

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION made as of _____, 2000, by BEAVER BROOK/SOMERS ASSOCIATES, LLC, a limited liability company formed and existing under and by virtue of the laws of the State of New York, having offices at 222 Grace Church Street, Port Chester, New York 10573 ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of all the real property (the "Property") shown on a certain map entitled "Subdivision Map, Section 1, The Meadows and Stephans Green" prepared by Roland K. Link, filed in the Office of the Westchester County Clerk, Division of Land Records on March 13, 2000 as Map No. 26505; and

WHEREAS, Declarant desires to develop on the Property a residential community together with common lands and certain amenities and utilities for the benefit of such community; and

WHEREAS, Declarant desires to provide for the preservation and maintenance of the common lands, amenities and utilities in said community, and, to this end, desires to subject the Property to the covenants, restrictions, easements, charges and liens set forth herein, each and all of which is and are for the benefit of the Property and each owner thereof; and

WHEREAS, Declarant desires, for the efficient preservation and maintenance of the common lands, amenities and utilities in said community, to create a homeowners association to which will be delegated and assigned the powers of maintaining and administering the common areas; administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges set forth herein; and

WHEREAS, Declarant has caused to be incorporated The Preserve at Somers Homeowners Association, Inc., under the Not-for-Profit Corporation Laws of the State of New York, for the purpose of exercising the aforesaid functions;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, conveyed, transferred and occupied subject to the following covenants, restrictions, easements, charges, assessments and liens which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and be binding on all parties acquiring any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

The following words when used in this Declaration shall, unless the context clearly requires otherwise, have the meaning set forth below:

Section 1.01. "Association" shall mean and refer to The Preserve at Somers Homeowners Association, Inc., a New York Not-for-Profit Corporation.

Section 1.02. "Board" and "Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.03. "By-Laws" shall mean the By-Laws of the Association, as they may hereafter be amended.

Section 1.04. "Certificate" shall mean the Certificate of Incorporation of the Association filed with the Secretary of State on _____, as it may hereafter be amended.

Section 1.05. "Declarant" shall mean and refer to Beaver Brook/Somers Associates, LLC for as long as it continues to own any part of the Property, and its successors and assigns.

Section 1.06. "Home" shall mean a unit of residential housing situated upon a "Lot" as defined in Section 1.08.

Section 1.07. "Documents" shall mean this Declaration, the Certificate of Incorporation, the By-Laws, the rules and regulations published hereunder by the Board, and any and all other documents or instruments applicable to the community.

Section 1.08. "Lot" shall mean and refer to each numbered plot of land on the Subdivision Map.

Section 1.09. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 1.10. "Open Space Lots" shall mean and refer to each lettered plot of land on the Subdivision Map. Open Space Lots are also referred to as "Common Areas".

Section 1.11. "Owner" shall mean and refer to the record owner, whether one or more person or entities, of the fee simple title to any Lot, but excluding those having such interest merely as security.

Section 1.12. "Property" shall mean the real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, consisting of all that certain plot, piece or parcel of land, with the appurtenances thereon, situated, lying and being in the Town of Somers, County of Westchester, State of New York, shown on the filed Subdivision Map.

Section 1.13. "Subdivision Map" shall mean and refer to the map entitled "Subdivision Map, Section 1, The Meadows and Stephans Green, situated in the Town of Somers, County of Westchester, State of New York," prepared by Roland K. Link and filed in the Office of the Westchester County Clerk, Division of Land Records on march 13, 2000 as Map No. 26505 (the "Map").

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Section 1.14. "Town" shall refer to the Town of Somers.

Section 1.15. "Withdrawal Date" means the date on which the Declarant ceases to own at least one Lot.

ARTICLE II
ANNEXATION OF ADDITIONAL SPACE

Section 2.0 Declarant shall have the right to annex additional sections to the Property. Such annexation shall take place by Declarant filing such amendment or amendments to this Declaration as shall be necessary. Thereafter, the Owner of a Lot in such annexed section shall become a Member of the Association subject to the Declaration and all the terms and conditions set forth herein. Notice by Declarant of such annexation shall be in writing and shall be sent promptly to the Association and to each of the Members. It is anticipated that there will be four additional sections for a total of 188 lots in five sections.

ARTICLE III
THE ASSOCIATION

Section 3.01. General. The Association has been organized, among other purposes, to own, administer and maintain the Open Space Lots and, to the extent set forth in this Declaration, to preserve the beauty and value of the Property. The Association shall act in accordance with the terms and provisions of this Declaration, the Certificate of Incorporation and By-Laws.

Section 3.02. Membership. The Association shall have one (1) class of membership interest. The owner of each Lot, including the Declarant so long as it owns one or more Lots, shall automatically be a Member and shall have all of the rights and obligations of membership. Membership shall be appurtenant to each Lot, and the Member for that Lot shall be their person, persons, entity, and/or entities which is or are the owner of record of fee title to that Lot. Only one (1) membership shall be appurtenant to a Lot, regardless of the number of persons and/or entities sharing record ownership of the Lot.

Section 3.03. The Board. All of the powers and duties of the Association under this Declaration shall be exercised by the Board, unless otherwise specifically delegated to the Members under any of the Documents.

Section 3.04. Voting Rights. Each Member may cast one vote in all matters upon which the Members are entitled to vote.

Section 3.05. Restrictions on Voting. Any Member who is in violation of this Declaration or any rule or regulation promulgated hereunder, as determined by the Board, shall not be entitled to vote during any period in which such violation continues, except where the violation is for non-payment of assessment.

Section 3.06. Responsibilities of the Association. The Association shall be responsible for:

- (a) Generally supervising, administering and enforcing the provisions of the Documents.
- (b) Insuring the Common Areas and improvements thereon, as further described in Section 3.09.
- (c) Maintaining or contracting for the maintenance of the Common Areas, including but not limited to landscaping, signs, fencing walls and other improvements thereon, and including but not limited to operation and maintenance (in accordance with all governmental requirements, and with any easement agreements or similar instruments affecting the Property) of the drainage system on or serving the Property, as are not required to be maintained by any governmental entity or other entity.
- (d) Enforcing any rights, and fulfilling any obligations, appurtenant to the Property under the Documents, except obligations which are those of individual members.
- (e) Paying such taxes as may be due in relation to the Common Areas and the Association.

Section 3.07. Cure of Default. If any Member causes any unsightly, disorderly or dangerous condition to exist on his Lot, or otherwise defaults in his obligations hereunder with respect to maintenance of his Lot and the improvements thereon, the Association (upon no less than ten (10) days notice to the Member, or without such or any notice if the Member is not Declarant and if the Board reasonably determines that an emergency exists) may cause its employees or agents to enter onto the Member's Lot and take such actions as the Association deems appropriate to remedy such default. The Member shall reimburse the Association for the cost of such action within ten (10) days after the Association gives notice demanding the same; such reimbursement, together with interest thereon at the rate chargeable from time to time with respect to delinquent assessments, shall be a lien on the Lot as if it were an unpaid assessment hereunder.

Section 3.08. Insurance on Common Areas. The Association shall insure the Common Areas against loss from fire, and such other casualties as the Board deems appropriate, for the full replacement cost of the improvements located thereon. The Association may also maintain fidelity insurance against dishonest acts on the part of Officers, Directors and employees of the Association, and shall maintain public liability insurance, covering (to the extent obtainable) the Association, each Member together with its licensees, invitees, guests and lessees, and the managing agent, if any, against liability arising out of occurrences on or use of the Common Areas, the exercise of rights hereunder, and the Associations performance of its responsibilities hereunder. Public liability insurance maintained by the Association shall in any event provide for waiver of subrogation against the Members and other persons exercising rights hereunder. The Board shall also maintain liability insurance for Officers and Directors. All premiums for such insurance coverage shall be paid by the Association. Subject to the foregoing general requirements, the Board shall determine the Insurers, the policy limits, the coverage and the provisions of such policies.

ARTICLE IV
ASSOCIATION EXPENSES, ASSESSMENTS AND LIENS

Section 4.01. Affirmative Covenant to Pay Association Expenses. Association Expenses shall comprise of and be defined as all expenses incurred by the Association in fulfilling the responsibilities and exercising the powers conferred on it hereunder, including but not limited to (a) taxes on the Common Areas, (b) insurance premiums, (c) utilities supplied to the Common Areas, (d) management costs, (e) bookkeepers, accountants, attorneys and other professionals fees, (f) labor and materials for the operation, maintenance and repair of the Common Areas, (g) interest payments on borrowed funds, (h) creation, maintenance and replenishment of franchise and income taxes, and (i) other operating expenses and expenses incurred in enforcing this Declaration. Association Expenses shall be paid by the Association from funds assessed and collected from Members in the manner set forth in this Declaration, and there is hereby imposed upon each Lot and Member the affirmative covenant and obligation to pay its respective share of the Association Expenses, which covenant shall run with the land. Each Member, by acceptance of a deed or other instrument of conveyance, whether or not so expressed in such deed or instrument, shall be considered to have agreed and covenanted to pay the share of Association Expenses allocated to his Lot or Lots. No Member shall be relieved of liability for payment of his respective share of Association Expenses by non-use of the Common Areas or by abandonment of his Lot.

Section 4.02. Budget Notice. Not less than sixty (60) days before the beginning of each fiscal year (which shall run from January 1st to December 31st), the Board shall give notice (the "budget notice") to the Members setting forth the Association's proposed budget for the forthcoming fiscal year. The budget shall be adopted by the Board, with such amendments as it deems appropriate, at a meeting held at a time specified in the budget notice, not more than forty-five (45) nor less than thirty (30) days before the beginning of the fiscal year. The foregoing requirements with respect to the giving of a budget notice, and the timetable for adoption of a budget, shall not apply to budgets for the period (which may cover all or parts of more than one fiscal year) ending on December 31st preceding the first Annual Meeting of Members.

Section 4.03. Budget. The budget shall include:

- (a) Estimated Association Expenses for the forthcoming fiscal year.
- (b) A description of each "capital" project (meaning a repair, a replacement, new construction, or an acquisition of real or personal property, not customarily considered a part of periodic maintenance, having a useful life of five (5) years or more, and costing more than five thousand dollars (\$5,000.00)) proposed to be undertaken or continued during the forthcoming fiscal year, together with a description of how the Association proposes to pay for it.
- (c) A division of estimated expenditures into "capital" and "non-capital" expenditures. Capital expenditures shall include all sums payable with respect to newly or previously funded or authorized capital projects, including interest payments on funds

established to pay for them. Non-capital expenditures shall include all other expenditures, including but not limited to creation and maintenance of other reserves.

(d) The Aggregate Annual Assessment proposed to be levied against the Lots, as described below, the date or dates on which it will be payable over the course of the fiscal year, and the interest rate to be charged with respect to Assessments not paid when due. The aggregate annual assessment shall equal the estimated Association Expenses for the fiscal year, after allowance for borrowing pursuant to Section 4.05.

Section 4.04. Capital Projects. Except as further provided in this Section, capital projects requiring an additional or Special Assessment shall be undertaken (and Assessments to pay for them shall be levied) only upon approval of two-thirds (2/3rds) of the Members. No such approval shall be required for the reconstruction (substantially in accordance with the original) of improvements to the Common Areas with respect to damage occurring before the Withdrawal Date or for any capital projects funded by Sponsor.

Section 4.05. Borrowing. The Association shall not borrow money for repayment in a subsequent fiscal year except to pay for capital projects. Extension of credit by a supplier until a reasonable time after completion of work or delivery of materials shall not constitute borrowing. No Member shall be liable for the debts of the Association, but the Association shall levy Assessments sufficient to pay its debts as they become due.

Section 4.06. Notice of Levy. Assessments shall be levied by notice of such levy given by the Association to each Member, not less than thirty (30) days before the beginning of the fiscal year with respect to which the levy is made. However, no such notice shall be required with respect to Assessments levied on account of the period ending on December 31st preceding the first Annual Meeting of Members. Such notice shall include a copy of the adopted budget (if different from the proposed budget), state the amount of the Assessment levied against each Lot, the date or dates on which it will become payable, and the interest rate to be charged with respect to installments of the Assessment not paid when due. Failure to provide notice of the Assessment as provided above shall not invalidate such Assessment when made.

Section 4.07. Interest and Collection Costs. An installment of an Assessment not paid when due shall bear interest from the date due at the rate specified in the notice of levy (or at the maximum legal rate if such notice was not required to be given or failed to specify a rate), which interest, together with costs of collection (including but not limited to reasonable attorneys fees), shall be added to such assessment. The minimum charge for interest and collection costs for an installment of an Assessment not paid within ten (10) days after it is due shall be fifty dollars (\$50.00). Payment of principal, interest and collection costs shall be the personal obligation of the Member, secured by a lien on his Lot in favor of the Association. Such lien may be foreclosed in the same manner as a mechanic's lien, but shall be subordinate to liens and encumbrances of record before the levy thereof, and as described in Section 4.10. A Member's personal obligation to pay assessments shall apply to Assessments levied with respect to his period of ownership, provided that such period of ownership shall not be deemed to have terminated before the Association actually receives written notice of the change in ownership,

signed by the former Member and the new Member, and accompanied by payment of any Assessments affecting the Lot which are then due, and by the new Owner's designation of representative and/or residents if required under Section 3.04. Within five (5) business days after receiving a written request from a Member or his mortgagee, the Board shall promptly furnish such Member or his mortgagee with a written statement of the unpaid Assessments due from such Member. The Board may impose a reasonable charge for doing so.

Section 4.08. Allocation of Assessments. The Aggregate Annual Assessments, and all other Assessments, shall be allocated equally among all of the Lots, improved and unimproved, except that sums payable by a Member to the Association by reason of his default under this Declaration, by way of fines for violation of the Documents, or otherwise for any reason other than the mere ownership of his Lot, shall be treated as if they were Assessments levied only against his Lot. If the Association has or projects a surplus, it may distribute a rebate to the Members (provided that the Association's attorney or accountant advises that this will not have an adverse tax impact on the Members or the Association), or reduce future assessments, provided that any such refund or reduction is allocated equally among all of the Lots.

Section 4.09. Special Assessments. The Board may revise the Association's budget during the fiscal year to provide for unforeseen Association expenses, at a meeting held on not less than five (5) business days prior notice to the Members. The Association shall levy Special Assessments to cover increases in the budget by giving written notice to the Members not less than thirty (30) days before any part of such Assessments is payable, which notice shall include a copy of the budget as thus revised. Special Assessments shall be levied against all Lots, improved and unimproved, in equal amounts, except as provided in Section 4.08.

Section 4.10. Recognized Mortgages. The Association's lien for unpaid Assessments shall be subordinate to the lien of a "Recognized Mortgage" (meaning thereby a first mortgage of record encumbering a Lot which is first granted to a bank or other lending institution). If the holder of a Recognized Mortgage acquires title to a Lot as a result of foreclosure of the Recognized Mortgagor by a deed given in lieu of foreclosure thereof, such Recognized Mortgagee, its successors and assigns, shall not be liable for any Assessments levied against such Lot prior to its acquisition of title to such Lot. If so requested by notice from any Recognized Mortgagee, the Association shall provide to such Recognized Mortgagee copies of any or all notices and other communications given by the Association to the Owner of the affected Lot.

Section 4.11. Delinquent Assessments. If an installment of an Annual or Special Assessment is not paid by the Member against whose Lot it is levied within ten (10) days after it is due, the entire Annual or Special Assessment against his Lot, as the case may be, for the fiscal period covered by the current budget, shall thereupon become due and payable. The Association may maintain a personal action against a Member to collect delinquent Assessments, without thereby waiving the right subsequently to foreclose its liens for any sums remaining unpaid. If the Association fails to enforce a Member's obligation to pay a delinquent Assessment, the Town may do so as if the Assessment were a tax.

Section 4.12. Payment Upon Sale or Mortgage. No Lot shall be sold or mortgaged, other than by Declarant, unless all Assessments against such Lot theretofore payable have been paid, or are paid out of the proceeds of such sale or mortgage. Any sale or mortgage made in contravention of the preceding sentence shall be voidable at the Association's election.

Section 4.13. Continuation of Budget and Assessments. If the Board fails to adopt a budget and/or levy Annual Assessments in a regular and timely fashion for any fiscal year, the budget for the preceding fiscal year shall be deemed the budget for the current fiscal year, and Assessments shall be payable as if the preceding fiscal year's notice of levy had been given for the current fiscal year.

ARTICLE V
USE OF COMMON AREAS; RESTRICTIONS AND EASEMENTS

Section 5.01. Use of Common Areas. Each part of the Common Areas shall be used for the purpose for which they are reasonably intended, subject to the further provisions hereof, such reasonable rules and regulations as the Board may publish and/or amend from time to time, and any governmental limitations and requirements. The Common Areas are comprised primarily of wetland and wetland buffer areas which are to remain as open space, undisturbed except for stormwater facilities pursuant to the approved plans. The Common Areas shall at all times be maintained by the Association in good repair and condition, and shall be operated in accordance with high standards. Neither the Common Areas nor any interest therein shall be sold, conveyed, transferred, subdivided or otherwise alienated. This Section shall not be amended.

Section 5.02. Retention of Open Space Lots. Those portions of the Property shown as Open Space Lots on the Subdivision Map shall not be further developed except as may be permitted by the Town.

Section 5.03. Sewer, Drainage and Water Easements. There is hereby granted to the Town and Somers Sewer District No. 1 an easement in, over and upon all portions of the Property shown and designated on the Subdivision Map as Open Space Lots and those areas indicated on the Subdivision Map as "Sewer Easement" or "Drainage Easement," for the purpose of installing sanitary and stormwater sewers, connecting such sewers to other existing sewer lines, and maintaining and repairing such sewers or other stormwater management facilities as necessary. There is hereby granted to the Town and the Amawalk Shenorock Water District an easement in, over and upon all Open Space Lots and those areas indicated on the Subdivision Map as "Water Easement for the purpose of installing water mains, connecting such mains to other existing water mains, and maintaining and repairing such mains as necessary.

Section 5.04. 10.00' Foot-Path Easement. There is hereby granted to the Town an easement for the use, enjoyment and maintenance of those portions of the individual Lots and Open Space Lots which are shown and designated on the Subdivision Map as "10.00' Wide Foot Path Easement," for pedestrian use only and only from sunrise to sunset. Declarant shall construct the 10.00' Foot Path Easement in accordance with site plans approved or to be approved by the Town. Thereafter, the Town shall have the responsibility to maintain the 10.00' Foot Path

Easement; however, to this end no topsoil, sand, gravel, rock or minerals shall be excavated or removed, no grading shall be conducted, no fill shall be placed which may cause or contribute to erosion of the land, and no trees or other plants or vegetation shall be cut, destroyed or removed other than those which are dead, diseased or decayed. Subsequent to the initial construction of the 10.00' Foot Path Easement, Declarant shall have no obligation to maintain, alter or improve the 10.00' Foot Path Easement.

Section 5.05. Landscape Buffer. Those portions of the Property which are shown and designated on the Subdivision Map as "20' Wide Restrictive Landscape Buffer" shall be landscaped in accordance with landscape plans approved by the Town and such landscaping shall be maintained so as to function as a landscape buffer to adjacent properties.

Section 5.06. Stormwater Management Facilities. The stormwater management facilities which are located or to be located within the Open Space Lots or individual Lots shall be maintained by Declarant (or Declarant's successors or assigns) for a period of five years next following installation thereof. Thereafter, such facilities shall be maintained by the Association. Such maintenance shall be performed in accordance with the maintenance schedule included in the stormwater pollution prevention plan approved by the New York City Department of Environmental Protection on October 4, 1999. In performing its obligations hereunder, the Association is authorized to collect any and all funds from the Owners necessary to pay for such maintenance, and to spend such funds to pay for such maintenance. Maintenance of such facilities shall be for the benefit of the consumers of the New York City drinking water supply system as well as for the members of the Association. There is hereby granted to the Declarant, the Association, and if necessary, the Town, an easement over the portions of the Property which are shown and designated on the Subdivision Map as the "Biofilter Basin Easement" for maintenance, repair and replacement of the stormwater basins, and for access thereto.

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Section 5.07. Mahopac Pathway Easement. There is hereby granted to the Town an easement for the use and maintenance of that portion of the Property which is shown and designated on the Subdivision Map within the Open Space as the "Mahopac Pathway Easement" which easement, if and when the easement area shall be improved as part of a pathway system, shall allow public access.

Section 5.08. Road and Utility Easement. While the Declarant owns the roads and utilities as shown on the Subdivision Map, the Association, each Owner, every utility company serving the Property, and all governmental entities having jurisdiction shall have a non-exclusive vehicular and pedestrian right-of-way over the roads and an easement as necessary for the use and maintenance of the utilities.

Section 5.09. Declarant's Easement. Declarant shall have an easement for the purpose of exercising its Declarant rights. Declarant's easement shall not cover any Lot that is not owned by Declarant, except to the extent reasonably required to complete construction, including without limitation construction of utility lines, the stormwater drainage system, landscaping, roads and driveways (whether or not they serve such Lot), as well as any construction warranty

or other defect correction work. Declarant's easement rights may be exercised also by its contractors, employees and other authorized agents.

Section 5.10. Manner of Exercise of Easement Rights.

(a) All rights and easements granted under this Section 5 shall be exercised carefully, with minimum practicable disturbance of the affected areas. Areas disturbed by such exercise shall be repaired or restored to their prior condition as soon as practicable by the party exercising such rights, provided that (in the case of the Declarant) such repair or restoration shall be performed promptly after notification by the Association or any Member.

(b) Without limiting the generality of the preceding subparagraph, while the Association owns the roads, each Owner shall be responsible for repairing any damage to the roads caused by construction vehicles and machinery operated by or for such Owner, or such Owner's agents, employees or contractors, but this shall not apply to wear and tear caused by ordinary automotive or commercial traffic.

ARTICLE VI
BUILDING RESTRICTIONS

Section 6.01. Residential Building. No building shall be erected, placed or permitted to remain on any Lot, other than one (1) detached, single-family dwelling and attached garage, except that non-residential buildings and structures accessory to the use of the dwelling may be erected on the Lot as permitted by the Town.

Section 6.02. Non-Interference With Easements. No structure, planting or other material shall be placed or permitted to remain on any Lot which may damage or interfere with the installation and maintenance of utility lines, the storm drainage system, or with the exercise of any easement rights. Grades and vegetation shall not be altered so as to affect drainage patterns or characteristics of the Property. The surface area of any Lot affected by any easement shall be maintained by the Lot Owner, except as may be specifically provided for in the terms of such easement.

Section 6.03. Prohibitions. No individual water supply system, individual sewage system, clothesline or other exterior clothes drying apparatus, exterior artificial vegetation, trailer, tent, or other temporary structure shall be permitted on any Lot.

Section 6.04. Signs. No temporary or permanent sign, poster, advertisement or similar display of any kind shall be displayed for general view on any Lot. However, directional or traffic signs may be installed by the appropriate governmental entity, by Declarant, or by the Association, and name and address plates of reasonable size may be displayed.

Section 6.05. Stone Walls. Stone walls existing on the Property as of the date hereof shall be preserved whenever possible.

Section 6.06. Completion of Construction and Repairs. Construction of any new building, or the clean-up and repair of any Lot and/or building damaged by fire or otherwise, shall be diligently prosecuted and promptly completed. Repair of fire or other damage to improvements on a Lot shall be commenced within thirty (30) days after the damage occurs, and shall thereafter be pursued continuously and diligently. This Section shall not be enforced against the Declarant.

Section 6.07. Exceptions for Declarant. Notwithstanding anything in this Declaration to the contrary, Declarant may construct and maintain trailers, sales offices and temporary structures, together with signs relating thereto and to the offering of Homes for sale or rent on the Common Areas and on any Lot owned by it, and may use any Lot owned by it for all purposes relating to the completion of the development and the marketing of Homes. Declarant may maintain signs relating to the marketing of Homes, and identifying its construction lender and other participants in the development, on the Common Areas at or near the vehicular entrance to the property so long as it owns any Lot.

ARTICLE VII USE RESTRICTIONS AND COVENANTS

Section 7.01. Residential Use. Each Lot shall be restricted to residential use by a single household, its servants and guests, and shall be used for no other purpose. No trade, profession, business or any other type of commercial activity shall be conducted on any Lot.

Section 7.02. Further Subdivision. No Lot shall be further subdivided or reduced in size.

Section 7.03. Maintenance of Exteriors. Each Member shall maintain the exteriors of all structures on his Lot and all fixtures attached thereto in a sightly manner, and shall maintain all gutters, downspouts and similar fixtures in good working order.

Section 7.04. Noxious Vegetation. No Member shall permit the growth of noxious weeds or vegetation upon his Lot. All Lots shall be maintained in a clean and sightly manner.

Section 7.05. Landscaping and Snow Removal Requirements. Members shall keep their Lots neatly groomed, with shrubs trimmed and lawn areas mowed. They shall keep their driveways and walkways free of snow and ice, and/or sanded to provide safety in walking and driving. Each Member is responsible for landscaping and maintaining all areas of their Lot, as well as the portion of the road right-of-way between their property line and the curb so that this area shall appear as an extension of the front yard. Only grass shall be permitted in the right of way. No grade changes or other planting are permitted in the road right of way.

Section 7.06. Litter, Trash, Garbage. No garbage, trash, refuse or rubbish shall be deposited, dumped or kept on the Property except in enclosed, sanitary containers in accordance with directions of the Board or requirements of the Town.

Section 7.07. Nuisances. No Member shall permit the emanation from his Lot of any unreasonable noises or odors. No Member shall permit on his Lot any nuisance, any disorderly,

immoral or illegal activity, or any activity which is observable by his neighbors and is unreasonably annoying or offensive to them.

Section 7.08. Vehicles. No vehicle, trailer or boat shall be parked on a Lot unless such vehicle is a passenger vehicle, is in a garage, or is a commercial vehicle in the process of being loaded or unloaded. Two-wheeled or three-wheeled motorized vehicles which require motor vehicle registration shall not be operated on the Property other than the roads. Vehicles shall not be repaired on the Property, other than within garages or for brief emergency service. This Section shall not be enforced against Declarant.

Section 7.09. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, other than dogs, cats and other typical household pets which are not kept for any commercial purpose, and which do not cause a nuisance or unreasonable annoyance to other Members. Pets shall not be allowed to roam unleashed.

Section 7.10. Insurance of Homes. Each Member shall maintain insurance covering his Lot against fire and other casualties commonly covered by an "extended coverage" endorsement. The policy shall name the Association as an additional insured as its interest may appear (which interest shall consist of the right to compel prompt reconstruction under Section 6.06), in the amount of the estimated cost of replacing those parts of the improvement on such Lot which are susceptible to damage by the perils covered. If a Member fails to do so, the Association may procure such insurance and shall be reimbursed therefor within ten (10) days after giving notice to the Member requesting the same. The Association shall cooperate in facilitating the disbursement of any insurance award in a manner reasonably designed to provide for the prompt repair or restoration of damage to the improvements on a Lot. Any provisions in any mortgage affecting the Property which would require application of insurance proceeds inconsistently with the foregoing shall be invalid.

Section 7.11. Wetlands. Within the Wetlands and the one hundred (100) foot Wetland adjacent area as shown on the Subdivision Map, no land disturbance, tree removal, construction regrading or other improvement shall take place within such regulated areas except in accordance with all applicable laws and regulations.

Section 7.12. Rules; Fines. The Board may adopt reasonable rules from time to time, each of which shall take effect when the Board gives written notice thereof to the Owners. Such rules may provide, without limitation, for the Board's imposition of a reasonable fine upon any Owner other than Declarant for violation of the Documents or this Declaration. Such fine may treat each day's violation as a separate offense. The topics addressed by the rules may include, but shall not be limited to, (a) conduct of pets on the Property; (b) speed limits on the roads; (c) restrictions on outdoor furniture and storage; (d) charges and procedures governing applications for approval of alterations; and (e) other matters specifically mentioned in this Declaration of Covenants, Restrictions and Easements.

Section 7.13. General Prohibitions. The following shall not be permitted on the Property:

- (a) Exterior artificial vegetation.
- (b) Above-ground swimming pools.
- (c) Fencing consisting of other than wood or stone.
- (d) Radio or television antennas, provided that "conventional", rooftop tubular antennas of size and configuration customary at the time when the Declaration was recorded, and "dish" type antennas not exceeding 18' in diameter, shall be permitted. The Association may by rule allow additional antenna installations that would otherwise be prohibited hereunder.

ARTICLE VIII
MISCELLANEOUS

Section 8.01. Incorporation of the Documents. All instruments conveying any interest in a Lot shall be deemed to incorporate the provisions of the Documents, including but not limited to this Declaration, whether or not such incorporation is specifically set forth by reference in such instruments. Acceptance by the transferee or grantee of such an instrument shall indicate acceptance of the provisions of the Documents. The provisions of the Documents shall, in any event, be binding on all persons now or hereafter occupying or claiming any interest in the Property.

Section 8.02. Enforcement. The provisions of the Documents may be enforced by Declarant, the Association, any Member, and by the Town to the extent set forth herein, by any remedy recognizable at law or in equity. Without limiting the generality of the foregoing, damages may not be considered an adequate remedy for violations of the provisions of the Documents, other than provisions imposing no obligation beyond the payment of ascertainable sums not payable by reason of any default of the obligor. Thus, violations of any provision of the Documents (or of any rule or regulation published by the Board) may be enjoined. The failure of any party to enforce any such provision shall not be deemed a waiver of such enforcement, or of the right of such party thereafter to enforce such provision. The prevailing party in any such litigation shall be entitled to reasonable attorneys' fees and court costs at all trial and appellate levels.

Section 8.03. Failure to Comply. In the event the Association fails to comply with any of its obligations hereunder or under the Documents, the Town may provide notice to the Association setting forth the manner in which there was a failure to comply. If after thirty (30) days from the date of such notice, corrective action has not been commenced by the Association, or if such corrective action has not been completed within one-hundred twenty (120) days after commencement (or, in either case, immediately, if exigent circumstances exist), the Town shall have the right to enter the Property and take corrective action as is reasonably necessary to ensure compliance. The Association shall pay the Town, within thirty (30) days of an invoice therefor, all expenses associated with the corrective action, including, without limitation, all labor costs of Town employees. In the event the Association fails to pay within thirty (30) days, the cost to the Town of any such corrective action shall become a lien against all the Lots

proportionately, and, together with interest from the date of the invoice, shall be included in the annual tax levy of the Town upon each Lot and shall be collected in the same manner as other Town taxes.

Section 8.04. Condemnation. If the Association receives any award or payment on account of condemnation, other governmental taking, or conveyance in lieu thereof of the Common Areas or of any interest therein, the net proceeds thereof shall first be applied to the restoration of the Common Areas to the extent deemed advisable by the Board. Any remaining balance shall either be distributed to the Members (or their respective mortgagees, as their interests may appear, provided in either case that the Association's attorney or accountant advised that this will not have an adverse tax impact on the Members or the Association), in equal shares for each Lot, or retained for application to future Association Expenses.

Section 8.05. Indemnification. The Association shall indemnify, defend and hold Declarant harmless against any suits, proceedings, liabilities and expenses arising out of the acts or omissions of the Association and the Members (other than Declarant), out of any occurrences on the Common Areas (other than with respect to acts or omissions of Declarant), and out of any interference with Declarant's exercise of its rights under the Documents. Declarant shall indemnify, defend and hold harmless the Association and the Board against suits, proceedings, liabilities and expenses arising out of Declarant's acts or omissions.

Section 8.06. Notices. Notices and other communications permitted or required under the Documents shall be written, and shall be delivered personally or mailed (postage prepaid, return receipt requested) to (a) Declarant at the address set forth above, or such other address as it may designate from time to time on Notice to the Association, (b) a Member, at the address of the Lot owned by the Member or at such other address as he may designate from time to time on Notice to the Association, and (c) the Association at 222 Grace Street, Port Chester, New York 10573 or such other address as it may designate from time to time on notice to Members. Notices to Declarant or the Association, and notices mailed from within New York to addresses within New York shall be deemed delivered upon receipt; other notices shall be deemed delivered on the earlier of the date of receipt or the third Federal business day after the date of mailing.

Section 8.07. Duration. The covenants, restrictions, liens and other provisions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by Declarant, the Association, the Members, and their respective legal representatives, heirs, successors and assigns (but shall not be construed to confer any benefit on the general public, except insofar as the Town is given certain specific rights hereunder) until the Withdrawl Date. After such time they shall be deemed automatically extended for successive terms of ten years, unless (a) an instrument, signed by the Owners owning at least a majority of the Lots, is recorded prior to commencement of any such extension, stating that such extension shall not take effect; and (b) any requisite governmental approvals are obtained with respect to such termination. However, the easements and other rights afforded to the Owners under Section 5 shall in any event be perpetual, except as agreed in writing by all persons claiming any interest of record in the Property.

Section 8.08. Disposition of Assets Upon Dissolution of Association. Upon dissolution of the Association, its real and tangible personal assets, including the Common Areas, shall be conveyed to an organization established to own and maintain such assets, and subject to (a) the same restrictions on maintenance and use as the Association, and (b) approval by the Town Planning Board. No disposition of the Association's assets shall itself affect any other revocation or amendment of any covenant, restriction or other provision of this Declaration. Subject to the foregoing, and subject to any inconsistent requirements of law, any assets distributable to the Members shall be distributed to the Members (or their respective mortgagees as their interests may appear), in equal shares for each lot.

Section 8.09. Records and Accounts. The Association shall maintain full and complete records and accounts at the office of the Association, or at the office of a managing agent engaged by the Association. All such records and accounts shall be available for inspection by any Member or the mortgagee of any Lot at reasonable times.

Section 8.10. Transfer of Declarant's Status. Declarant may convey its rights as Declarant under the Documents (as distinguished from its rights as Member) to any party acquiring fee simple title to three (3) or more Lots, and which qualifies as a substitute declarant under the Plan, by reciting such conveyance in the deed conveying title to such Lots. Upon such conveyance, the transferee shall be treated in all respects as if it has been the original Declarant of such Lots. Upon transfer the outgoing Declarant shall cease to have such rights as to the Lots conveyed, except as agent or contractor of such transferee. No such conveyance shall convey less than all of such rights, or shall release the outgoing Declarant from any obligation to any third party.

Section 8.11. Captions. Article and Section captions inserted throughout this Declaration are supplied for convenience, and shall not define, limit or in any way affect any of the provisions of this Declaration.

Section 8.12. Context. Whatever the context so requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any word may be deemed to mean the corresponding plural, or vice versa.

Section 8.13. Severability. If any provision of this Declaration is determined to be invalid by a court of competent jurisdiction, such determination shall not affect any of the other provisions hereof, which shall remain in full force and effect. Without limitation by reason of the foregoing, the invalidation of any provision of this Declaration, or a reduction in the term of the same by reason of the legal rule against perpetuities, shall in no way affect any of the other provisions hereof, which shall remain in full force and effect for such period of time as may be permitted by law.

Section 8.14. Conflicts. In the event of any conflict between the provision of this Declaration and of any other Land Use Document, the terms of this Declaration shall govern.

ARTICLE IX
AMENDMENTS AND REVISIONS

Section 9.01. Amendment. This Declaration may be amended by two-thirds (2/3rds) vote of all of the Members, at a meeting duly called and held, as described in the By-Laws, provided that:

(a) No provision which requires consent or other action by a greater percentage of Members of Lot owners shall be amended, except upon similar vote of such greater percentage.

(b) No provision setting forth restrictions relating to wetlands, use of the Open Space, maintenance of the Biofilter Basins or other portions of the stormwater management system, the Restrictive Landscape Buffer, the Footpath Easement or the Mahopac Pathway Easement may be amended without permission of the Town Planning Board.

(c) No provision affording rights to Declarant in distinction to other Members shall be amended without Declarant's consent.

(d) No Section which states that it may not be amended shall be amended without the consent of all Members, and of any governmental entity or other party upon whom rights are conferred by such Section.

Section 9.02. Effectiveness of Amendments. Duly adopted amendments shall become effective upon recording. The Association shall execute the instrument embodying such amendments.

IN WITNESS WHEREOF, Declarant has executed this instrument, intending the same to be recorded in the Office of the Westchester County Clerk, Division of Land Records, and effective as of the date first appearing above.

BEAVER BROOK/SOMERS ASSOCIATES, LLC

By: _____
Howard N. Blitman, Manager

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

On _____, 2000, before me, the undersigned personally appeared Howard N. Blitman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public