

BY-LAWS

of

THE PRESERVE AT SOMERS HOMEOWNERS ASSOCIATION, INC.

A New York Not-for-Profit Corporation

ARTICLE I. NAME, LOCATION AND PRINCIPAL OFFICE

These are the By-Laws of The Preserve at Somers Homeowners Association, Inc., hereinafter referred to as the "Association." The principal office of the Association shall be located at 222 Grace Street, Port Chester, New York 10573.

ARTICLE II. DEFINITIONS.

The following words when used in these By-Laws shall, unless the context otherwise prohibits, have the meanings set forth below:

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

(b) "Declaration" shall mean and refer to the Declaration of Easements, Covenants and Restrictions applicable to the Property, recorded in the Division of Land Records in the Office of the County Clerk, Westchester County, New York.

(c) "The Property" shall mean and refer to all those areas of land described in and subject to the Declaration.

(d) "Developer" shall mean and refer to Beaver Brook/Somers Associates, LLC, a New York limited liability company, and its successors and assigns should such successors and assigns acquire an undeveloped or developed, but unsold, portion of the Property from the Developer for the purpose of development.

(e) "Lot" shall mean and refer to any plot of land intended and subdivided for residential uses shown on the subdivision map of the Property, but shall not include the Common Areas as herein after defined.

(f) "Member" shall mean and refer to each holder of a membership interest in the Association, as such interest is set forth in Article VI hereof.

(g) "Home" shall mean and refer to all buildings of residential housing situated upon Lots located on the Property.

(h) "Owner" shall mean and refer to the record owner of fee simple title to any Home, including the Developer with respect to any unsold Home. Every Owner of a Home shall be treated, for all purposes, as a single owner for each Home held, irrespective of whether such ownership is joint, in common, or tenancy by the entirety. A majority vote of Owners shall be necessary to cast any vote on issues as to which such Owners are entitled to cast such a vote.

(i) "Common Areas" or "Open Space Lots" shall mean and refer to certain areas of land other than individual Lots as shown on the subdivision map and intended to be devoted to the common use and enjoyment of the Owners of the Property.

(j) "Development" shall mean The Preserve at Somers, a development of up to 188 Homes to be constructed on the Property, and the Common Areas, all as set forth in the Declaration, or any Amended Declaration.

(k) "Withdrawal Date" shall mean the date on which the Developer ceases to own at least one Lot.

ARTICLE III. PURPOSE

This Association is formed to own, administer and maintain the Common Areas for the benefit of the Members of the Association and to preserve the beauty and value of the Property..

ARTICLE IV. APPLICABILITY

All present and future Members, lessees, tenants, their families, guests, licensees, agents, employees and any other permitted users of the Common Areas, shall be subject to these By-Laws, the Declaration, and to the rules and regulations issued by the Association to govern the conduct of its Members.

ARTICLE V. USE OF FACILITIES

The Common Areas shall be limited to the use of the Members and their guests. However, in the event that a Member shall lease or permit another to occupy a Member's Home, the lessee(s) or occupant(s) shall, at the option of the Member, be permitted to enjoy the use of the Common Areas in lieu of, and subject to the same restrictions and limitations as, said Member.

Any Member, lessee or occupant entitled to the use of Association facilities may extend such privileges to members of their family residing in their household.

ARTICLE VI.

MEMBERSHIP AND VOTING RIGHTS.

Section 1. Membership. The Association shall have one class of membership interest which shall consist of all Owners. Each Member subject to the Declaration shall be entitled to one vote, irrespective of whether any such Owner owns more than one Home.

When more than one person or entity holds a Member's interest in any Home, the vote attributable to the Home shall be exercised as such persons mutually determine; however, with the exception of cumulative voting employed in the election of Directors, not more than one vote may be cast with respect to any such Home. For purposes of this Article VI, "Home" shall have the same meaning as Lot and, therefore, if there is no Home constructed on a particular Lot in the Development, the owner of such Lot will still be considered a Member entitled to cast the one vote as set forth above. No Member shall split or divide votes on any motion, resolution or ballot, other than in the cumulative voting procedures employed in the election of Directors.

Section 2. Suspension of Membership. The rights of membership are subject to the payment of periodic assessments levied by the Board of Directors, the obligation of which assessments is imposed against each Member and becomes a lien upon the Property of any Owner against which such assessments are made as provided for by Article IV of the Declaration. During any period in which a Member shall be in default in the payment of any assessment levied by the Association, the Member's right to the use of the Common Areas may be suspended by the Board of Directors until such assessment has been paid. Such rights of a Member may also be suspended, after notice and a hearing, for a period not to exceed thirty (30) days, for violation of any rules and regulations established by the Board of Directors governing the use of the Common Areas.

ARTICLE VII.

QUORUM, PROXIES AND WAIVERS

Section 1. Quorum. So many Members as shall represent at least fifty-one (51%) percent of the total authorized votes of all Members present in person, or represented by written proxy, shall be required to and shall constitute a quorum at all meetings of the Association for the transaction of business, except as otherwise provided by statute, by the Declaration, the Certificate of Incorporation of the Association or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the Association, the Members entitled to vote thereat, present in person or represented by written proxy, shall have the power to adjourn the meeting. At least 5 days' written notice of such adjourned meeting shall be given to all Members. At such adjourned meeting, at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting originally called.

Section 2. Vote Required to Transact Business. When a quorum is present at any meeting of the Association, the vote of a majority of the Members present in person or represented by written proxy shall decide any question brought before such meeting and such vote shall be

binding upon all Members, unless the question is one upon which, by express provision of statute, Declaration, the Certificate of Incorporation or of these By-Laws, a different vote is required, in which case such express provisions shall govern and control the decision of such question.

Section 3. Right to Vote. Members shall be entitled to vote either in person or by proxy at any meeting of the Association. Any such proxy shall only be valid for such meeting or subsequent adjourned meetings thereof.

Section 4. Proxies. All proxies shall be in writing and shall be filed with the Secretary prior to the meeting at which the same are to be used. A notation of such proxies shall be made in the minutes of the meeting.

Section 5. Waiver and Consent. Whenever the vote of the membership at a meeting is required or permitted by statute or by any provision of the Declaration, Certificate of Incorporation or of these By-Laws to be taken in connection with any action of the Association, the meeting and vote of the membership may be dispensed with if all Members who would have been entitled to vote upon the action if such meeting were held shall consent in writing to such action taking place.

Section 6. Place of Meeting. Meetings shall be held at any suitable places convenient to the Members as may be designated by the Board of Directors and designated in the notices of such meetings.

Section 7. Annual Meetings. The annual meeting of the membership of the Association shall be held on such date as is fixed by the Board of Directors. At such meetings, there shall be elected, by ballot of the membership, a Board of Directors in accordance with the requirements of Article VIII of these By-Laws. The Members may also transact such other business as may properly come before the meeting.

Section 8. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof, as well as the time and place where it is to be held, to each Member at least ten days, but not more than thirty days, prior to such meeting. The mailing of a notice in the manner provided in these By-Laws shall be considered service of such notice.

Section 9. Tenants and Occupants. Notwithstanding any other provisions of these By-Laws, in the event a Member shall lease or permit another to occupy their Home and elects to permit the lessee or occupant to enjoy the use of the Common Areas in lieu of the Member, the Member may, by a writing directed and in form satisfactory to the Board of Directors of the Association, also permit the lessee or occupant to exercise the Member's right to vote for the duration of the lease or permitted occupancy, or for a period of ten years, whichever is shorter. Upon the expiration of said period, and each successive period, the Member shall have the right to extend the lessee or occupant's right to exercise such vote if the aforesaid conditions are again satisfied.

Section 10. Order of Business. The order of business at all meetings shall be as follows:

- (a) Roll Call
- (b) Proof of notice of meeting or waiver of notice
- (c) Reading of minutes of preceding meeting
- (d) Report of officers
- (e) Report of committees
- (f) Appointment of inspectors of election (in the event there is an election)
- (g) Election of Directors (in the event there is an election)
- (h) Unfinished business
- (i) New business

ARTICLE VIII. BOARD OF DIRECTORS

Section 1. Number and Term. The number of Directors which shall constitute the whole Board shall not be less than five (5). An initial Board consisting of five (5) Directors shall be designated by the Developer to serve until the first annual meeting of the Association. At the first annual meeting and at all subsequent annual meetings, the Members shall vote for and elect five Directors to serve for one year terms and until their successors have been duly elected and qualified. All Directors, other than those the Developer shall have the right to designate, must be either Members of the Association or immediate family members residing in the Member's Home. Each Director shall be at least nineteen years of age.

Section 2. Cumulative Voting and Right of Developer to Designate Certain Board Members. In an election of Directors, each Member shall be entitled to as many votes as shall equal the number of Directors to be elected and a Member may cast all of such votes for a single Director or may distribute them among two (2) or more Directors as the Member sees fit.

Notwithstanding the foregoing, the Developer shall have the right to designate the five Directors until fifty (50%) percent of the Homes in the Development (the Development encompassing all 188 lots) are sold. The Developer shall have the right to designate three Directors until ninety (90%) percent of the Homes in the Development are sold. Thereafter, the Developer shall have the right to designate one Director for so long as it holds at least one membership. When the Developer no longer holds any membership interests, it may not designate any Directors. Developer may not cast its votes to elect any Directors other than to the designated Directors set forth above. This paragraph may not be amended without the consent of the Developer.

Section 3. Vacancy and Replacement. If the office of any Director becomes vacant by reasons of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, though less than a quorum, at a special meeting of Directors duly called for this purpose, shall choose a successor, who shall hold office for the unexpired term in respect of which such vacancy occurred and until a successor is duly elected and qualified. In

the event a Director appointed by Developer resigns, the Developer shall have the right to appoint a replacement Director.

Section 4. Removal. Directors may be removed for cause by an affirmative vote of a majority of the Members. No Director, other than a designee of the Developer, shall continue to serve on the Board if, during a term of office, such Director shall cease to be a Member.

Section 5. Powers.

(a) The property and business of the Association shall be managed by its Board of Directors ("Board"), which may exercise all such powers of the Association and do all such lawful acts and things as are not directed or required to be exercised or done by statute, Declaration, Certificate of Incorporation or by these By-Laws, by the Members or Owners personally. These powers shall specifically include, but not be limited to, the following items:

1. To determine and levy monthly assessments payable in advance ("Association Assessments") to cover the cost of operating and maintaining the Common Areas. The Board of Directors may increase the monthly assessments or vote a special assessment in excess of that amount, if required, to meet any additional necessary expenses;
2. To collect, use and expend the assessments collected to maintain, insure, care for and preserve the Common Areas;
3. To make repairs, restore or alter the Common Areas after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;
4. To open bank accounts and borrow money on behalf of the Association and to designate the signatories to such bank accounts;
5. To collect delinquent assessments by suit or otherwise; to abate nuisances and to enjoin or seek damages from Members for violations of rules and regulations referenced herein;
6. To make reasonable rules and regulations and to amend the same from time to time. Such rules and regulations, and amendments thereto, shall be binding upon the Members when the Board has approved them in writing and delivered a copy of such rules, regulations, and all amendments thereto, to each Member;
7. To employ workmen, gardeners, management agents, bookkeepers, and supervisory personnel, and to purchase supplies and equipment, to enter into contracts to provide maintenance and other services and generally to have the powers of Directors in connection with the matters hereinabove set forth. During the period that Developer is in

control of the Board, it will not enter into any contracts which bind the Association for a period in excess of three years from the date of the recording of the Declaration or if for a longer period, must be voidable upon ninety (90) days' written notice by a majority vote of the newly elected Board;

8. To bring and defend actions by or against one or more Members and pertinent to the operation of the Association and to assess special assessments to pay the cost of such litigation, and

9. To hire a managing agent to perform and exercise the powers of the Board in the management of the Development.

(b) The Board may, by resolution or resolutions passed by a majority of the whole Board, designate one or more committees, each of such committees to consist of at least three (3) Members, lessors of Members, or immediate family members residing in Home of a Member, one of whom shall be a Director, which, to the extent provided in said resolution or resolutions, shall have and may exercise the powers of the Board in the management of the business and affairs of the Association and may have the power to sign all papers which may be required, provided the said resolution or resolutions shall specifically so provide. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. Committees established by resolution of the Board shall keep regular minutes of their proceedings and shall report the same to the Board as required.

(c) Notwithstanding anything to the contrary contained in these By-Laws, so long as the Developer, or its designee, shall continue to own membership interests at least five (5%) percent of the total membership or more, but in no event later than 5 years from the closing of title to the first Home, the Board may not, without the Developer's prior written consent, (i) make any addition, alteration or improvement to the Common Areas; or (ii) assess any Association charges for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund; or (iii) enter into any service or maintenance contract for work not covered by contracts in existence on the date the Offering Plan for the Development is declared effective; or (iv) borrow money on behalf of the Association; or (v) increase or decrease the services or maintenance set forth in the Offering Plan; or (vi) purchase any materials, equipment or other goods costing in excess of \$1,000. Developer shall not use its veto power or control of the Board to reduce the level of services described in the Offering Plan or prevent capital repairs or prevent expenditures required to comply with applicable laws or regulations. While Developer is in control of the Board, no mortgage liens will be placed on the Common Areas without the consent of at least fifty-one (51%) percent of the Directors not nominated by Developer. This paragraph may not be amended except with the written consent of the Developer.

Section 6. Compensation Directors and officers, as such, shall receive no compensation for their services to the Association.

Section 7. Meetings.

(a) The first meeting of each Board newly elected by the Members shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practicable. The annual meeting of the Board shall be held at the same place as the annual meeting of Association Members and immediately after the adjournment of same, at which time the dates, places and times of regularly scheduled meetings of the Board shall be set.

(b) Regularly scheduled meetings of the Board may be held without special notice.

(c) Special meetings of the Board may be called by the President on two (2) days' notice to each Director either personally or by express mail or telegram. Special meetings shall be called by the President or Secretary in a like manner and on like notice on the written request of at least two (2) Directors.

(d) At all meetings of the Board, a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and an act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by statute or by the Declaration or by these By-Laws. If a quorum shall not be present at any meeting of Directors, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(e) Before or at any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by such Director of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 8. Annual Statement. The Board shall furnish to all Members and shall present annually (at the annual meeting) and when called for by a vote of the Members at any special meeting of the Members, a full and clear statement of the business condition and affairs of the Association, including a balance sheet and profit and loss statement verified by an independent public accountant and a statement regarding any taxable income attributable to the Members.

Section 9. Fidelity Bonds. The Board of Directors may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be an expense of the Association.

ARTICLE IX. OFFICERS

Section 1. Elective Officers. The officers of the Association shall be chosen by the Board and shall be a President, a Vice-President, a Secretary and a Treasurer. The Board may also choose one or more Assistant Secretaries and Assistant Treasurers and such other officers as, in their judgment, may be necessary. All officers must be either members of the Board, Members of the Association, or lessees or occupants entitled to the use of the Property in lieu of the Member renting or permitting them to occupy the Home in which they reside. Two or more offices may not be held by the same person.

Section 2. Election. The Board, at its first meeting after each annual meeting of Association Members, shall elect a President, a Vice-President, a Secretary and a Treasurer. Only the President must be a member of the Board.

Section 3. Appointive Officers. The Board may appoint such other officers and agents as it shall deemed necessary who shall hold their offices for such terms, and shall exercise such powers and perform such duties, as shall be determined from time to time by the Board.

Section 4. Term. The officers shall hold office for a period of one year or until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed, with or without cause, at any time, by the affirmative vote of a majority of the Board present at such meeting, provided prior notice was given to all Board members that this item was on the agenda for such meeting. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board.

Section 5. The President. The President shall be the chief executive officer of the Association; shall preside at all meetings of the Association Members and the Board; shall be an ex-officio member of all standing committees; shall have general and active management of the business of the Association; shall see that all orders and resolutions of the Board are carried into effect and shall have such other powers and duties as are usually vested in the office of president of a corporation organized under the Not-for-Profit Corporation Law of the State of New York.

Section 6. The Vice-President The Vice-President shall take the place of the President and perform the President's duties whenever the President shall be absent or unable to act, and shall have such other powers and duties as are usually vested in the office of vice-president of a corporation organized under the Not-for-Profit Corporation Law of the State of New York.

Section 7. The Secretary. The Secretary shall attend all sessions of the Board and all meetings of Association Members and record all votes and the minutes of all proceedings in a book to be kept for that purpose, and shall perform like duties for the standing committees, when required. The Secretary shall give, or cause to be given, notice of all meetings of Association Members and special meetings of the Board, and shall perform such other duties as may be prescribed by the Board or by the President, who shall supervise such duties.

Section 8. The Treasurer. The Treasurer shall have the custody of the Association funds and securities and shall keep full and accurate chronological accounts of receipts and disbursements in books belonging to the Association, including the vouchers for such disbursements, and shall deposit all monies, and other valuable effects, in the name and to the credit of the Association in such depositories as may be designated by the Board. These duties may also be exercised by the Managing Agent, if any; however, such Managing Agent shall not replace the Treasurer.

The Treasurer shall disburse the funds of the Association as ordered by the Board, making proper vouchers for such disbursements and shall render to the President and Directors, at the regular meeting of the Board or whenever they may require it, an account of all transactions as Treasurer and of the financial condition of the Association.

The Treasurer shall keep detailed financial records and books of account of the Association, including a separate account for each Member, which, among other things, shall contain the amount of each assessment, the date when due, the amount paid thereon and the balance remaining unpaid.

Section 9. Agreements, etc. Except as otherwise provided in these By-Laws, all agreements and other instruments shall be executed by the President or such other person as may be designated by the Board.

ARTICLE X. NOTICES

Section 1. Declaration. Whenever under the provisions of the Declaration or of these By-Laws notice is required to be given to the Board or to any Director or Association Member, it shall not be construed to mean personal notice; but such notice shall be given in writing, by mail, by depositing the same in a post office or letter box in a postage paid sealed envelope, addressed to the Board, such Director, or Member, as the case may be, at their address as same appears on the books of the Association.

Section 2. Service of Notice - Waiver. Whenever any notice is required to be given under the provisions of the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

ARTICLE XI. ASSESSMENTS AND FINANCES

Section 1. Creation of the Lien and Personal Obligation of Assessments. The creation of the lien and personal obligation of assessments is governed by Article IV of the Declaration.

Section 2. Date of Commencement of Assessments: Due Dates. The date of commencement and the due dates of assessments are as specified in Section 4.06 of Article III of

the Declaration.

Section 3. Effect of Non-Payment of Assessment: Remedies of the Association. The effect of non-payment of assessments and the remedies of the Association shall be as specified in Sections 4.07 and 4.11 of Article IV of the Declaration.

Section 4. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinated pursuant to the provisions of Section 4.10 of Article IV of the Declaration.

Section 5. Checks. All checks or demands for money and notes of the Association shall be signed by the President and Treasurer, or by such other officer or officers or such other person or persons as the Board may from time to time designate.

Section 6. Operating Account. There shall be established and maintained a cash deposit account to be known as the "Operating Account" into which shall be deposited the operating portion of all monthly and special assessments as fixed and determined for all Members. Disbursements from said account shall be for the general needs of the Association including, but not limited to, wages, repairs, betterments, maintenance and other operating expenses of the Association.

Section 7. Other Accounts. The Board shall maintain any other accounts it shall deem necessary to carry out its purposes.

ARTICLE XII. AMENDMENTS

These By-Laws may be altered, amended or added to at any duly called meeting of Association Members provided: (1) that the notice of the meeting shall contain a full statement of the proposed amendment; and (2) that the amendment shall be approved by vote of at least sixty-six and two-thirds (66-2/3%) percent of the Members. No amendment have the effect of infringing upon the Developer's right to build the Homes and develop the Property and make membership in the Association available to purchasers of the Homes.

ARTICLE XIII. GENERAL PROVISIONS

Section 1. Fiscal Year. The fiscal year of the Association shall be fixed by resolution of the Board of Directors.

Section 2. Seal. The Association seal shall have inscribed thereon the name of the Association and the year of its incorporation under the laws of the State of New York. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

Section 3. Examination of Books and Records. Each Member, or their respective representatives and first mortgagees, shall be entitled to a reasonable examination of the books and records of the Association at any time, upon reasonable notice to the Board. The Declaration, Certificate of Incorporation and the By-Laws of the Association shall be available for inspection by any Member or their first mortgagee at the principal office of the Association.

Section 4. Construction. Whenever the singular or plural form is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, whenever the context so requires.

In the case of any conflict between the Certificate of Incorporation and these By-Laws, said Certificate shall control. In the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

Section 5. Severability. Should any of the covenants, terms or provisions herein imposed be or become unenforceable at law or in equity, the remaining provisions of these By-Laws shall, nevertheless, be and remain in full force and effect.