

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION, made this tenth day of May, A.D. 1988, by Olde Millbrook Association, a Maine non-profit corporation, hereinafter called Association, and the undersigned lot owners.

WITNESSETH:

WHEREAS, the Association and the undersigned lot owners are the owners of the real property situated at and near Winnock's Neck in the Town of Scarborough, County of Cumberland, State of Maine; and

WHEREAS, the Association is authorized and required under the Declaration of Covenants and Restrictions recorded in the Cumberland County Registry of Deeds in Book 3132, Page 383 (as supplemented to date) to maintain thereon a residential community with permanent parks, playgrounds, open spaces, and other common facilities for the benefit of the said community; and

WHEREAS, the said Declaration of Covenants and Restrictions expire by their own terms on January 1, 1990; and

WHEREAS, the Association and the undersigned Lot Owners desire to continue to provide for the preservation of the values and amenities in said community and for the maintenance of said parks, playgrounds, open spaces and other common facilities; and, to this end, desire to subject the real property described in Article II together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, the Association and the undersigned lot owners have deemed it desirable for the efficient preservation of the values and amenities in said community to continue to maintain an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created;

NOW THEREFORE, the Association and the undersigned Lot Owners declare that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, and liens, (sometimes referred to as "covenants and restrictions") hereinafter set forth in conveyances of such land or lot.

ARTICLE I

Definitions

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to the Olde Millbrook Association.

(b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II, hereof.

(c) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plats of The Properties and intended to be devoted to the common use and enjoyment of the owners of The Properties, such areas being referred to on such subdivision plats as open space, pathways, walkways, recreational areas, playgrounds and other designations clearly indicating that such areas are for the common use and enjoyment of all residents of Olde Millbrook. These properties include, but are not limited to, those which were conveyed to Olde Millbrook Association by deeds of Jordan and Hammond, Inc. and which are recorded in the Cumberland Country Registry of Deeds in Book 3907, Page 40, Book 4155, Page 194, and Book 4527, Book 299; also including that property conveyed to Olde Millbrook Association by deed of Thomas Ferrante recorded in said Registry in Book 6440, Page 114.

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined and with the exception of any plot designated on any subdivision plat for utility or service use, such as a pumping station.

(e) "Living Unit" shall mean and refer to any building situated upon the Properties designed and intended for use and occupancy as a residence by a single family.

(f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon The Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(g) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section I, hereof.

ARTICLE II

Property Subject to this Declaration: Additions Thereto

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the Town of Scarborough, County of Cumberland, State of Maine, and is more particularly described and shown on the subdivision plats or plans entitled Olde Millbrook, Section 1, Scarborough, Maine, dated April 1969, sheets 1 of 2 and 2 of 2, recorded in the Cumberland County Registry of Deeds in plan Book 83, Pages 37 and 39 respectively to which reference is made for a complete description thereof, and also on those entitled Olde Millbrook, Section 2, Scarborough, Maine dated February, 1971, recorded in the Cumberland County Registry of Deeds in Plan Book 87, Pages 21, 23, 25, 27, 29, 31, 33, 35 and 37, and also on those entitled Revision of Olde Millbrook, Scarborough, Maine, made for Jordan and Hammond, Inc., South Portland, Maine by Robert P. Titcomb, Inc., dated January 1976 and recorded in the Cumberland County Registry of Deeds in Plan Book 113, Pages 3 through 14 inclusive, and finally that property subject to a certain condominium declaration records in said Registry in Book 6808, Page 232; all of which real property shall hereinafter be referred to as "Existing Property".

Section 2. Additions to Existing Property. Additional lands may become subject to the Declaration in the following manner:

(a) Additions. Upon approval in writing of the Association pursuant to a vote of its Members at a meeting duly called for the consideration of such question, the owner of any property who desires to add it to the scheme of the Declaration and to subject it to the jurisdiction of the Association may file of record a Supplementary Declaration of Covenants and Restrictions. No such Supplementary Declaration shall be valid unless it has been joined in by the Association. The quorum for a vote on such question shall be Fifty Percent (50%) of the Members then entitled to cast votes at general meetings of the Association.

(b) Consolidation. Upon consolidation or merger of the association with another Association, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merge. The surviving or consolidated association may administer the covenants and restrictions established upon any other properties as one scheme. No merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Existing Property.

ARTICLE III

Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or Living Unit which is subject to this Declaration as provided in Article II shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. Members shall be entitled to one vote for each Lot or Living Unit in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot or Living Unit all such persons shall be members, and the vote for such Lot or Living Unit shall be exercised as they among themselves determine by majority vote, but in no event shall more than one vote be cast with respect to any such Lot or Living Unit. For purposes of determining the votes allowed under this Section, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.

ARTICLE IV

Property Rights in the Common Properties

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the Common Properties and such right and easement shall be appurtenant to and shall pass with the title to every Lot and Living Unit.

Section 2. Title to Common Properties. The Association shall retain the legal title to the Common Property subject to existing utility and service easements.

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

(a) the right of the Association, in accordance with its articles and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default in any such mortgage the lender's rights shall be limited to a right, after foreclosure or taking possession of such properties, to commence, continue, and finish construction of common facilities, to charge admission and other fees as a condition to

continued enjoyment by the members and, if necessary, to open the enjoyment of such facilities to a wider public until the mortgage debt is satisfied whereupon the title and possession of such properties shall be returned and all rights of the Members hereunder shall be fully restored; and

(b) the right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure; and

(c) the right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(d) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties; and

(e) the right of the Association to dedicate or transfer all or part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the total number of votes authorized under Article III, Section 1 has been executed, agreeing to such dedication, transfer, purpose or condition.

(f) rules, regulations and orders of record of the Maine Department of Environmental Protection.

Section 4. Extension of Rights and Benefits. Every Member of the association shall have the right to extend the rights and easements of enjoyment vested in him under this Article to each of his tenants and to each member of his family who resides with him.

ARTICLE V

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each owner of an Lot or Living Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, does covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon at an annual rate not to exceed eighteen percent (18%) and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

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

Section 3. Basis and Maximum of Annual Assessments. The annual assessment for each fiscal year shall be determined by a majority vote of Members voting in person or by proxy at each Annual Meeting of the Association as provided by Article III, Section 2. The Board of Directors of the association may, after consideration of current maintenance costs and future needs of the association, fix the actual assessment for any year at a lesser amount.

Section 4. Special assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Date of Commencement of Annual Assessments; Due Dates. The annual assessment provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement.

The assessments for any year shall become due and payable on the first day of March of each year. The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 6. Effect of Non-Payment of assessment: The personal Obligation of the Owner; The Lien; Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section 5. hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the

then Owner, his heirs, devisees, successors, personal representatives and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at a rate of interest predetermined by the association, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgement is obtained, such judgement shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 7. Subordination of the Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such property pursuant to any allowable method of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment. the lien of the assessments shall also be subordinate to all utility easements which may be placed upon the Properties.

Section 8. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all Common Properties as defined in Article I, Section 1. hereof; (b) all properties exempted from taxation by the laws of the State of Maine, upon the terms and to the extent of such legal exemption; (c) all properties and interests owned or held by utility and public service companies.

Section 9. In each instance where two or more lots are under a common ownership, the Board of Directors of the Association shall, upon written request, for any assessment period, reduce the annual assessments on said commonly owned lots to an amount not less than the assessment for a single lot; provided, however, the Board of Directors has first determined that the benefits derived from the use of the annual assessment proceeds are not significantly greater in the case of the commonly owned lots than would be in the case of a single lot. In the event the Board of Directors allows a reduction of the annual assessment on such commonly owned lots, the voting rights appertaining to said lots shall be reduced in proportion to the reduction of the annual assessment during said assessment period.

ARTICLE VI

Architectural Control Committee

Section 1. Review by Committee. No building, fence, wall, sewerage system, or other structure or addition thereto or installation, or anything used for habitation shall be commenced, erected, or allowed to remain upon The Properties until the plans and specifications or other descriptive material, which shall show the location of the same, shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures, topography and soil conditions by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Section will be deemed to have been fully complied with.

Section 2. In addition to the requirements of Section 1 of this Article VI, The Properties shall be subject to the following restrictions concerning the use and enjoyment thereof:

(a) each Lot shall be used only for single family residential purposes unless a Lot or group of Lots are designated on a recorded subdivision plan for multi-family uses. Structures, in addition to the single family dwelling or multi-family dwelling, where allowable, such as guest cottages, utility houses, detached garages, may be erected and maintained if first approved by the Board of Directors or architectural committee in accordance with the standards set forth in Section 1 of this Article VI.

(b) no mobile homes shall be placed or maintained on said Properties. Utility trailers and recreational vehicles may be placed upon lots provided they are not occupied for human habitation.

(c) no trade, business or commercial activity of any nature shall be conducted on said Properties unless first approved by a majority of all Members of Olde Millbrook Association then entitled to vote, voting in person or by proxy at a meeting duly called therefor, other than that activity necessary to sustain the recreational areas from time to time operating upon the Common Properties.

(d) no living trees greater than one (1) inch in diameter shall be cut, trimmed or altered nearer than thirty (30) feet to any street or road or nearer than twenty (20) feet to any other land adjoining a Lot without prior approval of the Board of Directors or architectural committee in accordance with the standards set forth in Section 1 of this Article VI; except that

power and utility companies may conduct necessary cutting, trimming and alteration of trees, bushes and shrubs; diseased trees may be removed regardless of size.

(e) no livestock, animals or poultry shall be kept or maintained or allowed on any Lot or within any structures thereon other than household pets; provided that a riding horse shall be allowed on a Lot temporarily in connection with the exercise thereof.

(f) no garbage, trash, noxious or offensive objects, shall be kept, maintained or allowed on Properties, and no junk automobiles or other vehicles which do not pass the State of Maine Motor Vehicle Inspection law unless garaged.

(g) any dwelling or other structure on any of The Properties which may be destroyed or damaged in whole or part by fire, windstorm or by other casualty must be rebuilt or all debris removed and the premises restored to a slightly condition without delay.

(h) easements for installation and maintenance of utility and drainage facilities are hereby reserved the Association, for itself, its successors and assigns, in, over and under all rights of way and common areas shown on recorded subdivision plans and on and near Lot lines or across property as shown on said plans for maintenance of said utilities, drainage facilities, pipes, poles, wires, and other conduits, whether under or above ground.

(i) rules, regulations and orders of record of the Maine Department of Environmental Protection.

ARTICLE VII

General Provisions

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns in perpetuity unless earlier terminated by an instrument executed by three quarters (3/4) of the Association Members entitled to cast votes as authorized by Article III, Section 2 of this instrument.

Section 2. Severability. Invalidation of any one of the covenants or restrictions herein contained by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Assignability. The Association, its successors and assigns, notwithstanding any other provision herein to the contrary, shall at all times have the right to fully transfer, convey and assign all of its right, title and interest under this Declaration, provided that such transferee, grantee or assignee shall take such rights subject to all provisions and obligations contained herein.

Section 4. Effective Dates. This document shall take effect on January 1, 1990 or on the date of recording in the Cumberland County Registry of Deeds, whichever occurs later.

Section 5. Counterparts. This instrument may be executed in any number of counterparts, each of which, when so executed and contemporaneously recorded in the Cumberland County Registry of Deeds, shall be an original, and such counterparts shall constitute but one and the same instrument.

Section 6. **CONDITIONAL VALIDITY. NOTWITHSTANDING ANY PROVISIONS HEREIN TO THE CONTRARY, NEITHER THIS INSTRUMENT NOR ANY OF ITS COUNTERPARTS SHALL BE VALID UNLESS THEY COLLECTIVELY, AT THE TIME OF THEIR CONTEMPORANEOUS RECORDING, BEAR THE VALID EXECUTIONS OF THE OWNERS OF NO FEWER THAN ONE HUNDRED SIXTY FOUR (164) LOTS OR LIVING UNITS WHICH, ON MARCH 15, 1988, WERE SUBJECT TO THE ORIGINAL COVENANTS AND RESTRICTIONS (AS SUPPLEMENTED) AS IDENTIFIED ON THE FIRST PAGE OF THIS INSTRUMENT.**

Section 7. Mortgage. This document shall be deemed to be valid and effective against and in favor of a signer notwithstanding any title theory of the mortgage.

IN WITNESS WHEREOF, the Olde Millbrook Association has caused this Declaration of Covenants and Restrictions to be executed in its name and behalf by its President duly authorized, and the undersigned lot owners have set their hands in seals, all on the dates shown next to their signatures.

OLDE MILLBROOK ASSOCIATION

BY: /s/ William W. Adams

Its President