

7/11/2016

Petition to the Planning Board of Windham Maine.

We the undersigned, as residents of OtterBrook Estates, namely Rocklinn Drive and Otter Drive, located in Windham ME 04062, respectfully request that the application before the Board today be denied and that no further changes such as:

- A) Subdivisions,
- B) Lot size and number of lots
- C) Side, front or rear property set backs
- D) easements
- E) property uses or
- F) other property changes which may or could violate the deeded protective covenants

be allowed, permitted or approved.

Printed Name	Signature	Address	Phone Number
Matthew Noel	Matthew Noel	9 Rocklinn Dr.	892-7406
Jacqueline Bisetti	Jacqueline Bisetti	6 Rocklinn Dr.	892-2312
Angela Wymon	Angela Wymon	2 Rocklinn Dr.	415-5236
Jesse Wymon	Jesse Wymon	2 Rocklinn Dr.	415-5802
Erlyn Brisette	Erlyn Brisette	3 Rocklinn Dr.	272-9085
Patsy Brisette	Patsy Brisette	3 Rocklinn Dr.	749-3693
Rex Paulhus	Rex Paulhus	11 Rocklinn Drive	894-4396
John Henry	John Henry	10 Rocklinn Dr.	245-4990
Ron Bisetti	Ron Bisetti	6 Rocklinn Dr.	892-2312
John Camp	Felicia Cummings	17 Rocklinn Dr.	893-0334
Lois McInnes	Rick Cummings	17 Rocklinn Dr.	893-0334
Betty McInnes	Lois McInnes	1 Rocklinn Dr.	856-2936
Laurie Noel	Betty McInnes	1 Rocklinn Dr.	856-2936
Colene Egger	Laurie Noel	9 Rocklinn Dr.	892-7406
Doug Ewing	Colene Egger	4 Rocklinn Dr.	653-4585
Patricia Warner	Doug Ewing	19 Rocklinn Dr.	214-1119
Dean Winkle	Patricia Warner	19 Rocklinn Dr.	651-0600
Krista White	Dean Winkle	12 Rocklinn Dr.	892-3799
Paul Veil	Krista White	12 Rocklinn Dr.	892-3799
Becky DeCource	Paul Veil	14 Rocklinn Dr.	404-1308
Mark DeCource	Becky DeCource	27 Rocklinn Dr.	400-9105
George Baron	Mark DeCource	27 Rocklinn Dr.	232-2772
Paul Baron	George Baron	25 Rocklinn Dr.	892-5860
Joseph Bishop	Paul Baron	25 Rocklinn Dr.	892-5860
Kristen Gorriola	Joseph Bishop	16 Rocklinn Dr.	894-5103
Carol Verdine	Thomas Gorriola	23 Rocklinn Dr.	893-3933
Mark Cobb	Kristen Gorriola	23 Rocklinn Dr.	632-1307
	Carol Verdine	4 Otter Dr.	766-6057
	Mark Cobb	34 Rocklinn Dr.	892-5795

Good Evening.

Thank you for the opportunity to speak to you regarding this application and how it could affect me, my neighborhood and the Otter Brook community.

I have several points of concern with the application and as such, I have some images of documents which are available to all in the Planning Office. Most of these were not provided in the packet to the Planning Board Members or submitted by the applicant or his appointed spokesperson.

I would like to start at the beginning around 1988 & 1989 when Charles and Ester Rolfe worked closely with the Town of Windham's Planning Board and Maine's Department of Environmental Protection and others, in the research and the eventual approval of the Otter Brook Estates sub division. The creation of Otter Brook Estates took years of work and studies, especially with the Department of Environmental Protection, before finally being approved in January of 1989. As mentioned all of these documents are available in the Planning Office.

As a condition of its approval, the Maine Department of Environmental Protection required the Rolfe's to create and file deed restrictions for the Otter Brook Estate Development. I want to emphasize, these Deed Restrictions were NOT optional, but REQUIRED by the MDEP.

It is interesting to note at this time that the application before the Board tonight does not include these Deed Restrictions. In fact, the application on page 3 of 5 of the Town's Minor Sub-Division Application, item #7, indicates "N/A". While I understand Deed Restrictions are a civil matter and process, the contents of these deed restrictions, as they included specific Department of Environmental Protection requirements specific to Lot 26, should have been included. These MDEP restrictions are critical and I will share them with you.

The 1989 approved plans for Otter Brook Estates (see attached slide #2), which clearly shows Lot 27 and Lot 26. This drawing also shows the location of the approved locations for the private septic systems. This is important due to the ground water and the tributary which crosses lots 23, 26 and 27.

Slide #3 is a copy of the building permit application for lot 27. This slide shows the 1989 approved driveway, a shared driveway with Lot 26, and the location of the house construction for Lot 27. The shared drive was required per the MDEP to preserve the integrity of the wet lands on Lots 23, 26 and 27. See contour lines

In your packet, you have a copy of a letter from the builder of Lot 27 to the Town of Windham and approved by Roger Timmons, the CEO at the time. The Dyer's decided they did not want to share a drive or want a house built directly next to them on Lot 26 per the approved 1989 plans, so they decided to buy Lot 26 and, along with the letter you have, they decided to build a garage on it. Building a non-dwelling unit on a lot without a dwelling unit is non-conforming per Windham's Building code and also to the Deed Restrictions. This letter, the location of the garage (crossing the lot line between Lot 26 & Lot 27), the tax map, show the clear intent of the Dyers. They planned to define Lot 26 and Lot 27 as a single lot, Lot 27. They did so for the 16+ years they owned the property. Unfortunately, they failed to

register the deed properly. However their intent for 16 years is clear, one Lot, designated as Lot 27 was to be created, and it was and should be maintained.

In 2008, before we purchased our property, Lot 25, we researched all of the above and spoke with Roger Timmons. We performed this due diligence to verify that our vision and our investment into Lot 25 would not be adversely affected by construction in what appeared to be the undeveloped lot, Lot 26. In addition to Lot 26 appearing to be undeveloped, Lot 23 was also undeveloped at this time. Our research showed that based on the 1989 approved plan, conversations with the Town's CEO, that any dwelling unit on Lot 23 or Lot 26 would be several hundred feet, through heavy woods. These specific building sites were due to the wet lands found on these lots, and the required MDEP deed restrictions of Otter Brook Estates. Also the possibility of any additional construction on Lot 26 was impossible as it no longer "existed", it had been absorbed into Lot 27.

Fast forward to today.

The current application before you would like to wipe out the history noted above, and the facts which contributed to our decision to invest and decisions of others who have invested in properties within the Otter Brook Estates. If this application is approved, not only would the MDEP Deed Restrictions currently in place be ignored and violated, the investment I have made in Lot 25, and the investments my neighbors have made in their properties would also be compromised.

For the following specific reasons I oppose the application for a minor subdivision to the Otter Brook Estates as submitted by K.P Gagnon Company LLC. The approval of this application will have a MAJOR impact on the current neighborhood, its residents and threaten Otter Brook and / or its tributaries as identified by the MDEP.

The following are the specifics.

- 1) Our investment in Lot 25 was based on a thorough and detailed research in our property and the abutting properties, deed restrictions and consultation with Town Officials.
 - a. No building could be built on Lot 26 as it no longer existed. It had been absorbed in Lot 27.
 - i. The current garage on the former lot 26 was not built to meet the side line setbacks, or to Town's Ordinance, the deed restrictions (non-dwelling unit).
 - b. A building on Lot 23, not yet built in 2008, when built, would be hidden through hundreds of feet of woods.
- 2) MDEP Required Deed Restrictions for Otter Brook Estates, specifically the following, yet all apply.
 - a. Item #16, Protection of Streams (see Slide #4)
 - b. Item #17, Placement of Leach fields (see Slide #4)
 - c. Low ground water, seepage. (see Slide #5 & #6)
- 3) Otter Brook Estate Development / Residential Impact:

- a. The residents of Otter Brook Estate have and continue to make investment in the properties within the Otter Brook Estate based on the Deed Restrictions / Protective Covenants and the adherence to them including those listed above.
 - b. Section 9. Trees on Lots. See slide #7,
 - c. Privacy – See Slides #8, #9,
 - d. Topography. Ref Slides #10, & #11.
 - i. As outlined above, and in slide 5 & 6. A survey as noted in this slide resulted in the location of the leach fields as outlined on Slide #2.
- 4) Sign Petition:
- a. The submitted Petition, signed by the majority of the residents of the Otter Brook Estates respectfully request that this application be rejected. See slide.

We the residents of Otter Brook Estates, based on these facts and all the appropriate information, urge you to reject the proposed minor sub division plan before you tonight.

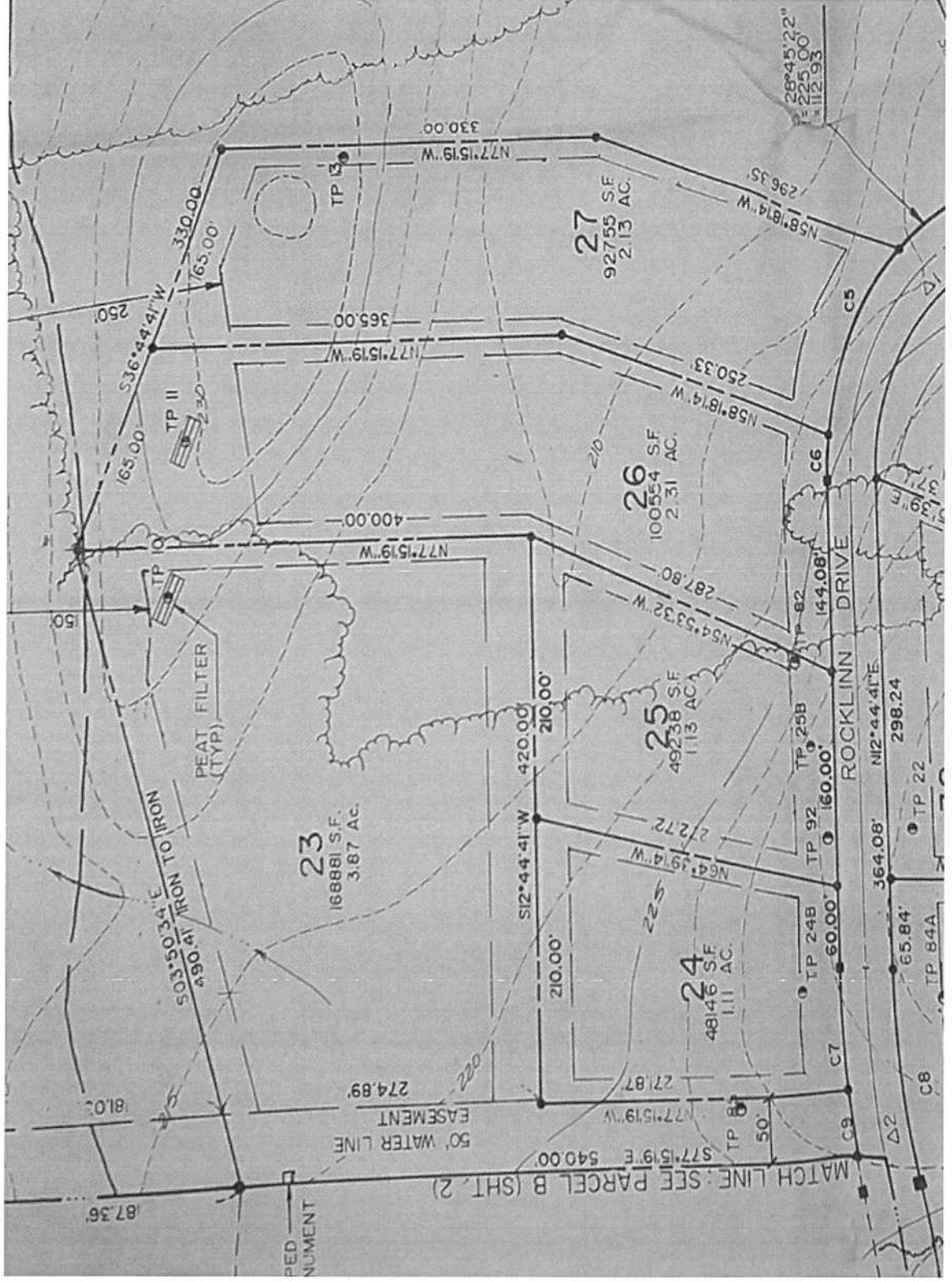
Thank You.

Laurie Noel

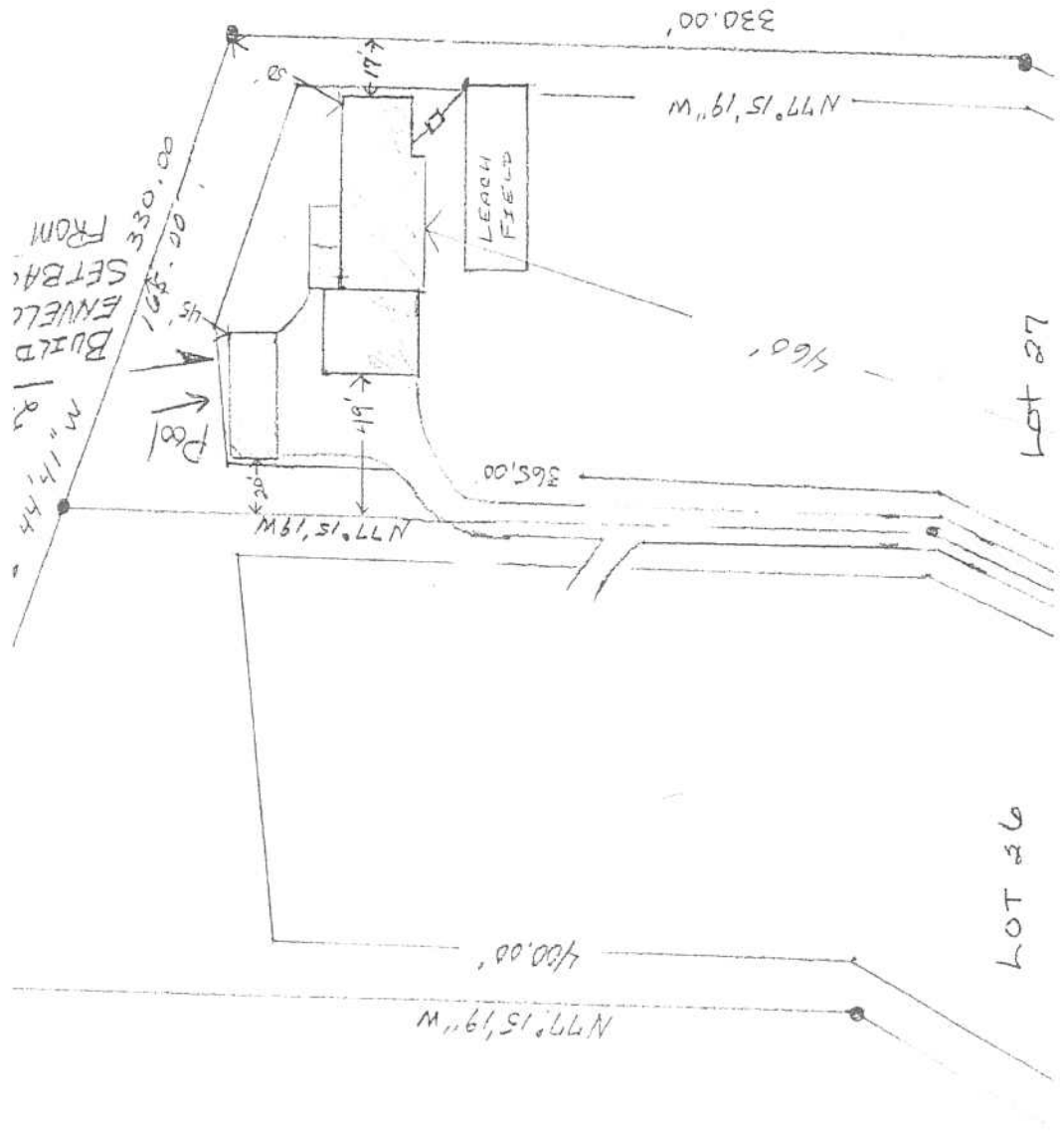
Planning Board Presentation Opposition to Minor Subdivision

July 11, 2016

1989 Approved Plan



Lot 27 Permit – May 2000



MDEP Otter Brook Estate

Deed Restrictions - #16, & #17

16. Protection of Streams. That portion of the Property which is situated either (i) within 100 feet of the bank of either side of the perennial stream, or its tributaries, as defined in Department of Environmental Protection, Bureau of Land Quality Control Policy 13, which flows through Lots 1,2,3,4,5,6,9,10,11,14,15,16,23 and 26 or (ii) within 25 feet of the bank of either side of the intermittent stream, as defined in said Policy 13, which flows through Lot 16, all as depicted on the Plan, shall be preserved in its natural state. By way of example, but not by way of limitation; no structure shall be constructed on; no trees, shrubs or other vegetation shall be cut, pruned or otherwise removed from; no stumps or root systems shall be excavated on; no rocks or topsoil shall be displaced from; no fill may be placed on; and no other alteration of any kind shall be undertaken on; such portion of the Property.

17. Placement of Leachfields. The location of any leachfields installed and maintained on Lots 12,13,19,27 and 33 shall be limited to those areas designated by the Maine Department of Environmental Protection as being suitable for such installation or maintenance. Peat filters shall be installed under leachfields installed or maintained on Lots 1,7,11,21,22,23 and 26, as described in the Declarant's application to the Department of Environmental Protection for approval under the Site Location of Development Act, 38 M.R.S.A. §§481 et seq.

MDEP Submission -

Otter Brook Estates - 1989

subdivision.

Groundwater flow paths are locally complex in this type of setting and it is difficult to determine the local subsurface routes of effluent. Seeps often develop where the interface between the overlying outwash sands and clay intercept on a slope face. A similar situation can exist where bedrock underlies thin soils on a slope. If a leachfield is placed too close to the seepage point, some of the effluent may discharge as seeps before complete treatment and removal of microbes and other organic compounds normal to the effluent. We recommend that the proposed leachfields be kept as far as practical from any observed seeps zones. Spring is the best time of the year to evaluate if localize seeps are occurring. No standards or guidelines exist for estimating the required separation. However, maximizing separation from the seep zones will allow the maximum amount of soil filtration of the effluent. The site evaluator or hydrogeologist can easily observe seep conditions through a field inspection within April or May.

Respectfully,
SEVEE & MAHER ENGINEERS, P.A.

SMC

MDEP Submission

Otter Brook Estates - 1989

Groundwater beneath the site is assumed to move in the general direction of decreasing topography, which is typical for Maine. However, the groundwater remains shallow and discharges into the onsite streams or as seeps along the slopes of the steeper topographic areas. Effluent discharged from the wastewater disposal systems will in general flow with the groundwater.

A calculation of the average nitrate levels in the groundwater was estimated assuming 5 inches per year of precipitation

Otter Brook Estate

Deed Restrictions - #9

assigns, including, but not limited to the Corporation, reserves the right to remove said rubbish and/or debris at the expense of the offending Owner or Owners after having given such Owner or Owners at least ten (10) days' written notice of such intended removal.

* 9. Trees on Lots. No living trees or shrubs larger than one-half (1/2) inch in diameter at the base shall be cut, trimmed or altered within twenty-five (25) feet of the rear line or sidelines of any Lot. Except as limited by Paragraph 16 hereof, however, trees identified as diseased by a forester licensed in the State of Maine may be removed, regardless of size or location. Clear cutting shall not be permitted under any circumstances, except for the removal of diseased trees as provided in this Paragraph.

10. Television Antennae. No radio or television aerial wires, satellite dish or antennae shall be maintained on any portion of any Lot forward of the back building line of said Lot nor shall any

Invasion of Privacy

Yard of Lot 25 looking at Lot 23



Invasion of Privacy

Looking from Lot 25 to Lot 26



Actual Topography

Rear of Lot 25 looking toward Rocklinn Drive



Actual Topography

Road looking toward rear of Lot 25



DECLARATION OF PROTECTIVE COVENANTS AND COMMON EASEMENTS

BY

EASTER I. and CHARLES L. ROLFE

FOR OTTERBROOK ESTATES

WITNESS THIS DECLARATION OF PROTECTIVE COVENANTS AND COMMON EASEMENTS made this _____ day of _____, 198__, by EASTER I. ROLFE and CHARLES L. ROLFE, both of Windham, Maine (hereinafter collectively called "Declarant"); and

WHEREAS, Declarant owns certain real property located in Windham, Cumberland County, Maine, shown as Lots 1 through 42, Brooklet Way, Woodlinn Drive, Otter Drive and Common Open Space (the "Property"), upon a certain plan entitled "Otter Brook" prepared by Sebago Technics, Inc. dated _____, 198__ and recorded in the Cumberland County Registry of Deeds in Plan Book _____, Page _____ (hereinafter called the "Plan"); and

WHEREAS, Declarant desires to assure quality standards for the wholesome development of the Property and to promote the interest and welfare of each owner of a part of the Property and therefore desires to subject the Property to protective covenants and common easements as set forth hereinafter;

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, occupied, improved, transferred, leased and otherwise used and disposed of subject to the protective covenants and common easements set forth herein, all of which are declared to be in furtherance of a uniform scheme of mutual equitable servitudes upon each and every portion thereof, in favor of each and every other portion thereof, and to create reciprocal rights and privity of contract and estate between all persons acquiring or owning an interest in any portion thereof, which protective covenants and common easements shall be determined to run with the land and be a burden and benefit upon and to, and be enforceable by, all persons having any interest in any portion of the Property.

ARTICLE I

DEFINITIONS

1. Building. "Building" shall mean and refer to any residential structure or other similar improvement.

2. Common Expenses. "Common Expenses" shall mean and refer to expenditures made by or financial liabilities of the Corporation, together with any allocations to reserves.

3. Common Open Space. "Common Open Space" shall mean and refer to the portion of the Property delineated as such on the Plan, and any other portion of the Property which may now or hereafter be owned by the Corporation for the common use and enjoyment of the Owners.

4. Corporation. "Corporation" shall mean and refer to Otterbrook Estates Maintenance Corporation, its successors and assigns.

5. Home. "Home" shall mean and refer to the individual dwelling constructed on each Lot and any accessory structure located on or about any Lot.

6. Lot. "Lot" shall mean and refer to the individual lots numbered 1 through 42 on the Plan and any dwelling and accessory buildings or other improvements constructed thereon.

7. Member. "Member" shall mean and refer to those persons entitled to membership in the Corporation as determined by the Bylaws of the Corporation.

8. Owners. "Owners" shall mean and refer to the record owner or owners of a fee simple title to any Lot and shall include the Declarant so long as it owns any Lot or any other portion of the Property, but shall not include any person or legal entity owning an interest merely as security for an obligation.

9. Residential Unit. "Residential Unit" shall mean and refer to one detached Home designed as a residence for one family either standing alone or combined with either or both of: (i) one garage for private use with such residence and constructed either as an integral part of such residence or as a detached building and adapted for the storage of a minimum of two automobiles and (ii) garden structures ordinarily appurtenant to single family residences.

ARTICLE II

PROTECTIVE COVENANTS AND RESTRICTIONS

Each conveyance of a Lot shall henceforth be subject to the following protective covenants and restrictions:

1. Residential Uses. Subject to the rights of the Declarant to develop and sell the Lots and such other rights of the Declarant as are set forth in this Declaration, each Lot shall be used only as a single family residence, and no commercial enterprise of any nature or description shall be conducted or maintained on any portion of the Property, except that an Owner may maintain an office in his Home if he is engaged in the sort of business or profession which is ordinarily conducted out of a single family residence and if such use complies with the applicable ordinances of the Town of Windham.

2. Residential Unit. Subject to the rights of the Declarant to develop and sell the Lots and such other rights of the Declarant as

are set forth in this Declaration, no Building other than a Residential Unit shall be constructed, maintained or occupied on any Lot and no more than one Residential Unit shall be maintained at any time on any one Lot. Such Residential Unit shall have a minimum above ground living area of 1,500 square feet, exclusive of any porches, garages or basements. All Homes shall be erected with a continuous foundation and shall include a heating system for year-round occupancy. All utility lines serving the Residential Unit shall be installed underground at the expense of the Owner.

3. Exterior of Buildings. Buildings erected on any Lot shall be covered only with natural materials such as wood clapboards or shingles, brick, or stone, except that window sashes and trim may be constructed from man-made materials. No Homes constructed wholly or partially of logs or materials made to resemble logs may be erected on any Lot. All roofs of Buildings constructed on any Lot shall be covered with (i) cedar shingles or shakes or (ii) fiberglass or asphalt shingles that are architectural grade and/or have a minimum weight of 280 pounds per square.

4. Construction of Residential Units. All exterior construction of Residential Units shall be completed within one (1) year from the date that construction, as evidenced by excavation of the foundation, commences. All landscaping and grading and construction of a paved or crushed gravel driveway shall be completed within six months of occupancy by the initial Owner.

*
violated

5. Temporary Structures. No Building of a temporary character, whether trailer, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, either temporarily or permanently, provided, however,

(i) Declarant reserves to itself, its successors and assigns, the exclusive right to erect, place and maintain such facilities in or upon any portion of the Property as in its sole discretion may be necessary or convenient while selling the Lots or portions thereof, selling or constructing Homes and constructing other improvements upon the Property. Such facilities include, but are not limited to, sales and construction offices, storage areas, model units, signs, and portable toilet facilities.

(ii) One dog house is permitted on each Lot, so long as said dog house is not of unreasonable size and is so placed on the Lot so as not to be visible from the front street side of the Home on the Lot.

6. Campers, Motor Homes and Boats. Trucks, campers, motor homes, trailers, and other such vehicles (whether or not operable) may be parked, kept or stored on any Lot only if parked in an enclosed garage, but may be parked on any street for not more than forty-eight (48) hours during any seventy-two (72) hour period. Boats (whether powered, sail or otherwise) may not be parked, kept or stored forward of the back building line of any Lot. No junk vehicles or other

vehicles which do not display a current state motor vehicle registration may be kept or maintained on the Property. The Board of Directors of the Corporation shall have the power to adopt such reasonable rules and regulations as it deems appropriate to regulate the use of motor vehicles on the Property. All-terrain vehicles, trail bikes, snowmobiles and similar vehicles shall not be operated on the Property. Except in the development and sale of the Lots by the Declarant, no house trailer, business or commercial vehicles or vehicle of similar nature shall be brought upon, or be maintained, or be permitted to remain on the Property, except that a business or commercial vehicle normally used by an Owner in his or her occupation may remain on the Property provided said vehicle is parked in an enclosed garage.

7. Animals. No poultry, swine, livestock or other animals shall be kept on the Property, except household pets of the kind and number normally housed in a residence. All pets shall be restrained so as not to become noisome or offensive to other Owners and shall not be allowed off of their owner's Lot, except on a leash or other restraining device. The Board of Directors of the Corporation shall have the power to adopt reasonable rules and regulations further regulating the keeping of pets on the Property.

8. Rubbish and Debris. Disposal of rubbish and debris shall be the responsibility of each individual Lot Owner. Rubbish and debris shall be stored between pickups in sanitary receptacles constructed of metal, plastic or masonry materials with sanitary covers or lids or as otherwise required by the Town of Windham. All such receptacles shall be kept in clean and sanitary condition. No rubbish or debris shall be permitted to accumulate on any Lot beyond a reasonable accumulation between pickups. The Declarant, for itself and its successors and assigns, including, but not limited to the Corporation, reserves the right to remove said rubbish and/or debris at the expense of the offending Owner or Owners after having given such Owner or Owners at least ten (10) days' written notice of such intended removal.

* 9. Trees on Lots. No living trees or shrubs larger than one-half ($1/2$) inch in diameter at the base shall be cut, trimmed or altered within twenty-five (25) feet of the rear line or sidelines of any Lot. Except as limited by Paragraph 16 hereof, however, trees identified as diseased by a forester licensed in the State of Maine may be removed, regardless of size or location. Clear cutting shall not be permitted under any circumstances, except for the removal of diseased trees as provided in this Paragraph. * * *

Setbacks

10. Television Antennae. No radio or television aerial wires, satellite dish or antennae shall be maintained on any portion of any Lot forward of the back building line of said Lot nor shall any free-standing antennae of any style be permitted to extend more than twenty (20) feet above the roof of the principal Building on such Lot. No Owner shall install or maintain radio or television aerial wires or antennae in airspace over any Lot adjoining such Owner's Lot.

11. Maintenance of Home. Each Owner shall maintain the exterior of his Home in an attractive manner and shall not permit the paint, roof, rain gutters, downspouts, exterior walls, windows, screens, doors, walks, driveways, parking areas and other exterior portions of his Home to deteriorate. Each Owner shall at all times keep all weeds and grass located within thirty (30) feet of his Home cut in a sanitary, healthful and attractive manner and no Owner shall permit such weeds or grass to grow to a height greater than six (6) inches. The Declarant, for itself, its successors and assigns, including but not limited to the Corporation, reserves the right, without liability for trespass or otherwise, to enter upon any Lot and remedy any violation of this provision at the Owner's expense, after giving the Owner ten (10) days written notice of its intent to do so. After remedying such violation, the Declarant, its successors or assigns, including, but not limited to, the Corporation, shall render a statement to the Owner for the expenses incurred by it and each Owner agrees by the acceptance of a deed to his Lot to pay such statement within a reasonable time after the receipt thereof, which reasonable time shall not exceed ninety (90) days. If the Lot Owner shall fail to pay such statement within the time period specified, the amount thereof, together with all collection costs, including reasonable attorneys fees, shall become a lien on such Owner's Lot to be administered and enforced as if it were a lien for Common Expenses under Article VI.

12. Drying of Clothes and Storage. Clothes shall not be hung to dry on any line, or otherwise, forward of the front building line of any Lot. The Owner of any Lot at the intersection of streets where the side or rear of the Lot beyond the front building line is visible to the public shall construct and maintain a drying yard or other suitable enclosure to screen from public view the drying of clothes, the storage of yard equipment, and the keeping of woodpiles or similar storage piles.

13. Signs. No signs, billboards, posters, or advertising of any character shall be erected, permitted or maintained on any Lot except (i) one sign of not more than two (2) square feet showing the name of the Owner or occupant and the name or number of the Lot and (ii) one sign, advertising the particular Owner's Lot on which the sign is situated for sale or rent. Such signs shall be compatible with the environment of the Project, and under no circumstances shall any projecting signs, neon or brightly lit or internally lit signs be permitted on any Lot. The right is reserved by Declarant, its successors and assigns, to construct and maintain such signs, billboards or advertising devices on any Lot or elsewhere on the Property as are customary in connection with the general sale of residential property.

14. Damage or Destruction. Any Home or other structure on a Lot which is destroyed or damaged in whole or in part by fire, windstorm or other casualty must be rebuilt or all debris removed and the affected portion of the Property restored to its natural condition without delay.

15. Compliance with Laws. All Buildings erected on the Lots shall be constructed in compliance with all applicable federal, state and local building ordinances and codes, including but not limited to, any building setbacks. Further, Owners shall occupy and maintain their Lots in accordance with all applicable federal, state, and local statutes, rules, regulations and ordinances. By way of example, and not by way of limitation, all siting, construction, excavation, sewage disposal, water supply and storm water drainage shall be accomplished in accordance with such applicable statutes, rules, regulations and ordinances, including but not limited to, the erosion control standards submitted to and approved by the Maine Department of Environmental Protection. *

16. Protection of Streams. That portion of the Property which is situated either (i) within 100 feet of the bank of either side of the perennial stream, or its tributaries, as defined in Department of Environmental Protection, Bureau of Land Quality Control Policy 13, which flows through Lots 1,2,3,4,5,6,9,10,11,14,15,16,23 and 26 or (ii) within 25 feet of the bank of either side of the intermittent stream, as defined in said Policy 13, which flows through Lot 16, all as depicted on the Plan, shall be preserved in its natural state. By way of example, but not by way of limitation; no structure shall be constructed on; no trees, shrubs or other vegetation shall be cut, pruned or otherwise removed from; no stumps or root systems shall be excavated on; no rocks or topsoil shall be displaced from; no fill may be placed on; and no other alteration of any kind shall be undertaken on; such portion of the Property. *

17. Placement of Leachfields. The location of any leachfields installed and maintained on Lots 12,13,19,27 and 33 shall be limited to those areas designated by the Maine Department of Environmental Protection as being suitable for such installation or maintenance. Peat filters shall be installed under leachfields installed or maintained on Lots 1,7,11,21,22,23 and 26, as described in the Declarant's application to the Department of Environmental Protection for approval under the Site Location of Development Act, 38 M.R.S.A. §§481 et seq. *

18. Buffer Zone. That portion of the Property which is situated within 50 feet of the sidelines of River Road or Pope Road and delineated as "50' Buffer Zone" on the Plan shall be preserved in its natural state. By way of example, but not by way of limitation; no structure shall be constructed on; no trees, shrubs or other vegetation shall be cut, pruned or otherwise removed from; no stumps or root systems shall be excavated on; no rocks or topsoil shall be displaced from; no fill may be placed on; and no other alteration of any kind shall be undertaken on; such portion of the Property.

19. Building Setback. No structure shall be erected within 250 feet of either side of Otter Brook or of its tributary which flows through Lots 14 and 15 and the Common Open Space, except that a structure may be erected on Lot 23 in a location up to 150 feet from the bank of either side of Otter Brook or its tributary.

Per Department of Environmental Protection

20. Access to Lot 15. Lot 15 may not be entered from Woodlinn Drive, but may be entered only from the 50-foot right-of-way leading from Pope Road and depicted on the Plan.

21. Fences. No fence exceeding four and one-half (4-1/2) feet in height may be constructed on any portion of the Property, including but not limited to any Lot, unless such fence is required to enclose a swimming pool by any applicable ordinance or regulation of the Town of Windham or to comply with Paragraph 12 of this Article II.

22. Chimneys. The chimney of any Home containing only one chimney shall have a minimum enclosed area of ten (10) square feet and the sides thereof shall be at least three (3) feet in width. Each chimney of any Home containing more than one chimney shall have a minimum enclosed area of seven and one-half (7-1/2) square feet.

ARTICLE III

COMMON OPEN SPACE

Each conveyance of a Lot to an Owner shall include as an appurtenance to such Lot a right and easement to use the Common Open Space for passive recreational purposes, such as walking and cross country skiing, in connection with the ownership of such Lot for himself, his family, guests and invitees, subject to this Declaration and subject to any restrictions or limitations contained in any deed of the Common Open Space to the Corporation, noted on the Plan or imposed by the Corporation. The Common Open Space shall be preserved in its natural state. By way of example, but not by way of limitation; no structure shall be constructed on; no trees, shrubs or other vegetation shall be cut, pruned or otherwise removed from; no stumps or root systems shall be excavated on; no rocks or topsoil shall be displaced from; and no fill may be placed on; and no other alteration of any kind shall be undertaken on; the Common Open Space. By acceptance of the deed to his Lot, each Owner covenants and agrees to abide by such restrictions and limitations. The Corporation shall be responsible for the maintenance of the Common Open Space in such natural state.

ARTICLE IV

INSURANCE

1. Types and Amounts. The Corporation shall maintain as a Common Expense and to the extent reasonably available, the following types and amounts of insurance:

(a) Property insurance insuring any personal property and any improvements or fixtures owned by the Corporation against all risks of direct physical loss commonly insured against or such other fire and casualty insurance as the Board of Directors of the

Corporation may determine provides equal or greater protection for the Owners and their mortgagees, if any, in each case complying with any applicable requirements of this Article. The amount of any such hazard insurance obtained pursuant to this paragraph (a) shall be equal to one hundred percent (100%) of the current replacement cost of the insured property at the time the insurance is purchased and at each renewal date without deduction for depreciation, exclusive of land, foundations, excavation and other items normally excluded from coverage. The proceeds of such policy shall be payable to the Corporation for the benefit of the Owners and holders of mortgages secured by the Lots. Such hazard insurance policy shall include a separate "loss payable endorsement" in favor of the mortgagees of Lots, if any, modified to make the loss payable provisions in favor of the mortgagees subject and subordinate to the loss payable provisions in favor of the Corporation. If the Board of Directors of the Corporation fails within sixty (60) days after the date of an insured loss to initiate a claim for damages recoverable under the policy or policies obtained pursuant to this paragraph (a), any Owner or mortgagee may initiate such a claim on behalf of the Corporation.

(b) Comprehensive Liability Insurance insurance, including medical payments insurance, complying with the requirements of this Article, insuring the Owners, in their capacity as Owners and Members of the Corporation and the Corporation, against any liability to the public or to other Owners, their tenants or invitees, relating in any way to the ownership and/or use of the Common Open Space and any part thereof. Such insurance policy shall contain a "severability of interest endorsement" or equivalent coverage which precludes the insurer from denying the claim of an Owner because of the negligent acts of the Corporation or another Owner. Such insurance shall include coverage for bodily injury and property damage that results from the operation, maintenance or use of the Common Open Space, any liability resulting from lawsuits related to employment contracts in which the Corporation is a party, liability for non-owned and hired automobiles, liability for property of others, and such other risks as are customarily covered in similar projects. The amount of such liability insurance shall be at least \$1,000,000.00 for bodily injury and property damage for any single occurrence. The scope and amount of coverage of all liability insurance policies shall be reviewed at least once each year by the Board of Directors and may be changed in its discretion provided that such policies shall continue to comply with the requirements of this Article.

(c) Such worker's compensation insurance as applicable laws may require.

2. Required Provisions. Insurance obtained by the Corporation shall be in accordance with the following provisions:

(a) All policies shall be written with a company authorized to do business in the State of Maine, and for the hazard insurance policy described in Paragraph 1(a) of this Article, such company must hold a general policy holder's rating of at least "A" by Best's

Insurance Reports, or by an equivalent rating bureau should Best's Insurance Reports cease to be issued.

(b) Exclusive authority to adjust losses under policies hereafter in force on the Property shall be vested in the Board of Directors of the Corporation or its authorized representative.

(c) Each Owner may obtain additional insurance at his own expense; provided, however, that: (1) such policies shall not be invalidated by the waivers of subrogation required to be contained in policies required by this Declaration; and (2) no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Corporation may realize under any insurance policy which the Corporation may have in force on its property at any particular time.

(d) Any Owner who obtains individual insurance policies covering any portion of the property owned by the Corporation other than personal property belonging to such Owner shall be required to file a copy of such individual policy or policies with the Corporation within thirty (30) days after purchase of such insurance.

(e) With respect to the insurance policies described in Paragraph 1 of this Article issued to the Corporation and covering all or any part of its property, the Corporation shall cause such policies to provide that:

(1) Each Owner is an insured person under such policies with respect to liability arising out of his membership in the Corporation;

(2) The insurer waives its right to subrogation under the policy against any Owner or members of his household;

(3) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Corporation, will void such policies or be a condition to recovery under such policies;

(4) If at the time of a loss under such policies there is other insurance in the name of an Owner covering the same risk covered by the policy, the Corporation's policy provides primary insurance;

(5) The liability of the insurer shall not be affected by, and the insurer shall not claim, any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Owner;

(6) The insurer shall be relieved from no liability for loss occurring while the hazard to the property of the Corporation is increased, whether or not within the knowledge or control of the Board of Directors of the Corporation, or because of any breach of warranty or condition or any other act or neglect by the Board of Directors of the Corporation or any Owner or any other person under either of them;

(7) Such policies may not be cancelled nor may coverage thereunder be substantially changed (whether or not requested by the Board of Directors of the Corporation) except by the insurer giving at least ten (10) days' prior written notice thereof to the Board of Directors of the Corporation, the Owners, each holder of a first mortgage which is listed as a scheduled holder of a first mortgage in such policies, and every other party in interest who shall have requested such notice of the insurer;

(f) With respect to the property insurance policy described in Paragraph 1(a) of this Article, such policy shall contain a standard mortgagee clause, except that any proceeds payable under such policy shall be payable to the Corporation to be disbursed in accordance with this Article IV.

3. Additional Insurance. Nothing in this Declaration shall be construed to limit the authority of the Board of Directors of the Corporation to obtain such additional insurance which it deems advisable.

ARTICLE V

EASEMENTS

1. Creation of Easements. In addition to the drainage easements affecting Lots 8 and 22 shown on the Plan, the following easements are hereby created:

(a) The Declarant reserves the right to use any Lots owned or leased by the Declarant as models, management offices, sales offices for this and other projects or customer service offices, and the Declarant reserves the right to relocate the same from time to time within the Property; upon relocation, the furnishings thereof may be removed. The Declarant further reserves the right to maintain on the Property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of the Declarant. This easement shall continue until the Declarant has conveyed all Lots to Owners other than the Declarant.

(b) The Property shall be, and hereby is, made subject to easements in favor of the Declarant, appropriate utility and service companies, cable television companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements created by this Section (b) shall include, without limitation, rights of the Declarant, or the providing utility or service company, or governmental agency or authority to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, drainage ditches and pump stations, telephone wires and equipment, television equipment and facilities (cable or otherwise), electrical wires, conduits, and

equipment and ducts and vents over, under, through, along and on the Property. Notwithstanding the foregoing provisions of this Article, any such easement through a Lot shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Lot by the Declarant or so as not to materially interfere with the use or occupancy of the Lot by its occupants. With respect to any utility lines or equipment serving only the Property and located upon the Common Open Space, the Board of Directors of the Corporation shall have the right and power to dedicate or convey title to the same to any private or public utility company. The Board of Directors of the Corporation shall also have the right and power to convey permits, licenses and easements over the Common Open Space for the installation, maintenance, repair and replacement of utility poles, lines, wires and other equipment to any private or public utility company. In addition, the Board of Directors of the Corporation shall have the right to grant permits, licenses and easements over the Common Open Space for its maintenance and for other purposes necessary for the proper operation of the Property.

(c) The Declarant reserves for as long as it owns any Lot, an easement on, over and under those portions of the Property not located within a Building for the purpose of maintaining and/or correcting drainage of surface water in order to maintain reasonable standards of health, safety and appearance. The easement created by this Section (c) expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil, or to take any other action reasonably determined to be necessary. The Declarant or the Corporation, as the case may be, shall restore the affected property as closely to its original condition as is practicable.

(d) The Lots shall be and hereby are made subject to an easement in favor of the Declarant, the Corporation and the agents, employees and independent contractors thereof for the purpose of the inspection, upkeep, maintenance, repair and replacement, if applicable, of the Lots and any improvements and fixtures located thereon, pursuant to its rights to enforce the provisions of this Declaration.

(e) All easements, rights and restrictions described and mentioned in this Article V are easements appurtenant, running with the land and the Property, and (except as expressly may be otherwise provided herein or in the instrument creating the same) shall continue in full force and effect until the termination of this Declaration.

2. Reservation of Easement Rights. So long as the Declarant has title to any other portion of the Property, the Declarant reserves the right to grant to any third party any license or easement in, on, over or through the Property, in addition to and not in limitation of those set forth above, which license or easement is determined by the Declarant, in its reasonable judgment, to be necessary or desirable for the development or improvement of the Property. Any such license or easement granted hereunder may be recorded by the Declarant at its sole cost and expense. The Corporation, at the request of the

Declarant, shall execute and deliver in recordable form any instrument or documents necessary or appropriate to confirm the grant of such license or easement.

ARTICLE VI

OTTERBROOK ESTATES MAINTENANCE CORPORATION

Each Owner, his heirs, successors or assigns, shall automatically during the period of and by virtue of such ownership be a Member of the Corporation, so long as it shall be in existence.

1. Purposes. The purposes of the Corporation shall be: the protection and maintenance of the Common Open Space so long as it is owned by Declarant or the Corporation; the ownership of the Common Open Space; the administration and enforcement of the protective covenants and restrictions created by this Declaration; the general protection of the Property; and the performance of any functions desired by its Members for the regulation, use, or maintenance of the Property and its natural environment.

2. Voting. Each Owner, by virtue of his ownership of a Lot, shall automatically be entitled to one vote for each Lot owned by him, at any meeting of, or upon any action taken by, the Corporation. When more than one person is an Owner of the same Lot, all such persons may participate as, and shall have all the benefits and obligations of, Members of the Corporation and the vote for such Lot shall be exercised as they among themselves may determine, but in no event shall more than one vote be cast with respect to any Lot. Twenty-five percent (25%) of the Owners shall constitute a quorum for any meeting of the Owners, and, except as may be otherwise provided in this Declaration or in the Bylaws of the Corporation, fifty-one percent (51%) or more of the Owners present, a quorum being present, may take action at any meeting.

3. Assessments.

(a) Power to Assess. The Corporation, acting through the Board of Directors in accordance with the Bylaws, shall have the power to fix and determine, from time to time, the sums necessary and adequate to provide for the Common Expenses, including, but not limited to, such amounts as are necessary for uncollectible assessments, budget deficits, such reserves as the Board of Directors shall deem necessary or prudent, and such other expenses as are specifically provided for in this Declaration or the Bylaws.

(b) Special Assessments. If the cash requirement estimated at the beginning of any fiscal year shall prove to be insufficient to cover the actual Common Expenses for such fiscal year for any reason (including by way of illustration and not limitation, any Owner's non-payment of his assessment or municipal assessments not yet assessed), the Board of Directors of the Corporation shall have the power, at any time it deems necessary and proper, to levy one or more special

assessments against each Owner. Special assessments shall be due and payable in the manner and on the date set forth in the notice thereof.

(c) Payment of Assessments. Each Owner shall pay all assessments levied by or on behalf of the Corporation. Liability for such assessments shall begin accruing on the date on which fifty percent (50%) of the Lots have been conveyed to persons other than the Declarant, and they shall be due and payable on an annual basis or as otherwise designated by the Board of Directors. Assessments that are unpaid for over fifteen (15) days after the due date shall bear interest at such rate as may be set by the Board of Directors of the Corporation, from the due date until paid. In the sole discretion of the Board of Directors, a late charge may be assessed against the delinquent Owner.

(d) Failure to Fix New Assessments. If the Board of Directors of the Corporation shall fail to fix new assessments for Common Expenses for the subsequent fiscal year before the expiration of any fiscal year, the Owners shall continue to pay the same sums they were paying for such assessments during the fiscal year just ended and such sum shall be deemed to be the new assessments for the succeeding fiscal year. If the Board of Directors of the Corporation shall change the assessment at a later date, the difference between the new assessment, if greater, and the previous year's assessment up to the effective date of the new assessment shall be treated as if it were a special assessment under paragraph 3(b) of this Article; thereafter each Owner shall pay the new assessment. In the event the new assessment is less than the previous year's assessment, in the sole discretion of the Board of Directors of the Corporation, the excess either shall be refunded to the Owners, credited against future assessments, or retained by the Corporation for reserves.

(e) No Exemption by Waiver. No Owner may exempt himself from liability for the Common Expenses by waiver of the enjoyment of the right to use the Common Open Space or by the abandonment of his Lot or otherwise.

(f) Personal Liability of Owners. All sums assessed by the Corporation as a regular or special assessment shall constitute the personal liability of the Owner so assessed, and also, until fully paid, shall constitute a lien against such Owner's Lot with the same status as liens established on condominium units under the Maine Condominium Act, Title 33, Chapter 31 of the Maine Revised Statutes and shall be foreclosed in the same manner provided by law for the foreclosure of mortgages. The delinquent Owner shall be obligated to pay (a) all expenses of the Board of Directors of the Corporation, including reasonable attorneys' fees, incurred in the collection of the delinquent assessment by legal proceedings or otherwise, and (b) any amounts paid by the Board of Directors of the Corporation for taxes or on account of superior liens or otherwise to protect its lien, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessment and shall be collectible as such.

(g) Liability of Purchaser of Lot for Unpaid Assessments.

Upon the voluntary sale, conveyance or any other voluntary transfer of a Lot or any interest therein, the grantee thereof shall not be personally liable with the grantor thereof for all unpaid assessments for Common Expenses which are a charge against the Lot as of the date of consummation of the sale, conveyance or transfer, unless such grantee agrees to assume the obligation therefor.

(h) Subordination of Assessments. Any regular or special assessments or any late charges and interest that may be levied by the Corporation shall be subordinate to any first mortgage lien, recorded before or after such regular or special assessment, late charge, or interest was due.

(i) Surplus. The budget of the Corporation shall set forth the Common Expenses. Any amounts accumulated from assessments for Common Expenses in excess of the amount required for actual Common Expenses and reserves for future Common Expenses, unless otherwise directed by the Board of Directors of the Corporation in its sole discretion, shall be credited to each Owner, such credit to be applied to the next assessments of Common Expenses due from said Owners under the current fiscal year's budget, and thereafter, until exhausted or retained by the Corporation for reserves.

(j) Fraction of Common Expense Liability. Each Lot shall be assessed an equal share of the Common Expenses.

4. Working Capital Fund. A working capital fund equal to FOUR THOUSAND TWO HUNDRED DOLLARS (\$4,200.00) shall be established and maintained by the Corporation in a separate account. Such working capital fund shall be initially funded by the Declarant transferring One Hundred Dollars (\$100.000) to the Corporation at the time of the closing of the initial sale of each Lot by the Declarant.

ARTICLE VII

DURATION

The protective covenants and common easements, the provisions for the Corporation and the other provisions of this Declaration as set forth herein and as may be amended from time to time, shall run with and burden the Property and shall inure to the benefit of and be enforceable by the Declarant, by the Corporation and any other Owners of any portion of the Property, their respective legal representatives, heirs, successors or assigns, for a term of thirty (30) years ~~of~~ from the date this Declaration is recorded, after which time all of said provisions shall be automatically extended for successive periods of five (5) years unless an instrument executed by the Corporation pursuant to an affirmative vote of the Owners of three-quarters (3/4) of the Lots has been recorded, agreeing to terminate this Declaration as of a specified date following such recording date, provided that the Corporation may be dissolved at any time that neither the

Declarant nor the Corporation owns any portion of the Common Open Space or any other portion of the Property.

ARTICLE VIII

SUPPLEMENTAL DECLARATIONS

This Declaration may be amended from time to time by a Supplemental Declaration duly executed by the Declarant or the Corporation pursuant to an affirmative vote of three-quarters (3/4) of the Owners, except that so long as the Declarant is the Owner of ten percent (10%) or more of the Lots, it may in its sole discretion and without joinder of any Owner amend, revise or abolish any one or more of the provisions of this Declaration by instrument duly executed and recorded in the Cumberland County Registry of Deeds. No such amendment shall render invalid any use or subdivision of and within the Property existing in accordance with this Declaration at the time of recording such Supplemental Declaration, and any such amendment shall be reasonably consistent with the uniform scheme of development established by this Declaration.

ARTICLE IX

DISPUTES

xx In the event a dispute arises between two or more Owners, such Owners may submit the dispute to arbitration in accordance with the rules of the American Arbitration Association and the result thereof shall be binding and conclusive upon the parties. Upon the written request of either party to the dispute, each party to the dispute shall appoint one person as an arbitrator to hear and determine the dispute and if two arbitrators so chosen shall be unable to agree, then they shall select a third arbitrator whose decision shall be final and conclusive upon the parties. The expenses of such arbitration shall be borne by the losing party, or in such proportion as the arbitrators shall decide. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association.

ARTICLE X

DECLARANT'S RIGHTS

The conveyance of the Lots to Owners shall be subject to the following reserved rights:

1. The Declarant reserves the right until the construction, marketing and sale of all Lots is completed to:

(a) Change the size, number and location of Lots and other improvements, and the size, layout, and location of any Lot for which a purchase and sale agreement has not been executed by the Declarant

or with respect to which the purchaser is in default under a purchase and sale agreement. The change or changes shall be effective upon the recording by the Declarant of an amendment to this Declaration and/or the recording by the Declarant of a modified site plan indicating the changes made.

(b) Locate on the Property, even though not depicted on the survey, and grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of, utility lines, wires, pipes, conduits, and facilities, including, but not limited to, water, electric, telephone, fuel oil and sewer.

(c) Connect with and make use of utility lines, wires, pipes and conduits located on the Property for construction and sale purposes, provided that the Declarant shall be responsible for the cost of service so used.

(d) Use the Property for ingress and egress and for the storage of construction materials and equipment used in the completion of the project.

(e) Install and maintain signs and lighting for sales purposes.

(f) With respect to any Lots remaining unsold by Declarant, Declarant may let or lease such Lots to any person or persons as Declarant sees fit.

2. The Declarant reserves the right until ninety percent (90%) of the Lots have been sold to Owners other than the Declarant to appoint and remove the officers of the Corporation and members of the Board of Directors of the Corporation and to veto any action of the Corporation or the Board of Directors. Nothing contained in this Article X shall be deemed to affect the Declarant's exercise of its rights as an Owner of Lots and Member of the Corporation.

This Article X shall not be amended without the consent of the Declarant so long as the Declarant owns any part of the Property.

ARTICLE XI

GENERAL PROVISIONS

* 1. Enforcement. By the acceptance of a deed to his Lot, each Owner covenants and agrees to comply with the covenants and restrictions set forth in this Declaration, with the Bylaws of the Corporation and with any rules and regulations promulgated by the Corporation. Except as provided in Article IX, any failure to so comply shall be grounds for an action against the offending Owner to recover damages or for injunctive relief or both. Such action may be maintained by the Corporation or by any aggrieved Owner or by the Declarant so long as it owns any part of the Property. Any Owner

shall have a right of action against the Corporation for failure to comply with the covenants and restrictions set forth in this Declaration, with the Bylaws or with any rules and regulations promulgated by it.

2. Waiver. No delay or omission on the part of Declarant, the Corporation or any Owner in enforcing the covenants set forth herein shall be construed as a waiver of any right to enforce or to seek such remedy or acquiescence in such breach.

3. Severability. In the event any one or more of the provisions of this Declaration shall be found for any reason by a Court of competent jurisdiction to be unenforceable or null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any other provision of this Declaration.

4. Perpetuities. If any of the covenants, restrictions or other provisions of this Declaration shall be unlawful, void or voidable because of the Rule against Perpetuities, then such provision or provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

5. Pronouns. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the said Easter I. Rolfe and Charles L. Rolfe have executed this Declaration of Protective Covenants and Common Easements on the date and year first above written.

Easter I. Rolfe

Charles L. Rolfe

STATE OF MAINE
CUMBERLAND, ss

_____, 1988

Then personally appeared the above-named Easter I. Rolfe and acknowledged the foregoing instrument to be her free act and deed.

Before me,

Notary Public

(printed name)