

*certificates
of No Unpaid Common
Expenses 5/15/1994*

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DECLARATION OF PROTECTIVE COVENANTS

PREAMBLE

This Declaration of Protective Covenants is made on this day of August, 1988 by Millbrook Associates of Hartford, Connecticut as owner of certain real estate in the Town of West Tisbury, Dukes County, Massachusetts (Property herein), being more particularly described in Article II and known as "PRIESTER'S POND".

It is the intention of the Grantor, in furtherance of a plan for the improvement and sale of the property, to sell and convey all of said property subject to the conditions, limitations, and restrictions as set forth in this Declaration of Protective Covenants.

It is the purpose of these Covenants to provide an outline for development of the property for Single-Family Residential Use for the benefit of its future Owners as well as for the benefit of the residents of the Town of West Tisbury. Every person, by acceptance of his or her lot does thereby agree to be bound by the Covenants contained in this Declaration and each deed shall provide that the lot is subject to these Covenants.

ARTICLE I

DEFINITIONS: Unless the context otherwise specifies or requires, the terms defined in this Article I shall, for all purposes of this Declaration, have the meanings herein specified.

GRANTOR: The term "Grantor" shall mean Millbrook Associates or its nominees, successors and assigns. Any and all obligation imposed by these Covenants on the Grantor shall pass to and be assumed by its successors in title.

RESIDENTIAL LOT: The term "Residential Lot" shall mean numbered parcel of the Property which is shown on the Plan as numbered Lots 1 through 11.

OPEN SPACE LOT: The term "Open Space Lot" shall mean each a parcel or property which is shown on the Plan as Lot A - "Open Space" and Lot B - "Walking Trails".

BUILDING ENVELOPE: The term "Building Envelope" shall mean the area within the numbered Residential Lots within which

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above-ground Improvements relating to Single-Family Residential Use must be confined.

OWNER: The term "Owner" shall mean the person or persons whose interest in a lot aggregates a fee simple title thereto.

PERSON: The term "Person" shall mean an individual, corporation, unincorporated association, partnership, joint venture, trustee, conservator, administrator, executor or entity which has the right to hold title to real property.

PLAN: The term "plan" shall mean Plan entitled "Priester's Pond", West Tisbury, Mass., Surveyed for Mill Brook Associates March 17, 1988, Scale 1 in. = 100 ft., Vineyard Land Surveying, Box 1548, Vineyard Haven, MA 02568, Revised March 30, 1988 and further Revised June 29, 1988.

IMPROVEMENT: The term "Improvement" shall mean and include all buildings, out-buildings, garages, carports, sheds, walls, stairs, decks, poles, signs, driveways, tennis courts, swimming pools and structures of every type and kind including fences.

SINGLE-FAMILY DWELLING: The term "Single-Family Dwelling" shall mean a detached house designed and used as a residence for a single family including any appurtenant attached or detached garage or carport or similar out-building not suitable for habitation.

SINGLE-FAMILY RESIDENTIAL USE: The term "Single-Family Residential Use" shall mean the occupation or use of a single-family dwelling in conformity with the requirements of the Zoning By-laws of the Town of West Tisbury and applicable state, county, and other municipal or regional rules and regulations.

RESIDENTIAL AREA: The term "Residential Area" shall mean those areas of the Property designated on the Plan as numbered Lots 1 through Lot 11.

COMMON AREA: The term "Common Area" shall mean those areas of the Property designated on the Plan as Lots A and B, Ways and 40 foot Road Reserve.

ROADWAY AREA: The term "Roadway Area" shall mean those areas of the Property designated on the Plans as Ways 40 ft. wide.

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COMMITTEE: The term "Committee" shall mean the three members of the Homeowners Committee established for the enforcement of these Covenants and for the management of the Common Areas and the Roadways.

ARTICLE II

PROPERTY SUBJECT TO DECLARATION: The Property subject to this Declaration of Protective Covenants shall be all the land owned by the Grantor herein as shown on the Plan entitled "Priester's Pond", West Tisbury, Mass. Surveyed for Mill Brook Associates March 17, 1988 Scale 1 in. = 100 ft. Vineyard Land Surveying Box 1548 Vineyard Haven, Ma. 02568, Revised March 30, 1988 and further revised June 29, 1988 and also Lot 2 as shown on said map which Lot was previously conveyed to Benjamin S. and Susan G. Clark on June 26, 1987. Lot 12 as shown on said Plan shall not be subject to this Declaration but shall be subject to separate easements and restrictions contained in the deed by which it is conveyed.

APPROVAL OF GRANTOR FOR IMPROVEMENTS: None of the Improvements permitted in the following Article III shall be erected, placed or allowed to stand without the prior written approval by the Grantor or the Committee elected under Art. IV, of the size, plans, specifications, and location thereof. The Committee shall adopt rules and regulations for architectural compliance with the intent and purposes set forth herein. Such approval shall not be unreasonably withheld and a certificate thereof, in a form satisfactory for recording, shall be furnished, if requested by an Owner seeking to erect, place or allow to stand upon any lot any Improvements aforesaid. The Grantor or the Committee shall not be responsible for any structural defects in such plans or specifications or in any building or structure erected according to such plans or specifications submitted for his approval.

A. **Improvements In Residential Lots:** It is the intention of the Grantor to minimize the prominence of all buildings and above-ground Improvements built in the Residential Areas. The placement of lot lines and the use of Building Envelopes are to ensure that buildings be placed on the Lots to blend with the natural landscape and to minimize the impact on the surrounding landscape.

B. **Improvements In Open Space Lots:** It is the intention

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of the Grantor that the Open Space Lots shall be perpetually devoted to maintaining the existing character of the landscape by preventing unpermitted clearing or development. The two Open Space Lots shall provide the amenity of open space and a buffer between the proposed development and neighbors. No Improvements of any kind or additions or alterations thereto shall be made, erected, placed or allowed to stand, except as otherwise provided or allowed herein.

(i) Those Improvements relating to the construction and maintenance of underground utility services as may be required to provide services to the Residential Areas.

(ii) Those Improvements relating to the construction and maintenance of the Roadway Areas and their appurtenances as shown on the Plans including any such drainage as the Grantor and the Town of West Tisbury may deem appropriate for the construction and maintenance of the Roadway shown as "Way 40 feet wide".

(iii) Necessary maintenance of the walking trails on Open Space Lot B and the fire protection easement.

C. Improvements In Roadway Areas: It is the intention of the Grantor that the Roadway Areas function as an integrated landscape element giving access to the Lots. The roadway improvements allowed shall be:

(i) Those Improvements relating to the construction and maintenance of the road surfaces, associated clearings, drainage structures and ways and appurtenances, underground utilities, landscape improvements, and such other improvements allowed or required by the Definitive Plan Approval of the Property by the Town of West Tisbury Planning Board.

(ii) Those Improvements relating to the construction and maintenance of underground utilities to service the Residential Areas.

(iii) Those Improvements relating to the reconstruction and maintenance of the stonewalls or other barriers, to be approved by the Grantor.

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ARTICLE III

1. **LAND CLASSIFICATIONS:** The Property has been divided into the following use classifications:

- A. Residential Areas, including special boundary areas
- B. Common Areas
- C. Roadway Area

2. **PERMITTED USE AND RESTRICTIONS:** Each Lot or Area within the Property shall be for the use and benefit of the Owner(s) thereof, subject, however, to all of the following limitations of use and Restrictions.

A. **Use of Residential Areas:** The Residential Areas may be improved and shall be devoted exclusively to Single-Family Residential Uses as may be further restricted and controlled by the Town of West Tisbury Zoning By-Laws and any further conditions made part of the Definitive Plan Approval of the property.

B. No guest house shall be allowed on any lots with the exception of Lot 7 as shown on the Plan and the guest house on Lot 7 shall be limited to 800 square feet.

C. **Use of Common Areas:** The Common Areas shall not be improved, except as allowed herein, and shall be devoted to open space and walking trails as described herein.

D. **Use of Roadway Areas:** The Roadway Area shall be used by any Owner for all purposes for which roads and streets may be used in the Town of West Tisbury. All costs for maintenance of the Roadway Areas shall be the responsibility of the Owners, and the Roadway Areas shall be managed and maintained by the Committee with costs equally allocated as provided herein.

3. **RESTRICTIONS:**

A. No Improvements are permitted on Residential Lots except one Single-Family Dwelling together with a garage for the storage of not more than two (2) private automobiles, and such out-buildings, as are customarily appurtenant to Single-Family Dwellings in the Town of West Tisbury.

- (i) Improvements Within the Building Envelope: All

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residential buildings, garages, carports and similar structures shall be contained within the Building Envelopes shown on the Lots, and there shall be a 50 foot buffer zone along the perimeter of all of the property of the Grantor shown on said Plan in which no structures shall be allowed.

(ii) On-site waste disposal systems and their appurtenances, underground wires and lines for the transmission of energy or information, and accessory outbuildings are permitted beyond the building envelope.

B. Groundwater Protection: No underground storage tanks for fuels or chemicals of any type may be installed or placed or allowed on any part of the Property herein. Any outside fuel tanks shall be at the rear or side of the improvements.

C. Temporary Occupation: No trailer, mobile home, basement of any incomplete building, tent, truck camper, shack, garage or barn or temporary structure of any kind shall be used at any time for a residence on the Property, either temporary or permanent, unless in any specific instance such use shall have been authorized by the Committee. Temporary buildings or structures for office use or storage during the construction of "Approved" structures shall not be placed on the property until a Building Permit has been issued, and shall be removed upon the completion of construction or the expiration of said Permit or the issuance of a Certificate of Occupancy, whichever occurs first.

D. Nuisances: No refuse, rubbish, vehicle parts, junk, waste, fill, stumps, brush or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot which will or may render any such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other part of the property, and no activity, structure or device shall be conducted, built or maintained which is or may be offensive or detrimental to any other part of the Property or its Owners or occupants. All unregistered motor vehicles shall be garaged and completely hidden from the view of those persons traveling along the Roadway Areas.

E. Repair of Improvements: No Improvements upon any Lot shall be permitted to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

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F. Trash Containers: No garbage, refuse or trash shall be placed or kept on any Lot, except in covered containers, and said containers shall be garaged or otherwise hidden from the view of those persons traveling over the Roadway Areas at all times, except on the day(s) of collection.

G. Subdivision of Lots: No Lot or Lots shall be divided or subdivided in any manner which would increase the planned residential density beyond the eleven (11) permissible Single-Family Dwellings allowed on Lots 1-11 as shown on said plan.

H. Removal and Disturbance of Earth: No loam, peat, gravel, sand, clay or other mineral resource of any kind shall be excavated or removed from the Property in such a manner as to affect the surface thereof, except in conjunction with the construction of allowed Improvements. At all times during said construction when the surface of the Lot or Property is disturbed, the Owner or his agent shall undertake adequate siltation and erosion protection measures in accordance with good landscaping and construction practices.

I. Surface Drainage: All surface drainage created or altered by runoff water resulting from the construction of Improvements shall be contained on the Lot upon which the construction has taken place, or shall be directed to flow into either the Common Areas or the Roadway Areas, with care provided in accordance with the procedures referred to in "H" above.

J. Recreational Vehicles: No motorized recreational vehicle of any kind which is not duly registered as a motor vehicle for use on public ways may be operated on the Property.

K. Exceptions for Grantor: Nothing contained in these Covenants shall be construed to prevent the erection or maintenance by Grantor or its duly authorized agents, of structures or signs necessary or convenient to the development, sale, operation or other disposition of the Property and in accordance with the West Tisbury Zoning By-Laws. All such structures or temporary signs shall be removed by the Grantor no later than the date of the sale of the last Residential Lot owned by the Grantor.

L. Tree Removal: No commercial harvesting of forest products shall be allowed on the Property, and "clear-cutting"

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and other "de-nuding" shall be prohibited, except if in conjunction with the Grantor's construction of the roads, fields, and other elements of the Plan for the Property. Further tree clearing in various areas shall be controlled and limited as follows except for the minimum amount of clearing and cutting necessary for the construction and maintenance of allowed underground utilities including on-site water supplies, on-site waste disposal systems, wires and lines for the transmission of energy and information, and construction of driveways and allowed Improvements.

(i) **Building Envelopes:** In conjunction with anticipated or allowed construction of Improvements within the Building Envelope, no trees or other natural live vegetation shall be removed, cut or trimmed in any area on a Lot other than within the Building Zone of such Lot without the prior written approval of the Committee, and no herbicides, pesticides or chemical fertilizer shall be used on any property within the area designated on the Plan shown as Special Area Boundary.

(ii) Any exterior lighting installed on any Lot shall be installed and operated in such manner as to prevent undue glare or illumination from emanating beyond lines of the Lot.

M. Sightlines and View Easements: It is the Grantor's intention that all views as they exist at the time of completion of the Subdivision Improvements shall be preserved, subject only to the limited impact of the allowed construction of Improvements and the view easements either as approved by the Grantor and/or Committee or as shown on said Plan. Acting under the provisions of Article II concerning Approvals, the Grantor and/or Committee shall consider the protection of views as they may be affected by the placement and height and form of proposed Improvements.

N. Damage to Travelled Surfaces: Any damages caused to the Roadway Areas by any Owner or his agents or guests, resulting from construction or any activity other than routine residential use shall be assessed against said Owner and promptly repaired at his expense.

O. Construction of Improvements: No construction of Improvements as allowed in Article II or upon expiration of said review shall take place without the issuance of a Building Permit and all other appropriate and necessary Permits from the Town of

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West Tisbury. No excavation or site preparation may take place prior to such issuance except as required for work necessary for the proper design of any such Improvements. No building materials, tools, or equipment may be placed, stored or allowed to stand on any Lot unless a Building Permit is in effect during the time of such storage. Any such storage must be terminated upon the lapse of the Building Permit or issuance of a Certificate of Occupancy, whichever occurs first. In any event, all exterior surfaces of any such construction should be 100% completed within six months of the issuance of the Building Permit for said construction.

ARTICLE IV

OWNERSHIP AND MANAGEMENT OF COMMON AREAS: In accordance with the provisions of the Declaration of Protective Covenants, the Common Areas shall be owned and managed as provided by this Article. Unless the Town of West Tisbury and the Grantor elect to dedicate the fee in the Roadway Areas to the Town, said areas shall become, for purposes of this Article, additional Common Areas.

1. **Ownership:** Ownership of the Common Areas shall be divided equally between the numbered Residential Lot Owners and each Owner shall have conveyed to him or her a one-eleventh (1/11th) undivided interest in the Common Areas (including the Roadway Area) at such time as title to the Lot is conveyed.

2. **Control:** At such time as eight (8) of the numbered Residential Lots have been conveyed by the Grantor, Grantor shall then act as the Owner of the remaining three (3) Lots which have not been conveyed, and the collective Owners, with each Lot having one vote, shall then select three Lot Owners, of which the Grantor may be one, to serve a three member Homeowner's Committee. The Committee shall then represent the collective interests of the Owners in managing the Common Areas and shall exercise those duties and functions as set forth herein.

3. **Homeowner's Committee Terms:** Each member of the Committee shall serve a two (2) year term, except for the original three members. Of these three, one shall serve a one (1) year term, one shall serve a two (2) year term and one shall serve a three (3) year term. The original three members shall determine which member shall serve which initial term.

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4. Elections: Upon completion of any said term, the Owners shall elect a new member to the Homeowner's Committee or re-elect the member whose term has expired, for a new two (2) year term. There shall be no limit to the number of terms which may be served by any one Owner. Election procedures will be determined by the original three member Committee. In the event of a resignation at mid-term, the Owner shall elect a replacement member to serve for the remainder of that term.

5. Management by the Committee: The Committee shall have the right to make such reasonable rules and regulations and to undertake such endeavors as to properly carry out the following activities:

a. The regulation of activities within the Common Areas in accordance with the provisions of these Covenants and the needs of the Owners in conformance thereto.

b. The maintenance of the Common Areas for the activities selected by the Owners in conformance with these Covenants.

c. The enforcement of any of the Covenants contained herein, including approval of construction plans and design and the creation of view easements.

d. The collection of maintenance charges or other costs incurred in the performance of the authorized activities of the Committee. Real Estate Taxes and other municipal assessments on the Common Areas and Roadways are "Shared Costs" as provided below, but Lot Owners shall be jointly and severally liable for such assessments.

6. Shared Costs: Each Owner shall have an equal ownership interest in the Common Areas. He or she shall be responsible for an equal share of the costs arising from the ownership of said areas. The Committee shall prepare an annual budget and shall assess a regular fee to each Owner for any such costs in excess of any income that may be derived from approved activities or endeavors within said areas. Any such costs or charges shall constitute and create liens or encumbrances upon the Owner's Lots and acceptance of each deed shall be construed as an agreement to pay said charges. The Committee shall have the right to prosecute all actions or suits or take any such proper actions which may in its opinion be necessary for the collection of such charges including, without limitation, any actions pursuant to Mass. Gen. Laws Ann. Ch. 84, Section 12 or any other pertinent

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statutes, laws, or regulations. The liens hereby reserved shall at all times be subordinate to the liens of any mortgagees or lenders secured by properly recorded encumbrances.

7. Insurance: The Homeowner's Committee shall maintain liability insurance to protect the Owners against any incidents which may arise through use, authorized or otherwise, of the Common Areas and the Roadways.

ARTICLE VI

1. AMENDMENT AND DURATION:

A. Amendment or Repeal: These Covenants, with the exception of those requiring the Town of West Tisbury action, may be amended or repealed at any time by the written consent of two-thirds (2/3rds) of the Owners of the Property. Such amendment or repeal shall not be effective until such times as it has been recorded with the Dukes County Registry of Deeds. Notwithstanding the foregoing, no such amendment or repeal shall be valid, the intent of which is to alter the dedication of the Common Areas to any use other than Open Space Lots, or walking trails or to in any way result in an increase in the residential density of the Property or in the amount of acreage dedicated to Residential Lots.

B. Duration of Declaration: This Declaration shall continue in full force and effect for Thirty-five (35) years and may be extended for additional Ten (10) year periods by a two-thirds vote of the lot owners.

2. ENFORCEMENT AND NON-WAIVER:

A. Right of Enforcement: This Declaration is for the benefit of the property and shall run with the land. Except as may otherwise be provided herein, any authorized Board or Agency of the Town of West Tisbury or any owner of any Lot, including the Grantor, shall have the right to enforce any or all of the provisions of this Declaration.

B. Violation of Law: Any violation within the Property of any state law or Town of West Tisbury,

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By-Law or any regulations pertaining to the ownership, occupation or use of the Property is hereby declared to be a violation of these Covenants.

C. Remedies Cumulative: Each remedy provided in this Declaration is cumulative and not exclusive.

D. Non-Waiver: The failure to enforce any of the provisions of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provisions of said Declaration.

3. CONSTRUCTION AND SEVERABILITY; SINGULAR AND PLURAL; GENDER;

A. Restrictions Severable: Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provisions.

B. Singular Includes Plural: Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

C. Captions: All captions or titles used in these Covenants are intended solely for the convenience of reference and shall not affect that which is set forth in any of the provisions of said Declaration.

4. EASEMENTS:

A. The Grantor reserves to itself, its successors and assigns the right to construct, permit or grant easements for the installation and maintenance of drainage facilities as may be required by the Town of West Tisbury. The Grantor further and similarly reserves the right to grant easements for the construction and maintenance of any underground utility services being distributed to the Property as such rights

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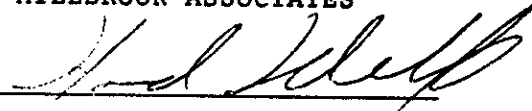
may be required by the Town of West Tisbury or those private companies providing said services to the property herein.

B. Reserving to the Grantor the right to install and maintain all public utilities, in, over, under, along and upon the private ways as shown on said Plans; reserving also to the Grantor the right to grant easements to public service corporations for the installation and maintenance of such public utilities in, under and upon said private ways, and anchors and guys to support the lines in said private ways and on land adjacent thereto; reserving also to the Grantor the right to installation and maintenance of necessary equipment in, under and upon strips of land ten feet in width abutting said private ways on said Plans; reserving also to the Grantor the title to all public utilities on said premises and private ways, except underground service cable.

IN WITNESS WHEREOF, Howard Klebanoff, Managing Partner of MILLBROOK ASSOCIATES has hereunto set his hand and seal this 15th day of September, 1988.


Nancy Nocton

MILLBROOK ASSOCIATES

By 

Howard Klebanoff
Managing Partner

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STATE OF CONNECTICUT
COUNTY OF HARTFORD

ss: Town of Hartford September 15, 1988

Personally appeared, HOWARD KLEBANOFF, Managing Partner of Millbrook Associates, signer and sealer of the foregoing, who acknowledged the same to be his free act and deed and the free act and deed of said Partnership, before me.

Lucille Ciavone

Notary Public
My Comm. exp. 3/31/93

Hartford, Mass. *Sept. 20, 1988*
at *11* o'clock and *07* minutes *A* M
Received and entered with Deeds for Records
book *507* page *326*

Attest: *Suzely W. King*
Register