

DECLARATION made as of this day of , 1977
by KMS PROPERTIES COMPANY, authorized to do business in
the State of New York, having offices at
Southampton, New York, 11968, hereinafter referred to as
"Developer".

W I T N E S S E T H :

WHEREAS, Developer is the Owner of the real property described in Schedule 1 annexed hereto (the "Property") which is to be developed as a residential community of 70 single family residential plots (individually "a Lot") with recreational lands, open spaces and other common facilities for the benefit of said community (the "Common Areas"); and

WHEREAS, Developer desires to provide for the preservation of certain values and amenities in said community and for the maintenance of the Common Areas which are more particularly identified on the Subdivision Map annexed hereto as Schedule 2; and

WHEREAS, Developer has incorporated Whalebone Landing Homeowners' Association, Inc. (the "Association") under the Not-for-Profit Corporation Laws of the State of New York for the purpose of holding title to and maintaining the Common Areas and enforcing the covenants and restrictions affecting the Property by virtue of this Declaration.

NOW, THEREFORE, the Developer, for itself, its successors and assigns, declares that the Property 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.

ARTICLE I MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Each owner of a Lot shall be a Member of the Association and there shall be seventy (70) votes in the Association, one allocable to each Lot (a "Vote"); if there shall be more than one owner of a Lot the Vote for that Lot shall be divided among the owners, pro rata in accordance with their ownership interest. The Developer shall have one Vote for each Lot owned by it, but shall not have the right to elect a majority on the Board of Directors after 50 Lots have been sold or after two (2) years from the date hereof, whichever shall first occur.

ARTICLE II PROPERTY RIGHTS IN THE COMMON AREAS

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

Exhibit A

Section 2. Title to Common Areas. At the time of sale of the first Lot, the Developer shall convey legal title to the Common Areas to the Association free and clear of all liens and encumbrances, except those created by or pursuant to this Declaration and the following:

- (i) covenants and restrictions recorded in Liber 765 cp 563, Liber 875 cp 78 and Liber 1180 cp 196;
- (ii) reservation contained in Liber 7443 cp 514;
- (iii) the rights of others in and to the areas within "encroaching lawn areas" shown on the Survey of Squires and Holden, dated November 30th, 1972 (the "Survey"); and
- (iv) rights of others in and to areas lying between the encroaching rail fence on the Northeast record line as shown by the Survey.

Section 3. Extent of Members' Easements. The right and easement of enjoyment created in the Common Areas shall be subject to the following:

- (a) The right of the Association to suspend the enjoyment rights of any Member during such period of time as an Owner shall be in default in payment of the Assessment referred to in Article III hereof;
- (b) The right of the Association to charge reasonable admission and other fees for the use of the Common Areas;
- (c) The right of the Association, provided it is approved by at least 47 Votes, to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as the Association may impose.
- (d) The right of the Developer and of the Association to grant and reserve easements and rights-of-way, in, through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for public or private utilities, including without limitation, electricity, telephone, water, sewer, drainage, cable television and fuel oil.

ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. The Budget. The Association's Board of Trustees shall, from time to time, but at least annually, fix and determine a budget (the "Budget"), which shall represent the amount required for the next fiscal year of the Association, including operational items such as taxes, insurance, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years. Provided it is approved by at least 47 Votes the Board may also adopt a Budget for capital improvements (the "Capital Budget"). The Board shall send a copy of the Budget and the Capital Budget to each Member prior to assessing the Members therefor.

Section 2. Creation of the Lien. Each Lot shall have imposed against it as a lien thereon an amount equal to one

seventieth of each Budget (the "Assessment") except that the amount of such lien shall, for each Lot owned by the Developer, be reduced by one seventieth of any amount assessed for the Capital Budget. Such lien shall commence on the first day of the fiscal year and shall continue until payment in full of the Assessment and shall be prior to any mortgage or other charge or lien affecting the Land. The Assessment shall also be a personal obligation of the owner or owners of the Lot on the date the lien takes effect. Upon the written request of a Member or the holder of a mortgage on a Lot, the Board shall promptly furnish a written statement of the amount of any unpaid Assessment.

Section 3. Effect of Non-Payment of Assessment. If an Assessment is not paid within thirty (30) days after any date or dates fixed by the Board of Trustees for payment thereof, it shall bear interest at the highest rate permitted by law and the Association may bring an action at law against the person or persons personally obligated to pay the same or to foreclose the lien against the Lot 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 judgment is obtained, such judgment shall include interest on the Assessment as above provided and reasonable attorneys' fees to be fixed by the Court together with the cost of the action.

ARTICLE IV ARCHITECTURAL CONTROL

No building, fence, wall or other structure, or change in landscaping, shall be commenced, erected or maintained upon any Lots, nor shall any exterior addition to or change or alteration of any thereof be made until plans and specifications showing the proposed improvement, including the height and location thereof and the materials and colors to be used, shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Trustees 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, fails to approve or disapprove the same within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE V USE OF PROPERTY

The use of a Lot shall be subject to the following covenants and restrictions:

(a) Occupancy shall be for "One Family Occupancy" by no more than four related adults, together with their children, whether adult or not.

(b) No signs or advertisements shall be displayed except one (1) sign offering a house for sale or lease which shall have maximum dimensions of 2 feet by 2 feet (2' X 2'). This restriction shall not apply to the Developer.

(c) No structure of a temporary character, boat, trailer, tent, shack, barn, or other out-building shall be erected or parked on any Lot or Common Area except in such designated areas, if any, as the Board of Trustees of the Association shall approve. Small boats and trailers may be stored if completely enclosed in a garage or basement.

(d) No animals, livestock, or poultry of any kind shall be raised, bred, or kept, except that dogs, cats or other household pets may be kept provided they are not kept, bred or maintained for commercial purposes, nor shall any animal be permitted to run loose on the Common Areas.

(e) No building or other structure shall be constructed so that any portion thereof would extend beyond the height of two (2) stories (plus normal attic space) above the highest natural grade as measured at any point adjacent to the foundation of such building or structure.

(f) No fence, unless approved as a part of the architectural design of the house, shall be constructed.

(g) Only permanent swimming pools shall be allowed and shall be constructed in such a manner that the top of the swimming pool does not extend beyond six inches above the finished grade.

(h) No tree with a trunk diameter of 3 inches or more, measured 12 inches above grade, can be removed except from an area where an approved improvement is to be placed or unless such removal is approved in writing by the Board of Trustees of the Association.

(i) Mail boxes shall be of a uniform size and color as prescribed by the Board of Trustees of the Association and installed in compliance with United States postal service regulations at locations approved by said Board.

ARTICLE VI GENERAL PROVISIONS

Section 1. Beneficiaries of Easements, Rights and Privileges. The easements, rights and privileges established, created and granted by this Declaration shall be for the benefit of, and restricted solely to, the Association and the owners of Lots and any such owner may grant the benefit of such easement, right or privilege to his tenants and guests and their immediate families for the duration of their tenancies or visits, and is not intended to nor shall it be construed as creating any rights in or for the benefit of the general public.

Section 2. Duration and Amendment. The provisions 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 Lot, until December 31st, 2076, except that the provisions hereof may be terminated by a recordable instrument signed by the holders of at least 56 Votes at the time of recording and may be amended by a recordable instrument signed by the holders of at least 56 Votes at the time of recording.

Section 3. Disposition of Assets Upon Dissolution Of Association. Upon dissolution of the Association, its real and personal assets, including the Common Areas, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of the Association properties shall be effective to divest or diminish any easements, rights or privileges vested in a Member under this Declaration.

Section 4. Notices. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of such person on the records of the Association at the time of such mailing.

Section 5. Severability. Invalidation of any of the provisions of this Declaration by judgment or court order shall in no wise affect any of the remaining provisions hereof, and the same shall continue in full force and effect.

KMS PROPERTIES COMPANY

By _____

All that certain plot, piece or parcel of land situate, lying and being in the Town of Southampton, Suffolk County, New York, more particularly bounded and described as follows:

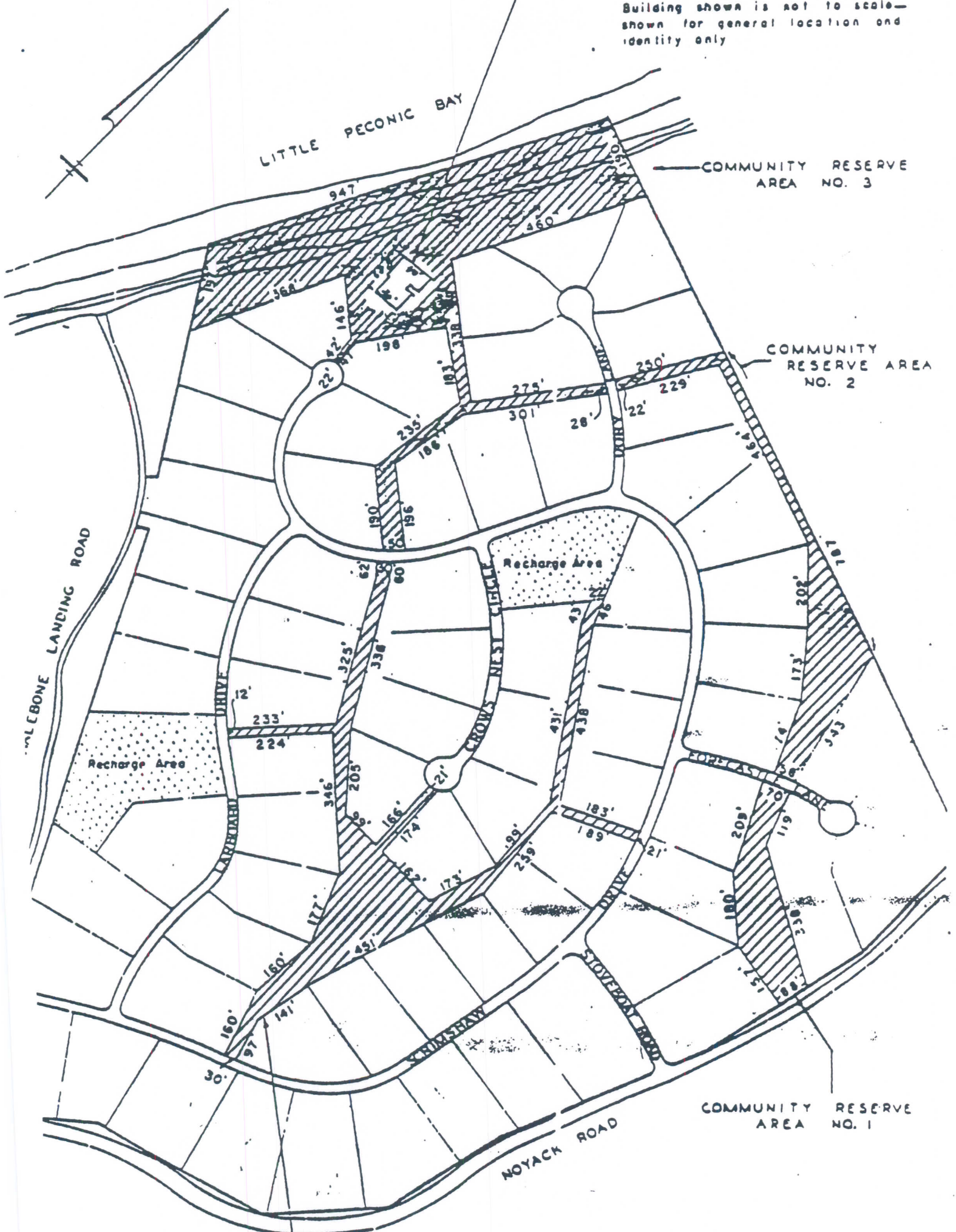
BEGINNING at a monument set at the intersection of the Northerly line of Noyack Road and the Easterly line of Whalebone Landing Road; and running thence North 23 degrees 46 minutes 20 seconds West along the Easterly line of Whalebone Landing Road 337.49 feet to a monument; thence North 2 degrees 05 minutes 50 seconds West along the Easterly line of Whalebone Landing Road 77.66 feet to lands of Harry H. White and Elizabeth Adams; thence North 71 degrees 31 minutes 30 seconds East along lands of Harry H. White and Elizabeth Adams 54.12 feet to a post; thence North 10 degrees 35 minutes 00 seconds West 346.63 feet to a stake and North 13 degrees 44 minutes 20 seconds West 698.37 feet to a concrete monument; thence North 19 degrees 14 minutes 00 seconds West along land now or formerly of Murray, McCormick, Plett and Drake 433.40 feet to a concrete monument; thence North 17 degrees 37 minutes 00 seconds West still along land now or formerly of Drake 242 feet, more or less, to the mean high water line of Little Peconic Bay; thence along said mean high water line to land now or formerly of Rawson Street Realty Corp., (the tie line being North 42 degrees 50 minutes 30 seconds East 947 feet); thence South 54 degrees 52 minutes 00 seconds East along said last mentioned land 1542 feet, more or less, to a concrete monument; thence South 52 degrees 46 minutes 30 seconds East 349.09 feet to a concrete monument set in the North-westerly line of Noyack Road; thence along the Westerly and Northerly line of Noyack Road the following eight (8) courses and distances:

- (1) South 31 degrees 58 minutes 40 seconds West 24.39 feet to a granite monument;
- (2) South 13 degrees 26 minutes 20 seconds West 304.28 feet to a granite monument;
- (3) South 26 degrees 32 minutes 10 seconds West 465.19 feet to a granite monument;
- (4) South 36 degrees 03 minutes 20 seconds West 459.07 feet to a granite monument;
- (5) South 26 degrees 31 minutes 10 seconds West 328.58 feet to a granite monument;
- (6) South 58 degrees 26 minutes 20 seconds West 294.14 feet to a granite monument;
- (7) North 87 degrees 24 minutes 50 seconds West 400.15 feet to a granite monument;
- (8) South 66 degrees 50 minutes 40 seconds West 316.63 feet to the monument set at the point or place of BEGINNING.

PARCEL II:

BEGINNING at a monument set at the intersection of the Easterly or Westerly, as the case may be, line of lands of Whalebone Landing, Inc., and the division line between the Northerly line of lands of Harry H. White and Elizabeth Adams and the Southerly line of the herein described Parcel; and running thence South 69 degrees 32 minutes 30 seconds West along the lands of Harry H. White and Elizabeth Adams 27.18 feet to the Easterly line of Whalebone Landing Road; thence North 20 degrees 20 minutes 00 seconds West along the Easterly line of Whalebone Landing Road 72.20 feet; thence North 29 degrees 30 minutes 00 seconds West along the Easterly line of Whalebone Landing Road 38.80 feet to lands of Arthur and Joan Heilsburg; thence North 60 degrees 30 minutes 00 seconds East along lands of Arthur and Joan Heilsburg 36.06 feet to lands of Whalebone Landing, Inc.; thence running South 19 degrees 14 minutes 00 seconds East along lands of Whalebone Landing, Inc., 116.31 feet to the monument set at the point or place of BEGINNING.

NOTE: Exact location of beach locker building subject to topographic surveys & subsoil conditions. Building shown is not to scale—shown for general location and identity only



COMMUNITY RESERVE AREA NO. 4

 Denotes areas to be deeded to Homeowner's Association.

Recharge Areas are in the

WHALEBONE LANDING
SUBDIVISION MAP WITH COMMON AREAS SHOWN
SCHEDULE 2