

DECLARATION OF COVENANTS

THUNDERMIST HOMEOWNERS' ASSOCIATION

Page 6 amended on July 29, 1992

original

DECLARATION OF COVENANTS

THIS DECLARATION OF COVENANTS (the "Declaration") is made this 15th day of October, 1987 by THUNDERMIST HOMEOWNERS' ASSOCIATION, a non-profit corporation, organized and existing under the laws of the State of Maine, (the "Declarant"), with a mailing address of P.O. Box 247, Ellsworth, Maine 04605.

BACKGROUND

A. The Town of Bar Harbor Planning Board has approved as of the 1st day of March, 1977 a Subdivision Plan of Thundermist Road Subdivision, prepared by Main Land Development Consultants, Inc., dated February 28, 1977, which provides for the subdivision of the Premises into twenty-six single family residential lots (individually the "Lot" or collectively the "Lots"). The Plan has been recorded in the Hancock County, Maine, Registry of Deeds, in Plan Book 1476 on the 23rd day of September, 1983.

B. The Declarant has caused to be incorporated under the laws of the State of Maine Thundermist HOMEOWNERS ASSOCIATION for the purpose of accomplishing the requirements of this Declaration.

NOW THEREFORE, this Declaration witnesses as follows:

ARTICLE I

Definitions.

The following terms when used in this Declaration shall have the respective meanings set forth below:

A. "Association": The Thundermist Homeowners' Association and its successors and assigns.

B. "Declaration": The covenants, conditions and restrictions and all other provisions set forth in this entire document, as amended from time to time.

C. "Member": The members of the Thundermist Homeowners'

Association.

D. "Owner": Collectively, the record holder of the fee simple title to any lot in the Premises, whether one or more persons or entities.

E. "Premises": The real property situated in Bar Harbor, Hancock County, Maine, more particularly described in Exhibit "A" attached hereto.

F. "Township": The Town of Bar Harbor.

ARTICLE II

"Declaration": Persons Bound

The Declarant for itself, its successors and assigns, hereby declares and each Owner of any portion of the Premises by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that the Premises is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, obligations, conditions, duties and other provisions created, declared and contained in this Declaration.

ARTICLE III

The Association

A. Organization. The Association is a nonprofit, corporation organized and existing under the laws of the State of Maine and charged with the duties and vested with the powers prescribed by law and set forth in this Declaration, as such may be amended from time to time.

B. Membership.

(1) Definition. Every Owner shall be a Member of the Association. Membership shall be appurtenant to ownership and shall run with the Lot giving rise to such membership, and

shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way.

(2) Members' Rights and Duties. Each Member shall have the rights, duties and obligations set forth herein.

(3) Exercise of Vote. Unless otherwise stated herein, each Member shall have one vote per Lot owned. The vote for any member which is held by more than one person may be exercised by any one of them, unless any objection or protest by any holder of such membership interest is made prior to the completion of a vote, in which case the vote for such membership shall not be counted.

ARTICLE IV.

Obligations of Association.

The Association and each Member thereof is deemed to covenant and agree as follows:

A. To be jointly and severally liable to maintain, at their cost and expense, in good order and condition and free of any cost and expense to the Town of Bar Harbor, the common areas, rights of way and roads, including the periodic inspection of the same at reasonable intervals and the making of all required repairs and replacements thereto;

B. To be jointly and severally liable to indemnify and hold harmless the Thundermist Road Subdivision and Thundermist Homeowners' Association from any and all damages or losses that may be suffered by reason of the installation or maintenance of the common areas, rights of way and roads, including the preparation and defense of any suit or like proceedings brought for the enforcement of collection of any such damages.

ARTICLE V

The Executive Committee.

A. The Executive Committee.

(1) Membership and Powers.

(a) the Executive Committee shall consist of no less than three Owners, which Executive Committee shall have all powers for the conduct of the affairs of the Association be charged with the power to levy assessments for the purpose of maintaining the common areas, rights of way and roads and shall have the duty of procuring adequate policies of insurance to indemnify the Town, the Executive Committee and the Association from any and all damages or losses that may be suffered by reason of the installation or maintenance of the common areas, rights of way and roads;

(b) The Executive Committee shall be empowered as follows:

(i) to select and contract with any individual or entity it may designate who shall perform on behalf of the Association periodic inspections at reasonable intervals of the common areas, rights of way and roads and make all repairs and replacements required to maintain same in good order and condition;

(ii) to procure such liability insurance as the Executive Committee shall deem necessary for purposes of indemnifying the Town, the Executive Committee and the Association from damages or losses that may be suffered by reason of the installation or maintenance of said common areas, rights of way and roads;

(iii) to levy annual assessments on each Lot for purposes of paying the costs and expenses incurred under subparagraphs (i) and (ii) above and for any additional liability that may be imposed upon the Association by reason of its maintenance and indemnification obligations set forth herein.

Each Lot shall be assessed an amount obtained by dividing the aggregate amount of each assessment by the total number of Lots of the Premises. Assessments shall be due and payable on November 1 of each year. All such assessments, together with interest thereon, costs of collection thereof and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest thereon, costs of collection thereof and reasonable attorney's fees shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. Upon the conveyance of a Lot to a new Owner, such Owner shall at the time of settlement be responsible for a pro rata share of the assessments against the Lot.

(iv) To establish and collect an operating capital reserve of \$1,000. per Lot to be paid by the Owner at the time of settlement on such Lot and to be held by the Executive Committee in trust for the Association.

(v) To prepare or arrange for the preparation of an annual statement of revenue and expenses which shall be provided to each Owner by January 15th for the preceding period of November 1st through October 31st.

(2) Declarant Control. Prior to the conveyance by the Declarant of the 18th Lot to be conveyed by the Declarant, the members of the Executive Committee shall be appointed, removed and replaced from time to time by the Declarant without the necessity of obtaining resignations. The Declarant-appointed members of the Executive Committee shall be replaced with Owners in accordance with the provisions of Subparagraphs (3) and (4) of this Article V.

(3) Notice by Declarant. At least thirty (30) days prior to the date scheduled for the conveyance by the Declarant of the 18th Lot to be conveyed by the Declarant (the "Closing Date"), the Declarant shall notify in writing all Owners of such Closing date.

(4) Election of Executive Committee by Owners. No later than sixty (60) days following the Closing Date, all members of the Executive Committee shall resign and the Owners (including the Declarant to the extent of Lots owned by the Declarant) shall elect a new three (3) member Executive Committee.

(5) Annual Meeting of Owners.

(a) The Executive Committee shall remain in power for one (1) year following the first meeting of the Association. On an annual basis on a date designated by the then existing Executive Committee, but no later than the anniversary date of the first meeting of the Association, the Association shall again meet for purposes of electing a new Executive Committee charged with the same responsibilities as the original Executive Committee and similarly empowered.

(b) The Executive Committee shall notify all owners in writing at least fourteen (14) days prior to the date of the scheduled annual meeting.

(6) Limitation of Liability. The Executive Committee and its members in their capacity as members, officers and employees of the Association:

(a) Shall not be liable for the failure of any service to be obtained by the Executive Committee and paid by the Association, or for injury or damage to persons or property caused by the elements or by another Owner or person on the Premises unless such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Executive Committee;

(b) Shall not be liable to the Owners as a result of the performance of the Executive Committee members' duties for any mistakes of judgement, negligence or otherwise, except for the Executive Committee members' own willful misconduct or gross negligence;

(c) Shall have no personal liability in contract to an Owner or any other person or entity under any agreement, check, contract, deed, lease, mortgage, instrument or transaction entered into by them on behalf of the Executive Committee or the Association in the performance of the Executive Committee members' duties.

*amended copy
July 29, 1992*

(d) Shall have no personal liability in tort to an Owner or any other person or entity, direct or imputed, by virtue of acts performed by or for them, except for the Executive Committee members' own willful misconduct or gross negligence in the performance of their duties.

(7) Indemnification. Each member of the Executive Committee, in his capacity as an Executive Committee member, shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may become involved by reason of his being or having been a member and/or officer of the Executive Committee or any settlement of any such proceeding, whether or not he is an Executive Committee member, officer or both at the time such expenses are incurred, except in such cases wherein such Executive Committee member and/or officer is adjudged guilty of willful misconduct or gross negligence in the performance of his duties; provided that, in the event of a settlement, this indemnification shall apply only if and when the Executive Committee (with the affected member abstaining if he is then an Executive Committee member) approves such settlement and reimbursement as being in the best interests of the Association; and provided further that, indemnification hereunder with respect to any criminal action or proceeding is permitted only if such Executive Committee member and/or officer had no reasonable cause to believe his conduct was unlawful. The indemnification set forth herein shall be paid by the Association and shall be assessed against and collectible from each Owner. Such right of indemnification shall be deemed exclusive of any of the rights to which such Executive Committee member and/or officer may be intitled as a matter of law or agreement or by vote of the Association or otherwise.

(8) Defense of Claims. Complaints brought against the Association, the Executive Committee, employees or agents

thereof in their respective capacities as such, shall be directed to the Executive Committee, which shall promptly give written notice thereof to the Owners and such complaints shall be defended by the Association. The Owners shall have no right to participate in such defense other than through the Association, unless such Owner is named as a defendant in such action. Complaints of a nature specified herein against one or more but less than all Owners shall be defended by such Owners who are defendants themselves and such Owners shall promptly give written notice of the institution of any such suit to the Association.

ARTICLE VI.

ROAD, NATURE PARK, AND COMMON AREA

1. Purpose. Thundermist Road Subdivision includes a nature park and common area. These areas have been established by the Declarant to afford the Owners of lots within the subdivision and their guests the opportunity to enjoy and appreciate the natural beauty of Mount Desert Island. The existence of such areas is an essential element in the environment of this subdivision.

2. Responsibility. Declarant recognizes that as each lot owner is anticipated to own one twenty-sixth (1/26) of the road, nature park, and common area, all lot owners will share common concerns about the maintenance, use, enjoyment, and possible liability inherent in such ownership. The Association shall be responsible for regulating these aspects of the roadway, nature park, and common area. It is essential to the preservation of the community which Declarant envisions being reflected by the Thundermist Road Subdivision and Thundermist Homeowners' Association that the private nature of the roadway, common area, and nature park be preserved.

3. Restrictions. The following restrictions and covenants shall be held to run with the common area and nature park, enforced as set forth in Article VIII of this declaration.

A. Common Area:

1. All restrictions and covenants set forth in the deeds of the individual lot owners and imposed upon the subdivision.

2. The common area shall not be used for vehicular access to the shore, nor traversed by vehicles except as may be necessary to construct, repair and maintain the pathway for pedestrian access to the shore.

3. No gathering of persons which by its number or conduct interferes unreasonably with the safety and privacy of the lot owners shall be permitted.

4. No violations of the law.

B. Nature Park:

1. All restrictions and covenants set forth under "Common Area", above.

2. No activities shall be permitted which endanger or threaten the nesting sites of any birds or the habitats of wild animals, except within an area to be specifically designated for the construction of outdoor activity.

ARTICLE VII.

Amendment

Subject to the provisions of Paragraph B of this Article VII, this Declaration may be amended at any time by an instrument executed on behalf of the Association by any two (2) members of the Executive Committee after approval by not less than two-thirds (2/3) of the Members

of the Association.

ARTICLE VIII.

Enforcement

The Town of Bar Harbor, the Executive Committee, the Declarant the Association and any Owner shall have the right to enforce by any proceeding at law or in equity, all conditions, covenants, liens and charges now or hereafter imposed by the provisions of this declaration. Failure to so enforce any covenants herein contained shall in no event be deemed a waiver of the right to do so hereafter.

ARTICLE IX.

Severability

Invalidation of any provision hereof by judgment or court order shall in no way effect any other provision which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed the day and year first above written.

THUNDERMIST HOMEOWNERS' ASSOCIATION

By: 

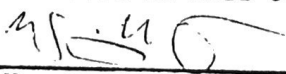
Peter Richardson, President
CROBB BOX COMPANY

STATE OF MAINE
HANCOCK, ss.

OCTOBER 15, 1989

Personally appeared the above-named Peter Richardson, President of Crobb Box Company, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Crobb Box Company.

Before me,


Notary Public

WILLIAM K. FERN