



**TOWN OF NORTH CASTLE**  
**WESTCHESTER COUNTY**  
**17 Bedford Road**  
**Armonk, New York 10504-1898**

**PLANNING DEPARTMENT**  
**Adam R. Kaufman, AICP**  
**Director of Planning**

**Telephone: (914) 273-3542**  
**Fax: (914) 273-3554**  
[www.northcastleny.com](http://www.northcastleny.com)

November 15, 2022

Supervisor Michael Schiliro  
and Town Board Members  
Town of North Castle  
15 Bedford Road  
Armonk, New York 10504

**Re: The Summit Club at Armonk – New Maintenance Facility**

Dear Supervisor Schiliro and Town Board Members:

The Summit Club site plan has been revised to depict a new golf course maintenance building. The subject of the current site plan is the residential component of the development. Since this new facility has been added to the current Planning Board review, the Applicant will need to obtain a Town Board special use permit for an amendment to the temporary golf course special use permit at this time. In addition, the Applicant will need to provide the Town Board and Planning Board with additional detail with respect to proposed maintenance operations on the golf course, number of employees, off-street parking, site access, site lighting, utilities, chemical storage, vehicle maintenance, etc.

The Planning Board at its November 14, 2022 recommended (4-0) that the Town Board give consideration to approving the necessary amendment to the existing temporary golf course special use permit to allow for the construction of a new maintenance building on the golf course.

Sincerely,

Adam R. Kaufman, AICP  
Director of Planning

**DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP**

**Mark P. Weingarten**  
**Partner**  
mpw@dde-law.com

COUNSELLORS AT LAW  
THE GATEWAY BUILDING  
ONE NORTH LEXINGTON AVENUE  
WHITE PLAINS, NEW YORK 10601  
(914) 681-0200  
FACSIMILE (914) 684-0288

Connecticut Office  
1111 SUMMER STREET  
STAMFORD, CT 06905  
(203) 298-0000

December 7, 2022

**By E-mail**

Supervisor Michael J. Schiliro  
Members of the Town Board  
15 Bedford Road  
Armonk, New York 10504

Chairman Christopher Carthy  
Members of the Planning Board  
17 Bedford Road  
Armonk, New York 10504

**Re: Summit Club**

Dear Supervisor Schiliro, Chairman Carthy and Members of the Town Board and Planning Board:

As you know, we represent Summit Club Partners, LLC (the "Applicant"), the owner of the property at 568 and 570 Bedford Road, formerly known as Brynwood Golf & Country Club, and now known as The Summit Club at Armonk ("Summit Club"). As you are also aware, on February 24, 2021, the Town Board granted a temporary special use permit (the "Temporary Permit") to the Applicant for the operation of the existing Summit Club golf course,<sup>1</sup> and the Applicant's application for site plan approval of the affiliated residential golf course community (the "Residences")<sup>2</sup> is currently pending before the Planning Board.

The Applicant now respectfully requests that the Temporary Permit be "converted" to a permanent special use permit. When the Temporary Permit was granted, the Applicant did not yet know whether and to what extent the former clubhouse on the Golf Course Lot might be reconstructed, and consequently, the permit was given a limited duration. There is no longer any uncertainty, as the Applicant has determined that Summit Club members will be served by the amenities facility proposed to be located on the Residential Lot, and therefore, the clubhouse will

---

<sup>1</sup> More precisely, for operation of a "membership club." The golf course is located on the property designated on the Tax Assessment Map of the Town as Section 101.02, Block 1, Lot 28.1 (the "Golf Course Lot"). and 28.2 C

<sup>2</sup> The residential community is located on the property designated on the Tax Assessment Map of the Town as Section 101.02, Block 1, Lot 28.2 (the "Residential Lot").

not be reconstructed at this time. The pending application for site plan approval includes the amenities facility. The application was also recently amended to include a property maintenance building located on the Golf Course Lot. Because the maintenance building will be on that lot, it is subject to the membership club special use permit for the Summit Club. Accordingly, the Applicant requests that the permanent special use permit cover this facility as well.

As the lengthy and rigorous approvals process for the Summit Club moves to a close, the Applicant has two additional requests. First, the Applicant requests that the Town set the recreation fee at \$1,000 per affordable (“AFFH”) residential unit. This is consistent with the Findings Statement for the project adopted by the Town Board on June 10, 2015, which provides in Section III.L(2) that:

“The Town charges a fee in lieu of providing recreation facilities. The Applicant believes that sufficient on-site recreational facilities are being provided to meet the demand of the Modified Project, and will therefore request a credit be given for the market rate homes. The residents of the AFFH units would not be required to be members of the [Summit] Club and would likely use Town recreation facilities. Therefore, the required \$1,000 per unit fee in lieu would be paid by the Applicant for the AFFH units.”

We also respectfully remind the Town Board that this request is also consistent with Section 2(c) of the Amended and Restated Community Benefits Agreement dated as of November 6, 2019, made between the Town and the Applicant’s predecessor, which provides as follows:

“The Town Board acknowledges that [the Applicant] will ask the Planning Board to reduce the fee otherwise payable under Section 145-3 or Section A216-35 of the Town Code of the Town of North Castle, in consideration of the on-site recreational facilities that will be available to Community residents, and agrees to recommend to the Planning Board that the fee be appropriately reduced.”

Second, the Applicant requests that the permanent special use permit temporarily allow general public use of the golf course during construction of the Residences. Permitting this temporary, transitional use will help ensure the financial viability of the Summit Club, which is in all stakeholders’ interests. The Applicant acknowledges that currently, the Town Zoning Code does not permit this use. Therefore, the Applicant requests that Section 355-32B of the Town Zoning Code be amended to include the following as the last sentence:

“Notwithstanding any provision of Article II or Article VII of this chapter, a special use permit for the affiliated membership club may permit temporary public use of the golf course and related facilities during construction of the residences of the golf course community, on reasonable terms and conditions determined by the Town Board.”

Third, because the approvals processes for the permanent special use permit and Zoning Code amendment cannot be completed before the December 31, 2022, expiration of the Temporary Permit, the Applicant respectfully requests that the Temporary Permit be extended

for six (6) months, with the understanding that it will terminate upon the grant of the permanent special use permit.

Finally, as you know, Section 355-32G(2) of the Town Zoning Code requires the Applicant to record a permanent conservation easement "pursuant to which [Summit Club] agrees that the property on which the golf course is located shall be used solely as a golf course or as open space." The Applicant's proposed form of conservation easement is attached, for review and approval by the Town Board in accordance with that section.

Thank you for your consideration. We look forward to the conclusion of the approvals process, and the success of The Summit Club at Armonk.

Very truly yours,



MARK P. WEINGARTEN

Enc.

cc: Adam R. Kaufman, AICP, Director of Planning  
Roland A. Baroni, Jr., Town counsel  
Jeffrey B. Mendell  
Janet J. Giris  
Peter J. Wise

**CONSERVATION EASEMENT  
AND  
DECLARATION OF RESTRICTIONS AND COVENANTS**

**THIS CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIONS AND COVENANTS** (“Conservation Easement”) executed on \_\_\_\_\_ 2022, is made by and between **SUMMIT CLUB PARTNERS LLC**, a Delaware limited liability company with an office at 16 Hobby Farm Drive, Bedford, New York 10506 (“Owner”), and the **TOWN OF NORTH CASTLE**, a New York municipal corporation with offices at 15 Bedford Road, Armonk, New York 10504 (“Holder”).

**WHEREAS**, Owner is the owner of certain real property in the Town of North Castle, Westchester County, consisting of approximately 156 acres, commonly known as 568 and 570 Bedford Road and designated on the Tax Assessment Map of the Town as Section 101.02, Block 1, Lots 28.1 and 28.2 (the “Property”). The Property is currently improved, and used, as a “membership club” known as The Summit Club at Armonk (the “Club”), which includes a ~~clubhouse and~~ an existing eighteen (18) hole golf course (the “Golf Course”) and related facilities; and

**WHEREAS**, Holder is a New York State municipal corporation, qualified to hold conservation easements as provided in the New York State Environmental Conservation Law; and

**WHEREAS**, the Property is being developed by the Owner as a residential Golf Course Community geared to an active adult lifestyle, in which all homeowners of market-rate residences will be required to be members of the Club, and to make substantial improvements to the golf course and Club facilities, ~~including the construction of a new clubhouse~~ (“the Project”). The Property is located in the Golf Course Community Floating Overlay District (“GCCFO District”) as set forth in the Town of North Castle Zoning Code (the “Zoning Code”); and

**WHEREAS**, the approximately 129.96 acre portion of the Property commonly known as 568 Bedford Road and designated on the Tax Assessment Map of the Town as Section 101.02, Block 1, Lot 28.1, shown as “Lot 1” (the “Golf Course Lot”) on a certain map titled “Final Subdivision Plat Prepared for Brynwood Partners LLC,” prepared by JMC Planning, Engineering, Landscape Architecture & Land Surveying, PLLC, last dated October 26, 2017, and filed in the Westchester County Clerk’s Office on January 31, 2018, as Map No. 29130 (the “Map Golf Course Lot”), consists of an eighteen (18) hole golf course with fairways, greens, other areas of play, cart paths, and other related ancillary improvements and facilities including, but not limited to, a golf driving range, practice greens, pavilions, and comfort stations (collectively, the “Golf Course”); and

**WHEREAS**, the portion of the Golf Course Lot shown on a certain map titled “Conservation Easement Map,” drawing no. EAS-1, dated June 18, 2015, revised [REDACTED], and prepared by JMC Planning, Engineering, Landscape Architecture & Land Surveying, PLLC, attached hereto as Exhibit A, and more specifically described in Exhibit B attached hereto (the “CEA”) is subject to this Conservation Easement; and

**WHEREAS**, the CEA consists, in part, of land areas in their natural state and possesses ecological, groundwater recharge, natural, scenic, educational, recreational, and open space values (collectively, "Conservation Values") of importance to Owner and the Town, and is worthy of preservation and conservation subject to the terms of this Conservation Easement, and conservation of the CEA subject to the terms of this Conservation Easement will yield significant benefits to the public; and

**WHEREAS**, the purpose of the Conservation Easement is to preserve and protect the Conservation Values of the CEA; to permanently conserve the ecological and natural character of the CEA, including land and water resources; to protect rare plants and animals and plant communities on the CEA or affected by its use, operation, and management; and to prevent any use of the CEA that will significantly impair or interfere with the Conservation Values of the CEA; and

**WHEREAS**, the Conservation Values of the CEA are documented in a Baseline Data Report dated \_\_\_\_\_, 20\_\_ (sometimes referred to herein as the "Baseline Documentation") which is on file in the office of Holder, and is incorporated herein by reference, and which includes an inventory of the relevant Conservation Values, maps, photographs, reports and other documents that the parties agree accurately represent the CEA at the time of the execution of this Conservation Easement, and which is intended to provide objective baseline information for purposes of future monitoring and enforcement; and

**WHEREAS**, Holder acknowledges that the Golf Course is an integral part of the Club; and

**WHEREAS**, The Property, including the CEA, is located in the Golf Course Community Floating Overlay District ("GCCFO District") of the Town of North Castle; and

**WHEREAS**, this Conservation Easement is intended to fulfill the conservation easement requirement of the GCCFO District as set forth in Section 355-32(G)(2) of the Town of North Castle Zoning Code (the "Zoning Code") that "as a condition of site development plan approval of a golf course community, the affiliated membership club shall record in the Westchester County Clerk's office a permanent conservation easement pursuant to which the membership club agrees that the property on which the golf course is located shall be used solely as a golf course or as open space. The conservation easement shall be in form and substance reasonably acceptable to the Town Board and Town Attorney"; and

**WHEREAS**, improvement, and continued use and operation, of the Golf Course is not contrary to any of the purposes of this Conservation Easement or Conservation Values set forth herein; and

**WHEREAS**, certain grading, utility and other construction activities will take place within the CEA, and certain temporary access routes through the CEA will be necessary, during the construction of the improvements to the Golf Course and Club facilities, and construction on Lot 1 shown on the Map of the golf course community residences affiliated with the Club (the "Residences"); and

**WHEREAS**, Owner and Holder have the common purpose of conserving the Conservation Values of the CEA in perpetuity; and

**WHEREAS**, this grant of Conservation Easement is made pursuant to New York Environmental Conservation Law, Title 3, Article 49, and is intended to comply with said statute; and

**WHEREAS**, Owner reserves for itself and its successors and assigns, all rights with respect to the CEA and any part thereof, including without limitation the right to sell, transfer, lease, mortgage, or otherwise encumber the CEA or any part thereof, as owner, subject to this Conservation Easement. Nothing herein shall: (i) be construed as a dedication to public use or grant to the general public of any right to enter upon any part of the CEA; (ii) limit, restrict or in any way affect the current and future use of ~~the clubhouse or~~ any Club facility, amenity, or component other than the Golf Course; and/or (iii) restrict an owner of the CEA or part thereof in imposing further restrictions upon conveyance or otherwise.

**NOW THEREFORE**, in consideration of the foregoing and the mutual covenants terms, conditions, and restrictions contained herein, Owner hereby voluntarily grants and conveys to Holder a conservation easement in perpetuity over the CEA of the nature and character and to the extent set forth herein.

1. **PURPOSE**

The purpose of the Conservation Easement is to preserve and protect the Conservation Values of the CEA; to permanently conserve the ecological and natural character of the CEA, including land and water resources; to protect rare plants and animals and plant communities on the CEA or affected by its use, operation, and management; and to prevent any use of the CEA that will significantly impair or interfere with the Conservation Values of the CEA, except the continued use, operation, management, improvement, maintenance, modification, repair, renovation, and/or restoration of the Club and Golf Course and ancillary and/or accessory facilities, buildings, or structures shall be permitted in accordance with the terms of this Conservation Easement.

2. **PROHIBITED USES AND RESTRICTIONS**

Any activity on or use of the CEA that is materially inconsistent with the purpose of this Conservation Easement is prohibited; provided, however, that use, operation, management, improvement, maintenance, modification, repair, renovation, and/or restoration of the CEA in accordance with any site plan or other approval(s) for the use, operation, management, improvement, maintenance, modification, repair, renovation, and/or restoration of the Club and/or the Golf Course granted from time to time by the Planning Board of the Town of North Castle and/or any other board, commission, agency, or department of the Town (collectively, the "Approvals"), and in accordance with all applicable federal, state and local laws, regulations, and requirements ("Applicable Laws"), is expressly permitted. Without limiting the generality of the foregoing, the following activities and uses within the CEA are expressly prohibited, unless required to comply with Applicable Laws, and then only to the extent required:

(a) **Disturbance of Natural Features.** Any change, disturbance, alteration or impairment of the natural, scenic, and aesthetic features of the CEA is prohibited. Notwithstanding the foregoing or any provision of this Conservation Easement, it is agreed that stone walls may be constructed, demolished, maintained, repaired and/or restored, subject to Applicable Laws.

(b) **Residential, Industrial, Institutional, and Commercial Use.** Residential, industrial, institutional, and commercial uses and activities are prohibited; provided, however, that nothing in this Conservation Easement shall prohibit: (i) the continued use, operation, management, improvement, maintenance, modification, repair, renovation, and/or restoration of the Club and/or Golf Course and ancillary and/or accessory facilities, buildings, or structures, including, without limitation, guest cottages/lodging units to the extent permitted by Applicable Laws; (ii) the construction, use, operation, management, improvement, maintenance modification, repair, renovation, and/or restoration of: (A) a wastewater treatment plant (the “WWTP”) serving the Club, Golf Course, and the Residences, and any appurtenances and related facilities and infrastructure, including sewer mains and other conveyance pipes (collectively with the WWTP, the “Sewer System”), (B) a maintenance building(s) and related facilities serving the Golf Course and the Club (collectively, the “Maintenance Facility”), (C) on-site or off-site wells and related facilities and infrastructure, including water mains and other conveyance pipes, for the production and distribution of water for on-site consumption and irrigation, and a water treatment facility (the “Water Treatment Facility,” and collectively with infrastructure, the “Water System”), and (D) storm water management basins/ponds and any appurtenances and related drainage facilities and infrastructure, including conveyance pipes and outfalls, serving the Golf Course, the Club, and the Residences (collectively, the “Stormwater Management System”); and (iii) other current and future uses and activities by Owner and the Club/Golf Course owner and/or operator within the CEA that are permitted by Holder in its reasonable discretion, provided such use or activity is consistent with the purpose of this Conservation Easement expressed in Section 1, and is not otherwise a prohibited use.

(c) **Tree and Vegetation Removal.** The pruning, cutting or removal of trees and/or woodland under-story vegetation shall be prohibited except:

(i) on-native invasive species, trees, and under story-vegetation which is dead or diseased, or poses a danger to public health, safety and welfare, including but not limited to users of the Golf Course, may be cut and/or removed;

(ii) Trees and under-story vegetation may be selectively cut and/or removed to maintain view sheds and maintain or improve the playability or attractiveness of the Golf Course, and to maintain Golf Course play areas including fairways, greens, tee boxes, area in the rough, and other areas which are an integral part of the Golf Course;

(iii) Fallen trees, and dead trees and dead under-story vegetation within the Golf Course area of play and within one hundred feet (100’) from the maintained edge of play may be cut and/or removed; and

(iv) Trees may be removed in accordance with the Approvals.



(d) **Plant and Animal Populations.** There shall be no disturbance within the CEA of plant and animal populations and/or their habitat, nor any introduction of non-native species, except as approved in advance by Holder in its reasonable discretion, in writing, except non-native species and disturbance shall be permitted within the Golf Course area of play, and as otherwise permitted under this Conservation Easement and the Approvals.

(e) **Vehicles.** No motorized (gas, battery or otherwise) vehicles shall be permitted within any portion of the CEA except on cart paths, fairways, greens, and internal roads and driveways, and as needed in emergencies, and for security, operation, management, improvement, maintenance, modification, repair, renovation, and/or restoration of the Golf Course.

(f) **Subdivision.** The CEA may be subdivided into one or more separate lots, provided that each such lot is subject to this Conservation Easement.

(g) **Excavation, Dredging.** There shall be no filling, excavation, dredging, removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land, except in accordance with the Approvals.

(h) **Signage.** Display of billboards, signs or advertisements is prohibited, except for: street signs, traffic control signs, way finding signs, entrance signs, Golf Course signs, no trespassing signs, no hunting signs, signs approved as part of the Approvals, and signs identifying: (i) lands subject to this Conservation Easement; (ii) the Conservation Values of the CEA and/or the terms of this Conservation Easement; (iii) use regulations on the CEA; and/or (iv) signs approved in advance by Holder, in its reasonable discretion in writing.

(i) **Dumping.** Processing, storage, dumping or disposal of soil, trash, ashes, sewage, garbage, waste, refuse, debris, abandoned vehicles, appliances, machinery, or any Hazardous Materials (as hereinafter defined) is prohibited, except: (i) one or more communal compost areas and a golf course maintenance landscape debris/mulch area(s) are permitted; and (ii) Hazardous Materials may be used and stored in accordance with all Applicable Laws.

(j) **Water Quality and Storm Water Management.** There shall be no pollution, alteration, manipulation, depletion, sedimentation or extraction of surface water, natural water courses, wetlands, marshes or any other water bodies except in accordance with the Approvals and Applicable Laws. Holder acknowledges and agrees that: (i) water may be extracted for consumption on the Property, and to irrigate the Golf Course and other areas of the Property; and (ii) the treated effluent from the WWTP will discharge into a stream adjacent to the 15<sup>th</sup> hole of the Golf Course. During construction of improvements to the Golf Course, Club, and/or Residences, Owner will adhere to New York State Department of Environmental Conservation requirements regarding sedimentation and erosion control and to an approved Storm Water Pollution Prevention Plan. Any buffers required by the Approvals, and by Applicable Laws, shall be maintained for all waters and/or wetlands located within the CEA.

(k) **Lighting.** No exterior lights or lighting may be installed except in accordance with the Approvals.

### 3. **PERMITTED USES**

Owner reserves for itself, and its successors and assigns, all rights accruing from ownership of the CEA, including, without limitation, the rights to sell, give, lease, or otherwise convey the CEA, or mortgage or encumber the CEA, subject to the terms of this Conservation Easement; and the right to engage in, or permit others to engage in, all uses of the CEA that are not expressly prohibited herein and are not inconsistent with the purposes of this Conservation Easement.

Notwithstanding any provision of this Conservation Easement, the CEA may be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot and bulk requirements, or open space requirements under the Town of North Castle Zoning Code and any other Applicable Laws controlling zoning and land use.

Notwithstanding any provision of this Conservation Easement, Owner specifically reserves for itself, and its successors and assigns, and Holder hereby grants to Owner, and its successors and assigns, the following rights with respect to the CEA, in perpetuity:

(a) Except as limited by this Conservation Easement, Owner reserves all rights as fee owner of the CEA, including the right to use the CEA for all purposes permitted and/or required by the Approvals.

(b) The right to in accordance with the Approvals and Applicable Laws construct, install, use, operate, manage, improve, maintain, modify, repair, renovate, and/or restore the Golf Course, including but not limited to golf fairways, greens, other areas of play, cart paths, and other related ancillary improvements and facilities including, but not limited to, a [clubhouse](#), golf driving range, practice greens, pavilions, and comfort stations.

(c) The right to in accordance with the Approvals and Applicable Laws construct, install, use, operate, manage, improve, maintain, modify, repair, renovate, and/or restore golf cart paths and internal roads and driveways.

(d) The right to remove non-native trees and vegetation in the CEA, and to remove native trees and vegetation in order to preserve the Conservation Values of the CEA, as set forth in Section 2(c) above, and in accordance with all Applicable Laws.

(e) The right to control vehicular, pedestrian and other public and private access to the CEA, Golf Course, and Club, except such access as is specifically granted to Holder by this Conservation Easement for purposes of monitoring compliance with this Conservation Easement. No dedication to public use, or right of access to the general public to any portion of the Property, CEA, Golf Course, or Club, of any kind or nature, is offered, conveyed, or granted by this Conservation Easement.

(f) The right to in accordance with the Approvals and Applicable Laws construct, install, use, operate, manage, improve, maintain, modify, repair, renovate, and/or restore: (i) the

WWTP; (ii) the Water Treatment Facility; (iii) the Maintenance Facility; (iii) the Water System; (iv) the Water System; and (v) the Stormwater Management System.

(g) The right to in accordance with the Approvals and Applicable Laws use, operate, manage, improve, maintain, modify, repair, renovate, and/or restore any Club facility, amenity, or component other the Golf Course, even if the Golf Course is discontinued or abandoned.

(h) Notwithstanding Section 2, Section 3, or any provision of this Conservation Easement: (i) Owner or its successor may in its sole discretion at any time and for any reason discontinue the Club and Golf Course, and instead use the CEA as open space for passive recreation by residents of the Residences; and (ii) if Owner or its successor shall have abandoned the use and operation of the Golf Course for a period of five (5) or more years, then such use and operation shall not thereafter be restored, and the CEA shall thereafter be used only as open space; for passive recreation by residents of the Residences, and in either event, Owner or its successor may in its sole discretion demolish and remove any temporary or permanent structures or building located within the CEA. For all purposes of this subsection(h)~~Section 3A~~, the term “abandoned” means that Owner or its successor shall have voluntarily and knowingly relinquished its rights under this Conservation Easement to construct, install, use, operate, manage, improve, maintain, modify, repair, renovate, and/or restore the Club and Golf Course, with the intention of not reclaiming such rights.

#### 4. **RIGHTS OF HOLDER**

To accomplish the purpose of the Conservation Easement, the following rights are conveyed to Holder:

(a) The right to preserve and protect the Conservation Values of the CEA subject to the terms of this Conservation Easement.

(b) The right to enter the CEA at reasonable times, in a reasonable manner, and when practicable, after giving notice to Owner, for the purposes of: (i) inspecting the CEA to determine if the Owner is complying with the covenants and purposes of this Conservation Easement; (ii) enforcing the terms of this Conservation Easement; (iii) taking any and all actions with respect to the CEA as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof, (iv) making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Property by the Owner and its members, guests, and successors in interest; and (v) monitoring and management of the CEA as described below.

(c) The right to prevent any activity on or use of the CEA that is inconsistent with this Conservation Easement and to require the restoration of such areas or features of the CEA that may be damaged by any inconsistent activity or use.

#### 5. **ENFORCEMENT**

(a) **Notice.** If Holder determines that Owner is in violation of the terms of this Conservation Easement or that a violation is threatened, Holder shall give written notice to Owner of the violation and demand corrective action sufficient to cure the violation. Where the

violation involves injury to the CEA resulting from any use or activity inconsistent with the purpose of this Conservation Easement, Holder may demand that Owner restore the CEA to its prior condition.

(b) **Injunctive Relief.** If Owner fails to cure the violation within thirty (30) days after receipt of notice from Holder, or if the violation cannot reasonably be cured within a thirty (30) days, Owner fails to begin curing the violation within thirty (30) days, or fails to thereafter diligently pursue the cure of the violation, Holder may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, by temporary or permanent injunction, and to require the restoration of the CEA to the condition that existed prior to any such injury.

(c) **Costs of Enforcement.** All reasonable costs of enforcing the terms of this Conservation Easement against Owner, including but not limited to the costs and expenses of legal action, reasonable attorneys' fees, and any costs involved in the restoration of the CEA resulting from Owner's violation of the terms of this Conservation Easement, shall be borne by Owner unless Owner ultimately prevails in any action or proceeding for judicial enforcement, in which case ~~Holder each party~~ shall bear ~~all such~~ its own costs. Notwithstanding the above, Holder shall not be entitled to recover costs or expenses associated with the inspection, monitoring, management or testing of the CEA by Holder.

(d) **Forbearance.** Forbearance or delay by Holder in the exercise of any of its rights to enforce this Conservation Easement or to exercise any right granted to it under this Conservation Easement shall not be deemed a waiver of such rights or of any of the terms of the Conservation Easement.

(e) **Acts Beyond Owner's Control.** Holder shall have no cause of action under this Conservation Easement against Owner, and nothing in this Conservation Easement shall be construed to entitle the Holder to institute any enforcement proceedings against the Owner, for injury or damage to the CEA which is beyond Owner's control, such as changes caused acts of force majeure, including, without limitation, flood, fire, wind, storms, or earth movement, or from any prudent action taken by Owner, under emergency conditions, to prevent, abate, or mitigate significant injury to the CEA or adjacent properties from such causes, or caused by the unauthorized wrongful acts of third persons. In the event of violations of this Conservation Easement caused by unauthorized wrongful acts of third persons, Owner shall at Holder's option, assign its right of action to Holder, join in any judicial proceeding commenced by Holder, and/or appoint Holder its attorney-in-fact for the purposes of pursuing enforcement action against such third persons.

## 6. NOTICE OF CERTAIN PERMITTED ACTIONS; HOLDER APPROVAL

Owner agrees to give Holder thirty (30) days' advance written notice before exercising any reserved right not expressly permitted in Section 2 or Section 3, the exercise of which may have a material adverse impact on the Conservation Values conserved by this Conservation Easement. The purpose of requiring Owner to notify Holder is to afford Holder an opportunity to determine, in Holder's reasonable discretion, whether the action can be carried out in a manner consistent with the purpose of this Conservation Easement. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed action in

sufficient detail to permit Holder to make an informed judgment as to its consistency with the purpose of this Conservation Easement.

Notwithstanding any provision of this Conservation Easement, in all instances where Holder's prior approval is required: (i) Holder shall grant or withhold its approval in writing within thirty (30) days of receipt of Owner's written request therefor; and (ii) Holder's approval may be withheld only upon a reasonable determination by Holder that the action as proposed would be inconsistent with the purpose of this Conservation Easement as set forth in Section 1 hereof. If Holder fails to respond within thirty (30) days of receipt of Owner's written request, Owner shall be entitled to give Holder a second, written notice (the "Second Notice") stating in **bold font** that Holder's failure to respond to the prior request within thirty (30) days after receipt of the Second Notice shall be deemed approval by Holder of the proposed action, and if Holder fails to respond to the Second Notice, the proposed action shall be deemed approved.

7. **COSTS AND LIABILITIES**

Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, and maintenance of the CEA. Holder shall have no obligation for the maintenance of the CEA.

8. **BINDING EFFECT**

The provisions of this Conservation Easement shall run with the CEA in perpetuity and shall bind and be enforceable against the Owner and all future owners and any party entitled to possession or use of the CEA or any portion thereof while such party is the owner or entitled to possession or use thereof. As used in this Conservation Easement, the term "owner" includes the owner of any beneficial equitable interest in the CEA or any portion thereof; the term "Owner" includes the original Owner, its successors and assigns, all future owners of all or any portion of the CEA, and any party entitled to possession or use thereof; and the term "Holder" means, collectively, the original Holder and its successors and assigns, and any Additional Holder (as hereinafter defined), and its successors and assigns. Notwithstanding the foregoing, upon any transfer of title, the transferor shall cease being an Owner or owner for purposes of this Conservation Easement and shall have no further responsibility or liability hereunder for acts done or conditions arising thereafter, but the transferor shall remain liable for earlier acts and conditions.

9. **ASSIGNMENT**

(a) Holder's rights and obligations under this Conservation Easement may be assigned only to an organization that is a qualified organization under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable) and is a governmental unit or not-for-profit conservation corporation or other entity authorized to take title to a conservation easement under New York Environmental Conservation Law, Article 49, Title 3, and which agrees to continue to carry out the conservation purposes of this Conservation Easement (a "Qualified Organization"). Any assignee other than a governmental unit must be an entity able to enforce this Conservation Easement. Holder agrees to provide Owner notice of any assignment twenty (20) days prior to assignment.

(b) Notwithstanding any provision of this Conservation Easement, Holder may, but shall not be obligated to, amend this Conservation Easement without Owner's consent solely to add a Qualified Organization as an additional Holder ("Additional Holder") hereunder; provided that such amendment shall not modify any provision of this Agreement, and shall not require Owner to incur any new or additional cost or expense in connection with such amendment or addition of such Additional Holder for a stewardship endowment or any other purpose.

#### **10. SUBSEQUENT TRANSFERS**

Owner may convey fee title in and to the Golf Course Lot and/or transfer any interest in and to the CEA without the consent or approval of Holder, including, without limitation, to any condominium association or homeowner's association formed with respect to the Residences, provided that aAny subsequent conveyance and/or transfer of any interest in the CEA, including, without limitation, ~~transfer~~, lease or mortgage, shall be subject to this Conservation Easement, and any deed, lease, mortgage or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This [conveyance, lease, mortgage, easement, etc.] is subject to a Conservation Easement which runs with the land and is binding on Owner's heirs, successors and assigns, and which was granted to the Town of North Castle by instrument dated \_\_\_\_\_, and recorded in the office of the Westchester County Clerk at Control No. \_\_\_\_\_." The failure to include such language in any deed or instrument shall not affect the validity or enforceability of this Conservation Easement. Owner further agrees to give written notice to Holder of the conveyance of any interest in the CEA at least sixty (60) days prior to the anticipated date of such conveyance. Owner's rights and obligations under this Conservation Easement shall terminate upon Owner's transfer of ownership of the CEA, except that liability for acts or omissions occurring prior to the transfer shall survive such transfer.

#### **11. ESTOPPEL CERTIFICATES**

Upon request by Owner and at Owner's sole expense, Holder shall within fifteen (15) days execute and deliver to Owner any document, including an estoppel certificate, which certifies Owner's compliance with any obligation of Owner contained in this Conservation Easement and otherwise evidences the status of this Conservation Easement as may be reasonably requested by Owner, provided, however, Owner shall reimburse Holder for all costs, including Holder's reasonable attorneys' fees and any update to the Baseline Documentation, associated with Owner's request.

#### **12. MEDIATION**

If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Conservation Easement, and Owner agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by making a request in writing. Within ten (10) days of the receipt of the request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within fifteen (15) days of receipt of the initial request, jointly apply to a proper court for the appointment of a trained and impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

(a) **Purpose.** The purpose of the mediation is to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or *de facto* modification or amendment of the terms, conditions, or restrictions of this Conservation Easement.

(b) **Participation.** The mediator may meet with the parties and their counsel jointly or *ex parte*. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as requested by the mediator.

(c) **Confidentiality.** Mediation is intended to be private and confidential. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. The parties and the mediator agree that to the extent during the course of the mediation (or during preparations for the mediation) they disclose, transmit, introduce, or otherwise use any matter, fact, statement, document, attendance or any other thing not otherwise discoverable, including but not limited to, opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation, any such information shall be confidential and treated as a compromise or offer to compromise pursuant to New York Civil Practice Law and Rules Section 4547, and such information shall not be disclosed unless authorized by law.

(d) **Time Period.** Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

(e) **Costs.** The costs of the mediator as well as any and all costs incurred by either party in connection with the dispute which is the subject of such mediation shall be borne equally by the parties.

(f) **Venue.** The venue for the mediation shall be in Westchester County, New York or such other location mutually agreeable to Owner and Holder.

13. **REPRESENTATIONS AND WARRANTIES; ENVIRONMENTAL COMPLIANCE; INDEMNIFICATION**

(a) **Representations and Warranties of Owner.** Owner hereby makes the following representations and warranties to Holder, each of which is true and correct as of the date of this Conservation Easement:

- (i) Owner has good and marketable title, in fee simple, to the CEA.
- (ii) To Owner's knowledge, no substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or

in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of deposited, abandoned, or transported in, on, from, or across the CEA, except in accordance with all Applicable Laws.

- (iii) No civil or criminal proceedings, suits, actions or investigations regarding the CEA are ongoing, or are now pending, and no written notices, claims, demands, or orders have been received, arising out of any material violation or alleged material violation of, or material failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the CEA or its use, nor is Owner aware of any facts or circumstances that Owner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- (iv) Owner is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Owner has full power and authority to execute, deliver and perform this Conservation Easement and the transactions contemplated by this Conservation Easement.
- (v) This Conservation Easement and all other agreements, instruments and documents to be executed and delivered by or on behalf of Owner, when executed and delivered, shall have been duly and validly executed and delivered by Owner and constitute the valid and binding obligations of Owner, enforceable in accordance with their terms, and no further action of any type is necessary on the part of Owner to make this Conservation Easement valid, binding and enforceable against it.
- (vi) The execution or performance of any covenant, agreement or obligation of Owner under this Conservation Easement does not constitute a breach or default or violation of any other agreement, instrument or obligation to which Owner is a party and no consents from any other party are required.

(b) **Representations and Warranties of Holder.** Holder hereby makes the following representations and warranties to Owner, each of which is true and correct as of the date of this Conservation Easement:

- (i) Holder is a municipal corporation duly organized and validly existing under the laws of the State of New York.
- (ii) Holder is duly authorized and empowered to execute, deliver and perform its obligations under this Conservation Easement, and any transactions contemplated by this Conservation Easement.
- (iii) This Conservation Easement and all other agreements, instruments and documents to be executed and delivered by or on behalf of Holder, when executed and delivered, shall have been duly and validly executed and delivered by Holder and constitute the valid and binding obligations of Holder, enforceable in accordance with their terms, and no further action of any type is necessary on the part of



Holder to make this Conservation Easement valid, binding and enforceable against it.

- (iv) The execution or performance of any covenant, agreement or obligation of Holder under this Conservation Easement does not constitute a breach or default or violation of any other agreement, instrument or obligation to which Holder is a party, and no consents from any other party are required.

All warranties, representation, covenants, and agreements of the parties under this Section 14 shall survive for a period of twelve (12) months from the date of execution of this Conservation Easement.

(c) **Environmental Compliance.** If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment (“Hazardous Materials”), except in accordance with Applicable Laws, then Owner agrees to promptly in compliance with Applicable Laws take all steps necessary to assure containment and remediation of such Hazardous Materials, including any cleanup that may be required, unless the release was caused by Holder, in which case Holder shall be responsible therefor. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Holder to exercise physical or managerial control over the day-to-day operations of the CEA, or any of Owner’s activities on the CEA, or otherwise to become an owner or operator with respect to the CEA within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and New York State hazardous waste statutes.

(d) **Hold Harmless.** Owner hereby indemnifies, releases and shall hold harmless, indemnify, and defend, at Owner’s sole expense, Holder and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (each an “Indemnified Party,” and collectively “Indemnified Parties”) from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys’ fees and expenses, arising from or in any way connected with: (i) the violation or alleged violation of, or other failure to comply with, any Applicable Laws, including, without limitation, CERCLA and state hazardous waste statutes, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (ii) the presence or release in, on, from, or about the Property, at any time, of any Hazardous Materials listed or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic pollution or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment unless caused by any of the Indemnified Parties; (iii) failure to repair or remedy any known or unknown defect on the Property, which may or does result in the personal injury of any licensee, invitee or known trespasser on the Property, and results in any type of legal action or claim; (iv) the ownership and/or operation of the Property prior to and including the date of this Conservation Easement; (v) any misrepresentation contained in any statement or certificate furnished by Owner to Holder pursuant to this Conservation Easement; and (vi) the breach or

inaccuracy of any of the obligations, covenants, agreements, representations, and warranties of Owner contained in this Conservation Easement. Notwithstanding the foregoing, Owner shall not indemnify any Indemnified Party for any losses to the extent that any such losses arise from any act of negligence, fraud or misconduct of such Indemnified Party.

14. **NOTICE**

Any notice, demand, request, consent, approval, or communication given shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (i) when actually delivered and received, if personally delivered; or (ii) three (3) business days after being mailed, if sent by certified mail, postage prepaid receipt request; or (iii) one (1) business day after being sent by overnight delivery service, all to the following addresses:

To Owner:

Summit Club Partners LLC  
16 Hobby Farm Drive  
Bedford, New York 10506  
Attention: Jeffrey B. Mendell

With a copy to:

DelBello Donnellan Weingarten Wise & Wiederkehr, LLP  
One North Lexington Avenue  
White Plains, New York 10601  
Attention: Peter J. Wise

To Holder: Office of the Supervisor  
Town of North Castle  
15 Bedford Road  
Armonk, New York 10504

With a copy to:

Office of the Town Attorney  
Town of North Castle  
15 Bedford Road  
Armonk, New York 10504

or to such other address designated by either party by written notice.

15. **CONSERVATION PURPOSE**

Holder, for itself and its successors and assigns, agrees that this Conservation Easement shall be held exclusively for the conservation purposes set forth by this Conservation Easement and as specified in Section 170(h)(4)(A) of the Internal Revenue Code. This Conservation Easement shall be construed to promote the purposes of New York Environmental Conservation Law, Title 3, Article 49, which authorizes the creation of conservation agreements for purposes including those set forth in the Recitals to this Conservation Easement, and the conservation

purposes of this Conservation Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code.

16. **RECORDATION**

Owner shall record this Conservation Easement in the Westchester County Clerk's office.

17. **GENERAL PROVISIONS**

(a) **Applicability of Environmental Conservation Law.** The parties hereto understand and agree that all the terms and provisions of New York Environmental Conservation Law, Title 3, Article 49, entitled "Conservation Easements," as the same may be hereafter amended, shall apply to this Conservation Easement.

(b) **Interpretation.** Regardless of any contrary rule of construction, no provision or alleged ambiguity of this Conservation Easement shall be construed in favor of one of the parties because it was drafted by the other party's attorney. If any provision of this Conservation Easement is ambiguous or shall be subject to two or more interpretations, one of which would render that provision invalid, then that provision shall be given such interpretation as would render it valid and consistent with the purpose of this Conservation Easement as intended by Owner. This Conservation Easement shall be interpreted broadly to effect the purpose of this Conservation Easement as intended by Owner.

(c) **Modification.** This Conservation Easement can be amended, supplemented, or otherwise modified only by a written agreement executed by Owner and Holder, or their successors or assigns.

(d) **Force Majeure.** It is understood and agreed by the parties that the Owner, its successors and assigns, shall not be liable for any changes to the CEA caused by any natural disaster or event of *force majeure*.

(e) **Severability.** In the event a court of competent jurisdiction shall determine any provision of this Conservation Easement, or the application thereof to any person or circumstance, to be inconsistent with any laws, rules or regulations of any applicable governing body or otherwise invalid, unenforceable or void to any extent from any reason, such determination shall not affect the remaining provisions of this Conservation Easement, which shall continue in full force and effect, and the parties agree to use commercially reasonable efforts to modify such provision so that it is no longer inconsistent with such laws and is acceptable to both parties. Except as set forth herein, the provisions of this Conservation Easement shall be severable and the unenforceability of any provision of this Conservation Easement shall not affect the validity of the remaining provisions.

(f) **Entire Agreement.** This Conservation Easement sets forth the entire agreement of Owner and Holder with respect to the conservation easement granted by Owner to Holder and supersedes all prior discussions, negotiations, understandings, or agreements, whether written or oral, relating to the conservation easement, all of which are merged herein.

(g) **No Forfeiture.** Nothing contained in this Conservation Easement will or can result in a forfeiture or reversion of Owner's title to the CEA and/or Property.

(h) **Successors.** The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, and shall continue as a servitude running in perpetuity with the CEA.

(i) **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(j) **Legal Counsel.** Each party represents to the other that each has independent legal advice, by counsel of its own selection, in the negotiation of this Conservation Easement. Each party understands the facts, and has been fully informed in regard to its legal rights and obligations, and each has signed this Conservation Easement freely and voluntarily, intending to be bound by it.

(k) **Baseline Documentation.** Holder acknowledges, by its acceptance of the Conservation Easement, that Owner's present uses of the CEA, and all future uses in accordance with the Approvals, are compatible with the purposes of this Conservation Easement. To establish the present condition of the Conservation Values so as to be able to properly monitor future uses of the CEA and assure compliance with the terms hereof, Holder has prepared or caused to be prepared the Baseline Documentation. Owner and Holder acknowledge and agree that, in the event that a controversy arises with respect to the nature and extent of Owner's present use or the physical condition of the CEA subject to this Conservation Easement as of the date hereof, the parties may look beyond the Baseline Documentation, if necessary, to other relevant or material documents, surveys, reports and other evidence showing conditions at the time of execution of this Conservation Easement to assist in the resolution of the controversy. Owner and Holder acknowledge that the Baseline Documentation is an accurate representation of the CEA at the time of this grant.

(l) **Further Assurances.** The parties hereby covenant and agree to execute and deliver from time to time, promptly after any reasonable request therefor, any and all instruments, agreements and documents which either party may reasonably require, and to perform such other acts as may be reasonably necessary or desirable, to carry out the purpose of this Conservation Easement.

a

(m) **Miscellaneous.** The failure of either party to enforce promptly a right under this Conservation Easement shall not constitute a waiver of such right or constitute a waiver with respect to subsequent breaches. No waiver of any provision of this Conservation Easement shall be valid or enforceable unless such waiver is in writing and signed by the party to be charged. This Conservation Easement has been executed and delivered and shall be interpreted, construed and enforced pursuant to and in accordance with the laws of the State of New York and the parties agree that any action or proceeding seeking to enforce any provisions of, or based upon any rights arising out of this Conservation Easement must be brought against any of the parties in the Supreme Court of the State of New York, County of Westchester.

**TO HAVE AND TO HOLD** this Conservation Easement unto Holder and its successors and assigns, forever.

**IN WITNESS WHEREOF**, Owner and Holder have executed and delivered this Conservation Easement as of the day and year first above written.

OWNER:

**SUMMIT CLUB PARTNERS LLC**

By: \_\_\_\_\_

Name: Jeffrey B. Mendell

Title: Manager

HOLDER:

**TOWN OF NORTH CASTLE**

By: \_\_\_\_\_

Name:

Title:

DRAFT

**EXHIBIT A**  
**(The CEA – Conservation Easement Map)**

DRAFT

**EXHIBIT B**  
**(The CEA – Legal Description)**

DRAFT