

**DECLARATION OF TRUST ESTABLISHING THE  
XXXXXXXXXXXX HOMEOWNERS ASSOCIATION**

**AGREEMENT and DECLARATION OF TRUST** made this \_\_\_\_ day of \_\_\_\_\_ 20XX, by Habitat for Humanity of Cape Cod, Inc., 411 Main Street, Suite 6, Yarmouthport, Massachusetts 02675 (“Habitat”) as Declarant and Trustee (hereinafter with their successors in trust referred to as the “Trustees”).

(1) **Name of Trust.** The name of this trust shall be the XXXXXXXX *Homeowners Association* (hereinafter referred to as the “Trust” or the “Association”).

(2) **Purpose of Trust.**  
A. The purpose of this Trust is to provide for the preservation and maintenance for the common enjoyment and benefit of the Homeowners (as hereinafter defined) of the Common Area and Facilities of the development known as the XXXXXXXXXX as shown a plan entitled “XXXXXXXXXXXXXXXX” dated XXXXX, by Down Cape Engineering, Inc. and recorded with Barnstable Registry of Deeds in Plan Book XXX Page XXX (hereinafter the “Subdivision Plan” or “Subdivision”). The Subdivision is subject to the following:

- (i) the Comprehensive Permit issued by the Harwich Zoning Board of Appeals dated XXXXXXXX (the “Comprehensive Permit” or the “Permit”), recorded with the Barnstable Registry of Deeds in Book XXXX Page XXX;
- (ii) a Regulatory Agreement and Declaration of Restrictive Covenants for Ownership Project by and between Habitat, the Town and the Commonwealth of Massachusetts, acting by and through its Department of Housing and Community Development, dated XXXXX and recorded with said Deeds in Book XXXX, Page XXX (the “Regulatory Agreement”);
- (iii) the affordability restrictions and covenants set forth in said Permit and Regulatory Agreement and to be further set forth in deeds of Lots 1 through 6 in the Subdivision (the “Deed Rider”); and
- (iv) the Declaration of Protective Covenants and Restrictions for XXXXXXXXXX, dated \_\_\_\_\_, 20\_\_\_\_, recorded herewith (“Declaration of Protective Covenants”).

(v) Schedule A, the Rules and Regulation of the XXXXXXXX Homeowners Association attached hereto and incorporated herein.

The Permit, Regulatory Agreement, Deed Rider and Declaration of Protective Covenants, and the provisions of each, are explicitly incorporated herein by reference.

B. The portions of the Subdivision subject to the terms of this Trust are Lots 1, 2, 3, 4, 5 6, and Lot \_\_\_\_\_. Lot 9 is the Common Area and Facilities of the Subdivision (the "Common Area").and includes:

(i) The Private Road and its Cul-de-sac, shown on the Subdivision Plan, a portion of which Private Road is shared with and to be used by the owner of Lot 8 shown on the Subdivision Plan pursuant to an Easement XXXXXXXXXXXX;

(ii) The stormwater drainage system, the water system elements and the common utilities in, under, over and near the access drive, to the extent the same are not maintained by the Town of Harwich ("Town") or the appropriate utility companies; and

(iii) All other common areas and facilities of the Subdivision, including, without limitation, all conduits, ducts, pipes, plumbing, wiring and other facilities for the furnishing of power, light, telephone, cable, water, sewer, drainage pipes, and lighting fixtures, if any

C. Habitat has conveyed or will convey to the Trustees the Common Area, and may convey any other property, real or personal, for their administration for the benefit of the Homeowners. All of the Homeowners shall have the right to use the Trust property subject to any and all easements, covenants, conditions, restrictions and reservations pertaining to the Subdivision and recorded with Barnstable Registry of Deeds and to rules and regulations as adopted or to be adopted and amended from time to time by the Association.

D. It is hereby expressly declared that a trust, and not a partnership, has been hereby created and that the Homeowners are beneficiaries and not partners or associates or any other relation whatsoever among themselves with respect to the Trust property and that they hold no relation to the Trustees other than as such beneficiaries, with only such rights as are conferred upon them as such beneficiaries hereunder.

(3). **Beneficiaries.** The beneficiaries of this Trust shall be the Homeowners of Lots 1 through 6 as shown on the Subdivision Plan. Each Lot shall be entitled to one vote. The words "Homeowner" or "Member" shall mean and refer to the record holder from time to time of the legal title in fee of any of said Lots. Two or more persons or entities holding record title to the same Lot shall be treated as a single Homeowner and exercise of their rights as such owners shall be by their unanimous action. Their obligations to pay any assessment shall be joint and several.

(4) **Homeowners' Annual and Special Meetings.** Any action or consent by the Homeowners shall be taken or given at the annual meeting or at any special meeting of the Homeowners. The first annual meeting of Homeowners shall be held on the third Saturday in \_\_\_\_\_ 20\_\_, or on the third Saturday of the second month after the sale of the sixth home, whichever is later. Thereafter, the annual meeting of Homeowners shall be held on the third Saturday of \_\_\_\_\_ of each and every year (or if that be a legal holiday on the next succeeding Saturday) at the hour and place to be fixed by the Trustees. If no annual meeting has been held on the date fixed above, a special meeting in lieu thereof may be held. Special meetings of Homeowners may be called by the Trustees on their own motion and shall be called by the Trustees upon written application to the Trustees of at least two Homeowners. Habitat for Humanity of Cape Cod, Inc. ("Habitat") shall have the right, but not the obligation, to attend the annual and special meetings for twenty years from and after the date of the first annual meeting of Homeowners. Habitat shall be a non-voting Member of the Association and shall participate in the meetings in an advisory capacity only. A written notice of the place, date and hour of all meetings of Homeowners shall be given by the Trustees at least fifteen (15) days before the meeting to each Homeowner and to Habitat. Notice need not be given to a Homeowner or to Habitat if a written waiver of notice, executed before or after the meeting by such Homeowner or his attorney thereunto authorized, is filed with the records of the meeting.

(5) **Voting.** Each Homeowner shall be entitled to one vote for each Lot owned in the Subdivision, i.e. Lots 1, 2, 3, 4, 5, and 6. Such vote may be cast in person or by proxy. Any instrument dated not more than six months before the meeting purporting to grant authority to another to cast such vote, duly executed by the Homeowner and acknowledged before a witness, shall be deemed a proxy. A proxy shall be revocable at any time by written notice to the Trustees. Upon demand by any Homeowner, the vote on questions before the meeting shall be by ballot. No Homeowner of a Lot against whom there are any outstanding and unpaid assessments (as provided herein) shall be entitled to vote at any regular or special meeting. Habitat will serve in an advisory capacity only and will have no vote.

(6) **Quorum.** At any meeting of the Members of the Association the presence in person or by proxy of Members holding **four** of the total number of votes entitled to be cast will be necessary to constitute a quorum for all purposes. The approval of the Members present in person or by proxy representing at least **four** of the total number of votes entitled to be cast, shall be necessary for affirmative action on any matter involving expenditures of any sum or money in excess of Five Thousand Dollars (\$5,000.00); or for affirmative action on the disposition of property or the imposition of special assessments for capital improvements. On all other matters, the vote of a majority of those present or by proxy, in person, shall be sufficient. In the event that, at the time of any legally called meeting, there are fewer than **four** Homeowners present and those members not attending do not send proxies and received written notice pursuant to Paragraph 4 above, then a quorum shall be defined as the number of qualified voters attending the meeting and approval of matters listed above that require **four** votes will require the unanimous vote of the qualified quorum voters. Likewise, in the event that, at the time of any legally called meeting, there are fewer than **four** owners qualified to participate in the quorum or voting due to failure to pay their assessment, then a quorum shall be defined as the number of qualified voters attending the meeting and approval of matters listed above that require **four** votes will require the unanimous vote of the qualified quorum voters. Other votes will require a majority.

(7) **Compensation and Expenses.** Members shall not receive any compensation for their services, but may be paid for rendering unusual or special services to the Association or reimbursed for expenses incurred, if the same are approved by a majority of Members present and entitled to vote at the meeting during which request for such payment is made.

(8) **Notices.** All notices to the Homeowners shall be in writing and shall be sent to the Homeowners or to such one of them as they may designate in writing from time to time, at the last address of such Homeowner as it appears in the records of the Trust. Changes in the Homeowners or their addresses shall be noted in the records of the Trust only upon written notice filed with the Trustees. Notice shall be deemed given as of the date of mailing. Notice to Habitat shall be sent to its address at 411 Main Street, Suite 6, Yarmouthport, Massachusetts 02675, Attention: Executive Director, until such time as the Trust is notified of a change in address.

(9) **Powers and Duties of Trustees.** For the purpose of carrying out the terms of this Trust, the Trustees shall have all the powers and duties necessary or convenient for the administration of the Trust property, including without limitation the following powers which may be exercised by them without any action or consent by the Homeowners, except as set forth in this Trust instrument, and which shall continue after the termination of the Trust for the purpose of disposing of the Trust property and until final disposition thereof:

(a) preserve, care for and maintain the Common Area and facilities of the Subdivision;

(b) maintain, repair, improve, change or alter the Common Area, real or personal, including, without limitation, repairing, replacing, digging, excavating, filling, tearing down, restoring and rebuilding the Private Road and its Cul-de-sac, utility lines, storm water catch basins and other drainage systems, structures or additions thereto;

c) snowplow the Private Road and around its Cul-de-sac, assuring the removal of any snow windrows along the entrance to the Private Road within the site triangle areas of the Subdivision, where and when such accumulations would exceed 2.5 feet in height.

(d) plant, ~~fertilize~~, water, mow and maintain the lawn and/or landscape within the Common Area, assuring that no plantings of any bushes or other vegetation within ten feet of the edge of the paved road would interfere with the site lines of all vehicles exiting the Private Road nor impede access for emergency vehicle. Grasses and low bushes less than 2.5 feet in height not affecting site lines or emergency access are permissible.

(e) maintain, repair and replace systems and utilities serving the Association and its Members within the Common Area and to abate any public health nuisance that in the Trustees' judgment is caused thereby;

(f) operate, maintain, repair and replace any and all portions of the Common Area and facilities including, without limitation, the stormwater drainage system, and do all things necessary to manage, operate and maintain, without limitation, the Common Area and facilities which in the Trustees' judgment is necessary;

(g) in addition to Schedule A attached hereto, the Rules and Regulations of the Association, adopt reasonable rules and regulations governing the enjoyment by the Homeowners of the Trust property, as shall be established by the Association; the Trustees may, at any time and from time to time, adopt, amend and rescind reasonable administrative rules and regulations governing the details of the operation and use of the Common Area and facilities, and such restrictions as are designed to prevent unreasonable interference with the use by the Homeowners of their dwelling units and of the Common Area and facilities so long as any adopted, amended or rescinded rule or regulation is not less restrictive than, or contrary to the provisions of the Declaration of Protective Covenants or ~~the Rules and Regulation~~ set forth on Schedule A attached hereto; the Trustees shall enforce all said rules and regulations promptly, properly and uniformly as against all Homeowners and others to whom the same may from time to time apply and enforce the same at the request of any Homeowner, all of which obligations shall constitute obligations of theirs as Trustees hereunder;

(h) make contracts which the Trustees deem convenient to the performance of their duties as Trustees;

(i) hire and retain a property management services company or organization to perform some or all of the Trustees' responsibilities, including but not limited to the collections of assessments, and to include payment for such services in the annual assessment;

(j) through the property management services company, manage the finances of the Association, including allocation of income and expenses, and enforce the obligations of the Homeowners to pay the assessments;

(j) working with the property management services company, determine and collect reasonable fees from the Homeowners, as shall be established by the Association, including special assessments for capital purposes;

(k) open bank accounts in the name of the Trust or the Trustees with power in two Trustees to draw on such accounts;

(l) acquire by purchase, hire or otherwise, property convenient to the performance of their functions as Trustees;

(m) borrow money, provided however, that such borrowing has been authorized by a vote of the Members owning no less than four (4) Lots entitled to be cast at a meeting of the Members of the Association held pursuant to Paragraph 4 of this Declaration; in the event that there are fewer than four (4) Members qualified to participate in the voting due to failure to pay their assessment, approval to borrow money will require the unanimous vote of the Members qualified to vote.

(n) procure insurance;

(o) enforce the obligations of the Homeowners under said Declaration of Protective Covenants and the Rules and Regulations of the Association;

(p) pay, resist, compromise or submit to mediation any claim or matter in dispute;

(q) convey easements and lesser interests in, upon, over and under the Private Road with its Cul-de-sac for the installation, maintenance, repair and replacement of utilities and other services and rights incidental thereto;

(r) grant or relocate permits, easements and licenses on, over and under the Common Area and facilities;

(s) convey to the Town of Harwich or other public body the fee, or convey easements to said Town, in Lot \_\_\_\_, the Private Road with its Cul-de-sac for the purpose of making it a public way;

(t) maintain, from time to time, reasonable reserves from income or by assessment upon the Homeowners for any or all of the following purposes: repairs, improvements and reconstruction of the Common Area and any other real or personal property belonging to the Trust, real estate and personal property taxes; interest and principal payments due or to become due on loans; and invest such reserves and use the same for such purposes as it shall deem best; and

(u) generally, in all matters not herein otherwise specified, control and do each and every thing necessary, suitable, convenient, or proper for the accomplishment of any of the purposes of the Trust or incidental to the powers herein and manage and dispose of the Trust property as if the Trustees were the absolute owners thereof; and to otherwise exercise any powers which may be necessary or desirable for carrying out the terms of this Trust or which the Trustees may have under any present or future statute or rule of law; and to execute and deliver all appropriate instruments in connection therewith.

(10) **Assessments.** Each Homeowner or entity except Habitat that takes title to any Lot shall, upon acceptance of a deed or upon the vesting of title by descent or devise, be deemed to have agreed to pay to the Association all special or annual assessments, which assessments may include but are not limited to the following: management, maintenance, including but not limited to plowing, improvement, preservation, replacement and restoration of the Common Area or facilities thereof, including but not limited to the Private Road with its Cul-de-sac; real estate taxes on the Common Area; premiums for insurance on the Common Area; expenses relating to the Trustees' contractual obligations to the property management services company, and expenses, [including without limitation legal fees](#), relating to the enforcement of the covenants,



restrictions and provisions set forth in said Declaration of Protective Covenants and the Rules and Regulation set forth on Schedule A attached hereto, as amended.

(a) The annual assessments provided for herein shall commence on \_\_\_\_\_, 20\_\_\_\_, and shall be payable in equal quarterly installments on the first day of January, April, July and October. The amount of the first annual assessment shall be established by Habitat. Additionally, each homeowner shall pay on the date of delivery of the deed Three Hundred (\$300.00) Dollars and the equivalent of two months installments to be held in escrow by Habitat until the election of the Trustees at the first annual meeting.

(b) At least fourteen (14) days before the annual meeting, the Trustees shall estimate and provide to all the Homeowners a budget showing the estimated expenses to be incurred during such next fiscal year, together with reasonable provisions for the contingencies and reserves for the performance and fulfillment of all of the duties, functions and activities of the Trustees which, as determined by said Trustees in their reasonable discretion, are for the general benefit of all of the Homeowners. Each such common budget shall include payment to the property management services company for the services provided the Association. Each such common budget shall be divided into equal shares, one for each Lot.

(c) Written notice of the annual assessment and quarterly statements ("statements") shall be sent by the property management services company, under the direction and by the authority vested in the Trustees of the Association, to the then owners of Lots 1, 2, 3, 4, 5 and 6. Each person or entity except Habitat that takes title to any of these Lots shall upon acceptance of a deed, or upon the vesting of title by descent or devise, be deemed to have agreed to pay all assessments in a timely manner. "Timely manner" is hereby defined as within thirty (30) days from the sending of a written notice of assessment by the Trustees of the Association. Any assessment not paid within such thirty-day period shall bear interest thereafter at the rate of one percent (1.0%) per month, or at the maximum interest rate allowed by law if such maximum allowable rate is less than 1.0% per month.

(d) In addition to annual assessments, the Trustees may levy in any assessment

year a special assessment, applicable to that year only, for the purpose of providing for the payment of the costs of construction of, and unexpected repairs or replacement to, a capital improvement relative to the Common Area of the development, which exceeds the current cash reserves of the Association, provided that any special assessment is authorized by said Association at a meeting duly called for this purpose pursuant to Paragraphs (4) and (6) of this Declaration, written notice of which shall be sent to all Homeowners at least fifteen (15) days in advance and shall set forth the purpose of the meeting. Upon said approval, the Trustees shall direct the property management services company to include such special assessment in its quarterly statement.

(e) In the event that the Trustees shall determine during any fiscal year that the common budget so established is less than the expenses actually incurred (including reserves), or in the reasonable opinion of the Trustees likely to be incurred, the Trustees shall make a supplemental assessment or assessments and direct the property management services company to include such supplemental assessment in its quarterly statement in the manner aforesaid.

(f) The amount of each quarterly statement for regular, special or supplemental assessments, if not paid when due, shall remain the ongoing obligation of the Homeowner and shall constitute an ongoing lien on the Lot until paid.

(g) The Association, through the property management services company or the Trustees, by the power and authority vested in the Trustees, may bring a civil action at law or in equity against any person or entity for failure to pay any Homeowners Association assessment within ninety (90) days from the due date of a notice of assessment by the Trustees of the Association.

(h) The amount of each statement for regular, special or supplemental assessments, together with interest thereon, if not paid when due, together with all costs and expenses, including attorneys' fees, incurred by the Trustees in any proceeding brought to collect such unpaid common expenses and assessments, delinquent fees, charges, penalties and interest charged to a delinquent Homeowner, shall constitute a lien on the Lot. Such lien shall have priority over all other liens except (a) real estate taxes and other municipal liens, and (b) a first mortgage on the Lot in question which was

recorded prior to the time the assessment or charge was first levied. Such amount shall also constitute a personal debt of the Homeowner who is the owner of such Lot on the date of the assessment by the Trustees. The Trustees shall take prompt action to collect any common expenses and assessments due from any Homeowner that remain unpaid for more than 90 days from the due date thereof. By acceptance of any deed to any of the Lots, the Homeowner thereof thereby covenants with the Trust that any assessment by the Trustees for which said Homeowner is liable may be enforced by selling the Homeowner's Lot, together with any improvements thereon, by virtue of the STATUTORY POWER OF SALE, pursuant to Massachusetts General Laws, Chapter 183, §21, as though said Homeowner had granted a mortgage at the time of such acceptance of said deed to the Trust to secure such assessments as may from time to time be due to the Trust by said Homeowner. Such lien may also be foreclosed by the Trustees in like manner as a condominium assessment lien under Massachusetts General Laws, Chapters 183A and 254.

(i) The Trustees shall furnish, upon demand by any Homeowner, a certificate in writing signed by any Trustee (other than the Homeowner who demanded the certificate) attesting that any annual, special and/or supplemental assessment is paid or outstanding. Any such certificate, if recorded in Barnstable Registry of Deeds within 30 days of its date, shall be conclusive evidence of the facts stated therein.

(11) **Liability of Trustees**. All persons extending credit to or contracting with or having any claim against the Trustees hereunder shall look only to the Trust property for any such contract or claim, so that neither the Trustees nor the Homeowners shall be personally liable therefor. No Trustee hereunder shall be liable to this Trust or to the Homeowners for the default of any other Trustee, or for leaving the Trust property in the hands of another Trustee, or for any error of judgment or law on his own part, but shall be liable only for his own willful default. Any Trustee hereunder shall be reimbursed in full for any loss or expense incurred or suffered by the Trustee or the estate of the Trustee as a result of his or her acting as Trustee hereunder, excluding only such loss or expense resulting from his or her own willful default.

(12) **Financial Records.** The Trustees shall keep proper records and accounts of the affairs of the Trust, which shall be open to inspection by any Homeowner at reasonable times. At least once a year the Trustees shall render a written report and financial statement to the Homeowners. The approval by a majority of the Homeowners entitled to cast a vote of any report or financial statement by the Trustees shall be, as to all matters and transactions stated in said report or statement or shown thereby, a complete discharge of the Trustees and final and binding upon all Homeowners. The fiscal year of the Association shall be from January 1<sup>st</sup> to December 31<sup>st</sup> of each year.

(13) **Property Management Services Company.** The Trustees shall hire, retain, and contract with a property management services company to perform the following duties and responsibilities of the Trustees:

- a) hold and manage the Association's bank account, collect all annual, special and supplemental assessments and pay the Association's expenses, all as directed by the Trustees;
- b) provide the Trustees with a written report and financial statement that includes an annual summary of assessments paid and expenditures made a minimum of thirty (30) days before the annual meeting;
- c) prepare an annual budget showing the expenses to be incurred during the next fiscal year including reasonable provision for contingencies and reserves, and present the same to the Trustees a minimum of thirty (30) days before the annual meeting;
- d) provide each Homeowner with written notice of the annual assessment to be due quarterly in four equal payments on the 1<sup>st</sup> of January, April, July and October;
- e) provide each Homeowner with quarterly statements of the annual assessment and include any additional amounts owing due to special or supplemental assessments, as directed by the Trustees;
- f) send written notice of failure to pay assessments to any Homeowner in arrears of his, her, or their quarterly payment of the annual, special and supplemental assessments;

g) bring, or cause to be brought, a civil action in law or in equity against any Homeowner in arrears of his, her, or their payment of any assessment for more than 90 days from the due date thereof, i.e. 120 days from the 1<sup>st</sup> day of the quarter;

i) provide the Trustees with written notice of a Homeowner's failure to pay if the Homeowner is in arrears of his, hers or their quarterly assessment payment after 60 days from the due date thereof; and

j) perform any and all duties and responsibilities directed and contracted by the Trustees within the rights and duties of the Trustees.

(14) **Trustees in Number and Terms.** There shall always be two (2) Trustees hereunder except that prior to the sale of the six lots and the first annual meeting of Homeowners, there shall be one Trustee to be appointed by Habitat. Upon the sale of the sixth Lot and at the first Annual Meeting of Homeowners, the Homeowners shall elect the Trustees from among the Homeowners. The Trustees from then on shall be Homeowners. All Trustees shall serve until their successors have been duly elected and the position of Trustee accepted. Habitat shall serve in an advisory capacity to the Trustees for one year following the first annual meeting. Habitat shall have the right, but not the obligation, to attend Trustees' meetings for twenty years from and after the date of the first Annual Meeting of Homeowners. Habitat shall be a non-voting Member of the Association and shall participate in the meetings, in its sole discretion. Except for the Trustee appointed by Habitat, the term of each Trustee shall expire at the time fixed herein for the annual meeting of Homeowners to be held in the second year after the election of such Trustee, provided that:

(a) the initial term of Trustee No. 1 elected by the Homeowners shall expire at the time fixed for the annual meeting to be held in **[2yrs from 1<sup>st</sup> Annual Meeting]**, but not until the election of a successor Trustee and his or her acceptance to so serve;

(b) the initial term of Trustee No. 2 elected by the Homeowners shall expire at the time fixed for the annual meeting to be held in **[1yr from 1<sup>st</sup> Annual Meeting]**; but not until the election of a successor Trustee and his or her acceptance to so serve;

(15) **Election of Trustees.** At each annual meeting of Homeowners, commencing with the annual meeting to be held in **[1yr from 1<sup>st</sup> Annual Meeting]**, the Homeowners shall elect one Trustee for a term expiring at the time fixed for the annual meeting to be held in the second year after such election.

(16) **Vacancies, Removals, and Action by Majority Vote.** Any Trustee may at any time resign as Trustee by a written instrument signed by him or her, acknowledged and delivered to the remaining Trustees. Upon the death or resignation of any Trustee, a vacancy in the office of Trustee shall be deemed to exist and a new Trustee shall be elected for the unexpired term by the remaining Trustees. Any successor Trustee shall qualify as a Trustee by written acceptance, signed and acknowledged by him or her. Pending any appointment of a successor Trustee, the remaining Trustee shall have and may exercise all powers, authorities and discretions conferred by this Trust. After reasonable notice and opportunity to be heard before the Homeowners at a Special Meeting of the Homeowners called pursuant to Paragraph 4 herein, any Trustee may be removed from office by a vote of four (4) of the Homeowners, excepting Trustee No. 1 appointed by Habitat whose term will cease upon the election of the Trustees at the first annual meeting of the Homeowners. In the event that, at the time of the Special Meeting so called, there are fewer than four Homeowners qualified to participate in the voting (due to failure to pay their assessment), then a Trustee may be removed from office by the majority vote of Homeowners qualified to vote. Upon the death, resignation, removal or incapacity to act of any of the Trustees, the title of the Trust property shall vest in the remaining Trustee, and, upon the filling of any such vacancy, such title shall vest jointly in those who shall be the Trustees hereunder without further action.

In all matters relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred, the Trustees shall act by consensus. The Trustees may so act without a meeting by instrument signed by both Trustees.

(17) **Fidelity Bonds and Surety.** The Trustees shall attempt to obtain fidelity bonds in amounts which they deem reasonably sufficient to cover the Trustees when and if the Trustees are handling or are responsible for funds.

(18) **Rights of the Town of Harwich:** The principal duty of the Trustees shall be to maintain and keep in good repair the Common Area of the Subdivision. The expenses of all such maintenance, operation, repair and replacement shall be assessed to the Homeowners as a common expense. The Town shall have the perpetual right and easement to enter the Trust property, including the Common Area, for the purpose of inspecting the same and to ensure compliance with the terms hereof, and to take any measures to abate or remedy any violation hereof.

In the event repairs, maintenance or replacement of any of the Common Area is required and the Trustees fail or are unable to take such action within sixty (60) days after written notice from the Town, the Town may take such actions necessary to have the work performed, and the expenses thereof shall be chargeable against the Trust and the Homeowners, the Trust property and the Lots.

The rights hereby granted to the Town include the right to enforce the obligations of the Trustees contained herein by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violation, including, without limitation, relief requiring repair, maintenance or replacement of any Trust property (it being agreed that the Town has no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Town. The Town shall have the option to enforce said obligations, but does not have the obligation to do so. The expenses, including legal fees, incurred by the Town, if the Town is the prevailing party, in abating or remedying any violation hereof, ~~and/or including legal fees incurred by the prevailing party, in enforcing the duty of the Trustees hereunder when to remedy the violation requires repair, maintenance or replacement of Trust property,~~ shall be paid by the Trustees within thirty (30) days of written notice to the Trustees by the Town; and, if not paid by the Trustees within the time allowed, the Town may assess such costs against the Homeowners and such assessment shall become ~~a~~ liens on the Homeowners' use

properties which may be collected and enforced in the manner fixed by law for the collection of taxes. Notice of ~~the said~~ liens shall be recorded in the Barnstable District Registry of Deeds. As an alternative or in addition to this process, the Town may recover its costs by means of betterment assessments on the Homeowners. Notwithstanding the foregoing, the Town shall have no obligation to perform the foregoing maintenance and repairs.

(19) **Restrictions on Use.** Lots 1, 2, 3, 4, 5, and 6 are intended for residential use. Lots 1, 2, 3, 4, 5, and 6 and the Common Area of the Subdivision shall be subject to the following restrictions:

(a) All maintenance and use by Homeowners of all of the Common Area shall be done so as to preserve the general appearance and character of the same and of the grounds and buildings;

(b) All use and maintenance of the Lots shall be in accordance with the provisions of the Rules and Regulations from time to time promulgated by the Trustees and in accordance with such Declaration of Protective Covenants;

(c) The Lots, the buildings thereon, and the Common Area shall be used only for purposes consistent with their design;

(d) Each Homeowner shall use his or her Lot only for such purposes and to such extent that it will not overload the structure of the building on the Lot or its foundation or unreasonably overload the capacity of the subsurface sewage disposal system on the Lot or any utility furnished to the Lot including but not limited to water, electricity, cable, gas and telephone;

(e) No Homeowner or occupant shall commit, permit or suffer any violation of any insurance policies taken out by the Trustees, or do, permit or suffer anything to be done, or keep or permit anything to be kept, or permit any condition to exist which might (i) result in the termination of such policies, or (ii) adversely affect the right of recovery hereunder, or (iii) result in reputable companies refusing to provide insurance as required or permitted by the Trustees, or (iv) result in any increase in the insurance rate or



premium with respect to any other Homeowner's policy or policies, unless, in the case of such increase, the Homeowner responsible for such increase shall pay the same.

(f) No unlawful use shall be made within the Common Area or any part thereof, and all valid laws, orders, rules and regulations of all governmental agencies having jurisdiction thereof shall be strictly complied with. Compliance with any legal requirements shall be at the sole cost of the Homeowner or the Trustees as the case may be, whichever shall have the obligation under this Declaration of Trust to maintain, repair or control the portion of the property affected by any such legal requirement. Each Homeowner shall give prompt notice to the Trustees of any notice he or she receives of the violation of any legal requirements affecting the Homeowner or the Common Area.

(20) **Termination by Law.** This Trust, unless sooner terminated as herein provided, shall terminate ninety (90) years from the date hereof.

(21) **Termination or Amendment by Consent.** Except as specified in Paragraph 20 herein, the provisions hereof may be altered, amended, or repealed at any meeting of the Association by a vote of four of the total number of votes entitled to be cast, represented either in person or by proxy, provided that the proposed action is inserted in the notice of such meeting. Notwithstanding the foregoing, no such amendment, alteration, addition or change that would (a) render this Trust contrary to or inconsistent with any requirements or provisions of applicable law or any permit or approval issued by a board or officer of the Town, including the Comprehensive Permit, (b) alter, amend or revoke the obligations of the Trustees to maintain the Common Area in good order and condition, (c) render the Declaration of Protective Covenants or the Rules and Regulation set forth on Schedule A attached hereto, less restrictive or contrary to their purposes; or (d) reduce the obligations of the Homeowners to pay common expenses, shall be valid or effective without the prior written consent of the Town. Further, no termination of the Trustees' obligation and responsibility to retain the services of a property management services company to manage certain duties of the

Trustees shall be permitted unless an alternative means of discharging the Trustees' maintenance obligations has been approved by the Town of Harwich Board of Appeals.

(22) **Disposition of Trust Property.** Upon termination of the Trust, the Trust property shall be conveyed to the Homeowners as tenants in common, subject to the terms and provisions of the Comprehensive Permit and all other matters of record which henceforth shall be enforceable by and against the Homeowners, joint and severally.

(23) **Reliance by Parties.** A certificate signed by any one of the Trustees and acknowledged before a Notary Public shall be conclusive evidence in favor of any person, firm, corporation, trust or association acting in good faith in reliance thereon as to the truth of any matter or facts stated therein relating to:

- (a) the death, resignation, removal or appointment of a Trustee;
- (b) compliance by the Trustees and Homeowners with any requirement of this Trust;
- (c) the terms of this instrument and any amendment or termination of this Trust;
- (d) the fact of the validity of any action taken by the Trustees or the Homeowners and to the authority of the Trustees or Homeowners to take such action; and the number of Homeowners acting in favor of any matters; or
- (e) any other matter pertaining to the Trustees, Homeowners or the Trust property.

When recorded with the Barnstable Registry of Deeds, such certificate shall be conclusive evidence to all persons regardless of whether they have notice thereof or act in reliance thereon.

(24) **Recording.** All amendments to this Trust and resignations and appointments of Trustees shall be filed with said Registry and any person shall be entitled to rely on the records of said Registry with respect to the termination of the Trust, the terms of the Trust, any amendment thereto, and the identity of the Trustees, the identity

of the Homeowners, and to any other matter pertaining to the Trust, the Trustees, or the Homeowners of the Trust property.

(25) **Governing Law.** This Trust shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

(26) **Enforcement.** If the Trustees at any time in their reasonable judgment determine that a Homeowner is violating or attempting to violate the terms and provisions of this Trust or the terms and provisions of the Declaration of Protective Covenants or the Rules and Regulation set forth on Schedule A hereto, the Trustees may prosecute proceedings at law or equity against such Homeowner. Prior to initiating such proceedings, the Trustees shall in writing request the Homeowner to cease the action resulting in the violation of such terms and provisions or perform the needed action to conform to such terms and provisions. If the Trustees believe the violation to constitute an emergency, the Trustees shall so state in the written request. In the event the Homeowner fails to take such action or cease such action, as the case may be, within thirty (30) days (or such reasonably shorter period in case of emergency as the Trustees shall determine) of the Trustees' request, the Trustees shall be entitled to enter upon and have access to the Homeowner's lot for the purpose of correcting any violation or having work performed to correct such violation, the cost of which shall be borne by the Homeowner. The cost of such work shall constitute a lien upon such lot and the Homeowner shall be personally liable therefor and such lien shall have the same priority as a lien under Paragraph 10 hereof.

If the Homeowner objects to the Trustees' written request and intends to not comply with said written request, he/she may, with the assent of the Trustees, attempt to resolve the dispute pursuant to Paragraph 27 herein by requesting mediation within ten (10) days of receipt of the Trustees' written request. If the Trustees receive the Homeowner's timely request for mediation and the Trustees believe the violation in question does not constitute an emergency situation, the Trustees may, in their sole discretion, not commence to take action or perform the needed maintenance, repair or

replacement or correct the violation and proceed with resolution of the dispute pursuant to Paragraph 27.

Nonpayment of Association assessments, fees imposed for rule violation, and/or reimbursement for repairs made and work performed by the Association are not subject to, and are excepted from, this Paragraph 26. See Paragraph 10 pertaining to such nonpayment of Association assessments.

(27.) **Dispute Resolution.** Subject always to the terms and conditions set forth in Paragraph 26, any Homeowner aggrieved by any decision, action, or inaction of the Trustees in the administration of the Trust, excepting assessments or liens for work done to correct violations of this Trust or the Declaration of Easements by Homeowner, shall resolve the decision, action or inaction by mediation. However, in the first instance, the aggrieved Homeowner will first attempt resolution by discussion with the Trustees, and the Trustees will attempt resolution by discussion with the Homeowner.

(a) In the event agreement cannot be reached by discussion, the Homeowner shall endeavor to resolve any claim or dispute concerning a decision or action of the Trustees by mediation which shall be mediated by a neutral mediator from the Cape Cod Dispute Resolution Center ("CCDRC"), the Real Estate Bar Association ("REBA"), its successors in title, or a mutually agreed upon mediation service. Request for mediation shall be filed in writing with the Trustees and with the CCDRC, REBA or other mutually agreed upon mediation service, and shall be made no later than ninety (90) days after the decision or action in question has been made or taken. A copy of the request shall be forwarded to Habitat.

(b) The Homeowner and Trustees shall share the mediator's fee and any filing fees equally. The mediation shall be held in Harwich unless another location is mutually agreed upon. Agreements reached in mediation shall be final and conclusive between the Homeowner and Trustees, enforceable as settlement agreements in any court having jurisdiction thereof, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

(c) Upon the request of the Trustees, the property management services company may serve in all instances as the agent of the Trustees.

(d) Nonpayment of Association assessments, fees imposed for rule violation, and/or reimbursement for repairs made and work performed by the Association are not subject to, and are excepted from this Paragraph 27.

[end of document text – signature page follows]

**HABITAT FOR HUMANITY OF CAPE COD, INC.**

By: \_\_\_\_\_, Treasurer

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

COMMONWEALTH OF MASSACHUSETTS

Barnstable County

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, President of Habitat for Humanity of Cape Cod, Inc., and \_\_\_\_\_, Treasurer of Habitat for Humanity of Cape Cod, Inc., personally known to me to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that it is the free act and deed of said corporation, for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Barnstable County

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires:

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**SCHEDULE A**  
**XXXXXXXXXXXXXXXXX HOMEOWNERS ASSOCIATION**  
**RULES AND REGULATIONS**

The intent of these Rules and Regulations is to foster and maintain a safe, clean and pleasing environment for the enjoyment of the owners and occupants of Lot 1, 2, 3, 4, 5, and 6 of the Subdivision. The Lot Owners shall hereinafter be referred to as the Homeowners. All Homeowners, family members, invitees and other occupants are obligated to be familiar with and abide by the terms and conditions contained within these Rules and Regulations and all other documents governing the operations of the Homeowners Association, including the *Declaration of Protective Covenants and Restrictions for XXXXXXXXXXXXXXXX*, ("Protective Covenants") dated \_\_\_\_\_, 20XX, and recorded with the Barnstable Registry of Deed in Book\_\_\_\_ Page \_\_\_\_.

1. No use shall be made of the Private Road and its Cul-de-sac except as set forth in this Declaration of Trust and in the aforesaid Protective Covenants or as permitted by the Trustees.
2. Nothing shall be done or kept upon or in the Private Road and its Cul-de-sac that increases the rate of insurance of the Homeowners Association without the prior written consent of the Trustees. No Homeowner shall permit anything to be done or kept in the Private Road and its Cul-de-sac which will result in the cancellation of insurance of the Homeowners Association or which would be in violation of any law. There shall be no disposal of waste on or in the Private Road and its Cul-de-sac.
3. The Trustees are responsible for planting, fertilizing, watering, mowing and maintaining the lawn and/or landscape within the Common Area, assuring that no plantings of bushes or other vegetation within ten feet of the edge of the paved road will interfere with the site lines of all vehicles exiting the Private Road nor impede access for emergency vehicles. Grasses and low bushes less than 2.5 feet in height not affecting site lines or emergency access are permissible within the Common Area.
4. The Trustees are responsible for snowplowing the Private Road and around its Cul-de-sac, and assuring the removal of any snow windrows along the entrance to the Private Road within the site triangle areas of the Subdivision, where and when such accumulations would exceed 2.5 feet in height.
5. Each Lot has its own individual subsurface sewage disposal system. Routine and regular pumping of all subsurface sewage disposal systems shall occur



every three years, or whenever the Harwich Board of Health recommends.

Maintenance, including regularly scheduled pumping and any and all repairs to and replacement of the subsurface sewage disposal system serving a particular Lot shall be the responsibility of, and paid for by, the individual Homeowner. No trees or deep-rooted plantings shall be planted in the ground area above a subsurface sewage disposal system.

6. No additions, modifications or improvements to existing buildings or additional structures of any kind, including but not limited to a deck and shed for each Lot, shall be erected, placed, or allowed to stand upon any Lot of the Subdivision except in accordance with the Comprehensive Permit and as permitted by the Bylaws or Zoning Ordinances of the Town of Harwich, as the same may from time to time be amended, or by any applicable law, ordinance, or regulation of any governmental unit having jurisdiction thereof. All such additions, modifications or improvements shall in the first instance be submitted to the Trustees in writing for prior approval by affirmative vote. The Trustees shall review such submission to determine such matters as boundary line encroachment; safety; color or design previously adopted by Association vote; tangible adverse effect on the abutters' property, i.e. location of a tree not previously planted that could shade the neighbors' yard, location of a compost bin close to abutters' property, and the like. The Trustees' review shall not include a review of the aesthetic design of the submission.

7. The Trustees shall hire and retain a property management services company and delegate to the property management services company certain of their rights, responsibilities and duties, including without limitation the collection of assessments.

8. The use and maintenance of Lots 1, 2, 3, 4, 5, and 6 by the respective Homeowners, including without limitation snow removal from their own walkway and driveway, and maintenance of their own yard and its grasses and plantings, as well as the safety and maintenance of all personal property of the Homeowners kept on Lots 1, 2, 3, 4, 5, and 6 and in the Dwelling Units themselves, shall be the responsibility and at the sole risk of the respective Homeowners, and neither the Trustees nor their respective agents, servants, employees, successors or assigns, shall bear any responsibility therefor. Each Homeowner assumes responsibility for such Homeowner's own safety and that of such Homeowner's family, guests, agents, employees and licensees.

9. Any Homeowner may prosecute proceedings at law or in equity against any person violating or attempting to violate the provisions hereof either to restrain violation

or to recover damages, provided Homeowner acts pursuant to paragraphs 26 and 27 of this Declaration of Trust.

10. The Trustees may adopt fines and penalties for the failure of a Homeowner to comply with the provisions of this Declaration including without limitation these Rules and Regulations and the covenants, restrictions and provisions of the Protective Covenants.

11. —In the event of a default in the performance of paragraph (2) g, h, i, and j of the Protective Covenants and paragraph 53 of these Rules and Regulations, and if such default shall not have been cured within thirty (30) days after written notice to the Homeowner, the Trustees shall have the right to enter upon the lot of the Homeowner in default without being deemed guilty of trespass in order to correct any default of the provisions contained herein, to mow the grass, to place the property in a neat and orderly condition; and do all things reasonably necessary to correct any default of the Rules and Regulations contained herein. For convenience, paragraph (2) of the Protective Covenants follow:

- a) Garbage disposals in any dwelling or other building are expressly prohibited.
- b) Private wells, either for irrigation or for drinking water, are expressly prohibited.
- c) No automobile, truck, motorcycle, trailer, mobile home, recreational vehicle, commercial vehicle, or other motorized vehicle of any kind, and no boats or trailers may be parked overnight in the Private Road and its Cul-de-sac.
- d) No baby carriages or playpens, bicycles, wagons, toys, benches or chairs left unattended on any part of the Private Road and its Cul-de-sac.
- e) No unregistered motor vehicle of any type, including motorcycles, motorbikes, so-called ATV's and the like, may be kept, maintained or stored, temporarily or permanently, unless garaged and unexposed to public view, for a period in excess of sixty (60) days.
- f) No boats, campers, or recreational vehicles over 20 feet in length shall be placed or stored on or about any Lot unless garaged and unexposed to public view.
- g) As light pollution can be a nuisance to neighbors, all exterior lighting shall be directed to cast no light beyond any lot line. Exterior spotlights and floodlights are prohibited.
- h) Every outdoor receptacle for ashes, trash, rubbish, or garbage shall be so placed and kept as not to be visible at any time except the times when refuse

collections are being made, and all receptacles must be covered. The building and grounds on any lot shall be maintained in a neat and attractive manner and the entire property kept free of rubbish, debris or material of any kind that render the same unsanitary, unsightly, offensive, or detrimental.

i) Individual Lot Owners shall maintain the outside of their homes, the walkway, driveway, and fences on their property. Grassed areas shall be mowed regularly and maintained by each Lot Owner. Snow removal from walkways and driveways is the responsibility of each Lot Owner.

j) Clotheslines and outdoor clothes drying devices shall be placed only in the backyards of the Lots and positioned so as to minimize their visibility from the Private Road and its Cul-de-sac.

k) All Lot Owners shall reasonably cooperate with the Town and the Commonwealth of Massachusetts on the location of future sidewalks along Main Street (Route 28).

l) Lot Owners of Lot 8 and the Private Road (Lot \_\_\_\_\_), shall not plant any bushes or other vegetation that would interfere with the site lines of all exiting the Private Road. Grasses and low bushes less than 2.5 feet in height not affecting site lines are permissible.

m) No commercial or business activity and no business or profession of any nature shall be conducted in any Dwelling Unit on any of the Lots of the Subdivision except those home occupations allowed as of right or by special permit of the Town of Harwich.

n) Waste created by household pets, cared for and controlled in accordance with the Town Bylaw, shall be removed promptly from any yard, including the Lot Owner's yard or the Common Area, and contained and disposed of in a sanitary manner.

o) A Vegetative Screen shall be planted and maintained, repaired, and/or replaced, if damaged so that the homes on Lots 1 through 6 are appropriately screened from Route 28/Main Street. This Vegetative Screen may not be removed without prior approval of the Trustees of the XXXXXXXXXXXX Homeowners Association and the Town of Harwich Zoning Board of Appeals.

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120. At all times and for all matters concerning these Rules and Regulations and upon the request of the Trustees, the property management services company may serve as agent of the Trustees.