

**Declaration of Trust Establishing the Wellfleet Hills Homeowners’
Association Trust and Imposition of Covenants, Conditions and Restrictions**

Declaration made this 11th day of May, 1978 by Robert M. Sriberg and William E. Cobb, both of Dennis, Barnstable County, Massachusetts, Trustees of Mid Cape Equity Trust under Declaration of Trust dated January 4, 1974 and recorded with Barnstable County Registry of Deeds in Book 1986, Page 307.

Whereas, Declarants are the owners of real property shown on a plan entitled:

“‘Wellfleet Hills’, Subdivision Plan of Land in Wellfleet made for Mid Cape Equity Trust Scale 1 in. = 50 ft., dated September 1977, drawn by Slade Associates, Registered Land Surveyors,” recorded with Barnstable Registry of Deeds, Plan Book 317, Page 89 and 90.

Whereas, Declarants desire to create The Wellfleet Hills Homeowners’ Association; and

Whereas Declarants will convey to the Wellfleet Hills Homeowners’ Association Trust all of their right, title and interest in and to the recreation area, roads and easements as shown on the aforesaid plan by a Quitclaim Deed to be recorded herewith;

Now, therefore, Declarants hereby declare that all of the properties described in the above plan shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof, and the Declarants further declare that they will hold any and all property that may be conveyed to us in trust hereunder for the sole benefit of the beneficiaries for the time being hereunder, upon the terms herein set forth. The terms “Trustee” or “Trustees” wherever used herein shall include such person or persons who hereafter are serving as Trustee or Trustees hereunder, and the rights, powers, authority and privileges granted hereunder to the Trustee or Trustees may be exercised by such person or persons subject to the provisions hereof.

Article I – Definitions

1. “Association” shall mean and refer to Wellfleet Hills Homeowners’ Association Trust, its successors and assigns.
2. “Lot” shall mean and refer to any numbered plot of land shown upon the above described plan.
3. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, but excluding those having such interest merely as security for the performance of an obligation.
4. “Properties shall mean and refer to that real property shown on the above described plan and such addition thereto as may be brought within the jurisdiction of the Association.
5. The term “member” shall mean and refer to those persons who are beneficiaries of the Wellfleet Hills Homeowners’ Association Trust as provided in Article IV hereof.
6. “Recreation Area” shall mean and refer to the Lot marked “Reserved for Recreation” as shown on the plan herein above referred to.
7. “Roads” shall mean and refer to Barnabas Young Road, Zoheth Smith Way, Ephraim Covel Road, Daniel Cole Way, Woodlot Way, Major Doane Road and Elisha Witherell Road as shown on the plan hereinabove referred to.
8. “Easements” shall mean and refer to the various pedestrian and other easements as shown on the plan hereinabove referred to.

Article II – Name and Title

The name and title of the Trust established by this Declaration shall be “Wellfleet Hills Homeowners’ Association Trust”.

Article III – Property Rights

Every owner shall have a right and easement of enjoyment in and to the Recreation Area, Roads and Easements which shall be appurtenant to and shall pass with the title to every Lot, subject to this Declaration, the Declaration of Trust of the Association, as amended, and reasonable rules and regulations as may from time to time be adopted by the Board of Trustees of the Association.

Article IV – Membership and Voting Rights

1. Every Owner of a Lot shall be a beneficiary of the Association and a “member” as specified in definition 5. Membership shall be appurtenant to and may not be separated from ownership of a Lot.
2. The Association shall have two classes of membership.
 - a) Class A members shall be all Owners, with the exception of the Declarants, and shall be non-voting members until such time as the Declarants own ten (10) or less Lots, at which time each Class A member shall be entitled to one (1) vote for each Lot owned.

When more than one person holds an interest in any Lot, all such persons shall be Class A members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

- b) The Class B member shall be the Declarants and shall be entitled one (1) vote for each Lot owned. Class B membership shall cease and be converted to Class A membership when the Declarants own ten (10) or less Lots.

Article V – Beneficiaries

The beneficiaries of this Trust shall be those persons who are defined as “Owners” in Article 1 of this Declaration. When an owner no longer has any record interest in any Lot which is a part of the properties that person shall no longer be a beneficiary. Status of beneficiary and the requirement that a beneficiary be an “Owner” are not separable.

Article VI – Trustees

1. The number of Trustees shall be not less than five. The number of Trustees from time to time may be altered but, in no case, to less than three by a vote of seventy-five (75%) percent of the members, which shall become effective when a copy of such instrument shall have been acknowledged by a Trustee and recorded in the Registry of Deeds of Barnstable County, hereinafter call “Registry”. Whenever a vacancy in the number of trustees shall occur, until such vacancy is filled the continuing Trustee or Trustees regardless of their number shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Declaration of Trust. The term ‘majority of the Trustees whenever used herein shall mean more than one-half of the total number of Trustees then in office when three or more Trustees are then in office, and

shall mean one Trustee if only one Trustee is at the time in office, and shall mean both Trustees if only two Trustees are at the time in office.

2. The Trustees shall be elected annually by vote of the members, and shall hold office during their respective terms of office, provided, however, that any one or more Trustees may be removed at any time as Trustee or Trustees by the vote or written consent of the holders of seventy-five (75%) percent of the members.
3. Any Trustee may resign his trust by instrument in writing signed by him and delivered or mailed to the Managing Trustee or Secretary, and such resignation shall take effect immediately or at a later date according to the terms of the instrument but no such resignation shall become effective unless and until a copy of such instrument shall have been acknowledged by the resigning Trustee and recorded in the Registry.
4. In case of a vacancy through death, resignation, removal, or increase in the number of Trustees (unless the vacancy occurring through removal has already be filled by the members), the continuing Trustees or Trustee in office may fill such vacancy until the next annual election by appointing by an instrument in writing signed by a majority of the Trustees such person as they or he in their or his absolute discretion shall see fit, but no such appointment shall become effective unless and until such instrument bearing the acceptance of the person so appointed shall have been acknowledged by one or more of the continuing Trustees and recorded in the Registry. Thereupon the Trust property shall vest in the new Trustee jointly with the continuing Trustee or Trustees without any further act or conveyance. If at any time, by reason of deaths, resignations, or removal there shall be no remaining Trustees, a meeting of members shall be forthwith called for the election of successor Trustees. Ten (10%) percent of the members shall be entitled to call such meeting and to nominate candidates for election as successor Trustees at any such election.
5. The death, resignation, or removal of any one or more of the Trustees shall not operate to annul the Trust or to revoke any existing agency created pursuant to the terms of.
6. Meetings of the Trustees shall be held, from time to time, at such place as the Trustees shall designate, upon the call of the Managing Trustee, the Secretary, or any two of the Trustees. Notice of any meeting or of any action expressed in a writing signed by the Trustees without a meeting shall be given not less than three days prior to each meeting or the execution of such writing, as the case may be, but such notice may be waived by any Trustee either before or after such meeting or execution of such writing, as the case may be. Except as otherwise specifically provided herein, the concurrence of all the Trustees shall not be necessary for the validity of an action taken by them, but a decision expressed in a vote passed at a meeting by more than one-half of the Trustees present at such meeting or expressed in a writing signed by a majority of the trustees without a meeting shall constitute the action of the Trustees and have the same effect as if assented to by all. At any meeting a majority of the Trustees shall constitute a quorum. Any instrument or writing executed by one or more of the Trustees shall be valid and binding

upon the Trustees and upon the Trust when authorized by a vote or writing passed or signed as above provided.

7. The Trustees shall annually elect from among their number a managing Trustee and a Secretary who shall be the principal officers of the trust. The Trustee may elect or appoint, from among their number or otherwise, or may authorize the managing trustee or secretary to appoint, a Treasurer, one or more Assistant secretaries and Assistant Treasurers and such other officers or agents, who shall have such powers, duties, and responsibilities, as to them or him may seem advisable, and who shall hold office for such periods as may be determined by them or him. The Trustees and all officers, whom they elect, shall serve without compensation.
8. The Trustees may adopt and from time to time amend or repeal Bylaws for the conduct of the business of the trust, and in such Bylaws may define duties of their officers, agents, servants, and representatives.
9. The Trustees shall cause to be prepared, promptly after the end of every calendar year, an annual report of the affairs of the Trust, including a balance sheet as of the end of the calendar year, a statement of the income and expenses of the Trust for the calendar year, and a statement of the surplus of the Trust existing at the end of the calendar year. A copy of such annual report shall be made available to each member.
10. Anything to the contrary herein notwithstanding, so long as the Declarants are the owners of more than ten (10) lots there shall be only one (1) Trustee.
11. The Declarants appoint William E. Cobb as the initial Trustee.

Article VII – Covenant for Maintenance Assessments

1. The Declarants, for each Lot owned within the Properties, hereby covenant, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:
 - 1.1. annual assessments or charges and
 - 1.2. special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interests, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interests, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.
2. The assessments levied by the Association shall be used exclusively by the Board of Trustees to promote the recreation, health, safety, and welfare of the residents of the

Properties and for the improvement and maintenance of all property owned by the Association including but not limited to the recreation Area, Roads and Easements.

3. Until the Declarants become the owners of ten (10) or less Lots, the Board of Trustees shall fix the annual assessment.
4. After the Declarants become the owner of ten (10) or less Lots, the Board of Trustees shall continue to fix the annual assessment, but it cannot increase the annual assessment by more than fifteen (15) percent in any one year. Each such increase shall be approved by a vote of not less than seventy five (75%) percent of the Trustees then in office at a meeting of the Board of Trustees duly called for such purpose.
5. Anything to the contrary notwithstanding, after the Declarants become the owner of ten (10) or less Lots, the Board of Trustees can increase the annual assessment by more than fifteen (15%) percent in any one year provided it is assented to by a vote of not less than seventy-five (75%) percent of the members at a meeting of the members duly called for such purpose. The presence of members or proxies entitled to cast seventy-five (75%) percent of all the votes shall constitute a quorum for such a meeting.
6. In addition to the annual assessments authorized above, the Board of Trustees may levy, in any year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon all said property owned by the Association, including fixtures and personal property related thereto, provided that any such assessment shall be assented to (at a meeting of members duly called for such purpose) by a vote of not less than seventy-five (75%) percent of the members. The presence of members or of proxies entitled to cast seventy-five (75%) of all the votes shall constitute a quorum for such meeting.
7. Written notice of any meeting called for the purpose of taking any action authorized under sections 4, 5 or 6 shall be sent to all members not less than thirty (30) days or more than sixty (60) days in advance of the meeting.
8. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.
9. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Trustees shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, which shall be the calendar year. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Trustees. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by the Trustees of the Association setting forth whether the assessments on a specified Lot have been paid.

10. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate to be determined by the Board of Trustees. The Association may bring an action against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for hereby by non-use of the property owned by the Association or abandonment of his Lot.
11. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien.
12. Anything to the contrary notwithstanding, until the Declarants become the owners of ten (10) or less Lots the Declarants shall pay to the Association the annual assessments that become due and payable prior to such time on all Lots whether owned by the Declarants or other Owners, and such payment shall be the obligation of the Declarants only and shall not be a charge on the land or a personal obligation of any other Owners. When the Declarants become the owners of ten (10) or less Lots the procedure set forth in Sections 1-11 of this Article shall take effect, and this Section 12 shall no longer apply.

Article VIII – Use Restrictions and Easements

1. The parcel marked “Reserved for Recreation” shall be used for recreation and conservation purposes only and such use shall be subject to reasonable rules and regulations as may from time to time be adopted by the Board of Trustees.
2. The Owners shall have a right of way for all purposes for which roads are commonly used in common with all others who are or may become lawfully entitled thereto in, over and upon the roads.
3. The Owners shall have the right to use the pedestrian and other easements as shown on the plan of Wellfleet Hills in common with all others who are or may become lawfully entitled thereto subject to the rules and regulations concerning the use of such easements adopted by the Board of Trustees.

Article IX– Trustee’s Liability

No Trustee hereunder shall be liable for any error of judgment not for any loss arising out of any act or omission in good faith, but shall be responsible only for his own willful breach of trust. No license of court shall be requisite to the validity of any transaction entered into by the Trustees. Every instrument executed by the Trustees hereunder, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof this trust was in full force and effect and that the execution and delivery thereof was duly directed by the beneficiaries. Any person dealing with the Trust property r any Trustee may always rely without further inquiry on

a certificate signed by the Trustees appearing from the records of said Registry of Deeds to be Trustees hereunder as to who is a Trustee or a beneficiary hereunder or as to the authority of any Trustee to act or as to the existence or non-existence of any fact or facts which constitute conditions precedent to acts by the Trustees, or which are in any other manner germane to the affairs of the trust.

Article X – General Provisions

1. The Association, or any Owner, shall have the right to endorse, by any proceeding, all restrictions, conditions, covenants, reservations, lien and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
2. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.
3. This Declaration may be amended by recording at the Barnstable County Registry of Deeds a Certificate of Vote certifying that this Declaration has been amended at a meeting duly called for this purpose by a vote of not less than seventy-five (75%) percent of the members, such Certificate of Vote to be signed by all the Trustees of the Association. The presence of members or proxies entitled to cast seventy-five (75%) percent of all the votes shall constitute a quorum for such meeting.

IN WITNESS WHEREOF, the said Robert M. Sriberg and William E. Cobb, Trustees of Mid Cape Equity Trust do hereby set their hands and seals this 11th day of May, 1978

Robert M Sriberg
William E. Cobb

Recorded June 2, 1978

WELLFLEET HILLS HOMEOWNERS' ASSOCIATION TRUST
FIRST AMENDMENT

We, being the three current Trustees, do declare this First Amendment made to the Declaration of Trust for the Wellfleet Hills Homeowners' Association Trust under a declaration made May 11, 1978 and recorded in the Barnstable County Registry of Deeds in Book 2718, Pages 215 through 226.

Pursuant to the provisions of Article X(3) of the Declaration of Trust at a meeting duly called for the purpose of amending the Declaration of Trust with not less than seventy-five percent (75%) of the beneficiaries present or represented by proxy, such meeting held on May 26, 2013

, did vote to amend the Trust as follows:

In consideration of being released from all obligations under Article V11 for payment of Maintenance Assessments and in consideration of releasing their rights in certain Trust properties, the owners of lots numbered 1,2,3,4,5,6,7,8,10 and 11, as shown on "Wellfleet Hills' Subdivision Plan of Land in Wellfleet made for Mid Cape Equity Trust, Scale 1 in. = 50 ft., dated September 1977, drawn by Slade Associates, Registered Land Surveyors," recorded in the Barnstable County Registry of Deeds in Plan Book 317, pages 89 and 90, are hereby released from the obligations to pay assessments and are deleted and discharged from all rights and obligations under the Trust as owners, their ownership of such lots no longer entitling each owner to the rights and obligations of a beneficiary, it being the intent to no longer require or allow such lot owners to remain as beneficiaries of the trust.

In witness whereof, I, as Trustee, hereunto set my hand and seal.
May, 2014

Hedy Gryszan
Greg Scerbinski
Jonathan Strongin