

DECLARATION OF PROTECTIVE COVENANTS  
BAY HARBOUR SUBDIVISION

Declaration of Protective Covenants made this 18<sup>th</sup> day of October, 2007, by WILLIAM A. GORDON, JR. and CHARLOTTE L. GORDON, Trustees of Clancy Realty Trust under a Declaration of Trust dated March 17, 1993, registered with the Barnstable County Registry District of the Land Court as Document No. 577,685, herein referred to as "Declarants".

WHEREAS, Declarants are the owners of land situated in Provincetown, Barnstable County, Massachusetts, hereinafter described, and are desirous of creating an attractive residential community, encouraging harmonious and pleasing homes, assuring a high quality of community appearance, preserving and protecting the natural character of the land, conserving the trees, shrubbery and other natural features for the benefit of all property owners, preventing nuisances, to maintain the desirable tone of the neighborhood and thereby to secure to each lot owner the full benefit and enjoyment of his home with no greater restrictions upon the free and undisturbed use of his lot than is necessary to insure the same advantages to the other lot owners; and

WHEREAS, the Declarants desire to provide and insure the preservation of values in the neighborhood, and to this end desire to subject the real property hereinafter described together with such additions as may hereinafter set forth, each of which is to be for the benefit of said property and each owner thereof.

NOW THEREFORE, the Declarants declare that Lots 9, 10, 11, 12, 13, 14, 15 and 16 as shown on Land Court Plan No. 14709-F are hereby made subject to the following Restrictive Covenants imposed and enforceable by the Declarants as owners of Lots 10, 11, 12, 13, 14, 15 and 16 as well as assented to by the owners of Lot 9, and their successors in interest to said lots.

**RESTRICTIVE COVENANTS**

1. **APPLICATION.** The covenants and restrictions contained in this Declaration shall pertain and apply to all Lots and to all Structures erected or placed thereon.

Harbour Drive, Provincetown, MA

2. **RESTRICTION OF USE.** Lots may be used for single-family residential purposes only and for no other purpose, provided that Declarant may operate a Sales Office and/or Model Home on a Lot or Lots designated by Declarant.

3. **RESUBDIVISION OF PROPERTY.** No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise. Notwithstanding the foregoing, nothing herein shall prevent Declarant or the Owners of any Lots from combining two or more Lots into one Lot for construction of a single family Residence thereon; provided, however, that such combined Lot may not be subdivided thereafter; and, provided further, that the Owner of the Lot so made shall be responsible for assessments based upon the number of Lots combined into one Lot.

4. **PLAN APPROVAL REQUIREMENTS.** No building or structure shall be commenced, erected, placed, maintained or moved onto any lot, nor shall any additions to or exterior change or alteration be made to an existing structure, including the exterior color thereof, until the architectural, landscape, and site plans thereof, including the specifications for the exterior color scheme and landscape plantings, have been approved by the Declarants, their successors, assigns or agents; said approval to be given in writing suitable for recording in the Registry of Deeds. It is the intent of this provision to require that structures be in good taste, be of a Cape Cod design and conform in all respect to the provisions hereof. It is also the intent of this provision to require that the landscaping be in keeping with a natural progression of native plants grasses, trees and a mixture of lawns to keep a Cape Cod feeling within the development. Disapproval of such plans may be based upon any grounds, including purely aesthetic grounds, or the fact that the dimensions of the building would unreasonably obstruct the view of other lots in the subdivision, and shall solely be within the discretion of the Declarants, their successors, assigns or agents.

However, no approval will be unreasonably withheld, provided the architecture and landscaping is in conformity with traditional Cape Cod or colonial New England architecture and landscaping. No residence shall be approved on Lots 9, 10, 12, 13, 14, 15 and 16 which contains less than 3000 square feet of interior floor space including enclosed porches but not including decks, patios, breeze ways or garage space, unless a lesser area is requested due to particular conditions of the Lot or because of regulatory limitations. With

respect to Lot 11, due to regulatory constraints, the dwelling must contain not less than 1500 square feet of interior floor space. No stockade fence, including planting material that is used as such a fence, shall be allowed that exceeds six (6') feet in height above grade.

**5. START OF CONSTRUCTION AND COMPLETION.** The owner agrees that once a building permit is obtained and construction starts, the construction needs to be completed by the end of the eighteenth (18<sup>th</sup>) month. Construction is not considered complete unless all plans submitted, including landscape plans, have been completed in the eighteen (18) month timeframe. If the owner does not complete construction by the end of the eighteen (18) month period, the owner shall pay the assessed fee of \$1,000 per month until a certificate of occupancy is issued and the above plans have been completed. The Declarants shall serve the owner with a notice of such intent by certified letter and thereafter owner shall have 30 days to complete construction or be assessed the fine retroactive to the end of the eighteenth (18<sup>th</sup>) month. The Declarants may, where they find unusual and compelling circumstances, extend the time for the completion of construction. Any such extension shall be in writing and delivered to the Owner.

**6. EROSION CONTROL.** No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the Declarants of plans and specifications for the prevention and control of such erosion or siltation. The Declarants may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation), physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping. No work, including clearing, grubbing or grading, shall be commenced on any Lot unless and until all permissions have been granted by the Declarants and the builder or Owner is ready to commence construction of the Lot.

**7. GENERAL RULES AND REGULATIONS FOR BUILDERS.** All construction of Lots subject to this Declaration shall be performed in accordance with the following rules and regulations:

- a. Owner and Owner's Builder shall adhere to rules and regulations so as to comply with all Massachusetts Environmental Protection requirements. Owner and Builder shall comply with the Bay Harbour Erosion, Sedimentation and Pollution Plan. All builders shall submit secondary permittee applications as required by the Massachusetts DEP.
- b. Owner shall install and maintain new Type "C" silt fencing below and around all new-disturbed areas. All new and existing silt fencing shall be removed from lot after landscaping is complete and disturbed area is stabilized. Any damaged fence shall be replaced immediately. If not within 24 hours of notification. Homeowners Association shall replace the fence, at cost plus 10% charged to the Owner.
- c. Owner and Builder shall ensure that all roads and paved areas are clear and open for traffic 24 hours a day.
- d. Owner and Builder shall ensure that any mud or dirt moved onto roads adjacent to lot shall be cleaned up by the end of the work day.
- e. Owner and Builder shall not load or unload heavy equipment on paved roads. Heavy equipment shall not be walked on paved roads to other work areas or across property not owned by them.
- f. Construction debris and trash shall be deposited in a proper trash container on site. When containers are full, they shall be covered and removed to a proper town/county approved dump location. Any trash falling from containers while being transported from site shall be picked up and removed immediately.
- g. Each worksite shall have a properly maintained and clean Port-A-John on site for the use of all construction personnel.
- h. Any and all damage to roads, shoulders, drainage structures, entrance structures, entrance gates, adjoining lots or other person's property shall be the responsibility to repair to original condition or replace with original material by the Owner and their Builder. This shall stand whether caused by themselves, vendors, sub-contractors, or visitors to their lot.

- i. Damage caused by wind, storm, rain or act of God shall be the Owner's responsibility to clean up or repair within one week or a length of time set by the Homeowners Association.
- j. If construction is suspended for over 30 days all stored building materials shall be removed until construction resumes.
- k. Concrete delivery trucks shall not be washed on right of way.
- l. CD players, tape players, and radios are not allowed to be heard beyond the individual job site. Builders shall do everything they can within reason to keep noise levels down.
- m. Builders shall monitor work crews. Crews should not be wandering around the subdivision sightseeing. Loud or abusive language shall not be tolerated. The builder is liable for all sub-contractors and vendors they employ while at Bay Harbour.
- n. Open fires shall not be permitted at any time.
- o. Posted driving speed limits shall be adhered to at all times.
- p. Builders may not access adjoining properties to deliver or store materials, or park vehicles unless permission is obtained in advance from the lot owner and the Declarants.
- q. All vehicles shall be parked on lot they are working on or another lot with permission as in subparagraph p. above and not on common roadways. No builder vehicles shall be left in the community overnight. Construction equipment may be left on site but kept off common road.
- r. Only one authorized Builder's sign shall be used on each site. No additional signs of any type are allowed.
- s. No improvements, excavations, tree cutting or storage of materials shall be permitted on any lot until all DEP regulations are met, a building permit is acquired and a construction schedule is submitted to the developer.

t. The Declarant may enter on the site at reasonable times to see that site conditions are conforming to the submitted plans.

u. Any non-compliance to above rules and regulations that incur any cost to the Homeowners Association or Declarants shall be rectified by the Homeowners Association or Declarants and charged to the Owner at cost plus 10%.

8. **LANDSCAPING.** No construction or alteration of any Structure shall take place without the prior written approval by the Declarants of plans and specifications for the landscaping to accompany such construction or alteration.

9. **TREES.** No tree having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level), shall be removed from any Lot unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of Section 4 hereof.

10. **TEMPORARY BUILDINGS.** No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a Residence on any Lot. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot without prior written approval from Declarant.

11. **SIGNS.**

(a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the Declarants prior written approval of plans and specifications therefore, be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

- (i) such signs as may be required by legal proceedings;
- (ii) not more than one For Sale sign, such sign having a maximum face area of four square feet; provided that such sign may only be displayed in the front yard of a Lot;
- (iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the Declarants; and
- (iv) for rent signs are prohibited.

(b) In no event during approved construction of any Structure shall more than one job identification sign be approved by the Declarants.

12. **SETBACKS.** In approving plans and specifications for any proposed Structure, the Declarants may establish setback requirements for the location of such Structure. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

13. **FENCES.** No fence or wall of any kind, including planting material used as a fence or wall, shall be erected, maintained or altered on any Lot without the prior written approval of the Declarants of plans and specifications for such fences and walls.

14. **ROADS AND DRIVEWAYS.** No road or driveway shall be constructed or altered on any Lot without the prior written approval of the Declarants of plans and specifications for such roads and driveways.

15. **ANTENNAE, ETC.** No exterior television or radio antennae or satellite dish or receiver or solar equipment of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval by the Declarants, except that one twenty-four inch (24") or smaller receiver may be placed in a location approved by the Declarants. No antennae shall be installed or used for the purpose of transmitting of electronic signals.

16. **CLOTHESLINES, GARBAGE CANS, ETC.** No outside clotheslines will be allowed. Garbage cans and woodpiles shall be kept screened by adequate planting or fencing so as to conceal them from view from neighboring Lots and streets, and may be maintained in the side yard on a Lot only. Garbage cans must be contained in this screened area and pickup will only be permitted in such area on each lot.

17. **MAINTENANCE.** Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures; (ii) the seeding, watering, and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. Notwithstanding the

foregoing, the maintenance required hereunder shall also extend from the boundary of a Lot to a line ten (10') feet from the curbing of the right-of-way bordering said Lot with respect to Lots 9, 10 and 11, from the sideline of Commercial Street and the portion of the lot running along Harbor Drive from Commercial Street to the driveway of such lot. Such ten (10') foot or thirty (30') foot area to be maintained as common area by the Association. If in the opinion of the Declarants, any Owner shall fail to perform the duties imposed by this Section, the Declarants shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Declarants shall have the right to take such actions and assess the Lot owner(s) for the costs of the same.

**18. RECREATIONAL VEHICLES, COMMERCIAL VEHICLES AND TRAILERS.** No house trailer, mobile home, motor home, recreational vehicle, commercial vehicle, camper, truck with camper top, boat or boat trailer or like equipment shall be permitted on any Lot on a permanent basis, but shall be allowed on a temporary basis not to exceed forty-eight (48) consecutive hours. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in an enclosed space and is concealed from view by neighboring Lots and streets, and be approved in writing by the Declarants.

**19. RECREATIONAL EQUIPMENT.** Recreational and playground equipment shall be placed or installed only upon a Lot as approved by the Declarants. Basketball hoops may be placed adjacent to the driveway, but shall be painted to match the house. No aboveground pools shall be allowed.

**20. NON-DISCRIMINATION.** No Owner or person authorized to act for an Owner shall refuse to sell, after receiving a bona fide offer, or refuse to negotiate for the sale, or otherwise make unavailable or deny the purchase of any Lot to any persons because of race, color, religion, sex, age, sexual orientation, or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.



**21. ANIMALS.** No agricultural animals may be kept on any Lot. No animals, including birds, insects and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for said Structure have been approved by the Declarants.

**22. SOLID WASTE.**

(a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.

(b) No person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.

(c) Except for building materials employed during the course of construction of any Structure approved by the Declarants, no lumber, metals, bulk material or solid waste of any kind shall kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner approved in writing by the Declarants.

(d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open directly in front of their screened enclosure only, on any day that a pick-up is to be made, in order to provide access to persons making such pick-up. At all other times such containers shall be screened or enclosed in an enclosure approved by the Declarants.

**23. NUISANCES.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof which may be or may become any annoyance or nuisance to the community.

**24. HOMEOWNER'S ASSOCIATION.** The Declarants have established the Bay Harbour Homeowners Association, Inc., a Massachusetts non-profit corporation organized pursuant to Chapter 180 of the General Laws, hereinafter referred to as "the Association". The Association shall be responsible for the maintenance, upkeep, repair and replacement of the roadway known as Harbour Drive (Lot 17 on Land Court Plan No. 14709-F), the common beach access right of way over Lots 11 and 12, the common beach area below the July 28, 1998 mean high water mark over which the lot owners will be granted easement rights, as well as any other common property in the subdivision. All lot owners shall be members of the Association.

The Association shall have the right to make such reasonable rules and regulations, and do all things expedient and necessary to effectuate the purposes hereof. Further, the Association may obtain liability insurance covering the areas for which it is responsible.

**25. COVENANT FOR MAINTENANCE ASSESSMENTS AND CERTIFICATES.**

A. The Declarants, for each Lot owned within the Premises, 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) annual assessments or charges, and (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 assessments is made. Each such assessment, together with interest, 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.

B. The assessments levied by the Association shall be used for the repair, improvement and maintenance of Harbour Drive, the common beach access right of way over Lots 11 and 12, the common beach easement area, as well as all property owned or managed by the Association, including premiums for the cost of liability insurance covering such areas.

C. The Board of Directors shall fix the annual assessment, but it cannot increase the annual assessment by more than fifty (50) percent in any one year unless such increase shall be approved by (a) a vote of not less than two-third (2/3) of the Directors then in office at a meeting of the Board of Directors duly called for such purpose, or (b) by a vote of at least sixty (60) percent of the members at a duly called meeting of the members.

D. In addition to the annual assessments authorized above, the Board of Directors 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 said road, beach access or other property provided that any such assessments shall be

assented to (at a meeting of members duly called for such purpose) by a vote of not less than seventy (70) percent of the members. The presence of members or proxies entitled to cast seventy (70) percent of all the votes shall constitute a quorum for such meeting.

E. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or less frequent basis.

F. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance by the Declarants of the fifth lot sold to an Owner (other than the Declarants). No assessments shall be made prior to such time and Declarants shall be responsible for payment of all costs of the Association up to the time of the sale of the fifth lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against such Lots at least thirty (30) days in advance of each annual assessment period, which shall be the calendar year, subject to the provisions of Paragraph 4 hereof. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

G. Any assessments not paid within thirty (30) days after the due date shall bear interest from the due date at a rate equal to eighteen (18%) percent per annum. 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 waiver or otherwise escape liability for the assessments provided for herein by non-use of the roads or Open Space lot, or abandonment of his Lot.

H. 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.

I. The cost of reviewing plans, preparation and recording of certificates, waivers or approvals from the Board of Directors or Declarants shall be borne by the owner of the lot for which said certificate, waiver or approval is given.

26. **AMENDMENT TO INCLUDE ADDITIONAL LOTS.** Declarants reserve the right to amend this Declaration so as to include in the property subject to the same Lot 7 and/or Lot 8 as shown on Land Court Plan No. 14709-E, subject to the following:

- a) At the time of such amendment, the Lot or Lots to be added shall not have been built upon or the Declarants have reviewed and approved the structures then built;
- b) Utilities and access to the Lot(s) must be from Commercial Street and not over, upon or beneath Bay Harbour Drive.
- c) The owner or owners of the Lot(s) to be added execute an instrument in recordable form agreeing to subject the Lot or Lots to this Declaration;
- d) All holders of mortgages on such Lot(s) consent to the subjecting of the Lot(s) to this Declaration; and
- e) The Declarants determine that it is in the best interest of the lot owners and Association to so include said Lot(s).

27. **DURATION AND VIOLATIONS.** These restrictive provisions shall run with and bind the land hereinabove described for a period of thirty (30) years from the date hereof, and may be extended for further periods in the manner provided by General Laws (Ter. ED.) Chapter 184, Sections 26 to 30, and shall inure to the benefit of and be enforceable by the Developer and his successors in interest. It shall be lawful for the Developer to prosecute any proceedings at law or in equity against any party or person violating or attempting to violate any restrictions herein contained whether to prevent him or them from so doing, or to recover damages or other dues for such violation. The failure to enforce any restriction, condition, or other provision herein contained in any particular instance shall in no event be deemed a waiver of the right to do so as to any subsequent breach. These restrictive provisions shall in no manner limit the right of the Developer to use or permit others

to use any part or whole of the remainder of the property referred to in said plan in a manner at variance with the uses permitted by the conveyance herein.

**28. NOTICES.** All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by Declarant, the Association, the Owners, or any other person, shall be in writing. All such writings shall be sufficient only if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

(a) Declarants:

William A. Gordon, Trustee  
Charlotte L. Gordon, Trustee  
Clancy Realty Trust  
P. O. Box 558  
Provincetown, Massachusetts 02657

(b) Owners:

Each Owner's address as registered with the Association in accordance with the By-Laws.

Any written communication transmitted in accordance with this Section shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

**29. NO LIABILITY.** Declarants have, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

**30. ASSIGNMENT OF ENFORCEMENT.** Upon the sale of the last Lot subject to these Restrictive Covenants the Declarants shall assign all enforcement and other rights and obligations under this

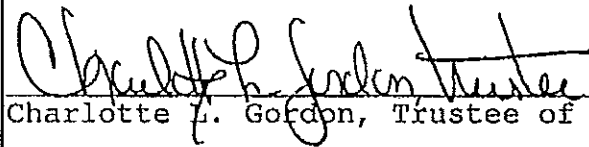
Declaration to the Homeowner's Association as defined in Paragraph 24 hereof. The Declarants may assign any or all of their rights and obligations hereunder to said Association any time prior to the sale of the last Lot.

For Declarants' title see Certificates of Title No. 129579 and 177264, and 183269.

IN WITNESS WHEREOF, the Declarants have caused this Declaration to be duly executed and sealed the day and year first above written. Signed, sealed and delivered,

 trustee

William A. Gordon, Trustee of CLANCY REALTY TRUST

 trustee


Charlotte L. Gordon, Trustee of CLANCY REALTY TRUST

IN WITNESS WHEREOF, the Association, acting through its duly authorized officers, has caused this Declaration to be executed and sealed this 13 day of October, 2007.

BAY HARBOUR HOMEOWNERS ASSOCIATION, INC.

BY:  Pres.  
William A. Gordon

Its President

BY:  Treas.  
William A. Gordon

Its Treasurer

LAND COUNTY, DISTRICT. The land herein described will be shown on our approved plan to follow as

OCT 19 2007

Plan 14709<sup>F</sup> Lot 5 10-16  
(EXAMINED AS DESCRIPTION ONLY)  
George T. Capellanis, Engineer  
TUP