

RIDER #3  
DECLARATION OF TRUST  
TANGLEWOOD HOMEOWNERS TRUST

The undersigned JJAD, Inc., a Massachusetts corporation, (hereinafter the "Declarant"), hereby declare that the trustee and successors in trust as set forth herein will hold the Open Areas, as shown on the Plan hereafter described and conveyed as Trustee hereunder by deed of JJAD, Inc. recorded in Plymouth County Registry of Deeds herewith, as Trustee subject to and upon the terms and conditions hereinafter set forth and the perpetual conservation restrictions hereinafter set forth for the sole benefit of the Beneficiaries, as hereinafter defined.

ARTICLE I  
Name of Trust

The Trust hereby created shall be known as "Tanglewood Homeowners Trust" and under that name shall all business carried on by the Trustee be conducted and shall all instruments in writing by the Trustee be executed.

ARTICLE II  
Definitions

As used herein, unless otherwise provided, or unless the context otherwise requires, the following terms shall be defined as in this Article provided:

"Assessment" shall mean that portion of the Common Expenses which is to be paid by each Lot Owner.

"Beneficiaries" shall have the meaning set forth in Article VI hereof.

"Common Expenses" shall mean the actual and estimated expenses and costs of the administration of the Trust, real estate taxes, insurance, and the maintenance, management and operation of the Open Areas on the Plan.

"Lot" shall mean each lot designated and delineated upon the Plan (excluding the Open Area lots) ; provided, however, that in the event that a Lot Owner shall combine all or some portion of two or more Lots as designated on the Plan, the combined land shall together constitute a single Lot for the purposes hereof.

"Lot Owner" shall mean the record owner, whether one or more persons or entities, of a Lot. "Lot Owner" shall include the purchaser of a Lot under the executory contract for the sale of real property. "Lot Owner" not include persons or entities who hold an interest in any Lot merely as collateral security for the payment or performance of an obligation.

"Open Area" shall mean the parcel or parcels of land designated as "Open Area" in, and the boundaries of which are specifically described on, the Plan hereinafter referenced.

"Plan" shall mean the subdivision plan of land entitled "Definitive Subdivision Plans for Tanglewood, Middleborough, MA", dated December 31, 1998, and revised through June 26, 1999, prepared by Earth Tech for Bay Colony Investment and Development, Inc., which plan is recorded at Plymouth County Registry of Deeds herewith

"Pro Rata" shall mean or refer to that proportionate share, fractional share or percentage share calculated as the equivalent of a fraction, the numerator of which is one, and denominator of which is the number of Lots.

"Town shall mean the Town of Middleborough, Massachusetts.

"Transition Date" shall mean July 13, 2007 or the date upon which the Declarant no longer owns any of the Lots, whichever shall first occur.

"Trustee" shall mean the original Trustee and any successor Trustees.

### ARTICLE III

#### The Trust and Its Purpose

Section 1. This trust is established for the perpetual preservation and the maintenance of the Open Areas, shown on the Plan and as set forth in a Maintenance Plan dated June 30, 1999 and filed with the Town Of Middleborough (hereinafter the "Trust Property") and is the organization of Lot Owners as required by the provisions of the Open Space and Resource Protection Development Bylaw of the Town under Section XVI in respect to Tanglewood, as an Open Space and Resource Protection Development as shown in the Plan. All of the rights and powers in and with respect to the management and use of the Trust Property are conferred upon and exercisable by the Trustee and all property, real and personal, constituting or situated upon the Trust Property, are conveyed to the Trustees as Trustee of this Trust, IN TRUST to manage, administer and dispose of the same for the benefit of the Lot Owners from time to time of record.

Section 2. It is hereby expressly declared that a Trust and not a partnership has been created hereby and that the Lot Owners are beneficiaries and not partners or associates or any other relation whatever among themselves with respect to the Trust property, and hold no relation to the Trustees other than as beneficiaries hereunder.

### ARTICLE IV

#### Conservation Restrictions

The Open Areas of the Trust Property shall be maintained in perpetuity, subject to the provisions of ARTICLE XI hereof, for conservation, agricultural, recreational and park uses and subject to a conservation restriction whereby the following activities are prohibited:



1. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground except as set forth in the paragraph B below.
2. Dumping of soil or other substance or material as landfill, or dumping placing trash, waste or unsightly offensive materials.
3. Removal or destruction of trees, shrubs or other vegetation, excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to effect the surface, except in conjunction with the uses allowed herein as set forth in paragraph B below.
4. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation.
5. Other acts or uses detrimental to such retention of the land in its open and natural condition.
6. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation;
7. Any activity that would have a detrimental effect on the recharge areas of the Town of Middleborough's water supply wells or any private water supply wells that may exist in the area of the Premises;
8. Any other use of the Premises or activity which would materially impair significant conservation interests unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction.

## ARTICLE V

### The Trustee

Section 1. Until the transition Date, there shall be one (1) Trustee hereunder chosen by the Declarant. The initial Trustee so chosen is Jonathan D. White.

Section 2. Commencing the Transition Date, there shall be three (3) Trustees elected by a majority of the Lot Owners.

Section 3. Whenever any of said Lots is owned of record by more than one person, the several owners of such Lot shall:

- a. determine and designate which one of such owners shall be authorized and entitled to cast votes and otherwise exercise the rights appertaining to such Lot hereunder; and
- b. notify the Trustee of such designation by a notice in writing signed by all of the record owners of such Lot. Any such designation shall take effect upon receipt by the Trustee of such notice, and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Trustee may by majority vote either designate any one of such owners for such purposes or disqualify all of such owners from voting until a notice of designation is received from such owners in the required form.

Section 4. Any vacancies, due to resignation, removal or death shall be filled at a

special meeting called by the remaining trustees.

## ARTICLE VI

### Beneficiaries and the Beneficial Interest in Trust

Section 1. The Beneficiaries of this Trust shall be the Lot Owners, each of whom shall have a Pro Rata undivided interest in the Trust Property as beneficial owners.

Section 2. The beneficial interest of each Lot Owner in the Trust Property shall be inseparable from ownership of the Lot and may not be conveyed or in any way alienated or separated from said Lot.

Section 3. The Lot Owners and the Town are the beneficiaries of the conservation restrictions imposed upon the Open Areas by ARTICLE IV hereof, and as such individually and jointly shall have the right to enforce said restrictions by injunction or other proceeding.

Section 4. In the event the Trustee fails to own and maintain any portion of the Trust Property in reasonable order and condition, the Middleborough Planning Board and/or the Conservation Commission of the Town may serve written notice of such failure upon the Trustee or Lot Owners and shall include a demand for correction within thirty (30) days of the notice and shall state the date, time and place of a hearing thereof which shall be held within fourteen (14) days of the notice. If the deficiencies are not corrected or the Town's demand modified, the Town acting through the Planning Board or Conservation Commission may, but shall not be required to, enter upon the Trust Property and maintain the same for a period of one (1) year. Before the expiration of the year, a second public hearing shall be called by the Board or Commission, at which time the Trustee or the Lot Owners shall show cause why such maintenance should not continue for a succeeding year. If the Board or Commission determines that the need for Town maintenance no longer exists, the Board or Commission shall cease to maintain the Trust Property. All costs incurred by the Town shall be assessed against the Lot Owners and shall become a lien on all lots which may be collected and enforced by any remedy available under the law. The Middleborough Planning Board and/or Conservation Commission shall have the right to enforce those provisions.

## ARTICLE VII

### Assessments

Assessments against the Lot Owners shall be made or approved by the Trustee and paid by the Lot Owners to the Trust in accordance with the following provisions:

Section 1. Each Lot Owner shall be liable for his Pro Rata share of the Common Expenses.

Section 2. Assessments for Common Expenses shall be made for the fiscal year annually in advance on or before the 1<sup>st</sup> day in November immediately preceding the year for which the Assessments are made and at such other and additional times as in the judgment of the Trustee additional Common Expenses Assessments are required for the proper



management, maintenance and operation of the Trust Property. Such annual Assessments shall be due and payable in four (4) equal quarterly installments on the 1<sup>st</sup> day of January, April, July and October. The total of the Assessments shall be in the amount of the estimated Common Expenses for the fiscal year including a reasonable allowance established by the Trustee for contingencies and reserves less the amounts of unneeded Common Expenses Account balances. If an annual Assessment is not made as required, a payment in the amount required by the last prior Assessment shall be due upon each Assessment payment due until changed by a new Assessment.

Section 3. Each Lot Owner shall be jointly and severally liable for all unpaid Assessments due and payable at the time of a conveyance but without prejudice to the rights of the grantee therefor. Such liability may not be avoided by a waiver of the use or enjoyment of the Trust Property. A purchaser of a Lot at a judicial or foreclosure sale or a first mortgage who accepts a deed in lieu of foreclosure shall be liable only for Assessments coming due after such sale and for that portion of due Assessments prorated to the period after the date of such sale or deed acceptance. Such a purchaser or first mortgagee as aforesaid shall be entitled to the benefit of all pre-paid Assessments paid beyond the date such purchaser acquired title.

Section 4. The unpaid portion of a Lot Owner's Assessment which is due shall be secured by a lien upon his Lot and all appurtenances thereto and shall be enforced by any remedy available to the Trustee under the law to enforce the lien and to recover any unpaid assessments. Such lien shall have priority over all other liens, except municipal liens and first mortgages of record held by an institutional lender. Such a claim of lien shall also secure all Assessments which come due thereafter until the claim of lien is satisfied.

Section 5. Assessments and installments thereof paid on or before ten (10) days after the date when due shall not bear Interest but all sums not paid on or before ten (10) days after the date when due shall, to the extent permitted by law, bear interest at the rate of one-half percent per month, or at a rate as established by the Trustee, from the date when due until paid. All payments upon account shall be applied first to interest and then to the Assessment payment first due. All interest collected shall be credited to the Common Expenses Account.

Section 6. The Trust at its option may enforce collection of delinquent Assessments by suit at law or by foreclosure of the liens securing the Assessments or by any other competent proceeding and in any event, the Trust shall be entitled to recover in the same action, suit or proceeding the payments which are delinquent at the time of judgment or decree together with interest thereon at the rate established pursuant to Section 5 of this ARTICLE VI, and all costs incident to the collection and the action, suit or proceedings, including, without limitation, reasonable attorney's fees.

## ARTICLE VIII

### Compliance and Default

Each Lot Owner shall have the right to use the Open Areas of the Trust property in common with all the other Lot Owners but such use shall be in strict compliance with the terms and conditions of the Trust and the rules and regulations promulgated from time to time by the Trustee. A default shall entitle the Trustee or Lot Owner to the following relief:

Section 1. Failure to comply with any of the terms and conditions of the Trust or the rules and regulations promulgated from time to time by the Trustee shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Trustee or, if appropriate, by an aggrieved Lot Owner.

Section 2. Each Lot Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or by that of his agents, servants, employees and invitees. The Trustee may take appropriate action under the law to collect any such expenses.

Section 3. In any proceeding arising because of an alleged default by a Lot Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by the Court.

Section 4. All rights, remedies and privileges granted herein to the Trustee or a Lot Owner shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by the terms herein or at law or in equity.

## ARTICLE IX

### By-Laws

The provisions of this ARTICLE IX shall constitute the By-Laws of this Trust, to wit:

#### Section 1. Powers and Duties of Trustee.

The Trustee/Board of Trustees shall have the following powers and duties and all other powers necessary for the maintenance and administration of the Trust Property:

- a. To hold, operate, care for, and maintain the Open Areas.
- b. To hold, operate, care for and maintain the drainage ponds and ditches, the walkways as shown on the Plan.
- c. To determine the amount of the Common Expenses.
- d. To determine and collect Assessments from the Lot Owners.
- e. To employ and dismiss the personnel necessary or advisable for the maintenance and operation of the trust Property.
- f. To adopt and amend rules and regulations covering the details of the use of the Open Areas by the Lot Owners.
- g. To open bank accounts on behalf of the Trust.
- h. To obtain public liability insurance for the Trust Property.
- i. To make improvements to the Trust Property.
- j. To borrow money and execute contracts and instruments to which the Trust may at any time be a party and to delegate to any person or persons (including, without limitation, any other Trustee) authority to execute any and all contracts



and instruments or to do any and all acts which the Trustee is authorized and empowered so to do.

- k. To do any such other action as the Trustee may be specifically authorized or directed to do by the terms of this instrument.
- l. To take such action with respect to the Trust Property as from time to time specifically directed by not less than seventy-five percent (75%) of the Lot Owners.
- m. No trustee shall be required to furnish bond or to take any action which will, in the reasonable opinion of such Trustee, subject him or her to or involve him or her in any personal liability unless first indemnified to his or her satisfaction.

## Section 2. Expenditures.

The Trustee shall expend common funds only for Common Expenses.

## Section 3. Meetings.

- (a) Commencing on the Transition Date, the Lot Owners shall meet annually on the third Tuesday of September in each year and at such meeting shall elect the Trustees from their number. Other meetings of the Lot Owners may be called by the President or any five (5) Lot Owners and in such other manner as the Trustees may establish, provided, however, that written notice of each meeting, stating the place, day and hour thereof, shall be given at least seven (7) days before such meeting to each Lot Owner.
- (b) Promptly following the annual meeting of Lot Owners, the Trustees shall elect a President, Treasurer and Secretary from their number. The Trustees shall meet not less than quarterly at such times as the Trustees shall determine. Special meetings of the Trustees may be called by the President or any two (2) Trustees, provided, however, that written notice of each meeting, stating the place, day and hour thereof, shall be given at least seven (7) days before such meeting to each Trustee.

## Section 4. Voting.

In any matters relating to Common Expenses, Assessments, and administration of the Trust hereunder, the affirmative majority vote of the Trustees at any duly constituted meeting shall be sufficient for the transaction of business. A Trustee may vote in person or by a written proxy dated no earlier than one (1) month prior to the date of the meeting at which such vote is taken.

## Section 5. Inspection of Books; Reports to Lot Owners.

Current copies of this Trust and rules and regulations for the Trust Property shall be made available and all books, accounts, records and financial statements of the Trustees shall be open to inspection to any one or more of the Trustees and the Lot Owners at all reasonable times during normal business hours or under other reasonable circumstances.

Section 6. Checks, Notes, Drafts and Other Instruments.

Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust shall be signed by the Trustee so designated by a majority of the Trustees.

Section 7. Fiscal Year.

The fiscal year of the Trust shall be the calendar year.

Section 8. Removal or Resignation of Trustees.

- (a) Any trustee hereunder may resign by written instrument signed and acknowledged by such Trustee and delivered to the remaining Trustees.
- (b) Commencing on the Transition Date, any Trustee may be removed by an instrument in writing signed by not less than seventy-five (75%) of the Lot Owners and delivered to the remaining Trustees.
- (c) The remaining Trustees shall be empowered to appoint a replacement Trustee for the unexpired term of any Trustee who resigns pursuant to Section 8 (a) or is removed pursuant to Section 8 (b).
- (d) Upon the appointment or election of any succeeding Trustee, the title to the Trust Property shall, thereupon and without the necessity of any conveyance, be vested in said succeeding Trustee jointly with the remaining Trustees, if any. Each succeeding trustee shall have all the rights, powers, authority and privileges as if named as an original Trustee hereunder.

ARTICLE X

Rights and obligations of Third Parties Dealing With the Trustees: Limitation of Liability

Section 1. No person dealing with the Trustees as they then appear of record in the Plymouth County Registry of Deeds or as they then may be identified and named in a written certificate signed by not less than two (2) of the Trustees shall be bound to ascertain or inquire further as to the persons who are then Trustees hereunder and such record or signed certificate shall be conclusive evidence of the identities of said Trustees and of any changes therein. The receipts of the Trustees, or any one or more of them shall be effectual discharges therefrom to the persons paying or delivering the same, and no person from whom the Trustees, or any one or more of them, shall receive any money, property or other credit, shall be required to see to the application thereof.

Section 2. This Declaration of Trust and any amendments thereto and any certificate herein required to be recorded, and any other certificates of the Trust and any amendments thereto and any other certificate or paper signed by said Trustee which it may be



deemed desirable to record, shall be recorded with said Registry of Deeds and such record shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustee, the Trust Property or any Beneficiary hereunder, shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be recorded with said Registry of Deeds. Any certificate signed by a Trustee in office at the time, setting forth as facts any matters affecting the Trust and as to matters determining the authority of the Trustee to do any act, when duly acknowledged and recorded with said Registry of Deeds, shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons.

Section 3. No Trustee hereunder shall be liable for any error or judgment or for any loss, damage or liability resulting from or arising out of any act or omission in good faith, but shall be responsible only for his or her own willful breach of trust.

## ARTICLE XI

### Amendments and Termination

Section 1. The affirmative vote of a majority of the Trustees and, after the Transition Date, not less than seventy-five percent (75%) of the Lot Owners shall be sufficient to amend, alter, add to, or change this Declaration of Trust, including, without limitation, the By-Laws set forth in ARTICLE IX hereof. Notwithstanding the foregoing, none of the rights granted to the Town of Middleborough may be abridged or in any way modified without the approval of a majority of the Planning Board and/or Conservation Commission. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this Section shall become effective upon the recording with said Registry of Deeds of an instrument of amendment, alteration, addition, or change, as the case may be, signed, sealed and acknowledged by the Trustee, or by the Trustee and the Selectmen as the case may be, in the manner required in the Commonwealth of Massachusetts for the acknowledgement of deeds. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all prerequisites to the validity of such amendment, alteration, addition, or change.

Section 2. The Trust hereby created shall terminate only upon the affirmative vote of all Trustees and the affirmative vote of the Planning Board and/or Conservation Commission of the Town of Middleborough after public hearing pursuant to Massachusetts General Laws, Chapter 184, Section 32, as amended.

Section 3. Upon the termination of this Trust, each Lot Owner shall own a Pro Rata undivided interest in the Trust Property in common with the other Lot Owners free of all trusts.

## ARTICLE XII

### Construction and Interpretation

This Trust shall take effect and be constructed according to the laws of the Commonwealth of Massachusetts and the invalidity of any provision of this Declaration of Trust (the "Trust") shall not be deemed to impair or affect the validity of the remainder of the Trust and in such event, all of the other provisions of the Trust shall continue in full force and effect as if such invalid provisions had never been included herein.

IN WITNESS WHEREOF, the said JJAD, Inc.-Declarant has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Jay Howland its President and Treasurer hereto duly authorized, this 31st day of August in the year one thousand nine hundred and ninety-nine.

By: Jay Howland, President  
Jay Howland, President/Treasurer

COMMONWEALTH OF MASSACHUSETTS

~~NORFOLK~~  
Plymouth, ss.

August 30, 1999

Then personally appeared the above-named Jay Howland, President and Treasurer and acknowledged the foregoing instrument to be the free act and deed of JJAD, Inc., before me,

Mary C. Adams  
Notary Public

My commission Expires: OCTOBER 11, 2002

IN WITNESS WHEREOF, the said Jonathan D. White Trustee has hereunto set his hand and seal as of the 31<sup>st</sup> of August, 1999.

Jonathan D. White  
Jonathan D. White, Trustee



COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss.

August 30, 1999.

Then personally appeared the above-named Jonathan D. White, Trustee and acknowledged the foregoing instrument to be his free act and deed, before me,

Eileen S. Gates  
Notary Public

Eileen S. Gates  
My Commission Expires: mar 2, 2004