

## DECLARATION OF RESTRICTIONS

This Declaration is being entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2020 by the undersigned Owners to replace the recently expired Restrictions set forth in Article Two of that certain Amended and Restated Declaration of Restrictions and Easements dated November 1, 1988.

### ARTICLE ONE

For purposes of this agreement, each of the following defined terms shall be deemed to have the meaning, and only the meaning set forth:

- 1.01 “Association” shall be Trustees from time to time of The Tupelos at Crows Nest Association Trust under Declaration of Trust dated April 1, 1988 and registered as Document No. 43666 at Nantucket Registry District, as amended and restated by instrument dated November 1, 1988.
- 1.02 “Building Envelopes” refer to the areas marked upon the Declaration Plan as Building Envelopes.
- 1.03 “Common Use Land” refers to the areas shown as Common Use Land on the Declaration Plan.
- 1.04 The “Declarants” are Scott L. Savitz; Robert A. Axelrod and Christy N. Wise; Dan W. Lufkin; 8 Plover Lane LLC; John A. Martin and Margaret B. Martin, Trustees of The John A. Martin Revocable Trust and John A. Martin and Margaret B. Martin, Trustees of The Margaret B. Martin Revocable Trust; 12 Plover Lane Realty Trust; Delaney Family Nominee Trust; and Elizabeth S. Van Brunt and Michael R. Van Brunt; as set forth at the beginning of this instrument.
- 1.05 “Declaration Plan” is an “Easement Plan of Land in Nantucket, MA”, showing Easements, Reserved Forever Wild Areas, Common Use Land, and Building Envelopes, dated May 5, 1988, by Hart-Blackwell and Associates, Inc., filed for record with the Nantucket Registry of Deeds in Plan File. 30E.
- 1.06 “Dwelling” shall mean a structure used solely for human habitation by not more than one family unit at any given time, containing facilities used or intended to be used for living, sleeping, cooking and eating, and containing one, and not more than one, kitchen.
- 1.07 “Footpath Easement” shall refer to the Footpath Easement shown on the Declaration Plan.
- 1.08 The “Land” consists of Parcels A, C, D, E, F, G, H, and J.
- 1.09 “Owner” An Owner shall be every person or other entity having any freehold interest of record in any Parcel.
- 1.10 “Parcel” shall mean any one of Parcels A (16 Plover Lane), C (12 Plover Lane), D (10 Plover Lane), E (7 Plover Lane), F (8 Plover Lane), G (5 Plover Lane), H (4 Plover Lane), and J (111 Squam Road).
- 1.11 “Parcel A” refers to Lot 149 on Land Court Plan 15961-24.
- 1.12 “Parcel B” intentionally omitted.
- 1.13 “Parcel C” refers to Lot 137 on Land Court Plan 15961-24.

- 1.14 "Parcel D" refers to Lot 138 on Land Court Plan 15961-24.
- 1.15 "Parcel E" refers to Lot 139 on Land Court Plan 15961-24.
- 1.16 "Parcel F" refers to Lots 140 and 141 on Land Court Plan 15961-24.
- 1.17 "Parcel G" refers to Lots 142 and Lot 143 on Land Court Plan 15961-24.
- 1.18 "Parcel H" refers to Lots 144 and 145 on Land Court Plan No. 15961-24.
- 1.19 "Parcel I" intentionally omitted.
- 1.20 "Parcel J" refers to Lot 132 on Land Court Plan 15961-22.
- 1.21 "Reserved Forever Wild Areas" refers to the area shown as Land Forever Wild on the Declaration Plan.
- 1.22 The "Restrictions" shall mean the restrictions imposed upon the Land and each Parcel by Article Two of this instrument.
- 1.23 "Structure" shall mean any building, fence, bridge, trestle, tower, tank, wall, deck, platform, steps, chimney, swimming pool, tennis court, or other material or other combination of materials assembled or erected at a fixed location.
- 1.24 "Utility" shall refer to any telephone, electric, water, sewer, gas transmission, cable television, or other service which is customarily used in the Town of Nantucket from time to time.

## ARTICLE TWO

2.01 Benefit of Restrictions. The Restrictions are hereby imposed upon the Land, and each Parcel, for the benefit of the Declarants and their successors in title to the Land and each of the Parcels, or to any interest therein.

2.02 Term of Restriction. The Restrictions shall expire thirty (30) years from the date hereof, provided, however, that the Restrictions may be extended for further periods of not more than twenty (20) years at a time by the Owners, at a time of recording of the extension, of fifty percent or more of the Land by area, by recording an extension in accordance herewith, naming or signed by one or more of the persons appearing of record to own each parcel at the time of such recording, and, in case of such recording, twenty years, has not expired after the recording of any such extension without the recording of a further like extension. Any such extension shall be made in conformity with the requirements of Massachusetts General Laws, Chapter 184, Sections 27 and 20 as from time to time amended, and any provisions of law superseding them.

2.03 Enforcement of Restrictions. Any Owner of any Parcel or any interest therein, shall be entitled to enforce the Restrictions, or any of them, by proceeding for any applicable legal or equitable remedy, including injunctive relief and award of money damages

2.04 Restrictions Upon Structures. No Structures shall be constructed upon any Parcel, except one dwelling for single family use on each parcel; fences not over six feet in height; accessory outbuildings such as garden sheds and storage sheds; and garages. No swimming pools shall be constructed upon the Land.

2.05 Restrictions Upon Use. No Parcel nor any portion thereof, shall be used for any commercial purpose; nor for any purpose which, under the zoning by-law of the Town of

Nantucket as from time to time in effect, is not then permitted in the zoning district where such parcel is located; nor for any wind energy conversion system, as defined in the Nantucket Zoning By-Law; nor for any activity which involves loud noises, flashing lights, dumping of trash or refuse, or other interference with the peaceful and quiet enjoyment of other Parcels for single-family residential purposes. No use of any Parcel for multiple ownership under any time sharing agreement or interval leasing agreement shall be permitted. No above-ground utility lines shall be constructed upon any part of the Land; above-ground utility lines now existing may continue to exist and may be maintained, repaired, or replaced as required. No billboards or other advertising; dumping or placing of soil or other substance or material as landfill; dumping or placing of trash, waste or unsightly or offensive materials; no excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substances (except in connection with the construction of permitted structures or permitted underground utility lines), shall be permitted upon any part of the Land. Open storage of boats upon any part of the Land is expressly prohibited.

2.06 Restrictions upon Access. No access for passage to or from any Parcel shall be used by the Owners of such Parcel, or those claiming by, through or under any Owner of such Parcel, over any part of the Land, including any part of such Parcel, except through the Driveway Easements shown on the Declaration Plan and which are appurtenant to such Parcel as provided in Article Three of the Amended and Restated Declaration of Restrictions and Easements dated November 1, 1988. No access for passage to or from any part of the Land from or to Squam Road (except Parcel I) or Wauwinet Road shall be used by any person except over the Main Driveway Easement shown on the Declaration Plan. Nothing herein shall prohibit access to Parcels, E, G, and I from Crows Nest Way.

2.07 Restrictions upon Transfer and Subdivision. No portion of any Parcel may be transferred or sold in separate ownership from any other portion of such Parcel. No Parcel shall be divided or subdivided into additional lots. Nothing herein shall prohibit the adjustment of boundary lines between the Owners of adjacent Parcels, nor the transfer of any portion of any Parcel to the owner of any adjacent land, so long as no new building lots are thereby created.

2.08 Restrictions upon Location of Structures. No structure shall be erected upon any portion of any Parcel except within the Building Envelope located upon such Parcel, except for such fences and detached accessory structures as are permitted under Section 2.04. No sand or dirt driveways shall be permitted. All driveways shall be paved or surfaced with stone or seashells.

2.09 Restrictions upon Reserved Forever Wild Areas. No use of any portion of the Reserved Forever Wild Area whatsoever shall be permitted, except for passage by foot, and management (in accordance with recognized conservation management practices and applicable wetlands protection laws and by-laws), as determined by the Association from time to time to be appropriate. The Association shall have the right to establish and maintain walking trails in the Reserved Forever Wild Areas, and shall have the exclusive right to maintain such areas, to establish rules and regulations relating to their use, and to license their use by Owners and others.

2.10 Restrictions upon Design of Structures. No Structure shall be constructed or maintained upon any part of the land, unless its siding and roofing are of natural cedar shingles, nor unless it complies in all respects with the rules and regulations of the Nantucket Historic

District Commission as applicable to such Structure. No structure with a two-story façade may be constructed.

2.11 Restrictions upon Common Use Land. The Common Use Land shall be used only for such recreational uses as may be from time to time be established at the sole discretion of the Association.

### ARTICLE THREE

3.01 Effect. This instrument shall bind and be of benefit to the Owners from time to time of each Parcel, except as herein provided, shall run with the Land, and shall be referred to in any conveyance of any Parcel or any interest therein.

3.02 Amendment. This Declaration may be amended at any time or from time to time by unanimous consent of the Owners of all of the Parcels and the holders of all mortgages on each Parcel. This Declaration may also be amended at any time or from time to time by consent of the Owners of any six or more Parcels and the holders of all mortgages on such Parcels; provided that no amendment adopted by less than unanimous consent shall be effective to impose restrictions or easements more onerous than those hereby imposed upon any Parcel, the Owners and mortgage holders of which shall not have joined in and consented to such amendment. No amendment hereof shall be effective unless a written memorandum thereof, signed and acknowledged by the Owners and mortgagees consenting thereto, shall have been filed for record with Nantucket Registry District and noted upon the Certificates of Title to all of the Parcels affected thereby.

3.03 Governing Law. This instrument shall be construed under the laws of the Commonwealth of Massachusetts.

3.04 Severability. In the event that any provisions hereof shall be finally adjudicated by a court of competent jurisdiction to be invalid or unenforceable, every other provisions hereof shall nevertheless remain in full force and effect.

Executed and sealed this \_\_\_ day of \_\_\_\_\_, 2020, by the undersigned Owners of the  
Parcels listed herein.

\_\_\_\_\_  
Douglas Delaney, Trustee  
Delaney Family Nominee Trust

\_\_\_\_\_  
Natalie Delaney, Trustee  
Delaney Family Nominee Trust

STATE OF \_\_\_\_\_

\_\_\_\_\_,ss

\_\_\_\_\_, 2020

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned notary public, personally  
appeared Douglas Delaney and Natalie Delaney, Trustees, (a) \_\_\_\_ personally known to me, or (b)  
\_\_\_\_ proved to me through satisfactory evidence of identification, which was \_\_\_\_\_  
(type of identification) to be the person who signed the preceding or attached document in my  
presence, and who swore or affirmed to me that the contents of the document are truthful and  
accurate to the best of his/her/their knowledge and belief.

\_\_\_\_\_  
(official signature and seal of notary)

My commission expires: \_\_\_\_\_

