

*Universal  
Village  
Declaration*

FOR

*The Villages  
of  
New Seabury  
Mashpee, Massachusetts*

Document #1,029,711

Effective January 1, 2006

# RESTATEMENT OF UNIVERSAL VILLAGE DECLARATION

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## UNIVERSAL VILLAGE DECLARATION

### 1. Identification and Recitals.

- 1.1 **Identification.** “This UNIVERSAL VILLAGE DECLARATION FOR NEW SEABURY (hereinafter referred to as “Universal Declaration”), is made by Peninsula Council, Inc.
- 1.2 **Previous Declarations Filed for Individual Villages.** The Peninsula Council, Inc. as described in Section 1.1 is the same Peninsula Council, Inc. that is the declarant in prior declarations for the Villages known as Bright Coves I, Bright Coves II, Bright Coves III, Bright Coves IV, High Wood, Greensward East, Triton Sounds, Summer Sea and Fells Pond.
- 1.3 **Statement as to existing Declarations.** This Universal Declaration is intended to be a new declaration and not an extension of any prior existing declarations. This Universal Declaration shall have no effect on any prior declarations.
- 1.4 **Recorded Land.** Some of the Declarations and the Universal Village Declaration were also recorded with the Barnstable Registry of Deeds because they affected unregistered, recorded land. All references herein to Declarations and Universal Village Declaration shall relate to all land and areas covered and affected thereby, whether registered or recorded.
- 1.5 **Villages.** The term “Villages” as used herein shall mean and refer to the villages listed in 1.2 above.
- 1.6 **Council.** Peninsula Council, Inc, a 501C corporation duly organized and existing under the laws of Massachusetts, with a principal place of business in Mashpee, Barnstable County, Massachusetts, operates as the homeowners’ association for the Villages. As used herein, the “Council” shall mean and refer to Peninsula Council, Inc. The Council manages its affairs according to its By-Laws.
- 1.7 **Lots.** The term “Lots” as used herein shall mean and refer to the buildable lots and condominium units comprising the various Villages.
- 1.8 **New Seabury Roads.** The term “New Seabury Roads” as used herein shall mean and refer to the roads as listed here: Wading Place Road, Rock Landing Road, Red Brook Road (from front entrances to the fork with Wading Place Road), Greensward Road, Shore Drive, Shore Drive West, Shore Drive Extension, Troon Way, Walton Heath Way, Fairway Lane, Daniels Island Road (from the rear entrance of Summersea village to the New Seabury Marina at Popponeset Island Road), Mall Way, and Cross Road (from the rotary to Fells Pond Road).

- 1.9 Village Roads** as used herein shall mean and refer to the roads that have been managed by each Village Committee or those that may be created in all subsequent developments, including any new roads.
- 1.10 Reserved Areas.** The term “Reserved Areas” as used herein shall mean and refer to those areas, which are designated “Reserved Area” on the plans filed in Land Court Case 11048.
- 1.11 Committee.** The term “Committee” as used herein shall mean and refer to the Architectural Review Committee, which is referred to further in paragraph 2 and 3 of this Universal Village Declaration.
- 1.12 Village Committee.** The term refers to the duly elected individuals for each village or condominium following the By-Laws of the Council.
- 1.13 Uniformity.** The purpose of this Universal Declaration is to provide a uniform set of guidelines and other matters to apply to the Villages.
- 1.14 Developer.** The “Developer” as used herein shall mean and refer to the current developer, New Seabury Properties, LLC.

**2. Architectural Review Committee.**

The Architectural Review Committee (the “Committee”) has been established by the Declarations and the Master Declaration; its members have been and shall be appointed by one or more written instruments setting forth the names and business addresses of the members and the period or periods for which type are appointed. Such appointments shall take effect when acknowledged before a notary public and filed for registration in the Barnstable Registry District. Pursuant to the Assignment and Assumption of Certain Rights and Duties Under Declaration, Document #205902, the Council may appoint and replace the members of the Committee at any time. Any change in the membership of the Committee shall take effect when similarly acknowledged and filed with the Registry of Deeds. The Committee works closely and in conjunction with the Officers of the Council, as well as the appropriate Village Committee, on matters within the respective village. The Committee acts independently of the Council; however, the Officers of the Council and the Executive Director provide oversight.

Any member or agent of the Committee may at any time enter, inspect and report upon any Lot as to its compliance with the provision thereof; and the Committee or member thereof shall not thereby be guilty of any manner of trespass for such entry or inspection.

**3. Committee Restrictions.**

The following restrictions having been updated and are imposed upon the Villages (including, without limitation, the Lots), but not as a common scheme, may be enforced only by (1) the Committee, (2) the Council., or (3) Developer or (4) the owner of the Reserved Area. Enforcement of these restrictions shall be governed by applicable provisions hereof, including, without limitation, Paragraph 2.

- 3.1. Committee Approval.** No structure, improvement or building, whether residence, accessory building, shed, driveway, swimming pool, tennis court, mail box or other improvement (a "Structure"), nor any new landscaping or grounds treatment shall be constructed or made upon the Villages; and no Structure not previously approved by the Committee pursuant to a Declaration shall be maintained without the prior written approval of the Committee given pursuant to Paragraph 3.8.

The Committee will update and publish a detailed "Guidelines and Specifications Booklet" on a regular basis which will detail the process for approving homes and all exterior modifications to a home, landscape, etc.

- 3.2 Committee Fees.** The Committee reserves the right to charge sufficient fees necessary to carry out the processes and activities described herein including foundation, framing and final inspections, as well as all of the meetings, coordination, and correspondence necessary to insure compliance. Such fees will be documented and published in the Committee Guidelines and Specifications.
- 3.3 Alterations.** No exterior change, alteration, addition, projection, decoration or other feature shall be erected or placed upon or attached to any Structure, building or any part thereof on any Lot; no addition to or change or replacement (except, so far as practicable, with identical kind) of any exterior light, or other exterior hardware, exterior door, or door frames shall be made; no painting, staining or other decoration shall be done on any exterior part or surface of any Structure nor shall any Structure be moved from without or within or from within to without any Lot without the prior written approval of the Committee given pursuant to Paragraph 3.8. Notwithstanding the foregoing, Lot owners shall have the right to otherwise decorate the interiors of their Structures as they may desire as well as carry out minor, unobtrusive landscape items that do not offend the abutters or the residents using the village or New Seabury Roads.
- 3.4 Excavation.** No excavation of stone, gravel, sand or earth shall be made, and no landscaping work shall be done in the Villages without the prior written approval of the Committee given pursuant to Paragraph 3.8.
- 3.5 Trees.** No live trees in the Villages which are in excess of six inches in diameter at the base or which are within 15 feet of any Lot line, and no rare or specimen shrub or tree, shall be intentionally cut, destroyed or removed without the prior written approval of the Committee given pursuant to Paragraph 3.8.
- 3.6 Building Materials.** No building materials of any kind or character shall be placed upon any Lot except in connection with construction approved as provided above. As soon as building materials are placed on any Lot in such connection, construction shall be promptly commenced and diligently prosecuted in a neat and workmanlike manner, with all refuse and debris being stored in covered and suitable containers.

**3.7 Outdoor Items.** No boat, tent, trailer or other temporary structure shall be placed, installed or maintained on any Lot for living purposes without the prior written approval of the Committee given pursuant to Paragraph 3.8. The Committee will enforce Village specific rules in regard to boat storage, trailers or covering color upon properties. The Village Committee of each village, duly elected by the homeowners, will inform the Committee as to their policy on this matter each year so the policy is current.

**3.8 Procedure for Committee Approvals.** Any request to the Committee for approval of work or activity otherwise prohibited by Paragraphs 3.1, 3.3, 3.4, 3.5 and 3.6 shall be in writing and shall include an information sheet containing full details of the proposed Work, including, (except in the case of work prohibited by Paragraphs 3.3, 3.4, 3.5 and 3.6), complete plans and specifications, following the Committees current Guidelines & Specifications. The Guidelines and Specifications document will specify in detail: the process, design specifications, landscape specifications, time frames and fee schedules.

The Committee will review and approve plans within 60 days of submission and if it (the Committee) fails to respond in writing, it will be presumed that the Committee has approved the plans.

**3.9 Maintenance.** Each Structure and all landscaping and other physical improvements in the Villages, including, without limitation, outdoor furniture, fixtures and equipment thereon, shall be maintained by the owner of each Lot in accordance with Guidelines & Specifications document promulgated from time to time by the Committee.

**3.10 Signs.** No sign plaque, clothes line, drying yarn or similar item shall be placed on any Lot, or any Golf Course Easement or located or maintained in any other section of the Villages which is visible from a New Seabury Road, a Reserved Area or a golf course easement Area or a Village road or common area of any condominium included in the Villages. Signs of less than 200 square inches, which are consistent in appearance with signs previously approved by the Committee and which identify only the name, address and/or profession of the Lot owner shall not be subject to this Paragraph 3.10. This paragraph shall be interpreted to specifically prohibit, among other things, all "For Sale" signs, "For Rent" signs, balloons and temporary Contractor/Builder signs. In accordance with the terms of a preliminary order entered by the United States Bankruptcy Court for the District of Massachusetts (the "Bankruptcy Court") in Case Number 97-12964-WCH, certain sign privileges have been afforded to New Seabury Company Limited Partnership. Nothing herein is intended to alter or amend the rights provided to New Seabury Company Limited Partnership by the Bankruptcy Court order.

During construction builders can display an approved sign as per the Committee Guidelines and Specifications. The Committee must approve the sign before it can be displayed at the site.

**3.11 Open Space.** Any areas referred to in the Declarations as “Open Space”, “Open Area” or the like shall be left in a natural state, free of any structures or improvements, with the exception of landscaping, utilities and underground septic systems and roads or walkways. No boats, vehicles, or trailers may be parked on, nor debris or vegetation deposited on, these Open Spaces.

**3.12 Subdivision.** No Lot shall be subdivided except that two or more Lots may be combined and re-divided into the same number of Lots, no one of which shall, without the prior written approval of the Committee, contain fewer square feet or fewer frontages than the smallest of the Lots so combined and re-divided.

**3.13 Reserved Area.** No Structure shall be erected on any area defined in a Declaration as a Reserved Area except Structures designed for a common use and approved in advance and in writing by the Committee working in conjunction with the specific Village committee or in the case of a New Seabury Reserved Area, the Developer. No boats, vehicles, or trailers may be parked or other personal items stored on, nor debris or vegetation deposited on, these Reserved Areas. The Reserved Area in each Village will be maintained by the appropriate Village Committee and managed by the Committee.

**3.14 Garages.** All garage doors in the Villages shall remain closed when not in use. Garages shall be used only for the purpose of parking automobiles or storing household goods or boats.

**4. Restrictions.**

The following restrictions are imposed as a common scheme upon the Villages for the benefit of each Lot and may be enforced by the owner of any Lot or any individual or entity entitled to enforce the restrictions set forth in Paragraph 3. Applicable provisions shall govern enforcement of these restrictions hereof, including, without limitation:

**4.1 Use.** No Lot shall be used for any purpose other than for residential purposes. Residential purposes include a home office for the residents of the home.

**4.2 Fuel Tanks.** Storage of fuel on a lot must be done in accordance with the applicable laws of the Commonwealth for residential property.

**4.3 Animals.** No poultry house or yard, or rabbit hutch shall be constructed or maintained on any Lot. No fowl or animals, other than a reasonable and usual number of unobjectionable household pets, shall be kept on any Lot. Dogs must be restrained according to the laws, by laws and regulations of the Town of Mashpee.

**4.4 Garbage.** No garbage, refuse, rubbish or cuttings shall be kept on any Lot. A reasonable amount of garden refuse may be kept on a lot, but must be held in a suitable container.



**4.5 Nuisances.** No noxious or offensive trade or activity shall be carried on upon any Lot, or any part of the Villages, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each lot owner.

**4.6 Drainage.** All drainage of water from any Lot and the Structure thereon shall drain or flow as set forth below:

(a) Any such water may not drain or flow into adjacent streets or alleys and shall not be allowed to drain or flow upon, across, or under adjoining Lots or Reserved Areas unless such drainage is covered by a valid easement for such purposes.

(b) All slopes or terraces on any Lot shall be maintained so as to prevent any erosion thereof upon adjacent streets or displacement of material there from upon adjacent facing streets and property.

**4.7 Exterior Lighting.** Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb the residents of adjacent Lots. Ornamental post lights may be gas or electric and designed to be consistent with the lighting fixtures at the corners of the New Seabury Roads and should not be placed within the utility easement.

**4.8 Storage Bins.** Storage Bins may be placed on a lot during a renovation project but only for the period of construction. The Storage bin must not be on the road and must be removed immediately upon completion of said renovation.

**4.9 Autos.** No unregistered vehicle may be stored on a property at any time.

**5. Developer Privileges.**

Nothing in Paragraphs 2, 3, or 4 shall apply to the Developer or any person, firm or corporation while acting on behalf of the developer or any successor or assign.

**6. Sales.**

**Certificate of Compliance and Non-Assessment.** A Certificate, executed and acknowledged by the Committee, stating that the provisions of this Declaration have been met by a Lot Owner, or have been duly waived by the Committee, shall be conclusive upon the Committee in favor of all persons who rely thereon in good faith. Such certificate shall be furnished upon request to any Lot Owner who has in fact complied with the provisions of these Declarations or in respect to whom the provisions have been waived.

**Certificate of No Assessment.** A Certificate, executed and acknowledged by the Executive Director or agent of the Peninsula Council stating that the provisions of this Declaration have been met by a Lot Owner, or have been duly waived by the Council, shall be conclusive upon the Council in favor of all persons who rely thereon in good faith. Such

certificate shall be furnished upon request to any Lot Owner who has in fact complied with the provisions of these Declarations or in respect to whom the provisions have been waived.

**The Right of First Refusal.** The Right of First Refusal reserved to the developer is retained and hereby confirmed.

**Transfer Fee.** The Committee will coordinate for the homeowners the execution and creation of all necessary papers and certificates described in Paragraphs 6.1, 6.2, and 6.3. The homeowner or the owner's agent must contact the Committee upon execution of a Purchase and Sale document for any property within New Seabury. The Committee charges a nominal fee for coordinating and creating all of the necessary paper for a closing.

**7. Duration of Declarations and the Universal Village Declarations.**

The restrictions set forth in the Universal Village Declaration will take effect when duly executed and filed for registration and will continue for a period of 20 years and may be extended for two periods not exceeding 20 years each, by agreement executed and filed by the majority of the homeowners at the time.

**8. Charges.**

**Annual Charges.** The Annual Charge may be adjusted annually, utilizing a Cost of Living Adjustment (COLA) based on the Boston CPI (Consumer Price Index).

Each home shall be subject to an annual charge of \$450.00, base charge as of 2005. The Charge will be allocated as follows: \$200 for village activities, \$200 for Special Maintenance activities and an optional \$50.00 for Peninsula Council administration. The Annual Charge can be modified using the adjustment described effective January 1, 2006.

The Village Annual Charge, the Special Maintenance Charge and the Peninsula Council Administration Charge can be modified by a majority vote at the Village Annual Meeting. The homeowner will be notified at least 30 days prior to the date of the meeting as to the nature of any vote so that a proxy or absentee ballot can be submitted.

The Annual Charges shall be due and payable on the first day of January of each year.

**Special Charges.** If and when Special Maintenance Funds and Village Funds are insufficient to cover extreme and unusual situations, the Peninsula Council reserves the right to assess a homeowner a Special Charge sufficient to cover the emergency. The situation and the budget will be fully disclosed and explained via letter to all property owners. Special Charges shall be due and payable as determined by the Council, as applicable.

**Annual Charges and Special Charges.** When due, Annual Charges and Special Charges shall be liens upon the Lots, and the Committee, or the Council, as applicable, shall have all

rights and remedies afforded by law to collect such charges. Annual Charges and Special Charges, which are due and unpaid after 90 days, shall bear interest at the rate of 1 ½% per month.

The Annual Charges and Special Charges, together with interest thereon as provided above and attorneys' fees thereon as provided in Paragraph 8.1, shall be the personal obligation of the person who is the owner of the Lot at the time the Annual Charge or Special Charge first becomes due and payable. In the case of co-ownership of a Lot, all co-owners shall be jointly and severally liable for such Annual Charges, Special Charge, interest and attorneys' fees.

**Undeveloped Lots.** The Annual Charges and Special Charges (if any) for any Undeveloped lot shall be 50% of the charges as determined pursuant to paragraphs 8.1 and 8.2.

## **9. Application of Charges**

**9.1 Annual Charges** shall be paid to the council except that:

- (1) until this Universal Village Declaration becomes effective, pursuant to Paragraph 10 hereof, to all Lots in an Village, a portion of the Annual Charges equal to the amount payable under the Declaration shall be paid to the Council; and
- (2) at such time as this Universal Village Declaration becomes effective for all of the Villages, all of the Annual Charges for all of the Villages shall be paid to the Council.

**9.2 Annual Charges from each Village.** The Annual Charges from each Village shall be maintained in a separate account and applied to the purposes set forth below:

- (a) Expenses, if any, incident to the enforcement of the easements, covenants, restrictions, agreements, and collection of charges which relate to such Village and which are contained (1) in this Universal Village Declaration, or (2) in any Supplemental Declaration;
- (b) Costs relating to the approval of plans;
- (c) Lighting, maintaining, repairing, landscaping and beautifying of roads within the Villages;
- (d) Taxes and assessments, if any, which may be levied by public authorities on (1) the portion of the Village Roads and (2) Reserved Areas in the village;
- (e) Any purpose contributing, in the opinion of the Village Committee, to the general health, welfare, safety, enjoyment or advantage of such

Village, including, without limitation, the payment of (1) deficits previously incurred; and (2) costs related to any erosion control or environmental protection program conducted by The Peninsula Council, Inc.;

- (f) Maintenance of Storm Drains along the Village roads;
- (g) Costs associated with the maintenance of Village reserved areas;
- (h) Maintenance of all paths and trails throughout the Villages;
- (i) Maintaining, repairing, insuring and replaces water mains, hydrants, valves and related equipment located along village road;

The Village Committee may decide, in its sole and uncontrolled discretion, to which of the above purposes, if any, available funds shall be applied.

**9.3 Annual Charges for Special Maintenance:** All collected Annual Charges for Special Maintenance shall be applied toward the payment of the following:

Expenses, if any incident to the enforcement of the easements, and charges contained in this Universal Village Declaration, including:

- (a) Lighting, maintaining, repairing, landscaping, and beautifying the entrances to New Seabury;
- (b) Expenses of providing security services for the Villages, Taxes and assessments, if any, that may be levied by public authorities on the New Seabury Roads or other areas in the Community available for use by the Lot Owner such as New Seabury Reserved Areas;
- (c) Costs related to any coastline bank erosion control, botanical enhancement, pollution control or other environmental program conducted by The Peninsula Council, Inc. and approved by the Town of Mashpee Conservation Commission;
- (d) Any purpose contributing, in the opinion of the Peninsula Council, Inc., to the general health, welfare, safety, enjoyment or advantage of the Villages and the New Seabury community;
- (e) Repairing, insuring and replacing water mains, hydrants and related equipment located along New Seabury Roads;
- (f) Maintenance of all paths and trails that are located along New Seabury Roads;
- (g) The maintenance of storm drains along all New Seabury Roads;

- (h) Replenishing Reserve Funds for the planned replacement of New Seabury Roads and to act as buffer in the event an extraordinary expense is incurred.

Neither the Council, The Committee, nor the Village Committees shall be obligated to carry out any of said purposes except to the extent possible from collected funds.

Special Charges collected shall be applied for the purposes described thereof provided to owners of Lots and/or homes.

**9.4 Peninsula Council Fees.** All Peninsula Council fees collected will be applied to:

- (a) Administrative Expenses associated with operating the Council on a day to day basis; and
- (b) Production of the Peninsula Reporter on a quarterly basis.

**10. Amendments.**

This Universal Village Declaration may be amended, modified, supplemented or altered by a majority vote of the homeowners subject to this Universal Village Declaration at the Peninsula Council Annual Meetings of the Villages as described in Paragraph 8.1; and duly registered with the Barnstable County Registry District and recorded with the Barnstable Registry of Deeds and accompanied by a Certificate signed by a majority of the then directors of the Peninsula Council certifying the number of lots within the area of New Seabury covered by this Universal Village Declaration and certifying that majority or more of the lot owners subject to this Universal Village Declaration have approved the amendments, except that:

- (a) The date on which any such amendment is first signed by a Lot owner shall be indicated thereon as the date thereof and no such instrument shall be of any force and effect unless and until the same has been executed and registered as aforesaid.
- (b) No instrument of amendment affecting any Lot upon which there is a mortgage of record shall be binding upon the holder of such mortgage unless the same has been assented to by such holder.
- (c) Votes may be taken by proxy and by written ballots sent to homeowners by The Peninsula Council.

Ballots shall be valid and effective on the date indicated on the ballot as the date of the vote notwithstanding any transfer of title or sale of the property between the time of the vote and certification of the vote or recording of the vote.

**11. Effective Date.**

The provisions of this Universal Village Declaration shall take effect upon recording in the Barnstable Registry of Deeds and Barnstable District of Land Court.

All existing Declarations shall remain, so far as they are in full force and effect.

**12. Rights of New Seabury Properties, LLC.**

This Universal Village Declaration shall have no effect on any and all existing declarations, easements and rights reserved to New Seabury Properties, LLC or its successors and assigns.

**13. Execution of the Universal Village Declaration.**

This Universal Village Declaration is a voluntary document. Ballots have been distributed to all of the owners of lots shown on Land Court Plan 11408. Any owner that checks "yes" and signs their Ballot shall be subject to all the terms and conditions contained herein.