

AMENDED, RESTATED AND EXTENDED  
DECLARATION OF PROTECTIVE COVENANTS FOR  
BOLDWATER, INCORPORATED, EDGARTOWN, MASSACHUSETTS  
COVENANTS, RESERVATIONS, RESTRICTIONS AND EASEMENTS

DECLARATION, made this 23<sup>rd</sup> day of August, 2003 by the Owners (as defined in Section 2.15) who have executed and acknowledged this Instrument.

ARTICLE I

STATEMENT OF PURPOSE

WHEREAS, BoldWater, Incorporated as then sole owner of real property, known as and hereinafter referred to as BoldWater, in the Town of Edgartown, County of Dukes County, Commonwealth of Massachusetts, referred to in the first sentence of Section 3.1 of this Declaration has created thereon a residential and vacation community of the highest quality, while at the same time preserving permanent open spaces, natural topographical features, and wetland areas and providing common facilities for the benefit of the residents of said community; and

WHEREAS, for that purpose BoldWater Incorporated caused to be executed an instrument entitled "Declaration of Protective Covenants for BoldWater, Incorporated, Edgartown, Massachusetts, Covenants, Reservations, Restrictions and Easements" dated July 31, 1985, which was filed for registration with the Dukes County Registry District of the Land Court as Document No. 19221 and recorded with the Dukes County Registry of Deeds at Book 436, Page 655 ("the "Declaration"); and

WHEREAS, BoldWater Incorporated has conveyed all its rights as Declarant to the Association (as hereinafter defined) in accordance with the terms of the Declaration; and

WHEREAS, it is in the interest of the Owners (as hereinafter defined), believing that the structures and activities of man should mildly enhance the dominant open natural scenic and agricultural features of the Island, to ensure the use of the Property for residential purposes only, to prevent nuisance, to maintain wetland areas, to maintain open spaces, to preserve views, to conserve the natural resources and ecology, to preserve the character of the landscape and to ensure the free enjoyment of the property by the Owners, their families and guests, attended by a minimum of disturbances from the activities of the Owners and the general public, and to ensure that the property as so developed will continue to retain the above mentioned attributes and by the maintenance of the beauty and quality of said property, will inure to the great benefit of the Owners

and is also in the best interests of the Town of Edgartown and the Commonwealth of Massachusetts, and accordingly it is desirable that said characteristics be maintained; and

WHEREAS, in order to accomplish the foregoing objectives, the undersigned Owners desire to amend, restate and extend the term of the Declaration in accordance with Section 8.4 thereof; in order to maintain the foregoing real property and such additions thereto as may hereafter be made pursuant to Article 3 of this Declaration subject to the covenants, restrictions, reservations, easements, charges and liens hereinafter set forth, (except to the extent otherwise expressly provided with respect to any such addition at the time thereof) each and all of which are for the benefit of the aforesaid property and each Owner; and have deemed it desirable to confirm the continuing responsibilities of BoldWater Residents Association, Inc., the agency to which has been delegated and assigned the rights, powers and duties of maintaining and administering the aforesaid common facilities and of administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges which are created by this Declaration;

NOW THEREFORE, the undersigned, being the Owners of two thirds or more of the Lots subject to the Declaration and being Owners of fifty percent or more of the restricted area in which the Lots are located, acting in accordance with Section 8.4 hereof and Massachusetts General Laws Chapter 184, Section 27(b), hereby amend, restate and extend said Declaration for an additional term of twenty years from the date on which this instrument is Filed of Record (as defined below) in order that the real property referred to in Section 3.1 of the Declaration and such additions thereto as may hereafter be made pursuant to Article 3 hereof are and shall be held, occupied, transferred, sold, and conveyed subject to and with the benefit of the covenants, restrictions, reservations, easements, charges and liens hereinafter set forth (except to the extent otherwise expressly provided with respect to any such addition at the time thereof) which covenants, restrictions, reservations, easements, charges and liens are intended to operate as covenants running with the land for the benefit of, and enforceable by the Owners, all grantees of portions or lots of said real property, whether such grantees have acquired title from BoldWater, Incorporated, or from a successor in title to BoldWater, Incorporated, and all owners from time to time of lots added to the scheme of this Declaration under Article 3, Section 3.2 hereof, and said covenants, restrictions, reservations, easements, charges and liens shall be deemed a part of the aforesaid real property, whether or not specifically included as a part thereof, except to the extent otherwise expressly provided in Sections 6.2 and 6.3.b of this Declaration.

## ARTICLE II

### DEFINITIONS

The following words, when used in this Declaration or any Supplemental Declaration shall have the following meanings unless otherwise specified to the contrary or otherwise required by the context:

2.1 "Approval of the Owners" shall mean either (i) the affirmative vote of two-thirds of all the Owners taken at a meeting or (ii) the written consent of two thirds of all the Owners, in either event done in compliance with Section 5.3.

2.1.1 "Association" shall mean and refer to BoldWater Residents Association, Inc., a nonprofit corporation organized under Chapter 180 of the Commonwealth of Massachusetts and its successors and assigns.

2.2 "Architectural Review Committee" (ARC) shall mean and refer to the persons described in Section 4.4.a.iv.D.

2.3 "Common Property" shall mean the aggregate of the Common Recreation Property and the Common Rights-of-Way, as defined herein and which are intended to be devoted to the common use and enjoyment of the Owners of the Lots.

2.4 "Common Recreation Property" shall mean and refer to Parcels number six (6), and twenty-three (23) as shown on Plan No. 1.

2.5 "Common Rights-of-Way" shall mean and refer to the ways shown as "50' Way" on Plan No. 1 and Plan No. 3 and the way shown as "40' Way" on Plan No. 2 and Plan No. 4, and the Edgartown Water Company Easement.

2.6 "Covenants and Restrictions" shall mean and refer to the aggregate of the covenants, restrictions, reservations, easements, charges and liens applicable to the Property pursuant to the Declaration, including any amendments thereof effective pursuant to Section 8.4.

2.7 "Covenant" shall mean the agreement by and between the Declarant and the Town of Edgartown specifically providing for the maintenance of a section of the Pohogonot Road, the Edgartown Water Company easement, and the ways shown as "50' Way", and "40' Way" on Plan No. 1, Plan No. 2, Plan No. 3 and Plan No 4.

2.8 "Declarant" shall mean BoldWater Incorporated, its successors, and assigns, expressly including the Owners.

2.9 "Declaration" shall mean and refer to this Declaration of Protective Covenants for BoldWater, Incorporated, Edgartown, Massachusetts as amended, restated and extended hereby.

2.9.1 "Dwelling" shall mean and refer to the primary detached single-family house located upon a Lot, but not a guest house.

2.10 "Edgartown Water Company Easement" shall mean and refer to the easement granted by the Edgartown Water Company to George D. Flynn, Jr. by deed dated June 15, 1981 and recorded in Book 384, Page 97 at the Dukes County Registry of Deeds and as shown on a plan recorded therewith.

2.11 "Existing Property" shall mean and refer to the aggregate of the property referred to in Section 3.1. The Existing Property contains 15,542,208 square feet (356.8 acres) more or less as shown on the plans referred to in said Section 3.1.

2.12 "Filed of Record" shall mean recorded with the Registry of Deeds of Dukes County, Massachusetts, and filed for registration with the Dukes County Registry District of the Land Court, or such other place as may from time to time be designated as the place of filing for public record of instruments conveying an interest in real estate with respect to the Property.

2.13 "Lot (s)" shall mean and refer to Parcels No. 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 24, 25, 26, 28, 30, 31, 32, 33, 34, 35 and 36 as shown on Plan No. 1, Parcels No. 1, 3, 4, and 5 as shown on Plan No. 2, Parcels No. 8, 9, 10, 11, 12, 13 and 14 as shown on Plan No. 3 and Parcels 7 and 8 as shown on Plan No. 4.

2.14 "Member(s)" shall mean and refer to a member(s) of the Association as provided in Article 5 of the Declaration.

2.15 "Owner(s)" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any Lot situated upon the Property, and their executors, administrators, heirs, devisees, successors and assigns, but shall not include any mortgagee unless and until such mortgagee has acquired fee simple title pursuant to foreclosure or any proceeding in lieu of foreclosure.

2.16 "Plan No. 1" shall mean and refer to a plan of land entitled "Plan of Land in Edgartown, Mass., Prepared for BoldWater, Inc., April 9, 1984, Scale 1" = 200', Dean R. Swift, Reg'd Land Surveyor, Vineyard Haven, Mass.," and being Registered Land Plan No. 24774B2, filed January 18, 1985 with the Land Court.

2.17 "Plan No. 2" shall mean and refer to a plan of land entitled "Plan of Jacob's Neck, in Edgartown, Mass., Surveyed for BoldWater, Inc., June 5, 1984, Scale 1" = 200'. Dean R. Swift, Reg'd Land Surveyor, Vineyard Haven, Mass." and being Registered Land Plan No. 37340B, filed November 15, 1985.

2.18 "Plan No. 3" shall mean and refer to a plan of land entitled "Plan of Land in Edgartown, Mass., Prepared for BoldWater, Inc., April 9, 1984, Scale 1" = 200', Dean R. Swift, Reg'd Land Surveyor, Vineyard Haven, Mass.", recorded at the Dukes County Registry of Deeds as Edgartown Case File Number 337.

2.18.1 "Plan No. 4" shall mean and refer to a plan of land entitled "Plan of Land in Edgartown, Mass., Surveyed for Najeeb Halaby, October 16, 2001, Scale 1" = 100', Vineyard Land Surveying, Inc., West Tisbury, Mass." and being Registered Plan No. 37340C, filed \_\_\_\_\_.

2.19 "Property" shall mean and refer to the aggregate of the Existing Property and any other real property which shall be subject to the scheme of this Declaration pursuant to Article 3.

2.20 "Supplementary Covenants and Restrictions" shall mean and refer to the aggregate of any covenants, restrictions, reservations, easements, charges and liens applicable to any part of the Property, other than the Existing Property, pursuant to any Supplementary Declaration, including any amendments thereof effective pursuant to Section 8.4.

2.21 "Supplementary Declaration" shall mean and refer to any declaration of covenants and restrictions filed pursuant to Section 3.2.a.ii.

### ARTICLE III

#### THE PROPERTY

3.1 "Existing Property". The real property which is, and shall be, initially held, occupied, transferred, sold and conveyed subject to and with the benefit of this Declaration (the "Existing Property") is located in the Town of Edgartown, County of Dukes County, Commonwealth of Massachusetts, and is shown as Parcels number 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33, 34, 35, and 36 on Plan No. 1, Parcels number 1, 3, 4, and 5 on Plan No. 2, Parcels number 8, 9, 10, 11, 12, 13 and 14 on Plan No. 3, Parcels number 7 and 8 on Plan No. 4 and the ways shown as "50' Way" on Plan No. 1 and Plan No. 3 and the way shown as "40' Way" on Plan No. 2 and Plan No. 4 and the Edgartown Water Company Easement. The Existing Property is part of parcels of land conveyed to BoldWater, Incorporated by deed of George D. Flynn, Jr. dated December 19, 1983 and recorded on December 23, 1983 in Book 409, Page 378 at the Dukes County Registry of Deeds and as Document No. 16606 at the Dukes County Registry District of the Land Court.

3.2 "Additions to Existing Property". BoldWater, Incorporated intends to develop a community which will make available to Owners the benefit of low-density land development together with the use of a substantial amount of Common Property. In furtherance of, and consistent with, this objective, additional lands may become subject to and with the benefits of this Declaration in the following manner.

3.2.a "Additions by Declarant".

3.2.a.i. General. The Association, with the Approval of the Owners, shall have the right to bring within the scheme of this Declaration additional properties either as Lots or Common Property, which Lots or Common Property shall then be subject to all the covenants, reservations, restrictions and easements contained herein and applicable to them.

3.2.a.ii. Filing of Supplementary Declaration. The additions authorized under Section 3.2.a.i shall be made by a Supplementary Declaration of Covenants and Restrictions Filed of Record with respect to the additional property, which shall extend the scheme of the Covenants and Restrictions of this Declaration to such property. Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in the Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration which affect the Existing Property.

## ARTICLE IV

### USE OF AND PROTECTIVE RESTRICTIONS ON PROPERTY

4.1 General. The uses to which the Property may be put, and the covenants, restrictions, reservations, easements, charges and liens which shall apply to the Property, shall vary according to the classification of the several parts of the Property as designated herein. The areas so classified shall be subject to the specific use and development restrictions set forth in Sections 4.2, 4.3, 4.4, and 4.5 below, in addition to those of general application stated in this Article IV. Except as may be specifically authorized by the Association or provided elsewhere in this Declaration or any amendment to it, the sole uses to which such classified parts may be put and the protective covenants and restrictions which apply thereto are hereinafter described in this Article IV.

#### 4.2 "Common Property"

4.2.a. General. All Common Property shall be maintained for the exclusive use and enjoyment of Owners, and shall be subject to and have the benefit of (i) the covenants, restrictions, reservations, easements, charges and liens applicable thereto set forth in this and any Supplementary Declaration, and (ii) the By-laws and any reasonable published rules and regulations of the Association applicable thereto, all of which shall be in furtherance of the scheme and purposes of this and any Supplementary Declaration.

4.2.b. Common Recreation Property. The Association, with the approval of the ARC, may construct on any part of the Common Recreation Property such recreational and other facilities for the common use and enjoyment of the Owners as shall be necessary or desirable in order to carry out the purposes of this and any Supplementary Declaration. The Association, with the approval of the ARC, may from time to time set aside portions of the Common Recreation Property for active recreation facilities such as tennis courts, or bicycles, bridle or walking paths, beach areas, docks and swimming pools or for such other common purposes for the benefit of Owners as they may from time to time determine and thereafter make changes in the location thereof. The Agents and/or employees of the Association shall have the right to travel throughout the entirety of the Common Recreation Property by foot or vehicle.

4.2.c. Common Rights-of-Way. The Owners, the Association and their respective successors and assigns shall have an easement in all Common Rights-of-Way as is reasonably necessary to provide a means of egress and ingress to public ways for all purposes for which roads and ways are commonly used in the Town of Edgartown, including in the case of the Owners the right and easement to install, repair, maintain, use and tie in to customary residential utility lines and services and drainage facilities provided that they are located below the surface of the ground. No Common Right-of-Way shall in any way be unreasonably obstructed.

4.3 Lots (subject to provisions of Sections 4.4 and 4.5)

4.3.a. Minimum Restrictions on General Use.

4.3.a.i. Residential Purposes. No Lot shall be used for other than single family residential purposes without the written consent of the Association's Board of Directors, provided that this restriction shall not be construed to prohibit the construction of a guest house as allowed under 4.3.a.iii(c).

4.3.a.ii Automobiles; Parking Spaces. Every Lot shall provide parking places for at least two automobiles. No Lot shall be used for the outdoor storage of unregistered motor vehicles or any vehicle body or motor parts, unless otherwise specifically authorized in writing by the Association's Board of Directors.

4.3.a.iii Number of Buildings. Except as otherwise provided herein, no buildings shall be constructed, erected, maintained or permitted to remain on any Lot other than

(a) one (1) detached single-family dwelling (hereinafter in this Article IV called a "Dwelling") and

(b) one (1) private garage for not more than four (4) automobiles.

(c) one (1) guest house.

(d) any other structures, such as barns, tool, storage or worksheds may be allowed, but must be approved in writing as to architectural style and location by the ARC.

4.3.a.iv. Size; Setback. Each Lot shall have an area of at least one hundred twenty thousand (120,000) square feet. Except for an existing structure on Lot 20 on Plan No. 1, no structure shall be located on any Lot nearer to the Lot Lines than, from the front Lot Line, one hundred fifty (150) feet, from any side Lot Line, fifty (50) feet, and from the rear Lot Line, fifty (50) feet. For purposes of this Section, the front Lot Line shall mean the longest Lot Line which abuts a Common Right-of-Way.

4.3.a.v. Ownership of Two or More Lots. No provision hereof shall be construed to prohibit an Owner of more than one Lot from building on and otherwise using and enjoying each such Lot to the extent and in the manner set forth herein.

4.3.a.vi. Leasing Limitations. No owner shall lease any portion of his Lot as other than a single-family unit, and/or for agricultural use.

4.3.a.vii. Maintenance of Property.

4.3.a.vii.A. Appearance of Lots and Structures Thereon.

All Lots and structures thereon shall be maintained in a neat and attractive manner. In furtherance of the foregoing, the Association, acting through its Board of Directors, shall have the right to correct unsightly conditions on a Lot and to take any reasonable action which it deems necessary in order to preserve a neat and attractive exterior appearance of a Lot and structures thereon, if the Owner of such Lot has failed to initiate such action himself within thirty (30) days after delivery to him of written notice by the Association's Board of Directors to take such action, and once initiated, to complete such action, within thirty (30) days, unless such time is specifically extended in writing by the Association's Board of Directors. If at any time the Association exercises any of its aforesaid rights, neither the Association nor any duly authorized agent thereof shall be liable for trespass to the Owner of such Lot as a result of any entry upon such Lot.

4.3.a.vii.B. Cost of Exterior Maintenance, Assessments.

Any costs sustained by the Association in exercising any of its rights under Section 4.3.a.vii.A. with respect to any Lot shall be assessed against that Lot and shall be added to and become part of, and due as payable as, the annual assessment to which such Lot is subject under Article VII hereof and, as part of such annual assessment, it shall constitute both a lien upon the Lot and a personal claim against the Owner thereof, each of which shall be of the same nature as the lien and claim described in Section 7.7. The Directors of the Association, when establishing the annual assessment against each Lot for any assessment year as required under Article VII hereof, may add thereto the estimated completion cost of the aforementioned exterior maintenance for that year as authorized by this Section 4.3.a.vii., but shall, thereafter, make such adjustment with the Owner as is necessary to reflect the actual cost thereof.

4.3.a.viii. Subdivision of Lots. No Lot or combination of Lots shall be resubdivided so as to create any additional building lots, except as may hereinafter be approved by the ARC and the Edgartown Planning Board. Approval by the Planning Board shall be deemed to have been given if either (i) a definitive plan for subdivision of land (Form C) or (ii) a plan bearing the endorsement of the Planning Board that approval under the subdivision control law is not required (Form A) is Filed of Record as applicable. Approval by the ARC shall be evidenced by a Certificate of Approval signed and acknowledged by at least one member. The ARC and the Edgartown Planning Board will not unreasonably withhold permission for an Owner to



convey a portion of his Lot to the Owner of an adjacent Lot, or to the Association, Town or other non profit organization for agricultural, conservation, energy or open space purposes.

#### 4.4 Common Property and Lots

##### 4.4.a Minimum Architectural and Landscaping Restrictions

##### 4.4.a.i. Governing Policies

4.4.a.i.A. General. In making its determination, the ARC shall consider these Covenants and Restrictions and any Supplementary Covenants and Restrictions, particularly the preservation of land in its natural environment to the maximum extent possible, and to the extent land is developed, that such development be done unobtrusively, and in a manner which compliments the desired rural environment and is in the tradition of rural New England architecture and landscaping. Appropriately proportioned and designed contemporary designs will be considered an acceptable alternative to New England architecture.

4.4.a.i.B. Dwellings. In furtherance of the foregoing policy, the following are suggested as guidelines in the construction of buildings upon the Property: (i) the suggested roof pitches shall be a minimum of six (6) in twelve (12) [22 ½ degree pitch] and a maximum of twelve (12) in twelve (12) [45 degree pitch] for a minimum of eighty percent (80%) of the total roof area, (ii) the suggested roofing materials shall be cedar shingle or stone materials, (iii) the suggested siding materials shall be clapboards spaced no further apart than four (4) inches, cedar shingles, or rough sawn lumber, (iv) the suggested colors of the siding and other exterior materials shall be a natural weathered finish, a grey or brown stain, or subdued colors commonly used on traditional rural New England Structures, so as to be consistent and compatible with the neighborhood. All exterior chimneys shall be constructed of stone or brick, or as approved by the ARC. Any Dwelling or other structure whose design is unusual or ultra-contemporary shall need the written approval of the ARC and the Board of Directors of the Association.

##### 4.4.a.ii. Size Limits and Other Restrictions.

4.4.a.ii.A Dwelling. A Dwelling or guest house shall not exceed two and one-half (2 ½) floors and thirty two (32) feet in height, but such limits shall not include the basement level, which shall be that level which is wholly or substantially below ground level. The ground floor area of a Dwelling, exclusive of open porches and garages attached to the Dwelling, shall not be less than one thousand (1,000) square feet.

4.4.a.ii.B Solar Heating. All residential Dwellings shall be designed and situated to take advantage of passive solar heating principles to the

maximum extent reasonable and practicable, emphasizing southerly exposure and protection from northerly winds.

4.4.a.ii.C Metal. The use of shiny metals, oversized antennae, and other metal accretions to any buildings on a Lot is prohibited, except that suitable screened satellite dishes (for TV or other reception or transmission) may be allowed by written approval of the ARC provided that same does not interfere with any TV or Radio reception of other Owners.

4.4.a.ii.D Certain Use Restrictions. The ARC may require that the driveway to the dwelling on a Lot leave a Common Right-of-Way at and along the side boundary of a Lot. This would be done so as to minimize the number of openings from the Common Rights-of-Way and to avoid starting two (2) driveways from two (2) Lots at the same point. No Owner of any Lot shall interfere with the natural drainage of surface water from Common Rights-of-Way or from a Lot to the detriment of any other Lot. Consequently, in the construction of a driveway onto any Lot, when so required, a twelve (12) inch diameter culvert, or larger if necessary shall be used in order to prohibit blockage of natural drainage.

4.4.a.ii.E. Construction on Lots. No excavation for stone, gravel, sand, earth or any mineral shall be on any Lot except to the minimum extent required to allow for the construction of a Dwelling, garage, guest house, other allowed structures, swimming pools, tennis courts, driveway, and road servicing any such Dwelling house. The natural grade and topography of any Lot shall not be altered or changed in any way except to the minimum extent required to allow for the construction of a Dwelling, garage, guest house, other allowed structures, swimming pools and tennis courts and the driveway servicing said house.

4.4.a.ii.F. Garages. Unless a specific exception is made by the ARC, garages shall be attached to the dwelling house.

4.4.a.ii.G. Tennis Courts and Swimming Pools. All tennis courts and swimming pools will be located upon the Lots or screened so as to be not visible from any Common Rights-of-Way or other Lot and will have appropriate fencing surrounding them especially in the case of swimming pools so as to not create a hazard.

4.4.a.iii Review by Architectural Review Committee (ARC). No dwelling, building, fence, wall, or other structure or improvement of any kind or nature shall be commenced, erected, replaced, or maintained upon any Lot, nor shall any exterior addition to or alteration thereto be made until the plans and specifications showing the nature, kind, shape, height, materials, color, and location thereof, as well as plans for landscaping, the cutting of trees larger than four (4) inches in diameter, at a height of four (4') feet above the ground, the location of driveways, the height and location of antennae for radio or television and the location of water and sewerage facilities shall have been submitted to and approved in writing, as to harmony

of external design and location in relation to surrounding structures, vegetation, views, and topography, by the Architectural Review Committee (ARC). The ARC must review all such plans so submitted as set forth below. No cutting, landscaping or other alteration of the natural vegetation, trees, and ground cover below the ten (10) foot contour line shall be commenced without the prior approval of the ARC.

In the event the ARC shall approve plans subject to the effectuation of such changes therein as may be specified by the ARC, the person submitting the plans shall deliver to the ARC a copy of the final plans of the construction or erection contemplated by the plans as soon as practicable after the preparation thereof, which final plans shall reflect the changes specified by the ARC with respect to the originally submitted plans.

Once construction of improvements is started on any Lot, the exterior of all such improvements must be completed within six (6) months from commencement.

4.4.a.iv.A (1) Content of Plans. As a minimum, the plans should include the nature, kind, shape, height, materials, and location of any structure (including any anticipated landscaping), the location and size of driveways and parking areas, the height and location of antenna(e) for radio and television and the location of water and sewerage facilities. Any plans which do not set forth sufficient detail to enable the ARC to approve or disapprove the same shall be returned to the person submitted the same, who may later resubmit revised plans to the ARC after the inclusion of the requested detail.

4.4.a.iv.A. (2) Preliminary Submission. The Association, any Owner or any person considering the purchase of a Lot may at any time submit to the ARC a description, rough sketches or preliminary plans of a proposed structure or improvements thereon and request of the ARC an opinion as to the likelihood of approval by the ARC, as provided herein, of plans containing the substance of such description, sketches or plans.

4.4.a.iv.A. (3) Procedure for Submission. Plans shall be deemed to have been submitted to and received by the ARC if deposited in the mail, as registered or certified mail, postage prepaid, and addressed to the “Architectural Review Committee” in accordance with the provisions of Section 8.5; provided that for the purpose of determining the commencement of the sixty (60) day period in Section 4.4a.iv.B.(2), notices shall be deemed received when actually received by the ARC.

#### 4.4.a.iv.B Review Guidelines

4.4.a.iv.B. (1) General. Any ARC determination as to the approval or disapproval of plans submitted under this Article shall be in light of the general architectural policy contained in Section 4.4.a.i.A., the other pertinent sections of this Article IV and including, but not limited to the policies set forth in Article I together with any other criteria as established by the ARC from time to time as it deems necessary

or desirable in order to most effectively implement the foregoing policy and guidelines and restrictions.

4.4.a.iv.B. (2) Automatic Approvals and Certificates of Approval. In the event the ARC shall fail to approve or disapprove the design and location of any proposed improvements within sixty (60) days after receipt by registered or certified mail of plans and specifications, such plans and specifications shall be deemed to have been approved, unless within thirty (30) days thereafter ten (10) Lot Owners file a written notice of protest with the Dukes County Registry of Deeds. In the event that such notice of protest is filed, then the ARC must review the plans and specifications or they are deemed disapproved. The ARC, on request, shall furnish a certificate of approval, recordable in form, to any Owner whose plans have been approved and who have built in conformity with such plans.

4.4.a.iv.B. (3) Disapprovals and Variances. The ARC may refuse to approve the design and location of an improvement because it violates one of these policies, guidelines or restrictions, or because the proposed improvement will disrupt the site or fail to fit harmoniously into the landscape. If approval is so refused, the ARC must furnish the Owner with the specific reasons for the refusal, as well as with the specific changes necessary to ensure that the improvement would be approved. The ARC may grant a variance provided it will not be contrary to these policies, guidelines or restrictions, that the situation justifying the variance is peculiar to the Lot and to the improvement in question and that it will not adversely affect other Lots.

4.4.a.iv.C. Inspection; Completion of Exterior; Certificates. Prior to the completion of any construction or erection contemplated by the plans, any member or duly authorized agent of the ARC shall have the right, at any time and from time to time, during reasonable hours, to enter and inspect a structure in order to determine the extent of compliance with the plans or final plans subsequently filed, as the case may be. The exterior construction of any structure contemplated by the plans and situated upon a Lot shall be completed within twelve (12) months after the commencement of the construction or erection contemplated by the plans (excluding from such period any period during which construction shall be prevented or hindered by war, governmental regulations, strikes, casualties or other causes beyond the control of the Owner of the Lot), and, if not, then the Association, acting through its agents and/or employees, shall have the right, after notice as provided in Section 4.3.a.vii.A, in its discretion, to either remove, or to complete the exterior construction of, the structure without further notice to the Owner of the Lot, provided that as between the alternatives of removal and completion the Association's Board of Directors shall effect only that alternative it reasonably believes to be the less costly of the two. If at any time either the ARC or the Association, acting through its agents and/or employees, exercises any rights granted to either by this Section 4.4.a.iv.C., (i) neither the ARC nor any member or any duly authorized agent thereof, nor the Association or any duly authorized agent and/or employee thereof, shall be liable for trespass to the Owner of the Lot upon which the structure is situated as a result of any entry upon such property, and (ii) the Owner of any Lot with respect to which the Association, acting through its duly authorized agents

and/or employees, shall have effected the removal or the completion of a structure, shall reimburse the Association for any costs sustained by it in effecting said action, to secure the reimbursement of which the Association shall have both a lien upon such Lot and a personal claim against the Owner thereof, each of which may be enforced as if the foregoing costs constituted assessments of the Association, payment of which was in default, all as provided in Article VII, and each of which shall be of the same nature as the lien and claim described in Section 7.7. Upon the written request of an Owner of any Lot, the ARC shall promptly issue to such person a certificate signed by a member of the ARC and in a form suitable for filing of record, stating that there has been full compliance with the plans as finally approved by the ARC pursuant to Sections 4.4.a.iii. or 4.4.a.iv.B., and that such construction or erection conforms thereto if the ARC finds such to be the case, and any certificate shall be conclusive evidence of such compliance. At all times during construction, the Lot owner shall be responsible and liable for, and shall avoid, if at all possible, the collection of, or washing on to the Common Rights-of-Way of any mud, sand, debris or building materials. In addition, the Owner shall be responsible for any damage done to the Common Property by heavy machinery used in the construction or maintenance of his Lot.

4.4.a.iv.D Membership of ARC. The ARC shall consist of the Directors from time to time of the Association, or a committee of three (3) or more persons appointed by said Directors, which committee (hereinafter included within the meaning of the term "ARC") shall at all times be deemed an agent acting on behalf of said Directors. The ARC shall at all times, if feasible, have as one of its members a member of the design profession who shall, to the greatest extent possible, have a substantial contact with the Property, whether by reason of ownership of a Lot, professional consultation as to the construction of structures on the Property, or otherwise. The ARC may appoint a representative to act on the ARC's behalf on any matters, except that any person submitting plans to the ARC may request that said plans be reviewed and approved or disapproved by the ARC as a whole, even if a representative shall at that time have been appointed to act on the ARC's behalf in reviewing and approving or disapproving plans.

4.4.a.iv.E ARC Rules. The ARC may, from time to time adopt, amend and repeal by unanimous vote, rules and regulations to be known as The "Architectural Review Committee Rules".

4.4.b. Access and Utility Easements. Each Lot shall have the benefit of: (1) an appurtenant easement (which shall be the sole access for each Lot) to use the Common Rights-of-Way, the Pohogonot Road and the Edgartown Water Company Easement for passage by and means to and from the Edgartown-West Tisbury Road, a public way, subject to such restrictions as the Association may from time to time impose to reasonable speed and travel for the common good; and (2) an appurtenant easement to tie into the utility lines belonging to the Declarant situated in the Common Rights-of-Way and to install and maintain utility lines for the transmission of electrical power and communication to service such Lots.

4.4.b.i Additional Easements Licenses and Rights. The Association shall have the right to grant to itself and/or others such further easements, licenses and rights in the Common Property, Common Rights-of-Way and the Edgartown Water Company Easement as it may in its discretion determine necessary.

4.4.b.ii. Additional Reservation of Easement. The Association shall have the right to install and maintain all public utilities, in, over, under, along and upon the Common Rights-of-Way, the Edgartown Water Company Easement, strips of land twenty (20) feet in width along all Lot boundary lines shown on Plan No. 1, Plan No. 2, Plan No. 3 and Plan No. 4 and strips of land ten (10) feet in width on all Lots (provided however that such right (ten (10') foot strips) will not unreasonably interfere with any structures existing on the Lot or with the Owner's occupancy of the Lot) and anchors and guys to support the lines in said Common Rights-of-Way, the Edgartown Water Company Easement, strips of land twenty (20) feet in width along all Lot boundary lines shown on Plan No. 1, Plan No. 2, Plan No. 3 and Plan No. 4 and strips of land ten (10) feet in width on all Lots (provided however that such right (ten (10') foot strips) will not unreasonably interfere with any structures existing on the Lot or with the Owner's occupancy of the Lot). The Association shall have the right to grant easements to public service corporations for the installation and maintenance of necessary equipment in, under and upon strips of land twenty (20) feet in width abutting said Common Rights-of-Way. The Association shall also have the right to grant easements to Public Service Corporations for the installation and maintenance of such public utilities, and other necessary equipment including transformer pads, transformers and lines running to them in, under and upon strips of land twenty (20) feet in width along all Lot boundary lines shown on Plan No. 1, Plan No. 2, Plan No. 3 and Plan No. 4 and strips of land ten (10) feet in width on all lots (provided however that such right (ten (10') foot strips will not unreasonably interfere with any structures existing on the Lot or with the Owner's occupancy of the Lot). The Association shall hold the record title to all public utilities on said strips of Land, Common Rights-of-Way, the Edgartown Water Company Easement, Common Property and Lots, including the underground service cable.

4.4.b.iii. Authority. The Association shall exercise the rights set forth in Sections 4.4.b.i and 4.4.b.ii only after first obtaining the approval of its Board of Directors.

4.5. Additional Restrictions.

4.5.a. Unregistered Vehicles, Equipment, and Materials. No unregistered vehicles, equipment or materials shall be placed or stored on any Lot except:

4.5.a.i Equipment and Materials Allowed. Equipment or materials for use in connection with the construction or maintenance of a dwelling or amenities appurtenant thereto and permitted hereunder upon a Lot shall be allowed, except that after thirty (30) days the same shall require approval of the ARC, and unregistered vehicles, equipment and materials not visible from any point outside the boundaries of the Lot.

4.5.b. Mobile Homes and Commercial Vehicles. No mobile home, either with or without wheels, shall be permitted upon a Lot. No commercial vehicle larger than ¾ ton shall be placed or stored on any Lot for a period of more than 96 consecutive hours, unless it is stored in a garage.

4.5.c. Fences. No fence shall be constructed along the property lines of a Lot unless the design of such fence shall have been approved by the ARC. In considering such design, the ARC shall give preference to fences designed to complement the woodland surroundings and the contours of the Property.

4.5.d. Lighting. Any exterior lighting or solar panels installed on any Lot shall be installed and operated in such manner as to prevent offensive glare or illumination beyond the boundary lines of the Lot and shall have prior approval of the ARC.

4.5.e. Signs. No signs shall be permitted on any Lot except for one sign not over 1-1/2 square feet in area, indicating at the Owner's option, the Owner's name, and/or the name and street address of the Lot. Signs designating property for sale or rent shall need the written approval of the ARC or the Directors of the Association.

4.5.f. Garbage and Refuse Disposal. All garbage, trash and rubbish placed outdoors shall be kept in covered containers protected from animals and screened from view outside the boundaries of the Lot, and in no event shall garbage, trash and rubbish be placed by or on the Common Rights-of-Ways so as to create a nuisance.

4.5.g. Clothes Lines. No exterior laundry drying facilities shall be placed on a Lot unless they are screened from view outside the boundaries of the Lot.

4.5.h. Nuisances. No improper, offensive, annoying or unlawful use shall be made of the premises conveyed hereby or any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed; provided that application for minor or unsubstantial variances may be made; provided further that notice of any such application shall be given to all other Lot Owners within said Property.

4.5.i. Animals. Dogs, cats or other domesticated household pets may be kept; provided that they are not kept, bred, or maintained for any commercial purpose, unless previously approved by the ARC. Any other animal, livestock, or poultry may be raised, bred, or kept only upon the prior written approval of the ARC.

4.5.j. Yard Sales Etc. There shall not be conducted or allowed on the Property conveyed hereby any yard sale, fair, exhibition, festival, show, or other activity that attracts or is intended to attract, divert or collect a large number of persons.

4.5.k. Hunting. The Board of Directors of the Association reserves the right to restrict or prohibit any hunting or trapping upon any Lot or Common Property.

4.5.l. Trailers. Trailers, camper vehicles, camping trailers, recreational vehicles and other mobile living quarters are not permitted. Boats may not be lived on and when taken out of the water must be stored within an enclosed space not visible from any other Lot or Common Property.

4.5.m. Electrical Services. All electrical service, if on a pedestal by the road shall be shielded from view by means of shrubs or other planting and if attached to a structure shall be on a side of said structure not visible from the Common Rights-of-Way. All utilities shall be installed underground.

4.5.n. Piers. Insofar as any owner may be able to install an offshore mooring, floating pier, or permanent pier in or near the waters of Edgartown Great Pond under applicable state or local law, nevertheless, only one offshore mooring or floating pier in Edgartown Great Pond shall be permitted to be installed and maintained for each Lot within the Property. In any event, no permanent pier may be erected on any Lot that has frontage on Edgartown Great Pond. Floating piers and offshore moorings shall not be installed without the prior written approval of the ARC as to the location and design thereof.

4.5.o. Septic Systems. To insure proper function and avoid backups, clogging and bacterial contamination of the ground water and Edgartown Great Pond, the ARC reserves the right to require any Owner to show proof of inspection and, pumping when necessary, of the sewage disposal systems upon any Lot.

4.6 Compliance Committee. The Association, shall elect from its members three (3) individuals for a period of one (1) year (each) to form a committee to be known as the Compliance Committee (CC). Said Committee shall be initially responsible for enforcing and maintaining the requirements of this Declaration as to sightliness and appearance of any Lot or Property covered by this Declaration. The CC shall notify in writing by registered or certified mail, any Owner in violation of these standards of the specific violation. Said Owner shall then have thirty (30) days from the time of receipt of notice to respond. If no response is received, the Board of Directors of the Association shall then notify the said Owner who will then have thirty (30) days to respond or propose corrective measures. If no action or response is taken within the second thirty (30) day period, the Board of Directors of the Association may proceed under Section 4.3.a.vii or in the alternative shall have the power to refer the matter to counsel without further notice to said Owner for legal action. Any attorney's fees, costs or expenses incurred shall be the responsibility of the said Owner if he shall be found to be in violation of the Declaration by a Court of competent jurisdiction.

## ARTICLE V

### BOLDWATER RESIDENTS ASSOCIATION, INC.



5.1. The Association. BoldWater Residents Association, Inc. (hereinafter called the Association) is a non-profit Massachusetts corporation, organized under provisions of Chapter 180 of the Massachusetts General Laws, charged with the duties and invested with the powers prescribed by law and set forth in the Articles, By-Laws and this and any Supplementary Declaration. Neither the Articles nor By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with the provisions of this and any Supplementary Declaration.

## MEMBERSHIP

5.2. Qualifications, Rights, and Duties. Every Owner shall be a member of the Association, and one Membership shall be appurtenant to each Lot. The qualifications of such Membership and the rights, duties, privileges and liabilities of members shall be as set forth in this and any Supplementary Declaration and in the By-Laws of the Association.

5.3. Voting. Each membership (i.e., each Lot) shall be entitled to one vote, regardless of the number of owners of such Lot and regardless of the number of Lots which may be owned by the same person or persons; provided, however, that;

5.3.i. Each Membership shall be held and exercised as a unit and shall not be divided among several owners of any Lot. To that end, whenever any Lot 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 of such Lot shall be authorized and entitled to cast votes, execute instruments and otherwise exercise the rights appertaining to such Lot hereunder, and (b) notify the Secretary of the Association of such designation by a notice in writing signed by all of the record owners of such parcel. Any such designation shall take effect upon receipt by the Secretary 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 Secretary may designate any one such owner for such purpose;

5.3.ii. Voting at a meeting may be either in person or by proxy. No vote taken at a meeting shall take effect for the purposes hereof unless a notice of the aforesaid meeting of Owners sent in compliance with Section 8.5 setting forth the matters to be considered at the meeting shall have been delivered to each owner at least twenty (20) days prior to the aforesaid meeting. No written consent of the Owners shall be effective until twenty (20) days after such notice has been delivered to each Owner.

5.4. Duties of the Corporation. The Association shall have the obligation, subject to and in accordance with the provisions of this Declaration, the Articles and the By-Laws to perform the following duties for the benefit of the Owners of Lots.

5.4.A. Operation of Community and Vehicular Access Areas. To operate and maintain or provide for the operation and maintenance of all Common Property and to maintain the Common Rights-of-Way and the Edgartown Water Company Easement until such time as they are accepted by the Town of Edgartown.

5.4.B. Payment of Taxes. To pay all real property taxes and assessments levied upon the property owned by the Association and the Edgartown Water Company Easement. Such taxes and assessments may be contested or compromised by the Association.

5.4.C. Public Service. To contract for or provide (to the extent adequate services are not provided for by a public authority) such grounds maintenance, snowplowing, service and other services and facilities of a public or quasi-public nature as may be deemed necessary or desirable for the effectuation of the purposes of this and any Supplementary Declaration. In connection with the provision of such facilities and services, the Association may contract with or delegate its duties to any public authority, governmental body or private corporation or entity organized for such purposes.

5.4.D. Insurance. To obtain and maintain in force such insurance as the Board of Directors shall deem necessary to protect the Association from loss by reason of fire or other casualty and from liability for personal injury and property damage and to obtain and maintain such fidelity and other bonds as the Board of Directors shall deem appropriate to protect the Association.

5.4.E. Other. To carry out the duties of the Association as set forth in this and any Supplementary Declaration, the Articles and the By-Laws.

5.5. Powers and Authority of the Association. The Association shall have all the powers of a non-profit corporation organized under Chapter 180 of the General Laws of the Commonwealth of Massachusetts, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the By-Laws and this and any Supplementary Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of this and any Supplementary Declaration, the Articles and the By-Laws, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. Without in any way limiting the generality of the foregoing provisions, the Association shall have the power and authority at any time;

5.5.A. Assessments. To levy assessments on the Owners of Lots, and to receive and collect payment of such assessments, in accordance with the provisions of Article VII hereof.

5.5.B. Easements and Rights-of-Way. To grant easements and rights-of-way, such fee titles as may be required by governmental agencies or utility companies, for the purpose of constructing, erecting, operating or maintaining (1) the streets and ways comprised in the Common Rights-of-Way, the Edgartown Water Company Easement and (2) pipes, lines, cables, conduits and other facilities for the provision of water, electric, telephone, drainage, sewage disposal and other utility services in, on, under and through the Common Property, and the Edgartown Water Company Easement.

5.5.C. Employment of Agents. To employ a manager and such other employee and attorneys as are necessary to carry out the responsibilities and duties of the Association.

5.6. BoldWater Rules

5.6.A. Rulemaking Power. Subject to the provisions of this and any Supplementary Declaration, the Board of Directors of the Association may from time to time adopt, amend and repeal rules and regulations to be known as “BoldWater Rules”, governing, among other things, use of any Common Property under the jurisdiction of the Association. Said rules may restrict and govern the use of the Common Property. Said rules may also include parking restrictions and limitation, limitations upon vehicular travel, restrictions on the type or types of vehicles which may be permitted to enter or use such Common Property, and restrictions on the maintenance or landscaping or other improvements on any Lot which may obstruct the vision of motorists or which create a hazard for vehicular or pedestrian traffic.

5.6.B. New Recordation of Rules. A copy of the BoldWater Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Lot owner and may, but need not be recorded or Filed of Record. Upon such mailing, other delivery or recordation and filing, said BoldWater Rules shall have the same force and effect as if they were set forth in and were a part of this and any Supplementary Declaration.

5.7. Liability of Board Members, Officers, and Committee Members. No member of the Board, Officers, Committee Members, or other employee of the Association shall be personally liable to any owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board of Directors, the Officers, Committee Members, or any other representative or employees of the Association or the Architectural Review Committee, except where resulting from the willful misconduct of the Director, Officers, Committee Member or other employees.

ARTICLE VI  
RIGHTS OF OWNERS IN COMMON PROPERTY

6.1. Owners’ Rights and Easements of Enjoyment. Subject to the provisions of Section 4.2., 4.4., 6.2. and 6.3., and to reasonable rules and regulations adopted by the Association’s Board of Directors pursuant to Section 5.6. of this Declaration, every Owner shall have a right and easement of enjoyment in and to the Common Property. Said right and easement shall be appurtenant to every Lot and shall pass to any subsequent Owner thereof. Nothing herein shall be construed to prevent an Owner from extending his aforesaid right and easement of enjoyment to members of his family, his guests, and tenants, subject to the By-Laws and any published rules and regulations of the Association.

6.2. Title to Common Property. The fee title to the Common Property shall be held by the Association for the benefit of the Owners. The Association with the Approval of the Owners may dedicate or transfer all or any part of any Common Rights-of-Way, or interest therein, to any public agency or governmental authority for use as a public right-of-way or a public road, subject to such conditions as may be agreed upon by the Association, with the Approval of the Owners, and such agency or authority, including without limitation the condition that any covenants, restrictions, reservations, easements, charges and liens applicable to any such Common Right-of-Way pursuant to this and any Supplementary Declaration shall be of no force and effect after the aforesaid dedication or transfer, except that no rights or interest in or with respect to (i) any utility easement reserved to the Association or the Owners, pursuant to Section 4.4.b., 4.4.b.i. and 4.4.b.ii., whether or not finally laid out, or (ii) any utility line, service and/or drainage easement and access easement in favor of any Owner and the Association pursuant to Section 4.2.c., shall be in any way impaired without the consent (which shall be filed of record) of the then holder of such easement.

6.3. Extent of Owner's Easements. In addition to the protective covenants and restrictions set forth in Sections 4.2. and 4.4. and the provisions of Section 6.2., the right and easement of enjoyment hereby created in favor of each Owner in and to the Common Property shall be subject to the following:

6.3.a. Borrowing and Mortgage in Common Property. The right of the Association to mortgage the Common Property or any part thereof in order to borrow money for the purpose of maintaining and/or improving the Common Property (including construction of facilities thereon), subject to Approval of the Owners. No such approval shall take effect for the purposes hereof unless (i) the notice to the Owners required by Section 5.3.ii shall set forth the purposes of the mortgage, the terms thereof (including the lender's rights upon default, as hereinafter set forth) and a description of the Common Property to be mortgaged and (ii) a certificate of the clerk, or an assistant clerk, of the Association attesting to the adoption and continuing effectiveness of said approval shall have been Filed of Record. In the event of a default upon any such mortgage, the lender's rights shall be limited to a right, after taking possession of the mortgaged Common Property, to charge such admission and other fees (all of which shall be used to satisfy the mortgage debt) as shall have been specified by the terms of the mortgage deed until the mortgage debt is satisfied, whereupon full possession of such Common Property shall be returned to the Association, and all rights of the Owners hereunder shall thereupon be restored in full.

6.3.b. Transfer or Dedication of Common Property.

6.3.b.i. Common Property. The right of the Association with the Approval the Owners to dedicate or transfer all or any part of the Common Property owned by BoldWater, Incorporated or the Association, as the case may be, or any interest therein, to any charitable or public agency or governmental authority or utility, subject to such conditions as may be agreed upon by the Association and such agency, authority, or

utility, including without limitation the condition that any covenants, restrictions, reservations, easements, charges and liens applicable to said Common Property pursuant to this or any Supplementary Declaration shall be of no force and effect after said dedication or transfer, except that no rights or interest in or with respect to (A) any utility easement granted or established pursuant to Section 4.4.b.i. and 4.4.b.ii., whether or not finally laid out, or (B) any utility line, sewerage and/or drainage easement in favor of any Owner pursuant to Section 4.2.c. and 4.4.b., shall be in any way impaired without the consent (which shall be Filed of Record) of the then holder of such easement. No approval under this Section shall take effect unless the notice required by Section 5.3.ii contains a statement as to the proposed dedication or transfer and a full description of the conditions thereof and (ii) a certificate of the clerk, or an assistant clerk of the Association attesting to the adoption and continuing effectiveness of said approval shall have been Filed of Record.

6.3.b.ii. Dissolution. The right of the Owners to dissolve the Association, and, upon such dissolution, the right of the Association to transfer, grant, convey and assign all of the Common Property owned by it to a corporation, association, trust or other organization (none of which shall be organized for profit and not part of the net income of any of which shall inure to the benefit of and upon the dissolution thereof no part of any of the property thereof shall be distributable to, any member or beneficiary). But in any such event all such Common Property shall be held for the exclusive use and enjoyment of the Owners and subject to conditions which are nearly as practicable as the same as those to which the Common Property is or shall be subject under this or any Supplementary Declaration.

6.3.b.iii. Miscellaneous. With respect to any dedication, transfer, grant, conveyance or assignment referred to in Section 6.3.b.i and 6.3.b.ii., to the extent that the effect of any conditions applicable to the Common Property after any aforesaid dedication, transfer, grant, conveyance or assignment is inconsistent with any covenants, restrictions, reservations, easements, charges and liens applicable to the Common Property pursuant to this or any Supplementary Declaration, such conditions shall be deemed superior to any of said covenants, restrictions, reservations, easements, charges or liens as of the time of the dedication, transfer, grant, conveyance or assignment and shall thereafter be deemed to constitute an exception to said covenants, restrictions, reservations, easements, charges and liens.

6.3.c. Conservation Easements. The right of the Association (not in limitation of the rights expressed in Section 6.3.b), with the Approval of the Owners, to impose conservation restrictions conforming to the provisions of Chapter 184, sections 26 and 31-33, inclusive, of the General Laws of the Commonwealth of Massachusetts.

6.3.d. Suspension of Privileges. The right of the Association, pursuant to the provisions of its Articles of Organization or By-Laws, or both, to suspend the right and easement of enjoyment of any Owner in and to any Common Property (i) for any period during which any assessment payment shall be

deemed in default as determined under Section 7.7.a., and (ii) for any period, not to exceed one (1) year, for any infraction of its published rules and regulations adopted pursuant to the Association's By-Laws or for the violation of any of the Covenants and Restrictions or Supplementary Covenant and Restrictions.

## ARTICLE VII

### COVENANTS FOR MAINTENANCE ASSESSMENTS

7.1 Creation of the Lien, and Personal Obligation, Relating to Assessments. Each Owner, for each Lot owned, by acceptance of a deed therefor, whether or not the conditions of this Article 7 shall be so expressed in any such deed or other conveyance or in the Supplementary Declaration with respect to such added Lot, shall be deemed to covenant to pay to the Association an annual maintenance assessment or charge (hereinafter in this Article called "assessment"), which shall be fixed, established and collected from time to time as hereinafter provided in this Article 7. The assessment, together with interest thereon and costs of collection thereof as hereinafter provided, (a) shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made, and (b) shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment become due and payable under Section 7.5.

7.2 Purpose of Assessment. The assessment shall be used exclusively for the purpose of promoting the protection, health, safety and welfare of the Owners and in particular for the improvement and maintenance of properties, services and Common Rights-of-Way, and the Edgartown Water Company Easement devoted to this purpose and related to the use and enjoyment of the Common Property including, but not limited to, (i) the payment of taxes and insurance thereon, (ii) repair and replacement of the Common Rights-of-Way, and the Edgartown Water Company Easement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof, and (iii) the expenses of collecting the assessments and enforcing this Declaration and any Supplementary Declaration.

7.3 Rate and Amount of Assessment.

7.3.a.i. Initial Rate. The assessment for each Lot shall be at a rate set for each fiscal assessment year by the Directors of the Association in accordance with the provisions of this Article 7. A fiscal assessment year shall commence January 1. The rate for the fiscal assessment year commencing January 1, 1987 shall be TWO HUNDRED (\$200.00) DOLLARS for each Lot to be increased at year's end if a pro rata share, as determined under Section 7.3.b. hereof, of the expenses of the Association shall exceed TWO HUNDRED (\$200.00) DOLLARS, then that amount overpaid shall be credited against the next year's assessment.

7.3.a.ii. Changes in Rate. After the initial fiscal assessment year, the rate of the assessment for each fiscal assessment year commencing January 1, 1988 shall be

initially the rate, as adjusted, for the preceding fiscal assessment year and shall be adjusted at year end (if necessary) to be the pro rata share of the Association's expenses for such year.

7.3.b. Certain Definitions. The pro rata share of each Lot and of each Owner, as the term pro rata share is used in Section 7.3.a. hereof, is determined by dividing the Association's expenses during the fiscal assessment year by the sum of the total number of Lots which are subject to this Declaration during such year. Notwithstanding the foregoing, the pro rata share of a Lot shall not exceed one thirty-seventh (1/37) of such expenses, unless other Lots are added to the Property pursuant to Article 3 or by reason of a subdivision in accordance with Section 4.3.a.viii in which event the pro rata share of a Lot shall not exceed a fraction, the numerator of which is one and the denominator is the total number of Lots subject to this and any Supplementary Declaration.

Expenses as used in Section 7.3.a.i and 7.3.a.ii. hereof and in this Section 7.3.b shall mean and include all expenses and costs which the Association incurs (except for those for which special assessments are made under Section 7.3.c hereof) in its operations, including without limitation, the salaries of all employees, legal, accounting, engineering and other professional costs, costs of architectural consultants, ordinary overhead costs, and all costs which it incurs in carrying out its obligations under this and any Supplementary Declaration.

7.3.c. Special Assessments for Emergency Repairs or Capital Improvement. In addition to the annual assessments, applicable to that year only, and to be paid by the Owners, the Association may levy in any fiscal assessment year a special assessment applicable to that year only, and to be paid by the Owners for the purpose of defraying, in whole or in part, the cost of any emergency repairs or the making or replacement of a described capital improvement upon the Common Property, or the Edgartown Water Company Easement including the necessary fixtures and personal property related thereto. Any such special assessment shall be authorized by the Owners in accordance with the provisions set forth in Section 7.4. below. Otherwise, the special assessment shall have the same standing as an annual assessment.

7.4 Authorization of Special Assessments. Any special assessments requiring the authorization of the Owners pursuant to Section 7.3.c. shall be subject to the Approval of the Owners. No such approval shall take effect for the purposes hereof unless (i) the notice required by Section 5.3.ii shall state the purposes for which the assessment is required and the amount thereof and (ii) a certificate of the clerk, or an assistant clerk, of the Association attesting to the adoption and continuing effectiveness of said vote shall have been Filed of Record.

7.5 Commencement and Due Dates of Assessments. The first assessment shall commence on and be due and payable upon January 1, 1987. Such first assessment shall apply to the balance of the fiscal assessment year ending the first December 31 following the commencement date. The assessment for the second and all succeeding

fiscal assessment years shall become due and payable on the 1<sup>st</sup> day of January of each such year. The due date of any special assessment under Section 7.3.c. hereof shall be fixed in the vote authorizing such assessment. Payment of all adjustments of assessments shall be made within thirty days of receipt of notice thereof.

7.6. Roster and Notice of Assessments; Certificate as to Assessment Payments.

7.6.a. Roster and Notice of Assessments. At least thirty (30) days prior to the due date of any assessment pursuant to Section 7.5., the Directors of the Association shall (i) prepare a roster of the Lots and assessments applicable thereto and shall cause the same to be kept in the office of the Association open to inspection by every owner, and (ii) send to every Owner written notice of the assessments payable by him.

7.6.b. Certificate as to Payment of Assessments. The Directors of the Association shall, upon demand at any time by any owner, furnish to such Owner a certificate in writing signed by a duly authorized officer of the Association and in a form suitable for filing of record stating whether all assessments payable by said Owner have been paid, and, if such is not the case, stating the nature, amount and due date of any unpaid assessments. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid, and the signature of such officer shall be conclusive evidence of his authority to sign and delivery such certificate.

7.7. Nonpayment of Assessments.

7.7.a. Lien and Personal Obligation of Owner. If any Owner fails to pay any assessment when due pursuant to Section 7.5., then the obligation to pay the same shall from that time be deemed in default and shall, together with interest and cost of collection as provided in section 7.7.b., become a continuing lien upon the Lot with respect to which the assessment is due. In addition, the payment of the assessment, together with interest and costs of collection as provided in Section 7.7.b., shall become and remain the personal obligation of the Owner of the Lot for such period of time as may be permitted by law and shall not pass to the successors in title of the Lot unless expressly assumed by them.

7.7.b. Enforcement. If any Owner fails to pay an assessment within thirty (30) days after its due date as set forth in Section 7.5., the assessment shall bear interest from the due date at the rate of fifteen (15%) percent per year. In order to enforce payment of the assessment and interest the Association may, in addition to any other remedy afforded to it by this or any Supplementary Declaration or By-law, foreclose its lien against the Lot in any manner provided by the laws of the Commonwealth of Massachusetts for the foreclosure of mortgages or any proceeding in lieu thereof, or bring an action at law against the Owner with respect to his personal obligation of payment, or both, and in any such event, there shall be added to the amount of the assessment and interest thereon the costs of collection thereof, including reasonable attorneys' fees and any other costs required in order to bring either or both of the aforesaid actions.



7.7.c. Subordination of Lien to Mortgage. The lien provided for in Section 7.7.a shall be subordinate to the lien of any mortgage or mortgages existing upon the properties at the time such lien comes into existence.

7.7d. Exempt Property. The following property subject to this and any Supplementary Declaration shall be exempt from any assessments, charges and liens created herein: all properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use, and all Common Property.

## ARTICLE VIII

### GENERAL PROVISIONS

8.1 Liability. The Association shall indemnify and hold harmless the Board of Directors, Officers of the Association, Committee Members, and the Declarant from and against any loss, liability and expense, including reasonable attorneys' fees, arising out of or in connection with any action taken by the Board of Directors, Officers of the Association, Committee Members, or the Declarant as authorized by this and of any Supplementary Declaration, except where resulting from the willful misconduct of the Directors, Officers, Committee Members or the Declarant. In the event that the Association retains counsel to enforce these Covenants and Restrictions by negotiation or civil action, against a Lot Owner, said Lot Owner shall be responsible, for any attorney's fees, expenses and costs incurred, if the Lot Owner is found to be in violation of said Covenants and Restrictions by a Court of competent jurisdiction. The indemnity hereunder is in addition to any indemnity available under the Articles of Organization and Bylaws of the Association.

8.2. Enforcement. The provisions hereof and of any Supplementary Declaration may be enforced by the Association, and by its successors in interest and assigns, and by the Owner(s) from time to time of any Lot, through civil action in any court of competent jurisdiction, or by administrative proceeding before any appropriate authority.

The remedies hereby specified are cumulative, and the specification of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law, in equity, or under any statute. No delay or failure on the part of an aggrieved party to act on available remedy in respect of a violation of any of these Covenants and Restrictions and any Supplementary Covenant and Restriction shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

8.3. Severability. Invalidation of any one or more provisions hereof by court judgment or court order, state, rules or regulations shall not affect the remaining provisions which shall remain in full force and effect.

8.4. Amendment. This and any Supplementary Declaration may be amended from time to time by written agreement executed and acknowledged by a two-thirds (2/3) majority of the Owners from time to time of the Lots; and any such amendment shall become effective prospectively upon recording of same in the Dukes County Registry of Deeds. And unless so amended, modified, or abolished, these Protective Covenants and any Supplementary Covenants thereof shall affect and run with the land and shall exist and be binding upon all parties and all persons claiming under them for a term of twenty (20) years, from the date on which this instrument is Filed of Record, after which time the same may be extended for successive periods of twenty (20) years each.

8.5 Notice. Any notice or any other communication permitted or required to be sent to any Owner under the provisions of this or any Supplementary Declaration, whether by the Association, Architectural Review Committee, Compliance Committee or otherwise, shall be in writing and delivered to the last known address of the person who appears as Owner on the books of the Association at the time of such delivery. With respect to any annual or special meeting of Owners or those meetings referred to in Section 6.3.a, 6.3.b, or 7.4, (a) any notice thereof shall contain (in addition to any information or material required under the aforementioned Sections) the date, time, place and purposes of the meeting, and (b) such notice shall be deemed to have been delivered and received when deposited in the mail, postage prepaid, and addressed as aforesaid. Any notice or other communication permitted or required hereunder, other than notices of meetings of Owners as aforesaid, shall be deemed to have been delivered and received when deposited in the mail, as registered or certified mail, postage prepaid, and addressed, if to an Owner, as aforesaid, and:

if to:                BoldWater Residents Association, Inc.  
                          P.O. Box 2005  
                          One North Water Street  
                          Edgartown, Massachusetts 02539

if to:                Architectural Review Committee of the  
                          BoldWater Residents Association  
                          P.O. Box 2005  
                          One North Water Street  
                          Edgartown, Massachusetts 02539

unless a different address shall have been Filed of Record.

8.6. Fair Practices. No covenants, restrictions, reservation, easement, charge or lien contained in, or created by, this or any Supplementary Declaration shall be construed or enforced so as to discriminate against any person or persons because of race, color, religion, sex or natural origin, provided however, that nothing contained in this or any Supplementary Declaration shall require the furnishing to the general public of the use of any Common Property other than as expressly provided by this or any Supplementary Declaration, the Articles or the Association's By-laws.

8.7. Construction. References in this and any supplementary Declaration to an "Article" or a "Section" shall be to an Article or a Section hereof. Headings and titles used herein are for convenience only and shall not influence construction or interpretation. For purposes of construction, the masculine gender shall be deemed to denote the feminine or neuter genders and singular to denote the plural and the plural the singular, where the context so admits. As used herein, the term "persons" includes corporations, trusts, societies, associations and partnerships.

[signatures on the following pages]

[Signature Page for Amended, Restated and Extended  
Declaration of Protective Covenants for  
Boldwater, Incorporated, Edgartown, Massachusetts  
Covenants, Reservations, Restrictions and Easements]

Executed as a sealed instrument this      day of                      , 2003.

Owner Plan No. \_\_Lot \_\_ Area \_\_\_\_\_ sq. ft.

\_\_\_\_\_

\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

, ss

, 2003

Then personally appeared the above named  
and acknowledged the foregoing instrument to be                      free act and deed,  
before me

\_\_\_\_\_

Notary public

My commission expires: