

FORM L

**DARTMOUTH
PLANNING BOARD**
400 Slocum Road
Dartmouth, MA 02747
(508) 910-1816



DECLARATION OF TRUST

File 2 forms with the Dartmouth Planning Board. After endorsement of the Plan, the Planning Board will keep one copy and the other will be returned to the applicant, who shall record it at the Bristol County (S.D.) Registry of Deeds

“ _____ **TRUST**”

I/We, the undersigned,

of _____
(hereinafter the “Declarant”), hereby declares that he and his successors in trust will hold the drainage pond and appurtenant structures, including swales and easements, to be called “Stormwater Management Facilities; the Open Areas, and the walkways as shown on the Plan hereinafter described and to be conveyed to him as Trustee hereunder by deed to be recorded immediately following the recording of this instrument, as Trustee subject to and upon the terms and conditions hereinafter set forth and the perpetual conservation restrictions hereinafter set forth, for the sole benefit of the Beneficiaries, as hereinafter defined.

**ARTICLE I
Name of Trust**

The Trust hereby created shall be known as the

“ _____ Trust” and under that name shall all business carried on by the Trustee be conducted and shall all instruments in writing by the Trustee be executed.

**ARTICLE II
Definitions**

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

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

“Beneficiaries” have the meaning set forth in Article VI hereof.

“Common Expenses” shall mean the actual and estimated expenses and costs of the administration of the Trust, real estate taxes, fire district taxes, insurance, and the maintenance, management, and operation of the “Stormwater Management Ponds” on the Plan.

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

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

“Open Area” shall mean the parcel or parcels of land, if any, designated as “Open Space Parcels” in, and the boundaries of which are specifically described on, the Plan hereinafter referenced.

“Plan” shall mean the subdivision plan of land:

Entitled “ _____ ”

Dated _____

Prepared by _____

of _____ as amended or supplemented from time to time.

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

“Town” shall mean the Town of Dartmouth, Massachusetts.

“Transition Date” shall mean the date which occurs eighteen (18) months after the first lot is released from the Performance Covenant by the Planning Board or fifty-one percent (51%) of the Lots have been conveyed, whichever shall first occur.

“Trustee” shall mean the original Trustee and any successor Trustees.

ARTICLE III
The Trust and Its Purpose

Section 1. This trust is established for the perpetual preservation and the maintenance (per attached Maintenance Schedule marked Exhibit A) of the Open Areas, the Stormwater Management Facilities, and the walkways shown on the Plan (hereinafter the "Trust Property") and is the organization of the Lot Owners. All of the rights and powers in and with respect to the management of the use of the Trust Property are conferred upon and exercisable by the Trustee and all property, real and personal, constituting or situated upon the Trust Property, are conveyed to the Trustee of the Trustee of this Trust, IN TRUST, to manage, administer, and dispose of the same for the benefit of the Lot Owners from time to time of record.

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

ARTICLE IV
Conservation Restrictions

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

1. The dumping and placing of trash, waste, or unsightly or offensive materials
2. The excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other mineral substance in such a manner as to adversely affect the surface. This shall not apply to activities necessary for the construction and maintenance of the Stormwater Management Facilities.
3. Surface use other than agricultural, farming, forest, or outdoor recreational purposes permitting the land and water areas to remain predominantly in its natural condition.
4. Activities detrimental to drainage, flood control, water conservation, and soil conservation.
5. The erection of any building or structure other than those devoted to underground utilities, recreational uses, and structures necessary for the storage of recreational, agricultural, or grounds-keeping equipment directly related to the agricultural and recreational uses on the Open Area. The aggregate floor area for all such structures shall not exceed two percent (2%)

of the Open Area. In no event shall a structure be erected which interferes with the design and operation of the Stormwater Management Facilities.

6. All structures shall be approved as to location and design by the Planning Board.

ARTICLE V The Trustee

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

Section 2. Commencing on the Transition Date, there shall be three (3) Trustees elected by majority vote of the Lot Owners. Each Lot Owner, designated pursuant to Section 3 below, shall be entitled to one (1) vote. If the required subdivision improvements have not been completed on the Transition Date, the original Trustee shall remain in office. From and after the Transition Date, the terms of office of the Trustees shall, except as hereinafter provided, be three (3) years, and such terms shall be staggered so that the terms of one-third of the Trustees expires each year; provided that, in order to establish and maintain such staggering of terms, the terms of the persons first elected or appointed as Trustees after the Transition Date shall be one (1) year, two (2) years, and three (3) years respectively. If the original Trustee is to remain in office, the Trustees elected by the Lot Owners shall serve the three (3) year and two (2) year terms. Otherwise, the Trustees shall all be elected by majority vote of the Lot Owners, and said Trustees' terms of one (1), two (2), or three (3) years shall be determined by lot. The Trustees shall notify the Planning Board of the Town of Dartmouth in writing of changes in Office (name and mailing address of the new Trustee) at any time such a change in Office occurs.

Section 3. Whenever any of said Lots is owned of record by more than one person, the several owners of such Lot shall determine and designate which one of such owners shall be authorized and entitled to cast votes and otherwise exercise the rights appertaining to such Lot hereunder; and notify the Trustee of such designation by a written notice signed by all of the record owners of such Lot. Any such designation shall take effect immediately upon receipt of the Trustee of such notice, and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Trustee may by majority vote either designate any one of such owners for such purposes or disqualify all of such owners from voting until a notice of designation is received from such owners in the required form.

ARTICLE VI
Beneficiaries and the Beneficial Interest in the Trust

- Section 1.** The Beneficiaries of this Trust shall be the Lot Owners, each of whom shall have a Pro Rata undivided interest in the Trust property.
- Section 2.** The beneficial interest of each Lot Owner in the Trust Property shall be inseparable from the ownership of the Lot and may not be conveyed or in any way alienated or separated from said Lot.
- Section 3.** The Lot Owners and the Town are the beneficiaries of the conservation restriction imposed upon the Open Areas, Stormwater Management Facilities, and walkways by ARTICLE IV hereof, and as such individually and jointly shall have the right to enforce said restrictions by injunction or other proceeding.
- Section 4.** In the event the Trustee fails to own and maintain any portion of the Trust Property in reasonable order and condition, or fails to adhere to the conditions of approval, the Select Board of the Town of Dartmouth may serve written notice of such failure upon the Trustee or Lot Owners and shall include a demand for correction within thirty (30) days of such notice and shall state the date, time, and place, of a hearing thereof which shall be held within fourteen (14) days of such notice. If the deficiencies are not corrected, or the Town's demand modified, the Town, acting through its Select Board, may enter upon the Trust Property and maintain the same for a period of one (1) year or correct the non-compliances. Before the expiration of one year, a second public hearing shall be called by the Select Board, at which time the Trustee of the Lot Owners shall show cause why such maintenance should not continue for a succeeding year. If the Select Board determined that the need for Town maintenance no longer exists, the Select Board shall cease to maintain the Trust Property. All costs incurred by the Town for maintenance or correction of non-compliances shall be assessed against the Lot Owners and shall become a lien on those properties which may be collected and enforced in the manner fixed by the law for the collection of taxes. Notice of the lien shall be recorded in the Registry of Deeds.

ARTICLE VII
Assessments

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

- Section 1.** Each Lot Owner shall be liable for his Pro Rata share of the Common Expenses.
- Section 2.** Assessments for Common Expenses shall be made for the fiscal year annually in advance on or before the first day of November immediately preceding the year

for which the Assessments are made and at such other and additional times as in the judgment of the Trustee additional Common Expenses and Assessments are required for the proper management, maintenance, and operation of the Trust Property. The Trustee shall promptly render statements to the Lot Owners for their respective shares of such Assessments. Such annual Assessment statements shall be due and payable on the first day of January of the year in question. The Assessments shall be in the amount of the estimated Common Expenses for the fiscal year, including a reasonable allowance established by the Trustee for contingencies and reserves, less the amounts of unneeded Common Expenses account balances. If an annual Assessment shall be due upon the Assessment payment date until changed by a new Assessment.

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

Section 4. The unpaid portion of a Lot Owner's Assessment which is due shall be secured by lien upon his Lot and all appurtenances thereto, and shall be enforced in the manner provided in M.G.L. Chapter 254, §5. Such lien shall have priority over all other liens except municipal liens and first mortgages of record held by an institutional lender. Such a claim of lien shall also secure all Assessments which come due thereafter until the claim of lien is satisfied.

Section 5. Assessments and installments thereof paid on or before ten (10) days after the date when due shall not bear interest, but all sums not paid on or before ten (10) days after the date due shall, to the extent permitted by law, bear interest at the rate of one and one-half percent (1 ½%) per month, or at a rate established by the Trustee, from the date due until paid. All payments upon account shall be applied first to interest and then to the Assessment payment first due. All interest collected shall be credited to the Common Expenses account.

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

ARTICLE VIII
Compliance and Default

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

- Section 1.** Failure to comply with any of the terms and conditions of the Trust or the rules and regulations promulgated from time to time by the Trustee shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof, and which relief may be sought by the Trustee, or, if appropriate, by an aggrieved Lot Owner.
- Section 2.** Each Lot Owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness or by that of his agents, servants, employees, or invitees.
- Section 3.** In any proceeding arising because of an alleged fault by a Lot Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by court.
- Section 4.** All rights, remedies, and privileges granted herein to the Trustee or a Lot Owner shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such party by the terms herein or at law in equity.

ARTICLE IX
Bylaws

Section 1. Powers and Duties of Trustee

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

- A. To hold, operate, care for, and maintain the Open Areas, Stormwater Management Facilities, walkways, and any other Trust Property.
- B. To determine the amount of the Common Expenses, and determine and collect Assessments from Lot Owners.

- C. To notify new lot owners of the existence of this Trust, and their rights and responsibilities herein.
- D. To employ and dismiss the personnel necessary or advisable for the maintenance and operation of the Trust Property.
- E. To adopt and amend rules and regulations covering the details of the use of the Open Areas.
- F. To open, maintain, and close, bank accounts on behalf of the Trust.
- G. To obtain any insurance which may be needed or desired for the Trust Property.
- H. To make improvements to the Trust Property, subject to the limitations placed on the Trust Property by law and the approval of the subdivision by the Planning Board.
- I. To borrow money and execute contracts and instruments to which the Trust may at any time be a party and to delegate to any person or persons (including, without limitation, any other Trustee) authority to execute any and all contracts and instruments or to do any and all acts which the Trustee is authorized and empowered to do.
- J. To do any such other action as the Trustee may be specifically authorized or directed to do by the terms of this instrument.
- K. To take such action with respect to Trust Property as from time to time specifically directed by not less than seventy-five percent (75%) of the Lot Owners.
- L. No Trustee shall be required to furnish bond or to take any action which will, in the reasonable opinion of such Trustee, subject him to, or involve him in any personal liability unless first indemnified to his satisfaction.

Section 2. Expenditures

The Trustee shall expend common funds only for Common Expenses.

Section 3. Meetings

- A. Commencing on the Transition Date, the Lot Owners shall meet annually at a time and place to be designated by the Board of Trustees by written notice given to the Lot Owners at least seven (7) days prior to the date of said annual meeting. At such meeting, the Lot Owners shall elect the Trustees from their number, and shall designate which of said Trustees shall serve President, Treasurer, and as Secretary, and ratify such matters as listed in Section 4 below. Fifty percent (50%) of the Lot Owners of record shall constitute a quorum at said annual meeting, and a simple majority vote of those present shall be sufficient for the transaction of business.
- B. Other meetings of the Lot Owners may be called by the President, or ten percent (10%) of the lot owners of record, provided, however, that written notice stating the date, time, and location of such meeting shall be given at least seven (7) days before such meeting of each of the Lot Owners.

- C. The Trustees shall meet not less than quarterly at such times as the Trustees shall determine. Special meetings of the Trustees may be called by the President or any two (2) Trustees, provided, however, that written notice stating the date, time, and location of each meeting shall be given to each Trustee at least seven (7) days prior to the meeting.

Section 4. Voting

The provisions of Section 3A above shall govern voting at the Annual Meeting of the Lot Owners. The affirmative majority vote of the Trustees at any duly constituted meeting shall be sufficient for the transaction of business. A Trustee shall be present to vote. Any matters relating to Common Expenses, rules and regulations regarding the use of Trust Property, improvements to Trust Property, or borrowing money in the name of the Trust shall require not only a majority vote of the Trustees, but also a ratification vote of the Lot Owners at a duly constituted meeting of the Lot Owners.

Section 5. Inspection of Books; Reports to Lot Owners

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

Section 6. Checks, Notes, Drafts and Other Instruments

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

Section 7. Fiscal Year

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

Section 8. Removal, Resignation, and Replacement of Trustees

- A. Any Trustee hereunder may resign by written instrument signed and acknowledged by such Trustee and delivered to the remaining Trustee.
- B. Commencing on the Transition Date, any Trustee may be removed by an instrument in writing signed by not less than seventy-five percent (75%) of the Lot Owners and delivered to the Trustees.
- C. The remaining Trustees shall be empowered to appoint a replacement Trustee for the remainder of the unexpired term of any Trustee who resigns pursuant to Section 8A, is removed pursuant to Section 8B, or dies.
- D. Upon the appointment or election of any succeeding Trustee, the title to the Trust Property shall, thereupon and without the necessity of conveyance, be vested in said succeeding Trustee jointly with the remaining Trustees, if any.

Each succeeding Trustee shall have all the rights, powers, authority, and privileges as if named an original Trustee hereunder.

- E. The Trustee shall notify the Dartmouth Planning Board of any change in the membership of the Board of Trustees within thirty (30) days of such change.

ARTICLE X

Rights and Obligations of Third Parties Dealing With Trustee Limitation of Liability

- Section 1.** No person dealing with the Trustees as they then appear of record in the Registry of Deeds shall be bound to ascertain or inquire further as to the persons who are then Trustees hereunder, and such record shall be conclusive evidence of the identities of said Trustees and of any changes therein. The receipts of the Trustees, or any one or more of them, shall be effectual discharged there from to the persons paying or delivering the same, and no person from whom the Trustees, or any one or more of them, shall receive any money, property or other credit, shall be required to see the application thereof.
- Section 2.** This Declaration of Trust and any amendments thereto and any certificate herein required to be recorded, and any other certificates of the Trust and any amendments thereto and any other certificates or papers signed by said Trustee which it may be deemed desirable to record, shall be recorded with the Registry of Deeds and such record shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustee, the Trust Property, or any Beneficiary hereunder shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee, when the same shall be recorded with said Registry of Deeds, except that the Dartmouth Planning Board shall receive separate notice of any change of Trustee or change in this Declaration of Trust. Any certificate signed by a Trustee in office at the time, setting forth as facts any matters affecting the Trust and as to matters determining the authority of the Trustee to do any act, when duly acknowledged and recorded with said Registry of Deeds, shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons.
- Section 3.** No Trustee hereunder shall be liable for any error of judgment or for any loss, damage, or liability resulting from or arising out of any act or omission in good faith, but shall be responsible only for his own willful breach of trust. No Lot Owner hereunder shall be liable for any loss, injury, damage, or liability resulting from or arising out of any use of Trust Property which may coexist in an easement across his lot, but shall be responsible for his own willful breach of trust or deliberate act which interferes with use of the Trust Property without permission of the Trustees.

ARTICLE XI
Amendments and Alterations to this Declaration of Trust

- Section 1.** No amendment or alteration of any type may be made to this Declaration of Trust until after the Transition Date set forth in ARTICLE II above. Thereafter, the affirmative vote of a majority of the Trustees and not less than seventy-five percent (75%) of the Lot Owners shall be sufficient to amend, alter, add to, or change this Declaration of Trust, including, without limitation, the bylaws set forth in ARTICLE IX hereof. Notwithstanding the foregoing, none of the Conservation Restrictions set forth in ARTICLE IV or the rights in the Trust Property granted to the Town of Dartmouth in this Declaration of Trust may be abridged or in any way modified without the approval of a majority vote of the Select Board and a four-fifths affirmative vote of the Planning Board of the Town of Dartmouth. No amendment or alteration may result in a violation of any law, bylaw, or regulation, nor any condition of approval or covenant executed as a result of the approval of this subdivision, as that approval may be amended. Any amendment, alteration, addition, or change pursuant to the foregoing provisions of this Section shall become effective upon the recording with said Registry of Deeds of an instrument of amendment, alteration, addition, or change, as the case may be signed, sealed, and acknowledged by the Trustee, or by the Trustee, Select Board, and Planning Board, as the case may be, in the manner required in the Commonwealth of Massachusetts for the acknowledgement of deeds. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all prerequisites to the validity of such amendment, alteration, addition, or change, and a copy of this recorded instrument shall be delivered to the office of the Planning Board within two (2) weeks of its being recorded at said Registry of Deeds.
- Section 2.** The Trust hereby created shall terminate only upon the affirmative vote of all Trustees and the affirmative vote of the Dartmouth Select Board after public hearing pursuant to Massachusetts General Laws, Chapter 184, §32, as amended. The Planning Board shall be notified at least two (2) weeks prior to said public hearing so that it may have opportunity to participate in the proceeding. Termination does not take effect until notice of such termination, signed, sealed, and acknowledged by the Trustees and the Select Board has been recorded at said Registry of Deeds, and a copy of the recorded document is delivered to the office of the Planning Board.
- Section 3.** Upon the termination of this Trust, each Lot Owner shall own a Pro Rata undivided interest in the Trust Property in common with the other Lot Owners, free of this Trust.

ARTICLE XII
Construction, Interpretation, and Severability

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

IN WITNESS WHEREOF we have hereunto set our hands and seals below:

SIGNATURE OF DECLARANT(S)

Then personally appeared before me the above named Covenanter(s) and acknowledged the foregoing instrument to be (his/her) free act and deed.

Commonwealth of Massachusetts, Notary Public: _____

Date: _____

My Commission expires:

Accepted by the Dartmouth Planning Board on: _____
Date

Majority of the Planning Board

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

On this _____ day of _____, before me, the undersigned Notary Public,
personally appeared

as members of the Dartmouth Planning Board and together constituting a majority of the members of the Dartmouth Planning Board, each being personally known to me to be a member of the Dartmouth Planning Board, and acknowledged that they signed the foregoing document voluntarily on behalf of the Dartmouth Planning Board for its stated purpose.

Notary Public

My Commission expires: