

**"THE HEIGHTS AT HOUGHTON LANE"  
DECLARATION OF RESTRICTIONS, RESERVATION  
OF EASEMENTS AND HOMEOWNERS ASSOCIATION**

This Declaration of Restrictions and Reservations of Easements and Homeowners Association is made this 2<sup>nd</sup> day of July, 1998, by Habitech, Inc., a Massachusetts corporation, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner in fee of the land known as The Heights at Houghton Lane shown on a subdivision plan (in four sheets) of land in Boxborough and Stow, Middlesex County, Massachusetts entitled "Definitive Plan 'The Heights' at Houghton Lane in Boxborough and Stow, Mass." dated March 14, 1997, by Hayes Engineering, Inc., recorded in the Middlesex South District Registry of Deeds as Plan No. \_\_\_\_\_ of 1998 (hereinafter the "Subdivision Plan"); and

WHEREAS, Declarant desires to restrict the nature and location of the improvements which may be made on the land shown on the Subdivision Plan in order to encourage the creation of an attractive residential community and enhance values; and

WHEREAS, Declarant desires to reserve certain easements in the ways, and in the lots and other parcels of land shown on the Subdivision Plan.

NOW, THEREFORE, Declarant does hereby declare that the land shown on the Subdivision Plan shall be held subject to, and have the benefit of, the easements hereafter described and, further, that it shall be held subject to, and have the benefit of, the following PROTECTIVE COVENANTS AND RESTRICTIONS which shall run with said land and which shall remain in full force until December 31, 2007 (if any lots remain unbuilt upon at such time, then this date shall automatically be extended to a time period which expires one (1) year after houses have been constructed and

MARGINAL REFERENCE REQUESTED	
BOOK <u>28818</u>	PAGE <u>365</u>

7798

#416

SEE PLAN IN RECORD BOOK 29140 PAGE 471  
#1049

MSD 09/25/98 02:20:32  
846 17.00

occupied upon all Lots) , at which time they shall terminate unless a majority of the then owners of the lots shown on the Subdivision Plan (hereinafter referred to as "Lots") shall agree in a recorded instrument to extend them in whole or in part:

1. Use of Lots. All Lots shall be used and occupied solely for one single-family residence, together with no more than two accessory buildings (in addition to any detached garage) normally appurtenant to single family residences as permitted by the Town of Boxborough or the Town of Stow zoning bylaws, whichever is applicable. No structure, tent, or shelter other than a completed house may be used even temporarily as a place of habitation on any such Lots. Temporary outbuildings used during construction of a residence are permitted only during such construction and may not be used as a place of habitation. The land shown on the Subdivision Plan presently owned by the Declarant shall not be developed in any manner which results in more than eleven (11) separate residential building lots having access to either Houghton Lane, as shown on the Subdivision Plan, or Robinson Road, Boxborough, Massachusetts; nor shall Houghton Lane as shown on the Subdivision Plan be lengthened nor in any manner used as part of a through street connecting said Robinson Road to Taylor Road, Stow, Massachusetts. Provided, however, and always, that nothing herein contained shall in any way limit or restrict any of the separate residential building lots which may be developed or created on any of the land shown on the Subdivision Plan presently owned by the Declarant, so long as: (a) not more than eleven (11) of said lots have access either to Houghton Lane or Robinson Road, as aforesaid; and (b) any of the separate residential building lots do not have access either to Houghton Lane or Robinson Road, as aforesaid, but have access from Taylor Road or from any subdivision way which may hereafter be created.

2. Architectural Control. No improvements shall be made on any Lots, including fences and walls and landscaping, until a plan showing their location and design has been approved by the Declarant, so long as the Declarant is an owner of any one of the Lots shown on the Subdivision Plan.

At such time as the Declarant ceases to own any of the Lots shown on Subdivision Plan, the rights under this Paragraph to architectural control shall reside in an approval committee of three (3) persons (the "Approval Committee") as set forth in the Old Harvard Estates Declaration of Restrictions and Reservation of Easements dated August 22, 1988, recorded in Book 19283, Page 175 with the Middlesex South District Registry of Deeds, as amended, of record.

The Declarant's (or the Approval Committee's) approval or disapproval of plans and specifications shall be in writing, and in the case of an approval in recordable form. In the event that the Declarant and the Approval Committee shall cease to exist, the design of any improvements shall be in harmony with the improvements on the other lots shown on the Subdivision Plan.

3. Size of Residences and Lot Amenities. No residence shall be constructed on any Lot having a total habitable area of less than three thousand two hundred (3,200) square feet (exclusive of open porches, garages and unfinished attic and basement spaces). Every Lot shall have a garage (under, attached or detached) for at least two automobiles. Roofing materials shall be wood, asphalt shingles, tile, or slate. Siding materials shall be stone, brick, wood clapboard, stucco or cedar shakes. Building materials used for accessory buildings shall match those of the residence on the Lot. Residences shall be traditional style(s) as reasonably determined by the Declarant. The style of accessory buildings shall match those of the main structure. Driveways on the Lots shall be constructed of bituminous concrete, cement or granite/brick pavers. Fences or walls shall be

constructed of wood, stone or brick except that fences enclosing swimming pools or tennis courts may be vinyl coated chain link fencing. All utilities between the street, near lot lines, and any structures or other improvements on a Lot shall be installed underground. Declarant will utilize its best efforts to maintain as many trees as possible within twenty five (25) feet of the lot lines during the development and construction process. Additionally, Declarant will utilize its best efforts to maintain as many trees as possible on the Lots during the development and construction process.

4. Parking and Storage. No trucks, boats, boat trailers, campers, motor homes, house trailers, unregistered vehicles, off-road recreational vehicles, or commercial vehicles shall be parked or stored on any Lots or ways shown on said plan unless wholly contained in an enclosed garage, provided however that the foregoing restriction is not intended to prohibit routine truck deliveries of tradesmen. No off-road recreational vehicles shall be operated within Old Harvard Estates. No materials or parts of any vehicle shall be stored on any Lot.

5. Construction Activities. The erection of any structure after approval by the Declarant or the Approval Committee shall be carried forward to completion with diligence, without stopping, once begun, provided, however, that the completion of the exterior of any structure, except for exterior painting, shall not be left incomplete for more than one hundred eighty (180) days from the commencement of framing. Any structure not substantially completed within one year after it is begun shall be removed, except that said one-year period shall be extended for any period during which construction activities are prevented by governmental regulation or acts of God.

6. No Business Use of Residences. No business activities of any nature shall be conducted on any Lot except that a professional person permitted to maintain an office in his or her

own residence under the Town of Boxborough Zoning By-Law shall not be prohibited by this Declaration from doing so.

7. Animals and Birds. No animals or birds shall be kept on any Lot except for normal household pets such as dogs, cats, or caged birds without the prior written consent of the Declarant or the Approval Committee. No more than two dogs and two cats shall be kept on any Lot.

8. Trash Receptacles. All rubbish and trash shall be stored in suitable containers with tops, and such containers shall be in turn stored in enclosed places such as in garages, cellars or sheds.

9. Clothes Drying. Clothes shall not be dried on outside clothes lines visible from ways or other Lots.

10. Agricultural Activities. Agricultural activities such as vegetable gardening are not prohibited but must be conducted so as not to be visible from ways.

11. Fuel Tanks, Statuary and Antennas. No external fuel tanks or other storage devices shall be so placed on any Lot as to be visible from ways. No statues or ornamental devices or structures of any kind may be placed on any Lot without the prior written approval of the Declarant or the Approval Committee.

12. Signs, Posters, Advertisements. No signs, posters or advertisements of any kind or description visible to public view, shall be erected, maintained or displayed on any Lot other than: (a) Usual small professional signs posted by a resident professional; and (b) "For Sale" signs.

13. Maintenance Covenant, Nuisances. Lots shall be maintained in a generally neat and orderly condition. No nuisance shall be maintained or continued on any Lot.

The foregoing restrictions shall be enforced by the Declarant for so long as the Declarant

owns of record any Lots shown on the Subdivision Plan. The Declarant shall have the power to waive, amend or release any of the foregoing restrictions, excepting items 3, 4 and 5 so long as the Declarant owns of record any land shown on the Subdivision Plan. After the Declarant no longer owns of record any Lot shown on the Subdivision Plan, then the foregoing restrictions may be enforced by the Old Harvard Estates Homeowners Association, Inc., or by the owners of record of any three lots shown on the Subdivision Plan.

### EASEMENTS

Declarant reserves the following rights and easements in the land shown on the Subdivision Plan for so long as Declarant owns of record any land shown on the Subdivision Plan, and all Lots conveyed by Declarant shall be subject to said easements.

A. An easement to use all streets and ways shown on the Subdivision Plan, for all purposes for which streets and ways are commonly used in the Town of Boxborough in common with others from time to time entitled to use the same, including the right to grant such an easement to others for the purpose of installing utilities or otherwise.

B. The right from time to time to grade, change the grade of, surface, landscape, and otherwise improve said ways and remove and dispose of soil therefrom and cut trees and brush thereon and the right to petition the Town of Boxborough to take, lay out, and accept such ways, or any part thereof, as public ways and to execute and deliver to said Town as agent for all owners of Lots shown on the Subdivision Plan appropriate instruments to release said Town from any claims for damages on account of any taking or laying out of such ways as public ways.

C. An easement for the installation, use, maintenance, replacement and removal of

underground sewers and drains, together with related equipment, and for discharging ground and surface water runoff in all areas marked "Drainage Easement" shown on the Subdivision Plan; and, in addition thereto, an easement for such purposes and for the installation, use, maintenance, replacement and removal of underground water lines, gas pipes, electric and telephone lines, and other public services together with related equipment in an area between the rear lot line of each Lot and a line parallel to said rear lot line and ten (10) feet distant from said lot line in the interior of said Lots. The rear lot line of corner Lots shall be deemed to mean both interior lot lines. Declarant shall also have the right to grant such an easement to others.

D. An easement for road construction and sloping in that certain easement shown as twenty-five (25) ft. wide temporary slope easement and temporary slope easement on the Subdivision Plan.

#### HOMEOWNERS ASSOCIATION

1. Membership. The owner of record of each lot shall automatically become a member of Old Harvard Estates Homeowners Association, Inc. (the "Homeowners Association") in accordance with and subject to the provisions and requirements of its Articles of Incorporation, its By-Laws, and rules and regulations from time to time adopted thereunder in accordance with the acceptance of The Old Harvard Estates Homeowners Association, Inc. hereto. Each Lot shall have one vote in the Homeowners Association, regardless of the number of owners of such Lot.

A Lot owner's membership and privilege to use the Common Areas owned or maintained by said Homeowners Association may be suspended by a majority vote of the Board of Directors of said Homeowners Association upon (i) non-payment of assessments to the members made by said

Homeowners Association for the cost and expenses of operating, maintaining, and improving the Common Areas, or (ii) conduct by the Lot owner, and/or such member's family members, guests, agents, lessors, sub-lessees or any others whose use of Common Areas is derived from such member's Lot, involving damage or destruction to the Common Areas or failure to comply with the provisions of the By-Laws and applicable rules and regulations adopted thereunder by said Homeowners Association, provided, however, that the Lot owner shall be given written notice, including a statement of the reasons for consideration of possible suspension and a reasonable opportunity to be heard prior to any such suspension, and further provided that no such suspension shall deny the Lot owner and those claiming under him the right to use the roads in the subdivision for access to and from the owner's Lot.

2. Assessments. The Homeowners Association shall adopt, in accordance with its By-Laws, annual budgets for the cost of operating, maintaining, landscaping, repairing, improving, insuring and providing security for the Common Areas of the subdivision and enforcing the provisions of this Declaration. The amount of such budget, which may include reasonable reserves for working capital and capital improvements and replacements, after allowance for any anticipated user fees, contributions, insurance proceeds, dedicated reserves, and other funds or income, shall be assessed by the Homeowners Association to the owners of the Lots pro rata according to the number of Lots. Each such Assessment, together with interest thereon and any costs of collection as hereinafter provided, shall be the personal obligation of the owner(s) of each Lot. A Lot owner shall be obligated to pay all Assessments during any suspension as a member of the Homeowners Association and notwithstanding that (s)he does not use the Common Areas.



3. Lien for Assessments. If an Assessment is not paid on the date when due, then such Assessment shall be delinquent and shall, together with interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the respective Lot and the improvements thereon, which shall bind such property in the hands of the then owner of such Lot, his heirs, devisees, personal representatives, successors in title and assigns, provided, however, that a transfer of title shall not relieve such owner of his personal liability to pay any Assessment unless his successor expressly assumes such obligation in a writing delivered to the Homeowners Association.

If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the due date at lower of (i) one and one-half percent (1.5%) per month or (ii) the highest rate allowed by law, and the Community Association may, seven (7) days after giving written notice to the mortgagee(s), if any, holding a mortgage covering the Lot in question, bring an action to foreclose the lien against such Lot and the improvements thereon, and there shall be added to the amount of such Assessment the costs of preparing and filing the complaint in such action; and, in the event a judgment is obtained, such judgment shall include interest on the Assessment the costs of the action and any other collection costs.

The lien of the Assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages, now or hereafter placed upon the Lot subject to such Assessment, which are held by a commercial or financial institution in the business of granting or investing in residential mortgage loans (an "Institutional Mortgagee") provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot

and improvements thereon pursuant to a foreclosure, or any other proceeding or transfer in lieu of foreclosure. Declarant and any Institutional Mortgagees shall have the right, but not the obligation, jointly or singly and at their sole option, to pay any Assessments which are in default and which may or have become a charge against any Lot and improvements thereon.

4. Statement of Unpaid Assessments. The Homeowners Association shall promptly provide any member requesting the same in writing a written statement of all unpaid Assessments due from such member in form suitable for recording. The recording of such statement with said Registry of Deeds shall operate to discharge the member's Lot from any lien for any Assessments not described in such statement which were due prior to the date of such statement.

WITNESS the execution hereof by Habitech, Inc., by D. Bruce Wheeler, its Vice-President, under seal on the date first above set forth.

Accepted and Agreed to  
Old Harvard Estates Homeowners  
Association, Inc. ✓

By: Steven P. Lurie  
President

HABITECH, INC.

By: [Signature]  
D. Bruce Wheeler Vice-President

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

July 3, 1998

Then personally appeared the above-named D. Bruce Wheeler, Vice-President as aforesaid, and acknowledged the foregoing instrument to be the free act and deed of Habitech, Inc., before me

Aurelie M. Cyr  
Notary Public  
My Commission Expires:

**AURELIE M. CYR**  
**NOTARY PUBLIC**  
My Commission Expires  
February 5, 2004

## COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

July 4, 1998

Then personally appeared the above-named Steven P. Levin  
President as aforesaid, and acknowledged the foregoing instrument to be the free act and deed  
of Old Harvard Estates Homeowners Association, Inc., before me

Barbara A. Logan  
Notary Public

My Commission Expires: 10-21-99

s:\re\habitech\heights.wp