

Declaration of Trust
Westborough Village Condominium

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DECLARATION OF TRUST

WESTBOROUGH VILLAGE CONDOMINIUM TRUST

THIS DECLARATION OF TRUST is made by Toll MA II LLC, a Massachusetts limited liability company, with an address of 134 Flanders Road, Westborough, MA 01581 (the "Declarant").

ARTICLE I NAME OF THE TRUST

The trust hereby created shall be known as the **WESTBOROUGH VILLAGE CONDOMINIUM TRUST**.

ARTICLE II THE TRUST AND ITS PURPOSE

2.1 General Purposes: This trust is created as the "organization of Unit Owners" as required by the provisions of M.G.L. c.183A (the "Condominium Law") for the purpose of managing and regulating the Westborough Village Condominium (hereinafter referred to as the "Condominium"), established and created by a Master Deed executed by the owner of the land described therein, dated the same date as the date of this Trust and recorded herewith (such owner being hereinafter sometimes referred to as "Declarant"). The Condominium is created in accordance with and subject to a Transit Oriented Village Special Permit, issued by the Westborough Planning Board, recorded with said Registry at Book 39226, Page 10, as amended at Book 46993, Page 209 (the "Special Permit").

2.2 Definitions: Unless the context otherwise requires, the definitions contained in Section 1 of the Condominium Law shall be applicable to this Trust.

2.3 Trust and Not a Partnership: It is hereby expressly declared that a trust and not a partnership or corporation is hereby created and that the Unit Owners are beneficiaries and not partners or associates between and among themselves with respect to the Trust property, and hold no relation to the Trustees (as defined below) other than as beneficiaries hereunder and under the provisions of the Condominium Law.

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2.4 Property Held in Trust: All property, real and personal, tangible and intangible, conveyed to or held hereunder by the Trustees shall vest in the Trustees, in trust, to manage, administer, and dispose of the same exclusive of the common areas and to receive and/or distribute the income and/or principal thereof for the benefit of the Unit Owners who are Owners from time to time of the Units in the Condominium. The Condominium shall contain up to 146 Townhome Units (the "Townhome Units"), 112 Garden Style Units (the "Garden Style Units") located within multi-story buildings, and up to 18 Detached Units (the "Detached Units"). The Townhome Units, Garden Style Units and Detached Units shall be referred to herein collectively as the "Units." The unit type and the beneficial interest of each Unit Owner is set forth in Exhibit C of the Master Deed, as may be amended in accordance with phasing amendments and other amendments from time to time.

ARTICLE III THE TRUSTEES

3.1 Trustees:

a. Subject to the provisions of this Declaration, the Board of Trustees shall have the power to act on behalf of the Condominium Trust. The initial Board of Trustees shall consist of two (2) Trustees. The initial Trustees shall be appointed, removed and replaced from time to time by the Declarant without the necessity of obtaining resignations. The Declarant-appointed Trustees shall be replaced with Trustees elected by the Unit Owners in accordance with the provisions of this Section.

b. For purposes of this Declaration, the term "First Election Meeting" shall mean the first meeting of the Condominium Trust which shall occur no later than sixty (60) days after thirty percent (30%) of the Units are conveyed to Unit Owners, other than the Declarant. The term "Second Election Meeting" shall mean the second meeting of the Condominium Trust which shall occur no later than sixty (60) days after sixty percent (60%) of the Units are conveyed to Unit Owners, other than the Declarant. The Term "Transitional Meeting" shall mean the meeting of the Condominium Trust which shall be held no later than the earliest of (i) sixty (60) days after one hundred percent (100%) of the Units are conveyed to Unit Owners, other than the Declarant; or (ii) two (2) years after the Declarant has ceased to sell Units in the ordinary course of its business. Subject to the right of the Declarant to alter the following procedure so as to have all or part of the transition process occur earlier than as hereafter described, the transition from a Board of Trustees comprised solely of Trustees appointed by the Declarant to a Board of Trustees comprised solely of Trustees elected by the Unit Owners shall occur as follows:

- (i) At the First Election Meeting, the Unit Owners, other than the Declarant, shall elect one (1) Unit Owner to serve as Trustee which shall increase the size of the Board to a total of three (3) Trustees. The Trustee who secures Unit Owner votes representing the greatest percentage of beneficial interest in the Condominium shall serve until the third annual meeting of Unit Owners occurring after the First Election Meeting, at which time there shall be another election (or re-election) of a the Unit Owner Trustee.

- (ii) At the Second Election Meeting, the Unit Owners, other than the Declarant, shall elect one (1) Unit Owner to serve as Trustee. The Trustee who secures Unit Owner votes representing the greatest percentage of beneficial interest in the Condominium shall serve until the third annual meeting of Unit Owners occurring after the Second Election Meeting. At the time of the Second Election Meeting, the Declarant shall name one (1) additional initial Trustee who shall serve in accordance with the same terms as the other two (2) initial Trustees. The combined actions of the Unit Owner vote and the additional Declarant appointment shall increase the size of the Board to a total of five (5) Trustees.
- (iii) At the Transitional Meeting, the Unit Owners, other than the Declarant, shall elect three (3) Unit Owners to serve as Trustees who shall replace the three (3) Trustees appointed by the Declarant, resulting in a Board with five (5) Trustees, all representing Unit Owners. Subject to the minimum Unit Owner representation set forth in subsection (vi) below, the Trustee elected pursuant to this Subsection with Unit Owner votes representing the greatest percentage of beneficial interest in the Condominium shall serve until the third annual meeting of Unit Owners following the Transitional Meeting, and the Trustee elected by votes representing the second greatest percentage of beneficial interest shall serve until the second annual meeting of Unit Owners following the Transitional Meeting, and the Trustee elected by votes representing the third greatest percentage of beneficial interest shall serve until the first annual meeting of Unit Owners following the Transitional Meeting.
- (iv) After the Transitional Meeting, the term of each Trustee election shall be for a period of three (3) years from the annual meeting of Unit Owners at which such Trustee is elected, or such shorter term as may be necessary in order that the Trustees shall be elected on a staggered basis so that in any one year not more than two Trustee terms will expire.
- (v) Notwithstanding the foregoing, the Declarant shall have the right to accelerate the First Election Meeting, Second Election Meeting and the Transitional Meeting, as it deems appropriate. In addition, after the Transitional Meeting, the Declarant reserves the right to appoint one additional non-voting member to the Board of Trustees to serve until three hundred sixty-five (365) days after the Declarant conveys the last Unit to a Unit Owner.
- (vi) All Trustees elected by the Unit Owners from and after the First Election Meeting shall be required to be Unit Owners. In addition, from and after the Transitional Meeting, the Board of Trustees shall be made up of at least one (1) Unit Owner representing the Detached and Townhome Units and one (1) Unit Owner representing the Garden Style Units. In event such representation does not exist on the Board of Trustees, as a result of a Unit Owner vote, the Unit Owner candidate(s) representing such Unit style with votes representing the greatest percentage of beneficial interest

in the Condominium shall be deemed elected to the Board. Any existing Trustee who sells his or her Unit during the Trustee term, shall vacate the office of Trustee in accordance with the provisions of Section 3.2 below.

c. For purposes of determining whether the period of Declarant control has terminated or whether Unit Owners other than the Declarant are entitled to elect members of the Board of Trustees, the percentage of Units conveyed is presumed to be that percentage of the total number of Units to be developed within the Condominium.

d. After the election held at the Transitional Meeting and until the Declarant has conveyed the last Unit in the Condominium, the Board of Trustees shall notify the Declarant in advance of all meetings of the Board of Trustees and the Condominium Trust at the same time as notices are given to the Board of Trustees or the Unit Owners as the case may be. Until the Declarant has conveyed every unit in the Condominium, the Board of Trustees is prohibited from taking any action which would discriminate against the Declarant, or which would be detrimental to the sale or leasing of Units owned by the Declarant, in the Declarant's sole discretion. The Board of Trustees will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to the assumption of control of the Condominium Trust by owners other than the Declarant until the Declarant conveys the last Unit in the ordinary course of business.

3.2 Vacancies: After the Transitional Meeting, if and when the number of Trustees shall become less than five (5) due to death, disability, removal or resignation, a vacancy shall be deemed to exist, whereupon a Special Meeting of Unit Owners may be called in order to conduct an interim election. The vacancy shall be filled by the candidate selected by Unit Owner vote representing the greatest percentage of beneficial interest in the Condominium, and who shall fill the remaining Trustee term evidenced by certificate in writing. In the event that Unit Owners fail to elect a successor Trustee within a thirty (30) day period, then the Trustees then remaining may appoint a natural person or entity, as aforesaid, to fill such vacancy. In the event that the Trustees fail to so appoint a successor Trustee within thirty (30) days (after the initial period of thirty (30) days for the owners to appoint), or if there is no remaining Trustee, then such vacancy, or vacancies, shall, upon the petition therefore of any Unit Owner, with notice to all other Unit Owners, be filled by the appointment, or appointments, of a court of competent jurisdiction. In all such instances, the elected and/or appointed person or entity shall represent that same Unit Owner Type as the position vacated. The election or appointment of Trustees shall become effective upon such election or appointment. An instrument certifying such election or appointment shall be recorded with the Worcester County Registry of Deeds (the "Registry of Deeds"), acknowledged and subscribed to by a majority of the then Trustees, (1) referencing this Declaration of Trust; (2) reciting the existence of a vacancy; (3) the election or appointment of the successor Trustee; and (4) containing an acceptance of such election or appointment by the successor Trustee. The failure or delay in recording said instrument shall not affect the validity of such Trustee's election.

The foregoing provision of this Section 3.2 notwithstanding, despite any vacancy in the office of Trustee, however caused and for whatever duration, the remaining or surviving Trustee(s) shall continue to exercise and discharge all the powers, discretions and duties herein conferred or imposed upon the Trustees.

3.3 Action by Majority: The Trustees may act by a majority vote at any duly called meeting at which a quorum is present. A quorum shall consist of a majority of the Trustees then in office. The Trustees may also act without a meeting if a written consent thereto is signed by all the Trustees then in office.

Notwithstanding the foregoing, in the event of a tie vote on any matter, the then current President of the Board of Trustees shall cast the tie-breaking vote to decide the matter.

3.4 Resignation and Removal of Trustee: Any Trustee may resign by notice in writing given to each of his co-Trustees and by recording with said Registry of Deeds at any time an instrument in writing signed and acknowledged by him. Prior to the First Election Meeting, the Declarant may remove any Trustee and appoint successor Trustee(s) as provided herein. Any Trustee appointed by the Declarant may be removed only by the Declarant. From and after the First Election Meeting, any Trustee elected by the Unit Owners may, with or without cause, be removed by a vote of Unit Owners constituting fifty-one percent (51%) or more of the beneficial interest in the Condominium at a special meeting duly called therefore and after being afforded the opportunity to be heard. The vacancy so resulting shall be filled in the manner provided in Section 3.2 above. Any removal shall become effective upon the recording of a certificate thereof with the Registry of Deeds executed by one or more of the then remaining Trustees in office or, upon a failure thereof, by the Declarant (if prior to the Transitional Meeting), or by any five (5) of the Unit Owners voting to remove such Trustee (if after the Transitional Meeting).

3.5 No Bond or Surety: No Trustee named or appointed, as hereinbefore provided, whether as original or successor Trustee(s), shall be obliged to give any bond or surety or other security for the performance of his duties hereunder, provided however, that a vote of Unit Owners constituting one hundred percent (100%) or more of the beneficial interest in the Condominium may at any time, by notice in writing signed by them and delivered to the Trustee or Trustees affected thereby, require that all of the Trustees shall give bond in such amount and with such sureties as shall be specified in such notice. All expenses incident to any such bond shall be charged as common expenses of the Condominium.

3.6 Compensation of Trustees: The Trustees shall not be entitled to compensation for their services but shall be reimbursed for all out-of-pocket expenses incurred for the benefit of the Trust property, which expenses shall constitute common expenses of the Condominium.

3.7 No Liability If In Good Faith: No Trustee hereinbefore named or appointed as hereinbefore provided shall under any circumstances or in any event be held liable or accountable out of his personal assets or be deprived of compensation by reason of any action taken, suffered, or omitted in good faith, or be so liable or accountable for more money or property than he actually receives, or for allowing one or more of the other Trustees to have possession of the Trust books or property, or be so liable, accountable, or deprived by reason of honest errors of judgment or mistakes of fact or law or by reason of the existence of any personal or adverse interest or by reason of anything except his own personal and willful malfeasance and defaults.

3.8 Self-Dealing: Any and all Trustees, notwithstanding their official relations to the Trust and to the beneficiaries, may in the ordinary course of business enter into, negotiate, consummate, and perform any contract or agreement of any name or nature between the Trust and/or any or all of the Unit Owners and themselves or any or all of the individuals who from time to time constitute the Trustees, or any firm or corporation in which any of the Trustees or any Unit Owner may have an interest directly or indirectly, whether such individual, individuals, firm or corporation thus contracting with the Trust shall thereby derive personal or corporate profits or benefits or otherwise; provided however, that the fact of the interest of such Trustee must be disclosed to the Trustees and that such contract is fair and reasonable in its terms, the intent hereof being to relieve each and every person who may be or become a Trustee from any disability that might otherwise exist from contracting with the Trustees or with the Unit Owners after such disclosure and upon such fair and reasonable terms for the benefit of himself or any co-partnership or corporation in which he may have any interest.

3.9 Indemnity: The Trustees and each of them individually shall be entitled to indemnity both out of the Trust property and by the Unit Owners against any liability incurred by them or any of them in the execution hereof, including without limiting the generality of the foregoing, liabilities in contract and in tort and liabilities for damages, penalties, and fines. Each Unit Owner shall be personally liable for all sums lawfully assessed for his share of the common expenses of the Condominium and for his proportionate share of any claims involving the Trust property in excess thereof, all as provided in Sections 6 and 13 of the Condominium Law. Nothing in this paragraph shall be deemed, however, to limit in any respect the powers granted to the Trustees in this instrument.

ARTICLE IV BENEFICIARIES AND BENEFICIAL INTEREST

4.1 Percentage Interests: The beneficiaries shall be the Unit Owners of the Condominium from time to time. The beneficial interest in the Condominium hereunder shall be divided among the Unit Owners in the percentage of undivided beneficial interest appertaining to the Units of the Condominium as set forth in Exhibit C of the Master Deed.

4.2 *Persons to Vote as Unit Owners:* Whenever any of the said Units is owned of record by more than one person, the several Owners of such Unit shall designate in writing to the Trustees one of several Owners of such Unit to vote the beneficial interest of such Unit. Such designation shall be in writing signed by all the record Owners of such Unit. Any such designation shall take effect upon receipt by the Trustees of such notice and may be changed at any time and from time to time by notice as aforesaid. In the absence of such notice of designation, the Trustees may designate any one such Owner for such purpose.

ARTICLE V BY-LAWS

The provisions of this Article V shall constitute the By-Laws of this Trust and the Organization of Unit Owners established hereby, to wit:

5.1 *Powers of Trustees:* The Trustees shall have the sole control and management of the Common Elements and the common funds and profits of the Condominium as those terms are defined in the Condominium Law and in the Master Deed establishing the Condominium. Their powers shall include those enumerated in Section 10 of the Condominium Law and such further powers as are necessary or appropriate to the proper management of the Condominium. Without limiting the foregoing general powers and in addition rather than in limitation of their common law and statutory powers, the Trustees shall have the following powers:

a. Operating, caring for, keeping up, managing, leasing, and maintaining the Common Elements of the Condominium or any part thereof, including the ability to employ, appoint, and remove agents, managers, employees, assistants and counsel as they may deem proper for the purchase, sale or management of the Condominium.

b. Owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to or purchased by them as a result of enforcement of the lien for common expenses, action under the Condominium Law, Sections 17 and 18, or otherwise.

c. Conducting litigation on behalf of the Unit Owners and being subject to suit as to any course of action involving the Common Elements or arising out of the enforcement of these By-Laws, any and all Rules and Regulations promulgated hereunder or restrictions in the Master Deed or Unit Deeds.

d. Determination and budgeting of the common expenses required for the affairs of the Condominium and this Trust, including, without limitation, the operation and maintenance of the Trust property.

e. Collecting the common charges (which for the purposes of these By-Laws shall mean such portion of the common expenses as are payable by the respective Unit Owners) from Unit Owners.

- f. Employing and dismissing personnel necessary for the maintenance and operation of the Common Elements.
- g. Opening and utilizing bank accounts on behalf of the Trust and designating the signatories required therefor.
- h. Obtaining of insurance pursuant to the provisions of these By-Laws.
- i. Making of repairs, additions, and improvements to or alterations of the Trust property and repairs to and restoration of the Trust property, in accordance with the other provisions of these By-Laws.
- j. Incurring obligations and paying, compromising, or adjusting all obligations incurred and rights acquired in the administration of the Trust.
- k. Adopting and amending rules and regulations covering the details of the operation and use of the Common Elements, the administration of the Condominium as contemplated by the Master Deed and this Trust, and in interpretation thereof.
- l. Obtaining advice of counsel and relying thereon, and employing, appointing, and removing such other persons, agents, managers, officers, brokers, engineers, architects, employees, servants and assistants as they shall deem advisable, and defining their respective duties and fixing their pay and compensation.
- m. Granting of permits, licenses, and easements and/or leases over, under, through, and/or to the Common Areas for utilities, roads and/or all other purposes reasonably necessary and/or beneficial, useful for, and/or to the proper maintenance and/or operation of the Condominium and/or the convenience and/or of the Unit Owners.
- n. Altering the layout, location, nature, and/or use of any of the Common Elements, making installations therein, and moving and removing the same, subject, however, to a Unit Owner's rights to use any rights appurtenant to a Unit as specified in the Master Deed.
- o. Enforcing obligations of the Unit Owners, including the levying of general and special assessments for common expenses and the providing of adequate remedies for failure to pay such assessments, levying reasonable fines against the Unit Owners for violations by the Unit Owners, or persons for whom a Unit Owner is responsible, of the Rules and Regulations or of the provisions of the Trust or the Master Deed, and in the case of persistent violations of the Rules and Regulations or of this Trust or the Master Deed by a Unit Owner, or persons for whom a Unit Owner is responsible, requiring such Unit Owner to post a bond to secure adherence thereto.

p. Investing and reinvesting the Trust property, or any part or parts thereof and from time to time and as often as they shall see fit to change investments, including power to invest in all types of securities and other property, of whatsoever nature and however denominated, all to such extent as to them shall seem proper, and without liability for loss, even though such property or such investment shall be of a character or in an amount not customarily considered proper for the investment of trust funds, or which does or may not produce income.

q. Selling and exchanging Trust Property or any interest therein for such consideration and upon such terms as they deem advisable.

r. Purchasing and otherwise acquiring any real or personal property.

s. Borrowing money and mortgaging or pledging all or any part of the Trust property and issuing bonds, notes, or other evidence of indebtedness.

t. Providing for payment by the Trust of real estate taxes becoming due and payable after the date of recording of the Master Deed which are assessed upon all of the Land and/or improvements included within the Condominium, instead of upon individual Units and their proportionate interests in the Common Elements, and levying an equitable assessment of said tax payments among the individual Unit Owners.

u. Incurring such liabilities, obligations, and expenses, and to pay from the principal or the income of the Trust Property in their hands all such sums, as they shall deem necessary or proper, for the furtherance of the purposes of the Trust.

v. Determining as to all sums of money and other things of value received by them, whether and to what extent the same shall be deemed to be and shall be accounted for as principal or as income, and as to all charges or expenses paid by them, whether and to what extent the same shall be charged against principal or against income, including, without hereby limiting the generality of the foregoing power, to apportion any receipt or expense between principal and income, and power to determine what portion, if any, of the actual income received upon any asset purchased or acquired at a premium or any wasting investment shall be added to principal to prevent a diminution thereof upon the maturity or exhaustion of such asset or investment.

w. Entering into and having such access to Units and Limited Common Elements reserved to Units in the Condominium as shall be reasonably necessary to the performance and exercise of the duties, obligations, rights and powers of the Trustees hereunder.

x. Executing any and all instruments incidental or necessary to carry out any of the foregoing powers.

y. Generally, in all matters not herein otherwise specified, controlling, managing and disposing of the Trust Property and controlling and managing the Trust property as if the Trustees were the absolute owners thereof and doing any and all acts, including the execution of any instruments which by their performance thereof shall be shown to be in their judgment for the best interest of the Unit Owners.

5.2 Maintenance and Repair of Units:

5.2.1 Each Unit Owner shall be responsible for the proper maintenance and repair of his Unit and the maintenance, repair, and replacement of utility fixtures and utility services therein or elsewhere solely serving the same, together with Limited Common Elements serving said Unit, all as more particularly set forth in the Master Deed. Each Unit Owner shall be responsible for all damages to any and all Units caused by his failure to satisfy his maintenance, repair, and/or replacement obligations hereunder.

5.2.2 If the Trustees shall, at any time in their reasonable judgment, determine that a Unit is in such need of maintenance or repair that the market value of one or more of the other Units is being adversely affected, or that the condition of a Unit or any fixtures, furnishings, facilities, or equipment therein is hazardous to any Unit or the occupants thereof, or adversely impacts the Common Elements and/or common expenses, the Trustees shall in writing request the Unit Owner of such Unit to perform the needed maintenance, repair, or replacement or to correct the hazardous condition, and in case such work shall not have been commenced within fifteen (15) days (or such reasonably shorter period in case of emergency as the Trustees shall determine) of such request and thereafter diligently brought to completion, the Trustees shall be entitled to have the work performed for the account of such Owner whose Unit is in need of work and to enter upon and have access to such Unit for such purpose; and the cost of such work as is reasonably necessary therefor shall constitute a lien upon such Unit and the Unit Owner thereof shall be personally liable therefor.

5.3 Maintenance, Repair, and Replacement of Common Elements and Assessments of Common Expenses: The Trustees shall be responsible for the proper maintenance, repair, and replacement of the Common Elements of the Condominium (See Section 5.6 for specific provisions dealing with repairs and replacements necessitated because of casualty loss) and any two (2) Trustees, or any others who may be so designated by the Trustees, may approve payment of vouchers for such work. The expenses of such maintenance, repair, and replacement shall be assessed to the Unit Owners as common expenses of the Condominium at such times and in such amounts as provided in Section 5.4 herein, provided however, that if the maintenance, repair, or replacement of the Common Elements is necessitated by the negligence or misuse of a Unit Owner, either directly or by virtue of his failure to properly maintain, repair, or make necessary replacements in his Unit, the expenses of such maintenance, repair, and/or replacement, to the extent not covered by the casualty insurance provided for herein, may be assessed to the particular Unit Owner by the Trustees and the particular Unit Owner shall be personally liable therefor.

5.4 Common Expenses, Profits, Funds:

5.4.1 The Unit Owners shall be liable for common expenses and entitled to common profits and funds ("Common Profits and Funds") of the Condominium in proportion to their respective percentages of beneficial interest as set forth in Article IV hereof. The Trustees may at any time or times distribute common profits among the Unit Owners in such proportions. The Trustees shall, to such extent as they deem advisable, set aside common funds of the Condominium as reserve or contingent funds, and may use the funds so set aside for reduction of indebtedness or other lawful capital purpose, or subject to the provisions of Section 5.6 hereof, for repair, rebuilding, or restoration of the Trust property or for improvements thereto, and the funds so set aside shall not be deemed to be common profits available for distribution.

5.4.2 At least thirty (30) days prior to the commencement of each fiscal year of this Trust (and within thirty (30) days after the execution hereof with respect to the portion of a fiscal year then remaining), the Trustees shall estimate the common expenses expected to be incurred during such fiscal year together with a reasonable provision for contingencies and reserves, and after taking into account any undistributed common profits from prior years, shall determine the assessment to be made for such fiscal year. The Trustees shall promptly render statements to the Unit Owners for their respective shares of such assessments. Assessments shall be made according to the respective percentages of undivided beneficial interests hereunder, all as more fully set forth in the Master Deed. Assessment statements shall, unless otherwise provided herein, be due and payable within thirty (30) days after the same are rendered. In the event that the Trustees shall determine during any fiscal year that the assessment so made is less than the common expenses actually incurred, they shall make a supplemental assessment or assessments and render statements therefor in the manner aforesaid, and such statements shall be payable and take effect as aforesaid. The Trustees may in their discretion provide for payments or statements in monthly or other installments. The amount of such payment together with interest and/or a late charge, at such rates and in such amounts as is determined from time to time by the Trustees, and all attorney's fees and costs incurred in collecting the same, shall constitute a lien on the Unit of the Unit Owner so assessed, pursuant to the provisions of Section 6 of the Condominium Law and for which the Unit Owner shall be personally liable. The Trustees shall determine, in addition, the working capital requirements of the Condominium Trust (the "Working Capital Fund") and, from time to time, may establish and set aside as a common charge such amount or amounts as they may deem necessary and/or advisable to establish and maintain adequate capital replacement reserves (the "Replacement Reserve Fund").

In addition to the foregoing, the Trustees shall collect from each Unit Owner at settlement a contribution fee equal to two (2) months of the then applicable monthly Common Area fee per Unit or such other amount as may be determined by the Trustees from time to time (the "Closing Contribution Fee"). The Closing Contribution Fee shall be collected at the initial sale and any resale of a Unit. The Closing Contribution Fee shall be allocated as the Condominium Trust deems appropriate, including but not limited to allocations to the Working Capital Fund, the Reserve Replacement Fund, and the escrow fund required in connection with the sewer pump station (the "Pump Station Escrow Account"), and otherwise shall be used by the Trustees for such purposes

deemed appropriate or desirable in accordance with this Declaration. The Closing Contribution Fee shall not be considered as an advance payment of regular assessments or directly applicable to any budgetary shortfall.

The Trustees shall expend Common Profits and Funds only for common expenses and lawful purposes permitted hereby and the provisions of the Condominium Law.

5.4.3 Further, to the extent that it may be permitted by the Condominium Law and the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation, the Declarant shall not be responsible for payment of monthly charges, contributions to the Working Capital Fund, the Replacement Reserve Fund, the Pump Station Escrow Account, or other fees or assessments against undeclared Units.

5.4.4 In the event a budget deficit is incurred, or there is a deficit in the Working Capital Fund, the Replacement Reserve Fund or the Pump Station Escrow Account, the Condominium Trust may levy a special assessment to meet any such deficit. In the alternative, the Declarant may advance funds to the Condominium Trust sufficient to satisfy the deficit, if any, between the actual expenses of the Condominium Trust and the sum of the annual assessments collected by the Condominium Trust in any fiscal year, and such advances shall be evidenced by promissory notes from the Condominium Trust in favor of the Declarant which shall be payable as the Condominium Trust's cash flow permits.

5.4.5 The Declarant may not use Common Profits and Funds to defray any of its expenses or construction costs. All Common Profits and Funds on account with the Declarant not otherwise set off against expenses of the Condominium Trust, as provided herein, shall be transferred to the Condominium Trust for deposit to a segregated fund when control of the Condominium Trust is transferred to the Unit Owners. Notwithstanding the foregoing, all or some portion of the Closing Contribution Fee shall be used by the Declarant to reimburse the Declarant for any advance payments made to the Town of Westborough for the Pump Station Escrow Account.

5.5 Insurance:

5.5.1 The Trustees shall obtain and maintain, to the extent available, master policies of casualty and physical damage insurance for the benefit and protection of the Trustees and all of the Unit Owners, and with loss proceeds payable to the Trustees hereunder, or one or more of the Trustees hereunder designated by them to be Insurance Trustees for all the Unit Owners collectively of the Condominium and their respective mortgagees, as their interests may appear, pursuant to such Condominium form insurance as may from time to time be customarily used in Massachusetts, such insurance to cover the building and all other insurable improvements forming part of the Common Elements, including service machinery, apparatus, equipment, and installations associated with the Common Elements, and including also all such portions and elements of the Units as the Unit Owners are responsible for under Section 5.2.1, but not including: (a) the furniture, furnishings, or other personal property of the Unit Owners; or (b) improvements within a Unit made by the Owners

thereof subsequent to the first sale of such Unit by the Declarant, unless such improvement has been made with the written consent of the Trustees pursuant to which such Unit Owner agrees to pay any additional insurance premiums resulting therefrom. If such agreement is not made, insuring such improvements shall be the separate responsibility of the Unit Owner. Such insurance shall, insofar as practicable, be maintained in an amount equal to at least one hundred (100%) percent of the replacement value of the insured property for insurance purposes as determined by the Trustees (who shall review such value at least annually), and shall insure against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; and (b) such other hazards or risks as the Trustees from time to time in their discretion shall deem appropriate, including, but not limited to vandalism, malicious mischief, windstorm and water damage, and boiler and machinery explosion or damage. Such insurance may have a deductible amount to be determined from time to time by the Trustees and shall have an agreed amount endorsement or its equivalent, if applicable, or an inflation guard endorsement. The Trustees shall establish notice and claim procedures from time to time, which procedures shall be incorporated into the Rules and Regulations of the Condominium. Unit Owners shall be responsible for following such procedures in the event of a casualty or liability event.

5.5.2 Each Unit Owner shall notify the Trustees in writing of all improvements to his or her Unit (except personal property other than fixtures) which exceed a total value of Ten Thousand Dollars (\$10,000.00) within twenty (20) days after the commencement of construction or installation of such improvement, and upon receipt of such notice, the Trustee(s) shall notify the insurer under any casualty policy obtained pursuant to this Section of such improvements and shall, if necessary, purchase additional casualty insurance in such amounts as may be required under this Section. Any premium increase caused by insuring such improvements may be assessed to the Owner of the improved Unit as a Common Expense attributable to such Unit. No Unit Owner shall be entitled to receive insurance proceeds for repair, replacement or restoration of any such improvement not so reported to the Trustee(s), unless otherwise consented to by the Trustees.

5.5.3 All policies of casualty or physical damage insurance shall, insofar as practicable, provide: (a) that such policies may not be cancelled, terminated, or substantially modified as to amount of coverage or risks covered without at least thirty (30) days' written notice to the insured and first mortgagees; (b) for waiver of subrogation as to any claims (except claims involving arson or fraud) against the Trust, the Trustees, the manager, agents, employees, the Unit Owners and their respective employees, agents, and guests; (c) for waivers of any defense based upon the conduct of any insured; and (d) in substance and effect that the insured shall not be entitled to contribution as against any casualty or property insurance which may be purchased separately by Unit Owners and first mortgagees, holders, insurers, or guarantors of said mortgages.

5.5.4 The Trustee or Trustees hereunder designated as the Insurance Trustee(s) as aforesaid, shall collect and receive all casualty loss insurance proceeds and shall hold, use, apply, and disburse the same in accordance with applicable provisions of Section 5.6 of this Article V. With respect to losses covered by such insurance which affects portions or elements of a Unit, or more than one Unit to substantially the same or to different extents, the proceeds relating thereto shall be used, applied, and disbursed by the Trustees in a fair and equitable manner.

5.5.5 The Trustees shall also obtain and maintain, to the extent available, master policies of insurance with respect to the Common Elements, for the benefit of the Trustees and all Unit Owners, for: (a) comprehensive public liability, including personal injury coverage which shall cover claims of any Unit Owner in an amount of not less than One Million (\$1,000,000.00) Dollars; (b) workmen's compensation and employees' liability with respect to any manager, agent, or employee of the Trust, but excluding any independent agent or manager who shall furnish to the Trustees a Certificate of Insurance if such liability is uninsured against, it being agreed that the Trustees may waive such requirement in any particular instance, at their discretion; and (c) such other risks as the Trustees in their discretion deem it appropriate to insure. All such insurance shall be in amounts and forms as the Trustees in their discretion deem appropriate, and shall, insofar as practicable, contain provisions as above set forth with respect to non-cancellation, waiver or subrogation, waiver of defense based on conduct of any insured, and non-contribution.

5.5.6 The cost of insurance obtained and maintained by the Trustees pursuant to all provisions of this Section 5.5 shall be assessed to the Unit Owners as a common expense. However, to the extent the Trustees may purchase insurance for individual Buildings sufficient in the opinion of the Trustees to provide insurance coverage for the individual Buildings and the Condominium subject to the requirements of this Paragraph 5.5, the cost of such insurance may be assessed to the Unit Owners having Units within any such Building and that cost shall be borne as an expense of those Unit Owners only. In the event that any Unit Owner does anything in the Condominium which causes an increase in the rate of insurance for the Condominium, as a result of (a) an act of gross negligence, (b) his willful default, or (c) having done anything requiring the Trustees' consent without having obtained the Trustees' consent, the Trustees may, in their discretion, assess the amount of such increase directly to such Unit Owner as a common charge against such Unit. In addition, any property damage to an individual Unit covered under the Condominium's master policy, but less than the deductible under such insurance, shall be the sole responsibility of the Unit Owner. For any property damage in excess of the master policy deductible, Unit Owners shall be responsible for the pro-rata share of such deductible.

5.5.7 Each Unit Owner shall obtain public liability insurance in an amount of not less than Five Hundred Thousand (\$500,000.00) Dollars covering claims arising out of incidents occurring within any areas as to which he has an exclusive easement and as a result of his special rights to use the same, in such forms as shall be determined in his reasonable discretion.

Unit Owners shall carry insurance for their own benefit insuring any wall, ceiling or floor decorations or coverings, drapes, furniture, furnishings, fixtures, equipment and other personal property not covered by the insurance maintained by the Trustees, particularly any deductible, provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carrier issuing insurance obtained by the Trustees shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner. The Unit Owner specific property coverage protection shall be in amounts which are customary and reasonable for residential dwelling units in the Greater Boston Metropolitan area.

Unit Owners shall provide to the Trustees on an annual basis Certificates of Insurance or such other comparable evidence to indicate that the proper forms of insurance are in place.

Each Unit Owner and/or his mortgagee may obtain such additional insurance at his or its own expense provided that all such insurance shall, to the extent obtainable, contain provisions similar to those contained in the Trust's master policy as hereinabove set forth in Section 5.5. If the proceeds from the master policies on account of any casualty loss shall be reduced due to proration with insurance individually purchased by a Unit Owner, the Unit Owner shall assign to the Trustees such portion of the proceeds of his individual insurance as equals the amount of the reduction, which portion shall be distributed as above provided.

5.5.8 FHLMC/FNMA Insurance Requirements. If FHLMC or FNMA holds any interest in one or more mortgages on Units, the Trustees shall obtain and maintain, to the extent maintainable, such other insurance as may be required from time to time by whichever of FHLMC or FNMA (or both) holds such interest, including without limitation, fidelity coverage against dishonest acts on the part of Trustee(s), managers, employees or volunteers responsible for handling the Trust funds and public liability insurance, which policies shall be in such amounts and contain such terms as may be required from time to time by whichever of FHLMC or FNMA (or both) holds such interest. In addition, if FHLMC or FNMA holds any interest in one or more mortgages on units, then whenever any Unit and/or the Common Elements are damaged by fire or other hazard, the Trustees shall give notice of such damage to such persons as may be required by whichever of FHLMC or FNMA (or both) holds such interest.

5.5.9 Declarant's Master Insurance Program. Notwithstanding anything to the contrary contained herein, for so long as the Declarant controls the Board of Trustees, the Declarant reserves the right to include the insurance obligations of the Condominium Trust within a master insurance program controlled by the Declarant and upon doing so, the insurance obligations provided for under this Declaration shall be deemed satisfied.

5.6 *Rebuilding, Restoration, and Improvements:*

5.6.1 In the event of any casualty loss to the Common Elements, the Trustees shall determine in their reasonable discretion whether or not such loss exceeds ten (10%) percent of the value of the Trust property immediately prior to the casualty, and shall notify all Unit Owners of such determination. If such loss as so determined does not exceed ten (10%) percent of such value, the Trustees shall proceed with the necessary repairs, rebuilding, or restoration in the manner provided in Paragraph (a) of Section 17 of the Condominium Law. If such loss as so determined exceeds ten (10%) percent of such value, the Trustees shall forthwith submit to all Unit Owners (a) a form of agreement (which may be in several counterparts) by the Unit Owners authorizing the Trustees to proceed with any necessary repair, rebuilding, or restoration; and (b) a copy of the provisions of said Section 17; and the Trustees shall thereafter proceed in accordance with, and take such further actions as they may in their discretion deem advisable in order to comply with the provisions of Paragraph (b) of said Section 17.

5.6.2 Notwithstanding anything contained in Paragraph 5.6.1, (a) in the event that a Unit Owner disagrees with respect to the value of the Trust property, or any Unit or Units, or as to any other determination or other action proposed to be taken or not taken by the Trustees, and such dispute is not resolved within thirty (30) days after notice by one Unit Owner to the Trustees, then any of the Trustees or any Unit Owner may submit the matter to mediation in accordance with the dispute resolution procedures set forth in the Master Deed; and (b) the Trustees shall not in any event be obliged to proceed with any repair, rebuilding, or restoration, or any improvement, unless and until they have received funds in an amount equal to the estimate of the Trustees of all costs thereof. To the extent that the insurance proceeds are insufficient to effect the necessary repairs, such proceeds shall be apportioned based upon the relative losses to the Common Elements and the Units and the deficiency paid from common funds or by the relevant Unit Owner(s) as applicable.

5.6.3 If and when any Unit Owner shall propose to make an improvement to or affecting the Common Elements of the Condominium, at such Unit Owner's own expense, and the Trustees determine in their reasonable discretion that such improvement would be consistent with the provisions and intent of the Master Deed, the Trustees may, but shall not be obligated to, authorize such improvement to be made at the sole expense of the Unit Owner proposing the same subject to the provisions of Section 18 of the Condominium Law, without the consent or approval of the other Unit Owners, subject to such contractual undertakings of the Unit Owner proposing such improvement as the Trustees in their discretion may deem to be necessary or desirable in the circumstances.

5.7 *Rules, Regulations, Restrictions, and Requirements:* The Trustees may, at any time and from time to time, adopt, amend, and rescind (without the consent of the Unit Owners) administrative rules and regulations governing the details of the operation and use of the Common Elements, and such restrictions and requirements of the Common Elements as are consistent with the provisions of the Master Deed and are designed to prevent unreasonable interference with the use by the Unit Owners of their Units and the Common Elements.

5.8 Meetings:

5.8.1 The Trustees shall meet annually on the date of the annual meeting of the Unit Owners and shall elect a President, Treasurer, and Secretary. Other meetings may be called by the President and in such other manner as the Trustees may establish, provided however, that written notice of such meeting stating the place, day, and hour thereof shall be given to the Trustees at least seven (7) days before such meeting.

5.8.2 There shall be an annual meeting of the Unit Owners on or before April 1st of each year. The meeting shall be held at 7:00 o'clock p.m., at the Condominium or at such other reasonable place and time as may be designated by the Trustees by written notice given to the Unit Owners at least seven (7) days prior to the date so designated. Special meetings of the Unit Owners may be called at any time by the Trustees and shall be called by them upon the written request of Unit Owners holding at least fifty-one (51%) percent of the beneficial interest in the Condominium. Written notice of any such meeting, designating the place, date, and hour thereof shall be given by the Trustees to the Unit Owners at least fourteen (14) days prior to the date so designated. Unit Owners, represented in person or by proxy, entitled to not less than twenty-five (25%) percent of the beneficial interest in the Condominium shall constitute a quorum at all meetings. Unless otherwise provided herein, any matter put before the Unit Owners for a vote shall pass by an affirmative vote of fifty-one (51%) percent of the beneficial interest in the Condominium. At the annual meeting of Unit Owners, the Trustees shall submit reports of the management and finances of the Condominium. Whenever at any meeting the Trustees propose to submit to the Unit Owners any matter with respect to which approval of or action by the Unit Owners is necessary or appropriate, the notice of such meeting shall so state and reasonably specify such matter.

5.9 Notices to the Unit Owners: Every notice to any Unit Owner required or permitted under the provisions hereof or which may be ordered in any judicial proceeding shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one or more Trustees to such Unit Owner by leaving such notice at said Unit Owner's Unit or by sending such notice by regular mail, addressed to such Unit Owner at his address as it appears upon the records of the Trustees, at least five (5) days prior to the date fixed for which such notice is given, or at such earlier time as may be specified herein for such notice.

5.10 Inspection of Books, Reports to Unit Owners: Books, accounts, and records of the Trustees shall be open to inspection by any one or more of the Unit Owners and Trustees, and the Trustees shall, as soon as reasonably possible after the close of each fiscal year, or more often if convenient to them, submit to the Unit Owners a report of the operations of the Trustees for such year which shall include financial statements in such summary form and in such detail as the Trustees shall deem proper. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees given by certified or registered mail within a period of fifteen (15) days of the date of receipt by him shall be deemed to have assented thereto.

5.11 *Checks, Notes, Drafts, and Other Instruments:* Checks, notes, drafts, and other instruments for the payment of money drawn or endorsed in the name or names of the Trustees or of the Trust may be signed by any two (2) Trustees, or by any person or persons to whom such power may at any time or from time to time be delegated by not less than a majority of the Trustees.

5.12 *Seal:* The Trustee may adopt a seal, circular in form, bearing an inscription of the name of the Condominium, but such seal may be altered by the Trustees at pleasure, and the Trustees may, at any time and from time to time, at their option, adopt a common or wafer seal which shall be valid for all purposes.

5.13 *Fiscal Year:* The fiscal year of the Trust shall be the year ending with the last day of December or such other date as the Trustees may determine.

5.14 *Removal from Condominium Law:* Until such time as the Declarant has no beneficial interest hereunder, including but not limited to the right to phase in additional Units to the Condominium as provided in the Master Deed, Unit Owners holding one hundred (100%) percent of the beneficial interest shall be required to approve the removal of the Condominium described herein from the provisions of the Condominium Law, and thereafter, the provisions of Section 19 of said Law shall apply; provided however, if the Declarant approves such removal, the approval of Unit Owners holding at least one hundred (100%) percent of the beneficial interest, in the aggregate, shall be required for such removal.

5.15 *Total or Partial Condemnation, Loss or Destruction; Termination of Project:* The Condominium Trust shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlement, and agreements with the condemning authority for acquisition of the common areas, or parts thereof. Each Unit Owner appoints the Condominium Trust as attorney-in-fact for such purposes.

5.15.1 In the event of a taking or acquisition of part or all of the common areas by a condemning authority, the award of the proceeds of settlement shall be payable to the Condominium Trust, or to mortgagees of the Condominium Trust, as their interests may appear.

ARTICLE VI RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUSTEES

6.1 *Dealing with Trustees:* No purchaser, mortgagee, lender, or other person dealing with the Trustees as they then appear of record in said Registry of Deeds need inquire further as to the persons who are Trustees hereunder. The receipts of the Trustees or any one or more of them for monies or things paid shall be effectual discharges therefrom 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 credit shall be required to see the application thereof. No purchaser, mortgagee, lender, or other person dealing with the Trustees or with any real or personal property which then is or formerly was

Trust property shall be bound to ascertain or inquire as to the existence or occurrences of any event or purpose in or for which a sale, mortgage, pledge, or charge is herein authorized or directed, or otherwise as to the purpose or regularity of any of the acts of the Trustees or any one or more of them purporting to be done in the pursuance of any of the powers or provisions herein contained.

6.2 Recourse Against Trustees: No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant, or agreement, whether oral or written, made, issued, or executed by the Trustees or by any agent or employee of the Trustees or by reason of anything done or omitted to be done by or on behalf of them or any of them against the Trustees individually, or against any such agent or employee or against any beneficiary either directly or indirectly, by legal or equitable proceeding, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with, or having any claim against the Trustees, shall look only to the Trust property for payment under such contract or claim or for payment of any debt, damage, judgment, or decree, or of any money that may otherwise become due and payable to them from the Trustees so that neither the Trustees nor the beneficiaries, present or future, shall be personally liable therefor; provided however, that nothing herein contained shall be deemed to limit or impair the liability of the Unit Owners under the provisions of Section 3.9 hereof or under the provisions of the Condominium Law.

6.3 Instruments Subject to Trust Terms: Every note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant, or agreement, whether oral or written, made, issued, or executed by the Trustees or by any agent or employee of the Trustees shall be deemed to have been entered into subject to the terms, conditions, provisions, and restrictions hereof, whether or not express references shall have been made to this instrument.

6.4 Certifications by Trustees for Recording: This Declaration of Trust and any amendments hereto and any certificates herein required to be recorded and any other certificate signed and sworn to by said Trustees or any one or more of them which it may be deemed desirable to record may be recorded with the Worcester County Registry of Deeds, and such recording 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 Trustees, 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 any Trustee or Trustees, when the same shall be recorded with the said Registry of Deeds. Any certificate signed by the Trustees in office at the time or any one or more of them, setting forth as facts any matters affecting the Trust, including statements as to who are the beneficiaries, as to what action has been taken by the beneficiaries, and as to matters determining the authority of the Trustees to do any act, when duly acknowledged and recorded with said Registry of Deeds shall be conclusive evidence as to the existence of such facts in favor of all third persons, including the Trustees, acting in reliance thereon. Any certificate executed by the Trustees hereunder, or any one or more of them as the case may be, shall be, as to all persons acting in good faith in reliance thereon, conclusive evidence of the truth of the statements made in such certificate and of the existence of the facts therein set forth.

ARTICLE VII AMENDMENTS AND TERMINATION

7.1 *Amendment of Trust:* The Trustees, with the consent in writing of Unit Owners holding at least seventy-five (75%) percent of the beneficial interest in the Condominium hereunder, may at any time and from time to time, amend, alter, add to, or change this Declaration of Trust in any manner or to any extent, the Trustees first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided always, however, that no amendment, alteration, addition to, or change shall be valid if:

7.1.1 Made without the consent of the Declarant prior to the date on which the Declarant ceases to own more than one of the Units described in the Master Deed, or twenty (20) years from the date the first Unit deed is recorded, whichever first occurs; or

7.1.2 It would alter, or in any manner or to any extent whatsoever, modify or affect the percentage of beneficial interest of any Unit Owner hereunder so as to be different than the percentage of the individual interest of such Unit Owner in the Common Elements as set forth in the Master Deed; or

7.1.3 It would render this Trust contrary to or inconsistent with any requirements or provisions of the Condominium Law; or

7.1.4 It would give the Unit Owner or Trustees the right of first refusal on the transfer of any Unit.

7.2. *Necessity for Recording Amendments, Alterations, Additions, or Changes:* Any amendment, alteration, addition, or change pursuant to the foregoing provisions of this Article VII shall become effective upon the recording with the said Registry of Deeds of an instrument of amendment, alteration, addition, or change, as the case may be, signed, sealed, and acknowledged in the manner required for the acknowledgment of deeds by the Trustees, setting forth in full the amendment, alteration, addition or change and reciting the consent of the Unit Owners herein required to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with the prerequisites to the validity of such amendment, alteration, addition, or change, whether stated in such instrument or not, upon all questions as to title or affecting the rights of third persons and for all other purposes. Nothing contained in this Article VII shall be construed as making it obligatory upon the Trustees to amend, alter, add to, or change the Declaration of Trust upon obtaining the necessary consent as hereinbefore provided.

7.3 *Termination:* The Trust created shall terminate only upon the removal of the Condominium from the provisions of the Condominium Law in accordance with the procedures therefor set forth in Section 19 of said Law.

7.4 Disposition of Property on Termination: Upon the termination of this Trust, the Trustees may, subject to and in accordance with provisions of the Condominium Law, sell and convert into money the whole of the Trust property, or any part or parts thereof, and, after paying or retiring all known liabilities and obligations of the Trustees and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind (at valuations made by them, which shall be conclusive) all other property then held by them in trust hereunder, to the Unit Owners according to their respective percentages of beneficial interest hereunder. In making any sale under this provision, the Trustees shall have the power to sell or vary any contract for sale and to resell without being answerable for loss and, for said purposes, to do all things, including the execution and delivery of instruments, as may be by their performance thereof be shown to be in their judgment necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their possession or ownership, even though all times herein fixed for distribution of Trust property may have passed.

7.5 Consent of Mortgagees: Notwithstanding the foregoing provisions of this Article VII, unless at least fifty-one (51%) percent of the first mortgagees of Units (based upon one vote for each mortgage owned) and Unit Owners representing at least seventy-five (75%) percent of the beneficial interest in the Condominium have given their prior written approval, neither the Trustees nor the Unit Owners shall: (1) by act or omission seek to abandon or terminate the Condominium (except by abandonment or termination provided by statute in case of substantial loss to the Units and the Common Elements); (2) change the beneficial interest of any Unit for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards; (3) partition or subdivide any Unit; (4) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the common elements (but granting easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause); (5) use hazard insurance proceeds for losses to any Trust property (whether to Units or to common elements) for other than the repair, replacement, or reconstruction of such improvements, except as provided by statute in case of substantial loss to the Units and/or common elements of the Condominium; (6) make any material addition, amendment, alteration, or change to the Condominium documents relative to voting, assessment, reserve funds, insurance, fidelity bonds, rights to use common areas, responsibility for maintenance and repair, boundaries of any Unit, interests in the common areas, convertibility of Units into common areas or vice-versa, leasing of Units, imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his Unit, and provisions which are for the express benefit of eligible mortgage holders, eligible insurers, or guarantors of first mortgages on the Units. Additions or amendments to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. An eligible mortgage holder who receives a written request to approve additions or amendments and who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved said request.

ARTICLE VIII CONSTRUCTION AND INTERPRETATION

8.1 Terms: In the construction hereof, whether or not so expressed, words used in the singular or plural respectively include both the singular and plural; words denoting gender include individuals of both genders; words denoting persons include individuals, firms, associations, companies (joint stock or otherwise), trusts, and corporations, unless a contrary intention is to be inferred from or required by the subject matter or context. The cover, title, headings, or different parts hereof, the table of contents (if any), or any marginal notes, are inserted only for the convenience of reference and shall not be binding upon meaning, construction, interpretation, or effect hereof. All the trusts, powers, and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts.

8.2 Conflicts: If any provision of this Trust shall be invalid or shall conflict with the Condominium Law, then (a) such invalidity shall not impair or affect the validity or enforceability of the other provisions of this Trust, and (b) such conflict shall be controlled by the provisions of the Condominium Law applicable thereto.

IN WITNESS WHEREOF, the undersigned on behalf of Toll MA II LLC has hereunto set his hand and seal as of January 17, 2013.


TOLL MA II LLC


By: David Bauer, Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this 17th day of January, 2013, before me, the undersigned notary public, personally appeared David Bauer, authorized signatory of Toll MA II LLC, personally known to me and acknowledged to me that he signed the foregoing document voluntarily on behalf of Toll MA II LLC, for its stated purpose.


Notary Public
My Commission Expires: 3/8/13

