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2016 00042679

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Recorded: 09/07/2016 12:34 PM

**THE TEWKSBURY VILLAGE CONDOMINIUM  
DECLARATION OF TRUST AND BY-LAWS**

THIS DECLARATION OF TRUST AND BY-LAWS is made on the date set forth below, by **Tewksbury Village Condominium, LLC**, a Massachusetts limited liability company with an address of 36 Hillman Street, Unit 11, Tewksbury, Massachusetts 01876 (the “**Declarant**”).

ARTICLE I

NAME OF TRUST

The Trust hereby created shall be known as **The Tewksbury Village Condominium Trust** (the “**Trust**”), and under that name, so far as legal, convenient and practicable, all activities shall be carried on by the trustee(s) of the Trust (hereinafter, the “**Trustee(s)**” or “**trustee(s)**,” which term shall be deemed to include all successors hereunder).

ARTICLE II

THE TRUST AND ITS PURPOSE

Section 2.1. Unit Owners Organization. All of the rights and powers in and with respect to the common areas and facilities (the “**Common Areas and Facilities**” or “**Common Elements**”) of The Tewksbury Village Condominium, a condominium located in Tewksbury, Middlesex County, Massachusetts (the “**Condominium**”) established by a Master Deed (the “**Master Deed**”) of even date herewith and recorded herewith in the Middlesex North District Registry of Deeds (“**Registry of Deeds**”), which are, under the provisions of Massachusetts General Laws c. 183A, as amended (the “**Act**”), conferred upon or exercisable by the organization of Unit Owners of the Condominium and all property, real and personal tangible and intangible, conveyed to or held by the Trustee(s) (the “**Trust Property**”) hereunder shall vest in the Trustees, in trust, to exercise, manage, administer and dispose of the same and to receive the income thereof: (a) for the benefit of the owners of record from time to time (the “**Unit Owners**”) of the units (the “**Units**”) of the Condominium according to the allocation of undivided interest in the Common Areas and Facilities set forth in the Master Deed of the Condominium, and (b) in accordance with the provision of the Act. This Trust is the organization of Unit Owners established pursuant to Section 10 of the Act for the purposes therein and herein set forth.

Section 2.2. Entity Created. It is hereby expressly declared that a trust and not a partnership has been created, and that the Unit Owners are *cestuis que trustent* and not partners or associates nor in any other relation whatsoever between themselves and with respect to the Common Elements and/or Trust Property other than as Unit Owners of the Condominium, and hold no relation to the Trustee(s) other than of *cestuis que trustent*, with only such rights as are conferred upon them as such *cestuis que trustent* hereunder and under the provisions of the Act.

## ARTICLE III

### THE TRUSTEE(S)

Section 3.1. Number of Trustees. Until the “Transition Date,” described in Section 3.4 below, the Trustee(s) shall be appointed by the Declarant or its successors and assigns. After the Transition Date, there shall be a board of trustees (the “**Board**” or the “**Board of Trustees**”) consisting of either three (3) or five (5) natural persons, as may be determined by a vote of a majority of Unit Owners present in person or by proxy at a meeting at which a quorum has been established, who shall be elected as hereinafter provided. Such natural persons shall be Unit Owners or spouses of Unit Owners. In such case as title to a Unit is held by a trust, partnership, limited liability company or corporate entity, such natural person may be the fiduciary, officer, director, manager or partner of such trust or entity.

Section 3.2. Terms of Trustees. After the Transition Date, the term of each Trustee shall be for a period of three (3) years from the date on which such Trustee is elected or appointed in accordance with the provisions hereunder; provided, however, that such terms shall be on a staggered basis so that in each year one or two Trustees’ terms will expire. To that end, at the initial election after the Transition Date, one Trustee shall be elected for a term of one year, two for two years, and two for three years. A Trustee whose term has expired shall continue in office until a successor is elected or appointed as hereinafter provided.

Section 3.3. Vacancies, Election, Appointment and Acceptance of Trustees. After the Transition Date, if and when the number of Trustees shall become less than three (3) or five (5), as may be the case, due to death, disability, removal or resignation, a vacancy shall be deemed to exist, whereupon a majority of Unit Owners present in person or by proxy at a meeting at which a quorum has been established may elect a replacement to fill the term. In the event that the Unit Owners should fail to elect a successor Trustee within a thirty (30) day period from the creation of the vacancy, then the Trustee(s) then remaining may appoint a natural person, as aforesaid, to fill such vacancy. In the event that the Trustee(s) fail to appoint a successor Trustee within thirty (30) days from the date they are entitled to appoint a successor to fill the vacancy, or if there is no remaining Trustee, then such vacancy or vacancies shall, upon the petition therefor of any Unit Owner, with notice to all other Unit Owners, be filled by the appointment or appointments of a court of competent jurisdiction. 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 Registry of Deeds, acknowledged and subscribed to by a majority of the then Trustees, (1) referencing this Declaration of Trust; (2) reciting the election or appointment of the successor Trustee; and (3) 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 appointment or election.

Section 3.4. Trustee during Initial Period of Condominium; Transition Provisions. Notwithstanding the foregoing, during the period beginning with the establishment of the Condominium – that is, the recording of the Master Deed and this Declaration of Trust – until the later of (a) conveyance by the Declarant, or its successors or assigns, of all of the Units which may be included in the Condominium to third-party purchasers, or (b) seven (7) years from the conveyance of the first Unit, there shall be one (1) or more Trustee(s) appointed by the Declarant, its successors or assigns. As described above, the original Trustee appointed by the Declarant is

**Tewksbury Village Condominium, LLC.** The Declarant, at its option, may expand the initial Board of Trustees from one (1) member to two (2) or more members, all of which shall be designated by the Declarant, its successors or assigns. Within one hundred twenty (120) days after the occurrence of either of the events delineated above (the “**Transition Date**”), a special meeting of the Unit Owners shall be held for the purpose of electing Trustees who shall serve as described above as the successor Board. The Declarant may, at its sole option, choose to accelerate the Transition Date to a date which is earlier than that determined as set forth above.

Section 3.5. Trustee Action. In any matter relating to the administration of the Condominium and the exercise of the powers herein conferred, the Trustee(s) may act by majority vote of their number at any duly called meeting at which a quorum is present as hereinafter provided. The Trustees may also act without a meeting by written instrument or instruments executed by all of their number. Notwithstanding anything contained herein to the contrary, despite any vacancy in the office of Trustee, however caused and for whatever duration, the then remaining or surviving Trustees or Trustee shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustees.

Section 3.6. Trustee Meetings; Quorum. Until the Transition Date, regular Trustee meetings shall not be necessary, but may be called by any Trustee upon seven (7) days’ written notice to any and all other Trustee(s). After the Transition Date, the Trustees shall meet annually on the date of the annual meeting of the Unit Owners, immediately following such, and at such meeting may elect from their number officers (“**Officer(s)**”) including a Chairman, Treasurer and a Secretary, and any other officers they deem expedient. The Trustees shall thereafter meet at such regular intervals, times and places as determined, and specially upon the request of any two Trustees; provided, however, that written notice of each such special meeting setting the place, day, hour and purpose thereof shall be given at least seven (7) days before such meeting to each Trustee, unless such notice is waived by all Trustees. A majority of the number of Trustees then in office shall constitute a quorum at all meetings, and such meetings shall be conducted in accordance with such rules as the Trustees may adopt. Trustee meetings may be held by teleconference or video conference.

Section 3.8. Resignation and Removal. Any Trustee may resign at any time by an instrument in writing, signed and acknowledged in the manner required in Massachusetts for the acknowledgement of deeds and delivered to the remaining Trustees. Such resignation shall take effect upon the recording of such instrument with the Registry of Deeds, unless specified to be effective at some other time in said instrument. The remaining Trustees or Trustee shall forthwith cause said instrument to be duly recorded with the said Registry of Deeds. Upon a failure thereof, or the absence of other Trustees, the resigning Trustee may so record said instrument and shall notify the Unit Owners thereof.

Any Trustee appointed by the Declarant may be removed by the Declarant only. After the Transition Date, any Trustee may, (1) with cause, be removed by a vote of majority of the then serving Trustees, or (2) with or without cause, be removed by a vote of fifty-one percent (51%) of the Unit Owners at a special meeting duly called therefore. In either case, the Trustee to be removed shall be afforded the opportunity to be heard at a meeting of the Board or the Unit Owners. The vacancy so resulting shall be filled in the manner provided in Section 3.3 hereof. 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 Transition Date). In no case may the original Trustee or successor Trustees appointed by the Declarant, its successors or assigns, be removed except by the Declarant, its successors or assigns.

Section 3.9. Bond or Surety. No Trustee elected or appointed as hereinbefore provided, whether as original Trustee or as successor to or as substitute for another, shall be obliged to give any bond or surety or other security for the performance of any of his duties hereunder; provided, however, that the Unit Owners, by a vote of their number entitled to fifty-one percent (51%) of the Beneficial Interests may at any time require that any one or more of the Trustees, except a Declarant or court-appointed Trustee, shall give bond in such amount and with such sureties as shall be specified in such vote. All expenses incident to any such bond shall be charged as a Common Expense (as hereinafter defined) of the Condominium. The foregoing shall not affect any fidelity coverages hereinafter required under the insurance provisions of this Trust.

Section 3.10. Compensation of Trustees, Officers. No Trustee or Officer shall receive remuneration (which term shall not be deemed to include reimbursement for expenses incurred by such person in connection with his duties, which reimbursement shall be permitted and charged as a Common Expense) for his services unless so provided for by a vote of Unit Owners entitled to fifty-one (51%) of the Beneficial Interests and any remuneration so provided shall be from time to time fixed by said Unit Owners, and shall be a Common Expense of the Condominium. With the approval of a majority of the Trustees, any Trustee or Officer may receive reasonable remuneration for extraordinary or unusual services, professional or otherwise, rendered by him to the Trust, all as shall be from time to time fixed and determined by said Trustees, and such remuneration shall be a Common Expense of the Condominium. No compensation to Trustees may be voted by the Trustees or the Unit Owners with respect to the period while the Declarant, its successors or assigns, has the right to designate Trustees as provided in Section 3.4.

Section 3.11. No Personal Liability. No Trustee or Officer shall under any circumstances or in any event be held liable or accountable out of his personal assets or be deprived of compensation, if any, by reason of any action taken, suffered or omitted in good faith, or for allowing one or more of the other Trustees or Officers 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 anything except if he is adjudicated by a court of competent jurisdiction to have acted with his own personal and willful malfeasance and defaults, and/or such other conduct as would exempt him from indemnification as provided in Section 3.13 hereof.

Section 3.12. Trustees, Officers and Unit Owners May Deal with the Condominium. No Trustee nor Unit Owner shall be disqualified by his office or status from contracting or dealing, directly or indirectly, with the Trustees or with one or more Unit Owners as vendor, purchaser or otherwise because of his, the Trustees', Officers', or any Unit Owner's interest in any corporation, firm, trust, partnership or other organization connected with such contracting or dealing, nor shall any such dealing, contract or arrangement entered into in respect of this Trust in which any Trustee, Officer, or Unit Owner, shall in any way be interested be avoided nor shall any Trustee, Officer, or Unit Owner, so dealing or contracting or being so interested be liable to account for any profit realized by any such dealing, contact or arrangement by reason of such Trustee's or Officer's holding office or of the fiduciary relation hereby established, or by reason of such Unit Owner's status, provided the Trustee, Officer or Unit Owner shall act in good faith and shall disclose the nature of his interest before the dealing, contract or arrangement is entered into.

Section 3.13. Indemnification. The Trust shall, to the maximum extent legally permissible, defend and indemnify each of its Trustees and Officers against all liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and counsel fees, reasonably incurred by him in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, in which he may be involved or with which he may be threatened, while in office, or thereafter, by reason of his being or having been such a Trustee or Officer, except with respect to any matter as to which he shall have been adjudicated in any proceeding to have acted in bad faith or with willful misconduct or reckless disregard of his duties. The right of indemnification hereby provided shall not be exclusive of or affect any other rights to which any Trustee or Officer may be entitled herein or by contract or otherwise under applicable law. As used in this Section, the terms "Trustee" and "Officer" includes his respective heirs, executors and administrators. Nothing in this Section shall, however, be deemed to limit in any respect the powers granted to the Trustees and Officers in this instrument.

Section 3.14. Limited Declarant Liability. Notwithstanding anything to the contrary herein, and notwithstanding any custom or usage to the contrary, it is expressly understood that only the interest in the Condominium of the Declarant shall be bound by the provisions of this Trust and the Master Deed. No member, manager, officer, director or employee of the Declarant shall have any personal liability hereunder.

#### ARTICLE IV

##### BENEFICIARIES AND THE BENEFICIAL INTEREST IN THE TRUST

Section 4.1. Beneficiaries and the Beneficial Interests. The beneficiaries shall be the Unit Owners of the Condominium as they may be from time to time. The Beneficial Interests in the Trust hereunder shall be divided among the Unit Owners in the same percentages as the undivided interest in the Common Areas and Facilities as specified in the Master Deed (the "**Beneficial Interests**").

Section 4.2. Beneficial Interest Held by One Person. The Beneficial Interest appertaining to each Unit shall not be divided among several Owners of any Unit. To that end, whenever any of the Units is owned of record by more than one person, the several owners of such Unit shall (a) determine and designate which one of such Owners shall be authorized and entitled to cast votes, execute instruments and otherwise exercise the rights appertaining to such Unit, and (b) notify the Trustees of such designation by a notice in writing signed and acknowledged by all of the Owners of such Unit. Any such designation shall take effect upon receipt thereof by the Trustees 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 Trustees may designate any one such Owner for these purposes. For Units to which title is held by a fiduciary, the fiduciary shall be the designee. For Units to which title is held by a corporation or business entity, a duly authorized officer, director, manager or partner of such entity shall be the designee.

Section 4.3. Meetings of Unit Owners. There shall be an annual meeting of Unit Owners on the second Monday of May at 7:00 P.M. at the Condominium or at such other reasonable date, place and time as may be designated by the Trustees (the "**Annual Meeting**") in writing. The Trustees shall give written notice thereof to the Unit Owners at least fourteen (14) days prior to said date, which notice shall include an agenda and a full description of all matters to be voted upon, if any.

At the Annual Meeting, the Trustees shall submit reports of the management and finances of the Condominium, conduct elections as are necessary, and conduct such other business as is proper. Special meetings (including a special meeting in lieu of an annual meeting) 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 entitled to at least fifty-one percent (51%) of the Beneficial Interests (a “**Special Meeting**”). A request for such a Special Meeting from the Unit Owners shall be accompanied by a delineation of the items the requestors wish to have considered at said meeting, including the text of any proposed amendment to the Condominium documents. Written notice of any Special Meeting designating the place, day and hour thereof, together with a full description of the matter(s) to be considered and/or voted upon, shall be given by the Trustees to the Unit Owners at least fourteen (14) days prior to the date so designated. Accurate minutes of all Unit Owner meetings shall be taken by a person designated by the Trustees and shall be maintained by the Secretary as part of the records of the Trust.

Section 4.4. Voting. Each Unit shall have one (1) vote, which vote shall be weighted in relation to the votes of other Units in accordance with said Unit’s Beneficial Interest, as amended from time to time. Unless otherwise specifically provided herein or by law, the vote of a majority of the Beneficial Interests of Unit Owners (weighted as described above) present in person or by proxy at a duly convened meeting of the Unit Owners at which a quorum is present (“**Majority Vote**”), shall be binding as to those matters within the purview of the Unit Owners. A quorum for the purposes of conducting business at meetings of the Unit Owners shall equal representation of Unit Owners, in person or by proxy, entitled to at least twenty-five percent (25%) of the Beneficial Interests.

A Unit Owner may grant to any natural person, upon a form specified by the Trustees, his proxy to vote and/or attend meetings of the Unit Owners. This right to grant proxies shall in no manner vitiate the provision contained in Section 4.2 where a Unit is owned of record by more than one person. The Board may adopt reasonable rules regarding the use of proxies from time to time.

## ARTICLE V

### BY-LAWS

The provisions of this Article V shall constitute the By-Laws (the “**By-Laws**”) of this Trust and the organization of Unit Owners established hereby and shall be applicable to the Property of the Condominium, the Trust Property and to the use and occupancy thereof. The term “**Property**” as used herein shall include the Land, Building(s) and all other improvements thereon including the Units and Common Areas and Facilities, owned in fee simple absolute, or otherwise, and all easements, rights and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith, all of which are intended to be submitted to the provisions of said the Act. The term “**Trust Property**” shall refer to all property to which title is held by the Trust. The provisions of these By-Laws shall automatically become applicable to real property which may be added to the Condominium upon the recording of an amendment to the Master Deed submitting such additional real property to the provisions of the Act.

All present and future owners, mortgagees, lessees and occupants of Units and their employees, and any other persons who may use the facilities of the Condominium and/or the Property and/or the Trust Property in any manner, are subject to these By-Laws, this Declaration of Trust, the

Master Deed, the rules and regulations promulgated hereunder, and all covenants, agreements, restrictions, conditions, easements and declarations of record (the “**Title Conditions**”). The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that these By-Laws, this Declaration of Trust, the provisions of the Master Deed and the rules and regulations, as they may be amended from time to time, and the Title Conditions are accepted, ratified and will be complied with.

Section 5.1. Powers and Duties of Trustee(s). The Trustee(s) shall, subject to all provisions of applicable laws, the Master Deed and this Declaration of Trust, including these By-Laws, have the absolute control and management and disposition of the Property (excluding the Units) and the absolute control, management and disposition of Trust Property as if they were the absolute owners thereof and shall have all of the powers necessary for the administration of the affairs of the Condominium and may do all such and things in connection therewith. The powers and duties of the Trustee(s) shall include, but shall not be limited to, the following, all of which shall be exercised subject to the provisions hereof:

- a. Operating, caring for, keeping up, leasing, managing and maintaining the Common Areas and Facilities of the Condominium or any part thereof.
- 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 Act, Section 17 and 18, or otherwise.
- c. Conducting litigation as to any course of action involving the Common Areas and Facilities or arising out of the enforcement of the By-Laws, Rules and Regulations, and Master Deed and this Trust. Notwithstanding any provision of the Master Deed or the Declaration of Trust, or of these By-Laws or Rules and Regulations to the contrary, neither the Trustees acting in their capacity as such Trustees or acting as representatives of the Unit Owners, nor any class of Unit Owners shall bring any litigation whatsoever unless a copy of the proposed complaint in such litigation has been delivered to all of the Unit Owners, and Unit Owners entitled to not less than eighty percent (80%) of the Beneficial Interests consent in writing to the bringing of such litigation within thirty (30) days after a copy of such complaint has been delivered to the Unit Owners and specifying as a part of the written consent a specific monetary limitation to be paid as legal fees and costs and expenses to be incurred in connection therewith, which amount shall be separately assessed as a Special Assessment effective forthwith at the time of said affirmative consent. Notwithstanding any provisions of the Master Deed, or of the Declaration of Trust, or these By-Laws or the Rules and Regulations, the provisions hereof shall not be amended except by vote of Unit Owners entitled to not less than eighty percent (80%) of the Beneficial Interests. The provisions hereof shall not apply to litigation by the Board against Unit Owners with respect to the recovery of overdue Common Expenses or Special Assessments, or to foreclose the lien provided by M.G.L. c. 183A, Section 6, and M.G.L. c. 254, Sections 5 and 5A, or to enforce any of the provisions of the Master Deed, the Declaration of Trust, or these By-Laws or Rules and Regulations thereto, or the Unit deed, against Unit Owners;
- d. Determining and budgeting of the Common Expenses, whether shared or otherwise as set forth herein, required for the affairs of the Condominium and this Trust, or any portion or

portions thereof, including, without limitation, the operation and maintenance of the 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 necessary for the maintenance and operation of the Common Areas and Facilities.
- g. Opening and utilizing bank accounts on behalf of the Trust and designating the signatories required therefor.
- h. Obtaining such insurance as the Trustees deem appropriate.
- i. Making repairs, additions and improvements to or alterations of the Property and repairs to and restoration of the Property.
- 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 Areas and Facilities, the administration of the Condominium as contemplated by the Master Deed and this Trust, and its interpretation thereof.
- l. Obtaining advice of counsel and relying thereof, 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/or easements and/or leases over, under, through and/or to the Common Elements 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 of the Unit Owners, and modifying the terms and provisions of any easements, permits and/or licenses beneficial to the Common Elements and/or the Condominium.
- 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 appurtenance to this Unit as specified in the Master Deed.
- o. Enforcing obligations of the Unit Owners, including, but not limited to, 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, attorneys' fees, fines, costs and expenses 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 funds of the Condominium, or any part of parts thereof, and from time to time and as often as they shall see fit to change investments, including power to invest 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/or the Condominium's funds, 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 Areas and Facilities, and levying an equitable assessment of said tax payments among the individual Unit Owners.
- u. Incurring such liabilities, obligations and expenses, and paying from the principal or the income of the Condominium's funds 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, interest, late charges, attorneys' fees, fines, costs and/or expenses, and as to all charges or expenses paid by them, whether and to what extent the same shall be charged against principal or against interest, late charges, attorneys' fees, fines, costs and/or expenses, including, without hereby limiting the generality of the foregoing power, to apportion any receipt or expense between principal income, interest, late charges, attorneys' fees, fines, costs and/or expenses, and the 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 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 Trustee(s) 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 the Property (excluding the Units, except to the extent of use thereof or conduct therein as set forth under the terms of the Master Deed, the Trust, these By-Laws or the Rules and Regulations) as if the Trustee(s) 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 Condominium and its Unit Owners.

Section 5.2. Maintenance and Repair of Units; Trustee Access to Units. Except as hereinafter provided, the Unit Owners shall be responsible for the proper maintenance, replacement and repair of their respective Units and the Limited Common Elements (those Common Elements to which a Unit Owner has an exclusive right of use). Each Unit Owner shall be responsible for any and all damage to any and all other Units and/or the Common Areas and Facilities caused by his failure to satisfy this maintenance obligation, including all costs, charges, attorneys' fees, fines and expenses incurred by the Trust. If the Trustee(s) shall at any time in their reasonable judgment determine that a Unit, or any part thereof, or Limited Common Element, is in such need or maintenance or repair that the market value of one or more other Units is being adversely affected, or that the condition of a Unit, any part thereof, or Limited Common Element, or any fixtures, furnishings, facilities or equipment therein, is hazardous to any Unit or the occupants thereof and/or adversely affects any other Unit and/or the Common Elements and/or the Common Expenses, the Trustee(s) shall in writing request the Unit Owner thereof to perform the needed maintenance, repair, replacement and/or work and/or to correct the relevant condition and/or its cause. In such case as action thereon shall not have been commenced within the time as may be reasonably set by the Trustee(s) and thereafter diligently brought to completion, the Trustee(s) shall be entitled to have such performed for the account of such Unit Owner whose Unit, or Limited Common Elements, is in need thereof and to enter upon and have access to such Unit or Limited Common Elements for these purposes. In the case of an emergency which necessitates immediate action and the Unit Owner is unavailable or fails to take immediate action, the Trustee(s) may proceed thereto without delay. The cost incurred by the Trustee(s) including, but not limited to, attorneys' fees and expenses for such as is reasonably necessary therefor shall constitute an obligation of the applicable Unit Owner and shall be considered a Common Expense attributable to such Unit. The Trustee(s) may in their discretion additionally impose a fine upon a Unit Owner who, in the Trustee(s)' judgment, unreasonably fails to comply with a request made by the Trustee(s) hereunder.

Should it be necessary that any part of a Unit, personal property of a Unit Owner, and/or any part of the Common Areas and Facilities to which a Unit Owner has the right of exclusive use, be required to be removed for the purpose performing such work, or for the purpose of the Trustee(s) performing work upon the Common Elements, such Unit Owner shall promptly comply with such request by the Trustee(s). Should such Unit Owner fail to so comply, or in the case of emergency, the Trustee(s) may remove and store such part and/or property for the account of the Unit Owner,

the cost of which, including, but not limited to, attorneys' fees, fines and expenses shall constitute an obligation of the applicable Unit Owner and shall be considered a Common Expense attributable to such Unit. Such removal and storage shall be commercially reasonable in manner, extent and terms.

Each Unit Owner, subject to the reasonable approval of the Trustees, shall be responsible for arranging for the maintenance, repair and replacement of the Limited Common Elements, including but not limited to the patios, decks and porches, if any, and the Trustees shall charge the cost thereof to the Unit Owner of such Unit as a Common Expense if the Trust performs the work because the Unit Owners fail to perform such work and such Common Expense shall be due upon demand and enforceable in the same manner and to the same extent as other Common Expenses to that Unit. In addition to the foregoing, each Unit Owner shall be required to maintain appropriate climate control, keep his or her Unit clean, and take necessary measures to retard and prevent mold from accumulating in the Unit. Each Unit Owner shall be required to clean and dust the Unit on a regular basis and to remove visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces as soon as reasonably possible and must not block or cover any heating, ventilation, or air-conditioning ducts. Unit Owners are required to report immediately in writing to the Trustees: (i) any evidence of water leak or water infiltration or excessive moisture in the Unit, common hallways, if any, and any other Common Areas and Facilities; (ii) any evidence of mold that cannot be removed with a common household cleaner; (iii) any failure or malfunction in heating, ventilation or air conditioning, and (iv) any inoperable doors or windows and each Unit Owner shall be responsible for damage to the dwelling unit and personal property as well as any injury to the Unit Owner and/or occupants of the Unit resulting from the Unit Owner's failure to comply with these terms. Each Unit Owner is fully responsible and liable for the entire amount of all cleaning expenses and remediation costs incurred by the Trustees to remove mold from the Unit if the Unit Owner fails to remediate same and each Unit Owner shall be responsible for the repair and remediation of all damages to the Unit caused by mold.

In connection with all required maintenance, repair and replacement work to be carried out by the Unit Owner(s) hereunder, the Unit Owner shall: (1) obtain, at the Unit Owner's expense, all necessary approvals, variances, permits and/or licenses; and, (2) perform such work in a good and workmanlike manner and in full compliance with all applicable federal, state and local laws, ordinances, codes, bylaws and rules, including those relating to zoning, building, health, safety and sanitation. Upon the Board's request, the Unit Owner shall provide the names and contact information of all contractors who perform any work on the Unit.

Section 5.3. Maintenance, Replacement and Repair of Common Areas and Tort Immunity. Except as stated in the Master Deed or in Section 5.2, the Trustee(s) shall be responsible for arranging for the proper cleaning, replacement, maintenance and repair of the Common Areas and Facilities and such other portions of the Condominium as may be herein specified within the budgetary constraints of the Condominium. The Trustee(s) may approve payment of vouchers for such work, and the expenses of such replacement, maintenance and repair shall be assessed to the Unit Owners as Common Expenses of the Condominium at such times and in such amounts as provided in Section 5.5; provided, however, that such cleaning, replacement, maintenance and/or repair as may be necessitated by the negligence, misuse or neglect of a Unit Owner, his family, servants, agents, employees, invitees, lessees, licensees, pets, or others upon the Property at the Unit Owner's

behest, whether directly or by virtue of a Unit Owner's failure to properly maintain, repair or replace the Unit, components thereof, or Common Elements to which such Unit Owner has exclusive use, including all charges, fines, attorneys' fees, costs and expenses, shall be charged to such Unit Owner, constitute an obligation of such Unit Owner and be considered a Common Expense attributable to such Unit, except to the extent such as are covered by the Trust's master insurance policy.

The Trust and Trustees shall not be liable, in any legal action brought by or on behalf of a Unit Owner, resident or visitor, for bodily injury or death occurring to a Unit Owner, resident or visitor on the Trust's Common Areas and Facilities, on Limited Common Elements of a Unit unless the Trust or Trustees are adjudicated after final appeal to have acted with gross negligence, recklessness or willful misconduct.

Section 5.4. Right of Access. The Trustee(s) or any other person authorized by the Trustee(s), shall have a right of access to any Unit, and/or Common Elements to which a Unit has an exclusive right of use, for the purpose of making inspections, or for the purpose of correcting any conditions originating in the Unit and/or said Common Elements, or threatening another Unit or the Common Areas and Facilities, or for any other purpose reasonably necessary for the proper maintenance or operation of the Condominium, or for any other purpose as herein provided for which access to a Unit and/or said Common Elements is necessary; provided, however, that such entry is made after forty-eight (48) hours' written notice and that any such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, or in such case as a Unit Owner fails to cooperate with the Trustee(s) after notice as aforesaid, such right of entry shall be immediate, and without notice where such is impractical. In furtherance hereof, the Trustees may require that each Unit Owner shall provide to the Trustee(s) duplicate keys to all locks upon every means of access to a Unit.

Section 5.5. Common Expenses, Profits and Funds. The Unit Owners shall be liable for Common Expenses and entitled to common profits of the Condominium in proportion to their respective percentages of the Beneficial Interests. The Trustees may round installments of Common Expenses to the nearest whole dollar. The Trustee(s) may at any time or times, as they in their sole discretion may determine, distribute common profits and/or surplus accumulation among the Unit Owners in such proportions.

- a. Reserve Funds. The Trustee(s) shall establish and maintain as hereinafter provided the following separate and segregated funds to be used for the purposes hereinafter specified:
  - i. Capital Expense Fund. The Trustee(s) shall set aside from the regular monthly payments of Common Charges an amount to be adequate and appropriate to provide a reserve for the periodic repair and/or replacement of the Common Elements and other capital purposes and may, to the extent consistent with these purposes, use the funds so set aside for the reduction of indebtedness or other lawful capital purpose, or subject to the provisions of these By-Laws and the provisions of the Act, Section 17 and/or 18, for the repair, replacement, rebuilding, restoration or improvement of the Common Areas and Facilities. Such reserves shall be maintained in a separate and segregated account to be known as the Capital Expense Reserve Account and the funds so set aside shall not be deemed common profits available for distribution; but, rather, shall be considered as property of the Trust held for the account of the Unit Owners in accordance with their respective

Beneficial Interests. To ensure the adequacy of such Capital Expense Reserve Account, the Trustee(s) may periodically engage an appropriate professional to undertake a capital reserve study, and/or to up-date one previously undertaken, and based thereon establish an appropriate policy to fund such capital expense needs as therein determined.

- ii. Working Capital. The Trustee(s) may maintain a working capital reserve in an amount as the Trustee(s) shall in their judgment determine as adequate and appropriate, to provide available funds to meet unforeseen expenditures, to cover cash flow requirements, or to acquire additional equipment or services deemed by the Trustee(s) as necessary or desirable, and may, to the extent consistent with these purposes, use the funds so set aside consistent with the provisions of these By-Laws. Such Working Capital Reserve Account shall be maintained in a separate and segregated account to be known as the Working Capital Reserve Account and the funds so set aside shall not be deemed common profits available for distribution, but, rather, shall be considered as the property of the Trust. The first purchasers of each Unit from the Declarant shall be responsible for the payment of an additional amount equal to two months' Common Charges to initially fund the Working Capital Reserve Account. Such amounts shall not be considered an advance on the payment of Common Charges but, rather, a separate cost. Subsequent purchasers may also be required to contribute funds for Working Capital Reserve.
- b. Determination of Common Expenses and Fixing Of Common Charges. As a result of the Condominium configuration (which is intended to include both residential and commercial Units), it is anticipated that each of the elements (residential and commercial) may have different budgetary requirements. To the extent necessary or appropriate, the Trustees may, at their discretion, prepare a separate budget for each such element. The Trustees shall also prepare a budget for the shared Common Expenses, common to all Unit Owners regardless of whether they are part of the residential or commercial elements. To the extent that the Trustees elect to prepare multiple budgets, the budget for the commercial Units shall be entitled "Commercial Budget" and the budget for residential Units shall be entitled "Residential Budget." The budget for the shared, or otherwise undefined, Common Expenses shall be entitled the "Common Budget." To the extent that the Trustees elect to prepare multiple budgets, the Commercial Budget and Residential Budget shall consist of all items properly, in the good faith judgment of the Trustees, attributable to the Common Areas of the commercial Units or residential Units respectively. Any amounts set forth in a separate Commercial Budget or Residential Budget may be assessed against each commercial or residential Unit Owner, respectively, as follows: the amount assessed to each individual Unit Owner shall be the product of the total amount of said Commercial or Residential Budget multiplied by the fraction where the numerator is the Unit Owner's Beneficial Interest as set forth in the Master Deed and the denominator is the total of all Unit Owner Beneficial Interests of either commercial Units or residential Units as appropriate.

The Trustee(s) shall prepare the budget(s) noted above for the Condominium by establishing the Common Expenses expected to be incurred during the ensuing fiscal year

together with a reasonable provision for contingencies and reserves as referred to above, and after taking into account any undistributed common profits from prior years (reserves excepted), shall determine the assessment to be made for such fiscal year (herein referred to as “**Common Expenses**”). The Common Expenses, which may be allocated either to commercial or residential Units or to all Units, as the Trustees may determine, shall include, but in no way be limited to, all such amounts as the Trustee(s) may deem proper for the operation and maintenance of the Condominium including, without limitation, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained pursuant to the provisions of this Declaration of Trust, an amount for a capital expense reserve, an amount for a working capital reserve, and an amount to make up for any deficit in the Common Expenses for any prior year. The Common Expenses may also include such amounts as may be required for the purchase or lease by the Trustee(s), on behalf of all Unit Owners, pursuant to the terms of this Declaration of Trust, of any Unit which is to be sold at foreclosure or other judicial sale, or otherwise. The Trustee(s) shall render statements to the Unit Owners for their Common Charges, according to their Beneficial Interests, and the amount shown on such statement shall, unless otherwise provided therein, be due and payable within thirty (30) days after the same is rendered. In the event an annual assessment is not made as above required, an assessment shall be presumed to have been made in the amount of the last prior assessment. In the event that the Trustee(s) shall determine at any time during the fiscal year that the assessment so made is less than the Common Expenses actually incurred, or in the reasonable opinion of the Trustee(s), likely to be incurred, or in the event that the Trustee(s) shall determine that it is advisable to establish a larger reserve or other fund for projected capital expenses or working capital or other expenditures or otherwise, the Trustee(s) may make one (1) or more temporary fee increases to the Common Charges and/or supplemental assessments and render such statements as they may deem necessary therefor in the manner aforesaid, and the amount shown in such statement shall be payable and take effect as aforesaid.

- c. Payment and Collection of Common Expenses. The Trustee(s) shall, so far as reasonably possible, provide for payment of the annual assessment of Common Charges in advance in monthly substantially equal installments, which shall be due upon the first day of each month, or such other periodic payment as the Trustee(s) may determine. The amount of each such statement, together with late charges as may be reasonably imposed by the Trustee(s), reasonable attorneys’ fees, fines and interest on the assessment at the rate of one and one-half percent (1½%) per month, if that amount is not paid when due, shall constitute a lien on the Unit of the Unit Owner assessed and the personal obligation of the Unit Owner, all pursuant to provisions of the Act, Section 6. The Trustee(s) shall take prompt action to collect any Common Charges due from any Unit Owner which remain unpaid. The Trustee(s) may, also, prohibit the delinquent Unit Owner, or persons occupying his or her Unit, from using any of the Common Elements of the Condominium, if any, not necessary to the use of the Unit. To the extent a Unit Owner may be persistently delinquent in the timely payment of Common Charges due, as the Trustee(s) in their sole discretion may determine, the Trustee(s) may require such Unit Owner to pay the Common Expenses due in one (1) lump sum as opposed to periodically as herein provided for. All obligations and charges to a Unit Owner and such Unit Owner’s Unit shall for the purposes

hereof be deemed a Common Expense attributable to such Unit and payment thereof shall be enforceable as herein provided.

d. Payment of Common Expenses Subsequent To Transfer. No Unit Owner shall be liable for the payment of any part of the Common Charges assessed against his Unit subsequent to a sale, transfer or other conveyance by him of such Unit. A purchaser of a Unit shall not be personally liable for the payment of Common Charges assessed and unpaid against such Unit prior to the acquisition by him of such Unit unless such purchaser has agreed to assume such obligation. This provision shall not, however, affect the statutory lien on such Unit for such unpaid Common Charges. Except as provided in the Act, Section 6, a purchaser of a Unit at a foreclosure sale of such Unit by a first mortgagee or any first mortgagee who comes into possession of the Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims and/or liens for unpaid assessments or charges against the mortgaged Unit which accrue prior to the time such holder comes into possession of the Unit.

e. Default In Payment of Common Expenses. In the event of default by any Unit Owner in paying to the Trustee(s) the Common Expenses attributable to his Unit (the “**Common Charge**”), such Unit Owner shall be obligated to pay all expenses, including attorneys’ fees, fines, late charges and interest incurred by the Trustee(s) in any proceeding brought to collect such unpaid Common Charges, irrespective of the amount so unpaid. The Trustee(s) shall have the right and duty to attempt to recover such unpaid Common Charges, irrespective of the amount so unpaid, together with late charges, interest thereon, fines and the expenses of the proceeding, including attorneys’ fees, in an action to recover the same brought against such Unit Owner, or by foreclosure of the lien on such Unit, or in any proceeding wherein the Unit Owner seeks to avoid payment of the Common Charges due, all such constituting a lien as provided in Section 6 of the Act. In furtherance hereof, a defaulting Unit Owner hereby waives any argument upon such a proceeding that the expenses thereof, including attorneys’, fees, are unreasonable and/or excessive when considered in the light of the amount so unpaid. A Unit Owner shall, upon any action brought by the Trustee(s) to collect unpaid Common Charges, have no right to make any claims or defense of off-set upon any basis.

After an action is commenced by the Trustee(s) to foreclose a lien on a Unit because of unpaid Common Charges, a Unit Owner remaining in his Unit for any period of time thereafter shall be required to pay a reasonable fee for the use and occupancy of his Unit and a receiver may be appointed to collect same. The Trustee(s) acting on behalf of all Unit Owners, shall have power to purchase a Unit at the lien foreclosure sale and to acquire, hold, lease, mortgage (but not to vote the votes appurtenant thereto), convey or otherwise deal with the same. A suit to recover a money judgment for unpaid Common Charges shall be maintainable without foreclosing or waiving the lien securing the same, and may be brought simultaneously with an action to so establish and foreclose upon said lien.

During such time that a Unit Owner remains in default of any payment due hereunder or the performance of any other obligations or covenant under this Declaration or the Master

Deed, the Board may suspend or limit such Unit Owner's right to vote at any meeting of the Unit Owners, in person or by proxy, or to use any part of the Common Elements.

- f. Application of Common Funds. The Trustee(s) shall expend common funds only for purposes permitted hereby and by the provisions of the Act.
- g. Notice of Default in Payment of Common Expenses. Pursuant to the applicable provisions of the Act, Section 6, and/or upon the written request of the holder of any mortgage upon a Unit, the Trustee(s) shall notify such holder of any default by a Unit Owner in the payment of his share of the Common Expenses.
- h. 6(d) Certificates. Upon request of a Unit Owner or his designee, the Trustee(s) shall, within ten (10) business days, provide a certificate in conformity with the Act, Section 6(d), specifying the amount, if any, of any unpaid Common Charges assessed to the Unit Owner and/or attributable to the Unit. The Trustee(s) may in their discretion impose a reasonable fee for the provision of such statement. Such Certificate need only be signed by any one (1) Trustee. A majority of the Trustees, by an instrument recorded at said Registry, may delegate the authority to sign 6(d) certificates to a third party including a managing agent or employees or principals of a managing agent.
- i. Notwithstanding the above provisions of this Section 5.5, until the completion of construction of all the Unit interiors and the Common Elements, so that Units can be occupied, no Common Charges or Reserve Funds, shall be assessed or due and payable on account of any Unit.

Section 5.6. Insurance. The Trustee(s) and the Unit Owners shall obtain and maintain the following insurance policies:

- a. Casualty Insurance. The Trustee(s) shall obtain and maintain, to the extent reasonably obtainable at costs deemed reasonable to the Trustees in their sole discretion and permitted by applicable law, so-called master policies of insurance providing fire-with-extended coverage and so-called "all risk" coverage insurance, insuring the Building(s) including, without limitation, the Common Areas and Facilities, all of the Units with all fixtures, additions, alterations and improvements thereof, all heating and cooling equipment and other service machinery, apparatus, equipment and installations comprised in the Common Areas and Facilities, and also all such portions normally deemed to constitute part of the buildings and customarily covered by such insurance, but not including any furniture, furnishings, or household and personal property belonging to and owned by individual Unit Owners or tenants, in an amount equal to not less than one hundred percent (100%) of the full replacement value thereof (exclusive of foundations, land and other items normally excluded therefrom) without deduction or depreciation. Coverage may be subject to a reasonable deductible as the Trustee(s) may determine, from time to time, and shall include Agreed Amount, Inflation Guard (if reasonably obtainable), Ordinance or Law coverage including increased cost of construction and demolition (if applicable), Replacement Cost Endorsements and boiler and machinery insurance in such limits as the Trustee(s) may, from time to time, determine. In determining full replacement value, the Trustee(s) may reasonably rely upon the advice of the insurer or other commercially reasonable appraisal



and such replacement value should be updated periodically but no less than every three (3) years. The name of the insured under such policy shall be stated in form, substance and effect similar to the following: "Trustee(s) of The Tewksbury Village Condominium Trust for use and benefit of the Unit Owners of The Tewksbury Village Condominium and their mortgagees as their interests may appear." Such insurance shall contain the standard mortgagee clause and shall name the Trustee(s) as Insurance Trustee(s) (as defined herein) for the use and benefit of all Unit Owners and their mortgagees as their interest may appear, with losses payable to and adjusted by the Trustee(s) as Insurance Trustee(s) in accordance with the provisions of these By-Laws. The Trustee(s) may insure against such other hazards or risks of casualty as the Trustee(s) from time to time in their discretion shall determine to be appropriate, including, but not limited to earthquake and flood insurance.

- b. Liability Insurance. The Trustee(s) shall obtain and maintain, to the extent obtainable and/or applicable, master policies of insurance with respect to the Common Areas and Facilities for the benefit and protection of the Trust and all Unit Owners for: (i) comprehensive general liability insurance in such limits as the Trustee(s) may, from time to time, determine but in no case less than \$1,000,000.00 per occurrence/\$2,000,000.00 in the general aggregate and (ii) an excess/umbrella liability policy with a limit of no less than \$2,000,000.00 per occurrence and general aggregate (to apply excess of general liability, automobile liability and employers liability coverages), covering the Trust, the Trustee(s), the Property Manager (as defined herein), if any, and each Unit Owner with respect to liability arising out of ownership, maintenance or repair of the Common Areas and Facilities of the Condominium, such insurance containing a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Condominium Unit Owner because of negligent acts of the Trust, the Trustee(s), the Unit Owner or other Unit Owners, and other provisions commonly referred to as a "Special Condominium Endorsement" or its equivalent; (iii) workmen's compensation and employers liability insurance and non-owned automobile liability insurance with respects to employees of the Condominium, if any; and (v) such other liability insurance as the Trustee(s) may from time to time deem appropriate and desirable.
- c. Fidelity Coverage. The Trustee(s) shall obtain fidelity coverage against dishonest acts on the part of the Trustee(s), the Property Manager (as defined herein), if any, employees or volunteers responsible for handling funds belonging to the Trust or administered by the Trustee(s). This fidelity insurance shall name the Trustees of The Tewksbury Village Condominium Trust as the named insured and shall be written in an amount equal to the maximum amount that will be in custody of the Trust at any one time, but in no event less than three (3) months Common Expenses plus all reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.
- d. Directors and Officers Liability Insurance. The Trustee(s) may obtain Directors' and Officers' Liability Insurance in such amounts and upon such terms as they deem appropriate.

- e. FHLMC and FANNIE MAE Insurance Requirements. The Trustees may rely upon the advice of its insurance agent in determining what coverages and in what amounts those coverages should be maintained by the Trust.
- f. Unit Owners' Insurance. Unit Owners shall carry insurance for their own benefit insuring their furniture, fixtures, furnishings, improvements and other personal property located within their respective Units or its appurtenances, and for such as is not covered by the Condominium master policies – particularly any deductible; provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Trustee(s) shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner. Unit Owners shall in all events maintain liability insurance covering damage to the Property in such reasonable amounts as the Trustee(s) may determine and, upon request, provide evidence thereof to the Trustee(s).
- g. Terms and Conditions of Policies. Policies for casualty insurance, and to the extent applicable, such other policies of insurance, shall provide: (i) that the insurance company waive any right of subrogation against the Trustee(s), their agents and employees, and the Unit Owners, their respective employees, agents, tenants and guests to the extent they are not specifically obligated hereunder; (ii) that the insurance shall not be prejudiced by any act or neglect of any Unit Owners or occupants or any other person or firm (including employees and agents of the Trustee(s)) when such act or neglect is not within the control of the Trustee(s) (or Unit Owners collectively) or by failure of the Trustee(s) or Unit Owners collectively) to comply with any warranty or condition with regard to any portion of the premises over which the Trustee(s) (or Unit Owners collectively) have no control; (iii) that such policies may not be canceled without at least twenty (20) days' prior written notice to all Unit Owners and mortgagees of Units to whom certificates of insurance have been issued; (iv) that recovery thereunder shall not be affected on account of the availability of proceeds under any policies obtained by individual Unit Owners covering their Units; and (v) if obtainable, that the company shall waive any right it may have under the policy to repair or restore damage should the Unit Owners elect to terminate the Condominium because of such damage.

Such insurance policies may provide for a deductible for each coverage thereof as determined by the Trustee(s) in their absolute discretion. In the event of any loss which relates in part to insurable portions of a Unit, or Units, and/or in part to the Common Elements, the Trustee(s) shall apportion the deductible amount directly proportional to the amount of such loss related to such Unit or Units, and/or the amount of the loss related to the Common Areas and Facilities. Where such loss is solely to a Unit, the deductible amount shall be borne solely by the Unit Owner thereof. Where such loss is solely to the Common Elements, such shall be borne from the common funds, unless such loss is determined by the Board to have been caused by the negligence, recklessness or willful misconduct of a Unit Owner(s), in which case the Board may assess such amounts to such Unit Owner(s).

- h. Insurance Appraisal. The Trustee(s) may obtain an appraisal of the full replacement value of the property to be insured in accordance with the foregoing provisions of this Section, without deduction for depreciation, for the purpose of determining the amount of insurance to be maintained pursuant to this Section. If the Trustee(s) in their discretion deem it necessary, they shall upon notification of improvements to be made to a Unit by a Unit Owner increase the insurance coverage afforded by said master policy.
- i. Trustee(s) As Insurance Trustee(s). The Trustee(s): (i) shall have exclusive authority to negotiate all losses as herein provided for, (ii) shall collect and receive all loss insurance proceeds, and (iii) shall hold, use, apply and disburse the same in accordance with the applicable provisions of these By-Laws for the benefit of the Unit Owners and their respective mortgagees. With respect to losses which affect portions or elements covered by such insurance or more than one Unit and/or the Common Elements to different extents, the proceeds relating thereto shall be used, applied and disbursed by the Trustee(s) in their judgment in a fair and equitable manner, primarily based upon the relative losses.
- j. Authorized Insurance Representative. Notwithstanding any of the forgoing provisions and requirements to the contrary relating to physical damage or liability insurance, there may be named as an insured, on behalf of the Trustee(s), the Trustee(s)' authorized representative, including any Trustee, with whom such Trustee(s) may enter into any insurance trust agreement or any successor to such Trustee (each of whom shall be referred to herein as the "**Insurance Trustee**"), who shall have exclusive authority to negotiate losses under any policy providing such physical damage or public liability insurance. Each Unit Owner appoints the Trustee(s), or any Insurance Trustee or substitute Insurance Trustee designated by the Trustee(s), as his attorney-in-fact for the purpose of purchasing, maintaining and administering such insurance, including without limitation the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.
- k. Notification of Mortgagees. The Trustee(s), on behalf of the organization of Unit Owners, shall, when requested by mortgagees of Units, give written notice to such mortgagees of any such loss to the Common Areas and Facilities, or to the Unit mortgaged, as the mortgagee requests.
- l. Certificates of Insurance. Certificates of insurance with proper mortgage endorsements, when requested, shall be issued to Unit Owners or their designees. The Trustee(s) may charge a reasonable fee for obtaining and issuing such certificates.

Section 5.7. Rebuilding, Restoration and Condemnation. The following provisions shall apply in the case of casualty loss or condemnation:

- a. Casualty Loss. In the event of damage to or destruction of the Condominium as a result of fire or any other casualty, the Trustee(s) shall proceed as follows:
- b. Casualty Loss to Units. Where such damage or destruction is solely to a Unit, or Units, the Insurance Trustee designated herein shall promptly adjust and collect the loss and disburse

the master policy insurance proceeds in appropriate progress payments with appropriate retainage to the Unit Owner(s) affected so as to facilitate and ensure the repair and restoration of the Unit or Units, so damaged or destroyed. In such case as an affected Unit Owner should fail to promptly take such action as the Trustee(s) deem appropriate to repair or restore his Unit, the Trustee(s) may, but shall not be obligated to, proceed thereto, in whole or in part, for his account and utilize the said insurance proceeds accordingly. The affected Unit Owner(s) shall bear any cost or expense for such repair and restoration in excess of the available insurance proceeds under the master policy, including any excess resultant from the application of any deductible thereon. Where more than one Unit is so damaged or destroyed, said proceeds and deductible shall be apportioned based upon the basis of the relative damage to each Unit; provided, however, that in such case as such damage or destruction is caused by the acts or omissions of a Unit Owner, his family, servants, agents, employees, invitees, licensees or lessees, any deficiency in the insurance proceeds shall be borne solely by such Unit Owner. Similarly, should there be any deficiency in the insurance proceeds resultant from a Unit Owner's failure to promptly and accurately report any improvements to his Unit, such deficiency shall be borne by such Unit Owner. The extent to which the cost is in excess of the insurance proceeds is attributable to such Unit Owner's failure to report improvements or is due to the acts or omissions as aforesaid shall be determined by the Trustee(s) in their reasonable discretion.

- c. Casualty Loss to Unit and Common Elements or Common Elements Only. Where such damage or destruction is solely to the Common Elements, or to both the Common Elements and Units, the Trustee(s), in their reasonable discretion, shall forthwith determine whether or not the loss exceeds ten percent (10%) of the value of the entire condominium immediately prior to the casualty and thereupon shall notify all Unit Owners of such determination. In furtherance thereof the Trustee(s) may employ such persons, firms or entities as are, in their judgment, appropriate to assist in such determination.
- d. Loss Less Than Ten Percent. If the loss as so determined is less than, or equals, ten percent (10%) of the value of the entire Condominium immediately prior to the loss, the Trustee(s) shall proceed as provided above provided that the Common Elements shall be repaired and restored by the Trustee(s) and any deficiency thereto relating shall be borne from common funds.
- e. Loss In Excess of Ten Percent. If the loss to the Common Elements as so determined exceeds ten percent (10%) of the value of the entire Condominium immediately prior to the loss, the Trustee(s) shall seek the agreement of Unit Owners entitled to seventy-five (75%) of the Beneficial Interests by submitting to the Unit Owners a form of agreement (the "**Restoration Agreement**") whereby the Unit Owners authorize the Trustee(s) to proceed with the necessary repair and restoration. If such percentage of Unit Owners agree (by executing the Restoration Agreement) to proceed to the necessary repair and restoration, then the Trustee(s) shall proceed thereto as provided above; provided that the cost of such repair and restoration in excess of available insurance proceeds shall be a Common Expense payable from common funds or by special assessment, if necessary; and further provided, however, that any Unit Owners who did not so agree may apply to the Superior Court of the county in which the Condominium is located on such notice to the

Trust as the Court shall direct, for an order directing the purchase of their Units by the Trust at the fair market value thereof as approved by the Court. The cost of any such purchase shall be a Common Expense. If such percentage of Unit Owners do not, within one hundred twenty (120) days of the occurrence of such loss, agree to proceed with the repair and restoration (by executing the Restoration Agreement and timely returning the same to the Trustee(s)), a Unit Owner's proportionate share of the insurance proceeds with respect to the Common Areas and Facilities, together with the portion of the insurance proceeds allocated to any Unit as a result of a loss to such Unit due to the casualty shall, to the extent permitted by law, be paid first to the holder of the first mortgage of such Unit, if any, up to, but not in excess of, the then principal balance secured thereby and any accrued interest and other charges then due the holder of the first mortgage, and thereafter to the Unit Owner, and if first mortgagees, of which the Trustee(s) have received notice, holding mortgages on Units having at least fifty-one percent (51%) of the Beneficial Interest approve a suit for partition then the Condominium shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is recorded. The net proceeds of a partition sale together with common funds of the Trust (adjusted for insurance proceeds paid or payable to mortgagees as aforesaid) shall be divided all as provided by law and distributed, with respect to the amounts respectively secured thereby, to the secured parties and thereafter to the Unit Owners. Upon such sale, the Condominium shall be deemed removed from the provisions of the Act.

The Trustee(s) may perform emergency work essential to the preservation and safety of the Property or the safety of persons, or required to avoid the suspension of any essential service to the Condominium without having first adjusted the loss or obtained proceeds of insurance or otherwise having complied herewith.

If there shall have been a repair or restoration pursuant to the foregoing and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds, if any, shall be added to the Condominium's Capital Expense Reserve Account or shall be, at the option of the Trustee(s), divided among all of the Unit Owners in proportion to their respective Beneficial Interest; provided, however, that no provision herein shall be deemed to give a Unit Owner or any other party priority over any rights of the holder of a first mortgage (if any) on such Unit Owner's Unit pursuant to such mortgage in the case of a distribution to such Unit Owner of insurance proceeds for losses to Units and/or Common Elements. First mortgagees of Units will be entitled to priority with respect to any insurance proceeds distributed to their mortgagors.

Notwithstanding anything to the contrary contained in this Subsection, in the event that any Unit Owner shall dissent from any determination of the Trustee(s) with respect to the value of the Condominium or any other determination or action of the Trustee(s) under this Subsection by notice in writing to the Trustee(s) within ten (10) days after such determination or action, and such dispute shall not have been resolved within thirty (30) days after such notice, then either the Trustee(s) or the dissenting Unit Owner may submit the matter to arbitration, and such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

Notwithstanding anything to the contrary contained in the preceding paragraphs of this Subsection, the Trustee(s) shall not, in any event, be obliged to proceed with any repair or restoration unless and until they have received funds in an amount equal to the estimate of the Trustee(s) of all costs thereof.

The foregoing provisions are intended to comply with Section 17 of the Act and to be, in addition, consonant with the requirements of FHLMC and FANNIE MAE. To the extent there is a conflict between the provisions hereof and the Act, the Act shall control.

- f. Eminent Domain. If more than ten percent (10%) of the entire Condominium is taken under any power of eminent domain, the taking shall be treated as a "casualty loss," and the provisions of Section 17 of the Act of Massachusetts General Laws shall apply. Where one (1) or more Units have been substantially altered or rendered uninhabitable as a result of a partial taking, and the Unit Owners vote to restore and continue the Condominium pursuant to the provisions of Section 17 of said the Act, the Trustee(s) shall have the authority to acquire the remaining portions of such Units, for such price as the Trustee(s) shall determine, provided that any Unit Owner of such remaining portion who does not agree with such determination may apply to the Superior Court, on such notice to the Trustee(s) as the Court shall direct, for an order directing the purchase of such remaining portion at the fair market value thereof as approved by the Court. Where as a result of a partial taking any Unit is decreased in size or where the number of Units is decreased by a partial taking, then the Trustee(s) may make such provision for realignment of the undivided interests in the Common Areas and Facilities as shall be just and equitable.

In the event of a total or partial taking under the powers of eminent domain, the Unit Owners shall be represented by the Condominium acting through the Trustee(s). In the event of a partial taking the award shall be allocated among the affected Units according to their appurtenant Beneficial Interest, and paid first to the extent permitted by law, to the holder(s) of the first mortgage of such Unit(s), if any, up to, but not in excess of, the then principal balance secured thereby and any accrued interest and other charges then due the holder(s) of the first mortgage. In the case of a total taking of all Units and the Common Areas and Facilities, the entire award shall be payable to the Trustee(s) to be allocated among the Units according to their appurtenant Beneficial Interest, and paid first to the extent permitted by law, to the holder(s) of the first mortgages of such Unit(s), if any, up to, but not in excess of, the then principal balance secured thereby and any accrued interest and other charges then due the holder(s) of the first mortgage. As to any portion or portions of any award which are attributable to direct or consequential damages suffered by particular Units, they shall be payable to the owners of such particular Units and their mortgagees, as their interests may appear.

- g. Retention of Architect. Whenever the estimated cost, as determined by the Trustee(s), of repair or restoration exceeds as to any one (1) casualty or occurrence, ten percent (10%) of the value of the entire Condominium or twenty-five percent (25%) of the value with respect to any one (1) Unit, then the Trustee(s), unless waived by unanimous vote, shall retain a licensed architect or licensed engineer, who shall not be directly or indirectly a Unit Owner or an employee or agent of any Unit Owner or a Trustee or an employee or agent of any

Trustee, to supervise the work of repair or restoration, and no sums shall be paid by the Trustee(s) on account of such repair or restoration except upon certification to them by such architect or engineer that the work for which payment is being made has been completed in a good and workmanlike manner in accordance with approved plans and specifications, and that the estimated total cost of completion of said repair or restoration, less amounts theretofore advanced, does not exceed the undisbursed proceeds of insurance as augmented by funds obtained by any assessment levied or chargeable to the Unit Owners as a Common Expense. The Unit Owner shall bear all costs relating to the architect and the Trustees shall have the right to direct said architect for purposes of ensuring the work or repair or restoration is adequately supervised.

Section 5.8. Improvements to the Units and Common Elements. The following provisions shall apply in the case of any improvement at the Condominium.

- a. Improvements to Common Areas and Facilities. If and whenever the Trustee(s) shall propose to make any improvement to the Common Areas and Facilities or shall be requested in writing by one-third (1/3) of the Unit Owners to make any such improvement, the Trustee(s) shall submit to all Unit Owners a form of agreement (which may be in several counterparts) (the “**Improvement Agreement**”) specifying the improvement or improvements proposed to be made and the estimated cost thereof, and authorizing the Trustee(s) to proceed to make the same. Upon the receipt by the Trustee(s) of such Improvement Agreement executed by Unit Owners entitled to seventy-five percent (75%) of the Beneficial Interests or the expiration of ninety (90) days after such agreement was first submitted to the Unit Owners, whichever of said events shall first occur, the Trustee(s) shall notify all the Unit Owners of the aggregate percentage of the Unit Owners who have then executed such Improvement Agreement. If such percentage is equal to or exceeds seventy-five percent (75%), the Trustee(s) shall proceed to make the improvement(s) specified in such agreement and, in accordance with Section 18 of the Act, shall charge the cost of such improvement(s) to all Unit Owners as a Common Expense in accordance with their Beneficial Interest. Provided, however, that if the Trustee(s) shall determine in their reasonable discretion that the cost of such improvement exceeds ten percent (10%) of the then value of the entire Condominium, any Unit Owner who did not so agree to proceed may apply to the Superior Court, on such notice to the Trustee(s) as the Superior Court shall direct, for an order directing the purchase of his Unit by the Trustee(s) at the fair market value thereof as approved by the Superior Court.
- b. Improvement at Unit Owner Expense. If and whenever any Unit Owner shall propose to make an improvement to or affecting the Common Areas and Facilities of the Condominium at such Unit Owner’s own expense, and the Trustee(s) determine in their reasonable discretion that such improvement would be consistent and compatible with the Condominium and the use and enjoyment thereof by its residents, the Trustee(s) may, but shall not be obligated to, authorize such improvement to be made at the sole expense of the Unit Owner proposing the same, without the consent or approval of other Unit Owners, subject to such contractual undertakings of the Unit Owner proposing such improvement as the Trustee(s) in their reasonable discretion deem to be necessary or desirable in the circumstances.

- c. Improvements to Units. No Unit Owner shall make any addition, alteration or improvement in or to his Unit or to any portion of the Common Areas and Facilities to which he has the exclusive use, which may affect the appearance or structure of the Condominium, or the integrity of its systems, or which is otherwise restricted by the Master Deed, without the prior written consent thereto of the Trustee(s). Said request shall include adequate plans, specifications and similar items, so as to enable the Trustee(s) to reasonably review such request.

As to any request for approval pursuant to this Subsection the Trustee(s) may engage, if they so choose, an architect or engineer or both, if necessary, to review the plans and specifications to be attached to said request, and such architect or engineer's fees shall be paid by the requesting Unit Owner. If the said engineer and/or architect determines that the plans and specifications are consistent with the structural integrity and/or design character, as relevant to the particular request, of the Condominium, the Trustee(s) may then, in their sole discretion, approve or disapprove said plans, or approve them subject to certain conditions including restrictions in the manner of performing such work and requirements thereto related and such other restrictions as may be contained in the Master Deed.

All additions, alterations or improvements to any Unit (whether or not affecting the structural or mechanical systems of the Condominium) shall be performed in compliance with all applicable laws, regulations and codes, and when required thereby, by licensed contractors and shall be completed in a good and workmanlike manner. Each Unit Owner, and his contractors, shall cooperate with the Trustee(s) and other Unit Owners so as not to unduly inconvenience or disturb the occupants of the Condominium. Notwithstanding any other provision of the By-Laws, the cost of repairing or restoring any damage to the Common Areas and Facilities or to any Unit which is caused by any work being performed by or for a Unit Owner shall be charged solely to such Unit Owner. The foregoing shall not be construed to interfere with a Unit Owner's right to decorate his Unit and/or affix fixtures normally associated with the permitted uses of the Unit.

- d. Permits. To the extent that any addition, alteration or improvement to a Unit by the Unit Owner requires a permit, license or similar item to be obtained in the name of the Condominium, Trust or Trustee(s), from a governmental authority, the application therefor shall be executed by the Trustee(s) without, however, incurring any liability on the part of the Trustee(s), or any of them, or the Trust to any contractor, subcontractor or materialman or any other person on account of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom, or, if permissible, to such governmental authority. The Unit Owner shall bear all costs associated herewith and shall be fully responsible therefor, and wholly liable thereunder; and shall pay to the Trustee(s) such fee therefor as the Trustee(s) may reasonably determine.

Section 5.9. Rules, Regulations, Restrictions and Requirements. The use of the Condominium and each Unit Owner's Unit shall be restricted to and shall be in accordance with the provisions of the Master Deed, this Trust (including the By-Laws and such administrative rules and regulations as the Trustee(s) may adopt pursuant to this Trust), and all applicable laws, zoning



ordinances, rules, regulations and requirements of all governmental bodies having jurisdiction over the Condominium or the use and occupancy thereof.

The Trustee(s) shall have the right (which right shall not be delegated) at any time and from time to time to adopt, amend and rescind reasonable administrative rules and regulations governing the operation, appearance and use of the Common Areas and Facilities including, without limitation, Common Areas and Facilities the exclusive use of which is for one or more Units, and otherwise providing for the administration of the Condominium as contemplated by the Master Deed and the Trust, and in interpretation thereof (the “**Rules and Regulations**”); provided, however, that any such Rules and Regulations shall not be promulgated and/or amended which will materially and adversely affect the holder of any first mortgage of which the Trustee(s) have received notice without the written consent of such holder. Any such Rules and Regulations shall be consistent with provisions of the Master Deed, the Declaration of Trust and By-Laws and the Act. Copies of such Rules and Regulations and any amendments or changes thereto shall be furnished by the Trustee(s) to each Unit Owner and shall be recorded with the Registry of Deeds. The Rules and Regulations shall be considered By-Laws for all purposes and the initial Rules and Regulations are set forth herein as Exhibit “A.”

The Master Deed, this Trust and the Rules and Regulations, as from time to time amended, shall be enforced by the Trustee(s). The Trustee(s) may eliminate any violation and the cost and expense, including, but not limited to, attorneys’ fees and fines, of eliminating such shall be chargeable to the Unit Owner who himself or whose family, servants, employees, agents, visitors, lessees, licensees, or pets are responsible for such violation. The cost of so eliminating a violation caused by another than as specified shall be a Common Expense. The Trustee(s) may also levy reasonable fines against the Unit owner for such violations and such fine shall constitute a portion of such Unit Owner’s Common Expenses which shall be payable by the Unit Owner of such Unit upon demand and enforceable as a Common Expense. For each day a violation continues after notice it shall be considered a separate violation. In the case of persistent violation, the Trustee(s) shall have the power to require the Unit Owner to post a bond, or other security as they may determine, to provide for adherence.

Section 5.10. Pets. Subject to the restrictions contained in the Master Deed, Unit Owners may keep in their Units customary household pets.

Section 5.11. Unit Owner Responsibility. Except as may be otherwise specifically provided herein, a Unit Owner shall be fully responsible for the acts and omissions, feissance, malfeissance and misfeissance, and all other conduct of his family members, servants, agents, employees, invitees, lessees, licensees, guests, pets or others upon the Property at the behest of the Unit Owner.

Section 5.12. Enforcement of Charges, Fines, Obligations. Any charge, fine, attorneys’ fees or other financial obligation to, of or on any Unit Owner, and/or Unit herein provided for shall constitute a lien upon such Unit and be enforceable to the same manner and extent as for Common Expenses provided for in this Declaration of Trust and Section 6 of the Act.

Section 5.13. Attorneys’ Fees and Costs. In such case as it is necessary for the Trustee(s) to engage the services of an attorney or attorneys for the purpose of enforcing against a Unit Owner, occupant, or other person bound thereby, any provision of the Master Deed, the Declaration of Trust and By-Laws, the Rules and Regulations, or obligations thereunder, and/or for the purpose

of defending any action brought by such person(s), said Unit Owner, tenant, occupant or other such person shall be liable for, in addition to any other liability, the fees and costs of such attorneys in so proceeding thereto, including the fees of all experts engaged in connection therewith. As to Unit Owners, the amount of such fines, fees and costs and attorneys' fees shall constitute a lien upon the Unit enforceable to the same manner and extent as a lien for Common Expenses, and the Unit Owner shall be personally liable therefor.

Section 5.14. Inspection of Books. The books, accounts and records of the Trustee(s) and of the organization of Unit Owners shall be open to inspection to any one or more of the Trustee(s), to the Unit Owners and to first mortgagees. The Trustee(s) may, however, subject to and in accordance with the applicable provisions of the Act, adopt reasonable rules and impose reasonable restrictions upon such access, including, but not limited to hours and place of availability, fees for reproduction, access only for Condominium related purposes, and provision for the maintenance of confidentiality as to appropriate records.

Section 5.15. Financial Reports to Unit Owners. After the Transition Date, the Trustee(s) 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 operation of the Trust for each year, which shall include financial statements in such summary form and in such detail as the Trustee(s) shall deem proper. Except in the case of fraud, committed by a Trustee, any person (other than a mortgagee or mortgage insurer or guarantor) who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustee(s), given by registered or certified mail within a period of sixty (60) days of the date of receipt by him, shall be deemed to have assented thereto. The holder, insurer or guarantor of any first mortgage shall be entitled to have an audited statement prepared within one hundred twenty (120) days of the end of the Trust's fiscal year.

Section 5.16. Fiscal Year. The fiscal year of the Trust shall be each calendar year ending December 31<sup>st</sup> or such other date as may, from time to time, be determined by the Trustee(s).

Section 5.17. Checks, Notes, Drafts, and Other Instruments. Except as to reserve accounts, checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustee(s) or of the Trust may be signed by any Trustee, or by the Property Manager (as defined herein), if any, to whom such power may at any time or from time to time be delegated. Checks drawn on the Trust's reserve account(s) may only be signed by at least two (2) Trustee(s) or one (1) Trustee if there be only one. Any instrument signed by any one (1), or more, Trustee(s) which contains or is accompanied by a certification that said Trustee, or Trustee(s) are authorized to execute and deliver the same by appropriate vote of the Trustee(s) shall be conclusive evidence in favor of every person relying thereon or claiming thereunder. The Trustee(s) may sign any instrument under seal without being required to affix a formal, common or wafer seal.

Section 5.18. Notices to Unit Owners. Unless otherwise required by applicable law or order of court, every notice to any Unit Owner required under the provisions hereof, or which may be deemed by the Trustee(s) necessary or desirable in connection with the administration of the Condominium 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 of the Trustee(s) to such Unit Owner by leaving such notice, or mailing it postage prepaid and addressed to such Unit Owner, at his address at the Condominium, unless such Unit Owner has designated in writing to the Trustee(s) some other address for the receipt of notices. Such notice shall be given within

such time period as herein, or by such court, required, and if there be no specified period then at least seven (7) days prior to the date fixed for the happening of the matter, thing or event of which such notice is given.

Section 5.19. Information to Be Provided By Unit Owners to Trustee(s). Each Unit Owner shall provide to the Trustee(s), at such times and in such manner and form as the Trustee(s) shall require, that information and data as the Trustee(s) may reasonably require in and for the efficacious performance of the Trustee(s)' duties as herein provided. Such information and data shall include, but shall not be limited to:

- a. The name and mailing address of the Unit Owner(s);
- b. The names of all occupants of the Unit, except guests of less than thirty (30) days duration; and,
- c. The name and address of all mortgagees, including the applicable loan numbers.

In the event, and at the time a Unit Owner should assign, lease, sell or otherwise transfer his interest in his Unit, such Unit Owner shall notify the Trustee(s) of the name and address of the person to whom he is so transferring the Unit whereupon the Trustee(s) shall provide such person with copies of the Master Deed, this Trust and the Rules and Regulations promulgated thereunder, as they may then be amended. The Trustee(s) may charge such Unit Owner a reasonable fee for the provision of said documents and require a receipt for the provision of the documents.

Section 5.20. Voting, Consents and Action Thereon. In regard to such actions and things as to which the consent or vote of the Unit Owners is required, unless a shorter period or requirement is imposed hereunder or by applicable law, the Trustee(s) shall have a period of six (6) months in which to obtain such consent or vote. The Trustee(s) shall have an additional period of six (6) months to obtain any required mortgagee consent. No Unit Owner may, after giving his consent or vote, rescind, modify or revoke such during said six (6) month period. Should a Unit be sold during said period after the giving of such consent or vote, such consent or vote shall remain valid notwithstanding the change of ownership.

Section 5.21. Acquisition of Units by Trustee(s). Acquisition of Units by the Trustee(s) for the Trust may be made from the Working Capital Reserve Account and common funds in the hands of the Trustee(s), or if such funds are insufficient, the Trustee(s) may levy an assessment against each Unit Owner in proportion to his Beneficial Interest, as a Common Charge, or the Trustee(s), in their discretion, may borrow money to finance the acquisition of such Unit; provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the Unit, together with the Appurtenant Interest to be so acquired by the Trustee(s) and/or a pledge of the Common Charges.

Section 5.22. Property Manager. The Trustee(s) may hire or appoint a professional manager ("**Property Manager**") to assist in the administration of the Condominium who shall perform such duties in the administration, management and operation of the Condominium, including the incurring of expenses, the making of disbursements and the keeping of accounts as the Trustee(s) shall from time to time determine. The Property Manager so retained shall in all events fully comply with the applicable provisions of the Act. Notwithstanding the appointment of such a

Property Manager, the Trustee(s) shall retain ultimate control over the administration, management and operation of the Condominium.

Any such agreement for professional management of the Condominium shall be terminable without cause and without incurring payment of a termination fee on ninety (90) days' written notice, or such lesser period as the Trustee(s) may agree upon in such agreement. Such agreement may, additionally, be terminated for cause upon ten (10) days' notice; provided, however, that the Property Manager may cure within such period. Notwithstanding this provision, there shall be no right of cure in regard to the misappropriation of the Condominium's funds upon which event termination may be had immediately upon notice.

Section 5.23. Arbitration. All claims, disputes and other matters in question arising out of or relating to the Declarant shall be decided by arbitration in accordance with the construction industry arbitration rules of the American Arbitration Association then obtaining. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Each party shall solely bear its own expenses, including legal fees, relating to the arbitration and the parties agree that the arbitrators shall not be entitled to award punitive damages.

Notices of the demand for arbitration shall be filed in writing with the other party to the dispute and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen and a demand shall not be made after the date when institution of legal proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations or barred by the limited warranty attached hereto and made a part hereof.

Notwithstanding the foregoing, the Trustees shall not undertake legal action relating to the Declarant or initial Trustee unless eighty percent (80%) of the Unit Owners of all units which may be created consent in writing to such legal action at a special meeting duly called by the Trustees and at which full disclosure is made by the Trustees and legal counsel as to the estimated cost of such legal action, said estimated costs shall include, but not be limited to, attorneys' fees, costs of the arbitrators and the costs for any professionals to prepare reports or attend as expert witnesses. Any such action must be commenced within ninety (90) days after transfer of control of the Trust to the Unit owners or shall be deemed forever waived by the Trustees and Unit Owners.

In the event of arbitration, each party shall elect an arbitrator of its choice and the two arbitrators so chosen shall select the third arbitrator. This Section 5.23 may not be amended without the written consent of the Declarant for so long as the Declarant retains any rights hereunder.

## ARTICLE VI

### MORTGAGES

Section 6.1. Unit Mortgages. Any Unit Owner may, without the prior written approval of the Trustee(s), mortgage his Unit to any person, firm or entity.

- a. Notice to Trustee(s). A Unit Owner who mortgages his Unit shall notify the Trustee(s) of the name and address of his mortgagee and loan number, and the Trustee(s) shall maintain

such information. Except as may be provided by applicable law, the failure of a Unit Owner to so notify the Trustee(s) shall not invalidate the mortgage or any other provisions or the rights of any holder of such mortgage.

- b. Notice of Unpaid Common Charges or Other Default; Material Amendment. In addition to the requirements of Section 6 of the Act, the Trustee(s), whenever so requested in writing by a mortgagee of a Unit, shall promptly report (i) any then unpaid Common Charges due from, or any other default by, the Unit Owner of the mortgaged Unit; (ii) any other default in the performance by the Unit Owner of the mortgaged Unit of any obligation under the Master Deed, this Trust or the Rules and Regulations which is not cured within sixty (60) days of notice to the Unit Owner; (iii) any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a mortgage held, insured, or guaranteed by a mortgage holder or insurer or guarantor, as applicable; (iv) any lapse, cancellation or material modification of any insurance policy or fidelity insurance maintained by the Trustee(s); (v) any proposed action which requires the consent of a specified percentage of eligible mortgage holders as specified in the Master Deed or this Declaration of Trust; and/or (vi) any proposed material amendment to this Trust which may affect such eligible mortgagee's interests or rights.
- c. Assignment of Unit Owner Rights. The right of any Unit Owner to vote, or grant or withhold any consent, and to exercise any other right or option herein granted to a Unit Owner may be assigned or transferred in writing to, or restricted in favor of, any mortgagee or a mortgage covering that Owner's Unit, and the Trustee(s) shall upon receipt of written notice thereof from such Unit Owner or mortgagee be bound by any such assignment or transfer which appears of record to be in full force and effect.

## ARTICLE VII

### RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUSTEE(S)

Section 7.1. Third Parties' Reliance. No purchaser, mortgagee, lender or other person dealing with the Trustee(s) as they then appear of record in the Registry of Deeds shall be bound to ascertain or inquire further as to the identity of said Trustee(s) or of any changes therein. The receipts of the Trustee(s), or any one of them, for moneys or things paid or delivered to them, or him, shall be effectual discharges therefrom to the persons paying or delivering the same and no person from whom the Trustee(s), or any one or more of them, shall receive any money, property or other credit shall be required to see to the application thereof. No purchaser, mortgagee, lender or other person dealing with the Trustee(s) 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 occurrence of any event or purpose in or from which sale, mortgage, pledge or charge is herein authorized or directed, nor otherwise as to the purpose or regularity of any of the acts of the Trustee(s), or any one or more of them, purporting to be done in pursuance of any of the provisions or powers herein contained, nor as to the regularity of the resignation, election or appointment of any Trustee.

Section 7.2. Personal Liability Excluded. 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 Trustee(s) or by any agent or employee of the Trustee(s), or by reason of anything done or omitted to be done by or on behalf of them, or

any of them, against the Trustee(s) 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 Trustee(s), shall look only to the Trust Property for payment under contract or claim, or for the payment of any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to them from the Trustee(s), so that neither the Trustee(s) nor the Unit Owners, present or future, shall be personally liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Unit Owners under provisions of the Act.

Section 7.3. All Instruments Subject To Terms Hereof. Every note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustee(s), or by any agent or employee of the Trustee(s), shall be deemed to have been entered into subject to the terms, conditions, provisions and restrictions hereof, whet or not express reference shall have been made to this instrument.

Section 7.4. Recording. This Declaration of Trust and any amendments hereto and any certificate herein required to be recorded and any other certificate or instrument (including without limitation a certificate pursuant to the Act, Section 6(d)) signed by any one (1) Trustee which may be deemed desirable to record shall be recorded with the 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 Trustee(s), the Property and/or 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 or Trustee(s), when the same shall be recorded with said Registry of Deeds. Any certificate signed by a majority of the Trustee(s) in office at the time (or one (1) Trustee if there be but one (1)) 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 Trustee(s) 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, including the Trustee(s), acting in reliance thereon. Any certificate executed by any Trustee hereunder, or by a majority of the Trustee(s) hereunder, setting forth the existence of any facts, the existence of which is necessary to authorize the execution of any instrument or the taking of any action by such Trustee or majority, as the case may be, shall as to all persons acting in good faith in reliance thereon be conclusive evidence of the trust of the statements made in such certificate and of the existence of the facts therein set forth.

Section 7.5. Certificates of Incumbency and Address. The Trustee(s) shall from time to time as required by the Act and/or this Declaration of Trust record with the Registry of Deeds appropriate instruments reflecting the composition of the Board of Trustee(s) and the mailing address of this Trust.

## ARTICLE VIII

### AMENDMENT AND TERMINATION

Section 8.1. Amendments to Declaration of Trust. The Trustee(s) may, by written instrument signed and acknowledged by a majority of their number, 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, provided such amendment, alteration, addition, or change is consented to in writing by the Unit Owners entitled to at least seventy-five percent (75%) of the Beneficial Interests or if such amendment, alteration, addition or change affects a provision then requiring more than such percentage, then by such larger percentage; provided, always, however, that no such amendment, alteration, addition or change (a) made without the written consent of the Declarant prior to the Declarant's relinquishing control hereunder; or (b) made without the written consent of the Declarant, according to the purport of which, the Declarant's rights hereunder, or under the Master Deed, are changed in any way; or (c) according to the purport of which, the percentage of the Beneficial Interest hereunder of any Unit Owner would be altered, or in any manner or to any extent whatsoever modified or affected so as to be different than the percentage of the undivided interest of such Unit Owner in the Common Areas and Facilities as set forth in said Master Deed, except as may be provided for elsewhere hereunder or in the Master Deed, other than by consent of the Unit Owners specified in the Master Deed; or (d) which could render this Trust contrary to or inconsistent with any requirements or provisions of the Act, shall be valid or effective.

- a. Consent of Mortgagees to Amendments. In addition, this Trust may not be materially amended without the approval of at least fifty-one percent (51%) of the first mortgagees who have requested, in writing, that the Trustee(s) notify them in such case as a material amendment is considered.
- b. Effective Date of Amendment. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this paragraph shall become effective upon the recording with said Registry of Deeds an instrument of amendment, alteration, addition or change, as the case may be, signed, sealed and acknowledged by a majority of the Trustee(s) then in office, setting forth in full the amendment, alteration, addition or change and reciting the consent of the Unit Owners and/or mortgagees 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 all prerequisites to the validity thereof, whether stated in such instrument or not, upon all questions as to title or affect the rights of third persons, and for all other purposes.
- c. No such amendment, addition or change shall be of any effect unless each instrument is so recorded within six (6) months of the date of the first consent thereto.
- d. Special Amendments. Notwithstanding the foregoing, this Trust may also be amended by special amendment as follows: The Declarant, without the consent of any Unit Owner or mortgagee may execute and record a special amendment as long as it owns any Units in the Condominium or the right to add additional Phases or Sub-Phases thereto, in order to (i) correct any errors and/or omissions in this Trust or the By-Laws hereunder, provided no such correcting amendment shall materially adversely affect the rights of any Unit Owner; (ii) to make this Trust or the By-Laws hereunder comply with the provisions of Massachusetts General Laws Chapter 183A; (iii) to make the provisions of this Trust or the By-Laws hereunder comply with the guidelines or requirements of the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), and any regulations promulgated pursuant thereto by the Department of

Housing and Urban Development (“HUD”), Massachusetts General Laws Chapter 151B, the Federal Housing Administration (“FHA”), Veterans Administration (“VA”), or any governmental agency, insurer or guarantor of Unit mortgages, including private mortgage insurers; (iv) to meet the requirements of any governmental or quasi-governmental body or agency including, but not limited to, the City of Tewksbury, or any of its boards, bodies or agencies; (v) to induce any such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering the ownership of a Unit; or (vi) to correct mathematical, clerical or scrivener’s errors, or to cure any ambiguity, inconsistency or formal defect or omission in this Trust or the By-Laws hereunder, or any supplement or amendment thereto, including without limitation, the correction of measurements appearing on any plan recorded in connection with the Condominium; or (vii) to assist the Declarant in the sale, development and/or marketing of any Unit.

Section 8.2. Termination. The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of the Act in accordance with the procedure therefor set forth in Section 19 of Chapter 183 and the Master Deed.

Section 8.3. Actions upon Termination. Upon the termination of this Trust, the Trustee(s) may, subject to and in accordance with provisions of the Act, sell and convert into money the whole of the Trust Property or any part or parts thereof, and, after paying or satisfying all known liabilities and obligations of the Trust and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, all other property then held by them in trust hereunder, to the Unit Owners as tenants in common, according to their respective percentages of Beneficial Interest. In making any sale under this provision, the Trustee(s) shall have power to sell by public auction or private contract and to buy in or rescind or vary any contract of 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 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 Trustee(s) shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distribution of Trust Property may have passed.

Notwithstanding anything to the contrary contained in this Section, in the event that any Unit Owner shall dissent from any determination of the Trustee(s) with respect to the value of the Condominium or any other determination or action of the Trustee(s) under this Section by notice in writing to the Trustee(s) within ten (10) days after such determination or action, and such dispute shall not have been resolved within thirty (30) days after such notice, then either the Trustee(s) or the dissenting Unit Owner may submit the matter to arbitration, and such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

## ARTICLE IX

### CONSTRUCTION, INTERPRETATION AND WAIVER

In the construction hereof, whether or not so expressed, words used in the singular or in the plural, respectively, include both the plural and the singular, words denoting males include females and words denoting persons include individuals, firms, associations, companies (joint stock or otherwise), trusts and corporations unless a contrary intention is to be inferred from them or



required by the subject matter or context. The title headings of different parts hereof are inserted only for the convenience of reference and are not to be taken to be any part hereof nor to control or affect the meaning, construction, interpretation or affect hereof. All the trusts, powers and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts. Unless the context otherwise indicates, words defined in the Act shall have the same meaning herein and to the extent of any conflict between the terms hereof and the requirements of said the Act, the latter shall govern. The invalidity of any part of this Trust shall not impair or affect in any manner the validity, enforceability or effect of the balance of this Trust. No restriction, condition, obligation or provision contained in this Trust shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

## ARTICLE X

### LITIGATION

Section 10.1. Definitions. The following words shall have the following meanings unless the context requires otherwise:

- a. "Derivative proceeding," a civil suit brought by a Unit Owner to enforce a right of the Condominium Association.
- b. "Unit Owner," the person or entity owning a Unit at the Condominium, including the Declarant.

Section 10.2. Standing. A Unit Owner may not commence or maintain a derivative proceeding unless the Unit Owner:

- a. Was a Unit Owner at the Condominium at the time of the act or omission complained of or became a Unit Owner through transfer by operation of law from one who was a Unit Owner at the time; and
- b. Fairly and adequately represents the interests of the Condominium Association in enforcing the right of the Condominium Association.

Section 10.3. Demand. No Unit Owner may commence a derivative proceeding until:

- a. A written demand has been made upon the Condominium Board to take suitable action; and
- b. Either: (i) ninety (90) days have elapsed from the date the demand was made, if such demand was not duly submitted to a vote of the Unit Owners referred to in Section 10.5 within sixty (60) days of such demand; or (ii) one hundred twenty (120) days have elapsed from the date the demand was made, if such demand was duly submitted to a vote of the Unit Owners referred to in Section 10.5.

- c. Unit Owner need not wait for the expiration of the applicable ninety (90) or one hundred twenty (120) day waiting period if either: (i) the Unit Owner is notified in writing during the waiting period that the demand has been rejected; or (ii) the Unit Owner can demonstrate to a court that irreparable injury to the Association would result by waiting for the expiration of the applicable waiting period.

Section 10.4. Stay of Proceedings. If the Board or the Association commences an inquiry into the allegations made in the demand or complaint, the Court may, upon motion of the Board or the Association, stay any derivative proceeding for a period as the Court considers appropriate.

Section 10.5. Dismissal.

- a. A derivative proceeding commenced after rejection of a demand shall be dismissed by the court on motion by the Board or the Association if the court finds that either: (i) one of the groups specified below has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the Association; or (ii) Unit Owners have, by vote hereunder, determined that the maintenance of the derivative proceeding is not in the best interests of the Association.
- b. Unless a panel is appointed pursuant to the provisions hereof, the determination in Subsection (a) above shall be made by: (i) a majority vote of independent Board members present at a meeting of the Board if the independent Board members constitute a quorum; (ii) a majority vote of a committee consisting of two (2) or more independent Board members appointed by majority vote of independent Board members present at a meeting of the Board, whether or not the independent Board members constituted a quorum; or (iii) the vote of a majority of Unit Owners entitled to vote, not including Units and corresponding percentages owned by or voted under the control of a Unit Owner or related person who has a beneficial financial interest in the act or omission that is the subject of the derivative proceeding (excluding benefits that may or may not result from the derivative proceeding as a result of the Unit Owner's membership in the Condominium) and which would reasonably be expected to exert an influence on the Unit Owner's or related person's judgment if called upon to vote in the determination.
- c. None of the following shall by itself cause a Board member to be considered not independent for the purposes of this Section: (i) the nomination or election of the Board member by a person who is defendant in a derivative proceeding or against whom action is demanded; (ii) the naming of the Board member as a defendant in the derivative proceeding or as a person against whom action is demanded; or (iii) the approval by a Board member of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the Trustee.
- d. If the Board or Association moves to dismiss the derivative suit, it shall make a written filing with the Court setting forth facts to show: (i) whether a majority of the Board members was independent at the time of the determination by the independent Trustees;

and (ii) that the independent Board members made the determination in good faith after conducting a reasonable inquiry upon which their conclusions are based. Unless otherwise required hereunder, the court shall dismiss the suit unless the plaintiff has alleged with particularity facts rebutting the Board's or Association's filing in its complaint or an amended complaint or in a written filing with the court. All discovery proceedings shall be stayed upon the filing by the Board or Association of the motion to dismiss and the filing required hereunder until the notice of entry of the order ruling on the motion; but the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted.

- e. If a majority of the Board does not consist of independent members at the time the determination by independent members is made, the Board or Association shall have the burden of proving that the requirements of this Section have been met. If a majority of the Board consists of independent directors at the time the determination is made or if the determination is made by Unit Owners pursuant hereto, the plaintiff Unit Owner shall have the burden of proving that the requirements of this Section have not been met.
- f. The court may appoint a panel of one or more independent persons approved or certified by the Community Association Institute of New England Dispute Resolution Program upon motion by the Board or Association to make a determination whether the maintenance of the derivative proceeding is in the best interests of the Association. In such case, the plaintiff Unit Owner shall have the burden of proving that the requirements of this Section have not been met.

Section 10.6. Discontinuance or Settlement. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the Unit Owners or a class of Unit Owners, the court shall direct that notice to be given to the Unit Owners affected.

Section 10.7. Payment of Expenses. Upon termination of the derivative proceeding the court may:

- a. Order the Association to pay the plaintiff Unit Owner's reasonable expenses, including counsel fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the Association; or
- b. Order the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose. Any expenses or fines or counsel fees ordered to be paid by a Unit Owner pursuant to this Section shall be collectible as a common expense.

***[Signature(s) Appear on the Following Page(s)]***

IN WITNESS WHEREOF said Trustee has hereunto set its hand and seal on this 6<sup>th</sup> day of September, 2016.

TRUSTEE:

**Tewksbury Village Condominium, LLC**

Robert Pondelli

Print: Robert Pondelli

Its: Manager

Duly Authorized

Joseph Laliberte

Print: Joseph Laliberte

Its: Manager

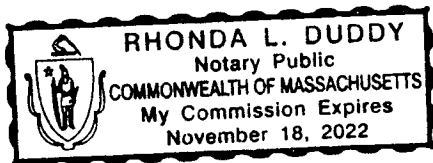
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

September 6, 2016

On this 6<sup>th</sup> day of September, 2016, before me, the undersigned notary public, personally appeared Robert Pondelli, Manager of Tewksbury Village Condominium, LLC, proved to me through satisfactory evidence of identification, which was drivers' license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as a duly authorized Manager of Tewksbury Village Condominium, LLC, a Massachusetts limited liability company.




Rhonda L. Duddy  
Official Signature and Seal of Notary  
My Commission Expires:

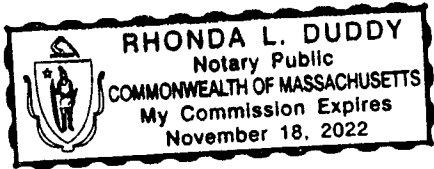
COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

September 6, 2016

On this 6<sup>th</sup> day of September, 2016, before me, the undersigned notary public, personally appeared Joseph Laliberte, Manager of Tewksbury Village Condominium, LLC, proved to me through satisfactory evidence of identification, which was drivers' license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as a duly authorized Manager of Tewksbury Village Condominium, LLC, a Massachusetts limited liability company.

  
\_\_\_\_\_  
Official Signature and Seal of Notary  
My Commission Expires:



**THE TEWKSBURY VILLAGE CONDOMINIUM**

**DECLARATION OF TRUST AND BY-LAWS**

**EXHIBIT A**

**RULES AND REGULATIONS**

1. Each Unit Owner must maintain and repair his own Unit and appurtenant Limited Common Areas to keep them in good order; in accordance with the provisions of the Master Deed and Trust.
2. Nothing shall be left in, added to, modified, altered, constructed in or removed from the Common Areas and Facilities except upon the prior written consent of the Board.
3. Each Unit Owner or resident shall keep his Unit and decks, porches and/or patios in a good state of cleanliness and repair in accordance with the provisions of the Master Deed and Declaration of Trust and By-Laws.
4. Nothing shall be done in any Unit or in, on or to the Common Areas and Facilities or any Exclusive Use Areas which could impair the structural integrity of the Buildings or which would structurally change the Buildings. Absolutely no work shall be done which would affect the water tightness or acoustical integrity of the ceiling, flooring and the demising wall between two Units without the prior written consent of the Trustees.
5. No clothes, clotheslines, sheets, blankets, laundry or any kind of other articles shall be hung out of a Unit or exposed on any part of the Common Areas and Facilities. The Common Areas and Facilities shall be kept free and clear of all rubbish, debris and other unsightly materials.
6. The Common Areas and Facilities shall not be obstructed nor used for storage without the prior written consent of the Board.
7. The Common Areas and Facilities shall not be decorated or furnished by any Unit Owner or resident in any manner without the prior written consent of the Board of Trustees.
8. In addition to all other prohibited signs, no Unit Owner may place "For Sale" or "For Rent" or other signs on the common areas nor may any signs be visible from any Unit. The use of the Units, the Common Areas and Facilities and the parking spaces by Unit Owners, as well as the safety and maintenance of all personal property of the Unit Owners and residents kept in such areas and in the Units themselves, shall be the responsibility and at the sole risk of the respective Unit Owners and residents, and neither the Trustees, the seller, nor their respective agents, servants, employees, successors or assigns, shall bear any responsibility thereof.
9. Each Unit Owner or resident assumes responsibility for his own safety and conduct that of his family, guests, agents, servants, employees, licensees and lessees.
10. Any consent or approval given under these Rules and Regulations may be added to, amended, or repealed at any time by the Board.

11. All Unit Owners are required to provide the Condominium with the name, address and contact person of each mortgage holder for their unit. Failure to do so in a timely manner may result in the Trust securing the information from a "title search." The cost of completing said title search will be assessed against the Unit.
12. No boats, campers, recreational vehicles or unlicensed or unregistered vehicles are permitted on the Common Areas and Facilities.
13. All garbage and trash must be placed in the proper receptacles designed for refuse collection and no garbage or trash shall be placed elsewhere upon any of the Common Areas and Facilities. Each Unit Owner or occupant shall dispose of garbage and trash in accordance with the procedure promulgated by the Board.
14. Furniture, televisions, computers, monitors, hazardous waste, paint, solvents, oil, mattresses, appliances, etc. are not allowed to be disposed and special arrangements with a trash hauler must be made by the Unit Owner/resident at their own expense.
15. Exterior parking spaces designated as visitor spaces shall be available for the occasional use by all Unit Owners, their customers, clients, guests and visitors, subject to and in accordance with the By-Laws and Rules and Regulations of the Condominium and the Approvals. All said individuals may not leave their vehicle parked in said visitor spaces for more than twenty-four (24) hours without the prior written permission of the Board. There shall be no overnight parking permitted on any of the ways in the Condominium at any time.
16. Pursuant to M.G.L. c. 183A and By-Laws, the Association may assess fines and attorneys' fees against Unit Owners for violations of the Master Deed, By-Laws and Rules and Regulations and these shall constitute a lien against the unit and be the personal liability of the Unit Owner. The Board may establish a fine schedule from time to time.
17. Holiday seasonal decorations shall be permitted between December 1<sup>st</sup> and January 30<sup>th</sup> of each year.
18. No Unit Owner shall make, permit or suffer any unreasonably disturbing noises or vibrations by means of a radio, stereo, television, piano or other musical instrument, exercise equipment, or other device or form of technology of any description, or by means of any activity of any description taking place in the Unit, or in any other manner, by himself, his family, guests, agents, servants, or employees, nor do, permit or suffer anything by such persons that will unreasonably interfere with the rights, comforts or conveniences of other Unit Owners or occupants. No radio, stereo, television or other device shall incorporate outside deck or balcony speakers.
19. Except for areas, if any, designated by the Trustees or in the Approvals, there shall be no storing or parking of carriages, bicycles, wagons, vehicles, trailers, tools, benches, chairs or other items, in any part of the Common Areas and Facilities. No bicycles or toys shall be kept in the driveway overnight.

20. The use of grills at the Property shall be in compliance with the regulations and requirements of the City of Tewksbury and the Commonwealth of Massachusetts.

21. If any key or keys (or lock combination) are entrusted by a Unit Owner or occupant or by any member of his family, or by his agent, servant, employee, licensee, lessee or visitor, to a Trustee, or an agent or employee of the Trustee, including without limitation the managing agent of the Condominium, whether for such Unit, garage, automobile trunk, or other item of personal property, the acceptance of the key (or combination) shall be at the sole risk of such Unit Owner or occupant, and such Trustees, agent, employee, and the Trustees shall not be liable for injury, loss, or damage of any nature whatsoever directly or indirectly resulting therefrom or connected therewith.

22. In addition to the other Rules contained herein and promulgated from time to time, the use of a porch, patio or deck appurtenant to a Unit shall be subject to the following:

- (i) Nothing shall be placed on a porch, patio or deck which in the opinion of the Trustees unreasonably obstructs sight lines from other Units.
- (ii) Any lighting installed by a Unit Owner on a porch, patio or deck will be subject to the prior approval of the Trustees, and will be limited to incandescent accent lighting only.
- (iii) All planting and other landscaping on a porch, patio or deck will be ornamental in nature (but may include herb gardens), and in no event will there be any artificial landscaping.
- (iv) No windsocks, kites or wind chimes will be permitted to be hung, displayed, draped or posted to or from the inside or outside of windows or placed on the outside or doors of the buildings, or on the entrance doors to Units, or from or on a porch, patio or deck.

23. No Unit Owner shall permit or suffer the keeping at any time of any flammable, combustible or explosive fluid or substance in or on any portion of the Condominium (including but not limited to his Unit) except only for such lighting and cleaning fluids as are customary for residential use. No Unit Owner shall permit or suffer the keeping at any time of any flammable, combustible or explosive fluid or substance in any vehicle parked in the parking spaces, except for gasoline or diesel fuel ordinarily contained in the fuel tank of such vehicle and such lubricating and other fluids as are ordinarily contained within the vehicle and used in its normal operation.

24. In the event that at any time or from time to time a Unit Owner wishes to perform any work in his Unit, other than cosmetic work, the Unit owner shall comply with the provision of the Trust including, but not limited to, obtaining the consent of the Trustees as applicable.

25. Satellite Dishes: Notwithstanding any provision of the Master Deed, Declaration of Trust, and/or Rules and Regulations of the Association, the following Rules and Regulations regarding satellite dishes and antenna restrictions shall take precedent over the same:

- A. Reception Antenna means an antenna, satellite dish, or other structure used to receive video programming services intended for reception in the viewing area. Examples of video programming services include direct broadcast satellite services, multipoint



distribution services, and television broadcast signals. The mast supporting the Reception Antenna, cabling, supports, guide wires, conduits, wiring, fasteners, bolts or other accessories for the Reception Antenna or similar structure is part of the Reception Antenna. A Reception Antenna that has limited transmission capability designed for the viewer to select or use video programming is a Reception Antenna provided that it meets Federal Communications Commission ("FCC") standards for radio frequency radiation. Structures similar to Reception Antennas are any structure, device, or equipment that is similar in size, weight and appearance to Reception Antennas.

B. Transmission antennas mean any antenna, satellite dish, or structure used to transmit radio, television, cellular, or other signals other than reception antennas. Transmission antennas are prohibited.

C. No resident shall install a Reception Antenna on any portion of the Common Areas and Facilities unless the area is an Exclusive Use Area pursuant to the provisions of the Master Deed creating the Condominium.

D. A Reception Antenna shall not encroach on the air space of another owner's Unit or onto the general Common Areas and Facilities. Rather, the Reception Antenna must be kept within the boundary of the Exclusive Use Areas.

E. For purposes of this rule, residents shall include owners, tenants, and/or lessees of Units in the Condominium Association.

F. If a Reception Antenna is installed in Exclusive Use Area as defined in the Master Deed, such installation shall be subject to the following:

a. Reception Antenna shall be no larger than necessary for the reception of an acceptable quality signal; provided that under no circumstances shall Reception Antennas for direct broadcast satellite dishes be larger than one meter in diameter;

b. Reception Antennas must be placed in areas that are shielded from view from outside the project or from other Units to the extent possible; provided that nothing in this rule shall require a Reception Antenna to be placed where it precludes reception of an acceptable quality signal unless no acceptable reception is available in any Exclusive Use Area. In no event may antennas be installed on roofs, lawns or other Common Areas and Facilities. Residents must first attempt to install the antennas within the Units. If an acceptable signal is not possible, residents must next attempt to install the antenna on their Exclusive Use Areas, as a second choice. Connections of wiring must be through a part of the building nearest the installation that is defined in the Master Deed as being part of the Unit, such as the frame or the glass of the nearest window or sliding glass door of the Unit, and may not be connected through general Common Areas and Facilities, such as building walls. All wiring shall be run so as to be as inconspicuous as possible. If a resident wishes to run wiring through Common Areas and Facilities such as an exterior wall, this must be in strict compliance with standards established by the Board to ensure the structural and watertight integrity of the Condominium.

c. Reception Antennas and similar structures shall not be placed in areas where it blocks fire exits, walkways, ingress or egress from an area, including a Unit, fire lanes, fire hoses, fire extinguishers, safety equipment, electrical panels, or other areas necessary for the safe operation of the Condominium. The purpose of this rule is to permit evacuation of the units and project and to provide clear access for emergency personnel.

d. Reception Antennas and similar structures shall not be placed within two (2) feet of electric power lines and in no event shall they be placed within an area where it can be reached by the play in the electric power lines. The purpose of this rule is to prevent injury or damage resulting from contact with the power lines.

e. The Board may require Reception Antennas placed outside the building be painted to match, or be compatible with, the color of the building. If they do so they will publish a list of acceptable colors. Such painting will not be required if it interferes with reception. In addition, the Board may require a resident to install and maintain inexpensive screens or plants to shield the Reception Antenna from view consistent with the requirements of Federal Communications Commission rules.

f. Any resident installing, maintaining, or using a Reception Antenna shall do so in such a way that it does not materially damage the general Common Areas and Facilities or the Units, void any warranties of the Association or other owners, or impair the water tight integrity of the buildings.

g. The residents who own or use the Reception Antenna are responsible for all costs associated with their Reception Antenna including, but not limited to, costs to (1) repair, maintain, remove and replace the Reception Antenna; (2) repair damages to the Common Areas and Facilities, the Unit, other Units, and other property caused by the installation, existence, or use of the Reception Antenna; (3) pay for medical expenses incurred by persons injured by installation, existence, or use of the Reception Antenna; and (4) reimburse residents of the Association for damages caused by the installation, existence, or use of the Reception Antenna. If the installation is made by a contractor, evidence of insurance of the installation in satisfactory kinds and amounts shall be provided to the Association prior to the commencement of work, naming the Association as an additional named insured, all as set forth in exhibit attached hereto and incorporated herewith.

h. Due to safety concerns relating to the falling of structures, all Reception Antennas shall be securely attached to the ground or building. Otherwise, Reception Antennas shall be attached to a pole which is mounted in a weighted base of sufficient weight to prevent falling under anticipatable conditions. If a resident desires to attach a Reception Antenna to a wall, railing, fence, partition or other element which is part of the Common Areas and Facilities and abuts/adjoins the Exclusive Use Area where the Reception Antenna is to be placed, they must first obtain permission from the Board upon terms which ensure the structural and watertight integrity of the Condominium or adhere to standards published by the Board of this purpose, if such has been established.

G. To the fullest extent permitted by the law, residents shall indemnify and hold harmless the Board, the Board's representatives, consultants, agents, attorneys and employees, unit owners, tenants, guests, and invitees, or any of them, from and against claims, damages, losses and expenses, including, but not limited to, reasonable attorney's fees arising out of or resulting from the installation of any Reception Antenna contemplated hereunder.

H. Notwithstanding any provision hereunder, the Board shall report, upon compliance by the resident of this rule, the installation of any Reception Antenna to the Master Insurance Policy. Said resident shall thereafter be responsible for any increases in the insurance premiums as a result of any installation contemplated hereunder, and agrees to remit to the Trustees any monies due and owing as a result thereof within thirty (30) days of being assessed the same. Further, notwithstanding the provisions of the Condominium documents, the cost in excess of available insurance proceeds of repairing or restoring any damage to the Common Areas and Facilities or to any Unit which is caused by any work contemplated hereunder by the resident shall be charged solely to the resident.

I. Residents shall not permit their Reception Antenna to fall into disrepair or to become a safety hazard.

J. In the event of a violation of these rules, the Association may bring an action for declaratory relief with the Federal Communications Commission ("FCC") or any court having jurisdiction over the matter. If, for any reason, the FCC or Court determines that there has been a violation, a fine equivalent to the maximum allowed under the Condominium documents shall be imposed. Notwithstanding the same, no attorney's fees shall be collected or assessed and no fines or other penalties shall accrue while a proceeding is pending to determine the validity of any restrictions. The resident shall have a period of twenty-one (21) days in which to comply with any adverse ruling by the FCC or court, and during such period, neither a fine nor penalty may be collected, unless the Trustees demonstrate in the above proceeding which resulted in an adverse ruling to the resident, that the resident's claim and the proceeding was frivolous.

K. Transmission antennas other than expressly authorized hereunder are prohibited.

L. A resident installing a Reception Antenna shall promptly notify the Board thereof by use of the form attached to these rules. If the work is to be performed by a licensed and insured contractor, said contractor shall provide detailed plans and specifications. Each said party shall provide the plans and specifications to the Association within seven (7) days of completion of the above installation, along with the form attached hereto.

M. The resident is responsible for the immediate removal of the Reception Antenna if it must be removed for the repair, painting or maintenance of the area where it is installed. The Board shall attempt to provide reasonable notice of the need for such removal. If a resident fails to timely remove their Reception Antenna, the Board may do so at the resident's expense.

N. The Board may prohibit the installation of individual antennas when the Association installs a central antenna which provides residents with the same service that individuals would request, as long as the signal quality received by the central antenna is at least as good as that received by an individual antenna, and that further, the cost of the central antenna to the individual resident, including the share of installation costs and subscriber's fees is not greater than the cost of the individual antenna installation, maintenance and use, and the requirement to use the central antenna does not unreasonably delay the reception of video programming. In the event that there are individual antennas installed prior to the installation of a central antenna system, the Board shall have the right to require the removal of said individual antenna, so long as the Board compensates the resident for the installation of the same. Notwithstanding the above, the resident shall be required to pay to the Board a cost determined by the Board to be said unit owner's and/or resident's share of the installation costs and subscribers fees, so long as the same are not greater than the cost of the individual antenna installation, maintenance, and use.

O. If any of these provisions are found to be invalid, the remainder of these Rules shall remain in full force and effect.

26. These Rules and Regulations may be amended from time to time as provided for in the Trust. The Board shall have authority to enforce these regulations through the use of fines, legal action, etc.

NOTIFICATION FORM FOR THE INSTALLATION OF  
DBS SATELLITE DISH, MMDS ANTENNA OR T.V. ANTENNA

**NOTE:** This form must be completed and returned within seven (7) days after the installation of any satellite dish/antenna

**TO** Board of Trustees  
The Tewksbury Village Condominium Trust  
c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FROM:** Owner's Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone # (home): \_\_\_\_\_  
Phone # (work): \_\_\_\_\_  
Unit Address: \_\_\_\_\_  
\_\_\_\_\_

Type of satellite dish or antenna installed (check any that apply):

- \_\_\_\_\_ DBS satellite dish one (1) meter or smaller (e.g., Primestar, Dish Network, Direct TV)
- \_\_\_\_\_ MMDS antenna (wireless cable) one (1) meter or smaller (e.g., WANTV)
- \_\_\_\_\_ Television antenna
- \_\_\_\_\_ Other

Installation includes a mast: \_\_\_\_\_ No      \_\_\_\_\_ Yes

If yes, insert total length or height of mast: \_\_\_\_\_ ft. (Note: mast may not exceed 12 ft.)

The installation of the dish or antenna was completed by the following licensed/insured contractor:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone #: \_\_\_\_\_

Insurance Agent: \_\_\_\_\_

A copy of the contractor's license and certificate of insurance naming the Condominium Trust as an additional named insured is attached hereto and made a part hereof.

Describe on a separate sheet of paper and attach hereto, the exact location of the dish or antenna and attach a diagram or drawing of the exact location of the dish/antenna.

Does the location of the dish or antenna comply with the Trust's regulations?

\_\_\_\_\_ Yes    \_\_\_\_\_ No

If no, state in detail the reason for noncompliance on a separate sheet of paper and attach hereto.

I acknowledge that I have read, understand, and have complied or will comply at all times with the Trust's regulation with respect to the installation of satellite dishes and antennas.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

UNIT OWNER DATA FORM

UNIT OWNER(S): \_\_\_\_\_  
\_\_\_\_\_

UNIT OWNER(S) ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OWNER(S) MAILING ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

UNIT OWNER PHONE NUMBER (DAYTIME): \_\_\_\_\_

UNIT OWNER PHONE NUMBER (EVENING): \_\_\_\_\_

MORTGAGEE(S):

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

LOAN NO: \_\_\_\_\_

PHONE NO: \_\_\_\_\_

RESIDENT(S): NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

DAYTIME PHONE: \_\_\_\_\_

EVENING PHONE: \_\_\_\_\_

CELL PHONE: \_\_\_\_\_

RESIDENT VEHICLE INFORMATION

TYPE: \_\_\_\_\_

TYPE: \_\_\_\_\_

COLOR: \_\_\_\_\_

COLOR: \_\_\_\_\_

MODEL: \_\_\_\_\_

MODEL: \_\_\_\_\_

LICENSE PLATE NO: \_\_\_\_\_

LICENSE PLATE NO: \_\_\_\_\_

PERSON OR COMPANY RESPONSIBLE FOR MAINTENANCE OF UNIT (IF NOT UNIT OWNER):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Unit Owner is hereby informed that the company responsible for the maintenance of the Common Elements is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

The original of this form is to be returned to \_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_ and the Unit Owner will receive a copy for his or her records.