

**DECLARATION OF TRUST
OF
THE WHISPERING PINES ESTATES CONDOMINIUM TRUST**

This Declaration of Trust (as the same may be amended, restated or modified from time to time, the "**Declaration of Trust**") is made by the WHISPERING PINES REAL ESTATE DEVELOPMENT, LLC, a Massachusetts limited liability company (the "**Declarant**"), having a principal place of business at 39 Lakeview Ave, in Tyngsboro, Middlesex County, Massachusetts (such entity, so long as it shall continue in office in accordance with the terms of this Declaration of Trust, and all other persons or entities who at the time in question have been duly elected or designated as trustees in accordance with this Declaration of Trust and are then in office are hereinafter together called the "**Trustees**").

ARTICLE I

Name of Trust

The trust created hereby shall be known as the WHISPERING PINES ESTATES CONDOMINIUM TRUST (the "**Trust**").

ARTICLE II

The Trust and Its Purpose

2.1 General Purposes. This Trust is created as the "Organization of Unit Owners" as required by the provisions of Chapter 183A of The Massachusetts General Laws, as amended (hereinafter referred to as the "**Condominium Law**"), for the purpose of managing and regulating the Whispering Pines Estates Condominium (hereinafter referred to as the "**Condominium**"), established and created by a Master Deed (the "**Master Deed**") executed by the owner of the land described therein, dated the same date as the date of this Trust and filed herewith (such owner being hereinafter sometimes referred to as the "**Declarant**").

2.2 Definitions. Unless the context otherwise requires, or unless such definition is set forth in the Master Deed, the definitions contained in **Section 1** of the Condominium Law shall be applicable to this Trust.

2.3 Trust and Not Partnership. It is expressly declared that a trust and not a partnership or corporation is hereby created and that the owners (the "**Unit Owners**") of units (the "**Units**") in the Condominium are beneficiaries and not partners or associates between and among themselves with respect to the trust property, and hold no relation to the Trustees other than as beneficiaries, with only such rights as are conferred upon them as beneficiaries hereunder and under the provisions of the Condominium Law.

2.4 Property Held in Trust. All property, real and personal, tangible and intangible, conveyed to or held hereunder by the Trustees shall vest in the Trustees, in trust, to manage, administer and dispose of the same and to receive and distribute the income and principal thereof for the benefit of the Unit Owners from time to time of the Condominium. The beneficial interest of each Unit Owner in this trust (the “**Beneficial Interest**” and collectively, the “**Beneficial Interests**”) is equal to the percentage interest of each Unit Owner in the Common Elements, as defined in the Master Deed (the “**Common Elements**”) of the Condominium, as set forth in **Exhibit C** to the Master Deed.

ARTICLE III

The Trustees

3.1 Number of Trustees; Term of Office; Qualifications. There shall be at all times five (5) Trustees to be designated and appointed by the Unit Owners from time to time, it being understood that each Trustee must be a Unit Owner. Notwithstanding the foregoing, prior to the “Turnover Event,” as hereinafter defined, the Declarant shall serve as the sole Trustee. If the Declarant shall resign or be unable or unwilling to serve as Trustee prior to the Turnover Event, then the Declarant or such person or entity as may succeed to the Declarant’s interest as developer of the Condominium shall appoint its successor to fill the remainder of such term. Upon the happening of the Turnover Event, the office of the original Trustee or its successor shall be deemed vacant so as to permit such vacancy to be filled in the manner provided in Section 3.3, below. Until such vacancy has been filled, however, the Declarant or its successor may continue to act. The term of office of the Trustee appointed to fill the vacancy of the original Trustee or of the successor(s) to the original Trustee shall be for the period until the annual meeting of the Unit Owners immediately succeeding said appointment and until successors have been elected in the manner provided in Section 3.3. Thereafter, the term of office of the Trustees shall be for a period of one (1) year and until their successors have been elected or appointed and qualified. Each Trustee, with the exception of the Declarant and any successor Trustee(s) designated by it, shall be a Unit Owner or a member of his/her household who resides at the Condominium, upon appointment by the Unit Owner. Upon selling his/her Unit or ceasing to reside therein, even if said Unit is still owned by the Trustee, such Trustee shall be deemed to have resigned his/her office and shall deliver to the other Trustees a confirmatory written resignation.

The "Turnover Event" is hereby defined as after one hundred percent (100%) of the interest in the Condominium has been conveyed to Unit purchasers.

The purpose of the foregoing provisions is to comply with the requirement imposed by the Federal National Mortgage Association (“FNMA”) necessitating the transfer of control of the Condominium to the Unit Owners as above provided. For this purpose, “control” means the right of the Declarant to control the Unit Owners’ Association, a.k.a. the Trust, or its Trustees, the Condominium itself or the Unit Owners in any manner except through votes allocated to Units owned by the Declarant on the same basis as votes pertaining to sold Units.

3.2 Election of Trustees. The total number of Trustees required by Section 3.1 hereof shall be elected by a majority vote of the Unit Owners, with each Unit Owner being entitled to one (1) vote per Unit, unless a percentage interest vote is required by Chapter 183A, at any annual or special meeting. Each person elected to serve as Trustee who wishes to so serve shall promptly file with the Secretary of the Trust his/her written acceptance of election, and, upon receipt of such acceptance, the Secretary shall sign and record with the Middlesex North Registry of Deeds a certificate of election with the name(s) of the new Trustee(s) and reciting that said Trustee(s) have been duly elected by the requisite vote of the Unit Owners or the Trustees, as the case may be, and have filed written acceptance(s) of election with the Secretary.

3.3 Vacancies. If and when, following the Turnover Event, the number of Trustees shall become less than five (5), a vacancy or vacancies in the office of Trustee shall be deemed to exist. If at any time there is a vacancy in the office of any Trustee and the Unit Owners fail to fill such vacancy within thirty (30) days of such vacancy, then the Trustees remaining in office shall have the power to make such appointment. Each appointment to fill a vacancy, other than by court proceeding, as hereinafter provided, shall become effective upon the filing with the Middlesex North Registry of Deeds (the “**Registry**”) of an instrument in writing signed by such successor Trustee and by the remaining Trustees with the signatures of each being acknowledged in proper form for filing with the Registry. Any appointment by a court proceeding shall become effective upon filing with the Registry of a certified copy of the decree of such court and of the acceptance of such appointment subscribed and sworn to by the successor so appointed. If for any reason any successor Trustee shall not be so designated within sixty (60) days after the vacancy in office occurs, a Trustee or Trustees to fill such vacancy or vacancies may be appointed by any court of competent jurisdiction upon the application of any Unit Owner or by notice to all Unit Owners and Trustees and to such others as the court may direct. Notwithstanding the foregoing provisions of this **Section 3.3**, the remaining or surviving Trustees shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustees and any person appointed as a successor Trustee as hereinbefore provided shall be vested with the title to the trust property jointly with the remaining or surviving Trustee or Trustees without the necessity of any act of transfer or conveyance.

3.4 Action by Trustees. Except as otherwise specified herein, the Trustees shall act by a majority vote at any duly called meeting. The Trustees may also act without a meeting if a written assent thereto is signed by all Trustees then in office.

3.5 Resignation and Removal of Trustee. Any Trustee may resign by notice in writing given to the other Trustees and by filing with the Registry at any time an instrument in writing signed by the resigning Trustee and acknowledged in form suitable for filing with the Registry. Such resignation shall become effective upon the filing of such document with the Registry. After reasonable notice and an opportunity to be heard, a Trustee may be removed from office with or without cause by a vote of Unit Owners holding at least fifty-one percent (51%) of the Beneficial Interests hereunder. Such removal shall become effective upon the filing with the Registry of an instrument signed by at least one (1) of the Trustees remaining in office with the signatures of such Trustee(s) acknowledged in form suitable for filing with the Registry.

3.4 Compensation of Trustees. No Trustee shall receive compensation for his/her/its services unless so provided by a vote of Unit Owners holding at least sixty-six percent (66%) of the Beneficial Interests, and any compensation so provided shall be from time to time fixed by the Unit Owners and shall be a common expense of the Condominium.

3.5 No Liability If In Good Faith. No Trustee shall be personally liable or accountable or be deprived of compensation by reason of any action taken, suffered or omitted in good faith, or for allowing one or more of the other Trustees to have possession of the Trust's books or property, or by reason of honest errors of judgment, mistakes of fact or law, the existence of any personal or adverse interest, or by reason of anything except such Trustee's own malfeasance or bad faith.

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

ARTICLE IV

Beneficiaries and Beneficial Interests

4.1 Percentage Interests. The beneficiaries shall be the Unit Owners of the Condominium from time to time. The Beneficial Interests of the Unit Owners in the Trust hereunder shall be divided among the Unit Owners as set forth in **Section 2.4** hereof.

4.2 Persons to Vote as Unit Owners. The Beneficial Interest of each Unit of the Condominium shall be held as a unit and shall not be divided among several owners of any such Unit. To that end, whenever any of said 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 or other person shall be authorized and entitled to cast votes, execute instruments and otherwise exercise the rights appertaining to such Unit hereunder; and (b) notify the Trustees of such designation by a notice in writing signed by a majority of the record owners of such Unit. Any such designation shall take effect upon receipt 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, by majority vote, designate any one of such owners for such purposes.

ARTICLE V

By-Laws

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

5.1 Powers of the Trustees. The Trustees shall, subject to and in accordance with all applicable provisions of the Condominium Law, have the absolute control, management and disposition of the trust property (which term, as herein used, shall, insofar as permitted by the Condominium Law, be deemed to include the Common Elements of the Condominium) as if they were the absolute owners thereof. Without limiting the generality of the foregoing, the Trustees shall have full power and uncontrolled discretion, at any time and from time to time and without the necessity of applying to any court or to the Unit Owners for leave so to do:

5.1.1 To operate, care for, keep up and maintain the Common Elements as well as to make repairs, additions and improvements to or alterations of the Property in accordance with the other provisions of this Declaration of Trust. Trustees and Beneficiaries specifically acknowledge that the following items are part of said Common Elements and that the Town of Tyngsboro shall not have, now or ever, any legal responsibility for the operation and maintenance of same: (a) storm water management facility; (b) sewer infrastructure; (c) landscaping; (d) all private roadways, sidewalks and parking areas within the Condominium Property; (e) snowplowing/snow removal; (f) curbside trash removal; (g) street lighting; (h) street sweeping; (i) ready access to fire hydrants; (j) centralized mail delivery area(s); and (k) open space. Said obligations shall be performed in compliance with the terms and conditions as outlined in that "Comprehensive Permit" issued by the Tyngsboro Zoning Board of Appeals, dated April 27, 2005 and recorded with the Middlesex North District Registry of Deeds at Book 18866, Page 222, as more particularly referenced in **Section 21.3** of the Master Deed (the "Comprehensive Permit").

5.1.2 To retain the trust property, or any part or parts thereof, in the same form or forms of investment in which received or acquired by them so far and so long as they shall think fit, without liability for any loss resulting therefrom;

5.1.3 To determine the Common Expenses required for the affairs of the Condominium, including, without limitation, the operation, care, upkeep and maintenance of the Common Elements and to collect the Common Charges, as defined below, from the Unit Owners;

5.1.4 Subject to the Condominium Law and in the course of their administration and management of the Condominium, to own, sell, assign, convey, transfer, encumber, exchange and otherwise deal with or dispose of the trust property, real or personal, tangible or intangible, or any part or parts thereof, at public or private sale, for cash or on credit, and in such manner, on such terms, for such considerations and subject to such restrictions, stipulations, agreements and reservations as they shall deem proper, including the power to secure the payment of all or any part of the purchase price of any of the trust property so sold or transferred by mortgage and to execute and deliver any deed or other instrument in connection with the foregoing; provided, however, that the Trustees may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any part of all of the Common Elements, other than by the granting of utility rights and easements and/or rights and easements for other public purposes consistent with the intended use of the Common Elements, without the prior authorization of Unit Owners holding at least seventy-five (75%) percent of the beneficial interest hereunder and at least fifty-one (51 %) percent of all first mortgagees of record of Units in the Condominium.

5.1.5 To purchase (whether at foreclosure or otherwise) or otherwise acquire title to, and to rent, lease or hire from others for terms which may extend beyond the possible duration of this Trust, any property or rights to property, real or personal, including, without limiting the generality of the foregoing, any Unit or Units in the Condominium, and to own, manage, use and hold such property and such rights;

5.1.6 To borrow or in any other manner raise such sum or sums of money or other property for such purposes, upon such terms and in such manner as they shall deem advisable, and to evidence the same by notes, bonds, securities or other evidence of indebtedness, which may mature at a time or times beyond the possible duration of this Trust, and to execute and deliver any mortgage, pledge, or other instrument to secure any such borrowing;

5.1.7 To enter into any arrangement for the use or occupation of the trust property, or any part or parts thereof, including, without thereby limiting the generality of the foregoing, leases, sub-leases, easements, licenses or concessions, upon such terms and conditions and with such stipulations and agreements as they shall deem desirable, even if the same extend beyond the possible duration of this Trust;

5.1.8 To invest and re-invest the trust property or any part or parts thereof from time to time, including power to invest in any type of security or property which they may deem proper, and without liability for loss, even though such property or such investments may not produce income or shall be of a character or in an amount not customarily deemed proper for the investment of trust funds;

5.1.9 To obtain and maintain such casualty and liability insurance on and with respect to the trust property as they shall deem necessary or proper, consistent with the provisions of **Section 5.5.5** hereof;

5.1.10 To incur such liabilities, obligations and expenses, and to pay from the principal or the income of the trust property in their hands all such sums as they shall deem necessary or proper for the furtherance of the purposes of the Trust;

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

5.1.12 To vote in such manner as they shall think fit any or all shares in any corporation or trust included in the trust property, and for that purpose to give proxies to any person or persons or to one or more of their number, to vote, waive any notice or otherwise act in respect of any such shares;

5.1.13 To guarantee performance of the obligations of others in any cases where they shall deem that it is to the advantage of the Trust that they give such guaranty;

5.1.14 To maintain such offices and other places of business as they shall deem necessary or proper and to engage in business in The Commonwealth of Massachusetts or elsewhere;

5.1.15 To open in any bank or trust company FDIC-insured deposit accounts in the name of the Trust, to identify the signatories for such accounts, to deposit any funds of the Trust into such accounts, and to withdraw and draw checks on any funds of the Trust held in such accounts, all in accordance with the provisions of **Section 5.11** hereof;

5.1.16 To enter and have such access into Units as shall be reasonably necessary to the performance and exercise of the duties, obligations, rights and powers of the Trustees hereunder;

5.1.17 Consistent with the terms and conditions for the same set forth in **Section 10** of the Condominium Law, to employ, appoint and remove (for reasonable terms and upon reasonable termination arrangements) such agents,

managers, officers, board of managers, brokers, employees, servants, assistants and counsel as they shall deem proper, for the purchase, sale or management of the trust property, or any part or parts thereof, or for conducting the business of the Trust and may define their respective duties and fix and pay their compensation and the Trustees shall not be answerable for the acts and defaults of any such person. The Trustees may delegate to any one or more of their own number and to any such agent, manager, officer, board, broker, employee, servant, assistant or counsel, any or all of their powers (including discretionary power, except that the power to join in amending, altering, adding to, terminating or changing this Declaration of Trust shall not be delegated), all for such times and purposes as they shall deem proper. Without hereby limiting the generality of the foregoing, the Trustees may from time to time designate from their number a Chairman, a Treasurer, a Secretary, and such other officers as they deem fit, and may from time to time designate one or more of their own number to be the Managing Trustee or Managing Trustees, for the management and administration of the trust property and the business of the Trust, or any part or parts thereof;

5.1.18 To enforce the obligations of the Unit Owners, allocating income and expenses, levying reasonable fines against the Unit Owners for violations of the rules and regulations which the Trustees may adopt pursuant to **Section 5.7** hereof;

5.1.19 To conduct litigation, including, without limitation, litigation as to any course of action involving the Common Elements or arising out of the enforcement of the Master Deed, the Declaration of Trust or the By-Laws, including, without limitation, litigation by the Trustees against Unit Owners with respect to the recovery of overdue Common Charges or to foreclose the lien provided by **Section 6** of the Condominium Law and Massachusetts General Laws Chapter 254, **Sections 5** and **5A**, as amended by Chapter 338 of the Acts of 1987, Chapter 400 of the Acts of 1992 and Chapter 4 of the Acts of 1993 (together, the “**Condominium Lien Foreclosure Statute**”);

5.1.20 To adopt, amend and administer the rules and regulations covering the details of the operations and use of the Property;

5.1.21 To take such steps, including the expenditure of funds, to protect and preserve the Common Elements of the Condominium;

5.1.22 To exercise the powers of the Trustees as are enumerated in **Section 10** of the Condominium Law;

5.1.23 To operate, maintain, repair and replace, as necessary, the following aspects of the Common Elements, as required by the Comprehensive Permit:

- (i) All roadways and parking areas;

- (ii) Stormwater management facilities, including detention basins;
- (iii) Snow plowing;
- (iv) Landscaping;
- (v) Trash removal;
- (vi) Street lighting;
- (vii) Buildings; and
- (viii) On-site water mains and water services.

5.1.24 Generally, in all matters not herein otherwise specified, to control, manage and dispose of the trust property as if the Trustees were the absolute owners thereof and to do any and all acts, including the execution of any instrument, which by their performance thereof shall be shown to be in their judgment for the best interest of the Unit Owners; and the Trustees shall by the exercise and fulfillment of the powers and provisions set forth in this ARTICLE V provide for the necessary work of maintenance, repair and replacement of the Common Elements and payment therefor.

5.1.25 Notwithstanding any provision of this Trust and these By-Laws to the contrary, the Trustees shall not, and are not authorized to, take any action that would be in violation of the Comprehensive Permit or the Regulatory Agreement more particularly referenced in **Section 21.3** of the Master Deed (the “Regulatory Agreement”).

5.2 Maintenance and Repair of Units.

5.2.1 Each Unit Owner shall be responsible for the proper maintenance, repair and replacement of the applicable Unit and the maintenance, repair and replacement of utility fixtures serving the same which are not part of the Common Elements, including without limitation: interior walls, ceilings and floors; all windows, window glass and the interior portion of window frames, including storm windows and screens, if any; interior window trim; doors; the interior portion of door frames and interior door trim; plumbing and sanitary waste fixtures and fixtures for water and other utilities; electrical fixtures and outlets; domestic hot water heaters and kitchen appliances and all wires, pipes, drains and conduits for water, sewerage, electric power and light, telephone and other utility services which are contained in and serve such Unit solely. In addition, each Unit Owner shall be responsible for the proper maintenance, repair and replacement of any portion of the Exclusive Use Common Elements, as defined in the Master Deed, as well as any heating, ventilating and air conditioning (“HVAC”)

machinery, equipment and apparatus, mechanical and maintenance rooms and utility rooms which provide services solely to one Unit (whether located within or without the Unit). Each Unit Owner shall be responsible for all damages to any and all other Units caused by her failure to satisfy her maintenance, repair or replacement obligations hereunder.

5.2.2 If a majority of the Trustees shall, at any time and in such Trustees' reasonable judgment, determine that any portion of a Unit (including any fixtures, furnishings, facilities or equipment therein) or the Common Elements which a Unit Owner is entitled to use on an exclusive basis (including, without limitation, the Exclusive Use Common Elements) is either (a) in such need of maintenance or repair or is in such unsanitary condition that the market value of one or more other Units are being adversely affected, or (b) in such condition so as to constitute a nuisance or to be noxious or hazardous to any other Unit or the occupants thereof, then such Trustees shall in writing request the Unit Owner to perform the needed maintenance, repair or replacement or to correct such nuisance or noxious or hazardous condition. If such work shall not have been commenced within fifteen (15) days of the Trustees' sending of such written request or if such work is not thereafter diligently brought to completion, the Trustees shall be entitled to have the work performed for the account of such Unit Owner whose Unit is in need of such work and to enter upon and have access to such Unit, or to such Common Elements as to which such Unit Owner is entitled to exclusive use, for such purpose; and the cost of such work as is reasonably necessary therefor shall constitute a lien upon such Unit and the Unit Owner thereof shall be personally liable therefor. Notwithstanding the foregoing, the Trustees shall not be required to send the aforementioned written request to the Unit Owner nor to wait fifteen (15) days prior to having the necessary work performed if the Trustees believe, in the exercise of the Trustees' reasonable judgment, that the condition of any Unit is such that an emergency situation exists.

5.3 Maintenance, Repair and Replacement of Common Elements and Assessments of Common Expenses. Except for such portion, if any, of the Common Elements which any Unit Owner is entitled to use on an exclusive basis (including, but not limited to, the Exclusive Use Common Elements as well as any HVAC machinery, equipment and apparatus, mechanical and maintenance rooms and utility rooms devoted to service solely for one Unit (whether located within or without the Unit)), the Trustees shall be responsible for the proper maintenance, repair and replacement of the Common Elements of the Condominium, including but not limited to those Common Elements as outlined in the above **Section 5.1.1**, subject to the provisions of **Section 5.6** hereof with respect to repairs and replacement necessitated because of casualty loss. A majority of the Trustees must approve payment of vouchers for such work. The expenses of such maintenance, repair and replacement shall be assessed to the Unit Owners as Common Expenses of the Condominium at such times and in such amounts as provided in **Section 5.4**; provided, however, that if the maintenance, repair or replacement of the Common Elements is necessitated by the negligence or misuse of a Unit Owner, either directly or

by virtue of her failure to properly maintain, repair or replace her Unit, or such Common Elements which said Unit Owner is entitled to use on an exclusive basis (including, without limitation, the Exclusive Use Common Elements, as defined in the Master Deed), the expenses of such maintenance, repair and replacement may be assessed to the particular Unit Owner by the Trustees and the Unit Owner shall be personally liable therefor.

5.4 Common Expenses, Profits and Funds.

5.4.1 The Unit Owners shall be liable for common expenses (the “**Common Expenses**”) and entitled to common profits of the Condominium in proportion to their respective percentages of the Beneficial Interest as set forth in **Section 2.4** hereof. The Trustees may at any time or times distribute common profits among the Unit Owners in the proportions set forth in **Section 2.4** hereof.

5.4.1(a) The Trustees shall establish a reserve fund (the “**Reserve Fund**”) equal to at least two (2) months’ estimated Common Charges, as defined below, for each Unit. The first owner of each Unit shall contribute an amount equal to two (2) months’ estimated common charges for such Unit into the Reserve Fund at the time of closing (or promptly upon demand made within a reasonable period of time following the closing), which amounts shall not be considered as advance payments of regular Common Charge assessments. The Trustees shall maintain the Reserve Fund in a segregated account to meet the ordinary and necessary working capital needs of the Condominium, unforeseen expenditures and needs for additional equipment or services.

The Reserve Fund shall be used for repairs and replacement of those Common Elements that must be replaced on a periodic basis. In addition, the Trustees may, to such extent as the Trustees deem advisable, set aside additional common funds of the Condominium as a further reserve or contingent funds for other purposes, including, without limiting the generality of the foregoing, reduction of indebtedness or other lawful capital purpose, or, subject to the provisions of **Section 5.6**, for rebuilding or restoration of the trust property or for improvements thereto, and the funds so set aside shall not be deemed to be common profits available for distribution. From time to time as requested by the Trustees each Unit Owner will be responsible for replenishing funds expended out of the Reserve Fund.

5.4.2 At least thirty (30) days prior to the commencement of each fiscal year of this Trust (and within thirty (30) days after the execution hereof with respect to the portion of the fiscal year then remaining), the Trustees shall estimate the Common Expenses expected to be incurred during such fiscal year together with a reasonable provision for contingencies and reserves (but in all events such Common Expenses shall include an adequate reserve for the maintenance, repair and replacement of those Common Elements that must be replaced on a periodic basis) and after taking into account any undistributed

common profits from prior years, shall determine the assessment to be made for such fiscal year (together, the “**Common Charges**”). The Trustees shall promptly render statements to the Unit Owners for their respective shares of the Common Charges, according to their respective percentages of undivided Beneficial Interests hereunder, and such statements shall be payable in monthly installments on the first day of each month for the month in question. In the event that the Trustees shall determine during any fiscal year that the assessment of Common Charges so made is less than the Common Expenses actually incurred, or in the reasonable opinion of the Trustees likely to be incurred, they shall make a supplemental assessment or assessments and render statements therefore in the manner aforesaid, and such statements shall be payable as such Trustees determine. The Trustees may in their discretion provide for payments of such supplemented assessments in monthly installments. The amount of each such payment, together with interest thereon, at the rate per annum which is two percentage points greater than the prime rate of interest published from time to time in the Money Rates section of the Wall Street Journal (or, if the same is no longer published, such other financial publication of general circulation, as the Trustees shall select) if such payment is not made when due and any costs and expenses of collection thereof, including, without limiting the generality of the foregoing, reasonable attorneys' fees, shall constitute a lien on the Unit of the Unit Owner assessed, pursuant to the provisions of, and to the extent set forth in **Section 6** of the Condominium Law.

5.4.3 The Trustees shall expend common funds only for Common Expenses and lawful purposes permitted hereby and by the provisions of the Condominium Law.

5.4.4 In any action brought by the Trustees to foreclose a lien on a Unit pursuant to the Condominium Lien Foreclosure Statute because of unpaid Common Charges, the Unit Owner shall be required to pay a reasonable sum for the use and occupancy of the applicable Unit from the date of foreclosure until the Unit Owner vacates the Unit (the plaintiff in such case shall be entitled to the appointment of a receiver to collect the same). The Trustees, acting on behalf of the Unit Owners, shall have the power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage (but not to vote the Beneficial Interests appurtenant to), 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 to secure the same.

5.4.5 Consistent with **Section 6(d)** of the Condominium Law, the Trustees shall promptly provide any Unit Owner, or any purchaser of a Unit who has a duly executed Purchase and Sale Agreement for the acquisition of a Unit, or any mortgagee, or the attorney for any such party, so requesting the same in writing, with a written statement in recordable form of all unpaid Common Charges due with respect to such Unit (a “6(d) Certificate”). Notwithstanding anything to the contrary contained in this Declaration of Trust, such statements

may be executed by any one Trustee then in office, however, if that Trustee is also the Unit Owner requesting the 6(d) Certificate, then an alternative Trustee must execute the Certificate unless there are no other Trustees at that time. The Trustees may charge a reasonable fee for the preparation of a 6(d) Certificate. The filing of a 6(d) Certificate with the Registry shall operate to discharge the Unit from any lien for any other sums unpaid not enumerated as of the date of such statement to the extent provided for under the Condominium Law.

5.5 Insurance.

5.5.1 The Trustees shall obtain and maintain, to the extent available, master policies of casualty and physical damage insurance for the benefit and protection of the Trustees and all of the Unit Owners, naming as the named insureds, and with loss proceeds payable to the Trustees hereunder, or one or more of the Trustees hereunder designated by them, as Insurance Trustees for all of the Unit Owners collectively of the Condominium and their respective mortgagees, as their interests may appear, pursuant to such condominium form of insurance as may from time to time be customarily used in The Commonwealth of Massachusetts (but in all events to be multi-peril-type coverage providing as a minimum fire and the standard extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders for projects similar in construction, location and use), such insurance to cover the building and all other insurable improvements forming part of the Common Elements, including all service machinery, apparatus, equipment and installations in the Common Elements, and including also all such portions and elements of and appurtenances to the Units as the Unit Owners are responsible for under **Section 5.2.1** and any addition to any Unit as is permitted by the Master Deed, but not including the furniture, furnishings or other personal property of the Unit Owners. Such insurance shall be maintained in an amount not less than one hundred percent (100%) of the replacement value of the insured property for insurance purposes, as determined by the Trustees (who shall review such value at least as often as annually), and shall insure against, insofar as is practicable, (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; and (b) such other hazards or risks as the Trustees from time to time in their discretion shall determine to be appropriate, including, but not limited to, vandalism, malicious mischief, windstorm and water damage and federal flood hazards, so called. Such insurance shall also provide standard Replacement Cost, Agreed Amount, Inflation Guard and Building Code Operations or Demolition Cost Endorsements or their equivalent if and to the extent available at reasonable cost and to the extent deemed appropriate by the Trustees. In addition, each Unit Owner shall notify the Trustees of any completed work in such Unit having a value of over One Thousand Dollars (\$1,000.00).

5.5.2 All policies of casualty or physical damage insurance shall, insofar as practicable, provide (a) that such policies may not be cancelled, terminated or substantially modified as to the amount of coverage or risks covered without (1)

at least thirty (30) days' written notice to the insureds and (2) at least ten (10) days written notice to each first mortgage holder named in the mortgage clause; (b) for waiver of subrogation as to any claims (except claims involving arson or fraud) against the Trust, the Trustees, the manager, agents, employees, the Unit Owners and their respective employees, agents and guests; (c) for waivers of any defense based upon the conduct of any insured; (d) in substance and effect that the insurer shall not be entitled to contribution as against any casualty or property insurance which may be purchased separately by Unit Owners; and (e) that such insurance shall not be prejudiced (i) by any act or neglect of any occupants of owners of the Units when such act or neglect is not within the control of the Trustees (or Owners) collectively or (ii) by failure of the Trustees (or Owners) collectively to comply with any warranty or condition with regard to any portion of the premises over which the Trustees (or Owners) collectively have no control.

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

5.5.4 The Trustees shall also so obtain and maintain master policies of insurance with respect to the Common Elements, for the benefit of the Trustees and all of the Unit Owners, for (a) comprehensive public liability, including personal injury coverage which shall cover claims of any Unit Owner in the amount of at least One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate for personal injury and/or property damage; (b) workers' compensation and employees' liability with respect to any manager, agent or employee of the Trust, but excluding any independent agent or manager who shall furnish to the Trustees a Certificate of Insurance if such liability is otherwise uninsured against, it being agreed that the Trustees may waive such requirement in any particular instance, at their discretion; (c) general liability insurance coverage for the Trustees; and (d) such other risks as the Trustees in their discretion deem it appropriate to insure. All such insurance shall be in such amounts and forms as the Trustees shall in their discretion deem appropriate (but no less than the above limits), and shall, contain provisions as above set forth with respect to non-cancellation, waiver of subrogation, waiver of defense based on conduct of any insured, and non-contribution. In all events such public liability insurance shall provide that the insurer is precluded from denying the claim of a Unit Owner because of negligent acts of the Trustees or other Unit Owners, and such insurance shall include all other coverage of the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use. Further such insurance shall in all events include, without limitation, legal liability of the insureds for property damage,

bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common areas, and legal liability arising out of law suits related to employment contracts of the Trustees. All policies of comprehensive general liability insurance referred to in this Paragraph shall provide for at least ten (10) days' written notice to the Trust and to each holder of a first mortgage on an individual unit before the insurer can cancel or substantially modify it.

5.5.5 The Trustees shall also so obtain and maintain such other, additional insurance, or shall modify existing coverage(s) if necessary, to comply with the requirements of the Federal Home Loan Mortgage Corporation (FHLMC) and the Federal National Mortgage Association (FNMA), so that mortgages covering the Units will be eligible for sale to FHLMC and FNMA.

5.5.6 The cost of all such insurance and bonds obtained and maintained by the Trustees pursuant to provisions of this **Section 5.5** shall be a Common Expense.

5.6 Rebuilding, Restoration and Improvements.

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

5.6.2 If and whenever the Trustees shall propose to make any improvement to the Common Elements of the Condominium, or shall be requested in writing by Unit Owners holding twenty-five percent (25%) or more of the Beneficial Interests hereunder to make any such improvement, the Trustees shall submit to all Unit Owners (a) a form of agreement (which may be in several counterparts) specifying the improvement or improvements proposed to be made and the estimated cost thereof, and authorizing the Trustees to proceed to make the same; and (b) a copy of the provisions of **Section 18** of the Condominium Law. Upon whichever of the following shall first occur, namely, (a) the receipt by the Trustees of such agreement signed by Unit Owners holding at least seventy-five percent (75%) of the Beneficial Interests hereunder; or (b) the expiration of

ninety days (90) after such agreement was first submitted to the Unit Owners, the Trustees shall notify all Unit Owners of the aggregate percentage of Unit Owners who have then signed such agreement. If such percentage equals or exceeds seventy-five percent (75%), the Trustees shall proceed to make the improvement or improvements specified in such agreement. To the extent not inconsistent therewith or not otherwise provided for herein, the provisions of said **Section 18(b)** shall apply hereto. Reference is hereby made to **Section 18(a)** of the Condominium Law, the provisions of which shall be deemed incorporated herein and shall be in addition to and not in limitation of the foregoing provisions hereof.

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

5.6.4 Notwithstanding the foregoing, no improvement(s) may be made to the Common Elements of the Condominium that would be in violation of the Comprehensive Permit.

5.7 Rules, Regulations, Restrictions and Requirements. The Trustees may, at any time and from time to time, adopt, amend and rescind (without the consent of the Unit Owners and to the extent permitted by the Condominium Law) administrative rules and regulations governing the details of the operation and use of the Common Elements, and such restrictions on and requirements respecting the use, occupancy and maintenance of the Units and the use of the Common Elements as are consistent with the provisions of the Master Deed and are designed to prevent unreasonable interference with the use by the Unit Owners of their Units and of the Common Elements. The Trustees shall enforce all said rules and regulations promptly, properly and uniformly as against all Unit Owners and others to whom the same may from time to time apply and, so failing shall so enforce the same at the request of any Unit Owners, all of which obligations shall constitute obligations of theirs as Trustees hereunder. The Trustees shall have the power to levy fines against Unit Owners for the violation of such rules and regulations. No fine may be levied for more than Five Dollars (\$5.00) for any one violation, but for each day a violation continues after notice, it shall be considered a separate violation. Collection of fines may be enforced against the Unit Owner or Unit Owners involved as if the fines were common charges owed by the particular Unit Owner or Unit Owners. In the case of persistent violations by a Unit Owner, the Trustees shall have the power to require such Unit Owner to post a bond to secure adherence to said rules and regulations.

No rule, regulation, restriction or requirement shall be made that would be in violation of the terms and conditions of the Comprehensive Permit.

The initial Rules and Regulations promulgated by the Trustees are recorded herewith.

5.8 Meetings.

5.8.1 The Trustees shall meet annually on the date of the annual meeting of the Unit Owners and at such meeting may elect the Chairman, Treasurer and Secretary as hereinbefore provided. Other meetings may be called by the Chairman and in such other manner as the Trustees may establish, provided, however, that written notice of each meeting stating the place, day and hour thereof shall be given at least seventy two (72) hours before such meeting to each of the Trustees. Notwithstanding any provision herein to the contrary, any action required or permitted to be taken at any meeting of the Trustees may be taken without a meeting of the Trustees if all of the Trustees consent to the actions in writing and the written consents are filed with the Condominium Chairman. Each such consent shall be treated for all purposes as a vote at a meeting of the Trustees.

5.8.2 There shall be an annual meeting of the Unit Owners on the second Tuesday in October of each year (or, if such day is a legal holiday, on the next succeeding day not legal holiday), commencing with the year 2009, at 7:30 P.M. at such location on the Condominium premises or at such other reasonable place within The Commonwealth of Massachusetts and time as shall be designated by the Trustees by written notice given to the Unit Owners at least seven (7) days prior to the date so designated. Special meetings of the Unit Owners may be called at any time by the Trustees, and special meetings of the Unit Owners shall be called by the Trustees upon the written request of Unit Owners holding at least sixty percent (60%) of the Beneficial Interests. Written notice of any such meeting designating the place, day and hour thereof shall be given by the Trustees to the Unit Owners at least fourteen (14) days prior to the date so designated. At the annual meeting of the Unit Owners, the Trustees shall submit reports of the management and finances of the Condominium. Whenever at any meeting the Trustees propose to submit to the Unit Owners any matter with respect to which approval of or action by the Unit Owners is necessary or appropriate, the notice of such meeting shall so state and reasonably specify such matter. The presence in person or by proxy of the holders of a majority of the Beneficial Interests shall be necessary to constitute a quorum at all meetings of the Unit Owners for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the Unit Owners, the Unit Owners present in person or represented by proxy shall have the power to adjourn the meeting from time to time, without notice, other than announcement at the meeting, until a quorum

shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted at the meeting as originally notified.

5.9 Notices to Unit Owners. Every notice to any Unit Owner required or permitted under the provisions hereof or which may be ordered in any judicial proceeding shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one or more of the Trustees to such Unit Owner by leaving such notice with him at her residence in the Condominium or by mailing it, postage prepaid, and addressed to such Unit Owner at her address as it appears upon the records of the Trustees at least three (3) business days prior to the date fixed for which such notice is given.

5.10 Inspection of Books, Report to Unit Owners. All books, accounts, rules and other records of the Trustees shall be open to inspection to any one or more of the Trustees and the Unit Owners and institutional first mortgage holders (and their insurers and guarantors) of the Units at all reasonable times. The Trustees shall, as soon as reasonably possible after the close of each fiscal year, or more often if convenient to them, submit to the Unit Owners a report of the operations of the Trustees for such year which shall include financial statements in such summary form and in such detail as the Trustees shall deem proper. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees given by certified or registered mail within a period of sixty (60) days of the date of the receipt by him shall be deemed to have assented thereto.

5.11 Checks, Notes, Drafts and Other Instruments. Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust may be signed by a majority of the Trustees, or by any person or persons to whom such power may at any time or from time to time be delegated by a majority of the Trustees.

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

5.13 Fiscal Year. The fiscal year of the Trust shall be the calendar year or such other yearly period as may from time to time be determined by the Trustees.

5.14 Financial Statements. Each Unit Owner shall be entitled upon, and within a reasonable time following written request, a copy of the budget and to a financial statement for the immediately preceding fiscal year, free of charge to the party so requesting.

5.15 Condemnation. In the event of any condemnation of the Trust property, the Trustees shall estimate the cost of restoring what remains of the Trust property and shall notify all Unit Owners of such estimate. Until the Unit Owners instruct the Trustees

otherwise by majority vote, the Trustees in their discretion shall proceed with rebuilding and restoration of the remaining Trust property as far as practical to the condition and standards existing before the taking and the cost thereof shall be a common expense. Any award in connection with condemnation of Trust property shall be common funds and the Trustees shall have all power and authority to deal with all persons, including without limitation the taking authority, in connection therewith. From and after any condemnation which includes one or more Units or parts thereof, (i) the Beneficial Interests of the remaining (including Units partially taken) Units and the corresponding percentage interest of each as stated in the Master Deed, shall be in proportion to their original Beneficial Interests, with equitable adjustments based on diminution in fair market value as to any Unit partially taken, and (ii) those Units entirely taken shall have no Beneficial Interest hereunder or any percentage interest under the Master Deed. Any award or portion thereof for taking of any Unit or portion thereof paid by the taking authority to the Trustees shall be paid to the Owners, mortgagees and other lien holders of such Unit as their interests may appear.

5.16 Resolution of Disputes between Unit Owners and Trustees. In the event that (a) any Unit Owner shall, by notice in writing to the Trustees, dissent from any determination of the Trustees with respect to any action taken by or inaction of the Trustees, or (b) any Trustee disagrees as to the course of any action to be taken by the Trustees pursuant to the terms of the Master Deed, this Declaration of Trust or otherwise, and in either case, such dispute shall not be resolved within fifteen (15) days after notice to the Trustees, then either the dissenting Unit Owner or the dissenting Trustee may submit the matter to arbitration, and for that purpose, one arbitrator shall be designated by the Unit Owner or dissenting Trustee, as applicable, and one arbitrator shall be designated by the remaining Trustees within ten (10) days of the expiration of the aforementioned fifteen (15) day period with a third arbitrator to be selected by the two arbitrators so designated and such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association; provided, however, that if any of the Unit Owners or Trustees required to designate an arbitrator fails so to do within five (5) days of the expiration of the aforementioned fifteen (15) day period, the second arbitrator shall be designated by the party who did, in fact, designate an arbitrator. During the pendency of any dispute with the Unit Owners described in the preceding sentence, the Trustees shall not proceed with the taking of any action, including any repair, rebuilding or restoration, or any improvement, unless the Trustees determine, in their reasonable discretion, that the condition of the Condominium or any part thereof is such that an emergency situation exists.

ARTICLE VI

Rights and Obligations of Third Parties Dealing with the Trustees

6.1 Dealing with Trustees. No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record in the Registry need inquire further as to the persons who are then Trustees hereunder. The receipt by the Trustees or any one or more of them for monies 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 Trustees 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 Trustees or with any real or personal property which then is or formerly was trust property shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, or otherwise as to the purpose or regularity of any of the acts of the Trustees or any one or more of them purporting to be done in pursuance of any of the provisions or powers herein contained.

6.2 Recourse Against Trustees. No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees or by reason of anything done or omitted to be done by or on behalf of them or any of them against the Trustees individually, or against any such agent or employee or against any beneficiary either directly or indirectly, by legal or equitable proceeding, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with or having any claim against the Trustees, shall look only to the trust property for payment under such contract or claim or for the payment of any debt, damage, judgment or decree or of any money that may otherwise become due or payable to them from the Trustees so that neither the Trustees nor the beneficiaries, present or future, shall be personally liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Unit Owners under the provisions of **Section 3.8** hereof or under the provisions of Condominium Law.

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

6.4 Certifications by Trustees for Filing. Any amendments to this Declaration of Trust and any certificate herein required to be filed and any other certificate signed and sworn to by all Trustees then in office which may be deemed desirable to file for recordation may be filed with the Registry and such record shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustees, the trust property or any beneficiary hereunder shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be filed with the Registry. Any certificate signed by the Trustees in office at the time or any one or more of them, setting forth as facts any matters affecting the Trust, including statements as to what action has been taken by the beneficiaries, and as to matters determining the authority of the Trustees to do any act, when duly acknowledged and filed with the Registry shall be conclusive evidence as to the existence of such alleged facts in favor of

all third persons, including the Trustees, acting in reliance thereon. Any certificate executed by all Trustees then in office, 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 the Trustees shall, as to all persons acting in good faith in reliance thereon, be conclusive evidence of the truth of the statements made in such certificate and of the existence of the facts therein set forth.

ARTICLE VII

Amendments and Termination

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

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

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

7.1.3 It would be inconsistent with the provision or intent of **Article 19** of the Master Deed.

7.1.4 It would alter, or in any manner or to any extent whatsoever, modify or affect the terms and conditions of the Comprehensive Permit, without modification of the same by written approval of the Tyngsboro Zoning Board of Appeals, which approval shall be recorded with the Middlesex North District Registry of Deeds.

7.1.5 It would, in any manner, disqualify mortgages of Units in the Condominium for sale to the Federal Home Loan Mortgage Corporation (FHLMC) or the Federal National Mortgage Association (FNMA). All provisions of this Trust shall be construed so as to qualify any such mortgages for sale to FHLMC and FNMA.

Notwithstanding the foregoing provisions of this Article VII and except as provided by applicable statute, in case of condemnation or substantial loss to the Units and or Common Elements of the Condominium, unless at least sixty seven percent (67%) of the holders of first mortgages of record on the Units (based upon one vote for each mortgage

owned) have given their prior written approval, neither the Trustees nor the Unit Owners shall: (a) change the pro-rata interest or obligations of any Unit for purposes of (i) levying assessments or changes or allocating distributions of hazard insurance proceeds of condemnation awards or (ii) determining the prorata share of ownership of each Unit in the Common Elements; (b) partition or subdivide any Unit; (c) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements, by act or omission (but the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed an action for which any prior approval of mortgagees shall be required under this subsection); or (d) use hazard insurance proceeds for losses to any Condominium property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such Condominium property.

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

7.3 Termination. The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of the Condominium Law in accordance with the procedure therefor set forth in **Section 19** of the Condominium Law as may be modified by **Section 19** of the Master Deed.

7.4 Disposition of Property on Termination. Upon the termination of this Trust, the Trustees may, subject to and in accordance with provisions of the Condominium Law, sell and convert into money the whole of the trust property, or any part or parts thereof, and, after paying or retiring all known liabilities and obligations of the Trustees and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind (at valuations made by them which shall be conclusive) all other property then held by them in trust hereunder to the Unit Owners according to their respective percentages of Beneficial Interests hereunder. In making any sale under this provision, the Trustees shall have power to sell or vary any contract of sale and to do all things, including the execution and delivery of instruments, as may by their performance thereof be shown to be in their judgment necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time

remaining in their possession or ownership, even though all times herein fixed for distribution of trust property may have passed.

ARTICLE VIII

Construction and Interpretation

8.1 Terms. In the construction hereof, whether or not so expressed, words used in the singular or in the plural respectively include both the plural and singular, words denoting males include females and words denoting persons include individuals, firms, associations, companies, trusts and corporations unless a contrary intention is to be inferred from or required by the subject matter or context. The cover, title, headings of different parts hereof, the table of contents and the marginal notes, if any, are inserted only for the convenience or reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation or effect hereof. All the trusts, powers and provisions herein contained shall take effect and be construed according to the law of The Commonwealth of Massachusetts. As all provisions of the Master Deed and this Trust are to be construed so that mortgages covering the Units shall qualify for sale to FHLMC and FNMA, where any action to be taken requires an assent or vote of a specified percentage of Unit Owners and/or their mortgagees, and the requirements of FHLMC and FNMA differ, the higher percentage shall control.

8.2 Consents. Wherever it is provided herein that the permission, approval or consent of any party is required, such permission, approval or consent shall not be unreasonably withheld. The Trustees have the power and authority to waive any provision of this Trust affecting or limiting the rights of a Unit Owner for any cause or reason determined to be reasonable by such Trustees in their discretion.

8.3 Conflicts. If any provision of this Trust shall be invalid or shall conflict with the Condominium Law or if any provision of this Trust conflicts with any provision of said Master Deed, then the following rules of construction shall be used: (a) in the event of a conflict between the Declaration of Trust and the Condominium Law, the provisions of the Condominium Law shall control; and (b) in the event of a conflict between the Master Deed and the Declaration of Trust, the Master Deed shall control, provided, however, that in the event of a conflict between any numerical voting requirements for action set forth in both the Master Deed and this Declaration of Trust, the provisions requiring the greater or more restrictive percentage or fraction for action to be taken or avoided shall control. The invalidity of any provision of this Declaration of Trust shall not impair or affect the validity or enforceability of any other provision of the Declaration of Trust.

ARTICLE IX

Protection of Mortgagees; Federal Home Loan Mortgage Corporation; Federal National Mortgage Association

9.1 Certain Definitions. For purposes of this Article IX, the following terms shall have the meanings ascribed below:

- (1) The term "FHLMC" means Federal Home Loan Mortgage Corporation.
- (2) The term "FNMA" means Federal National Mortgage Association.
- (3) The term "Eligible Mortgage Holder" means a holder of a first mortgage on a Unit who has requested notice of certain matters from this Trust as set forth herein.
- (4) The term "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters as set forth herein.
- (5) The term "Constituent Documents" means, collectively, the Master Deed, this Trust and any rules and regulations thereto.

9.2 Certain Prohibitions. Notwithstanding anything to the contrary in the Constituent Documents:

- (1) There shall be no restriction upon any Unit Owner's right of ingress or egress to his or her Unit, which right shall be perpetual and appurtenant to the ownership of the Unit.
- (2) There shall be no restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her Unit. There shall be no "right of first refusal" so called or any similar restriction.
- (3) There shall be no restriction on the right of any Unit Owner to mortgage or otherwise encumber his Unit.
- (4) Prior to the passage of control of this Trust to consumer Unit purchasers, no contract or lease (including management contracts) shall be entered into unless this Trust is provided with a right of termination of any such contract or lease with or without cause, exercisable without penalty at any time after transfer of control, upon not more than 90 days' notice to the other party thereto.
- (5) The Constituent Documents shall not be amended or modified if the result of any such amendment or modification would:
 - (a) Add a "right of first refusal" so called.

9.3 Notice of Action. Upon written request to this Trust identifying the name and address of the Mortgage Holder, Insurer or Guarantor and the Unit number or

address, any first mortgagee and any such eligible Mortgage Holder or eligible Insurer or Guarantor will be entitled to timely written notice of:

(1) Any condemnation loss or any casualty loss that affects either a material portion of the project or any Unit on which there is a first mortgage held, insured, or guaranteed by such eligible Mortgage Holder or eligible Insurer or Guarantor, as applicable;

(2) Any delinquency in the payment of assessments or charges owed, or default in the performance by the borrower of any obligation under the Condominium Constituent Documents, by an owner of a Unit subject to a first mortgage held, insured or guaranteed by such first Mortgage Holder or eligible holder or eligible Insurer or Guarantor, which remains uncured for a period of 60 days;

(3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Trust;

(4) Any proposed action which would require the consent of a specified percentage of eligible Mortgage Holders.

9.4 Amendment to Documents.

(1) Where Unit owners are considering termination of the legal status of the project for reasons other than substantial destruction, or condemnation, of the property the consent of owners of all Units and the approval of eligible Mortgage Holders representing at least sixty-seven (67%) percent of the votes of the mortgaged Units shall be required to terminate the legal status of the project as a Condominium.

(2) The consent of the owners of all Units and the approval of at least fifty-one (51%) percent of the eligible mortgage holders (based on one vote for each Unit subject to a mortgage held by an eligible mortgage holder), shall be required to add or amend any material provisions of the Constituent Documents of the project, which establish, provide for, govern or regulate any of the following:

- (i) voting rights;
- (ii) assessments, assessment liens or subordination of such liens;
- (iii) reserves for maintenance, repair and replacement of the common areas;
- (iv) insurance or Fidelity Bond requirements;
- (v) rights to use of the common areas;
- (vi) responsibility for maintenance and repairs;
- (viii) expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project, except as provided in the Master Deed;
- (ix) definitions of Unit boundaries;
- (x) the interests in the general or limited common areas;
- (xi) convertibility of Units into common areas or of common areas into Units;
- (xii) leasing of Units;

- (xiii) reallocation of interests in the general or limited common areas, or rights to their use;
- (xiv) a decision by the Trust to establish self-management when professional management had been required previously by an eligible Mortgage Holder;
- (xv) imposition of any restrictions on a Unit owner's right to sell or transfer his or her Unit;
- (xvi) restoration or repair of the project (after hazard damage or partial condemnation) in a manner other than that specified in the Condominium Constituent Documents;
- (xvii) any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or
- (xviii) any provisions which are for the express benefit of Mortgage Holders, eligible Mortgage Holders or eligible Insurers or Guarantors of mortgages on Units.

(3) An addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An eligible Mortgage Holder who receives a written request to approve additions or amendments which are not material who does not submit a response to the requesting party within thirty (30) days after the request is made shall be deemed to have approved such request. Additionally, if specifically provided by any applicable FNMA regulation, implied approval of any addition or amendment may be assumed when an eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within 30 days after the proper notice of the proposal is received, provided the notice has been delivered to the Mortgage Holder by certified or registered mail, return receipt requested. This clause (iii) shall not apply to FHLMC.

9.5 Arbitration. In the event that any Unit Owner or Trustee, by written notice to the Trustees, shall dissent from any determination of the Unit Owners or Trustees with respect to compliance with the provisions of this Trust and any Rules and Regulations thereto, the Master Deed, the master plans and each Unit deed and Unit plan, determination of the value of the Condominium, or any other determination or action or failure to act of the Unit Owners or Trustees herein, or in the event the Trustees or the Unit Owners cannot agree upon a course of action with respect to any matter before them, and such dispute shall not be resolved within thirty (30) days after such notice, then either a Trustee or the dissenting Unit Owner shall submit the matter to arbitration. For that purpose, one arbitrator shall be designated by any two of the Trustees, one by the dissenting Unit Owner or Trustee and a third by the two arbitrators so designated. Such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association and shall be binding upon all parties.

9.6 First Mortgagee Obtaining Title. Any first mortgagee who obtains title to a Condominium Unit, pursuant to the remedies provided in its mortgage, or foreclosure of its mortgage, will not be liable for such Unit's unpaid dues, common charges, or assessments (including interest and costs of collection and legal fees relating to the collection thereof) which accrue prior to the acquisition of title to such Unit by the

Mortgagee, provided, however, that notwithstanding the foregoing, such first mortgagee shall be liable for such Unit's unpaid common expenses, costs and attorneys' fees as provided in subsection (c) of Section 6 of Condominium Law. The lien for common expense assessments shall not be affected by any sale or transfer of a Unit, except that a sale or transfer pursuant to a foreclosure of a first mortgagee shall extinguish a subordinate lien for assessments which became payable prior to such sale or transfer, provided, however, that the lien for common expense assessments shall be affected by the sale or transfer of a Unit to the extent set forth in subsection (c) of Section 6 of Condominium Law. Any such delinquent assessments which were extinguished pursuant to the immediately preceding sentence may be reallocated and assessed to all Units as a common expense. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a Unit for liability for, nor the Unit from the lien of, any assessments made thereafter.

9.7 Additional Prohibitions. Except as provided by statute in case of condemnation or substantial loss to the Units and/or common elements of the Condominium project, unless at least 51% of the first mortgagees (based upon one vote for each first mortgage owned), or 100% of the unit owners (other than the sponsor, developer or builder) of the individual Condominium Units have given their prior written approval, this Trust shall not be entitled to:

- (1) by act or omission, seek to abandon (not legally terminate) the Condominium project;
- (2) change the pro rata interest or obligations of any individual Condominium Unit for the purpose of (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (2) determining the pro rata share of ownership of each Condominium Unit in the common elements;
- (3) partition or subdivide any Condominium Unit;
- (4) except as provided in the Master Deed, by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the Condominium project shall not be deemed a transfer within the meaning of this clause);
- (5) use hazard insurance proceeds for losses to any Condominium property (whether to Units or to common elements) for other than the repair, replacement or reconstruction of such Condominium property.

No provisions of the Constituent Documents shall give any Unit owner or owners or any other party or parties priority over any rights of first mortgagees of Condominium Units pursuant to their mortgages in the case of a payment to Condominium Unit owners of

insurance proceeds or condemnation awards for losses to or taking of Condominium Units and/or common areas and facilities.

9.8 Vote or Consent. The right of any Unit owner to vote or grant or withhold any consent or exercise any rights pursuant to the provisions of this Trust or the Master Deed may be assigned to or restricted in favor of any mortgagee, and the Trustees shall be bound by such assignment or restriction, provided, however, that such assignment or restriction does not conflict with the provisions of the Condominium Law and that the mortgagee has notified the Trustees of such assignment or restriction in writing.

9.9 Information. The Trust shall promptly deliver the following information, in writing, to any mortgagee, mortgage holder, mortgage servicer, FHLMC or FNMA, requesting same, without expense to the requesting party:

(1) notification of any default in the performance by the individual Unit borrower of any obligation under the Condominium Constituent Documents which is not cured within sixty (60) days;

(2) a written certification as to whether or not the owner of any Unit encumbered by a mortgage held or serviced, in whole or in part, by the requesting party, is more than one (1) month delinquent in the payment of Condominium common area charges or assessments;

(3) a written certification as to the percentage of Unit owners who are more than one (1) month delinquent in the payment of Condominium common area charges or assessments;

(4) a statement to the best of the Trust's knowledge as to the percentage of Units which have been sold and conveyed to bona fide purchasers (who have closed or who are legally obligated to close) and the percentage of Units which are occupied by individual Unit owners as their primary year round residence.

9.10 FHLMC; FNMA. The provisions of this Article are set forth so that the Condominium will comply with the requirements of FHLMC, and FNMA, and the provisions of this Article shall be construed and interpreted in accordance with that intention. Notwithstanding anything to the contrary in the Constituent Documents, the provisions of this Article shall at all times take precedence over all other provisions in the Constituent Documents, and this Article shall not be amended or modified without the express prior written consent of FHLMC and FNMA except as expressly provided in the immediately following sentence. In the event, at any time and from time to time, that applicable rules and regulations of FHLMC or FNMA are changed or modified, then and in any such event or events, the prohibition contained in the immediately foregoing sentence shall be deemed to be changed and modified so as to permit the amendment and modification of the Constituent Documents so that the Constituent Documents shall

comply with such changed or modified rules and regulations of FHLMC or FNMA, or both.

9.11 Effective Date. The provisions of Article IX shall become effective upon the sale by the Declarant of all units within the condominium.

ARTICLE X

Affordable Housing

10.1 Pursuant to the provisions of the Comprehensive Permit under M.G.L. Chapter 40 B, Sections 20-23, the Regulatory Agreement, the Deed Riders for the Affordable Units and the Monitoring Services Agreement by and between the Town of Tyngsborough, the Whispering Pines Real Estate Development, LLC and Community Housing, Inc., (hereinafter, the “Monitoring Services Agreement”), two (2) Units, being Units 7 and 14, are hereby designated as affordable in perpetuity and designated for donation to the Tyngsboro Housing Authority, consistent with the Comprehensive Permit and the Regulatory Agreement. The Affordable Units are being sold for prices below their fair market value to persons and families within specific income guidelines and subject to the Regulatory Agreement. The Regulatory Agreement shall restrict the resale price of an Affordable Unit, as well as the income of potential buyers of an Affordable Unit, in order to maintain such Unit as affordable in perpetuity. The Deed Rider shall be attached to the first Affordable Unit deed and all subsequent Affordable Unit deeds to be recorded with said Registry.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

