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**AMENDED AND RESTATED DECLARATION OF TRUST**

**ROBBINS BROOK CONDOMINIUM TRUST**

**Robbins Brook Condominium  
Acton, MA**

10<sup>th</sup> day of August, 2016

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## **AMENDED AND RESTATED ROBBINS BROOK CONDOMINIUM TRUST**

THIS AMENDED AND RESTATED DECLARATION OF TRUST made this 10<sup>th</sup> day of August, 2016 amends and replaces the Robbins Brook Condominium Trust dated January 3, 2002, and recorded with Middlesex County South District Registry of Deeds in Book 34644, Page 114, as previously amended.

### **ARTICLE I - NAME OF TRUST**

The trust is known as "ROBBINS BROOK CONDOMINIUM TRUST".

### **ARTICLE II - THE TRUST AND ITS PURPOSE**

2.1 **General Purpose.** This Trust is created as the organization of Unit Owners (hereinafter the "Owners" or "Unit Owners") as required by the provisions of Chapter 183A, as amended, of the Massachusetts General Laws (hereinafter the "Act") for the purpose of managing and regulating ROBBINS BROOK CONDOMINIUM (hereinafter the "Condominium"), established by a Master Deed dated January 24, 2002 and recorded with the Middlesex South County Registry of Deeds in Book 34644, Page 63, as previously amended, and as amended and restated pursuant to the Amended and Restated Master Deed of the Robbins Brook Condominium, recorded herewith but prior hereto (hereinafter the "Master Deed").

As set forth in the Master Deed the Condominium consists of multiple building types, which together make up the Condominium. Each of the four different building types are referred to respectively as the Village Homes Units (31 units) Town Home Units (53 units) Independent Dwelling Units (24 units, A/K/A "The Pines") and the Assisted Living Unit (collectively referred to as the "unit owner subgroups," the "subgroups" or individually as "subgroup). Because the Condominium consists of varying building types, the maintenance and repair requirements for each differ. For this reason, as detailed in Article V, Section 5.4 hereof, some costs of the Condominium are assessed to all unit owners, while costs associated exclusively with a particular subgroup are assessed exclusively to the units within that subgroup. In addition, to ensure that all unit owners are represented by the Board of Trustees, a certain number of positions on the Board of Trustees are designated to be elected by each of the subgroups of unit owners.

2.2 **Definitions.** Unless the context otherwise requires, the words defined in the Master Deed and the definitions contained in Section I of the Act shall be applicable to this Trust. The term "Unit" shall have the same meaning as the term "Unit" as defined by Section I of the Act.

2.3 **Trust and Not Partnership.** It is hereby expressly declared that a trust and not a partnership or corporation is hereby created, and that the owners are beneficiaries and not partners or associates between and among themselves with respect to the trust property, and hold no relation to the Trustees other than as beneficiaries hereunder.

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/or distribute the income and/or principal thereof for the benefit of the Owners from time to time of the Units in the Condominium.

The Beneficial Interest of each owner is set forth in Exhibit C to the Master Deed and made a part hereof (See Article IV, Section 4.1 hereof), which interest is equal to the percentage undivided ownership of the Condominium as said percentage individual ownership interest may be amended from time to time.

### ARTICLE III - THE TRUSTEES

3.1 Number of Trustees: Term of Office: Qualifications. Following adoption of this Amended and Restated Declaration of Trust, there shall be eleven (11) Trustees: Four (4) Trustees shall be elected by unit owners of the Town Homes, Three (3) Trustees shall be elected by unit owners of the Village Homes, two (2) Trustees shall be elected by unit owners of the Independent Dwelling units, and two (2) Trustees shall be elected/appointed by the Assisted Living unit. The term of office of Trustees shall be a period of two (2) years, and until their successors have been elected and qualified. Such terms shall be on a staggered basis so that insofar as possible in each year terms of approximately half of the Trustees will expire. To that end, in order to establish and maintain such staggered terms at the initial election at an annual meeting after adoption of this Restated and Amended Declaration of Trust, six Trustee positions shall be elected for a term of one (1) year and five Trustee positions shall be elected for a term of two (2) years, which shall be determined by lot. Thus, immediately following adoption of the Amended and Restated Trust, two (2) Trustee positions elected by the Village Homes shall be for one year, two (2) Trustee positions elected by the Town Homes shall be for one year, one (1) Trustee position elected by the Independent Dwelling shall be for one (1) year, and one Trustee position elected/appointed by the Assisted Living Unit shall be for a one (1) year term.

The number of positions on the Board of Trustees may be thereafter changed by a vote of Unit Owners entitled to not less than fifty-one percent (51%) of the total Beneficial Interest hereunder, but in no event shall the number be less than eleven (11), and shall always be an odd number. In the event in an increase in the Board of Trustees the ratio of Trustees chosen by each subgroup as initially stated above shall, to the extent possible, be preserved. In addition, upon any increase or decrease in the number of Trustees, the terms of any newly appointed Trustee or Trustees shall be one (1) year or two (2) years, determined insofar as necessary by lot, so as to maintain such staggering of terms insofar as possible. A Trustee whose term has expired shall continue in office until a successor is elected or appointed as hereinafter provided.

3.2 Election of Trustees. At the annual or special meeting of Unit Owners, each of the respective Trustees shall be elected by the respective vote of the Unit Owners in each subgroup, according to the number of positions allotted to that subgroup, as aforesaid, in person or by proxy, with the candidate(s) receiving the greatest individual totals of Beneficial Interest votes of the subgroup ("votes") as there are vacancies being elected, provided that for each subgroup electing Trustees at such meeting, a quorum of Unit Owners representing a least fifty-one (51%) percent of the total Beneficial Interest of each such subgroup is represented in person or by proxy, and provided further that a quorum of the total Beneficial Interest of all Unit Owners is present in person or by proxy. A majority of Unit Owners in interest at any meeting of the Owners, 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. There shall be no cumulative voting. Trustees shall be Unit Owners or residents of the Condominium. In such case as title to a Unit is held by a fiduciary (Trust), such natural person may be the fiduciary (Trustee or Beneficiary), or in the case of a Unit owned by a corporation or limited liability company, an officer or director of such corporation, or member or manager of the limited

liability company, or such other duly authorized person.

In such event as the Unit Owners in any subgroup should fail to elect a Trustee, then the remaining Trustees serving on the Board of Trustees (whether from the particular subgroup or from other subgroups) may by majority vote appoint a natural person, to fill the open term. Such natural person shall whenever possible be a Unit Owner, or resident of a Unit, from the particular subgroup, unless no candidate from the subgroup is available, in which case a natural person from other than the particular subgroup may be appointed. A candidate appointed shall in all cases be responsible to serve as a Trustee representative for the particular subgroup for which he or she is appointed. The intention of the foregoing is to allow the election/appointment of a resident from another subgroup in the event there are not enough candidates for a particular subgroup. However, if this occurs, the person appointed shall be responsible for serving as a Trustee for the subgroup for which they are elected/appointed, whether or not the individual is a unit owner, or resident of a Unit, in that subgroup. In the event that the remaining Trustees fail to so appoint a successor Trustee within thirty (30) days, 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, sworn and subscribed to by a majority of the then Trustees, or any three unit owners if there are no Trustees: (a) referencing this Declaration of Trust and the Master Deed; (b) reciting the existence and cause of the vacancy; (c) the election or appointment of the successor Trustee; and (d) containing an acceptance of such election or appointment by the successor Trustee. In the case of appointment by a court, an attested copy of the order may be recorded.

**3.3 Vacancies.** If and when the number of Trustees shall become less than the number of Trustees last elected or appointed due to death, disability or resignation, a vacancy shall be deemed to exist. Such vacancy shall, for the balance of the unexpired term of the vacating Trustee, be filled by the appointment of a natural person as aforesaid by the remaining Trustee or Trustees, except in the case of the Trustees appointed by the Assisted Living Unit, which shall be appointed by the owner of the Assisted Living Unit. The expiration of a term shall also create a vacancy, but such vacancy shall be filled at the annual or special meeting of the Unit Owners as provided pursuant to the terms stated in Section 3.2 above. Notwithstanding the foregoing provisions of this Section 3.3, the remaining Trustees shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred upon the Trustees. Such natural person shall whenever possible be a Unit Owner, or resident of a Unit, from the particular subgroup, unless no candidate from the subgroup is available, in which case a natural person from other than the particular subgroup may be appointed. A candidate appointed shall in all cases be responsible to serve as a Trustee representative for the particular subgroup for which he or she is appointed.

**3.4 Resignation and Removal of Trustee.** Any Trustee may resign by notice in writing given to the Secretary of the Trust, who shall in turn transmit written notice of such resignation to each of the other Trustees. Such written resignation shall be recorded by the Secretary of the Trust at the Middlesex South District Registry of Deeds. Any Trustee may be removed from office with or without cause by the written consent of unit owners holding at least fifty-one percent of the total Beneficial Interest of the subgroup which had the right to elect such Trustee. Any such removal shall be evidenced by the recording at the Middlesex South District Registry of Deeds

of a certificate of removal signed by the Secretary of the Trust naming the Trustee so removed and reciting that the requisite consent of the owners for the removal was obtained. Following removal, the position shall be filled for the balance of the unexpired term by vote of the Unit Owners from the subgroup who elected the Trustee in accordance with the provisions contained in Section 3.2 above.

3.5 Quorum and Action by Majority. The Trustees may act by a majority vote at any duly called meeting at which a quorum is present. A quorum shall consist of a majority of the Trustees. Being "present" for meeting purposes shall include attending in person, or attending the meeting via use of audio or video conferencing. In no event may any Trustee grant a proxy to any individual for the purpose of acting as Trustee or attending any meeting as a Trustee.

3.6 Action by Consent of Trustees. The Trustees may transact without a meeting any business which they are authorized to transact at a meeting, provided that the Trustees unanimously assent in writing to the decisions of the Trustees concerning such business and such is reflected in the meeting minutes or filed with the records of the Trustees. Any action so taken shall have the same force and effect as though taken at a duly called and held meeting of the Trustees.

3.7 Votes to be Cast for Trustees. As provided in Article IV, Section 4.1 hereof, each Owner shall have voting power equal to his Unit's Beneficial Interest hereunder as set forth in Exhibit C to the Master Deed as the same may be amended.

3.8 No Bond by Trustees. No Trustee elected or appointed as hereinbefore provided, whether as original or successor Trustee, shall be obligated to give any bond or surety or other security for the performance of his duties hereunder; provided, however, that owners holding at least fifty-one percent of the Beneficial Interest hereunder may at any time, by notice in writing signed by them and delivered to the Trustee or Trustees affected thereby, require that any one or more of the Trustees shall give bond in such amount and with such sureties as shall be specified in such notice; and provided further that any Trustee who is vested with authority or responsibility for handling funds belonging to or administered by the Trust shall be covered by fidelity insurance conforming to the requirements of Article V, Section 5.8 hereof. All expenses incident to any such insurance shall be charged as a common expense of the Condominium.

3.9 Compensation of Trustees. No Trustee shall receive compensation for his services as a Trustee, except that by a vote of a majority of the other Trustees a Trustee may be reimbursed for his out- of-pocket expenditures associated with Trust business.

3.10 No Liability if in Good Faith. No Trustee shall be personally liable or accountable out of his personal assets 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 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 his own willful malfeasance. See also Section 3.12 below.

3.11 Dealing with Trust Not Prohibited. No Trustee or Owner shall be disqualified by his office from contracting or dealing directly or indirectly with the Trustees or with one or more Owners, nor shall any such dealing, contract or arrangement entered into in respect of this Trust



in which any Trustee or Owner shall be in any way interested be avoided, nor shall any Trustee or owner so dealing or contracting or being so interested be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such Trustee's holding office or of the fiduciary relation hereby established, or by reason of such Owner's status, provided the Trustee or owner shall act in good faith and shall disclose the nature of his interest before the dealing, contract or arrangement is entered into.

3.12 Indemnity. The Trustees and each of them shall be entitled to indemnity both out of the trust property and by the Owners against any liability incurred by them or any of them in good faith in the execution hereof, including without limiting the generality of the foregoing, liabilities in contract and in tort and liabilities for damages, penalties and fines.

#### ARTICLE IV - BENEFICIARIES BENEFICIAL INTERESTS AND VOTING POWER

4.1 Beneficial Interest. The beneficiaries shall be the Owners of the Condominium from time to time. The Beneficial Interest in the Trust shall be divided among the Owners in the Percentage of Undivided interest appertaining to the Units of the Condominium, which shall be identical to the Unit's Percentage Interest in the Common Areas and Facilities of the Condominium as set forth in Exhibit C to the Master Deed, which percentage shall also be known as and referred to as the Percentage Interest, Beneficial Interest or Undivided Interest.

4.2 Persons to Vote as 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 all 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 such Owner or other person for such purposes.

#### 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 owners established hereby.

5.1 Powers and Duties of the Trustees. The Trustees shall have the powers and duties specifically conferred upon them by the Act, the Master Deed and these By-Laws, and all other powers and duties necessary for the administration of the affairs of the Condominium (except as otherwise provided by law, the Master Deed or these By-Laws), including, without limiting the generality of the foregoing, the following powers and duties:

5.1.1 Appoint. To appoint and remove at pleasure all officers, agents and employees of the Trust, prescribe their duties, fix their compensation, and require of them such security or fidelity bond(s) as they may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any owner or Trustee in any capacity whatsoever. Notwithstanding any provisions of this Trust and By-Laws to the contrary, the Trustees may not delegate to any manager or managing agent for the Condominium, unfettered control over the

Condominium, or its assets, and the manager or managing agent, in each instance, shall seek approval of the Board prior to entering into any material contracts for the Condominium. Further, the Board of Managers may not delegate to any manager or managing agent any of the following specific powers and duties:

- (a) The power to appoint the officers of the Trust;
- (b) The power to establish, levy and assess the annual assessments of charges for Common Expenses (though manager may perform accounting and collection of same);
- (c) The power to adopt, revise, modify and rescind the Condominium rules and regulations.

5.1.2 Assessments. To establish, levy and assess, and collect the assessments for Common Expenses, (including, but not limited to the institution of charges sufficient to generate revenues adequate to fund proper operation, maintenance, repair and replacement of the Sewer System, and to fund proper reserves for replacement, emergency repairs and working capital for the Sewer System,) and to establish, levy and assess, and collect the general common areas assessments and assessments for each of the subgroups as further described in Section 5.4. hereof.

5.1.3 General Authority. To do all things necessary to operate, maintain, repair, improve, replace, alter and otherwise administer and care for the Common Areas and Facilities.

5.1.4 Insurance. To obtain all policies of insurance required by these By-Laws and such other insurance as may be required by law or as the Trustees may from time to time determine and as further described in Article V, Section 5.8.

5.1.5 Services. To obtain any legal, architectural, accounting, administrative and other services deemed advisable by the Trustees, including the services of a manager and any other personnel, to whom the Trustees, except to the extent limited by the Act, the Master Deed, or these By- Laws (including this Section 5.1), may delegate certain of its powers and duties. The Trustees shall be entitled to rely upon the advice and counsel of attorneys, architects, accountants and other advisors hired by them and shall be protected in so doing.

5.1.6 Rules. To adopt, amend, modify and rescind from time to time and enforce rules and regulations (the "Condominium Rules") governing the use of the Common Areas and Facilities.

5.1.7 Records. To cause to be kept a record of all its acts and the affairs of the Trust.

5.1.8 Property. To purchase, or otherwise acquire title to or an interest in, sell, lease, mortgage and otherwise maintain, manage, hold, use, encumber and dispose of any property, real or personal, tangible or intangible, in the course of their administration and management of the Condominium, provided that except in the event of condemnation or substantial loss to the Units and/or the Common Areas and Facilities subject to the provisions of Article V, Section 5.9 hereof, the Trustees may not by act or by omission seek to abandon, partition, subdivide, encumber, sell or transfer any part or all of the Common Areas and Facilities, other than by the granting of utility rights and easements and/or rights and easements for other purposes consistent with the intended use of the Common Areas and Facilities, or Exclusive Use Areas

without the prior authorization of Owners holding at least 75% of the total voting power of the Owners hereunder and of at least two-thirds (based on one vote for each first mortgage owned) of all first mortgagees of record of Units in the Condominium and to the extent that said action would affect the Sewer System (as defined in the Master Deed) the Department of Environmental Protection, Division of Water Pollution Control or its successor in interest.

5.1.9 Accounts. To open and maintain bank accounts, and to authorize the drawing of checks and other financial instruments, and to keep a full and complete record of all financial transactions, which record shall be available for inspection by the Owners and mortgagees of the Units and to prepare periodic financial reports and accountings as may be reasonably required by the Owners.

5.1.10 Units. To purchase in its own name or the name of a nominee one or more Units in the Condominium at any public or private sale upon such terms and conditions as the Trustees may deem desirable, so long as the Board first obtains the consent of Unit Owners entitled to not less than seventy-five percent (75%) of the beneficial interest in the Trust and to sell, lease, mortgage and otherwise maintain, manage, hold, encumber and dispose of such Units, upon such terms and conditions as the Trustees shall deem appropriate.

5.1.11 Borrow. To borrow or in any other manner raise such sum or sums of money or other property as it shall deem advisable in any manner and on any terms, and to evidence the same by notes, bonds, securities or other evidence of indebtedness, which may mature at a time or times, and subject to any limitations imposed by law, the Master Deed or these By-Laws, and to execute and deliver any pledge, or other instrument to secure any such borrowing.

5.1.12 Committees. To establish committees from among the Owners, define their powers and duties and appoint and remove their members. Notwithstanding their formation, all committees shall report to the Board, and the Board shall not delegate its authority to manage the Condominium to any committee.

5.1.13 Easements. To grant easements and rights over and through the Common Areas including with respect to utilities to be installed in, upon, under and over the Common Areas and Facilities and to enter into such agreements and undertakings as shall be necessary therefor.

5.1.14 Relocate Rights. To approve the location and relocation of easements and rights for utilities which have been installed in, upon, under or over the Common Areas and Facilities and to execute, acknowledge and record such instruments and plans identifying such easements, or others, as the Trustees deem necessary or desirable.

5.1.15 Architectural Integrity. To receive notice, review and approve (a) certain modifications or additions to the building(s) as referred to in Section 10 of the Master Deed (and limited in scope as provided therein); (b) any other construction, modification or decoration activities with respect to a Unit which involve or impact the Common Areas and Facilities, and/or over which the Trustees may specifically have review and approval authority under the provisions of the Master Deed and this Condominium Trust, including architectural controls

5.1.16 Enforcement. To enforce obligations of the Owners, allocating income and expenses and doing anything and everything else necessary and proper for the sound management of the Condominium. The Board shall have the power to levy fines against

Owners for violations of the provision of the Master Deed, this Trust, the By-Laws and Rules and Regulations hereto in amounts as reasonably determined by the Board of Trustees in its sole discretion. The Trustees may also take all other action deemed necessary to eliminate any violation, and the cost and expense of eliminating such, together with any fines assessed, shall be chargeable to any unit owner who himself or whose family, servants, employees, agents, visitors, lessees, tenants, licensees, or pets, are responsible for such violation. Such assessments shall constitute a lien on the respective unit of such unit owner, and may be enforced in any manner permitted by Massachusetts General Laws Chapter 183A, Section 6 and Chapter 244, Section 5 and 5A, or their replacements, by the Board of Trustees.

**5.1.17 Sewer System.** To operate, maintain, repair and replace a Sewer System (as that term is defined in the Master Deed). To purchase, install, maintain (including periodic pumping) and replace a sewage treatment tank, including any and all mechanical and electrical systems which may support such tank and any pipe leading from such tank to the main conduits, always in conformity with the Department of Environmental Protection regulations, to be used as part of the sewage plant constructed for the Trust.

**5.1.18 Connect to Sewer.** In the event that a publicly owned sewage system is constructed and permission to enter such system is granted by the authority having jurisdiction over such system, then the Trustees, without the prior approval of the Owners, shall arrange for the connection of the Units to the public sewage system and the disconnection and dismantling, if necessary of those portions of the Trust's Sewer System no longer necessary. Any cost associated with the connection to the public sewage system and the disconnection and dismantling of the Trust's Sewer System shall be charged to the Owners as a Common Expense. Such actions shall not constitute an improvement as defined in Section 18 of the Act.

**5.1.19 Drainage.** To maintain and repair the drainage control structures including the detention and retention areas and wetland replacement areas outside the legal right of way.

**5.1.20 Instruments.** To sign, seal, acknowledge, deliver and record in any one or more public offices or places of recording all such instruments and documents as the Trustees shall deem necessary or desirable in the exercise of their powers and the discharge of their duties.

**5.1.21 Litigation.** To conduct litigation as to any course of action involving the Trust, the Condominium, the Common Areas and Facilities or arising out of the enforcement of the By-Laws, rules and regulations, and Master Deed, and this Trust. To enforce, settle, compromise or submit any matter to arbitration or mediation, as well as litigation, any right, obligation, claim, debt, or damage due from or owing to the Trust or Condominium and otherwise commence or defend suits or legal or administrative proceedings in the name and on behalf of the Trust, in their absolute discretion as they deemed necessary and proper to further the purposes of the Trust.

**5.1.22 Manage Property.** Generally in all matters not herein otherwise specified, to control, manage and dispose of the Trust property and to control and manage the Property (excluding the Units) as if the Trustees were the absolute owners thereof and doing any and all acts, including the execution of any instruments, which by their performance thereof shall be shown to be in their judgment for the best interest of the Condominium and its Unit Owners.

**5.2 Restrictions on Units.** The use of the Units, the Building(s) and the other Common Areas and Facilities shall, in addition to those restrictions and requirements contained in the Trust and Master Deed, be restricted as follows unless otherwise permitted in writing by the Board of Trustees:

**5.2.1. Nuisance.** No noxious or offensive activity shall be carried on upon any EUA or in any Unit or appurtenant Limited Common Area. No unlawful, improper, or offensive use shall be made of the Condominium, or any part thereof, and all valid laws, ordinances, rules and regulations of all governmental bodies having jurisdiction thereof shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any Unit shall be eliminated by and at the sole expense of the Owner of said Unit.

**5.2.2. Residential Use.** No Independent Dwelling, Village Home or Town Home Unit, Limited Common Area or EUA serving same, shall be used except for residential use. Notwithstanding the foregoing, to the extent permitted by the applicable zoning ordinance, a person residing in any Unit, may maintain therein a personal office for his or her professional and/or business use, provided that no employees or persons other than such resident of the Unit shall engage in any such activities in the Unit, no such office shall be advertised or held out or used as a place for service to clients, patients or customers, and there is no extraordinary package deliveries or pickups. The intent of this provision is to allow a home office for the Unit Owner to work from, but to prohibit clients, patients or customers from coming to, or meeting at, the Unit, for appointments, to receive service, or conduct any business on the premises, in person.

**5.2.3. Pets.** Only ordinary and usual domestic dogs, cats and birds, and no other animals, including but not limited to reptiles, snakes or rodents, may be kept by any Owner during such time as such Owner actually occupies his Unit, but no such pet shall be permitted in any part of the Condominium (other than within the Unit of the owner thereof) unless carried or on a leash and under full control of the handler. There shall not be more than two (2) pets permitted in any Unit. After due notice the Trustees may require any Unit Owner to permanently remove from any Unit and the common areas and facilities any pet which has been habitually guilty of annoying or harassing any Unit Owner or Occupant. Pets shall be permitted in the Assisted Living Unit subject to such restrictions as the owner of the Assisted Living Unit may promulgate. With regard to restrictions on pets, the Board of Trustees shall have the authority to impose further restrictions on pets including but not limited to a total prohibition of all pets within any of the Units. If the Board of Trustees promulgates such further restrictions regarding pets such rules and regulations shall have the same force and effect as if they were restrictions contained in this Master Deed, Trust or By-Laws, with the same effect as if each were set forth herein.

**5.2.4. Architectural Integrity.** The architectural integrity of the Building(s), the Units, Common Areas, Limited Common Areas or Exclusive Use Areas shall be preserved without modification, and to that end: no balcony, porch, garden or yard enclosure, awning, screen, antenna, sign, banner or other device, and no exterior change, addition, structure, projection, decoration or other feature shall be erected, applied to, or placed upon or attached to or hung from any Unit, or any part thereof, on the Building(s) or upon any other common elements or Common Areas; no addition to or change or replacement of any exterior light, door knocker or other exterior hardware shall be made; and no painting, attaching of decalcomania or other

decoration shall be done on any exterior part or surface of any Unit nor on the interior surface of any window, including the display of "For Sale", "For Rent" or other signage, without, in each instance, the express consent thereto in writing by the Trustees. Such restrictions shall not, however, be construed to restrict a Unit Owner's right to decorate his Unit as he should so determine; provided, however, that to the extent such decoration when viewed from the exterior of any Unit, if such shall be so viewable, detracts, in the reasonable judgment of the Trustees, from the aesthetic or architectural integrity of the Building, the Unit Owner may be required to undertake such reasonable measures as the Trustees may determine to ameliorate such detraction. Consistent with the above, any addition, projection, decoration, change or other feature to the exterior (or those to the interior which can be viewed from the exterior) are prohibited without, in each instance, permitted by the prior express written consent in writing by the Trustees.

Notwithstanding anything else to the contrary, no matter where stated, the architectural integrity provisions stated above in this Section 5.2.4, shall not apply to the Assisted Living Unit. Accordingly, the Assisted Living Unit shall be entitled to make changes, and modifications to the exterior of its building, and/or its limited and exclusive use areas, without the approval of the Board of Trustees, so long as such changes are consistent with a first-class, residential community, and in all material respects with the building standards upheld at other first class senior living communities in Massachusetts. Further, all work shall be performed in a good and workmanlike manner, in compliance with all applicable state and municipal laws, codes, ordinances and regulations.

**5.2.5 Sale or Lease of Units.** Subject to such restriction as may otherwise be set forth in the Master Deed or in the Trust and Bylaws, an owner may assign, lease, sell or otherwise transfer all of his interest in his Unit(s), together with (a) the undivided interest in the Common Areas and Facilities appurtenant thereto; (b) the interest of such owner in any Unit(s) theretofore acquired by the Trustees or their designee, on behalf of all owners or the proceeds of the sale or lease thereof, if any; and (c) the interest of such owner in any other assets of the Condominium (hereinbefore and hereinafter collectively called "Appurtenant Interests"). However, no Owner shall execute any deed, lease, mortgage, or other instruments conveying or mortgaging title to or an interest in his Unit(s) without including therein the Appurtenant Interest, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, lease, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Appurtenant Interests of any Unit(s) may be sold, leased, transferred or otherwise disposed of, except as part of a sale, lease, transfer or other disposition of the Unit(s) to which such interests are appurtenant, or as a part of a sale, lease, transfer or other disposition of such part of the Appurtenant Interests of all Unit(s).

**5.2.6 Transient Use.** Short term use of a Unit and/or any room or rooms in a Unit for any consideration, including non-monetary consideration, for living or sleeping purposes for a period of less than six (6) months is strictly prohibited without the prior written consent of the Trustees. Short term use of a Unit and/or any room(s) in a Unit, shall be defined as offering and/or using, renting, leasing, licensing, letting, swapping or exchanging of a Unit or room(s) of the Unit, for one or more persons for living or sleeping purposes, for any consideration, including non-monetary consideration, for a period of less than six (6) months. Prohibited uses shall include any use of a Unit, or room(s) in a Unit, as a bed and breakfast, regardless of

whether or not the owner/operator resides in the Unit, and/or any use for transient, hotel, motel, lodging, vacation rental, nightly rental, tourist home, tourist house or other similar usage such as air bnb. Notwithstanding the foregoing, the Assisted Living Unit shall be permitted to house residents on a short-term basis so long as such use is consistent with and related to the operation of an assisted living facility. Notwithstanding the foregoing, Unit Owners shall not be prohibited from having regular house guests at their Units.

**5.2.7 Smoking.** Because of the shared building ventilation system there shall be no smoking in any Unit, or in the building common areas, contained in the Independent Living subgroup. For purposes hereof, smoking shall include the inhaling, exhaling, breathing, carrying, or possessing of any lighted cigarette, cigar, pipe, other product containing any amount of tobacco, marijuana, or other similar heated or lit product whether or not containing tobacco.

**5.2.8 Modification to Units.** Any Owner may make any rebuilding, replacement, addition, alteration or improvement in or to the interior of his Unit provided the change is to an interior, non-structural, wall or partition, or change the use and/or designation of any room within his/her/their Unit; provided, however, that such shall not adversely affect the structural integrity of the Building(s) nor overload the Building(s) systems and provided further, that (a) reasonable advance notice thereof is given to the Trustees; (b) all reasonable and necessary documents in amendment of the Master Deed and all plans to be filed therewith are provided in advance to the satisfaction of the Trustees, such amendment requiring no consents other than the Trustees, and the Board of Trustees shall have the authority of not requiring any amendment in their sole discretion; (c) all necessary and proper permits and/or approvals are obtained from appropriate governmental authorities; and (d) all conditions as may be reasonably imposed by the Trustees are satisfied.

**5.2.9 Structural Changes.** With regard to any work which changes the architectural integrity of any Unit, or impacts in any manner the structure or supporting portions of any building, and/or the structural integrity of any building(s), or requires the modification of any common element or building system, the following procedures and conditions shall apply with respect to all such alterations, improvements, or other work or activities (hereinafter individually and collectively referred to as the "Proposed Work") which are subject to the approval procedures and conditions contained in Article V, Section 5.2.8, 5.2.9, and 5.2.10. Notwithstanding anything to the contrary Section 5.2.9 (e) shall be the sole operative provision applicable to structural changes to the Assisted Living Unit.

(a) Prior to the commencement of the Proposed Work:

(i) The Owner shall have submitted plans and specifications for the Proposed Work to the Trustees for their approval, in their sole discretion, pursuant to the provisions of this Section 5.2.9. Such plans and specifications shall be in such detail as the Trustees may reasonably request;

(ii) The Owner shall have submitted to the Trustees such supplemental information, in addition to the said plans and specifications, as the Trustees shall reasonably request in order to fully evaluate the proposed work;

(iii) The Trustees shall have given their written approval of the Proposed Work. The Trustees shall withhold approval of the Proposed Work unless they are satisfied that the performance of the Proposed Work will not derogate from the appearance and harmony of the community at Robbins Brook Condominium, and will not adversely impact the structural integrity of any building and/or any common system. In making a decision with respect to any Proposed Work, the Trustees may use any criteria reasonable and uniform under the circumstances, in order to insure that the Proposed Work will not derogate from the character, appearance and harmony of the community. The Trustees shall be entitled to withhold their consent on purely aesthetic grounds.

(iv) The Owner involved and/or his contractor(s) shall have obtained and delivered to the Trustees such policies of casualty, public liability, worker's compensation and other insurance insuring the Trustees, the Owners and such other persons as the Trustees may designate against such risks of loss and in such amount of coverage as the Trustees shall reasonably determine to be appropriate under the circumstances; and

(v) The Owner involved shall have obtained and delivered to the Trustees such security running to the benefit of the Trust, as the Trustees may reasonably require, so as to assure that the Proposed Work is duly, satisfactorily and expeditiously completed. Such security may take one or more of the following forms, as approved by the Trustees, who shall determine whether the amount, form and substance thereof is satisfactory:

- a. Deposits of cash or negotiable securities;
- b. Letters of Credit;
- c. Performance bonds and/or guarantees; and
- d. Such other types of security as the Trustees shall determine to be adequate and appropriate for the purpose.

(b) The Proposed Work shall be performed expeditiously in a good and workmanlike manner in full compliance with all applicable Federal, State and local laws, ordinances, codes, bylaws and rules and regulations, including those relating to zoning, building, health, safety and sanitation; and all necessary permits required for the work, including a building permit (if required by law) shall be duly obtained and complied with.

(c) No materials, supplies, equipment, tools or other items associated with the Proposed Work shall be stored or left overnight in or upon any of the Common Areas and Facilities without the prior written authorization of the Trustees.

(d) The Board of Trustees may require payment by the submitting Unit Owner, all expenses and/or costs incurred by the Trust, including any engineer or architect costs and/or attorney's fees, in reviewing, approving, and documenting the project.

(e) With regard to the Assisted Living Unit, the owner thereof may undertake structural and non-structural work to the interior or exterior of the Unit without approval of the Board of Trustees, and without meeting all of the requirements specified for all other Units pursuant to Section 5.2.8, and this Section 5.2.9. Notwithstanding the foregoing, the owner of the Assisted Living Unit must obtain the prior written permission of the Board of Trustees before any work which impacts, or modifies, any common area system is undertaken. In addition, the Assisted Living Unit shall comply with the provisions contained in Article V,



Section 5.2.9 (a) (iv), and Section 5.2.9 (b) and (c), and shall be performed by licensed and insured contractors. Additionally, if the work involved is extensive, and is likely to impact the residents of the Condominium, or have an extended impact on the appearance and harmony of the community, beyond the temporary set-up and existence of construction at the site of the Unit, such work may be subject to additional, reasonable conditions which may be required by the Board of Trustees, in order to minimize the impact of any such work on the community.

5.2.10. Approval of Work. By reviewing and approving an Owner's Proposed Work, the Trustees are not undertaking nor shall they thereby assume any liability or responsibility for the structural or other soundness of the Proposed Work; and each Owner for himself, his family and all others claiming by, through or under him, including all guests, lessees, tenants, licensees and other occupants of his Unit, hereby irrevocably releases each of the Trustees from any and all liability on account of any errors or defects in or failures or omissions with respect to the plans and specifications for and/or construction implementation of the Proposed Work or has the Proposed Work performed for him agrees to indemnify, defend and hold harmless, jointly and severally, the Trustees and all other Owners from and against all loss, liability, damage and expenses, including court costs and attorneys' fees, resulting from or arising in connection with any loss or damage to property or injury to person, actual or claimed, on account of the Proposed Work.

5.3 Process for Adopting Budgets: The Board of Trustees, as an entity acting by majority vote, shall set the budget and assessments for the Condominium. Additionally, the Board of Trustees shall contract for all services for all General Expenses, and for all Common and Limited Common Area and expenses, which are designated as a shared expense for any subgroup (as further discussed below and with exceptions for the Assisted Living Unit). The Trustees elected to represent any subgroup may not act independently on any matter unless specifically authorized by the Board of Trustees. Those expenses related to costs and expenses shared by all Unit Owners shall be referred to as "General Expenses," and those expenses shared by Unit Owners in a particular subgroup shall be referred to as "Subgroup Expenses," as further discussed herein.

It is intended that the Trustees elected or appointed to represent the interests of each subgroup shall present a proposed budget for those costs and expenses which shall be paid for exclusively by the unit owners within a particular subgroup on an annual basis (or more often as needed). The Board of Trustees shall review such budget and work proposals, and if approved by the Board of Trustees, the proposals shall be incorporated into the annual budget for the Condominium, with the cost of such assessed to the respective Unit Owners of each subgroup as part of their Common Expense assessments.

Although it is the intent that the Trustees representing each subgroup are primarily responsible for evaluating the needs of their subgroup, and making recommendations to meet those needs to the Board of Trustees for ratification, at all times it is the Board of Trustees, acting by majority vote, and not the Trustees of any one subgroup, that shall have the exclusive authority to adopt and set budgets, approve and adopt assessments, and do all other acts on behalf of the Trust.

Notwithstanding the foregoing, the Board of Trustees shall endeavor to accept the recommendations made by Trustees representing a subgroup unless the Board in good faith believes such recommendations do not adequately meet the needs of the unit owners within that

subgroup and/or are not in the best interests of the Condominium as a whole. In such cases, the Board of Trustees, whenever possible, shall endeavor to work in good faith with the Trustees of the subgroup to reach a mutually acceptable resolution.

In any dispute over a budget, or any item or other action which may arise, the Board of Trustees, acting by a majority vote, shall have final and complete authority to settle such dispute, in its sole discretion. In exercising such discretion, as in all matters, the Board of Trustees shall have the obligation and duty to treat each of the buildings in the Condominium with equal consideration with respect to repairs, replacement, and maintenance of the Common Areas and Facilities of the Condominium, so that the Common Areas within, and in the vicinity of each Building, shall be equally well maintained and no one subgroup is treated with more or less attention or care than another.

**5.4 Budget shall include General Expenses and Subgroup Expenses.** The budget for the Condominium is comprised of "General Expenses" and "Subgroup Expenses." General Expenses shall be assessed to all Unit Owners according to each owner's percentage interest in the entire Condominium as stated in the Master Deed on Exhibit "C". Subgroup Expenses shall be assessed to Unit Owners within a particular subgroup, and shall be assessed to those Unit Owners based on each owner's percentage interest in that particular subgroup, as stated in Exhibit "C" to the Master Deed.

The amount assessed to a unit owner as a General Expense, and the amount assessed as a Subgroup Expense, shall together constitute the common expense assessments, or common expenses of the Condominium (the "Common Expenses"). The terms Common Charges, Common Expenses, Common Area Charges or Common Area Assessments shall collectively mean the charges assessed to Unit Owners to meet the General Expenses of the entire Condominium, as well as those assessments assessed to each subgroup as Subgroup Expenses, along with such other charges that are specifically deemed to be General Expenses under these By-Laws or elsewhere in the Condominium Documents by the Board of Trustees.

**5.4.1 General Expenses Defined.** The General Expenses of the Condominium shall include all expenses, costs and charges relating to the operation, maintenance, repair, replacement and financing of the Common Areas and Facilities described in Section 8 of the Master Deed, including without limitation any expense for all apparatus, equipment and installations existing for common use, the Sewer System, and all components thereof as defined in the Master Deed, all waste and water supply piping located outside of any buildings or structures, the roadways within the Condominium, the shared walking paths and amenities located within the Common Areas as well all other costs and expenses, of any kind, of the Robbins Brook Condominium Trust, not otherwise included as a Subgroup Expense or otherwise allocated as an expense to an individual Unit Owner(s). With regard to snow removal, all snow removal shall be included as a General Expense, except that roof raking, roof treatment, clearing of individual decks, patios and balconies, and any second means of egress from a Unit shall be a Subgroup Expense.

Such General Expenses shall also include all expenses for the lawns, plants, shrubbery, landscaping (except for the cost of replacement of foundation plantings which shall be a Subgroup Expense), all paved driveways, parking spaces and parking areas (including those of the Assisted Living Unit), emergency access road, roads and walkways on the Common Areas

(and perimeter sidewalks and fences even if located within a subgroup Limited Common Area) and the improvements thereto and thereof, including without limitation, all walls, retaining walls, railings, wood parapets, if any, stairways and lighting fixtures. In addition, except for the costs and expenses noted below as Subgroup Expenses, including but not limited to those related to maintaining, repairing and replacing the physical portions of any buildings within a subgroup, all other expenses for the subgroups shall be paid for as a General Expense. Thus, all costs incurred in maintaining the landscaping, plantings, driveways and parking areas whether or not serving one subgroup, unless designated as the responsibility of an individual Unit Owner, shall be maintained, repaired and replaced by the Board of Trustees and included in the budget as a General Expense. It is specifically intended that all maintenance, repair and replacement of the parking areas serving the Assisted Living Unit, including snow removal and all landscaping for the Assisted Living Unit, shall be performed as a General Expense. With regard to snow and ice removal from walkways and sidewalks serving the Condominium, or any particular subgroup, such shall be a General Expense.

The General Expenses assessed to the Owners by the Trustees shall also include amounts deemed by the Board of Trustees to be adequate to generate revenues sufficient to fund the proper operation and maintenance of the Sewer System and to generate a capital replacement fund for same, and other facilities of the Condominium. The Trustees shall also, to such extent as they deem advisable, set aside funds of the Condominium as reserve or contingent funds, and may use the funds so set aside for reduction of indebtedness or other lawful capital purpose, or, subject to the provisions of Article V, Section 5.9 for repair, rebuilding or restoration of the Trust property or for improvements thereto, and the funds so set aside shall not be deemed to be common profits available for distribution. The actual sewer/water treatment costs for each subgroup shall be assessed to each subgroup based on the amount of effluent produced by each respective subgroup which will be estimated based on water usage. (See below as well as Section 5.26)

**5.4.2 Subgroup Expenses Defined.** Certain costs and expenses which relate solely to one subgroup shall be assessed and paid for by the owners of Units making up such subgroup.

A Subgroup Expense shall consist of any cost or expense which relates solely to the maintenance, repair or replacement of the physical buildings located within any subgroup (including all exterior areas of the building and the areas connected thereto such as decks, patios, all unit walkways (walkways leading to and from unit entrances) stairways, fire escapes, etc.), and sewer waste piping and water supply piping located within the physical buildings which serves more than one Unit, and the cost of replacement of all foundation plantings, contained within any subgroup, such costs and expenses shall be included in the Condominium's budget as a Subgroup Expense, and shall be assessed solely to the Unit Owners of that subgroup, by Percentage Interest of that subgroup as stated in Exhibit C to the Master Deed.

The Board of Trustees, taking into account all recommendations made by the subgroup Trustees as provided in Section 5.3 above, shall be entitled and obligated to levy assessments (including special or supplemental assessments in the case of assessments being made during the year) against the Owners of each of the subgroups, hereinafter referred to as the "Subgroup Expenses", in addition to the General Expenses, and not in substitution thereof, which shall be calculated based on the Percentage of Interest that each Unit has in that subgroup as specified in

Exhibit C of the Master Deed. In the case of the Assisted Living Unit, its Subgroup Expense (with exception for those items such as water and sewer treatment costs which will be assessed by the Board of Trustees) shall not be required to be assessed by the Board of Trustees, as the Unit Owner shall arrange for, and pay for, all maintenance, repair and replacement of the Assisted Living Unit directly.

Accordingly, the cost and expense incurred to maintain, repair and replace any Common, or Limited Common Area of each of the buildings, which is not already designated as part of a Unit, or if not part of a Unit, has not been designated as a specific Unit Owner responsibility, shall be included in the Condominium's budget as a Subgroup Expense, and shall be assessed as a Subgroup Expense to those Unit Owners owning Units within each subgroup in accordance with their Percentage Interests in that subgroup, as stated in the Master Deed.

By way of illustration, such subgroup costs and expenses shall include, but shall not be limited to, those incurred for the maintenance, repair and replacement of the interior and exterior of each building, including the cost to insure same (which cost may be reasonably estimated by the Board of Trustees in the event the buildings are covered under a joint policy), and including all appurtenances thereto, and the decks, patios, stairs and landings attached to the building, and not defined as part of any Unit, and all structural and non-structural parts of the buildings, not included as part of any Unit (with exception to the Assisted Living Unit), including but not limited to, footings and foundations, and all structural columns, lintels, girders, beams, joists and supports and common area equipment or facilities contained therein, including all components and installations of central services such as slabs, conduit wiring, attics, insulation, power, light, drains, hot and cold water supply lines and sewer waste piping and conduit located within the building(s), vents, heating, air conditioning and heating and air conditioning lines, but only if and to the extent that such installations serve more than one Unit. Such equipment and installations servicing a single Unit, whether located in whole or in part within, or outside said Unit, shall be the Unit Owner's responsibility to maintain, repair and replace.

The intent of this provision is to make any expenses associated with maintaining, repairing or replacing any common area, exterior or interior, feature or component, of any building, in any one subgroup, the sole responsibility of the unit owners of such subgroup, excluding only those areas of any of the buildings which are designated the responsibility of an individual to maintain, replace and repair, or has been designated as part of a Unit.

All other costs and expenses not designated as an expense of any individual Unit Owner, or part of a Subgroup Expense, shall be paid for as a General Expense.

For further illustration, by way of example, the following items for each of the subgroups shall be paid for as a Subgroup Expense (**note that the responsibility for expenses for any item or items undefined as an expense of individual Unit Owners or of a subgroup can and will be determined by the Trustees in their sole discretion**):

Town Homes & Village Homes Groups:

All building structures and appurtenant areas as stated above, and including patio slabs, decks, privacy fencing, railings, and the cost of replacement of all foundation plantings, etc., shall be a Subgroup Expense. Sewer and water piping and conduits located outside of any Town

Home or Village home building, shall be a General, not a Subgroup Expense to maintain, repair and replace, unless the applicable utility company has accepted responsibility for same.

Equipment, venting, piping, wiring and conduit which serves one unit exclusively, whether located outside the unit, or inside the unit, shall be the responsibility of the specific Unit Owner for which it serves to maintain, repair and replace. Thus, individual unit owners will be responsible for maintaining, repairing and replacing all HVAC equipment, including condensers/compressors located outside a Unit, and any related venting associated with any such equipment with the exception of venting for furnaces and/or hot water heaters where the intake/exhaust venting pierces the roof of a building. Such "active" venting shall be maintained, repaired, and/or replaced by the subgroup since Unit Owners are not permitted to access the roofs of Town Home and Village Home buildings.

Any enclosed porch/sunroom/three season room, both interior and exterior, shall be the responsibility of the individual Unit Owner to maintain, repair and replace. See Article V, Section 5.7 for further clarification on maintenance of Units.

#### Independent Dwelling Group:

All building structures and appurtenant areas as stated above, and including patio slabs, decks, privacy fencing, railings, and the cost of replacement of all foundation plantings, etc., shall be a Subgroup Expense. Sewer and water piping and conduits located outside of the Independent Dwelling Group building shall be a General, not a Subgroup, Expense to maintain, repair and replace, unless the applicable utility company has accepted responsibility for same.

Equipment, venting, piping, wiring and conduit, if any, which serve one unit exclusively, whether located outside the unit, or inside the unit, shall be the responsibility of the specific Unit Owner for which it serves to maintain, repair and replace. Equipment, venting, piping, wiring and conduit, if any, which serve multiple units or common area(s) within the Independent Dwelling subgroup building, whether located outside the unit, or inside the unit, shall be the responsibility of the subgroup to maintain, repair and replace. See Article V, Section 5.7 for further clarification on maintenance of Units.

#### Assisted Living Unit:

Because the Assisted Living Unit building is entirely defined as one Unit, the arrangement of any maintenance, repair or replacement of such Unit, and its Limited and Exclusive Use Areas, all as defined in Sections 7 and 10 of the Master Deed, shall be performed solely by the owner thereof, and all costs incurred shall be paid for solely by the Assisted Living Unit Owner. Notwithstanding the foregoing, the Board of Trustees shall arrange for all maintenance, repair and replacement of the parking areas serving the Assisted Living Unit, including snow removal from those areas, and all landscaping for the Assisted Living Unit, and the expenses associated with same shall be included as a General Expense. Additionally, Sewer and water piping and conduits located outside of the Assisted Living Unit building envelope shall be a General, not a Subgroup Expense to maintain, repair and replace, unless the applicable utility company has accepted responsibility for same.

The Assisted Living Unit expenses shall include, but shall not be limited to, all costs incurred to maintain, repair and replace: the roof, foundation, structural columns, girders, beams, supports, perimeter or exterior walls, concrete or wood floor slabs, window frames, door frames, , recreational facilities, decks, patios, stairs and landings if any, walks (but not the perimeter sidewalks), all conduits, ducts, pipes, flues, wires, meter area and other installations or facilities for the furnishing of utility services or waste removal and all components of any of the foregoing which are situated within the Assisted Living Unit or which are situated in, on or within the EUA set aside for the exclusive use of the Assisted Living Unit.

Additionally, the Assisted Living Unit shall be solely responsible for maintaining, repairing, and replacing all portions thereof, specifically including both structural and non-structural portions, including the service area at the rear of the facility, loading docks, dumpster(s), grease trap, and all other equipment and apparatus which serves the Unit exclusively, and all utility installations (including but not limited to hot water heaters) contained therein or on the EUA set aside for the exclusive use of the Assisted Living Unit, and which exclusively serve the Assisted Living Unit. No part of the Assisted Living Unit shall maintained, repaired, or replaced as a General Expense. Notwithstanding the foregoing, or anything else to the contrary wherever contained, as stated above, all parking areas and landscaping serving the Assisted Living Unit shall be performed by the Board of Trustees and the expense paid for as a General Expense, except that the cost of replacement of all foundation plantings shall be the expense of the Assisted Living Unit.

**5.5 Accounts, Determination of Budget and Payment and Collection of Common Expenses.** The Trustees shall at all times establish and maintain reserve fund(s) and working capital fund(s), and additional funds as they deem necessary and proper. Such accounts shall be maintained in a manner that allows for the separation or identification of capital between and among the individual subgroups so that funds contributed by one subgroup for Subgroup Expenses are segregated from each other. Except as may be otherwise provided herein or in the Master Deed, 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 Interest. The Trustees may at any time or times, as they in their sole discretion may determine, distribute common profits and/or surplus accumulations among the Unit Owners in such proportions.

**5.5.1 Annual Budget.** At least thirty days prior to the commencement of each fiscal year of this Trust (and within thirty days after the recording hereof with respect to the portion of a fiscal year then remaining), the Trustees shall estimate the Common Expenses expected to be incurred during such fiscal year together with a reasonable provision for contingencies and reserves, and after taking into account any undistributed common profits from prior years, shall determine the assessment to be made for such fiscal year. The Trustees shall promptly render statements to the Owners for their respective shares of such assessments, according to their respective percentages of the Undivided Interest in the Common Areas and Facilities of the Condominium in the case of General Expenses assessed, and in accordance with each Unit Owner's respective percentage of interest in a particular subgroup, with respect to Subgroup Expenses. Such statements shall, unless otherwise provided herein, be due and payable within thirty days after the same are rendered. In the event that the Trustees shall determine during any fiscal year that the assessment(s) so made are 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 for such assessments in the same manner as is

done for annual assessments. The Trustees may in their discretion provide for payments of statements in monthly or other installments. The amount of each such payment, together with late fees and/or interest thereon, if not paid when due, shall constitute a lien on the Owner assessed, pursuant to the provisions of Section 6 of M.G.L. c.183A.

**5.5.2 Payment of Assessments.** Each Owner shall be personally liable for those Common Expenses assessed against his Unit which are due and payable during his period of ownership. No Unit Owner shall be liable for the payment of any part of the Common Expenses 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 Expenses 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, effect the statutory lien on such Unit for such unpaid Common Expenses. Except as provided in M.G.L. c. 183A, §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 purchaser or holder comes into ownership or possession of the Unit.

**5.5.3 Default In Payment Of Common Expenses.** In the event of default by any Unit Owner in paying to the Trustees the Common Expenses attributable to his Unit (the "Common Charge"), such Unit Owner shall be obligated to pay all expenses, including attorneys' fees, incurred by the Trustees in proceeding to collect such unpaid Common Expenses, irrespective of the amount so unpaid. The Trustees shall have the right and duty to attempt to recover such unpaid Common Expenses, irrespective of the amount so unpaid, together with late charges, interest thereon, and the expenses of so 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 Expenses due, all such constituting a lien as provided in Section 6 of Chapter 183A. In furtherance hereof, a defaulting Unit Owner hereby waives any argument that the expenses of so proceeding, 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 Trustees to collect unpaid Common Expenses, have no right to make any claims or defense or off-set upon any basis.

In such event as the Unit which Common Expenses are in arrears is leased, rented or let, and upon compliance by the Trustees with the applicable provisions of M.G.L. c. 183A, §6, the Trustees shall be entitled to require the lessee or tenant to pay the rent due therefore directly to the Trustees until such time as the arrearage, late fees interest, costs and expenses are fully paid and, upon a failure thereof, to an order of a Court of competent jurisdiction so requiring. This right shall be in addition to any other remedy herein or by law provided.

After a successful action brought by the Trustees to foreclose a lien on a Unit because of unpaid Common Expenses, 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.

The Trustees acting on behalf of all Owners, shall have power to purchase such Unit, together with its Appurtenant Interests (at the foreclosure sale and to acquire, hold, lease,

mortgage, convey or otherwise deal with the same (but not to exercise vote or votes appurtenant thereto). A suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same.

**5.5.4 Expend Common Funds.** The Trustees shall expend common funds only for Common Expenses and lawful purposes permitted hereby and by the provisions of the Act.

**5.5.5 6(d) Certificates.** Upon request of a Unit Owner or his designee the Trustees shall, within ten (10) days, provide a certificate in conformity with M.G.L. c. 183A, §6(d), specifying the amount, if any, of any unpaid Common Charges assessed to the Unit Owner and/or attributable to the Unit. The Trustees may in their discretion impose a reasonable fee for the provision of such statement. Such Certificate need only be signed by any one Trustee and the Board of Trustees may authorize any individual to sign such on their behalf provided such is made pursuant to a properly executed delegation of authority.

**5.5.6. Monthly Installments.** With respect to Common Expense assessments which are payable in monthly installments, an Owner may, by arrangement with his mortgagee bank, provide for payment by him of installments due on account of such assessments to said mortgagee bank in full satisfaction of his obligation to pay said installments to the Trustees. Provided, however, that as a precondition to such arrangement the mortgagee bank must specifically agree with the Trustees to hold such payments on account of assessments in escrow for the benefit of the Trust and to pay over to the Trustees, upon their or their authorized officer's or agent's written request, all sums so held in escrow.

**5.5.7 Owner Responsible for Costs.** In the event that the Trustees shall commence an action, whether by way of litigation or arbitration, against any Owner before any administrative agency, Board of Arbitration or Court of competent jurisdiction for the enforcement of any lien, collection of any sums due, whether they be for Common Expenses or otherwise, or to enforce any provision of this Trust, the Master Deed or any rule or regulation of the condominium as any of the foregoing may be from time to time amended, said Owner shall, in addition to any judgment, damages, awards or the like, be liable for and pay all of the Trustees' reasonable costs and expenses, including reasonable attorney's fees relative to said matter and said judgment shall be entered accordingly.

**5.6 Maintenance, Repair and Replacement of Common Areas and Facilities.** The arrangement and performance of any maintenance, repair, or replacement of any portion of the Condominium, the cost of which is included under Article V, Section 5.4 as a General Expense, shall be performed or arranged for by the Board of Trustees. The expenses of such maintenance, repair or replacement shall be assessed to the owners as a General Expense as stated in Section 5.4. Additionally, any maintenance, repair and replacement of any portion of the Condominium, the cost of which is included under Article V, 5.4.2, as a Subgroup Expense, shall also be performed or arranged for by the Board of Trustees, though as stated in said Section 5.4.2, the cost and expense of such shall be assessed to the unit owners of that particular subgroup. Notwithstanding the foregoing, the expense of any maintenance, repair or replacement necessitated by the negligence or, or misuse by, a Unit Owner, his or her tenants, workers, agents, guests, or invitees may be assessed to said Unit Owner.

**5.7 Maintenance of Units.** Each Unit Owner shall be solely responsible for the proper maintenance, repair and replacement of his Unit, and such equipment, conduit, pipes, and utility



fixtures and installations, which serve his or her Unit exclusively, whether located outside of the Unit, or within the Unit, including but not limited to: interior finish walls, ceilings and floors; windows including glass, frame, sill, sash interior and exterior window trim, skylights, if any, doors (including all sliders and bulkhead doors), door frames and interior and exterior door trim; plumbing and sanitary waste fixtures for water and other utilities; electrical fixtures and outlets; and all wires, pipes, drains and conduits for water, drainage, sewerage, electrical power and light, telephone, television, internet access and any other utility services which serve such unit exclusively, whether or not located inside or outside of such Unit. Each Unit Owner shall also be responsible for maintaining, repairing and replacing the heating, ventilation and air conditioning ("HVAC") apparatus which exclusively serves his Unit whether or not located inside or outside of the Unit.

Unit Owners shall not be responsible for maintaining, repairing, or replacing any item which is included as a General Expense as defined in Article V, Section 5.4.1, or any Subgroup Expense, defined in Article V, Section 5.4.2, including but not limited to any appurtenant decks, patios, stairways, or fire escapes, whether not exclusively serving one Unit. If a unit owner has, with permission of the Board or pursuant to the terms of the Master Deed, enclosed any deck or patio area, the Unit Owner shall be responsible for the maintenance, repair, and replacement of such entire structure and enclosure, including but not limited to any screening, glass, walls, framing, and the roof of same. Notwithstanding the foregoing, each Unit Owner shall at all times keep such decks, patios, exterior steps, if any, serving his or her unit exclusively, in a clean and orderly condition.

Notwithstanding the foregoing, the Board of Trustees shall have the authority to perform routine maintenance (such as vent clearing or cleaning) or snow removal on behalf of unit owners and charge such as a Subgroup Expense (or to each individual owner directly) if the Board determines that performing the service or maintenance collectively (instead of each individual performing same for him or herself) is economically advantageous or if requiring individual unit owners to perform such is unsafe, burdensome, or otherwise not desirable. For example, Unit Owners are responsible for properly maintaining all venting serving their unit – but in certain circumstances such venting may be inaccessible due to conditions or location (on top of roof) in which case the Board may opt to perform such on behalf of all unit owners in that subgroup and charge such as a Subgroup Expense, in which case the Board shall give written notice to such affected unit owners in advance notifying them of the Board's determination.

The Trustees, and their agents, shall have the right of access to each unit for the purpose of inspecting same and/or performing inspections or work to the common areas and facilities, or other Units, accessible therefrom, provide such access is made after reasonable advance notice and at a time reasonably convenient to the Unit Owner and/or resident thereof. In the event of an emergency, such entry and inspection may be made without advance notice. In the event that any Owner fails to strictly adhere to the provisions of this section the Trustees shall have the right to notify such Owner in writing of such failure, specifying with reasonable particularity the action that such Owner must take in order to remedy such failure. If such Owner fails to take such action within fifteen (15) days of the giving of such notice by the Trustees, then the Trustees shall have the right of access and to cause the necessary work or maintenance, repair or replacement to take place, using such personnel or contractors as the Trustees in their sole discretion may decide, and the entire cost thereof, plus an administration fee of ten (10%) percent of the cost thereof, shall be payable by such Owner to the Trustees forthwith; and the

amount thereof shall be a lien on the Unit of such Owner enforceable to the extent and with the priorities set forth in Article V, Section 5.5.2 and 5.5.3 hereof and Section 6 of the Act.

**5.8 Insurance.** The Trustees of the Robbins Brook Condominium Trust shall, obtain and maintain, to the extent obtainable, one or more policies of insurance, as the Board of Trustees shall determine in their sole discretion.

Such so called master policies of casualty insurance shall provide for fire insurance with extended coverage and Special Peril all-risk insurance, vandalism and malicious mischief endorsements, insuring the Condominium, including without limitation, the Common Areas and Facilities, any Limited Common Areas or Exclusive Use Areas in the Condominium, all of the Units (except the Assisted Living Unit as provided for in Section 5.8 (n) hereof) 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, interior walls, all finished wall surfaces, floors and finished flooring surfaces, ceilings and finished ceiling surfaces, and plumbing and lighting fixtures, but not including any furniture, furnishings, or household and personal property belonging to and owned by individual Unit Owners or Tenants. Such insurance shall be in an amount at least equal to 100% of the replacement value of the property so covered (as that term is used for insurance purposes), subject to such reasonable deductible(s) as the Board of Trustees may determine, and which shall include if available at a reasonable cost, so-called Agreed Amount, Inflation Guard, Construction Code and Replacement Cost Endorsements. The Trustees may purchase a so-called "blanket" policy covering all of the buildings, if there be more than one, if they deem it advisable. Additionally, such insurance shall include coverage for costs of debris removal and demolition and shall be payable to the Trustees as Insurance Trustees for the Owners and their mortgagees, as their respective interests may appear. Also, if sprinkler systems are located in any of the Buildings and structures, sprinkler leakage coverage shall be obtained and if steam boilers are in operation in the Condominium, broad form boiler and machinery insurance in limits of at least \$100,000.00 per accident per location shall be obtained.

(a) **General.** The Board of Trustees 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 public liability insurance in such limits as the Board of Trustees may, from time to time, determine but in no case less than \$1,000,000/\$1,000,000 in coverage, covering the Trust, the Trustees, the Property Manager, 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 providing for cross claims by the co-insureds, and 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 Trustees, or other Unit Owners, and other provisions commonly referred to as a "Special Condominium Endorsement" or its equivalent; (ii) workmen's compensation and employee's liability insurance; (iii) if applicable, boiler and machinery insurance in such limits as the Trustees may, from time to time, determine but in no case less than \$2,000,000 or the insurable value of the building(s) housing the boiler or machinery, whichever is less; (iv) non-owned automobile liability insurance with the same limits as item (i) and (v) such other liability insurance as the

Trustees may from time to time deem appropriate and desirable, including non-owned automobile liability insurance.

(b) Fidelity Coverage. The Board of Trustees shall obtain fidelity coverage against dishonest acts on the part of the Trustees, the Property Manager, if any, employees or volunteers responsible for handling funds belonging to the Trust or administered by the Board of Trustees. This fidelity insurance shall name the ROBBINS BROOK CONDOMINIUM TRUST as the named insured and shall be written in an amount equal to the maximum amount that will be in the custody of the Trust at any one time, but in no event less than three months Common Expenses plus all reserves. In connection with such coverage, an appropriate endorsement to the policy to cover persons who serve without compensation shall be added if the policy would not otherwise cover volunteers

(c) Directors and Officers Liability Insurance. The Board of Trustees shall obtain Directors and Officers Liability Insurance in such amounts and upon such terms as they deem appropriate, but at least equal to their general liability policy limits provided above.

(d) FHLMC and FNMA Insurance Requirements. If the Federal Home Loan Mortgage Corporation (FHLMC) or the Federal National Mortgage Association (FNMA) or any other so-called Secondary Mortgage Market Agency holds any interest in one or more mortgages on Units of which the Trustees have received notice, the Trustees shall obtain and maintain, to the extent reasonably obtainable, such other insurance as may be required from time to time by whichever of FHLMC, FNMA or other holds any interest in one or more mortgages on Units. All such policies shall be in such amounts and contain such terms as may be required from time to time by whichever of FHLMC, FNMA or other holds such interest.

(e) Unit Owners' Insurance. Unit Owners shall carry insurance for their own benefit insuring their furniture, furnishings 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 - and that they ensure that the existence and application of the deductible on the Condominium master policy shall be treated as if there was no insurance coverage for the purposes of the application of any so-called other insurance clause on a Unit Owner's individual policy; provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Trustees shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner, or if so affected, it shall be deemed that the Unit Owners' insurance coverage has been assigned to the Trust to the extent of such effect. Unit Owners shall in all events maintain liability insurance covering damage to the Property in such reasonable amounts as the Trustees may determine and, upon request, provide evidence thereof to the Trustees.

(f) 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 Trustees, 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 Trustees) when such act or neglect is not within the control of the Trustees (or Unit Owners collectively) or by failure of the Trustees (or Unit Owners collectively) to comply with any warranty or condition with regard to any portion of the premises over which the Trustees (or

Unit Owners collectively) have no control; (iii) that such policies may not be cancelled or substantially modified 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 reasonable deductible from the coverage thereof as determined by the Trustees in their sole 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 Trustees 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. Additionally, all costs of adjusting and/or administering a loss shall be so apportioned and deducted from the insurance proceeds.

(g) Insurance Appraisal. The Trustees may obtain an appraisal of the full replacement cost 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 and/or may rely thereon, or upon the advice of the Association's insurance agent as to the amount of necessary coverage. If the Trustees 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 policies.

(h) Trustees as Insurance Trustees. The Trustees (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 of more than one Unit and/or the Common Elements to different extends, the proceeds relating thereto shall be used, applied and disbursed by the Trustees in their judgment in a fair and equitable manner, primarily based upon the relative losses.

(i) Authorized Insurance Representative. Notwithstanding any of the foregoing provisions and requirements to the contrary relating to physical damage or liability insurance, there may be named as an insured, on behalf of the Trustees, the Trustees' authorized representative, including any Manager, with whom such Trustees may enter into any Insurance Association Agreement or any successor to such Manager (each of whom shall be referred to herein as the "Insurance Manager"), who shall have exclusive authority to negotiate losses under any policy providing such physical damage or public liability insurance. Each Unit Owner appoints the Trustees, or any Insurance Manager or substitute Insurance Manager designated by the Trustees, 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.

(j) Notification of Mortgagees. The Trustees, shall, when requested by mortgagees of Units, give written notice to such mortgagees of such loss to the Common Areas and Facilities, or to the Unit mortgaged, as the mortgagee requests.

(k) Certificates of Insurance. Certificates of insurance with proper mortgagee endorsements, when requested, shall be issued to Unit Owners or their designees. The Trustees may charge a reasonable fee for issuing such certificates.

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

(m) Waiver of Claims. To the extent the Trustees maintain the casualty insurance herein provided for, the Unit Owners shall be precluded from making any claim against the Trust and/or its Trustees for property damage to the Units and/or the property of the Unit Owner kept within the Condominium and the Unit Owners shall look solely to such property insurance as they may personally maintain.

(n) Assisted Living Unit. Notwithstanding anything else to the contrary, the Board of Trustees shall not insure any portion of the Assisted Living Unit. The Owner of such Assisted Living Unit shall be required to at all times to insure the Assisted Living Unit, and all Limited Common Area and Exclusive Use Areas of the Assisted Living Unit, in amounts that are at all times not less than one hundred percent (100%) full replacement, and at least to the same extent, or greater, as those requirements set forth in this Section 5.8. Coverage for the Assisted Living Unit may be by means of a blanket policy insuring multiple properties provided that such coverage meets or exceeds the requirements contained in Section 5.8 and provided such is not prohibited by secondary mortgage market insurers. Upon the request of the Board of Trustees the owner of the Assisted Living Unit shall provide an insurance certificate evidencing the required insurance, and showing that Robbins Brook Condominium Trust, as well as its Board of Trustees, are named as "Additional Insureds" on said policy or policies. If such insurance certificate is not provided within seven business days of a request, the Board of Trustees shall have the right, after reasonable notice to the Unit Owner, to obtain such insurance as they deem appropriate insuring the Assisted Living Unit, its Limited and Exclusive Use Areas, and the cost incurred shall be assessed to the Assisted Living Unit Owner, and shall be collectible as a Common Expense Assessment as described in M.G.L. c.183A, §6.

Additionally, notwithstanding anything to the contrary contained herein or elsewhere in the Master Deed, Declaration of Trust or By-Laws, in the event of a total or partial loss to the Assisted Living Unit, the Owner thereof shall have the absolute right to repair or replace said Unit. Following a casualty loss to the Unit, the owner of the Assisted Living Unit will

undertake all work required to fully repair, restore, or replace, the Unit, to its previous condition, as it existed prior to the occurrence of the casualty loss.

If, following a catastrophic loss to the Assisted Living Unit, the owner (or its mortgage holders) decide not to fully restore, or rebuild the Unit, the owner thereof shall have the absolute duty and obligation to undertake such action, and all work, as is required to restore the area to a condition which does not detract from the value of the other Units and/or the Condominium community as a whole. The intent of this provision is to ensure that the Assisted Living Unit shall either be fully restored following a casualty event, or the owner shall undertake all work as may be required to restore the common areas of the Condominium to a state, as near as possible, to that which existed prior to construction of the Unit. In no event shall a partially existing structure, foundation, or debris of any kind be left unrestored at the property.

**5.8.1 Cost.** The cost of all such insurance obtained and maintained by the Trustees pursuant to provisions of this Section 5.8 shall be a General Expense (except the Assisted Living Unit). However, the Board of Trustees shall assess the portion(s) of the master insurance policy (or policies) which are attributable for coverage of the Common and Limited Common areas, and the Units, contained in each subgroup, directly to each subgroup as a Subgroup Expense, as defined in Article V, Section 5.4.2. Additionally, although the Assisted Living Unit shall obtain its own insurance policy or policies insuring its Unit, as well as the Limited Common Areas and Exclusive Use Areas, the Assisted Living Unit shall be obligated to contribute its proportionate share of the cost for portions of the master insurance policy which benefit all subgroups, including the Assisted Living Unit, including but not limited to, coverage for the Common Areas and Facilities, general liability, fidelity, and Directors and Officers liability insurance.

**5.8.2. Certificates.** Certificates of insurance with proper mortgagee endorsement, when requested, shall be issued to each Owner and his mortgagee(s).

**5.8.3 Increased Cost.** Notwithstanding anything in this Trust and By-Laws to the contrary, if an Owner by virtue of any activities he conducts in his Unit causes an increase in the premiums for any insurance obtained by the Trustees, he shall pay the amount of all such increases to the Trustees on demand as an additional Common Expense attributable to his Unit.

**5.8.4 Waiver.** Each Owner hereby waives, discharges and releases all claims and rights of recovery against the Trustees, the manager (if any), all Owners and other persons entitled to occupy any Unit or other portion of the Condominium and each of their respective agents and employees on account of any loss or damage, whether to person or property, insured against under the policies of insurance obtained by such owner for his own benefit. This waiver shall constitute a waiver of subrogation for purposes of such policies.

**5.9 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 Trustees shall proceed as follows:

- i. **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 Trustees deem appropriate to repair or restore his Unit, the Trustees 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 or cost of adjustment and/or administration thereof. Where more than one Unit is so damaged or destroyed, said proceeds, deductible and costs shall be apportioned 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 may be borne solely by such Unit Owner as determined by the Board of Trustees, in their sole discretion. 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 pursuant to the provisions of Section 5.8(l), 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 Trustees in their reasonable discretion. Additionally, the cost of adjusting and administering a loss shall be so apportioned and deducted from the insurance proceeds. Notwithstanding the foregoing, the provisions contained in this Section 5.9A.i. shall not apply to the Assisted Living Unit, which shall be insured by the owner of the Assisted Living Unit, and as such, shall use the proceeds received from such insurance policy or policies, in accordance with the provisions contained in Section 5.8(n) hereof.

ii. Casualty Loss To Units 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 Trustees, in their reasonable discretion, shall forthwith determine whether or not the loss exceeds ten percent (10%) of the value of the Condominium immediately prior to the casualty and thereupon shall notify all Unit Owners of such determination. In furtherance thereof the Trustees may employ such persons, firms or entities as are, in their judgment, appropriate to assist in such determination.

a. Loss Less Than Ten Percent. If the loss as so determined is less than, or equals, ten percent (10%) of the value of the Condominium immediately prior to the loss, the Trustees shall proceed as provided in Subsection i above provided that the Common Elements shall be repaired and restored by the Trustees and any deficiency thereto relating shall be borne from common funds.

b. 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 Condominium immediately prior to the loss, the Trustees shall seek the agreement

of seventy-five percent (75%) of the Unit Owners by submitting to the Unit Owners a form of agreement (the Restoration Agreement) whereby the Unit Owners authorize the Trustees to proceed with the necessary repair and restoration.

(1) If such percentage of Unit Owners agree (by executing the Restoration Agreement) to proceed to the necessary repair and restoration, then the Trustees shall proceed thereto as provided in Subparagraphs i and ii.a 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.

(2) 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 Trustees), 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 Trustees 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 filed. 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 Chapter 183A.

The Trustees 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 shall be added to the Condominium's Capital Expense Reserve Account or shall be, at the option of the Trustees, divided among 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 Trustees with respect to the value of the Condominium or any other determination or action of the Trustees under this Subsection by notice in writing to the Trustees 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 Trustees 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 Trustees 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 Trustees of all costs thereof.

The foregoing provisions are intended to comply with Section 17 of Chapter 183A and to be, in addition, consonant with the requirements of FHLMC and FNMA. To the extent there is a conflict between the provisions hereof and Chapter 183A, Chapter 183A shall control.

**B. Eminent Domain.** If more than ten percent (10%) of the 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 Chapter 183A of Massachusetts General Laws shall apply. Where one 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 Chapter 183A, the Trustees shall have the authority to acquire the remaining portions of such Units, for such price as the Trustees 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 Trustees 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 Trustees 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 Trustees. 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 Trustees 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.

C. Retention Of Architect. Whenever the estimated cost, as determined by the Trustees, of repair or restoration exceeds as to any one casualty or occurrence, ten percent (10%) of the value of the Condominium or twenty-five percent (25%) of the value with respect to any one Unit, then the Trustees, unless waived by unanimous vote, may 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 Trustees 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.

5.10 Improvements to Common Areas and Facilities. If and whenever the Trustees shall propose to make any improvement to the Common Areas and Facilities of the Condominium, or shall be requested in writing by twenty-five percent or more of the Owners to make any such improvement, the Trustees shall submit to all Owners (a) a form of agreement (which may be in several counterparts) specifying the improvement or improvements proposed to be made to make the same; and (b) a copy of the provisions of Section 18 of Chapter 183A. Upon whichever of the following shall first occur, namely, (a) the receipt by the Trustees of such agreement signed by fifty-one percent of the Owners, or (b) the expiration of six (6) months after such agreement was first submitted to the Owners, the Trustees shall notify all Owners of the aggregate percentage of Owners who have then signed such agreement. If the percentage of agreeing owners equals or exceeds seventy-five percent, then the Trustees shall proceed to make the improvement or improvements specified in such agreement and shall charge the costs thereof as a Common Expense, provided, however, that if such improvement costs are in excess of ten percent of the then value of the Condominium, any Owners not agreeing to the improvement may apply to the Middlesex Superior Court, on such notice to the Trustees as the Court shall direct, for an order directing the purchase of his Unit by the Trustees at the fair market value thereof as approved by the court. The cost of any such purchases shall be a Common Expense.

If the percentage of agreeing owners equals or exceeds fifty percent, but is less than seventy five-percent, the Trustees may, with the agreement of those Owners who wish the improvement to be made, proceed to make the improvement and charge the cost thereof as a Common Expense to such agreeing owners only.

5.10.1 If and whenever any Owner shall propose to make an improvement to or affecting the Common Areas and Facilities of the Condominium which is not within the EUA appurtenant to his Unit at such 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 Owner proposing the same, without the consent or approval of other Owners, subject to such contractual undertakings of the owner proposing such improvements as the Trustees in their reasonable discretion deem to be necessary or desirable in the circumstances.

**5.10.2 Determination of Trustees Subject to Arbitration.** In the event that any Owner or Owners shall by notice in writing to the Trustees dissent from any determination of the Trustees with respect to the value of the Condominium or of any Unit or Units, or any other determination or action of the Trustees under Article V, Section 5.9. A. ii a. or b., and such dispute shall not be resolved within thirty (30) days after such notice, then either the Trustees or the dissenting Owner or Owners may submit the matter to arbitration, and for that purpose, one arbitrator shall be designated by the Trustees, one by the dissenting owner or Owners, and a third by the two arbitrators so designated and such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association then prevailing. The Trustees shall not in any event be obligated to proceed with any repair, rebuilding or restoration, or any improvement, unless and until they have received funds in an amount equal to the estimate of the Trustees of all costs associated therewith.

**5.11 Rules, Regulations, Restrictions and Requirements.** The Trustees shall have the right (which right shall not be delegated) at any time and from time to time to adopt, amend and rescind administrative rules and regulations governing the details of the operation and use of the Common Areas and Facilities.

The Trustees shall have the power to enforce the Master Deed, Condominium Trust, these By-laws and the rules and regulations adopted pursuant hereto, and shall have the power to levy fines against the Owners for violations thereof, as set forth in Article V, Section 5.1.16 hereof. Fines may be enforced against the Owner or Owners involved as a Common Expense owed by the particular Owner or Owners. The Owner shall be responsible for all reasonable costs and expenses incurred by the parties in connection with any action so taken.

**5.12 Manager.** The Trustees may hire or appoint a manager or managing agent to perform such duties in the administration, management and operation of the Condominium, including the incurring of expenses, the making of disbursements and keeping of accounts, as the Trustees shall from time to time determine. However, notwithstanding the appointment of such a manager, the Trustees shall retain ultimate control over the administration, management and operation of the Condominium. Any agreement for professional management of the Condominium shall be terminable without cause and without incurring payment of a termination fee on ninety (90) days (or less) written notice. The term of such an agreement shall not exceed three (3) years.

**5.13 Meetings.** The Trustees shall meet annually on the date of the annual meeting of the Owners and at such meeting shall elect the Chairman, Treasurer and Secretary. Other meetings of the Trustees may be called by the Chairman and shall be called upon the written request of a majority of the Trustees, provided, however, that written notice of each meeting stating the place, day and hour thereof shall be given at least five business days before such meeting to each of the Trustees.

An annual meeting of the unit owners shall be each year at a date and time as the Board of Trustees shall designate, and held at the Condominium or at such other reasonable place and

time as may be designated by the Trustees. Written notice of the date, time, and location of the annual meeting must be given to the Owners at least thirty (30) days prior to the date so designated. Special meetings of the Owners may be called at any time by the Trustees, or upon the written request of owners holding at least 33-1/3 percent of the Beneficial Interest. Written notice of any such special meeting designating the place, day and hour thereof shall be given by the Trustees to the Owners at least fourteen (14) days prior to the date so designated. At the annual meeting of the 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 Owners any matter with respect to which approval of or action by the 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 at least fifty-one (51%) percent of the total voting power of the Trust shall constitute a quorum for any unit owner meeting. A majority of Owners present in person or represented by proxy at any meeting of the Owners, 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 which could have been transacted at the meeting as originally noticed. Notwithstanding the foregoing, no such subsequent meeting shall be held more than sixty (60) days following the date of the originally called meeting. Unless a greater vote of the Owners shall be required by the provisions of the Act, the Master Deed or this Trust, a vote of at least fifty-one (51%) percent of the total voting power present in person or by proxy at a meeting of the Owners at which a quorum is present shall be sufficient to transact the business of the Owners, provided always that the Owners may not act to rescind, reverse, modify or amend any decision of or action taken by the Trustees pursuant to their authority under this Trust, nor make the Owners undertake to exercise in any manner the powers or functions of the Trustees hereunder, unless such action by the Owners is authorized by the affirmative vote of at least two-thirds of the total voting power of the owners.

5.14 Notices to Owners. Every notice to any 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 Owner by leaving such notice at his Unit in the Condominium or by mailing it, postage prepaid, and addressed to such owner at such address as may appear upon the records of the Trustees, or by such other means including but not limited to electronic means.

5.15 Record Date. The Trustees may, for a period not in excess of thirty (30) days prior to a date of any meeting of the Owners, fix in advance a time as a record date for determining the Owners having a right to notice of and to vote at such meeting, and in such case only owners of record on such record date shall have such rights, notwithstanding any transfer by an owner of his interest in his Units after the record date. If no record date is fixed, the record date for the aforementioned purposes shall be 5:00 p.m. on the day next preceding the day on which notice of a meeting of the Owners is given.

5.16 Order of Business. The order of business at all meetings of Owners shall be as follows, unless the Board of Trustees, in their discretion, desires to set a different order of business for any meeting in which case the order of business determined by the Board shall govern:

- (a) Roll Call.
- (b) Proof of notice of meeting.

- (c) Reading of minutes of preceding meeting.
- (d) Report of officers.
- (e) Report of Trustees.
- (f) Report of committees.
- (g) Election of inspectors of election (when so required).
- (h) Election of Trustees (when required).
- (i) Unfinished business.
- (j) New business.

5.17 Voting at Meetings. At all meetings of Owners, each Owner may vote in person or by proxy. All proxies shall be (a) in writing signed by or on behalf of all the Owners of the Units involved, (b) dated and (c) filed with the Secretary of the Trust. No proxy shall be valid beyond the date of the final adjournment of the first meeting of owners, whether annual or special, held on or after the date thereof, and every proxy shall automatically terminate upon sale by the Owner of his Unit. A proxy may be revoked by notice given by any Owner of the Unit involved to the person presiding at the meeting at which it is to be cast. Any proxy which purports to be revocable without such notice shall be void.

5.18 Officers. Designation. The officers of the Trust shall be a Chairman, a Treasurer, a Secretary and such other officers as the Trustees from time to time may determine. If the number of Trustees shall be less than three, any one Trustee may hold more than one office.

5.18.1 Election and Qualification. The officers shall be selected by vote of a majority of the Trustees at their regular annual meeting, or in the event that the Annual Meeting is not held or in the event of resignation, removal or decease of an officer, at any special meeting of the Trustees. All officers shall be Trustees.

5.18.2 Term of Office. All officers shall hold office for a term of one year or until their successors are elected and qualified.

5.18.3 Resignation and Removal. Any officer may resign at any time by written notice to the Chairman or the Secretary which notice shall take effect on the date of receipt of such notice or at any later date specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any officer may be removed at any time, with or without cause, by a vote of a majority of the Trustees, provided that if removal for cause the removal shall be postponed, and the officer involved shall be granted the opportunity to be heard by the Trustees.

5.18.4 Vacancies. A vacancy in any office may be filled in the manner prescribed in Section 5.18.2 hereof. The officer selected to fill such a vacancy shall serve for the remainder of the term of the officer he replaces.

5.18.5 Chairman. The Chairman, or other designee of the Board of Trustees, shall preside at all meetings of the Trustees and of the Owners, and shall have such other powers and perform such other duties as are provided in the Master Deed or in this Trust and By-Laws or as may be designated by the Trustees or the Owners from time to time or as are ordinarily exercised by the presiding officer of a corporation.

The Board of Trustees may also create, at any time, a Vice Chair position to cover meetings in the event the Chairman is unable to attend any meeting.

5.18.6 Secretary. The Secretary, or other designee of the Board of Trustees, shall record the votes and keep the minutes of all meeting of the Trustees and of the Owners in a book or books to be kept for that purpose, the names of all Owners together with their addresses as registered by such Owners, and shall have such other powers and duties as may be delegated from time to time.

5.18.7 Treasurer. The Treasurer, or other designee of the Board of Trustees, shall be responsible for the funds of the Trust and shall be responsible for keeping or having kept full and accurate financial records and books of account showing all receipts and disbursements of the Trust and any other financial data required by the Trustees or by the Owners. He shall be responsible for the deposit of all funds in the name of the Trustees in such depositories as may be designated by the Trustees from time to time and shall have such other powers and duties as may be delegated to him by the Trustees or the Owners from time to time. The Trustees may delegate such of the Treasurer's powers and duties to the manager or managing agent as they deem to be advisable.

5.18.8 Temporary Replacement. If because of an extended absence or any officer, the Board of Trustees may, but is not required to appoint a member of the Board of Trustees to serve as an interim replacement for any officer.

5.19 Inspection of Books, Report to Owners. Books, accounts and records of the Trustees shall be open to inspection to any one or more of the Trustees and owners and first mortgage holders 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 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 ninety days after the date of the receipt by him shall be deemed to have assented thereto.

5.20 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 any two Trustees, or by any person or persons to whom such power may at any time or from time to time be delegated by not less than a majority of the Trustees.

5.21 Seal. The Trustees may adopt a seal circular in form bearing an inscription of the name of this Trust as set forth in ARTICLE I, but such seal may be altered by the Trustees at their 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.

5.22 Fiscal Year. The fiscal year of the Trust shall be the year ending with the last day of December or such other date as may from time to time be determined by the Trustees.

5.23 Removal from Condominium Law. Owners holding one hundred percent (100%) of the total voting power of the Owners, holders of first mortgages on Units which have sixty-seven percent (67%) or more of the undivided interest in Common Areas and Facilities, and the

Commonwealth of Massachusetts Department of Environmental Protection or successor agency responsible for granting wastewater treatment facility permits as provided in Paragraph 7.3 herein shall be required to approve the removal of the Condominium described herein from the provisions of the Act, and thereafter the provisions of Section 19 of said the Act shall apply.

5.24 Acquisition of Units by the Trustees. The Trustees may acquire Unit(s) using funds from the working capital and Common Expenses in the hands of the Trustees, or if such funds are insufficient, the Trustees may levy an assessment against each Owner in proportion to his percentage of Beneficial Interest as set forth in Exhibit C to the Master Deed, as a Common Expense, or the Trustees, in their discretion, may borrow money to finance the acquisition of such Unit(s).

5.25 Water Use Charges. Water shall be provided by the municipality to the Condominium through individual Unit meters and shall be paid by the Owners directly to the Municipality and shall not be a Common Expense of the Condominium.

5.26 Sewer Use Charges. Sewer and Sanitary Waste Disposal shall be by a Sewer System which shall be privately owned by the Trust as a portion of the Common Areas and Facilities. The cost and expense of the operation, maintenance, repair or replacement thereof shall be included by the Trustees in the Annual Budget and paid for by the owners as a General Expense as provided in Section 5.4 hereof. The actual sewer costs shall be assessed as a Subgroup Expense based on the amount of effluent produced by each respective subgroup which will be estimated based on water usage.

#### 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 Middlesex South District Registry of Deeds need inquire further as to the persons who are then Trustees hereunder. The receipts of 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 Trustee 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 for 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 Owners under the provisions of the Act.

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

6.4 Certifications by Trustees for Recording. 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 recorded with the Middlesex South District Registry of Deeds. Any certificate executed by the Secretary of this Trust, or by a majority of Trustees, setting forth the names of the Trustees hereunder, when recorded with said Registry of Deeds, shall be conclusive evidence of the identity of those persons who are serving as Trustees in favor of all third persons, including the Trustees, acting in reliance thereon. Any certificate signed by a majority of the Trustees in office at the time, setting forth as facts any matters determining the authority of the Trustees to do any act, when duly acknowledged and recorded with said Registry of Deeds shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees, acting in reliance thereon.

## ARTICLE VII - AMENDMENTS AND TERMINATION

7.1 Amendment of Trust. The Trustees 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, with the consent in writing of Unit Owners holding not less than a majority of the Beneficial Interest of all of the residential units in the Condominium, meaning that the sum of the residential Beneficial Interest shall be equal to the total Beneficial Interest in the Condominium, less the Beneficial Interest of the Assisted Living Unit. Additionally, if any proposed amendment is determined to have an effect on the interests of the Assisted Living Unit, the consent of the Owner of the Assisted Living Unit shall be required to adopt such amendment. Whether a proposed amendment is determined to have an effect on the interests of the Assisted Living Unit shall be reasonably, and in good faith, determined by at least one (1) of the two (2) Trustees who are appointed by the owner of the Assisted Living Unit. Such determination shall be communicated by one of the Trustees appointed by the Assisted Living Unit, to the Board of Trustees, in writing upon the Board's request to do so. 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 Owner hereunder so as to be different than the percentage of the undivided ownership interest in the Common Areas and Facilities which is appurtenant to such Owner's Units as set forth in the Master Deed, as said Master Deed may be hereafter amended to add new phase(s) to the Condominium pursuant to the provisions of paragraph 19 of the Master Deed; or



7.1.2 It would render this Trust contrary to or inconsistent with the Master Deed or any requirements or provisions of the Act.

7.1.3 It would cause provisions of this Trust to fail to comply with the requirements of the Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC") with respect to condominium mortgage loans.

7.1.4 It would be contrary or inconsistent with any other provision in the Master Deed and Trust relating to the Sewer System or any provision therein which requires the prior written approval of the Division of Water Pollution Control, the Department of Environmental Protection or its successors.

7.1.5 It would be contrary or inconsistent with any state, federal, or municipal law, including, without limitation, the Acton Zoning By-Law and Health Code.

7.1.6 The foregoing notwithstanding, the Trustees shall have the power coupled with the interest to, by an instrument signed by a majority of their number and duly recorded with the Registry of Deeds, amend this Declaration of Trust to: (a) correct any scrivener's or technical error made herein; or (b) to make this Declaration of Trust comply with Massachusetts General Laws, Chapter 183A, and other applicable state or federal laws or regulations; (c) to comply with rules or regulations promulgated by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMA), the Federal Housing Association (FHA) and/or any other so-called secondary mortgage market agencies and the Housing for Older Persons Act of 1995 ("HOPA") and any regulations promulgated pursuant thereto by the Department of Housing and Urban Development ("HUD"), Massachusetts General Laws Chapter 151B, (d) to satisfy applicable insurance requirements, or (e) to clarify and correct any ambiguities contained in this Trust or conflicts or ambiguities between the Master Deed and the Declaration of Trust and/or correct or clarify any mistakes or errors including any mistakes, errors, or omissions occurring as a result of amending and restating this Trust. This power may be exercised not only to add additional provisions or modify existing provisions, but also to delete provisions should such be desired.

7.1.7 Any consent once given may not be revoked. In such case as a Unit is sold during the six months preceding the adopting of any amendment, the consent of the seller shall bind the purchasing Unit Owner and their mortgagee.

7.2 Necessity for Recording Amendments, Alterations, Additions or Changes. Any amendment, alteration, addition or change pursuant to the foregoing provisions of the ARTICLE VII shall become effective upon the recording with the Middlesex South District Registry of Deeds of an instrument of amendment, alteration, addition or change, as the case may be, signed, sealed and acknowledged in the manner required for the acknowledgment of deeds by a majority of the Trustees, setting forth in full the amendment, alteration, addition or change and reciting the consent of the Owners herein required to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with the prerequisites to the validity of such amendment, alteration, addition or change, whether stated in such instrument or not, upon all questions as to title or affecting the rights of third persons and for all other purposes.

7.3 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 said law, as it may be modified by Section Article V, 5.23 of this Trust, and further provided that on or before the date set for termination (a) the Department of Environmental Protection, Division of Water Pollution Control, has been notified of the termination and has assented to it by written approval, (b) written consents to the termination are obtained from the holders of liens upon the common land and any of the Units, (c) to the extent required by the applicable local zoning by-laws, written consents to the termination are obtained by any local governmental entity or its agencies, and (d) in the event that the Sewer System is still servicing the Units of the Condominium a substitute form of the owner's association in a form satisfactory to the Department of Environmental Protection is established and existing to assume the maintenance and management of the Common Land upon which the Sewer System, all improvements thereto, and the expansion area are located. Termination pursuant to this Article shall become effective upon the recording with the Registry of Deeds of the aforementioned instrument signed by the Lot Owners authorizing termination, the consents of the lien holders, and the Department of Environmental Protection, Division of Water Pollution Control.

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 Act, 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, 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 owners as tenants in common, according to their respective percentages of Beneficial Interest hereunder. In making any sale under this provision, the Trustees shall have the power to sell or vary any contract 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; WAIVER AND DEFINITION

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 female and words denoting persons include individuals, firms, associations, companies joint stock or otherwise), trust and corporations unless a contrary intention is to be inferred from or required by the subject matter or context.

The cover, title, index, headings of different parts hereof and the marginal notes, if any, are inserted only for the convenience of 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.

8.2 Waiver. The Trustees shall have the power and authority to waive any provision of this Trust affecting or limiting the rights of an owner for any cause or reason determined to be reasonable by such Trustees in their discretion; provided, however, that no such waiver on any one occasion shall constitute a waiver on any future occasion, nor shall any waiver of a provision of this Trust affect the Trustees' rights and power to enforce all other provisions of this Trust. No restriction, condition, obligation or provision contained in this Trust or By-Law shall be deemed to have been abrogated or waived by reason of any failure to enforce the same.

8.3 Conflicts. If any this Trust shall be invalid or shall conflict with the Act, as amended, of the General Laws of Massachusetts or if any provision of this Trust conflicts with any provision of the Master Deed, then the following rules on construction shall be used:

8.3.1 In the event of a conflict between the Trust and the Act, as amended, the provisions of the Act shall control;

8.3.2 In the event of a conflict between any numerical voting requirements for action set forth in the Master Deed and any such requirements set forth herein, the provisions requiring the greater percentage or fraction for action to be taken or avoided shall control;

8.3.3 In the event of any conflict other than as set forth in Paragraph 8.3.2 of this Section between the provisions of the Master Deed and any other provision hereof, the provisions of the Master Deed shall control;

8.3.4 In the event of any conflict between the requirements set forth in the Master Deed or this Trust and the requirements of Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA"), the more stringent of the requirements of FHLMC or FNMA shall control, to the extent that such requirements do not otherwise conflict with applicable law.

8.4 Severability. In the event that any provision of this Trust shall be determined to be invalid or unenforceable in any respect, it shall be interpreted and construed to be enforceable to the extent and in such situations as may be permitted by applicable law, and in any event, the partial or total unenforceability of such provision shall not affect in any manner the validity, enforceability or effect of the remainder of this Trust; and, in such event, all of the other provisions of this Trust shall continue in full force and effect as if such invalid provision had never been included herein.

*[SIGNATURE PAGE TO FOLLOW]*

IN WITNESS WHEREOF we, the undersigned, being at least a majority of the Board of Trustees of the Robbins Brook Condominium Trust, having first received the written consent of the Unit Owners entitled to at least seventy-five percent (75%) of the Beneficial Interest, and the requisite consent of mortgage holders, which consent has been received and/or has been deemed given following proper notices to such mortgage holders pursuant to the requirements contained in M.G.L. c.183A, Section 23, have set our hands and seals this 1<sup>st</sup> day of AUGUST, 2016.

W. Neil Bauer  
W. NEIL BAUER, Trustee  
Robbins Brook Condominium Trust

Helen D. Taylor  
Helen D. Taylor Trustee  
Robbins Brook Condominium Trust

Thomas M Shea  
Thomas M Shea, Trustee  
Robbins Brook Condominium Trust

Marsha DuSSault  
MARSHA DUSSAULT, Trustee  
Robbins Brook Condominium Trust

Gail Enman  
Gail Enman Trustee  
Robbins Brook Condominium Trust

Henry Roberts Jr.  
Henry Roberts Jr. Trustee  
Robbins Brook Condominium Trust

Elizabeth Hermann  
Elizabeth Hermann, Trustee  
Robbins Brook Condominium Trust

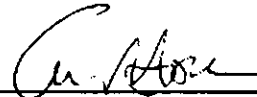
## COMMONWEALTH OF MASSACHUSETTS

## COUNTY OF MIDDLESEX

On this 10 day of AUGUST 2016, before me the undersigned notary public personally appeared the above

named WILLIAM BAUER, HELEN D. TAYLOR, THOMAS M. SHEA, MARSHALL DUSAPULT,  
GAIL INMAN, HENRY BABATIS, ELIZABETH HOERMANN,

proved to me through satisfactory evidence of identification which were Massachusetts driver's licenses, whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose, as Trustees of the Robbins Brook Condominium Trust as aforesaid.



Notary Public

My Commission Expires: FEBRUARY 23, 2018

