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**DECLARATION OF TRUST**

**BLACK BIRCH II CONDOMINIUM TRUST**

THIS DECLARATION OF TRUST is made by Black Birch II Development Partners LLC, a Massachusetts limited liability company, with an address of 83 Great Road, Suite 1B, Acton, MA 01720 (hereinafter referred to as the "Declarant" or the "Trustee").

**ARTICLE I  
NAME OF THE TRUST**

The trust hereby created shall be known as **BLACK BIRCH II CONDOMINIUM TRUST**.

**ARTICLE II  
THE TRUST AND ITS PURPOSE**

**2.1 General Purposes:** This trust is created as the "organization of Unit Owners" as required by the provisions of M.G.L. c.183A (the "Condominium Law") for the purpose of managing and regulating the Black Birch II Condominium (hereinafter referred to as the "Condominium"), established and created by a Master Deed executed by the owner of the land described therein, dated the same date as the date of this Trust and recorded herewith (such owner being hereinafter sometimes referred to as "Declarant").

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

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

**2.4 Property Held in Trust:** All property, real and personal, tangible and intangible, conveyed to or held hereunder by the Trustees shall vest in the Trustees, in trust, to manage, administer, and dispose of the same exclusive of the common areas and to receive and/or distribute the income and/or principal thereof for the benefit of the Unit Owners who are Owners from time to time of the Units in the Condominium. The Condominium shall contain up to 16 detached and attached Units referred to herein collectively as the "Units." The beneficial interest of each Unit Owner is set forth in Exhibit C of the Master Deed, as may be amended in accordance with phasing amendments and other amendments from time to time.

Return to:  
DLPN  
P.O. Box 2223  
Acton, MA 01720

Locus: Sweet Birch Lane, Concord, MA. 01742

**ARTICLE III  
THE TRUSTEES**

**3.1 Trustees:**

a. Subject to the provisions of this Declaration, the Board of Trustees shall have the power to act on behalf of the Condominium Trust. The initial Board of Trustees shall consist of one Trustee – Black Birch II Development Partners LLC. The initial Trustees shall be appointed, removed and replaced from time to time by the Declarant without the necessity of obtaining resignations. The Declarant-appointed Trustees shall be replaced with Trustees elected by the Unit Owners in accordance with the provisions of this Section.

b. For purposes of this Declaration, the term “Transitional Meeting” shall mean the first meeting of the Condominium Trust which shall occur no later than the earlier of (i) sixty (60) days after eighty percent (80%) of the Units (13 Units) are conveyed to Unit Owners, other than the Declarant; or (ii) two (2) years after the Declarant has ceased to sell Units in the ordinary course of its business. Subject to the right of the Declarant to alter the following procedure so as to have all or part of the transition process occur earlier than as hereafter described, the transition from a Board of Trustees comprised solely of Trustees appointed by the Declarant to a Board of Trustees comprised solely of Trustees elected by the Unit Owners shall occur as follows:

- (i) At the Transitional Meeting, the Unit Owners, other than the Declarant, shall elect no less than three (3) and no more than seven (7) Unit Owners to serve as Trustees, resulting in a Board with no less than three (3) and no more than seven (7) Trustees, all representing Unit Owners. The Trustee elected pursuant to this Subsection with the greatest number of Unit Owner votes shall serve until the third annual meeting of Unit Owners following the Transitional Meeting, and the Trustee elected by votes representing the second greatest number of Unit Owner votes shall serve until the second annual meeting of Unit Owners following the Transitional Meeting, and the Trustee elected by votes representing the third greatest number of Unit Owners shall serve until the first annual meeting of Unit Owners following the Transitional Meeting.
- (ii) After the Transitional Meeting, the term of each Trustee election shall be for a period of three (3) years from the annual meeting of Unit Owners at which such Trustee is elected, or such shorter term as may be necessary in order that the Trustees shall be elected on a staggered basis so that in any one year not more than two Trustee terms will expire.
- (iii) Notwithstanding the foregoing, the Declarant shall have the right to accelerate the Transitional Meeting, as it deems appropriate. In addition, after the Transitional Meeting, the Declarant reserves the right to appoint one additional non-voting member to the Board of Trustees to serve until three hundred sixty-five (365) days after the Declarant conveys the last Unit to a Unit Owner.

- (iv) All Trustees elected by the Unit Owners from and after the Transitional Meeting shall be required to be Unit Owners. Any existing Trustee who sells his or her Unit during the Trustee term, shall vacate the office of Trustee in accordance with the provisions of Section 3.2 below.

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

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

**3.2 Vacancies:** A Trustee shall be deemed to have resigned when he/she sells his/her Unit to a third-party purchaser for value, with such resignation becoming effective at the time of recording the unit deed that effectuates such sale, provided, however, that a Trustee who owns more than one Unit in the Condominium shall not be deemed to have resigned by selling a Unit if he/she continues to hold a record fee simple ownership interest in at least one other Unit of the Condominium. After the Transitional Meeting, if and when the number of Trustees shall become less than three (3) due to death, disability, removal or resignation, a vacancy shall be deemed to exist, whereupon a Special Meeting of Unit Owners may be called in order to conduct an interim election. The vacancy shall be filled by the candidate selected by Unit Owner vote representing the greatest percentage of voting interest in the Condominium, and who shall fill the remaining Trustee term evidenced by certificate in writing. In the event that Unit Owners fail to elect a successor Trustee within a thirty (30) day period, then the Trustees then remaining may appoint a natural person or entity, as aforesaid, to fill such vacancy. In the event that the Trustees fail to so appoint a successor Trustee within thirty (30) days (after the initial period of thirty (30) days for the owners to appoint), or if there is no remaining Trustee, then such vacancy, or vacancies, shall, upon the petition therefore of any Unit Owner, with notice to all other Unit Owners, be filled by the appointment, or appointments, of a court of competent jurisdiction. In all such instances, the elected and/or appointed person or entity shall represent that same Unit Owner Type as the position vacated. The election or appointment of Trustees shall become effective upon such election or appointment. An instrument certifying such election or appointment shall be recorded with the Middlesex South Registry of Deeds (the "Registry of Deeds"), acknowledged and subscribed to by a majority of the then Trustees, (1) referencing this Declaration of Trust; (2) reciting the existence of a vacancy; (3) the election or appointment of the successor Trustee; and (4) containing an acceptance of such election or appointment by the successor Trustee. The failure or delay in

recording said instrument shall not affect the validity of such Trustee's election.

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

**3.3 Action by Majority:** The Trustees may act by a majority vote at any duly called meeting at which a quorum is present. A quorum shall consist of a majority of the Trustees then in office. The Trustees may also act without a meeting if a written consent thereto is signed by all the Trustees then in office. Notwithstanding the foregoing, in the event of a tie vote on any matter, the then current President of the Board of Trustees shall cast the tie-breaking vote to decide the matter.

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

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

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

**3.7 No Liability If In Good Faith:** No Trustee hereinbefore named or appointed as hereinbefore provided shall under any circumstances or in any event be held liable or accountable out of his personal assets or be deprived of compensation by reason of any action taken, suffered, or omitted in good faith, or be so liable or accountable for more money or property than he actually receives,

or for allowing one or more of the other Trustees to have possession of the Trust books or property, or be so liable, accountable, or deprived by reason of honest errors of judgment or mistakes of fact or law or by reason of the existence of any personal or adverse interest or by reason of anything except his own personal and willful malfeasance and defaults.

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

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

**ARTICLE IV  
BENEFICIARIES, BENEFICIAL INTEREST AND VOTING INTEREST**

**4.1 Percentage Interests:** The beneficiaries shall be the Unit Owners of the Condominium from time to time. The beneficial interest in the Condominium hereunder shall be divided among the Unit Owners in the percentage of undivided beneficial interest in the common areas appertaining to the Units of the Condominium as set forth in Exhibit C of the Master Deed. The Unit Owners shall be responsible for paying the Common Expenses of the Condominium in accordance with the Common Expense Percentage Interest. For purposes of a Unit Owner's voting interest in accordance with this Declaration of Trust and the By-Laws, each Unit Owner shall have an equally weighted vote the percentage interest of which shall be one (1) divided by the total number of Units phased in the Condominium.

**4.2 Persons to Vote as Unit Owners:** Whenever any of the said Units is owned of record by more than one person, the several Owners of such Unit shall designate in writing to the Trustees one of several Owners of such Unit to vote for such Unit. Such designation shall be in writing signed by

all the record Owners of such Unit. Any such designation shall take effect upon receipt by the Trustees of such notice and may be changed at any time and from time to time by notice as aforesaid. In the absence of such notice of designation, the Trustees may designate any one such Owner for such purpose.

**ARTICLE V  
BY-LAWS**

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

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

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

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

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

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

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

f. Employing and dismissing personnel necessary for the maintenance and operation of the Common Elements.

g. Opening and utilizing bank accounts on behalf of the Trust and designating the signatories required therefor.

- h. Obtaining of insurance pursuant to the provisions of these By-Laws.
- i. Making of repairs, additions, and improvements to or alterations of the Trust property and repairs to and restoration of the Trust property, in accordance with the other provisions of these By-Laws.
- j. Incurring obligations and paying, compromising, or adjusting all obligations incurred and rights acquired in the administration of the Trust.
- k. Adopting and amending rules and regulations covering the details of the operation and use of the Common Elements, the administration of the Condominium as contemplated by the Master Deed and this Trust, and in interpretation thereof.
- l. Obtaining advice of counsel and relying thereon, and employing, appointing, and removing such other persons, agents, managers, officers, brokers, engineers, architects, employees, servants and assistants as they shall deem advisable, and defining their respective duties and fixing their pay and compensation.
- m. Granting of permits, licenses, and easements and/or leases over, under, through, and/or to the Common Areas for utilities, roads and/or all other purposes reasonably necessary and/or beneficial, useful for, and/or to the proper maintenance and/or operation of the Condominium and/or the convenience and/or of the Unit Owners.
- n. Altering the layout, location, nature, and/or use of any of the Common Elements, making installations therein, and moving and removing the same, subject, however, to a Unit Owner's rights to use any rights appurtenant to a Unit as specified in the Master Deed.
- o. Enforcing obligations of the Unit Owners, including the levying of general and special assessments for common expenses and the providing of adequate remedies for failure to pay such assessments, levying reasonable fines against the Unit Owners for violations by the Unit Owners, or persons for whom a Unit Owner is responsible, of the Rules and Regulations or of the provisions of the Trust or the Master Deed, and in the case of persistent violations of the Rules and Regulations or of this Trust or the Master Deed by a Unit Owner, or persons for whom a Unit Owner is responsible, requiring such Unit Owner to post a bond to secure adherence thereto.
- p. Investing and reinvesting the Trust property, or any part or parts thereof and from time to time and as often as they shall see fit to change investments, including power to invest in all types of securities and other property, of whatsoever nature and however denominated, all to such extent as to them shall seem proper, and without liability for loss, even though such property or such investment shall be of a character or in an amount not customarily considered proper for the investment of trust funds, or which does or may not produce income.
- q. Selling and exchanging Trust Property or any interest therein for such consideration and upon such terms as they deem advisable.

- r. Purchasing and otherwise acquiring any real or personal property.
- s. Borrowing money and mortgaging or pledging all or any part of the Trust property and issuing bonds, notes, or other evidence of indebtedness.
- t. Providing for payment by the Trust of real estate taxes becoming due and payable after the date of recording of the Master Deed which are assessed upon all of the Land and/or improvements included within the Condominium, instead of upon individual Units, and levying an equitable assessment of said tax payments among the individual Unit Owners.
- u. Incurring such liabilities, obligations, and expenses, and to pay from the principal or the income of the Trust Property in their hands all such sums, as they shall deem necessary or proper, for the furtherance of the purposes of the Trust.
- v. Determining as to all sums of money and other things of value received by them, whether and to what extent the same shall be deemed to be and shall be accounted for as principal or as income, and as to all charges or expenses paid by them, whether and to what extent the same shall be charged against principal or against income, including, without hereby limiting the generality of the foregoing power, to apportion any receipt or expense between principal and income, and power to determine what portion, if any, of the actual income received upon any asset purchased or acquired at a premium or any wasting investment shall be added to principal to prevent a diminution thereof upon the maturity or exhaustion of such asset or investment.
- w. Entering into and having such access to Units and Limited Common Elements reserved to Units in the Condominium as shall be reasonably necessary to the performance and exercise of the duties, obligations, rights and powers of the Trustees hereunder.
- x. Executing any and all instruments incidental or necessary to carry out any of the foregoing powers.
- y. Enter into professional management contracts for the management of the Common Elements or execute any agreement or arrangement which the Trustees in their discretion deem necessary and convenient for the management of the Common Elements in conjunction with other condominiums pursuant to which agreements the Trustees may delegate their powers and duties; and
- z. Generally, in all matters not herein otherwise specified, controlling, managing and disposing of the Trust Property and controlling and managing the Trust property as if the Trustees were the absolute owners thereof and doing any and all acts, including the execution of any instruments which by their performance thereof shall be shown to be in their judgment for the best interest of the Unit Owners.

**5.2 Maintenance and Repair of Units:**



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

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

**5.3 *Maintenance, Repair, and Replacement of Common Elements and Assessments of Common Expenses:*** The Trustees shall be responsible for the proper maintenance, repair, and replacement of the Common Elements of the Condominium as detailed in the Master Deed (See Section 5.6 for specific provisions dealing with repairs and replacements necessitated because of casualty loss) and any two (2) Trustees, or any others who may be so designated by the Trustees, may approve payment of vouchers for such work. Without limiting the generality of the foregoing, the Trustees shall specifically be responsible for all obligations set forth in that certain Agreement for the Connection of New Water Main at Black Birch Lane to the Town of Concord Public Water System dated June 4, 2018 and recorded in the Middlesex South District Registry of Deeds in Book 71346, page 42. The expenses of all maintenance, repair, and replacement shall be assessed to the Unit Owners as common expenses of the Condominium at such times and in such amounts as provided in Section 5.4 herein, provided however, that if the maintenance, repair, or replacement of the Common Elements is necessitated by the negligence or misuse of a Unit Owner, either directly or by virtue of his failure to properly maintain, repair, or make necessary replacements in his Unit, the expenses of such maintenance, repair, and/or replacement, to the extent not covered by the casualty insurance provided for herein, may be assessed to the particular Unit Owner by the Trustees and the particular Unit Owner shall be personally liable therefor.

**5.4 *Common Expenses, Profits, Funds:***

**5.4.1** The Unit Owners shall be liable for common expenses and entitled to common profits and funds ("Common Profits and Funds") of the Condominium in proportion to their respective Common Expense Percentage Interest as set forth in the Master Deed and Article IV hereof. The Trustees may at any time or times distribute common profits among the Unit Owners

in such proportions. The Trustees shall, to such extent as they deem advisable, set aside common funds of the Condominium as reserve or contingent funds, and may use the funds so set aside for reduction of indebtedness or other lawful capital purpose, or subject to the provisions of Section 5.6 hereof, for repair, rebuilding, or restoration of the Trust property or for improvements thereto, and the funds so set aside shall not be deemed to be common profits available for distribution.

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

In connection with the fiscal year budgeting provided above, the Condominium Trust shall budget for the annual fee contribution required for the Forest Ridge Association in which the Condominium shall be a member (the "Forest Ridge Association Expenses"). The Forest Ridge Association Expenses shall be included in all fiscal year budgets of the Condominium in one or more line items as the Condominium Trust deems appropriate. Each fiscal year budget shall include the ratable portion of Forest Ridge Association Expenses that are attributable to the Condominium, and these expenses shall be apportioned to the Unit Owners as Common Expenses.

In addition to the foregoing, the Trustees shall collect from each Unit Owner at settlement a contribution fee equal to two (2) months of the then applicable monthly Common Area fee per Unit or such other amount as may be determined by the Trustees from time to time (the "Closing Contribution Fee"). The Closing Contribution Fee shall be collected at the initial sale of each Unit and not upon subsequent resales. The Closing Contribution Fee shall be allocated as the Condominium Trust deems appropriate, including but not limited to allocations to the Working Capital Fund and the Reserve Replacement Fund, and otherwise shall be used by the Trustees for

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

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

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

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

**5.4.5** The Declarant may not use Common Profits and Funds to defray any of its expenses or construction costs. All Common Profits and Funds on account with the Declarant not otherwise set off against expenses of the Condominium Trust, as provided herein, shall be transferred to the Condominium Trust for deposit to a segregated fund when control of the Condominium Trust is transferred to the Unit Owners.

**5.5 Insurance:**

**5.5.1 Casualty Insurance.** The Trustee(s) shall obtain and maintain, to the extent reasonably obtainable and permitted by applicable law, so-called master policies of insurance providing fire-with-extended coverage and so-called all risk coverage insurance, insuring the Condominium, including, without limitation, the Common Elements, all of the Units with all fixtures, additions, alterations and improvements thereof, all heating and cooling equipment and other service machinery, apparatus, equipment and installations comprised in the Common Elements, and also all such portions normally deemed to constitute part of the buildings and customarily covered by such insurance, but not including any furniture, furnishings, or household and personal property belonging to and owned by individual Unit Owners or Tenants, in an amount equal to not less than one hundred percent (100%) of the full replacement value thereof, exclusive of foundations, land and other items normally excluded therefrom without deduction for depreciation, but subject to a reasonable deductible as the Trustee(s) may determine, and which shall include, if available, so-called Agreed Amount, Inflation Guard, Construction Code and Replacement Cost Endorsements. The Trustee(s) may purchase so-called "blanket" policy covering all of the buildings, if there be

more than one, if they deem it advisable. In determining full replacement value, the Trustee(s) may reasonably rely upon the advice of the insurer or their agent. The name of the insured under such policy shall be stated in form, substance and effect similar to the following: "Trustee(s) of Black Birch II Condominium for use and benefit of the Unit Owners at Black Birch II Condominium and their mortgagees as their interest may appear." Such insurance shall contain the standard mortgagee clause and shall name the Trustee(s) as Insurance Trustee(s) for the use and benefit of all Unit Owners of Black Birch II Condominium and their mortgagees as their interest may appear, with losses payable to and adjusted by the Trustee(s) as Insurance Trustee(s) in accordance with the provisions of the By-laws. The Trustee(s) may insure against such other hazard or risks of casualty as the Trustee(s) from time to time in their discretion shall determine to be appropriate, including, but not limited to, vandalism, malicious mischief, windstorm and water damage, earthquake, flood and machinery explosion or damage.

**5.5.2 Liability Insurance.** The Trustee(s) shall obtain and maintain, to the extent obtainable and/or applicable, master policies of insurance with respect to the Common Elements for the benefit and protection of the Trust and all Unit Owners for: (i) comprehensive public liability insurance in such limits as the Trustee(s) may, from time to time, determine but in no case less than a combined single limit of \$1,000,000 million in coverage, covering the Trust, the Trustee(s), the Property Manager, if any, and each Unit Owner with respect to liability arising out of ownership, maintenance or repair of the Common Elements of the Condominium, such insurance containing a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Condominium Unit Owner because of negligent acts of the Trust, the Trustee(s) the Unit Owner or other Unit Owners, and other provisions commonly referred to as a "Special Condominium Endorsement" or its equivalent; (ii) workmen's compensation and employee's liability insurance; (iii) if applicable, boiler and machinery insurance and such limits the Trustee(s) may, from time to time, determine; and (iv) such other liability insurance as the Trustee(s) may from time to time deem appropriate and desirable.

**5.5.3 Fidelity Coverage.** The Trustee(s) shall obtain fidelity coverage against dishonest acts on the part of the Trustee(s), the Property Manager, if any, employees or volunteer's responsible for handling funds belonging to Trust of administered by the Trustee(s). This fidelity insurance shall name Black Birch II 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 any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

**5.5.4 Directors and Officers Liability Insurance.** The Trustee(s) may obtain Directors' and Officers' Liability Insurance in such amounts and upon such terms as they deem appropriate.

**5.5.5 FHLMC and FNMA Insurance Requirements.** If the Federal Home Loan Mortgage Corporation (FHLMC) or the Federal National Mortgage Association (FNMA) holds any interest

in one or more mortgages on Units of which the Trustee(s) have received notice, the Trustee(s) shall obtain and maintain, to the extent reasonably obtainable, such other insurance as may be required from time to time by whichever of FHLMC or FNMA holds any interest in one or more mortgages of 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 or FNMA holds such interest.

**5.5.6 Unit Owners' Insurance.** Unit Owners may 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; provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carries issuing insurance obtained by the Trustee(s) shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner. Unit Owners shall in all events maintain liability insurance covering damage to the Property in such reasonable amounts as the Trustee(s) may determine and, upon request, provided evidence thereof to the Trustee(s).

**5.5.7 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 or subrogation against the Trustee(s), their agents and employees, and the Unit Owners, their respective employees, agents, tenants and guests to the extent they are not specifically obligated hereunder; (ii) that the insurance shall not be prejudiced by any act or neglect of any Unit Owners or occupants or any other person or firm (including employees and agents of the Trustee(s)) when such act or neglect is not within the control of the Trustee(s) (or Unit Owners collectively) or by failure of the Trustee(s) (or Unit Owners collectively) to comply with any warranty or condition with regard to any portion of the premises over which Trustee(s) (or Unit Owners collectively) have no control; (iii) that such policies may not be canceled 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 all 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.

**5.5.8** Such insurance policies may provide for a reasonable deductible from the coverage thereof as determined by the Trustee(s) in their reasonable discretion. In the event of any loss which related in part to insurable portions of a Unit, or Units, and/or in part to the Common Elements, the Trustee(S) shall apportion the deductible amount directly proportional to the amount of such loss related to such Unit, or Units, and/or the amount of the loss related to the Common Elements. Where such loss is solely to a Unit, the deductible amount shall be borne solely by the Unit Owner. Where such loss is solely to the Common Elements, such shall be borne from the common funds.

**5.5.9 Insurance Appraisal.** The Trustee(s) may obtain an appraisal of the full replacement value of the property to be insured in accordance with the foregoing provisions of this Section, without deduction for depreciation, for the purpose of determining the amount of insurance to be maintained pursuant to this Section. If the Trustee(s) in their discretion deem it necessary, they shall upon notification of improvements to be made to a Unit by a Unit Owner increase the insurance coverage afforded by said master policy.

**5.5.10 Trustee(s) As Insurance Trustee(s).** The Trustee(s) (i) shall have exclusive authority to negotiate all losses as herein provided for, (ii) shall collect and received 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 of elements covered by such insurance of more than one Unit and/or the Common Elements to different extents, the proceeds relating thereto shall be used, applied and disbursed by the Trustee(s) in their judgment in a fair and equitable manner, primarily based upon the relative losses.

**5.5.11 Authorized Insurance Representative.** Notwithstanding any of the forgoing provisions and requirements to the contrary relating to physical damage or liability insurance, there may be named as an insured, on behalf of the Trustee(s), the Trustee(s)' authorized representative, including any Trustee, with who such Trustee(s) may enter into any Insurance Trust Agreement or any successor to such Trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such physical damage or public liability insurance. Each Unit Owner appoints the Trustee(s), or any Insurance Trustee or substitute Insurance Trustee designated by the Trustee(s), as his attorney-in-fact for the purpose of purchasing, maintaining and administering such insurance, including without limitation the collection and appropriate disposition of the proceeds thereof; the negotiate 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.

**5.5.12 Notification of Mortgagees.** The Trustee(s), on behalf of the organization of Unit Owners, shall, when requested by mortgagees of Units, give written notice to such mortgagees of such loss to the Common Elements, or to the Unit mortgaged, as the mortgagee requests.

**5.5.13 Certificates Of Insurance.** Certificates of insurance with proper mortgagee endorsements, when requested, shall be issued to Unit Owners or their designees. The Trustee(s) may charge a reasonable fee for obtaining and issuing such certificates.

**5.5.14 Notification To Trustee(s) Of Improvements.** Each Unit Owner shall notify the Trustee(s) in writing of all improvements to his or her Unit (except personal property other than fixtures) which exceed a total value of One Thousand Dollars (\$1,000.00) within twenty (20) days after the commencement of construction or installation of such improvement, and upon receipt of

such notice, The Trustee(s) shall notify the insurer under any casualty policy obtained pursuant to this Section of such improvements and shall, if necessary, purchase additional casualty insurance in such amounts as may be required under this Section. Any premium increase caused by insuring such improvements may be assessed to the Owner of the improved Unit as a Common Expense attributable to such Unit. No Unit Owner shall be entitled to receive insurance proceeds for repairs, replacement or restoration of any such improvement not so reported to the Trustee(s), unless otherwise consented to by the Trustee(s).

**5.8 Meetings:**

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

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

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

**5.10 Inspection of Books, Reports to Unit Owners:** Books, accounts, and records of the Trustees shall be open to inspection by any one or more of the Unit Owners and Trustees, and the Trustees shall, as soon as reasonably possible after the close of each fiscal year, or more often if convenient to them, submit to the Unit Owners a report of the operations of the Trustees for such year

which shall include financial statements in such summary form and in such detail as the Trustees shall deem proper. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees given by certified or registered mail within a period of fifteen (15) days of the date of receipt by him shall be deemed to have assented thereto.

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

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

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

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

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

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

**5.16 Rules and Regulations.** In addition to such restrictions as may exist as a matter of law or which are specified in the Master Deed, the Trustees have adopted the Rules and Regulations set forth in Exhibit "A" attached hereto governing the details of the operation and use of the Common Elements and of Units, and containing such restrictions on and requirements respecting the use and maintenance of the Common Elements and of Units as are consistent with the provisions of the Master Deed, and designed to prevent unreasonable interference with the use by the Unit Owners of their Units and of the Common Elements. By vote of a majority in number of the Trustees, the Trustees may at any time and from time to time amend, modify and rescind the Rules



and Regulations, and may in a particular case waive the application of a Rule or Regulation.

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

**6. Dealing with Trustees:** No purchaser, mortgagee, lender, or other person dealing with the Trustees as they then appear of record in said Registry of Deeds need inquire further as to the persons who are Trustees hereunder. The receipts of the Trustees or any one or more of them for monies or things paid shall be effectual discharges therefrom to the persons paying or delivering the same, and no person from whom the Trustees or any one or more of them shall receive any money, property, or credit shall be required to see the application thereof. No purchaser, mortgagee, lender, or other person dealing with the Trustees or with any real or personal property which then is or formerly was Trust property shall be bound to ascertain or inquire as to the existence or occurrences of any event or purpose in or for which a sale, mortgage, pledge, or charge is herein authorized or directed, or otherwise as to the purpose or regularity of any of the acts of the Trustees or any one or more of them purporting to be done in the pursuance of any of the powers or provisions herein contained.

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

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

**6.4 Certifications by Trustees for Recording:** This Declaration of Trust and any amendments hereto and any certificates herein required to be recorded and any other certificate (including Certificates pursuant to M.G.L. c.183(a), Section 6(d)) signed and sworn to by said Trustees or any one or more of them which it may be deemed desirable to record may be recorded with the Middlesex South District Registry of Deeds, and such recording shall be deemed conclusive

evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustees, the Trust property, or any beneficiary hereunder shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of any Trustee or Trustees, when the same shall be recorded with the said Registry of Deeds. Any certificate signed by the Trustees in office at the time or any one or more of them, setting forth as facts any matters affecting the Trust, including statements as to who are the beneficiaries, as to what action has been taken by the beneficiaries, and as to matters determining the authority of the Trustees to do any act, when duly acknowledged and recorded with said Registry of Deeds shall be conclusive evidence as to the existence of such facts in favor of all third persons, including the Trustees, acting in reliance thereon. Any certificate executed by the Trustees hereunder, or any one or more of them as the case may be, shall be, as to all persons acting in good faith in reliance thereon, conclusive evidence of the truth of the statements made in such certificate and of the existence of the facts therein set forth.

## **ARTICLE VII AMENDMENTS AND TERMINATION**

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

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

**7.1.2** It would alter, or in any manner or to any extent whatsoever, modify or affect the percentage of beneficial or voting interest of any Unit Owner hereunder; or

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

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

**7.2. *Necessity for Recording Amendments, Alterations, Additions, or Changes:*** Any amendment, alteration, addition, or change pursuant to the foregoing provisions of this Article VII shall become effective upon the recording with the said Registry of Deeds of an instrument of amendment, alteration, addition, or change, as the case may be, signed, sealed, and acknowledged in the manner required for the acknowledgment of deeds by the Trustees, setting forth in full the amendment, alteration, addition or change and reciting the consent of the Unit Owners herein required to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with the prerequisites to the validity of such amendment,

alteration, addition, or change, whether stated in such instrument or not, upon all questions as to title or affecting the rights of third persons and for all other purposes. Nothing contained in this Article VII shall be construed as making it obligatory upon the Trustees to amend, alter, add to, or change the Declaration of Trust upon obtaining the necessary consent as hereinbefore provided.

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

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

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

guarantors of first mortgages on the Units. Additions or amendments to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. An eligible mortgage holder who receives a written request to approve additions or amendments and who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved said request.

7.6. *Special Amendments:*

7.6.1 Notwithstanding anything herein contained to the contrary, the Declarant reserves the right and power to record one or more special amendments (a "**Special Amendment**") to this Trust at any time and from time to time which amends this Trust:

- i. To comply with requirements of the Federal National Mortgage Association ("FNMA") or of the Federal Home Loan Mortgage Corporation ("FHLMC"), or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities;
- ii. To induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering the ownership of a Unit;
- iii. To bring this Trust into compliance with the Act;
- iv. To correct clerical, typographical or other errors in this Trust or any Exhibit thereto, or any supplement or amendment thereto; and
- v. To make any other minor modifications, additions or deletions to this Trust provided that such shall not materially or adversely impair the rights of Unit Owners or mortgagees hereunder.
- vi. To modify the terms of this Trust as necessary to make it consistent with any existing, amended or subsequent Special Permit, applicable law, ordinance, regulation or other municipal, state or federal permit received in connection with the development of this Condominium, including but not limited to any changes necessary or advisable relating to the Age-Restrictions and/or Affordability Restrictions which may affect a Unit Owner's Percentage Interest in the Common Areas or Common Expenses Percentage Interest or eliminate the concept of the Common Expenses Percentage Interest in the event of the entire elimination of the Affordability Restrictions.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to vote in favor of, make or consent to any such Special Amendment on behalf of each Unit Owner. By each Unit Owner's acceptance of a Unit deed, each Unit Owner and those taking title from or through such Unit Owner, including, without limitation, any mortgagees, shall

be deemed to have consented to the reservation of the power to the Declarant to vote in favor of, make, execute and record any such Special Amendment. The right of the Declarant to act pursuant to rights reserved or granted under this Section shall be automatically assigned by the Declarant, without further confirmation or act or deed by the Declarant, to the Trustees of the Trust at the time of the first annual meeting of the Unit Owners to occur after the Transitional Meeting.

**ARTICLE VIII  
CONSTRUCTION AND INTERPRETATION**

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

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

IN WITNESS WHEREOF, the undersigned on behalf of Black Birch II Development Partners LLC has hereunto set his hand and seal as of September 25, 2018.

BLACK BIRCH II DEVELOPMENT PARTNERS  
LLC *TRUSTEE*

  
By: John C. McBride, Manager

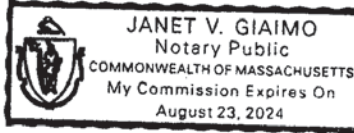
*Middlesex*, ss.

COMMONWEALTH OF MASSACHUSETTS

On this 25 day of September, 2018, before me, the undersigned notary public, personally appeared John C. McBride, as Manager of Black Birch II Development Partners LLC, personally known to me and acknowledged to me that he signed the foregoing document voluntarily on behalf

of Black Birch II Development Partners LLC, for its stated purpose as his free act and deed.

*Janet V. Giaimo*  
\_\_\_\_\_  
Notary Public  
My Commission Expires: *August 23, 2024*



**EXHIBIT A**

**BLACK BIRCH II CONDOMINIUM**

**RULES AND REGULATIONS**

The list of Rules and Regulations is meant to supplement and not supersede any provision of the Master Deed with respect to use of the Units or Common Elements. In the event of a conflict between the Rules and Regulations and the Master Deed, the provisions of the Master Deed shall govern. These Rules and Regulations may be changed or amended or waived in specific instances at any time or from time to time by a vote of the Trustees of the Black Birch II Condominium Trust in accordance with the terms of such Trust.

1. With the exception of normal and customary maintenance of landscaping and other such improvements, nothing shall be altered or constructed in or removed from the Common Elements except upon the prior written consent of the Board of Trustees. Any new or replacement landscaping shall be consistent with the landscaping approved and installed in accordance with the Special Permit, or with native species similar in type and quality.
2. Each Unit Owner, and its tenants, if any, shall keep his or her Unit and the Limited Common Elements attributable to such Unit in a good state of preservation and cleanliness.
3. The Common Elements shall be kept free and clear of all rubbish, debris and other unsightly materials.
4. The Common Elements shall not be obstructed nor used for storage, except as expressly set forth in the Master Deed, without the prior written consent of the Board of Trustees.
5. Except as expressly set forth in the Master Deed, the Common Elements shall not be decorated or furnished by any Unit Owner or its tenants in any manner without the prior written consent of the Board of Trustees.
6. The use of the Units, the Limited Common Elements, as well as the safety and maintenance of all personal property of the Unit Owners and their tenants, if any, kept in such areas and in the Units themselves, shall be the responsibility and at the sole risk of the respective Unit Owners, and the Board of Trustees shall not bear any responsibility thereof.
7. Each Unit Owner assumes responsibility for his own safety and that of his family, guests, agents, servants, employees, licensees and lessees.
8. Any consent or approval given under these Rules and Regulations may be added to, amended, or repealed at any time by the Board of Trustees.
9. Condominium Fees and related charges are due and payable the first of each month. All Units with balances outstanding as of the fifteenth of each month will be charged a late fee. Balances which remain unpaid will be referred to an attorney for collection. The cost of such collection action will be charged against the Unit.
10. All Unit Owners are required to provide the Condominium with the name, address and contact person of each mortgage holder for their Unit. Failure to do so in a timely manner will result in the Trust securing the information from a "title search." The cost of completing said title search will be assessed against the Unit.
11. Gas grills shall be regulated in accordance with the Master Deed. Charcoal grills are

- prohibited.
13. The Board of Trustees shall establish specifications for privacy fencing in order to encourage uniform and appropriate fencing throughout the Condominium.
  14. The Units shall be limited to residential use and occupancy by persons aged fifty-five (55) years of age or older. Notwithstanding the foregoing, no person under the age of eighteen (18) shall occupy any Unit, whether Age Restricted Units or otherwise, for a consecutive period of twelve (12) weeks or more, or for an aggregate period over the course of a calendar year of more than twenty-four (24) weeks. A Person under the age of eighteen (18) may temporarily reside in a Unit as an invited guest, provided that such guest residency does not exceed a consecutive period of twelve (12) weeks or more, or for an aggregate period over the course of a calendar year of more than twenty-four (24) weeks. Invited guests shall otherwise be subject to the same rules and regulations of occupants, unless otherwise specifically exempted herein;
  15. The total number of occupants in any Unit shall be limited by applicable laws and regulations, including the Town of Concord health and zoning ordinances;
  16. There shall be a limit of two dogs per Unit and the keeping of dogs and other pets shall be further governed by the terms of the Master Deed and other rules and regulations promulgated by the Trustees from time to time.
  17. All window treatments must have a white backing.
  18. Holiday décor is permissible on front porches and within foundation planting beds only.
  19. No RV's, boats or commercial vehicles shall be parked in driveways overnight.
  20. Toys, bikes and other such shall not be left on lawn or in driveway overnight.
  21. No street parking is allowed except as set forth in the Master Deed or permitted by the Trustees.
  22. Units may be rented only under the terms and conditions outlined in the Master Deed.
  23. These Rules and Regulations may be amended from time to time as provided for in the Trust. The Board of Trustees shall have authority to enforce these regulations through the use of fines, legal action (including specific performance), and such other means available at law or equity.