

017



031708mpm

## CONDOMINIUM DECLARATION OF TRUST

### of ELM PLACE CONDOMINIUM

Bk: 51000 Pg: 322 Doc: TRUST  
Page: 1 of 17 04/08/2008 09:52 AM

**THIS DECLARATION OF TRUST** made on April 8, 2008, at Concord, Middlesex County, Commonwealth of Massachusetts, by ELM PLACE LLC, a Massachusetts Limited Liability Company, having a usual place of business at 371 Old Bedford Road, Concord, MA hereinafter called the "Trustee," which term in either the singular or plural shall include any successor or successors in Trust hereunder, and shall mean the Trustee or Trustees for the time being hereunder, whenever the context so permits or requires.

#### I. Name

This Trust shall be known as the "**Elm Place Condominium Trust**".

#### II. Purposes.

The purpose of this Trust shall be the management of the Elm Place Condominium ("the Condominium"). The Condominium has been established, under the provisions of Massachusetts General Laws Chapter 183A ("Chapter 183A"), by a Master Deed recorded herewith the Middlesex South District Registry of Deeds (the "Registry"). This Trust shall at all times be governed by Chapter 183A and the Master Deed.

#### III. Trustees; Votes

- a. The initial Trustee shall be ELM PLACE LLC a Massachusetts Limited Liability Company, having a usual place of business at 371 Old Bedford Road, Concord, MA. Upon the conveyance of all Units (including all Units to be phased in according to the Master Deed), there shall be an election of new trustees in accordance with Section III j. hereof.
- b. For each Unit that is held in sole ownership, the sole owner may be elected to be a Trustee by virtue of accepting a deed to his Unit. Any Unit owned by a corporation, Trust, Partnership or other organizational entity shall be considered to be held in sole ownership and the vote for that Unit may be cast by any delegee of that entity. Such an organizational entity may serve as Trustee, in the person of its delegee. In the event that a Unit is not held in sole ownership, the co-owners shall decide amongst themselves who may serve as Trustee on behalf of that Unit; their decision shall be indicated in a writing signed by all of the co-owners of record, which writing shall indicate acceptance of appointment as Trustee and shall be recorded with the Registry of Deeds. A copy of said acceptance shall be delivered to the owner of each of the other Units (or, if there are co-owners of the other Units, to the co-owner designated under this subparagraph to serve as Trustee). In the event that the said co-owners are unable to so decide amongst themselves, then no Trustee shall serve on behalf of that Unit.

Elm Place Condominium Trust

*Michael P. Paul, Esq.*  
44 Park St.  
Andover, Mass. 01810

- c. Any Trustee may decline to serve further as Trustee by recording a signed Certificate so stating with the Registry. No such Certificate shall be valid until it has been recorded with the Registry. Any Trustee who has declined to serve as a Trustee may resume his Trusteeship by recording a signed Certificate so stating, and by providing notice of resumption to all other. Only Unit Owners may serve Trustees; accordingly, when a Trustee ceases to own his Unit, he may no longer serve or act as Trustee. The delivery and recording of a deed to such unit shall be deemed to be a resignation as trustee of such Unit Owner.
- d. ELM PLACE LLC, as original Trustee, may, in all cases during its term of office hereunder, act without further consent. Otherwise, the Trustees may act only by UNANIMOUS VOTE, unless provision is made herein or in the Master Deed or in Chapter 183A for some other quantum of vote. In the event, however, that there should be only one Trustee serving, the Trustees may act by a single vote. Any certificate under Section 6(d) of G.L., Chapter 183A, may be signed by any two (2) Trustees (or by the sole Trustee, if there be only one Trustee) and such certificate shall be binding on the Trust.
- e. No Trustee shall be required to give bond or surety or other security for the performance of his Trust; except that if a bond is required by authority of Court, then no surety shall be required on it. Reasonable expenses incurred as to a required bond shall be a common expense chargeable to the Condominium.
- f. No Trustee shall receive any compensation for fulfilling his Trust; but each Trustee shall be entitled to indemnity against any liability incurred in the good faith execution of this Trust Agreement. Such liabilities shall include, without limitation thereon, liabilities in contract and in tort and liabilities for damages, penalties and fines. Indemnification costs incurred under this Section shall be a common expense chargeable to this Condominium. The Trustees may also vote to satisfy indemnification costs in whole or in part out of assets owned by the Trust, exclusive of common areas and facilities.
- g. No Trustee shall be liable for accountable out of his personal assets by reason of any action taken, suffered or omitted in good faith, or be so liable or accountable for more money or other 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 or accountable 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.
- h. No Trustee shall be disqualified by his office from contracting or dealing with the Trustees or with the other Unit Owner (whether directly or indirectly because of his interest individually or the Trustees' interest or any Unit Owners' interest in any corporation, firm, Trust or other organization, connected with such contracting or dealing or because of any other reason), as vendor, purchaser or otherwise, nor shall any such dealing, contract or arrangement entered into in respect of this Trust in which any Trustee shall be in any way interested be

avoided, nor shall any Trustee so dealing or contracting or being so interested be liable to account for any profit realized by such dealing, contract or arrangement entered into.

- i. After the term of the Initial Trustees, there shall at all subsequent times be a Board of Trustees hereunder consisting of two Unit Owners, as shall be determined by vote of Unit Owners entitled to not less than fifty-one percent (51%) of the beneficial interest hereunder.

#### **Vacancies**

After Initial Trustees' terms expire, if and when the number of Trustees shall become less than two (2), a vacancy or vacancies in said office shall be deemed to exist. Each such vacancy shall be filled by written instrument setting forth (A) the appointment of a natural person to act as such Trustee, signed (i) by any two Unit Owners who certify under oath that Unit Owners entitled to not less than fifty-one percent (51%) of the beneficial interest hereunder have voted to make such appointment and acknowledged by at least one of the signatories; or (ii) if the Unit Owner(s) entitled to such percentage have not made such an appointment within thirty (30) days after the occurrence of such vacancy, by the remaining Trustees; and (B) the acceptance of such appointment, signed and acknowledged in proper form for recording by the person so appointed. Such appointment shall become effective upon the recording with the Middlesex South District Registry of Deeds of a certificate of such appointment, signed and accepted as aforesaid, and such person shall then be and become such Trustee and shall be vested with the title to the Trust property, jointly with the remaining or surviving Trustee or Trustees, without the necessity of any act of transfer or conveyance.

If, for any reason, any such vacancy in the office of Trustee shall continue for more than sixty (60) days and shall at the end of that time remain unfilled, a Trustee or Trustees to fill such vacancy or vacancies may be appointed by any court of competent jurisdiction upon the application of any Unit Owner and notice to the other Unit Owners and all Trustees and to such other parties in interest, if any, to whom the court may direct that notice be given, and such appointment shall become effective upon the recording with the Middlesex South District Registry of Deeds of a certificate or order of such appointment. Notwithstanding anything to the contrary in this subsection (b), despite any vacancy in the office of Trustee, however caused and for whatever duration, the remaining or surviving Trustees, subject to the provisions of the immediately following subsection (c), shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustees.

#### **IV. Beneficiaries; Shares**

The Beneficiaries shall be the Unit Owners. Each Unit shall be assigned a beneficial interest equivalent to the percentage interest of that Unit in the Common Areas and Facilities of the Condominium, as set forth in the Master Deed. If a Unit is owned in sole ownership, the sole owner shall have the beneficial interest for that Unit. If a Unit is owned in co-ownership, the co-owners shall divide among themselves the beneficial interest according to their own respective undivided ownership interest in their Unit. Trusts, Partnerships, Corporations and other organizational entities shall be considered individuals for the purpose of this Article IV.

**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:

- A. The Trustees shall, subject to and in accordance with all applicable provisions of said Chapter 183A, have the absolute control, management and disposition of the trust property (which term as herein used shall insofar as apt be deemed to include the Common Areas and Facilities of the Condominium) as if they were the absolute owners thereof, free from the control of the Unit Owners, with full power and uncontrolled discretion, subject only to the limitations and conditions hereof, the provisions of the Master Deed, and the provisions of said Chapter 183A, at any time and from time to time and without necessity of applying to any Court or to the Unit Owners for leave so to do:
1. To hold the trust property;
  2. To purchase or otherwise acquire title to, and to rent, lease, or hire from others for terms which may extend beyond the termination of this Trust and any property or rights to property, real or personal, and to own, manage, use and hold such property and such rights;
  3. To incur such liabilities, obligations and expenses and to pay from the principal or the income of the Trust property in their hands all such sums as they shall deem necessary or proper for the furtherance of the purposes of the Trust;
  4. To borrow or in any other manner raise such sum or sums of money or other property as they shall deem advisable in any manner and on any terms, and to evidence the same by notes, bonds, securities or other evidences of indebtedness, which may mature at a time or time even beyond the possible duration of this Trust, and to execute and deliver any mortgage, pledge, or other instrument to secure any such borrowing;
  5. To deposit any funds of the Trust in any bank or trust company and to delegate pursuant to Section 7 hereof to any one or more of their

number, or to any other person or persons, the power to deposit, withdraw and draw checks on any funds of the Trust;

6. To enter into any agreement for the use of occupation of the Trust property, or any part or parts thereof, including, without thereby limiting the generality of the foregoing, leases, subleases, easements, licenses or concession upon such terms and conditions and with such stipulations and agreements as they shall deem desirable, even if the same extend beyond the possible duration of this Trust;
7. To employ, appoint and remove such agents, managers, officers, board of managers, brokers, engineers, architects, employees, servants, assistants and counsel as they shall deem proper for the purchase, sale, or management of the Trust property, or any part or parts thereof, or for conducting the business of the Trust, and may define their respective duties and fix and pay their compensation, and the Trustees shall not be answerable for the acts and defaults of any such person.. The Trustees may delegate to any such agent, manager, officer, board, broker, engineer, architect, employee, servant, assistant or counsel any or all of their employee, servant, assistant or counsel any or all of their powers (including discretionary powers, except that the power to join in amending, altering, adding to, termination or changing this Declaration of Trust and the Trust hereby created shall not be delegated) all for such times and purposes as they shall deem proper. Without hereby limiting the generality of the foregoing, the Trustees may designate from their number a Chairman, a Treasurer, a Secretary, and such other officers as they deem fit, and may from time to time designate one or more of their own number to be the Managing Trustee or Managing Trustees, for the management and administration of the Trust property and the business of the Trust, or any part or parts thereof;
8. To pursue, on behalf of the Condominium Trust and any aggrieved Unit Owner, any appropriate right of action against Unit Owners for failure to comply with the provisions of the Master Deed, Condominium Declaration of Trust and By-laws or with decisions of the Trustees of the Elm Place Condominium Trust which are made pursuant thereto. Unit Owners shall have similar rights of action against the Trust;
9. To maintain the Common Areas and Facilities;
10. To have a reasonable right of entry upon any Unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of the Condominium;
11. To grant permits, licenses and easements over the Common Areas and Facilities for utilities, roads and other purposes reasonably

necessary or useful for the proper maintenance or operation of the Condominium;

12. To levy and enforce the collection of general and special assessments for common expenses, and to provide adequate remedies for failure to pay such assessments;
13. Generally, in all matters not herein otherwise specified, to control, do each and every thing necessary, suitable, convenient or proper for the accomplishment of any of the purposes of the Trust or incidental to the powers herein or in said Chapter 183A, to manage and dispose of the Trust property as if the Trustees were the absolute owners thereof and to do any and all acts, including the execution of any instrument, which by their performance thereof shall be shown to be in their judgment for the best interest of the Unit Owners.

B.

1. The Unit Owners shall be liable for common expenses and entitled to common profits, if any, of the Condominium in proportion to their respective percentages of beneficial interest as set forth in Article IV hereof.
2. At least thirty (30) days prior to the commencement of each fiscal year of this Trust, the Trustees shall estimate the common expense 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 have the authority and duty to levy and enforce the collection of general and special assessments for common expenses. The Trustees shall promptly render statements to the Unit Owners for their respective share of such assessment, according to their percentages of interest in the Common Areas and Facilities, and shall have the duty to take such action as they may deem reasonably required under the circumstances to collect from Unit Owners who shall fail to pay such assessments within thirty (30) days of the due date or within such shorter period of time as may be determined by the Trustees, including without thereby limiting the generality of the foregoing, the commencement of legal action. In the event that the Trustees shall determine during any fiscal year that the assessment so made useless than the common expenses actually incurred, the Trustees shall make a supplemental assessment 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 of statement in monthly or other installments. The amount of each assessment with interest thereon (at a rate equal to the bank prime rate) if not paid when due in accordance with the Master Deed, their By-laws or Massachusetts law, and together with costs and

reasonable attorney's fees, shall constitute a lien on the Unit of the Unit Owner assessed, pursuant to the provisions of Section 6 of Chapter 183A.

3. The Trustees shall expend common funds only for common expenses and lawful purposes permitted hereby and by provisions of Chapter 183A.
4. Upon written request addressed to the Trustees by a first mortgagee of any Unit, the Trustees shall notify such mortgagee of any default by the mortgagor of such Unit in the performance of the mortgagor's obligations under the master Deed of this Declaration of Trust.
5. Each assessment against a Unit shall also be the personal obligation of the owner at the time the assessment fell due. Such personal obligation shall not pass to successors in title unless assumed by them or required by applicable law.

C.

1. Subject to the provisions of the Master Deed, rebuilding of any and all Common Areas and Facilities, made necessary by fire or other casualty loss, shall be carried out using common funds, including the proceeds of any insurance for that purpose, upon the unanimous vote of the Trustees, provided such casualty loss does not exceed then per cent of the value of the Condominium prior to the casualty, the valuation to be based upon the findings of the appraisal arrived at by the insurance company carrying the insurance for that purpose.
2. Subject to the provisions of the Master Deed, if any such casualty loss exceeds then percent of the value of the Condominium prior to the casualty, the valuation to be based upon the findings of the appraisal arrived at by the insurance company carrying the insurance for that purpose, then the provisions of Section 17 of Chapter 183A shall apply.
3. Subject to the provisions of the Master Deed, improvements may be made to the Common Areas and Facilities (and the cost of such improvements shall be borne) according to the provisions of Section 18 of Chapter 183A. Provided, however, that, to the extent permitted under Chapter 183A, any improvements to the Common Areas and Facilities which cost Two Thousand and 00/100 Dollars (\$2,000.00) or more shall require the unanimous vote of the Trustees.
4. In furtherance of the provisions contained herein above, the Trustees shall, insofar as relevant and practicable, at all times keep a Master Policy of insurance covering all of the Common Areas and Facilities (except land, foundation, excavation and other items normally excluded from coverage) including fixtures and building service equipment to the extent that they are part of the Common Areas and Facilities of the

Condominium, as well as common personal property and supplies, and other common personal property belonging to the Trust; the master policy shall also include any fixtures, equipment or other property within the Units which are customarily considered a part of the Unit for mortgage purposes (regardless of whether such property is a part of the Common Areas). The master policy shall afford protection at least against the following:

- a. Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;
- b. All other perils which are customarily covered with respect to project similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, as well as vandalism, malicious mischief, windstorm and machinery explosion;
- c. Flood Insurance (if any portion of the Condominium property is a flood hazard area) in an amount not less than (1) maximum coverage available under the National Flood Insurance Program (NFIP) for all buildings and other insurable property within any portion of the Condominium located with a designated flood hazard are; or (2) 100% of current "replacement cost" of all such buildings and other insurable property.
- d. Liability insurance for comprehensive general liability covering all of the Common Areas and Facilities, public ways of the Condominium and commercial spaces owner by the Trust. Such coverage shall be for not less than \$1,000,000 for bodily injury, including deaths of persons, and for property damage, all arising out of a single occurrence; and shall include, without limitation, legal liability of the insureds for property, bodily injuries and deaths of persons in connection with the operation, maintenance of use of the Common Areas and Facilities, and legal liability arising out of law suits, related to employment contracts of the Trust; and shall provide further that such policy or policies may not be canceled or substantially modified by any party without at least ten (10) days prior written notice to the Trust and to the holders of first mortgages which are listed as scheduled holders of first mortgages in the insurance policy.
- e. Construction Code Endorsement (such as a Demolition Cost Endorsement, a Contingent Liability form Operation of Buildings Loans Endorsement and an Increased Cost of



Construction Endorsement) if the Condominium is or becomes subject to a construction code provision which would become operative and require changes to undamaged portions of the building (s).

The policy shall (insofar as is applicable) be in an amount equal to 100% of current replacement cost of the Condominium, exclusive of land, foundation, excavation and other items normally excluded from coverage, and shall include a so-called Replacement Cost Endorsement.

The Trustees may, at their sole discretion, further insure the Common Areas and Facilities and/or all the Units in an amount deemed by them to be appropriate, against other hazards and risks, including without limitation vandalism, malicious mischief, windstorm and water damage, federal flood hazards, so-called, and boiler and machinery explosion or damage. Such insurance which covers Units shall cover only their value of personal property or contents. The responsibility for insuring the personal property in, or the contents of, the Units shall be the responsibility of the respective Unit Owners.

5. Each policy of insurance shall contain a clause which provides that it may not be canceled or substantially modified without at least ten (10) days prior written notice to the Trust and to each holder of a first mortgage which is listed as a scheduled holder of a first mortgage in the insurance policy. In addition to the foregoing, each policy shall provide the following:
  - a. for recognition of the Insurance Trust Agreement (if any thereby);
  - b. for a waiver of the right of subrogation against the Trust, the Trustees, and the Unit Owners and their respective managers, employees, agents and guests individually;
  - c. that the insurance shall not be prejudiced (i) by any act of neglect of any owners or occupants of the Units, when such act or neglect is not within the control of the Trustees (or Owners) collectively, or (ii) by failure of the Trustees (or Owners) collectively to comply with any warranty or condition with regard to any portion of the premises over which the Trustees (or Owners) collectively have no control;
  - d. that the policy is primary in the event the Unit Owner has other insurance covering the same loss (the foregoing (a) through (d) are generally referred to as "Special Condominium Endorsement");

- e. and for an Agreed Amount and Inflation Guard Endorsement (if available). Further, all such policies shall be for the benefit and protection of the Trustees, and all of the Unit Owners, naming as the named insured, and with loss proceeds payable to the Trustees herein or one or more of the Trustees hereunder designated by them, as Insurance Trustees for all of the Unit Owners of the Condominium collectively and their respective mortgagees as their interest may appear. Each first mortgagee, its successors and assigns shall be named in the standard mortgage clause for each Unit on which there is such a mortgage.
6. The Trustee or Trustees hereunder designated as Insurance Trustee or Trustees as aforesaid, shall collect and receive all casualty loss insurance proceeds, and shall hold, use, apply and disburse the same in accordance with the applicable provisions hereof. With respect to losses covered by such insurance which affect portions or elements of a Unit, or of more than one (1) Unit to substantially the same or to different extents, the proceeds relating thereto shall be used, applied and disbursed by the Trustees in a fair and equitable manner.
  7. Each Unit Owner may obtain additional insurance for his or her own benefit at his or her own expense. No such policy shall be written so as to decrease the coverage under any of the policies obtained by the Trustees, and each Unit Owner hereby assigns to the Trustees in the proceeds of any such policy to the extent that any such policy does in fact result in a decrease in such coverage, said proceeds to be applied pursuant to the terms of this Section as if produced by such coverage. Copies of all such policies (except policies covering only personal property of individual Unit Owners) shall be filed with the Trustees.
  8. Each Unit Owner shall notify the Trustees of all improvements to his or her Unit (except personal property other than fixtures) which exceed a total value of One Thousand and 00/100 Dollars (\$1,000.00) within twenty (20) days after the commencement of construction of such improvement and, upon receipt of such notice, the Trustees shall (if so required) notify the insurer under any policy obtained by them of any such improvements.
  9. The cost of the insurance purchased pursuant hereto shall be a common expense.
- D. The Unit Owners shall be responsible for the proper maintenance, sanitation and repair of their respective Units including their respective Exclusive Use Areas and the maintenance, repair and replacement of utility fixtures herein serving the same, including without limitation, interior finish walls, ceiling and floors, plumbing and sanitary water fixtures and

fixtures for water and other utilities, electrical fixtures and outlets, and all wires, pipes, drains and conduits for water, sewerage, electric power and light, telephone and any other utility services which are contained in and serve such Unit. The Unit Owners shall also be responsible for all expenses for utilities which serve such Unit; provided, however, that water and sewer use charges (and any other charges for utilities which are supplied to the Units and/or the Common Areas and Facilities through a common meter) shall be common expenses. If any Trustee in his reasonable judgment determines that the interior of a Unit or any area subject to that Unit's rights of exclusive use and enjoyment is in such need of maintenance, sanitation, pest or roach control or repair that the market value of one or more other Units is being adversely affected, or that the condition of a Unit or any fixtures, furnishing, facility or equipment herein is hazardous to any Unit or the occupants thereof, that Trustee shall in writing request the Unit Owner to perform the needed maintenance, sanitation, pest or roach control, 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 Trustee 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 Unit Owners whose Unit is in need of work and to enter upon and have access to such Unit for the 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 therefore.

E.

1. The Trustees shall be responsible for the proper maintenance, repair and replacement of the Common Areas of the Condominium and such may be done through a Managing Agent. Any two (2) Trustees or the Managing Agent, or any others who may be so designated by the Trustees, may approve payment of vouchers for such work, and expenses of such maintenance, repair and replacement shall be assessed to the Unit Owners as common expenses of the Condominium.
2. All Common Areas and Facilities including Exclusive Use Areas shall be used in a manner which is not inconsistent with the residential character of the Condominium. No one shall obstruct, commit any waste in, or otherwise cause any damage beyond reasonable wear and tear to any Common Areas and Facilities and any Unit Owner causing such damage shall be responsible to pay any expense incurred by the Trustees in repairing the same.

F. The Trustees may at any time and from time to time adopt, amend and rescind administrative rules and regulations governing the details of the operation and use

of the Common Areas and Facilities including Exclusive Use Areas as are consistent with provisions of the Master Deed and are designed to prevent unreasonable interference with the use by the Unit Owners of their Units and of the Common Areas and Facilities.

G.

1. The Trustees shall meet annually on the date of the Annual meeting of the Unit Owners and prior thereto, and at such meeting shall elect such officers, and conduct such other business, as they shall see fit. Special Meetings of the Trustees may be called by any of the Trustees, upon at least forty-eight (48) hours of notice to all other Trustees as provided in subsection h, below. Two (2) Trustees shall constitute a quorum at any meeting, unless there should be only one Trustee serving, in which case one Trustee shall constitute a quorum. All meetings shall be conducted in accordance with such rules as the Trustees may adopt.
2. There shall be an Annual Meeting of the Unit Owners on the first Monday of June in each year at 7:00 P.M. in the Condominium, or at such other reasonable place and time (not more than twenty (20) days before or after said date) as may be designated by the Trustees by notice given to the Unit Owners at least fourteen (14) days prior to the date so designated. Special Meetings of the Unit Owners may be called at any time by the Trustees acting unanimously. At the Annual meeting of the Unit Owners, the Trustees shall submit reports of the management and finances of the Condominium.

H. Every required notice to Unit Owner or Trustee shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one or more of the Trustees to such Unit Owner or Trustee by leaving such notice with him at his Unit. Notice may be waived by a written waiver of notice. Any Unit Owner or Trustee in attendance at a meeting shall be deemed to have received notice thereof.

I. Books, accounts and records of the Trustees shall be open to inspection to any Trustee or Unit Owner at all reasonable times. The Trustees shall, as soon as reasonably possible after the close of each fiscal year, or more often if convenient to them, submit to the Unit Owners a report of the operations of the Trustees for such year which shall include financial statements in such summary form and only in such detail as the Trustees 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 mail within six (6) months of the date of the receipt by him shall be deemed to have assented thereto. The provisions of this subparagraph shall in any event be subject to the provisions of the Master Deed.

J. 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 those two

(2) Trustees to whom such power shall from time to time be delegated by not less than a unanimous vote of the Trustees.

- K. 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.
- L. Each unit owner shall be entitled to possess one common household pet which pet shall not exceed forty-five pounds. Said pet may be excluded from the condominium by the direction of the Trustees in the event the pet constitutes a nuisance. Grounds for the exclusion of pets shall include by are not limited to (1) failure of the unit owner to properly dispose of pet's sanitary waste; (2) pet causing excessive noise or destruction to common areas; (3) a pet being aggressive towards other unit owners and guests; and (4) a pet that would cause any increase in the unit owner's condominium liability insurance policy. Any Unit Owner may petition the Trustees to permit the possession of a common household pet in excess of forty five pounds and upon approval of the Trustees such Unit Owner may possess said pet as if the pet weighted less than forty five pounds subject to the same requirements set forth above.
- M. At the time of the recording of the initial unit deed, the unit owner shall deposit a sum equal to two months of common area charges to fund the condominium.
- N. The Unit Owners shall be required to comply with the Septic System regulations that are set forth on Board of Health approval or as may be enacted by the Trustee of the Condominium from time to time. The unit owners are prohibited from changing or adding any room not designated as a bedroom into a bedroom

**VI. Rights and Obligations of Third Parties Dealing with the Trustees.**

- A. No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record in the Registry shall be bond to ascertain or inquire further as to the persons who are then Trustees hereunder. The receipts of the Trustees or any one or more of them for moneys or things paid or delivered to them or him shall be effectual discharges therefrom to the persons paying or delivering the same and no person from whom the Trustees or any one or more of them shall receive any money, property or other credit shall be required to see to the application thereof. No purchaser, mortgagee, lender or other person dealing with the Trustees or with any real or personal property which then is or formerly was trust property shall be bond to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or change is herein authorized.
- B. No recourse shall at any time be had under or upon any note, bond, contract, order, instrument 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 or holder of any security issued by the

Trustees either directly or indirectly, by legal or equitable proceeding, or by virtue of any suite or otherwise, and all persons extending credit to, contracting with or having any claim against the Trustees, shall look only to the trust property for payment under such contract or claim, or for the payment of any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to them from the Trustees, so that neither the Trustees nor the beneficiaries present or future, shall be personally liable therefor, except as provided herein and in said Chapter 183A.

- C. 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 reference shall have been made to this instrument.
- D. This Declaration of Trust and any amendments hereto and any certificate herein required to be recorded and any other certificate or paper signed by said Trustees or any of them which it may be deemed desirable to record shall be recorded with the Registry and such record shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof, and all personal dealing in any manner whatsoever with the Trustees, the trust property or any beneficiary thereunder 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 said Registry of Deeds. Any certificate signed by the Trustees as provided herein 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 the Registry shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees, acting in reliance thereon. Any certificate executed by any Trustee or Trustees as provided hereunder, setting forth the existence of any facts, the existence of which is necessary to authorize the execution of any instrument or the taking of any action by such Trustee or Trustees, as the case may be, shall, as to all persons acting in good faith in reliance thereon be conclusive evidence of the truth of the statements made in such certificate and of the existence of the facts therein set forth. Any certificate under section 6(d) of Chapter 183A signed by any two (2) Trustees (or by the sole Trustee, if there be only one Trustee) shall be binding on the Trust.
- E. Any first mortgagee, in the event of foreclosure of its mortgage, shall take such Unit free of any claims for the unpaid common assessments against such Unit to the extent provided by law and the Master Deed.

### **VIII. Amendments**

The provisions of this Trust and the By-law enacted thereunder to the extent permitted by Chapter 183A and the Master Deed, may be amended by unanimous vote of the Trustees and of the Unit Owners, in favor of the amendment. Any such amendment, signed by all the Trustees and all the Unit Owners, shall become effective when recorded with the Middlesex South District Registry of Deeds. Provided, however, that this Condominium Declaration of Trust shall not be altered, amended or otherwise changed if such alteration or amendment will, in any manner, disqualify mortgages of Units in the Condominium for sale to Federal Home Loan Mortgage Corporation (FHLMC) or Federal National Mortgage Association (FNMA). All provisions of this Condominium Trust shall be construed so as to qualify any such mortgages for sale to FHLMC and FNMA.

The Condominium Trustees shall have the right and power to make, execute and record special amendments, so-called to this Trust, or to the By-laws or the rules and regulations promulgated thereunder, in order to:

1. comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, 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;
2. induce any of such agencies or entities to make, purchase, sell, insure, or guarantee mortgages covering Unit ownerships;
3. bring this Trust and its By-laws and rules and regulations into compliance with Chapter 183A; or
4. correct clerical or typographical errors.

#### **IX. Definitions**

In the construction hereof, whether or not so expressed, words used in the singular or in the plural respectively include both the plural and singular, words denoting males include females and words denoting persons include individuals, firms, associations, companies (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 of different parts hereof, the table of contents and the marginal notes, if any, are inserted only for the convenience of reference and are not to be taken to be a 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. Whenever it is provided herein that the permission, approval or consent of any party is required, such permission, approval or consent shall not be unreasonably withheld. The Trustees have the power and authority to waive any provision of this Trust affecting or limiting the rights of a Unit Owner for any cause or reason determined to be reasonable by such Trustees in their discretion.

If any provisions of this Trust shall be invalid or shall conflict with Chapter 183A, 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 of construction shall be used:

- a. In the event of a conflict between the Trust and said Chapter 183A, as amended, the provisions of Chapter 183A shall control;
- b. The invalidity of any provision of the Trust shall not impair or affect the validity or enforceability of the provisions of this Trust;
- c. 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;
- d. In the event of any conflict other than set forth in subparagraph 3(c) of this Article IX between the provisions of the Master Deed and any other provision hereof, the provisions of the Master Deed shall control.

No restriction, condition, obligation or provision contained in this Trust or By-laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same. The masculine gender shall include the neuter and feminine genders, and the singular shall include the plural, all where the context allows or requires.

All references to Chapter 183A shall mean Chapter 183A as amended to the date of this Declaration, except that this Declaration shall at all times be subject, in the event of conflicts, to the provisions of Chapter 183A as then enacted or amended.

#### **X. Arbitration**

In the event that any owner or any Trustee is aggrieved by any action or non-action of another Unit Owner or any Trustee, or in the event that any decision requiring a majority or unanimous vote of the Unit Owners or Trustees remains undecided because such vote does not receive a majority or unanimous vote, or is decided contrary to the desires of any Unit Owner or Trustee, such Unit Owner or



Trustee may submit such action or vote to arbitration. Such arbitration shall be conducted by an arbitrator selected by the American Arbitration Association (Boston Office, so long as such institution shall exist, or such similar organization as may then be in existence) who shall arbitrate such dispute according to rules promulgated by said Association. The findings and results of such arbitration shall be binding upon the parties and may thereafter be submitted to any Court of competent jurisdiction. The findings and results of such arbitration shall include an apportionment of the costs of said arbitration. Said apportionment shall be within the discretion of the arbitrator or the organization responsible for arbitration, except that such costs shall be apportioned against any Unit Owner, who, in the opinion of the arbitrator or organization responsible for the arbitration has acted in bad faith, regardless of whether he or she instituted the arbitration proceedings.

In the event that a Court action is necessary to enforce a decision made pursuant to this Article, said Court shall assess a Unit Owner who has been acting in bad faith, as determined by this Article, with the costs of said Court action, which costs shall include, but are not limited to, attorneys' fees and filing fees. Said costs shall be considered a common area fee charge against the Unit Owner and the Trustees shall have all powers set forth in M.G.L. chapter 183A for collection of the same.

**EXECUTED** as a sealed document in the date first set forth above.

ELM PLACE LLC



By: Gregory Adams, General Manager

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

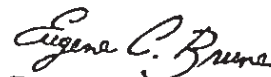
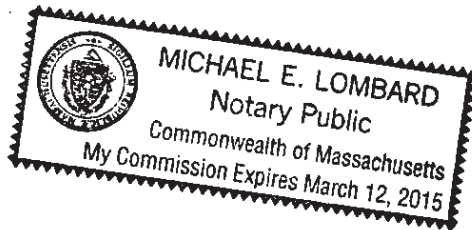
April 8, 2008

Then personally appeared the above named, Gregory Adams, General Manager of ELM PLACE LLC as aforesaid, who is personally known to me and acknowledged the foregoing instrument to be the free act and deed of said company before me,



Notary Public

My commission expires: ~~3-12-08~~ 3-12-2015 *ABG*



Attest Middlesex S. Register