

**DECLARATION OF TRUST**

**ROCKY HILL CONDOMINIUM ASSOCIATION**

This Declaration of Trust made this \_\_\_\_ day of October, 2003, by \_\_\_\_\_, (hereinafter referred to as the "TRUSTEES"), which term shall include their successors and assigns as TRUSTEES hereunder and any TRUSTEE or TRUSTEES for the time being hereunder howsoever appointed.

ARTICLE I

NAME OF TRUST

The trust hereby created shall be known as **ROCKY HILL CONDOMINIUM ASSOCIATION** (hereinafter referred to as the "Trust"), and under that name, so far as legal, convenient and practicable, shall all business carried on by the TRUSTEES be conducted and shall all instruments in writing by the TRUSTEES be executed. The office of the trust shall be at \_\_\_\_\_ Northampton, Hampshire County, Massachusetts or such other place as is designated by The TRUSTEES from time to time.

ARTICLE II

THE TRUST AND ITS PURPOSE

Section 2.1 - General.

All of the rights in and to the Common Areas and Facilities (the "Common Areas and Facilities") of ROCKY HILL COHOUSING CONDOMINIUM (the "Condominium") established by a Master Deed (the "Master Deed"), of even date and recorded herewith, which are under the provisions of Massachusetts General Laws Chapter 183A, as amended, ("Chapter 183A") exercisable by the organization of unit owners of the Condominium and all property, real and personal, tangible and intangible, conveyed to or held by the TRUSTEES hereunder shall vest in the TRUSTEES as joint tenants with right of survivorship as TRUSTEES of this Trust, in trust, to exercise, manage, administer and dispose of the same (a) for the benefit of the owners of record from time to time (the "Unit Owners" or "Owners") of the units (the "Units") of the Condominium according to the allocation of undivided beneficial interest in the Common Areas and Facilities set forth in Article IV hereof and (b) in accordance with the provisions of Chapter 183A. This Trust is the organization of Unit Owners established pursuant to the provisions of Section 10 of Chapter 183A for the purposes therein set forth.

Section 2.2 - Trust, Not Partnership Created

It is hereby expressly declared that a trust and not a partnership has been created, and that the Unit Owners are cestuis que trustent and not partners or associates among themselves with respect to the trust property.

### ARTICLE III

#### THE TRUSTEES

##### Section 3.1 - Number of TRUSTEES.

There shall be at all times an odd number of TRUSTEES consisting of not less than five (5) nor more than nine (9), as shall be determined from time to time by consensus of the Unit Owners and if after three good faith attempts at consensus, such number cannot be determined, then by vote of seventy-five (75%) percent of the Unit Owners determined first by consensus and then seventy-five (75%) percent of units affirmative vote, and subject to rights reserved to the Sponsor in the following paragraph. The term of each TRUSTEE shall be for three (3) years, except that the initial term of \_\_\_\_\_ shall be for one (1) year and the initial term of \_\_\_\_\_ shall be for two (2) years. If the number of TRUSTEES is increased by two (2), they shall have initial terms of two (2) and three (3) years; if by four (4), one (1), shall have an initial term of one (1) year, one (1) shall have an initial term of two (2) years, and two (2) shall have an initial term of three (3) years.

Notwithstanding anything to the contrary in this Trust, until four (4) months after the Sponsor of the Master Deed or its successor in interest owns less than fifty (50%) percent of the Units covered by the Master Deed or seven (7) years from the date of recording of the Master Deed for the Condominium, whichever first occurs, the Sponsor shall be entitled to appoint three (3) such TRUSTEES. The other TRUSTEES shall, during such time, be elected by majority vote (however Unit Owners will make best efforts to obtain a consensus as to whom the TRUSTEES shall be but if they are unable to reach consensus, then the TRUSTEES shall be chosen by seventy-five (75%) percent of Units owned by persons other than the Sponsor). Notwithstanding anything to the contrary in this Trust, during the time the Sponsor is entitled to appoint any TRUSTEE, any vacancy resulting from expiration of term, resignation, removal or death of a TRUSTEE appointed by the Sponsor may be filled by an instrument executed by the Sponsor and recorded with the Hampshire County Registry of Deeds stating the new TRUSTEE'S name and business address and that such TRUSTEE is being so appointed, and containing the TRUSTEE'S acceptance of appointment duly acknowledged. The Sponsor's rights under this Section 3.1 shall inure to the benefit of any successor to the Sponsor's interest in the Condominium.

##### Section 3.2 - Vacancies.

Subject to the provisions of Section 3.1, if and whenever the number of such TRUSTEES shall become less than five (5), or less than the number of TRUSTEES last determined as aforesaid, a vacancy or vacancies in the said office shall be deemed to exist. Each such vacancy shall be filled by a natural person elected by seventy-five (75%) percent of Units hereunder if no consensus as to whom the Successor TRUSTEE or TRUSTEES should be reached by the Unit Owners; if such successor shall not be so elected within sixty (60) days after the vacancy occurs, then the remaining TRUSTEE or TRUSTEES shall make such appointment. Each appointment shall become effective upon the acceptance of such appointment, signed and acknowledged by the person so appointed, and recorded with the Hampshire County Registry of Deeds (hereinafter Registry of Deeds) together with a certificate of such appointment signed by a majority of the then remaining TRUSTEES or TRUSTEE if any there be still in office or seventy-five (75%) percent of Units hereunder if there be no such TRUSTEES. 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 TRUSTEES or TRUSTEE without the necessity of any act or any transfer or conveyance. If for any reason any vacancy in the office of the 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 or TRUSTEE, after notice to all Unit Owners, the TRUSTEES, and such other parties in interest, if any, to whom the court may direct that notice be given. The term of any such successor TRUSTEE shall end on the same date as the term of the TRUSTEE whom the successor replaces.

### Section 3.3 - Action by Consensus.

The TRUSTEES may act by a consensus vote at any duly called meeting at which a quorum is present and a quorum shall consist of the majority of the TRUSTEES but in no event less than three (3) TRUSTEES. The TRUSTEES, provided there shall be at least three (3) TRUSTEES in office, may also act without a meeting if a written consent thereto is signed by two-thirds (2/3) of the TRUSTEES then in office. However, since this is a co-housing community it is inherent in the design of the community to use consensus in decision making for all decisions. Therefore before proceeding with a decision with approval of 75% of the unit owners the Board of TRUSTEES shall try to reach consensus of the membership on at least three (3) separate occasions and will only proceed with 75% of Unit Owners approval when consensus is not possible after three separate attempts and three separate meetings

### Section 3.4 - Resignation; Removal.

Any TRUSTEE may resign at any time by instrument in writing signed and duly acknowledged by that TRUSTEE. Resignations shall take effect upon the recording of such instrument with the Registry of Deeds. Any TRUSTEE may be removed if no consensus is reached by the Unit Owners after best efforts to reach a consensus as to removal; (a) in the event of material breach of the TRUSTEE'S fiduciary duty by vote of Unit Owners entitled to a majority of the beneficial interest hereunder and (b) for other cause or without

cause by vote of seventy-five (75%) percent of Unit Owners. The vacancy resulting from such removal shall be filled in the manner provided in Section 3.2. Any removal shall become effective upon the recording with the Registry of Deeds of a certificate of removal signed by a majority of the remaining TRUSTEES in office, or by the requisite number of Unit Owners required to effect such removal.

Section 3.5 - No Bond by TRUSTEE.

No TRUSTEE named or appointed, as hereinbefore provided, whether as original or successor TRUSTEE, shall be obligated to give any bond or surety or other security for the performance of his duties hereunder, provided, however, that Unit Owners holding at least seventy-five (75%) percent of the Beneficial Interest hereunder may at any time, by notice in writing signed by them and delivered to the TRUSTEE or TRUSTEES affected hereby, required that any one (1) or more 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 a common expense of Pathways Association.

Section 3.6 - Compensation of TRUSTEES.

No TRUSTEE shall receive compensation for his services unless so provided by a consensus of Unit Owners or failing a consensus after good faith attempts at consensus, then seventy-five (75%) percent of Unit Owners, and any compensation so provided shall be from time to time fixed by the Unit Owners and shall be a common expense of Rocky Hill Condominium Association. No compensation to a TRUSTEE may be voted during such time as the Sponsor shall be entitled to fifty-one (51%) percent or more of the Beneficial Interest hereunder.

Section 3.7 - Limitation of Liability.

No TRUSTEE shall under any circumstances or in any event be held liable or accountable out of his personal assets by reason of any action taken, suffered or omitted in good faith, or for allowing one (1) 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 anything except his own personal and willful malfeasance and defaults.

Section 3.8 - Dealing with Trust Not Prohibited.

No TRUSTEE or Unit Owner shall be disqualified by his office from contracting or dealing directly or indirectly with the TRUSTEES or with one (1) or more Unit Owners, nor shall any such dealing, contract or arrangement entered into in respect of this Trust in which any TRUSTEE or Unit Owner shall be in any way interested be avoided, nor shall any TRUSTEE or Unit Owner so dealing or contracting or being so interested be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such TRUSTEE'S holding office or of the fiduciary relation provided the TRUSTEE or Unit Owner shall act in good faith and shall disclose the nature of his interest before the dealing,

contract or arrangement is entered into.

### Section 3.9 - Indemnification of TRUSTEE.

The TRUSTEES shall be entitled to indemnity both out of the trust property and by the Unit Owners against any liability incurred by the TRUSTEES in the execution of their duties hereunder, including without limiting the generality of the foregoing, liabilities in contract and tort and fines.

### Section 3.10 – Officers.

Section 1. Selection. The Unit Owners shall choose the officers from among the Board members. The term of office shall be for one (1) year and may be renewable by decision of the Unit Owners.

Section 2. President. The President shall preside at meetings of the Board of Trustees, and shall sign all certificates, leases, bills of sale and other instruments conveying any interest in real or personal property of the Association and such other documents as the Trustees of the Association may authorize or direct, and shall perform such other duties as prescribed by the Unit Owners.

Section 3. Vice-President. the Vice-President may perform the duties of the President whenever the President is absent or unable to act.

Section 4. Secretary. The Secretary shall maintain records of the proceedings of all meetings of the Unit Owners and Trustees and shall preserve all documents, reports, and communications connected with the business of the Association.

Section 5. Treasurer. The Treasurer shall maintain a bank account(s), be responsible for all funds of the Association, disburse funds for the business of the Association, take vouchers for such disbursements, and keep adequate and correct financial records and books of account. The Treasurer shall submit a full report in writing of the financial condition of the Association when requested by the Trustees or the Unit Owners, but in no case less than quarterly. The Treasurer shall submit a budget for approval by the Unit Owners at its annual meeting.

## ARTICLE IV

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

#### Section 4.1 - The Beneficiaries and their Beneficial Interest.

The beneficiaries of this Trust shall be the Unit Owners of ROCKY HILL CONDOMINIUM. The beneficial interest in this Trust shall be divided among the Unit Owners in the percentage of undivided beneficial interest appertaining to the Units of the Condominium

as stated in the Master Deed of the Condominium as it may be amended from time to time.

Section 4.2 - Exercise of Beneficial Interest.

The beneficial interest appertaining to each Unit shall be held and exercised as a Unit and shall not be divided among several owners of any such Unit. To that end, whenever any of the Units is owned of record by more than (1) person, the several owners of such Unit shall (a) determine and designate which one (1) of such owners shall be authorized and entitled to cast votes, execute instruments and otherwise exercise the rights appertaining to such Unit hereunder, and (b) notify the TRUSTEES of such designation by a notice in writing signed by all of the record owners of such Unit. Any such designation shall take effect upon receipt by the TRUSTEES and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the TRUSTEES may designate any one (1) such owner for such purposes.

ARTICLE V

BY-LAWS

The provisions of this ARTICLE V shall constitute the By-Laws (the "By-Laws") of this Trust and the organization of Unit Owners established hereby.

Section 5.1 - Powers of TRUSTEES.

The TRUSTEES shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things in connection therewith, subject to and in accordance with all applicable provisions of Chapter 183A, the Master Deed and these By-Laws, or which are delegated by the members of the Trust acting at a properly called meeting or as are specifically allowed to the Trust. Whenever the activity of the Trust falls within the domain of any Committee of the membership a representative of that committee shall assist in the coordination of the Board's activity with the activities of the Committee. Without limiting the generality of the foregoing, the TRUSTEES may, at any time and from time to time and without the necessity of applying to any court or to the Unit Owners for leave so to do:

- (a) Provide for the operation, care, upkeep and management of the Common Areas and Facilities of the Condominium or any part thereof, including in such common areas, common water and sewage systems, roadways, parking areas, sidewalks, recreational facilities and common open space.
- (b) Engage in litigation in the name of and on behalf of the Trust as they deem necessary and proper to further the purposes of this Trust.
- (c) Determine and budget the common expenses required for the affairs of the Condominium, and collect the common expenses from the Unit Owners.

- (d) Own, convey, encumber, lease and otherwise deal with Units conveyed to it or purchased by it as the result of enforcement of the lien for common expenses, any right of first refusal, or otherwise.
- (e) Purchase or otherwise acquire title to, and rent, lease or hire from others for terms which may extend beyond the termination of this Trust any property or rights to property, real or personal, and own, manage, use and hold such property and such rights.
- (f) 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 evidence the same by notes, bonds, securities or other evidences of indebtedness, which may mature at a time or times, even beyond the possible duration of this Trust, and execute and deliver any mortgage, pledge or other instrument to secure any such borrowing.
- (g) Enter into an arrangement for the use or occupation of the Trust property, or any part or parts thereof, including, without thereby limiting the generality of the foregoing leases, subleases, permits, easements, licenses, limited common areas or concessions, upon such terms and conditions and with such stipulations and agreements as they shall deem desirable, even if the same extend beyond the possible duration of this Trust.
- (h) Invest and reinvest the Trust property, or any part or parts thereof, and from time to time, as often as they shall see fit, change investments, including investment 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 investments 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;
- (i) Incur such liabilities, obligations and expenses and 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 this Trust,
- (j) Deposit any funds of the Trust in any bank or trust company, and delegate to any one (1) 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;
- (k) Employ, appoint and remove such agents, committees, managers, officers, board of managers, brokers, engineers, architects, employees, servants, assistants and counsel (which counsel may be a firm of which one (1) or more of the TRUSTEES are members) 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, committees, manager, officer, board, broker, engineer, architect, 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, terminating 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 Unit Owners may designate from their number a President, Vice President, a Treasurer, a Secretary, and such other officers as they deem fit, and may from time to time designate one (1) 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.

- (l) Obtain insurance pursuant to the provisions of these By-Laws.
- (m) Make repairs, additions and improvements to or alterations of the Common Areas and Facilities; and make repairs to and restoration of the Condominium property, in accordance with the other provisions of these By-Laws, after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.
- (n) Adopt administrative Rules and Regulations governing the details of the operation and use of the Common Areas and Facilities including such fines as the Board deems appropriate; and
- (o) Generally, in all matters not herein otherwise specified, control and 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, 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 instruments, which by their performance thereof shall be shown to be in their judgment for the best interest of the Unit Owners.

#### Section 5.2 - Maintenance and Repair of Units.

The Unit Owners shall be responsible for the proper maintenance and repair of their respective Units and any limited common areas conveyed with a Unit. All maintenance, repairs and replacements to any Unit, whether structural or non-structural, ordinary or extraordinary, shall be done by the Unit Owner except as specifically provided herein. All maintenance, repair, and replacements to the common areas and facilities and to the exterior portions of the Units including siding, roofing, and original front porches, but not including decks, patios, and other porches shall be performed by the TRUSTEES and shall



be charged to all the Unit Owners as a common expense, excepting to the extent that the same are necessitated by the negligence, misuse, or neglect of a Unit Owner or his/her Tenant, guest, employee, occupant, child(ren), licensee, or pet, in which case such expense shall be charged to such Unit Owner. Each Unit Owner is responsible for maintenance and repair of decks, patios, or other limited common areas. If such Unit Owner fails to maintain such deck, patio, or limited common area or additional porches such maintenance or repair may be performed by the TRUSTEES in which case such expense shall be charged to the Unit Owner.

Any exterior changes to a Unit or Common area or interior changes which involve obtaining a building permit or affect the structure of a Unit or Common Area must be approved by a Design Review Board who will be appointed by the Unit Owners. Such changes will be approved in accordance with the Rules and Regulations of the Design Review Board to be promulgated. Said Design Review Board will be made up of eight Unit Owners who shall make decisions based on the Rules and Regulations of the Design Review Board.

#### Section 5.3 - Maintenance and Repair of Common Areas and Assessment of Common Expenses Thereof.

The TRUSTEES shall be responsible for arranging for the proper maintenance, replacement and repair of the Common Areas and Facilities. The TRUSTEES may approve payment of vouchers for such work; and the expenses of such maintenance, replacement and repair shall be assessed to the Unit Owners as common expenses as provided in Section 5.4 hereof. Provided, however, if maintenance, replacement or repair work in a given instance is necessitated by the negligence or misuse of a Unit Owner, the expense associated with such maintenance, replacement or repair work shall be assessed to such Unit Owner alone.

#### Section 5.4 - Common Expenses, Profits and Funds.

- A. The Unit Owners shall be liable for common expenses and entitled, subject to the TRUSTEES' judgment as to reserve funds, to common profits of the Condominium in proportion to their respective percentages of beneficial interest as set forth in ARTICLE IV hereof.
- B. The TRUSTEES shall establish and maintain from regular monthly assessments from each Unit Owner, an adequate reserve fund for maintenance, repair and replacement of improvements to the Common Areas of the Condominium. The Unit Owners shall be assessed to establish and maintain this fund, and shall be entitled to surplus accumulations, if any, in proportion to their respective percentages of beneficial interest as determined in accordance with ARTICLE IV hereof. Additionally, the TRUSTEES shall establish for working capital purposes or to acquire equipment or services as the TRUSTEES shall deem appropriate, a working capital fund equal to two (2) months' estimated assessments for each Unit Owner for the first fiscal year hereof, payable at the time of conveyance of the unit

purchased by him and within two years after conveyance of the first such unit by the Sponsor of the Master Deed or its successor in interest with respect to all units then owned by it, the amount attributable to each latter such unit (and any interest thereon) to be returned to the Sponsor or its successor in interest upon the conveyance of that unit to another, and the payment by the purchaser to the TRUSTEES of such two (2) months' assessment. Amounts paid to the working capital fund shall not be considered as an advance against the assessments otherwise assessed under Section 5.4.

- C. At least thirty (30) days prior to the commencement of each fiscal year of this Trust, 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 assessment, according to their percentages of beneficial interest in the Common Areas and Facilities, and the amount shown on such statement shall, unless otherwise provided therein, be due and payable within thirty (30) days after the same is rendered. In the event an annual assessment is not made as above required, an assessment shall be presumed to have been made in the amount of the previous year's assessment. In the event that the TRUSTEES shall determine at any time during any fiscal years that the assessment so made is less than the common expenses actually incurred, or in the reasonable opinion of the TRUSTEES likely to be incurred, the TRUSTEES may make one (1) or more supplemental assessment and render statements to the Unit Owners for such assessments in the same manner as is done for annual assessments. The TRUSTEES shall, insofar as is feasible, provide for payments of statements in monthly, substantially equal, installments. The amount of each such statement shall be a personal liability of the Unit Owner (jointly and severally among the Owners of each Unit) and if not paid when due, shall carry interest at the rate equal to eighteen (18%) percent per annum and shall constitute a lien on the unit of the Unit Owner assessed, pursuant to the provisions of Section 6 of the Massachusetts General Laws, Chapter 183A. Any payment not received within fifteen (15) days will result in a late charge of three (3%) percent of any amount overdue.
- D. No Unit Owner shall be liable for the payment of any part of the common expenses assessed against his Unit subsequent to the time he transfers record title to his Unit. Each new Unit Owner, by taking title to his Unit, shall thereby assume and become personally liable for the payment of all unpaid common-expenses assessed against such Unit prior to its acquisition by him, except that any purchaser at a foreclosure sale of the first mortgage or transferee by deed in lieu of such foreclosure, or any purchaser from the first mortgagee of a Unit should the first mortgagee purchase at the said foreclosure sale or acquire title by such deed in lieu of foreclosure, shall not be liable for the payment of assessments unpaid and due as of the time of his acquisition, except as set forth by Massachusetts General Laws, Chapter 183 or for six months common charges and costs of collection, including attorneys' fees, but

he shall be liable for assessments becoming due thereafter.

- E. In the event of default by any Unit Owner in paying to the TRUSTEES the common expenses charges against his Unit, such Unit Owner shall be obligated to pay all expenses, including attorney's fees, incurred in any proceeding brought to collect such unpaid common expense. Such expenses shall constitute a lien on the Unit pursuant to the provisions of Section 6 of said Chapter 183A.
- F. The TRUSTEES shall expend common funds only for such purposes as are permitted hereby and by the provisions of Chapter 183A.

Section 5.5 - Certificate with Respect to Unpaid Common Expenses; Provisions Regarding Sale and Transfer of Units

- A. No Unit Owner shall convey, mortgage, sell or lease his unit unless and until he shall have paid in full to the TRUSTEES all unpaid common expenses theretofore assessed by the TRUSTEES against his Unit, together with the interest due thereon and any costs of collection associated therewith. Within ten (10) business days after receiving an appropriate request from a Unit Owner, a purchaser of a Unit under a written contract of sale therefor or a Unit mortgagee addressed to the trustees, the TRUSTEES shall supply a certificate in accordance with Section 6(d) of Chapter 183A in recordable form stating the amount of any unpaid common expenses (including interest due thereon and costs of collection associated therewith) attributable to the Unit. Upon recording of such a certificate, the amount of any unpaid assessment stated therein shall be conclusively established as of such date in favor of all persons who rely thereon. Such certificate may be signed by any TRUSTEE and recorded at the Hampshire County Registry of Deeds and other appropriate public offices. TRUSTEES may in their discretion establish a charge for supplying said certificate to reimburse the Trust for the costs associated with the production of such certificate. In addition, trustees may establish a charge for any septic system inspection certificates for Unit Owners wishing to sell or mortgage their Units and requesting a copy of such inspection report.

B. Sale and Transfer of Units.

1. Intra-Family Transfers and Transfers through Inheritance

(a) Direct transfers of unit ownership shall be permitted between immediate family members, defined as mother, father, son, daughter, brother, sister, grandchild, grandparent, stepparent or stepchild, or domestic partner. Except in the case of inheritance, any unit owner wishing to make such a transfer shall give written notice to the Rocky Hill Condominium Association no less than 30 days before the intended date of transfer. Said notice shall state the name of the intended transferee, and the relationship of same to the Unit Owner.

(b) Transfers of unit ownership to an heir through inheritance shall also be permitted. In the case of inheritance, the designated heir, or the executor or administrator of the estate, shall provide written notice of transfer as set forth in the preceding paragraph.

C. Other Sales or Transfers of Ownership:

1. Except as set forth in Section B above, and excepting any sales by way of foreclosure, any Unit Owner wishing to sell or transfer ownership of a Unit shall give written notice of intention to sell the Unit to the Rocky Hill Condominium Association. Said notice shall be sent to the Association by certified mail, return receipt requested.

2. Said written notice shall contain a copy of an appraisal performed within the past three months by a certified appraiser stating the fair market value of the Unit. The appraised value of the Unit, or its assessed value, at the option of the Unit Owner, shall be the price at which the Unit is offered for sale; provided, that if the Unit is sold on the open market, as set forth in paragraph 3d below, the sale price shall be independently negotiated between the Unit Owner and Buyer.

3. Said written notice shall offer the Unit for sale in the following order of priority:

(a) First, to any current Unit Owner in the Rocky Hill Cohousing community for their occupancy;

(b) Second, to prospective Unit Owners on the waiting list;

(c) Third, to the Rocky Hill Condominium Association;

(d) Fourth, to a willing buyer on the open market.

4. Upon receipt of said written notice, the Rocky Hill Condominium Association will give email or written notification to all Unit Owners and members of the waiting list stating the availability of the Unit, the name of the Unit Owner, and the sale price. Within twelve (12) days of the sending of such notice any Unit Owner or waiting list member may make a written offer to purchase the Unit. Any such offer shall include a statement that the offeror has sufficient financial means to purchase the Unit, or to qualify for mortgage financing to make the purchase.

5. If within the twelve-day period stated above, more than one Unit Owner submits an offer to purchase the Unit, the right of first purchase shall be determined by lottery.

6. If within the twelve-day period stated above, no Unit Owner submits an offer

to purchase the Unit, the Unit shall be made available to purchase to members of the waiting list, with the right of first purchase afforded to the person whose name is highest on the list.

7. In the case of a Unit Owner or member of the waiting list who obtains the right to purchase the unit, the Seller shall have the right to require an earnest-money deposit of One Thousand and 00/100 (\$1,000.00) Dollars, to be credited to the purchase price at closing, within ten (10) days of designation as having the right of first purchase. Within that same ten-day period, the Buyer shall furnish to Seller evidence of mortgage pre-qualification by a bank or financial institution. With the consent of the Seller an alternative demonstration of financial means to complete the purchase shall be acceptable.

8. In the event that no Unit Owner or member of the waiting list desires to purchase the Unit, or in the event that a Unit owner or member of the Waiting List with right of first purchase is unable to satisfy the requirements of the preceding paragraph, the Unit shall be offered for sale to the Rocky Hill Condominium Association. The Association shall have twelve (12) days from the date of the offer to exercise its right to purchase, or, in the alternative, elect to offer the unit again to Unit Owners and members of the waiting list in the aforementioned order of priority.

9. If, after 120 days of the first notice of sale, no closing of sale of the Unit has occurred, Seller shall have the option to sell the Unit on the open market.

D. Unpaid Common Expenses.

1. All unpaid common expenses must be paid in full before Unit owner can sell or transfer ownership or lease a Unit.

2. Within ten (10) days after receiving request from a Unit Owner intending to sell or transfer Unit, the Rocky Hill Condominium Association shall furnish a certificate stating the amount of any unpaid common expenses.

3. No Unit Owner shall be liable for payment of any part of common expenses against their Unit subsequent to transfer of title. New owner by taking title, assumes expenses assessed against the unit prior to purchase (exception applies to foreclosure sale of the first mortgage.)

E. Resolution of Disputes or Request for Exceptions to By-laws Regarding Sale or Transfer of Units.

1. Upon written request of any Unit Owner made within twelve days of the offering of a Unit for sale, and for good cause shown, the Rocky Hill Condominium Association shall consider exceptions to these By-laws regarding sale and transfer of Units.

2. The types of requests the Association may consider shall include, but not be limited to, the following:

(a) requests to extend the time for submission of an offer for sale, or to modify any time period set forth in the sale process;

(b) a request by the selling Unit Owner to obtain a new appraisal to reflect changed market conditions from the original date of sale;

(c) requests to permit the sale or transfer of a Unit pursuant to the by-laws provisions governing intra-family transfers to a person not within the definition of persons who qualify as intra-family transferees, as set forth herein;

(d) requests to afford right of first purchase priority to a prospective buyer on the waiting list other than the prospective buyer highest on the waiting list.

3. Upon receipt of a request for an exception to the By-laws, the Rocky Hill Condominium Association shall make a prompt recommendation whether the request should be accepted, rejected or accepted with modifications, and submit that recommendation to the Rocky Hill Cohousing community for a consensus vote.

4. Except with the consent of the selling Unit Owner, under no circumstances shall any time period be extended or any other action taken that would cause the time period for closing to be extended beyond the 120-day period set forth herein.

#### Section 5.6 - Rebuilding, Restoration and Condemnation.

A. In the event of damage to or destruction of the Common Areas and Facilities of the Condominium as a result of fire or other casualty (unless the loss to the Common Areas and Facilities exceeds ten (10%) percent of the value of the Condominium prior to the casualty and seventy-five (75%) percent or more of the Unit Owners do not agree to proceed with the repair or restoration as described in Paragraph E of this Section ) or in the event of damage to or destruction of any Unit as a result of fire or other casualty, whether or not the Common Areas and Facilities have been damaged or destroyed (unless said Paragraph E of this Section is applicable), the TRUSTEES shall promptly adjust and collect the loss, arrange for the prompt repair or restoration of the damaged areas, and disburse the proceeds of all insurance policies in payment of all costs and expenses actually incurred in connection with such repair or restoration in appropriate progress payments and with appropriate retainage.

B. In the event that the total cost of repair or restoration as estimated on the basis of an independent appraisal, or as determined during the course of repair or restoration, exceeds the total sum of available insurance proceeds, then the TRUSTEES shall allocate the available proceeds between (1) Common Areas and

Facilities and (2) Units (or Unit) in proportion to the estimated cost of repairing or restoring each, and shall assess, levy or charge all Unit Owners, as a common expense, the amount estimated to repair or restore the Common Areas and Facilities in excess of the insurance proceeds available therefor and shall assess, levy or charge the Owner(s) of a Unit in which a loss has occurred for the amount estimated to repair or restore said Unit or Units in excess of the insurance proceeds available therefor.

- C. The TRUSTEES may perform emergency work essential to the preservation and safety of the Condominium or the safety of persons, or required to avoid the suspension of any essential service to the Condominium, without having first adjusted the loss or obtained proceeds of insurance.
- D. If there shall have been repair or restoration pursuant to the foregoing provisions of this Section and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds shall be divided into separate shares for the Trust and the Unit Owners of the damaged Unit, and shall then be paid over to the TRUSTEES and/or such Unit Owner entitled to a share.
- E. Notwithstanding the foregoing, if as a result of fire or other casualty the loss exceeds ten (10%) percent of the value of the Condominium prior to the casualty, and
  - (1) If seventy-five (75%) percent of the Unit Owners do not agree within one hundred twenty (120) days after the date of the casualty to proceed with repair or restoration, the Condominium, including all Units, shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of the partition sale together with any Common Funds shall be divided in proportion to the Unit Owner's respective Beneficial Interests, but, to the extent permitted by law, shall be paid first to the holder of any mortgage. Upon such sale of the Condominium, it shall be deemed removed from the provisions of Chapter 183A.
  - (2) If seventy-five (75%) percent of the Unit Owners agree to proceed with the necessary repair or restoration, the cost of the rebuilding of the Condominium in excess of any available Common Funds including the proceeds of any insurance, shall be a Common Expense, Provided, however, that if such excess cost exceeds ten (10%) percent of the value of the Condominium prior to the casualty, any Unit Owner who did not so agree may apply to the Superior Court on such notice to the TRUSTEES as the Superior Court shall direct, for an order directing the purchase of his Unit by the TRUSTEES at the fair market value thereof as approved by the Superior Court. The cost of any such purchase shall be a Common Expense.

- F. In the event of a taking of all or part of the Condominium under the powers of eminent domain, the provisions of Paragraphs A through E of this Section shall apply as if the taking were a casualty loss, with the proceeds of the taking award being treated in the same manner as would the proceeds of an insurance settlement. Provided, however, if the taking award specifically allocates certain damages as being attributable to the Common Areas and Facilities and/or particular Units, such allocations shall be used in allocating the proceeds pursuant to the provisions of said Paragraphs A through E.

#### Section 5.7 – Improvements to Common Areas and Facilities.

If and whenever the TRUSTEES shall propose to make any improvement to the Common Areas and Facilities of the Condominium, or shall be requested in writing by the twenty-five (25%) percent of Unit Owners to make any such improvement, the TRUSTEES shall submit to all Unit Owners (a) a form of agreement (which may be in several counterparts) specifying the improvement or improvements proposed to be made and estimated cost thereof, and authorizing the TRUSTEES to proceed to make the same, and (b) a copy of the provisions of Section 18 of said Chapter 183A. The TRUSTEES shall then notify all Unit Owners of such proposed improvements and in the event the Unit Owners are unable to reach a consensus after using their best efforts to reach consensus, then upon (a) the receipt by the TRUSTEES of such agreement signed by seventy-five (75%) percent or more of the Unit Owners or (b) the expiration of ninety (90) days after such agreement was first submitted to the Unit Owners, whichever of said (a) and (b) shall first occur, the TRUSTEES shall notify all Unit Owners of the percentage of Unit Owners who have then signed such agreement. If such percentage is seventy-five (75%) percent or more, the TRUSTEES shall proceed to make the improvement or improvements specified in such agreement and, in accordance with said Section 18 of Chapter 183A, shall charge the cost of improvement to all the Unit Owners. The agreement so circulated may also provide for separate agreement by more than fifty (50%) percent but less than seventy-five (75%) percent of the Unit Owners to consent, the TRUSTEES shall proceed to make such improvement or improvements and shall charge the same to the Unit Owners so consenting.

#### Section 5.8 - Arbitration of Disputed Trustee Action.

Notwithstanding anything contained in Sections 5.6 and 5.7, in the event that any Unit Owner, by written notice to the TRUSTEES, shall dissent from any determination of TRUSTEES with respect to the value of the Condominium or any other determination or action of the TRUSTEES under Section 5.6 and 5.7, and such dispute shall not be resolved within thirty (30) days after such notice, then either the TRUSTEES or the dissenting Unit Owner shall submit the matter to mediation first and failing to mediate, then to arbitration. For that purpose, one (1) arbitrator shall be designated by the TRUSTEES, one (1) by the dissenting Unit Owner and a third by the two arbitrators so designated. Such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association and shall be binding upon all parties. The TRUSTEES' decision that work constitutes a repair, rebuilding or restoration shall be binding on all Unit Owners



unless shown to have been made in bad faith. The TRUSTEES shall in no event be obliged to proceed with any repair, rebuilding or restoration, or any improvement, unless and until they have received funds in an amount equal to the TRUSTEES' estimate of all costs thereof.

Section 5.9 - Insurance.

- A. The TRUSTEES shall obtain and maintain, to the extent obtainable, a master policy of insurance providing fire and extended coverage insurance insuring the Condominium, including, without limitation, the Common Areas and Facilities, all of the Units with all fixtures, additions, alterations and improvements thereof, but not including any furniture, furnishings, household and personal property belonging to and owned by individual Unit Owners in an amount at least equal to the full replacement value thereof (as determined by the TRUSTEES not less frequently than on the renewal date of the policy), without deduction for depreciation. In determining full replacement value, the TRUSTEES may reasonably rely upon the advice of the insurer or their insurance agent. Such insurance shall name the TRUSTEES as Insurance TRUSTEES for the benefit of all Unit Owners and their mortgagees, with loss payable to and adjusted by the TRUSTEES as Insurance TRUSTEES in accordance with the provisions of these By-Laws.
- B. Policies for such casualty insurance shall provide: (i) that the insurance company waives any right of subrogation against the TRUSTEES and their agents and employees and the Unit Owners and their respective employees, agents, tenants and guests; (ii) that the insurance shall not be prejudiced by an act or negligence of any Unit Owners or occupants of Units or any other person or firm (including employees and agents of the TRUSTEES) when such act or neglect is not within the control of the TRUSTEES (or Unit Owners collectively); (iii) that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to all Unit Owners and mortgagees of Units to whom certificates of insurance have been issued; (iv) that recovery thereunder shall not be affected on account of the availability of proceeds under any policies obtained by individual Unit Owners covering their own Units; and (v) if available, 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.
- C. The TRUSTEES shall also obtain and maintain, to the extent obtainable, public liability insurance in such amounts as the TRUSTEES may, from time to time determine but in no case less than a single limit of ONE MILLION (\$1,000,000.00) DOLLARS for injury or death to one (1) person and for injury or death to more than one (1) person in the same accident and a limit of ONE MILLION (\$1,000,000.00) DOLLARS for damage to property, covering the TRUSTEES and each Unit Owner with respect to Common Areas and Facilities, such insurance to provide cross liability coverage with respect to liability claims of any one (1) insured thereunder against any other insured thereunder. This policy must contain a provision that it cannot be canceled or substantially modified unless at least ten (10) days written

notice is given to the Trust and holders of mortgages on individual units.

- D. A fidelity bond naming the Condominium Trust as an obligee and covering all officers, directors, TRUSTEES, and employees of this Trust, and every management agent appointed by the TRUSTEES with coverage as the TRUSTEES in their business judgment shall reasonably deem adequate, but in no event less than three (3) months' assessments for the entire Condominium then being charged under Section 5.4 plus the aggregate of reserve funds then held by the TRUSTEES under Section 5.4. Such fidelity bond shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employee." This bond may not be canceled or substantially modified unless at least ten (10) days' written notice is given to the Trust and holders of mortgages on individual units.
- E. Such other insurance as the TRUSTEES shall determine to be appropriate.
- F. The Unit Owners shall carry insurance for their own benefit insuring their carpeting or other floor covering, wall coverings, furniture, furnishings and other property located within their respective Units, provided that all such policies shall contain waivers of subrogation, and further provided that the liability of the carriers issuing insurance obtained by the TRUSTEES shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner.
- G. Each Unit Owner shall have the duty to report immediately to the TRUSTEES any improvements made to his Unit in excess of ONE THOUSAND (\$1,000.00) DOLLARS, so that the TRUSTEES may increase as necessary the amount of insurance coverage required by these By-Laws, and the Unit Owner making the improvement shall pay the cost of the additional insurance coverage, if any, resulting therefrom.
- H. Such master policies shall provide that adjustment of loss shall be made by the TRUSTEES and that all proceeds thereof shall be payable to the TRUSTEES as insurance trustees under these By-Laws. The duties of the TRUSTEES as insurance trustees shall be to negotiate losses and execute releases of liability, to receive such proceeds as are paid, to hold, use and disburse the same for the purposes stated in this Section and Sections 5.6 and 5.7 and to perform all other acts necessary to accomplish such purposes. Each Unit Owner, by accepting this Unit Deed, appoints the TRUSTEES as insurance trustees as attorney-in-fact for such purposes. If repair or restoration of the damaged portions of the Condominium is to be made, all insurance loss proceeds shall be held in shares for the Trust and the Owners of damaged Units in proportion to the respective costs of repair or restoration of the damaged portions of the Common Areas and Facilities and of each damaged Unit, with each share to be disbursed to defray the respective costs of repair or restoration of the damaged Common Areas and Facilities and damaged Units, and with any excess of any such share of proceeds above such costs of repair or restoration to be paid to the Trust or Unit Owner for whom held upon

completion of repair or restoration; but if pursuant to Sections 5.6 and 5.7, restoration or repair is not to be made, all insurance loss proceeds shall be held as Common funds of the Trust and applied for the benefit of Unit Owners in proportion to their percentage interests as listed in Section 4.1, if the Condominium is totally destroyed, and, in the event of a partial destruction, to those Unit Owners who have suffered damage in proportion to the damage suffered by them. Such application of insurance proceeds for the benefit of Unit Owners shall include payment directly to a Unit Owner's mortgagee if the mortgage with respect to such Unit so requires.

#### Section 5.10 - Meetings.

- A. Unit Owners. There shall be an annual meeting of Unit Owners at such time and place as may be determined by the TRUSTEES. Special meetings (including a meeting in lieu of a passed annual meeting) of the Unit Owners may be called at any time by the TRUSTEES and shall be called by the TRUSTEES upon the written request of more than thirty-three (33%) percent of the Unit Owners. Written notice of any such special meeting designating the place, day and hour thereof shall be given by the TRUSTEES to all Unit Owners at least ten (10) days prior to the date so designated. At the annual meeting of the Unit Owners the TRUSTEES shall submit reports of the management and finances of the Condominium. Whenever at any meeting the TRUSTEES propose to submit to the Unit Owners any matter with respect to which approval of or action by the Unit Owners is necessary or appropriate, the notice of such meeting shall reasonably specify such matter. The presence in person of a majority of the Unit Owners shall be necessary to constitute a quorum at all meetings of the Unit Owners for the transaction of business. Except as otherwise specified by law, the Master Deed or these by-laws, action taken by a majority of Unit Owners then present at a meeting at which there is a quorum shall be binding. However, prior to any vote, the Unit Owners will make all attempts to reach a full consensus on all matters including use of outside consultants, to help Unit Owners reach consensus.
- B. Action Without Meeting. Any action required or permitted to be taken by the membership may be taken without a meeting if all Unit Owners consent in writing to the action. Such action by written consent shall have the same force and effect as unanimous agreement of the Unit Owners.
- C. TRUSTEES. The TRUSTEES shall meet annually on the date of the annual meeting of the Unit Owners. Other meetings may be called by any TRUSTEE (if there be no more than three (3) then in office) or by any two (2) TRUSTEES (if there be more than three (3) then in office), provided that notice of each such other meeting stating the place, day and hour thereof shall be given at least two (2) days before such meeting to the other TRUSTEES. A majority of TRUSTEES then in office shall constitute a quorum for all meetings. Notices of meetings can be waived if all TRUSTEES sign a Written Consent in lieu of meeting, or all TRUSTEES actually attend such meeting.

#### Section 5.11 - Notices to Unit Owners.

Every notice to a Unit Owner required under the provisions of this Trust, or which may be deemed by the TRUSTEES necessary or desirable in connection with the execution of the Trust 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 (1) or more of the TRUSTEES to such Unit Owner by leaving such notice, or mailing it postage prepaid and addressed to such Unit Owner, at his address at the Condominium, unless such Unit Owner has designated in writing to the TRUSTEES some other address for the receipt of notices in which case notice shall be mailed to that address. All notices shall be delivered or mailed at least seven (7) days prior to the date fixed for the happening of the matter, thing or event of which such notice is given. Whenever at any meeting the TRUSTEES propose to submit to the Unit Owners any matter with respect to which specific approval of, or action by, the Unit Owners is required by law or this Trust, the notice of such meeting shall so state and reasonably specify such matter.

#### Section 5.12 - Inspection of Books: Reports to Unit Owners.

Books, accounts and records of the TRUSTEES and of Unit Owners shall be open to inspection by any one (1) or more of the TRUSTEES, the Unit Owners and any first mortgagee at all reasonable times. The TRUSTEES shall, as soon as reasonably possible after the close of each fiscal year, or more often if convenient for them, submit to the Unit Owners a report of the operations of the TRUSTEES for such year, which report shall include financial statements in such summary form and in only 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 three (3) months after the date of its receipt by him shall be deemed to have assented thereto.

#### Section 5.13 - Checks, Notes, Drafts and Other Instruments.

Check, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the TRUSTEES or of the Trust must be signed by at least two (2) TRUSTEES, or by any person or persons to whom such power may have been delegated by not less than a majority of the TRUSTEES.

#### Section 5.14 - Fiscal Year.

The fiscal year of the Trust shall be the year ending December 31.

#### Section 5.15 - Rules and Regulations.

The TRUSTEES may from time to time in accordance with Consensus decision of Unit Owners adopt, amend and rescind rules and regulations governing the operation and use of the Common Areas and Facilities, and such restrictions on and requirements respecting the use and maintenance of the units and the use of the Common Areas and

Facilities as are consistent with 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. Such rules and regulations and any changes therein shall become effective upon copies thereof being given to the Unit Owners. The TRUSTEES do hereby adopt the initial Rules and Regulations annexed to this DECLARATION OF TRUST.

## ARTICLE VI

### RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUSTEES

#### Section 6.1 - Reliance on Identity of Trustees.

No purchaser, mortgagee, lender or other person dealing with the TRUSTEES, as they then appear of record in the Hampshire County Registry of Deeds, shall be bound to ascertain or inquire further as to the identity of said TRUSTEES, or be affected by any notice, whether implied, constructive or actual, otherwise than by a Certificate thereof signed by one (1) or more of the persons appearing of record in the Registry of Deeds as TRUSTEES, and such record or certificate shall be conclusive evidence of the personnel of the TRUSTEES and of any changes therein. The receipts of the TRUSTEES, or any one (1) or more of them, for money or things paid or delivered to them or him shall be effective discharges therefrom to the persons paying or delivering the same, and no person from whom the TRUSTEES, or any one (1) or more of them shall receive any money, property or other credit shall be required to see to the application thereof. No purchaser, mortgagee, lender or other person dealing with the TRUSTEES or with any real or personal property which then is or formerly was Trust property shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, nor otherwise as to the purpose or regularity of any of the acts of the TRUSTEES and any instrument of appointment of a new TRUSTEE or resignation or removal of an old TRUSTEE purporting to be executed by the TRUSTEES, Unit Owners or other persons required by this Trust to execute the same, shall be conclusive in favor of any such purchaser or other person dealing with the TRUSTEES of the matters therein recited relating to such discharge, resignation, removal or appointment or the occasion thereof.

#### Section 6.2 - No Personal Liability in 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 an agent or employee of the TRUSTEES, or by reason of anything done or omitted to be done by or on behalf 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 contract or

claim, or for the payment of any debts, 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 therefore; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Unit Owners under provisions of Chapter 183A.

Section 6.3 - All Obligations Subject to this Trust.

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.

ARTICLE VII

AMENDMENT AND TERMINATION

Section 7.1 - Amendment.

Except as stated in Section 8, the TRUSTEES, with the consent in writing of seventy-five (75%) of Unit Owners, after such Unit Owners use their best efforts to reach a consensus on said amendment and said consensus cannot be obtained, may at any time and from time to time amend, alter, add to, or change this DECLARATION OF TRUST in any manner or to any extent, the TRUSTEES first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided always, however, that no such amendment, alteration, addition or change (a) according to the purport of which the percentage of the beneficial interest hereunder of any Unit Owner or Unit would be altered or in any manner or to any extent whatsoever modified or affected, so as to be different from the percentage of the undivided interest of such Unit Owner in the Common Areas and Facilities as set forth in the Master Deed therein, (b) which adversely affects any Unit owned by the Sponsor may be changed without Sponsor's written consent, or (c) which would render this Trust contrary to or inconsistent with any requirements or provisions of Chapter 183A, shall be valid or effective. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this paragraph shall become effective upon the recording with the 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 in Massachusetts for the acknowledgement of deed by any three (3) TRUSTEES, if there be at least three (3) then in office (or one (1) TRUSTEE if there be only one (1) in office), and any two (2) TRUSTEES if there be only two (2) in office setting forth in full the amendment, alterations, addition or change and reciting the consent of the Unit Owners required by this Trust to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all prerequisites to the validity 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. It is obligatory upon the TRUSTEES to amend, alter, add to or change the DECLARATION OF TRUST upon obtaining the necessary consent as hereinabove provided.

Section 7.2 - Termination.

The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of Chapter 183A in accordance with the procedure set forth in Section 19 thereof.

Section 7.3 - Distribution upon Termination.

Upon the termination of this Trust, the TRUSTEES may, subject to and in accordance with the provisions of Chapter 183A, sell and convert into money the whole of the Trust property or any part or parts thereof, and, after paying or satisfying all known liabilities and obligations of the TRUSTEES and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, all other property then held by them in trust hereunder to the Unit Owners as tenants-in-common, according to their respective percentages of beneficial interest hereunder. All valuations made by the TRUSTEES shall be conclusive. In making any sale under this provision, the TRUSTEES shall have power to sell by public auction or private sale or contract and buy in or rescind or vary any contract of sale or contract 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 by their performance thereof be shown to be in their judgment necessary or desirable in connection therewith. The power of sale and all other powers herein given to the TRUSTEES shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distribution of Trust property may have passed.

ARTICLE VIII

FHLMC AND FNMA COMPLIANCE

Notwithstanding anything to the contrary in this DECLARATION OF TRUST OF ROCKY HILL CONDOMINIUM ASSOCIATION, the following Provisions shall apply and take Precedence:

Section 8.1 - Definitions:

- (a) The term "FHLMC" means the Federal Home Loan Mortgage Corporation.
- (b) The term "FNMA" means the Federal National Mortgage Association.
- (c) The term "Eligible Mortgage Holder" means a holder of a first mortgage on a Unit.

- (d) The term "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters from this Trust.
- (e) The term "Constituent Documents" means, collectively, the Master Deed, this Trust and the By-Laws and Rules and Regulations thereto and the Master Plans.

Section 8.2 - Rights of Eligible Mortgage Holders and Eligible Insurance or Guarantors.

- (a) **Notice:** Upon written request to this Trust identifying the name and address of the holder, insurer or guarantor and the Unit number or address, any such eligible mortgage holder or eligible insurer or guarantor will be entitled to:
  - (1) Timely written notice of any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit or which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable.
  - (2) Timely written notice of any lapse, cancellation or material modification of any insurance policy maintained by Trust;
  - (3) Notification of any default in the performance by the individual Unit borrower of any obligation under the Condominium constituent documents which is not cured within thirty (30) days.
  - (4) Written certification as to the percentage of Unit Owners who are more than one (1) month delinquent in the payment of condominium Common Area charges or assessments.
  - (5) A statement to the best of the TRUSTEES' knowledge as to the percentage of Units which have been sold and conveyed to bona fide purchasers (who have closed or who are legally obligated to close) and the percentage of Units which are occupied by individual Unit Owners as their primary year round residence; and in the making of the statements referred to in this sentence, the TRUSTEES shall be entitled to rely upon verbal or written information furnished by Unit Owners and the TRUSTEES shall not be obligated to make any independent inquiry or attempt to confirm the veracity of any statements made by a Unit Owner, and the statements made by the TRUSTEES under the provisions of this sentence shall be understood to have been made to the best of the TRUSTEES' knowledge and shall not constitute a warranty, representation, or certification.
  - (6) Inspect the books, records and financial statements of the



Condominium Trust during normal business hours or under other reasonable circumstances.

(7) Receive a financial Statement of the Condominium Trust within one hundred twenty (120) days following the end of any fiscal year of the Trust.

(8) Receive written notice of all meetings of the Condominium Trust, and be permitted to designate a representative to attend all such meetings.

(9) Receive timely written notice of any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified herein.

(b) Other Provisions for Eligible Mortgage Holders: To the extent permitted by applicable law, eligible mortgage holders shall also be afforded the following rights:

(1) Any restoration or repair of the Condominium, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Master Deed, and the original plans and specifications, unless other action is approved by eligible holders holding mortgages on Units which have at least fifty-one (51%) percent of the votes of Units subject to eligible holder mortgages.

(2) Any election to terminate the legal status of the Condominium after substantial destruction or a substantial taking in condemnation of the Condominium must be approved by eligible holders holding mortgages on Units which have at least fifty-one (51%) percent of the votes of Units subject to eligible holder mortgages.

(3) Unless the formula for reallocation of interests in the Common Areas after a partial condemnation or partial destruction of the Condominium is fixed in advance by the constituent documents or by applicable law, no reallocation of interests in the Common Areas resulting from a partial condemnation or partial destruction of the Condominium may be effected without the prior approval of eligible holders holding mortgages on all remaining Units whether existing in whole or in part, and which have at least fifty-one (51%) percent of the votes of such remaining Units subject to eligible holder mortgages.

(4) When professional management has been previously required by any eligible mortgage holder or eligible insurer or guarantor, whether such entity became an eligible mortgage holder or eligible insurer or guarantor at that time or later, any decision to establish self-management by this Trust shall require the prior consent of Owners of Units to which at least sixty-seven (67%) percent of the votes in this Trust are allocated and the approval of eligible holders holding mortgages on Units which have at least fifty-one

(51%) percent of the votes of Units subject to eligible holder mortgages.

(c) For the purposes of the Master Deed and this Declaration of Trust, wherever a Mortgagee's consent is required, consent shall be deemed to have been given if a Mortgagee receives a notice and fails to object to said notice within thirty (30) days of receipt of such notice.

### Section 8.3 - Amendment to Documents.

The following provisions do not apply to amendments to the constituent documents or termination of the Condominium regime made as a result of destruction, damage or condemnation pursuant to Section 8.2 above.

(a) The consent of all Unit Owners, but failing such consent after good faith efforts to obtain a consensus, then the consent of seventy-five (75%) percent of Unit Owners and the approval of eligible holders holding mortgages on Units which have at least sixty-seven (67%) percent of the votes of Units subject to eligible holder mortgages, shall be required to terminate the legal status of the project as a Condominium. b) the consent of all Unit Owners, but failing such consent after good faith efforts to obtain a consensus, the consent of the seventy-five (75%) percent of Unit Owners and the approval of eligible holders holding mortgages on Units which have at least fifty-one (51%) percent of the votes of Units subject to eligible holder mortgages, shall be required to add or amend any material provisions of the constituent documents of the project, which establish, provide for, govern or regulate any of the following:

- (1) Voting;
- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of the Common Areas (or Units if applicable);
- (4) Insurance or Fidelity Bonds;
- (5) Rights to use the Common Areas;
- (6) Responsibility for maintenance and repair of the several portions of the Condominium;
- (7) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the project;
- (8) Boundaries of any Unit;
- (9) The interests in the general or limited Common Areas;

- (10) Convertibility of Units into Common Areas or of Common Areas into Units;
- (11) Leasing of Units;
- (12) Imposition on any right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit;
- (13) Any provisions which are for the express benefit of Mortgage Holders, Eligible Mortgage Holders or Eligible Insurers or Guarantors of first mortgages on Units.
- (14) Abolition of Right of First Purchase.

An addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An Eligible Mortgage Holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request, but this sentence shall not apply to FHLMC.

The provisions of Section 8.3 shall not apply to the extent necessary to allow Declarant to add the Buildings and Units pursuant to the Phasing Rights set forth in the Master Deed.

#### Section 8.4 - First Mortgage Obtaining Title.

Any first mortgagee who obtains title to a Condominium Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Unit's unpaid assessments or charges which accrue prior to the acquisition of title to such Unit by the mortgagee, except for six (6) months' common charges, costs of collection and attorney's fees as provided in MGL, Chapter 183A which may have priority over the first mortgage, and shall take the property free of any claims for such assessments or charges.

#### Section 8.5 - Additional Prohibitions.

Except as provided by statute and in case of condemnation or substantial loss to the Units and/or Common Area of the Condominium unless at least two-thirds (2/3) of the first mortgagees (based upon one (1) vote for each first mortgage owned), or seventy-five (75%) percent Owners (other than the sponsors, developer, or builder) of the individual Condominium Units have given their prior written approval, this Trust shall not be entitled to:

- (a) By act or omission, seek to abandon or terminate the Condominium project;

- (b) Change the pro rata interest or obligations of any individual Condominium Unit for the purpose of (i) levying assessments or charges or allocating distributions or hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of such Condominium Unit in the Common Areas;
- (c) Partition or subdivide any Condominium Unit, except as provided in Section 8.7, Leases;
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas. (The granting of easements, licenses, leases, limited common areas and other encumbrances for public utilities or for other purposes consistent with the intended use of the Common Areas by the Condominium project shall not be deemed a transfer within the meaning of this clause);
- (e) Use hazard insurance proceeds for losses to any Condominium property (whether to Units or to Common Areas) for other than the repair, replacement or reconstruction of such Condominium property. No provisions of the constituent documents shall give any Unit Owner or Owners or any other party or parties priority over any rights of first mortgagees of Condominium Units pursuant to their mortgages in the case of a distribution to Condominium Unit Owners of insurance proceeds or condemnation awards for losses to or taking of Condominium Units and/or Common Areas and Facilities.

The provisions of Section 8.5 shall not apply to the extent necessary to allow Declarant to add Buildings and Units pursuant to Phasing rights set forth in the Master Deed.

#### Section 8.6 - Vote or Consent.

The right of any Unit Owner to vote or grant or withhold any consent or exercise any rights pursuant to the provisions of this Trust or the Master Deed may be assigned to or restricted in favor of any Mortgagee, and the TRUSTEES shall be bound by such assignment or restriction, provided, however, that such assignment or restriction does not conflict with the provisions of said Chapter 183A and that the Mortgagee has notified the TRUSTEES of such assignment or restriction in writing.

#### Section 8.7 - Leases.

- (1) The Rocky Hill Condominium Association ascribes to the primary principle that units be owner-occupied and not operated over a long term by an absentee landlord.
- (2) Any non-owner residing in the Community, except for a period of fewer than 30 consecutive days, shall agree to become an Associate Member, as defined in the Community Rules and Regulations, whether they rent an entire unit or share the household with a unit owner.

(3) All unit rental agreements must be in compliance with applicable liability insurance requirements and town zoning and building code regulations.

(4) Associate Member tenants and resident non-owners shall enjoy the rights and responsibilities of Unit Owners but shall not have voting privileges and responsibilities.

### Rental Procedures

(1) All leases or rental agreements shall be in writing and shall be subject to and incorporate by reference the provisions of the Master Deed, these Bylaws, and the Rules and Regulations of the Community.

(2) No lease or rental agreement shall be for a period of less than 30 days or more than one year.

(3) Any Unit Owner may participate in a home-sharing arrangement, provided: (a) the Unit Owner maintains residence in the Unit; (b) any applicable rental agreement conforms to the provisions of these Bylaws.

(4) Any Unit Owner shall be allowed to create an accessory apartment, provided that any such apartment conforms to all applicable regulations and ordinances of the City of Northampton and these Bylaws, and provided that the Trustees shall have the power to regulate the creation and tenancy of accessory apartments, subject to such rules and regulations as the Community may impose.

(5) Copies of all leases and rental agreements shall be furnished to the Trustees. Any one-year lease may be renewed for a period of up to one additional year with the consent of the Trustees.

(6) Unit Owners maintain the ultimate responsibility for upkeep, repair and maintenance of the Unit during the rental or lease period. Unit Owners who will not reside within 50 miles of the Community during the term of a rental period must arrange for a local person to act as manager for the rental unit and insure its upkeep, repair and maintenance. In that event, the Unit Owner shall supply the Trustees with the name, address, and telephone number of the local manager.

(7) Tenants must participate in the upkeep of common space to the same extent as Unit Owners, consistent with their status as Associate Members of the Community.

(8) Before entering into any lease or rental agreement, the Unit Owner shall arrange for the prospective tenant to meet with the Trustees or their delegates by Committee, who shall have responsibility to approve or disapprove any tenancy based on the tenant's willingness to abide by the Master Deed, Bylaws, and Rules and Regulations, and to participate in community life.

(9) Unit Owners shall retain responsibility for payment of all common charges, fees and assessments for rented or leased Units.

Section 8.8 - Professional Management.

The TRUSTEES shall make no agreement for professional management of the Condominium, or any contract with the Declarant, which exceeds a term of three (3) years, and any such agreement shall provide for termination by either party without cause and without payment of a termination fee on not more than ninety (90) days written notice.

Section 8.9 - FHLMC; FNMA.

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

Section 9.1 - Fines – If provisions made in the Rules and Regulations for insuring compliance with all legal documents of Rocky Hill Condominium Association fail, then the TRUSTEES in their discretion may adopt fines to enforce the provisions of the Rules and Regulations. The fines shall not exceed TWENTY-FIVE AND 00/100 (\$25.00) DOLLARS per day per violation and shall be a consensual lien on the Unit of the Unit Owner found to be in violation of any rule and regulation but such lien shall not be placed on any such Unit until the violating Unit Owner has received notice of the violation and the fine and has an opportunity to have his case heard by a Committee of Unit Owners established by the Board of Trustees pursuant to provisions in the Rules and Regulations.

ARTICLE X

CONSTRUCTION AND INTERPRETATION

Section 10.1 - Construction.

In the construction hereof, whether or not so expressed, words used in the singular, words denoting males include females and words denoting persons include individuals,

firms, associations, companies (joint stock or otherwise), trusts and corporations unless a contrary intention is to be inferred from them or required by the subject matter or context. The titled headings of different parts hereof are inserted only for the convenience of reference and are not 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 laws of the Commonwealth of Massachusetts. Unless the context otherwise indicates, words defined in Chapter 183A shall have the same meaning herein.

Section 10.2 - Waiver.

The provisions of this Trust shall be waived only in writing by the party charged therewith, and not by conduct, no matter how often repeated.

Section 10.3 - Partial Invalidity.

The invalidity of any provision of this Trust shall not impair or affect the validity of the remainder of this Trust and all valid provisions shall remain enforceable and in effect notwithstanding such invalidity.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of October, 2003.

Witnesses:

_____	_____
	Glenn Koshar
_____	_____
	Mashara Newman
_____	_____
	Raymond DeMeo
_____	_____
_____	_____
_____	_____

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss.

October \_\_\_\_, 2003

Then personally appeared the above-named GLENN KOSHAR, MASHARA

NEWMAN, and ROBERT DEMEO \_\_\_\_\_  
and acknowledged the foregoing instrument to be their free act and deed, before me.

\_\_\_\_\_  
My Commission Expires: Notary Public