

Common Charge due from any Unit Owner which remains unpaid for more than thirty (30) days from the due date for payment thereof.

Section 5.10. Default in Payment of Common Charges. In the event of default by any Unit Owner in paying to the Trustees the Common Charges, the defaulting Unit Owner shall be obligated to pay interest thereon at the rate of interest per year then applicable for delinquent real estate tax payments in the Municipality from the due date thereof, together with all expenses, including reasonable attorneys' fees, incurred by the Trustees in any proceeding brought to collect the unpaid Common Charges. The Trustees shall have the right and duty to attempt to recover the unpaid Common Charges, interest thereon and the expenses of the proceeding in an action brought against the Unit Owner or by foreclosure of the lien on the Unit as provided in Section 6 of Chapter 183A. Any first mortgagee who obtains title to a condominium unit, pursuant to the remedies provided in its mortgage, or foreclosure of its mortgage, will not be liable for such unit's unpaid dues, common charges, or assessments (including interest and costs of collection and legal fees relating to the collection thereof) which accrue prior to the acquisition of title to such unit by the mortgagee, provided, however, that notwithstanding the foregoing, such first mortgagee shall be liable for such unit's unpaid common expenses, costs and attorneys fees as provided in subsection (c) of Section 6 of G.L. c. 183A as amended by Chapter 400 of the Acts of 1992 and Chapter 1 of the Acts 1993. The lien for common expense assessments shall not be affected by any sale or transfer of a unit, except that a sale or transfer pursuant to a foreclosure of a first mortgagee shall extinguish a subordinate lien for assessments which became payable prior to such sale or transfer, provided, however, that the lien for common expense assessments shall be affected by the sale or transfer of a unit to the extent set forth in subsection(c) of Section 6 of G.L. c. 183A as amended by Chapter 400 of the Acts of 1992 and Chapter 1 of the Acts of 1993. Any such delinquent assessments which are extinguished pursuant to the immediate preceding sentence may be reallocated and assessed to all units as a common expense. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a unit for liability for, nor the unit from the lien of any assessments made thereafter.

Section 5.11. Foreclosure of Liens for Unpaid Common Charges. Following a successful action brought by the Trustees to foreclose a lien on a Unit because of unpaid Common Charges, the Unit Owner shall be required to pay a reasonable rental for the use of his Unit, commencing upon the entry of judgment of foreclosure and the Plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Trustees, acting on behalf of all Unit Owners, shall have the power to purchase the Unit at the foreclosure sale and to acquire, hold, lease, mortgage, convey or otherwise deal with (but not to vote the Beneficial Interest appurtenant to) the Unit, provided, however, that if the purchase price for the Unit is more than the amount of the outstanding Common Charges due for the Unit, prior to such purchase, the Trustees shall obtain the written consent of all Unit Owners, other than the Owner of the Unit being foreclosed. The existence of the right to foreclose the lien for unpaid Common Charges shall not preclude the Trustees from suing a Unit Owner personally to recover a money judgment for unpaid Common Charges.

**Section 5.12. Statement of Common Charges.** The Trustees shall promptly provide any Unit Owner, the holder of any mortgage of a Unit or any proposed mortgagee thereof so requesting the same in writing, with a written statement in recordable form of all unpaid Common Charges assessed to the Unit, pursuant to Section 6(d) of Chapter 183A.

**Section 5.13. Insurance.**

A. The Trustees shall be required to obtain and maintain, to the extent obtainable and permitted by applicable law, master policies of multi-peril type insurance, including casualty and physical damage insurance, for the benefit of the Trustees and all of the Unit Owners, naming as the insured, and with loss proceeds payable to, the Trustees hereunder for all of the Unit Owners and their respective mortgagees, as their interests may appear (hereinafter collectively referred to as the "Insured"). Such insurance shall insure the Building, the Common Elements (including any Common Elements subject to exclusive rights and easements as provided in the Master Deed), all of the installed fixtures, interior walls, alterations, appliances and additions, including carpeting, domestic appliances, wall coverings, cabinetry and plumbing fixtures within any Unit or Common Area, windows, skylights, doors, ceilings, floors and decks; but not including (i) any furniture, furnishings, fixtures or equipment, hereinafter installed or other personal property of the Unit Owners whether within the Units or elsewhere or (ii) improvements, alterations, replacements or additions made subsequent to the date hereof within a Unit or a Common Area subject to such exclusive rights and easements, as to which it shall be the separate responsibility of such Unit Owner to insure; provided, however, that, to the extent possible, such exclusion from insurance coverage for subsequent improvements, alterations, replacements or additions shall not apply to items originally covered by such insurance which are of essentially the same type as the original items. Such insurance shall be maintained in an amount at least equal to the full replacement value of the insured property (exclusive of foundations) without deduction for depreciation, and shall insure against loss or damage by fire and other hazards covered by the standard extended coverage endorsement and such other hazards or risks as the Trustees from time to time, in their discretion shall determine to be appropriate, including, without limitation, vandalism, malicious mischief, windstorm, and water damage, earthquake, flood and boiler and machinery explosion or damage.

B. All policies of casualty or physical damage insurance shall, to the extent obtainable, (i) provide that the policies may not be canceled, terminated, or substantially modified without at least twenty (20) days' written notice to each Insured; (ii) provide that, notwithstanding any provisions thereof which give the insurer the right to elect to restore damage in lieu of making a cash settlement, such election may not be exercised without the approval of the Trustees and may not be exercised, in any event, if in conflict with the terms of this Declaration of Trust; (iii) include waivers of subrogation as to any claims against the Trust, the Trustees, the officers, the manager, the managing agent and their respective agents and employees, and the Unit Owners and their respective employees, agents and guests, and of any defense based on invalidity arising from the acts of the insured; (iv) provide 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 Unit; and (v) provide that adjustments of loss shall be made by the Trustees.

C. The Trustees, as insurance trustees hereunder for the benefit of the Insured, shall collect all casualty loss insurance proceeds, shall hold such proceeds in an identified segregated fund and shall use, apply and disburse them for the purposes and in the manner set forth in this Section and in Section 5.8. Subject to the provisions of Section 5.8, insurance proceeds received by the Trustees shall be held in trust in an identified and segregated fund for the benefit of each Insured. If the cost of restoring the Common Elements is estimated by the Trustees to exceed ten percent (10%) of the then replacement value of the Condominium, the Trustees shall give written notice of such loss to all Registered Mortgagees, and in addition, if the cost of restoration of any Unit is estimated by the Trustees to exceed ten percent (10%) of the then replacement value of such Unit, the Trustees shall give written notice of such loss to the Registered Mortgagee(s) holding the mortgages on that Unit. Such notice to Registered Mortgagees shall not entitle them to additional rights hereunder. If repair and restoration are to be made pursuant to Section 5.8, all insurance loss proceeds shall be disbursed to defray the cost of repairs and restoration, first, of the damaged Common Elements and, second, of the one or more damaged Units, and with respect to losses which affect portions or elements covered by insurance of more than one Unit to different extents, the proceeds relating thereto shall be used, applied and disbursed by the Trustees, in their judgment, in a fair and equitable manner.

D. The Trustees shall evaluate, at least annually, the amount of insurance coverage, and, if necessary, shall increase the amount of coverage on the master insurance policy accordingly. In no event shall the amount of such insurance be less than the full replacement value of the Property which is required to be insured by the Trustees hereunder.

E. The Trustees shall also obtain and maintain, to the extent obtainable, master policies of insurance with respect to the Condominium for the benefit and protection of the Trustees and the Unit Owners, for (i) comprehensive public liability with respect to liability arising out of the ownership, maintenance or repair of that portion of the Condominium which is not reserved for a Unit Owner's exclusive use and occupancy, (ii) workmen's compensation and employer's liability, if necessary, and (iii) such other risks as the Trustees, in their discretion, deem it appropriate to insure. In addition, if they deem it appropriate, the Trustees shall obtain and maintain fidelity coverage against dishonest acts on the part of officers, managers, managing agents, trustees, employees or volunteers (i) acting at the direction or on behalf of the Trustees or (ii) responsible for handling funds belonging to or administered by the Trust. All such insurance shall be in such amounts and forms as the Trustees shall, in their discretion, deem appropriate, and shall, insofar as practicable, contain provisions as set forth in Paragraph B of this Section 5.7. Such insurance shall not cover the liability of any Unit Owner as to claims arising out of incidents occurring within his own Unit or claims arising out of incidents occurring within any Common Area as to which he has any special right and easement and as a result of his special rights to use the same, but it shall be the responsibility of each Unit Owner, as provided in Paragraph H of this Section 5.7, to maintain his own public liability insurance therefor. The

Trustees may elect to include any manager, managing agent, officer, trustee, employee or volunteer of the Condominium as a party insured under the policies of insurance described in this Paragraph E.

F. Each insurance carrier shall be licensed or authorized by law to transact business within the Commonwealth of Massachusetts. To the extent possible, the Trustees shall not obtain policies of insurance which provide that (i) under the terms of the carrier's charter, By-Laws or policy, contributions or assessments may be made against a Unit Owner or his mortgagee, as an insured; (ii) by the terms of carrier's charter, By-Laws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent a Unit Owner or his mortgagee, as an insured, from collecting insurance proceeds.

G. The cost of insurance to be obtained and maintained by the Trustees pursuant to all preceding paragraphs of this Section 5.7 shall be assessed to the Unit Owners as a Common Expense. In the event that any Unit Owner does anything in the Condominium which causes an increase in the rate of insurance for the Condominium, as a result of (i) an act of gross negligence, (ii) his willful default or (iii) having done anything requiring the Trustees' consent without having obtained the Trustees' consent, the Trustees may, in their discretion, assess the amount of such increase directly to such Unit Owner as a Common Charge .

H. Unit Owners must carry insurance for their own benefit insuring any wall, ceiling or floor decorations or coverings, drapes, furniture, furnishings, fixtures, installations, equipment and personal property located in their Units and in any Common Areas in which they have special rights and easements and liability insurance (in such amounts as the Trustees may reasonably require) for the Units and such Common Areas to the extent not covered by the insurance maintained by the Trustees, 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. Each Unit Owner and/or his mortgagee may obtain additional insurance at his or its own expense provided that all such insurance shall, to the extent obtainable, contain provisions similar to those contained in the Trust's master insurance policy as set forth in Paragraph B of this Section 5.7. If the insurance proceeds from the master policies on account of any casualty loss shall be reduced due to proration with insurance individually purchased by a Unit Owner, the Unit Owner shall assign to the Trustees such portion of the proceeds of his individual insurance as equals the amount of the reduction, which portion shall be distributed as above provided.

Section 5.14. Repair or Reconstruction after Fire or Other Casualty.

In the event of damage to or destruction of (i) the Common Elements as a result of fire or other casualty (unless the casualty exceeds ten percent (10%) of the value of the Condominium prior to the casualty and seventy-five percent (75%) or more in Beneficial Interest of the Unit Owners do not agree to proceed with the repair or restoration as provided by the last paragraph of this

Section) or (ii) in the event of damage or destruction of any Unit as a result of fire or other casualty, whether or not the Common Elements have been damaged or destroyed (unless the last paragraph of this Section is applicable) the Trustees shall promptly adjust the loss, arrange for the prompt repair or restoration of the same, 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. All insurance proceeds paid to the Trustees on account of any casualty shall be dedicated solely to the repair or restoration of the loss, and any application of such proceeds by the Trustees on account thereof, shall be prior to the application of such proceeds for any other purpose. To the extent that insurance proceeds are available therefor and to the extent restoration is possible, the Trustees shall cause the damaged Common Elements and those portions of the Unit with respect to which the Trustees are required to maintain fire and extended coverage insurance to be restored as nearly as possible to their condition immediately prior to such damage or destruction. While the Trustees shall determine how much restoration shall be accomplished in their sole reasonable opinion, the Trustees shall, to the extent practical, consult with each Unit Owner with respect to redecorating that Unit Owner's Unit.

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 assess, levy or charge all Unit Owners, as a Common Expense, for the amount estimated to be required to repair or restore the Common Elements and those portions of the Unit(s) with respect to which the Trustees are required to maintain casualty or physical damage insurance (as provided in Section 5.7) in excess of the insurance proceeds available therefor.

Whenever the estimated cost of repair or restoration exceeds as to any one casualty or occurrence, on the basis of an independent appraisal, a sum which equals twenty percent (20%) of the replacement value of the Common Elements or of the replacement value of any one Unit, then the Trustees shall retain a registered architect or registered engineer, who shall not be directly or indirectly a Unit Owner or an employee or agent of any Unit Owner or a Trustee or an employee or agent of any Trustee, to supervise the work of repair or restoration, and no sums shall be paid by the Trustees on account of such repair or restoration except upon certification to it by such architect or engineer that the work for which payment is being made has been completed in a good and workmanlike manner in accordance with approved plans and specifications and that the estimated total cost of completion of said repair or restoration, less amounts theretofore advanced, does not exceed the undisbursed proceeds of insurance as augmented by funds obtained by any assessment or assessments levied or chargeable to the Unit Owners as a Common Expense or otherwise made available by individual Unit Owners. The Trustees may perform emergency work essential to the preservation and safety of the Property or the safety of persons, or required to avoid the suspension of any essential service to the Property without having first engaged an architect or engineer, adjusted the 1055 or obtained proceeds of insurance.

If there shall have been a repair or restoration pursuant to the foregoing and the amount in insurance proceeds shall have exceeded the cost of the repair or restoration, then the excess of the insurance proceeds, if any, shall be added to the Trust's Common Funds or, at the option of the Trustees, divided among all the Unit Owners in proportion to their respective Beneficial Interests; provided, however, that no provision herein shall be deemed to give a Unit Owner or any other party priority over any rights of the holder of the first mortgage (if any) on such Unit Owner's Unit pursuant to such mortgage in the case of a distribution to such Unit Owner of insurance proceeds for losses to Units and/or Common Elements. Mortgagees of Units will be entitled to priority with respect to any insurance proceeds distributed to their mortgagors.

Notwithstanding the foregoing, if, as a result of fire or other casualty, the loss exceeds ten percent (10%) of the value of the Condominium prior to the casualty, and

(i) If at least seventy-five percent (75%) in Beneficial Interest here under 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 Owners' 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.

(ii) If seventy-five percent (75%) in Beneficial Interest hereunder 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 percent (10%) 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.

#### Section 5.15. Maintenance and Repairs.

(a) Except as provided in Section 5.8, all maintenance and replacement of and repairs to any Unit (other than to the Common Elements contained therein), including, without limitation, the windows, skylights and doors therein, electrical, plumbing, heating and other similar fixtures or utility services within and serving only the Unit or belonging to the Unit Owner, painting of interior surfaces of doors and window sashes, and all washing of interior and exterior surfaces of windows and skylights shall be done by the Unit Owner at the Unit Owner's expense, except as otherwise specifically provided herein. The Unit Owners having special rights and easements in specified Common Areas as described in the Master Deed, shall not be responsible individually for the cost of maintenance, and repairs and replacements to the Common Area benefiting their

Units; provided however that it shall be the responsibility of such Unit Owners to keep said portions of the Common Areas clean and free of snow, ice and other debris which may accumulate thereon.

(b) All maintenance, repairs and replacements to the Common Elements required as a result of the other Unit Owners' and Trustees' exercise of the rights referred to in the last sentence of Subparagraph (a) above shall be done by the Trustees and shall be charged to all the Unit Owners as a Common Expense, reserving to the Trustees the right to recover all or part of the costs of such work from a Unit Owner (and, to the extent allowed by law, to have and enforce a lien on such Unit Owner's Unit for such costs) if work was necessitated by the negligence, misuse or neglect of such Unit Owner or any occupant of the Unit of such Unit Owner or occupant. Any one (1) Trustee, the managing agent or manager may approve payment of vouchers for any such work.

(c) Violations of any laws, ordinances, codes, regulations, rules or orders of any authority having jurisdiction over the Condominium shall be eliminated and the responsibility and expense therefor shall be borne according to the same criteria as are described in Subparagraphs (a) and (b) above.

Section 5.16. Improvements.

(a) If fifty percent (50%) or more but less than seventy-five percent (75%) in Beneficial Interest hereunder agree to make an improvement to the Common Elements, such improvement may be made, but the costs of making such improvement shall be borne solely by the Unit Owners so agreeing.

(b) If seventy-five percent (75%) or more in Beneficial Interest hereunder agree to make an improvement to the Common Elements, such improvement may be made and the costs thereof assessed to all Unit Owners as a Common Expense, provided, however, that if such improvement shall cost in excess of ten percent (10%) of the then value of the Condominium, any Unit Owner not so agreeing 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 fair market value thereof as approved by the Superior Court. The cost of any such purchase shall be a Common Expense.

Section 5.17. Restrictions on Use of Units and Common Elements. In order to provide for congenial occupancy of the Condominium and for the protection of the values of the Units, the use of the Building and Common Elements shall be subject to the provisions and restrictions set forth in Sections 13, 14, 15 and other sections of the Master Deed, all of which are incorporated herein by reference and made a part hereof.

Section 5.18. Right of Access. A Unit Owner shall grant a right of access to his Unit (at reasonable times and upon reasonable notice except in emergencies) to the Trustees, manager,

managing agent and any other person authorized by the Trustees, the manager or the managing agent, for the purpose of making inspections for the purpose of correcting any conditions originating in his Unit and threatening another Unit or a Common Element, or for the purpose of performing installations, alterations, repairs or replacements to or taking meter readings in the Common Elements in his Unit or elsewhere in the Buildings or in the Land. In case of emergency, such right of access shall be immediate, whether the Unit Owner is present or not. In the event of the exercise of the rights of access provided in this Section, any costs for repairs shall be borne in accordance with the provisions of Section 5.9.

**Section 5.19. Enforcement.** The Trust, acting by its Board, shall have the right to levy, without further legal action, liquidated charges for violations of the restrictions contained in this Declaration of Trust instrument, and the Master Deed. Any charge so levied is to be collected in the same manner as a Common Charge against the particular Unit Owner involved, and collection may be enforced by the Trustees in the same manner as they are entitled to enforce collection of Common Charges. Such levy of charges shall not replace nor abrogate any action for damages or injunctive relief as provided by law.

**Section 5.20. Utilities.**

A. **Water and Sewer Use Charges.** Water shall be supplied to all of the Units and the Common Elements through one meter. All Unit Owners shall be responsible for the cost of water and sewer charges serving the Common Elements and the individual units, such cost shall be determined and paid for by the Trustees according to the percentage of ownership interest assessed to a unit owner as defined in the Master Deed, and shall be assessed to the Unit Owners as a common expense.

B. **Electricity.** Except as provided in the following sentence, electricity shall be supplied by the public utility company serving the area, directly to the Units through separate meters, and each Unit Owner shall be required to pay the bills for electricity consumed or used in his Unit. Electricity supplied to the Common Elements shall be paid by the Condominium Association. All Unit Owners shall be responsible for the cost of electricity serving the Common Elements, such cost shall be determined and paid for by the Trustees and shall be assessed to the Unit Owners as a common expense.

C. **Heat.** Heat for each Unit shall be supplied directly to said Unit through a separate meter, and the Owner of the Unit shall be required to pay the bills for heat consumed or used for that Unit. All Unit Owners shall be responsible for the cost of heat serving the common elements which cost shall be determined and paid by the Trustees and shall be assessed to the Unit Owners as a common expense.

**Section 5.21. Managing Agent and Manager.** The Trustees may employ for the Condominium a managing agent or a manager at a compensation established by the Trustees, to perform such duties and services as the Trustees shall authorize. The Trustees may delegate to the manager or



managing agent, all of the powers granted to the Trustees by this Declaration of Trust other than the powers set forth in Subparagraphs (b), (c), (f), (h), that portion of (k), relating to requiring bonds and levying (but not collecting) fines and (1) of Subsection 4.1.3.

**Section 5.21. Condemnation.** If any public or quasi-public authority initiates a proceeding to take any portion of the Condominium under the power of eminent domain, the Trustees shall notify all Unit Owners and all mortgagees of record promptly after the commencement of such proceeding. If more than ten percent (10%) in value of the Condominium is taken under the power of eminent domain, the taking shall be treated as a "casualty loss," and the provisions of Section 17 of Chapter 183A shall apply. If one or more Units have been substantially altered or rendered uninhabitable as a result of a partial taking, and the Unit Owners vote to restore and continue the Condominium pursuant to the provisions of said Section 17 of Chapter 183A, the Trustees, with the written consent of Unit Owners entitled to at least seventy-five percent (75%) of the Beneficial Interest hereunder, shall have the authority to acquire the remaining portions of such Units, at the price which the Trustees shall determine, provided, however, that any Unit Owner of such remaining portion who does not agree with the determination 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 such remaining portion at the fair market value thereof as approved by the Superior Court.

In the event of a total or partial taking under the powers of eminent domain, the Unit Owners shall be represented in any proceeding by the Trust acting through the Trustees. In the event of a partial taking, the award shall be allocated to the Unit Owners, according to their respective Beneficial Interest, except as to any portion or portions of the award which are attributable to direct or consequential damages suffered by particular Units, which shall be payable to the Owners of such Units or their mortgagees, as their interests may appear. In the case of a total taking of all Units and the Common Elements, the entire award shall be payable to the Trustees to be distributed to the Unit Owners in accordance with their respective Beneficial Interests, or their mortgagees, as their interests may appear.

No vote or consent which is required of a Unit Owner pursuant to this Section shall be effective without the written consent thereto of any Registered Mortgagee, the holder of any first mortgage of record of such Unit. No provision herein shall be deemed to give a Unit Owner or any other party priority over any rights of the holder of the first mortgage (if any) on such Unit Owner's Unit pursuant to such mortgage in the case of distribution to such Unit Owner of condemnation awards for taking of Units and/or Common Elements. Mortgagees of Units will be entitled to priority with respect to any awards distributed to their mortgagors.

**Section 5.22. Notices to Unit Owners.** Every notice to any Unit Owner which is required under the provisions hereof, 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 given as provided in Section 3.7 hereof.

Section 5.23. Real Estate Taxes Prior to Separate Assessment of Units. For all fiscal years until the Units are separately assessed for real estate taxes, the Trustees shall have the right to collect each Unit Owner's pro rata portion of the real estate taxes on the Building and Land (in accordance with the Unit's Beneficial Interest), which tax payments shall be made, at the Trustees' election either (i) no later than ten (10) days prior to the date when such taxes are due and payable to the Municipality or, if the Trustees have not given a Unit Owner notice of the date when such tax payments are due, within five (5) days after the Unit Owner's receipt of such notice, whichever is later, or (ii) in equal monthly installments of one-twelfth of the amount estimated to be due for the Unit, with which any deficiency to be paid (by the Unit Owner) before the taxes are due and any excess to be refunded to the Unit Owners after the taxes are paid. The Trustees shall have the right to pay such collected taxes to the Municipality. All taxes so collected by the Trustees shall be held in a separate account which, notwithstanding anything to the contrary contained herein, shall not be part of the Common Funds; provided, however, that the failure of a Unit Owner to make such tax payments, if the Trustees elect to collect the same, may, at the Trustees' election, be treated hereunder in the same manner as a default in the payment of Common Charges. Notwithstanding the foregoing, a Unit Owner shall not be required to make the monthly tax payments to the Trustee, as set forth above, to the extent that he is required to make such payments to a bank, other institutional lender or other lender in the business of making mortgage loans holding a mortgage on his Unit.

#### ARTICLE VI

##### Sales and Mortgage of Units and Acquisitions of Units by Trustees

Section 6.1. No Severance of Ownership. Except as otherwise specifically provided in Section 8(a) of the Master Deed, no Unit Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his Unit without including therein (i) the undivided interest in the Common Elements and any exclusive rights and easements appurtenant thereto as provided in the Master Deed; (ii) the interest of such Unit Owner in any Unit previously acquired by the Trustees, or their designee, on behalf of all Unit Owners, or the proceeds of the sale or lease thereof, if any; and (iii) the interest of such Unit Owner in any other assets of the Condominium (all of which are hereinafter collectively called the "Appurtenant Interests"), it being the intention hereof to prevent any severance of such combined ownership. Except as expressly authorized by Section 8(a) of the Master Deed, any deed, mortgage, or other instrument purporting to affect one or more of the Appurtenant Interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. Unless otherwise expressly permitted under Section 8(a) of the Master Deed, no part of the Appurtenant Interests of any Unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Unit to which such interests are appurtenant, or as part of a sale, transfer or other disposition of such part of the Appurtenant Interests of all Units.

**Section 6.2. Mortgages of Units.** A Unit Owner who mortgages his Unit or the holder of a Unit Owner's mortgage shall notify the Trustees of the name and address of the holder of such mortgage and shall file a conformed or Xerox copy of the mortgage with the Trustees, and the Trustees shall maintain such information in a book entitled "Mortgages of Units". The failure of a Unit Owner or the holder of such Unit mortgage to so notify the Trustees or to file a conformed or Xerox copy with them shall not invalidate the mortgage or any of its provisions or the rights of any holder of such mortgage.

**Section 6.2.1. Provision for Eligible Mortgage Holders.** Eligible Mortgage Holders, being registered mortgagees within the meaning set forth herein, shall be entitled to the following rights, and further, none of the foregoing may occur without the approval of such mortgage holders holding mortgages on units, which units are entitled to at least fifty-one (51%) percent of the vote as follows: (a) Any restoration or repair of the condominium, after partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by the eligible mortgage holders as set forth above; (b) Any election to terminate the legal status of the Condominium after substantial destruction or substantial taking in condemnation of the Condominium Property must require the approval as set forth above; (c) Unless a formula for relocation of interest in the Common Area after a partial condemnation or partial destruction of the Condominium has been fixed and advanced by these documents, or by applicable law, no reallocation of interest in the Common Areas resulting from a partial condemnation or partial destruction of the Condominium may be effected without the prior approval of the eligible mortgage holders as set forth above; (d) 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 the Condominium Trust shall require the prior consent of owners entitled to at least sixty-seven (67%) percent of the votes and of the eligible mortgage holders as set forth above.

The Trustees, whenever so requested in writing by the holder of a mortgage of a Unit, shall promptly report any then unpaid Common Charges due from, or any other default by, the owner of the mortgaged Unit. In addition, the Trustees shall give prompt written notice to the holder of a first mortgage of record of any default in the performance by the Unit Owner of the mortgaged Unit of any obligation under the Master Deed, this Trust, or the Rules and Regulations which is not cured within thirty (30) days, and of any such default which is not cured within sixty (60) days. The Trustees, when giving notice to a Unit Owner of a default in paying Common Charges or other default, shall send copy of such notice to each Registered Mortgagee. In addition, the Trustees shall send written notice to all Registered Mortgagees and all holders of first mortgages of record of Units of any proposed amendment to this Declaration of Trust to be made pursuant to Section 9.1. After having given the Trustees reasonable prior notice, each Unit Owner and the holder of any mortgage of a Unit shall be permitted to examine the books of account and records of the Trust and the books of account of any manager or managing agent of the Condominium relating to the Condominium at reasonable times on business days. If a mortgagee gives written

notice to the Trustees that there is a default in a mortgage on a Unit held by it, or if a mortgagee gives written notice to the Trustees of an agreement or covenant by a Unit Owner that said mortgagee is to be the proxy of said Unit Owner, then such mortgagee shall be recognized as the proxy of the Unit Owner of such unit for all matters concerning the Condominium until the mortgagee revokes the same by written notice to the Trustees, or such mortgage is discharged of record; provided, however, that if such mortgagee is not represented at a meeting of Unit Owners, then the Unit Owner may, notwithstanding the foregoing, cast the vote attributable to his Unit. If two or more mortgagees of the same Unit give notice or seek to exercise rights hereunder, the mortgagee who in the good faith determination of the Trustees holds the senior lien upon the Unit shall have the rights granted in this paragraph.

Section 6.3. Acquisition of Units by Trustees. Acquisitions of Units by the Trustees, as permitted hereunder, may be made from Common Funds or, if such funds are insufficient, the Trustees may (i) levy an assessment as a Common Charge against the Unit Owners in accordance with their Beneficial Interests hereunder or (ii) borrow money to finance the acquisition of such Unit(s), provided, however, that no financing may be secured by an encumbrance or lien on any property other than the Unit, together with its Appurtenant Interests, so to be acquired by the Trustees.

## ARTICLE VII

### Rights and Obligation of Third Parties Dealing with the Trustees

Section 7.1. Third Parties No Duty Of Inquiry. No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record with the Registry shall be bound to ascertain or inquire further as to the persons who are then Trustees hereunder, or be affected by any notice, implied or actual, otherwise than by a certificate thereof, and such record or certificate shall conclusively evidence the persons who are then Trustees. 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 Property shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed or otherwise as to the purpose or regularity of any of the acts of the Trustees, or any one or more of them, purporting to be done in pursuance of any of the provisions or powers herein contained, or as to the regularity of the resignation, removal or election of any Trustee, and any records of the Trust purporting to be executed by persons herein required to execute the same, shall be conclusive evidence in favor of any such purchaser or other person dealing with the Trustees of the matters therein recited.

**Section 7.2. No Recourse to Trustees.** No recourse shall be had at any time under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant, or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees or by reason of anything done or omitted to be done by or on behalf of them or any of them, against the Trustees individually, or against any such agent or employee or any beneficiary, either directly or indirectly, by legal or equitable proceedings, or by virtue of any suit or otherwise. All persons extending credit to, or contracting with or having any claim against the Trustees, shall look only to the Property for payment under such contract or claim or for the payment of any debt, damage, judgment, decree or money that may otherwise become due or payable to them from the Trustees, so that neither the Trustees nor the Unit Owners, present or future, shall be personally liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Unit Owners under provisions hereof or under provisions of Chapter 183A.

**Section 7.3. All Instruments Subject To Terms Hereof.** 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 Declaration of Trust.

**Section 7.4. Recording in Registry.** This Declaration of Trust and any amendments to it and any certificate herein required to be recorded, shall be recorded with the Suffolk County Registry of Deeds. Any other certificate or paper signed by the Trustees or any of them which it may be deemed desirable to record shall be recorded with said Registry of Deeds. Such record shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof, and all persons dealing in any manner whatsoever with the Trustees, the Property or any Unit Owner shall be held to have notice of any alteration or amendment of this Declaration of Trust or change of Trustees, when the same shall have been recorded with said Registry of Deeds. Any certificate signed by a majority of the Trustees in office at the time (or by one Trustee if there is only one at the time), setting forth as facts any matters affecting the Trust, actions which have been taken by the Unit Owners, who the officers, if any, of the Trust are, who the Unit Owners are, whether there are Common Charges due with respect to a particular Unit and matters relating to the authority of the Trustees to do any act, when duly acknowledged and recorded with said Registry of Deeds, shall be conclusive evidence as to the existence of such alleged facts and of the truth of the statements made therein in favor of all third persons, including the Trustees, acting in good faith in reliance thereon. Any certificate executed by any Trustee hereunder, or by a majority of the Trustees 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 majority, 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.

**Section 7.5. Application.** All present and future owners, mortgagees, lessees and occupants of Units and their employees, and any other persons who may use the facilities of the Property in any manner are and shall be subject to provisions of the Master Deed, this Declaration of Trust and all covenants, agreements, restrictions, easements and declarations of record ("title conditions"). The acceptance of a Unit deed or conveyance, the execution of a lease for a Unit or the act of occupancy of a Unit shall constitute an agreement that the Master Deed and this Declaration of Trust, as any of them may be amended from time to time, and the title conditions are accepted, ratified, and will be complied with.

## ARTICLE VIII

### Miscellaneous

**Section 8.1. Records.** The Trustees or the managing agent or manager shall keep records of the actions of the Trustees and the managing agent or manager, and financial records and books of account of the Trust, including a chronological listing of receipts and expenditures and a separate account for each Unit which, among other things, shall contain the amount of each assessment of Common Charges against the Unit, the date when due, the amounts paid thereon and any balance remaining unpaid. An annual report of the receipts and expenditures of the Trust shall be rendered by the Trustees to all Unit Owners promptly after the end of each fiscal year. Copies of the Master Deed and this Declaration of Trust and the Floor Plans of the Buildings, as the same may be amended from time to time, and the records of the actions of the Trustees and financial records and books of account of the Trust shall be maintained by the Trustees and shall be available for inspection by Unit Owners and their authorized agents during reasonable business hours upon reasonable prior notice.

**Section 8.2. Fiscal Year.** Except as from time to time otherwise provided by the Trustees, the fiscal year of the Trust shall end on the thirty-first (31st) day of December in each year.

**Section 8.3. Invalidation.** The invalidity of any part of this Declaration of Trust shall not impair or affect in any manner the validity, enforceability or affect the balance of this Declaration of Trust.

**Section 8.4. Captions and References.** The Table of Contents and the captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration of Trust or the intent of any provision hereof. Reference in this Declaration of Trust to "hereof," "herein," and "hereunder" shall be deemed to refer to this Declaration of Trust and shall not be limited to the particular text or section in which such words appear, unless expressly stated.

**Section 8.5. Gender.** The use of the masculine gender in this Declaration of Trust shall be deemed to include the feminine and neuter genders, and the use of the singular shall be deemed to include the plural whenever the context so admits or requires.

Section 8.6. Waiver. No restriction, condition, obligation, or provisions contained in this Declaration of Trust shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches thereof which may occur.

## ARTICLE IX

### Amendments and Limitations

Section 9.1. Amendments to This Declaration of Trust. Except as otherwise provided in the Master Deed and as provided below in this Article, this Declaration of Trust may be amended, altered or repealed in any manner or to any extent with the consent of Unit Owners entitled to at least eighty (80%) percent of the beneficial interest hereunder, PROVIDED HOWEVER that the consent of the Unit Owners to which at least eighty (80%) percent of the votes are allocated and the approval of eligible holders holding mortgages on Units which have at least eighty (80%) percent of the votes of such Units subject to eligible holder mortgages, or such higher percentages as required by Chapter 183A, shall be required to add or amend any material provisions of the constituent documents of the Condominium, which establish, provide for, govern or regulate the following: (i) voting; (ii) assessments, assessment liens or subordination of such liens; (iii) reserves for maintenance, repair and replacement of the Common Area (or Units if applicable); (iv) insurance or fidelity bonds; (v) rights to use of the Common Areas; (vi) responsibility for maintenance and repairs of the several portions of the project; (vii) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium; (viii) boundaries of any Units; (ix) the interest in the Common Areas; (x) convertibility of Units into Common Areas or of Common Areas into Units; (xi) leasing of Units; (xii) imposition of any Right of First Refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit; and (xiii) any provisions which offer the expressed benefit of mortgage holders, eligible mortgage holders or eligible insurers or grantors of First Mortgages on any unit amendment, alteration or repeal pursuant to the foregoing provisions of this Section shall become effective upon the recording with the Suffolk County Registry of Deeds of an instrument of amendment, alteration, or repeal, as the case may be, signed, sealed, and acknowledged by a majority of the Trustees in office at the time, setting forth in full the amendment, alteration or repeal and reciting the consent of the Unit Owners and any Mortgagees hereunder required to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and compliance with all prerequisites to the validity of such amendment, alterations, or repeal, whether stated in the instrument or not, upon all questions as to title or affecting the rights of third persons and for all other purposes.

Section 9.2. Limitations. Except as otherwise provided by statute in the case of condemnation or substantial loss to the Units and/or the Common Elements, and except when Chapter 183A requires greater proportions, unless at least two-thirds (2/3) of the mortgagees holding first mortgages on Units (based upon one vote for each first mortgage) or two-thirds (2/3) of the Unit Owners (other than Sponsor) have given their prior written approval, notwithstanding any other provision of this Declaration of Trust, the Trustees (acting in their capacity as Trustees) shall not,

by virtue of any vote or other authorization of the Unit Owners or any other provisions hereof or otherwise, be entitled to:

(a) change the pro rata interest or obligations of any individual Unit for purposes of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or (ii) determining the pro rata share of ownership of each Unit in the Common Elements;

(b) partition or subdivide any Units;

(c) by act or omission, seek to abandon or terminate the Condominium;

(d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Unit Owners shall not be deemed a transfer within the meaning of this clause); or

(e) use hazard insurance proceeds or eminent domain awards for losses to any Property (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such improvements, except as provided in Chapter 183A.

#### ARTICLE X

##### General

**Section 10.1. Conflicts.** This Declaration of Trust is set forth in compliance with the requirements of Chapter 183A. In case any provision of this Declaration of Trust conflicts with the provisions of Chapter 183A or of the Master Deed, the provisions of Chapter 183A or the Master Deed, as the case may be, shall control.

**Section 10.2. Duration.** The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of Chapter 183A in accordance with the procedures set forth in Section 19 thereof. Except as otherwise provided herein, the Unit Owners may remove all or a portion of the Condominium from the operation of Chapter 183A at any annual or special meeting of the Unit Owners by the affirmative vote of at least seventy-five (75%) percent in Beneficial Interest hereunder, provided that notice of the removal is given in the notice of the meeting, and provided further, that the holders of all first mortgages on Units consent to such removal by written instruments duly recorded with the Registry of Deeds.

**Section 10.3. Sponsor's Nominee.** Sponsor's nominee shall be any person nominated by Sponsor by written instrument recorded with the Registry and marginally referred to on this Declaration of Trust. The records with the Registry shall be conclusive evidence, upon which third parties can rely, as to any such nomination.

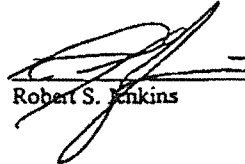


ARTICLE XI

Unresolved Disputes

11.1. Procedure. In the event that a dispute arises with respect to the construction, interpretation, or implementation of said Master Deed and Declaration of Trust, as amended, and such dispute shall not be resolved within fourteen (14) days after written notice from one Unit Owner, then the Unit Owner who sent the notice shall submit the matter to arbitration. For that purpose, one arbitrator shall be designated by the Unit Owner (s) who sent the notice, one by the other Unit Owner, and a third by the two arbitrators so designated. The Unit Owner who did not submit the matter to arbitration must designate one arbitrator within fourteen (14) days of the designation by the Unit Owner who did submit the matter to arbitration, or the arbitrator so designated by the Unit Owner who did submit the matter to arbitration shall be the sole arbitrator. Such arbitration shall be conducted in accordance with the rules and regulations of the American Arbitration Association. The final decision of said arbitration shall be final and binding on all parties.

IN WITNESS WHEREOF, the undersigned, being the original Trustees, have signed these presents under seal as such Trustee as of the date first set forth above and hereby accepts appointment as such Trustee and agrees to be bound by and act in accordance with the foregoing provisions of the Trust and any duly enacted amendments thereto.

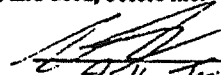
  
Robert S. Jenkins

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

October 27<sup>th</sup>, 1998

Then personally appeared the above-named Robert S. Jenkins, and acknowledged the foregoing instrument to be his free act and deed, before me.

  
Notary Public  
My Commission Expires: 5-5-00

SCHEDULE A

Percentage of Undivided  
Unit Designation Interest in Common Elements

Unit 1 has a (31 %) interest in the Common Areas.

Unit 2 has a (35 %) interest in the Common Areas.

Unit 3 has a (34 %) interest in the Common Areas.