

DECLARATION OF TRUST

OF

257-259 Main Street, Charlestown Condominium

DECLARATION OF TRUST of 257-259 Main Street, Charlestown Condominium Trust made at Boston this 19th day of October, 1994, Suffolk County, MA by Daniel M. McGoff and Joseph F. McGonagle, hereinafter called the "Trustees", which term and any pronoun referring thereto shall be deemed to include his successors in trust hereunder and to mean the Trustee or the Trustees for the time being hereunder wherever the context so permits. The business address of said Trustee is as follows:

31 Cambridge Street, Charlestown, Massachusetts

ARTICLE I

Name of Trust

The trust hereby created shall be known as 257-259 Main Street, Charlestown Condominium Trust (the "Trust"). Under that name, so far as legal, convenient, and practicable, all business shall be conducted by the trustee and all instruments in writing shall be executed by the Trustee.

ARTICLE II

The Trust Purposes

Section 2.1 Unit Owners' Organization. All of the rights and powers in and with respect to the common areas and facilities (the "Common Areas and Facilities") of 257-259 Main Street, Charlestown Condominium (the "Condominium") established by a Master Deed recorded herewith (the "Master Deed") with the Suffolk County Registry of Deeds (the "Registry of Deeds") which are by virtue of the Massachusetts General Laws, Chapter 183A, as amended ("Chapter 183A"), conferred upon or exercisable by the organization of the Unit Owners of said Condominium, and all property, real and personal, tangible and intangible, conveyed to the Trustee hereunder shall vest in the Trustee in trust to exercise, manage, administer and dispose of same, exclusive of the common areas, and to receive the income thereof (a) for the benefit of the owners of record from time to time of the Units of the Condominium in the Common Areas and Facilities according to the schedule of undivided beneficial interest set forth in Article IV hereof (the "beneficial

SUFFOLK COUNTY
REGISTRY OF DEEDS
RECORDING EXAMINER
ATTEST

Oct 20 2 16 PM '94

Paul J. McGoff

Patrick Sugruey
Orlando & Sugruey
1200 Foreman Brook Place
Quincy MA 02169

58

interest") and (b) in accordance with the provisions of Section 1 of Chapter 183A for the purposes therein set forth.

This Trust is the organization of Unit Owners established pursuant to the provisions of Chapter 183A for the purposes therein set forth.

Section 2.2 Not a Partnership. It is hereby declared that a trust and not a partnership has been created and that the Unit Owners are beneficiaries, and not partners or associates nor in any other relation whatever between themselves with respect to the Trust property, and hold no relation to the Trustee other than of beneficiaries, with only such rights as are conferred upon them as such beneficiaries hereunder and under and pursuant to the provisions of Chapter 183A.

ARTICLE III

The Trustees

Section 3.1 Number. After the Operating Event as hereinafter described, there shall at all times be Trustees consisting of such number, not less than one (1) nor more than three (3) as shall be determined by vote of more than fifty-one percent (52%) of the beneficial interest hereunder. Until Daniel M. McGoff and Joseph F. McGonagle, Trustees, the creators of the Condominium, and their successors or assigns (the "Sponsors") own less than one (1) Unit in the Condominium, or until three (3) years from the date hereof whichever occurs first (the "Operating Event"), there shall be not more than two (2) Trustees, and such Trustees shall be designated, appointed, and/or elected by the sponsors.

Within sixty (60) days after the occurrence of the Operating Event, the Trustee then in office shall tender his or her respective resignation and his or her respective office shall be deemed vacant so as to permit such vacancies to be filled in the same manner hereinafter provided. In the event that said resignation is not tendered pursuant to the preceding sentence, then said office shall automatically be deemed vacant on the seventy-fifth (75th) day after the Operating Event, and such vacancies shall be filled in the manner hereinafter provided.

Section 3.2 Term. The term of each Trustee shall be for one (1) year from the annual meeting of the Unit Owners (or special meeting in lieu thereof) at which the Trustee was appointed and shall end at the usual meeting (or special meeting in lieu thereof) at which such Trustee's successor is due to be appointed; except that the term of any Trustee appointed to fill a vacancy in an unexpired term shall end when his or her predecessor's term would, but for the vacancy, have ended.

19388 167

The term of the original Trustee shall end as follows: it shall end three (3) years from the date hereof, or until successors are elected pursuant to the terms thereof.

Section 3.3 Vacancies; Appointment and Acceptance of Trustees. If and whenever any Trustee's term is to expire or for any reason, including without limitation, removal, resignation or death of a Trustee, the number of Trustees shall be less than the number established under Section 3.1, a vacancy or vacancies shall be deemed to exist.

Such Vacancy shall be filled by (a) an appointment of a natural person to act as such Trustee (i) by an instrument signed by the sponsor, or (ii) if after the Operating Event, by vote of Unit Owners holding more than 52% of the beneficial interest hereunder, or (iii) if, after the Operating Event, Unit Owners holding such percentage have not within thirty (30) days after the occurrence of any such vacancy made such appointment, by a majority of the then remaining Trustees, or by the remaining Trustees or Trustee, if only one (at any time), and (b) the acceptance of such appointment, signed and acknowledged by the person so appointed.

Such appointment shall become effective upon the filing with the Registry of Deeds of a certificate of such appointment signed (1) by the Sponsor, or (2) if, after the Operating Event, by a majority of the then remaining Trustees, or by the sole remaining Trustee, if only one, setting forth the fact and basis of compliance with the provisions of this Section 3.1, together with such acceptance; and such person shall then be and become such Trustee and be vested with the title to the trust property jointly with the remaining or surviving Trustee or Trustees without the necessity of any act of transfer or conveyance.

If there shall be no remaining Trustee and a vacancy in the office of Trustee shall continue for more than sixty (60) days and shall at the end of that time remain unfilled, a Trustee or Trustees to fill such vacancy or vacancies may be appointed by any court of competent jurisdiction upon the application of any Unit Owner and notice to any Unit Owners and to such other, if any, parties in interest to whom the court may direct that notice be given.

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

Section 3.4 Trustee Action. In any matter relating to the administration of the Trust hereunder and the exercise of the power hereby conferred, the Trustees shall act by majority vote at any

duly called meeting at which a quorum, as defined in Section 5.9.1 is present. The Trustees may act without a meeting in any case by unanimous written consent and in cases requiring, in their sole judgment, respond to an emergency by majority written consent.

Notwithstanding the preceding language, any instrument signed by a majority of those Trustees appearing from the records of the Registry of Deeds to be such, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder, that at the time of delivery thereof the execution and delivery thereof, the execution and delivery of that instrument was duly authorized by all Trustees; and any instrument signed by any one or more Trustees which contains or is accompanied by a certification that such Trustee or Trustees were, by appropriate vote of the Trustees, authorized to execute and deliver the same, shall, in like manner be conclusive evidence in favor of every person relying thereon or claiming thereunder.

Section 3.5 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. Subject to the rights of Sponsor to designate Trustees of its own choice, any Trustee may be removed with or without cause by vote of Unit Owners entitled to more than fifty-one percent (52%) of the beneficial interest hereunder. The vacancy resulting from such removal shall be filled in the manner provided in Section 3.3. 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 Unit Owners, who certify under oath that Unit Owners holding more than fifty-one percent (52%) of the beneficial interest hereunder have voted such removal. By instrument recorded with the Registry of Deeds, the Sponsor may remove, with or without cause, the Trustee it is entitled to designate and appoint a successor Trustee as provided in the second paragraph of section 3.3.

Section 3.6 Bond or Surety. No Trustee, whether an original, substitute, or successor Trustee, shall be obliged to give any bond or surety or other security for the performance of any of his or her duties hereunder, provided, however that the Sponsor prior to the Operating Event or thereafter, or Unit Owners entitled to more than fifty-one percent (52%) of the beneficial interest of this Trust may at any time by instrument in writing signed by them and delivered to the Trustee or Trustees affected require that any one or more of the Trustees shall give bond in such amount and with such sureties as shall be specified in such instrument. All expenses incident to any such bond shall be charged as a common expense of the Condominium.

Section 3.7 Compensation of Trustees. With the approval of the majority of the Trustees, each Trustee may receive such

reasonable remuneration for his services and also additional remuneration for extraordinary or unusual services, legal or otherwise, rendered by him or her in connection with the Trust hereof, all as shall be from time to time fixed and determined by the Trustees, and such remuneration shall be a common expense of the Condominium. No compensation to Trustees may be voted by the Trustees with respect to the period before the Operating Event.

Section 3.8 No Personal Liability. No Trustee shall under any circumstances or in any event be held liable or accountable out of his personal assets or be deprived of compensation, if any, by reason of any action taken, suffered or omitted in good faith or be so liable, accountable or deprived by reason of honest errors of judgment or mistakes of fact or law or by reason of the existence of any personal or adverse interest or by reason of anything except his own personal and willful malfeasance and defaults.

Section 3.9 Trustees May Deal with Condominium. No Trustee shall be disqualified from his office from contracting or dealing with the Trustees or with one or more Unit Owners (whether directly or indirectly because of his interest individually or the Trustees' interest or any Unit Owner's interest in any corporation, firm, trust, other organization connected with such contracting or dealing or because of any other reason), as vendor, purchaser or otherwise, nor shall any such dealing, contract or arrangement entered into in respect of this Trust in which any Trustee shall be interested in any way be avoided nor shall any Trustee so dealing or contracting or being so interested be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such Trustee's holding office or of the fiduciary relation hereby established, provided the Trustee shall act in good faith and shall disclose the nature of his interest before entering into the dealing, contract or agreement.

Section 3.10 Indemnity of Trustees. The Trustees and each of them shall be entitled to indemnity both out of the Trust property and by the Unit Owners against any liability incurred by them or any of them in the execution hereof, including without limiting the generality of the foregoing, liabilities in contract and in tort and liabilities for damages, penalties, and fines, all as provided in Chapter 183A and acting by majority, may purchase such insurance against such liability as they shall determine is reasonable and necessary, the cost of such insurance to be a common expense of the Condominium. Each Unit Owner shall be personally liable for all sums lawfully assessed for this share of the common expenses of the Condominium and for his proportionate share of any claims involving the Trust property in excess thereof, all as provided in Sections 6 and 13 of Chapter 183A. Nothing in this paragraph shall be

deemed to limit in any respect the powers granted to the Trustees in this Declaration of Trust.

ARTICLE IV

Beneficiaries and the Beneficial Interest in the Trust

Section 4.1 Beneficial Interest. The beneficiaries of this Trust shall be the owners of the Units in the Condominium as they may be from time to time. 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 set forth in Exhibit "1" annexed hereto and incorporated herein.

Section 4.2 Each Unit to Vote by One Person. The beneficial interest for each Unit of the Condominium 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 Unit is owned of record by more than one person, the several owners of such Unit shall (a) determine and designate which one of such owners 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, and Trustees may designate any one such owner for such purposes.

ARTICLE V

By-Laws

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

Section 5.1 Powers of the Trustees. The Trustees shall have all the powers and duties necessary for the administration of the offices of the Condominium and may do all things, subject to and in accordance with all applicable provisions of said Chapter 183A and the Master Deed, and, without limiting the generality of the foregoing the Trustees may, with full power and uncontrolled discretion, at any time and from time to time without the necessity of obtaining any approval or license of any court for leave to do so:

(i) to retain the Trust property, or any part or parts thereof, in the same form or forms of investment in which received or acquired by them so far and so long as they shall think fit, without liability for any loss resulting therefrom;

(ii) to sell, assign, convey, transfer, exchange and otherwise deal with or dispose of the Trust property, exclusive of the common areas, free and discharged of any and all trusts, at public or private sale, to any person or persons for cash or on credit, and in such manner and on such restrictions, stipulations, agreements and reservations as they shall deem proper, including the power to take back mortgages to secure the whole or any part of the purchase price of any of the Trust property sold or transferred by them, and execute and deliver any deed or other instrument in connection with the foregoing;

(iii) to 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;

(iv) to borrow or in any other manner raise such sum or sums of money or other property as they shall deem advisable in any manner and on any terms, and evidence the same by notes, bonds, securities or other evidence 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;

(v) to enter into any 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, easements, licenses 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;

(vi) to 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;

(vii) to 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 proposes of this Trust;

(viii) to determine whether receipt by them constitutes principal or income or surplus and allocate between principal and income and designate as capital or surplus any of the funds of the Trust;

(ix) to vote in such manner as they shall think fit any or all shares in any corporation or trust which shall be held as Trust property, and for that purpose give proxies to any person, persons or to one or more of their number, vote, waive any notice or otherwise act in respect of any such shares;

(x) to depose any funds of the Trust in any bank or trust company, and delegate to any one or more of their number, or to any other person or persons, the power to deposit, withdraw and draw checks on any funds of the Trust;

(xi) to maintain such offices and other places of business as they shall deem necessary or proper and engage in business in Massachusetts or elsewhere;

(xii) to employ, appoint and remove such agents, managers, officers, brokers, engineers, architects, employees, servants, assistants and counsel (which counsel may be firm of which one 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, 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 Trustees may designate from their number a chairman, a Treasurer, a Secretary, and such other officers as they deem fit, and may from time to time designate one or more of their own number to be the Managing Trustee or Managing Trustees for the management and administration of the Trust property and the business of the Trust, or any part or parts thereof.

(xiii) to improve any property owned by the Trust;

(xiv) to manage, maintain, repair, restore, and improve common areas and facilities, and when they shall deem necessary, the Units;

(xv) to determine the common expenses required for the affairs of the Condominium;

(xvi) to collect the common expenses from the unit Owners;

(xvii) to adopt and amend rules and regulations covering the details of the operation and use of the common areas and facilities;

(xviii) to obtain insurance covering the Condominium (including the common areas and facilities and the Units);

(xix) to enforce obligations of the Unit Owners and have the power to levy fines against the Unit Owners for violations of reasonable rules and regulations established by the trustees to govern the conduct of the Unit Owners. No fine may be levied for more than \$10 for any one violation, but for each day a violation continues after notice, it shall be considered a separate violation. Collection of fines may be enforced against the Unit Owner or Unit Owners involved as if the fines were common charges owed by the particular Unit Owner or Unit Owners. In the case of persistent violation of the rules and regulations by a Unit Owner, the Trustees shall have the power to require such Unit Owner to post a bond to secure adherence to the rules and regulations;

(xx) 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 the maintenance, repair and replacement of utility fixtures therein servicing the same, including, without limitation, interior finish walls, ceilings, and floors; windows, and interior window trim; doors; door frames and interior door trim; plumbing and sanitary waste fixtures and fixtures for water and other utilities; electrical fixtures and outlets; and all wires, pipes, drains and conduits for water, sewerage, electric power and light, telephone and any other utility services which are contained in and serve the Unit. If the Trustees shall at any time in their reasonable judgment determine that the interior of any Unit is in such need of maintenance or repair that the market value of one or more other Units is being substantially and adversely affected or that the condition of a Unit or fixtures, furnishing, facility or equipment therein is hazardous to any Unit or the occupants thereof, the Trustees shall in writing request the Unit Owner to perform the needed maintenance, repair or replacement or to correct the hazardous condition, and in case such work shall not have been commenced within fifteen (15) days (or such reasonable shorter period in case of emergency as the trustees shall determine) of such request and thereafter diligently brought to

completion, the Trustees shall be entitled to have the work performed for the account of such Unit Owner and to enter upon and have access to such Unit for the purpose. The reasonable cost of such work shall constitute a lien upon such Unit and the Unit Owner shall be personally liable therefor.

Repair of uninsured casualty loss or damage to units caused by events in or condition of common areas and facilities may, in the trustee's sole discretion, but need not be, paid from common funds.

Section 5.3 Maintenance, Repair and Replacement of Common Areas and Facilities; Assessment of Common Expenses Therefor. The Trustees shall be responsible for the proper maintenance, repair and replacement of the common areas and facilities of the Condominium, which may be done through the managing agent, as hereinafter provided, and any two Trustees or the managing agent may approve payment of vouchers for such work. The expenses of such maintenance, repair and replacement shall be assessed to the Unit Owners as common expenses of the Condominium at such times and in such amounts as provided in Section 5.4.

Section 5.4 Common Expense Funds.

Section 5.4.1 Reserve Funds. The Unit Owners shall be liable for common expenses and, subject to the Trustees' judgment as to reserve and contingent liability funds stated below, shall be entitled to surplus accumulations (common profits), if any, of the Condominium in proportion to their beneficial interest in the Trust. The Trustees may from time to time distribute surplus accumulations, if any, among the Unit Owners in such proportions. The Trustees may, to the extent they deem advisable, set aside common funds for reserve or contingent liabilities, and may use the funds so set aside for reduction of indebtedness or other lawful capital purpose, or subject to the provisions of the following Sections 5.4.2 and 5.4.3, for repair, rebuilding, or restoration of the Trust property or for improvements thereto, and the funds so set aside shall not be deemed to be common profits available for distribution.

Section 5.4.2 Estimates of Common Expense and Assessments. 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 the next fiscal year together with a reasonable provision for contingencies and reserves, and after taking into account any undistributed surplus accumulations from prior years, shall determine the assessment to be made for the next fiscal year. The Trustees shall promptly render statements to the Unit Owners for their respective shares of such assessment, according to their beneficial interest in the common areas and facilities, and such statements shall, unless otherwise provided therein, be due and payable within thirty (30) days after the same

are 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 last prior assessment.

In the event that the Trustees shall determine during any fiscal year that the assessment so made is less than the common expenses actually incurred, or in the reasonable opinion of the trustees likely to be incurred, the Trustees shall make a supplemental assessment or assessments and render statements therefor in the manner aforesaid, and such statements shall be payable and take effect as aforesaid. The Trustees may in their discretion provide for payments of statements in monthly or other installments. The amount of each such statement shall be a personal liability of each Unit Owner (jointly and severally among the owners of each Unit) and, if not paid when due, or upon the expiration of such grace period as the Trustees may (but need not) designate, shall carry a late charge in such amount or at such rate (which amount or rate need not be in proportion to the beneficial interest in this Trust) as the Trustees shall determine and, together with any such late amount or charge and attorneys' fees for collection as hereinafter provided, shall constitute a lien on the Unit pursuant to the provisions of Section 6 of Chapter 183A. Each Unit Owner, by acceptance of a Unit Deed, agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by the Trustees in collection of said assessments for common expenses and enforcement of said lien.

Section 5.4.3 Application of Common Funds. The Trustees shall expend common funds only for the purposes permitted by this Trust and by Chapter 183A.

Section 5.4.4 Notice of Default to Mortgagees. Upon written request addressed to the Trustees by a first mortgagee of any Unit, the Trustees shall notify such mortgagee of any default by the mortgagor of such Unit in the performance of the mortgagor's obligation under the Master Deed or this Declaration of Trust.

Section 5.5 Rebuilding and Restoration, Improvements.

Section 5.5.1 Determination of Scope of Loss. In the event of any casualty loss to the Trust property, the Trustees shall determine in their reasonable discretion whether or not such loss exceeds ten percent (10%) of the value of the Condominium immediately prior to the casualty, and shall notify all Unit Owners of such determination. If such loss so determined does not exceed ten percent of such value, the Trustees shall proceed with the necessary repairs, rebuilding or restoration in the manner provided in paragraph (a) of Section 17 of Chapter 183A. If such loss as so determined exceeds ten percent of such value, the Trustees shall forthwith submit to all Unit Owners (a) a form of agreement (which may be in several counterparts) among the Unit Owners authorizing the Trustees to proceed with the necessary repair, rebuilding or

restoration, and (b) a copy of the provisions of Section 17; and the Trustees shall thereafter proceed in accordance with, and take such further action as they may in their discretion deem advisable in order to implement the provisions of paragraph (b) of said Section 17.

Section 5.5.2 Submission to Unit Owners of Proposed Improvements. 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 Unit Owners holding fifty-one percent or more of the beneficial interest in this Trust 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 the estimated cost thereof, and authorizing the Trustees to proceed to make the same, and (b) a copy of the provisions of Section 18 of Chapter 183A. Upon the receipt by the Trustees of such agreement signed by the Unit Owners holding seventy-five percent or more of the beneficial interest or the expiration of ninety days after such agreement was first submitted to the Unit Owners, whichever shall first occur, the Trustees shall notify all Unit Owners of the aggregate percentage of beneficial interest held by Unit Owners who have then signed such agreement. If such percentage exceeds seventy-five percent, the Trustees shall proceed to make the improvement or improvements specified in such agreement and, in accordance with 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 the Unit Owners that if more than fifty-one percent, but less than seventy-five percent of the beneficial interest so consent, the Trustees shall proceed to make such improvement or improvements and shall charge the same to the Unit Owners so consenting.

Section 5.5.3 Arbitration of Disputed Trustee Action. Notwithstanding anything in Sections 5.5.1 and 5.5.2: (a) In the event that any Unit Owner(s), by written notice to the Trustees shall dissent from any determination of the Trustees with respect to the value of the Condominium or any other determination or action of the Trustees under this Section 5.5, and such dispute shall not be resolved within thirty days after such notice, then either the Trustees or the dissenting Unit Owner(s) shall submit the matter to arbitration. For that purpose, one arbitrator shall be designated by the Trustees, one by the dissenting Unit Owner(s) 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 other than an improvement shall be conclusive 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 5.6 Administrative Rules and Regulations. The Trustees may from time to time adopt, amend and rescind administrative 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.

Section 5.7 Managing Agent. The Trustees may, at their discretion, appoint a manager or managing agent to administer the management and operation of the Condominium, including the incurring of expenses, and making of disbursements and the keeping of accounts, as the Trustees shall from time to time determine. The Trustees or such manager or managing agent may appoint, employ and remove such additional agents, attorneys, accountants or employees as the Trustees shall determine.

Section 5.8 Insurance.

Section 5.8.1 The Trustees shall obtain and maintain, to the extent available at reasonable cost, master policies of casualty and physical damage insurance for the benefit and protection of the Trustees, and all of the Unit Owners, naming as the named insured, and with loss proceeds payable to the Trustees hereunder, or one or more of the Trustees hereunder designated by them, as Insurance Trustees for all of the Unit Owners collectively of the Condominium and their respective mortgagees, as their interest may appear, pursuant to such condominium form of insurance as may from time to time be customarily used in Massachusetts, such insurance to cover the buildings and all other insurable improvements forming part of the common areas and facilities, including all service machinery, apparatus, equipment, and installations in the common areas and facilities, including also all such portions and elements of the Units for which the Unit Owners are responsible, but not including the furniture, furnishings or other personal property of the Unit Owners. Such insurance shall, insofar as practicable, be maintained in an amount not less than 100% of the replacement value of the insured property for insurance purposes, as determined by the trustees (who shall review such value at least as often as annually), and shall insure against (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and (b) such other hazards or risks as the Trustees from time to time in their discretion shall determine to be appropriate, including but not limited to vandalism, malicious mischief, windstorm and water damage, federal flood hazards, so-called, and boiler and machinery explosion or damage. Such

19388 178

insurance may have a deductible amount to be determined from time to time by the Trustees.

Section 5.8.2 All policies of casualty or physical damage insurance shall, insofar as practicable, provide (a) that such policies may not be canceled, terminated, or substantially modified as to amount of coverage or risks covered without at least thirty days' written notice to the insured; (b) for waiver of subrogation as to any claims (except claims involving arson or fraud) against the Trust, the Trustees, the manager, agents, employees, the Unit Owners and their respective employees, agents and guests; (c) for waivers of any defense based upon the conduct of any insured; (d) in substance and effect that the insurer should not be entitled to contribution as against any casualty or property insurance which may be purchased separately by Unit Owners; and (e) that such insurance shall not be prejudiced; (i) by any act or neglect of any owners or occupations of the Units, when such act or neglect is not within the control of the Trustees (or Owners) collectively, or (ii) by failure of the Trustees (or Owners) collectively to comply with any warranty or condition with regard to any portion of the premises over which the Trustees (or Owners) collectively have no control.

Section 5.8.3 The Trustee or Trustees hereunder designated as Insurance Trustee or Trustees as aforesaid shall collect and receive all casualty loss insurance proceeds, and shall hold, use, apply, and disburse the same in accordance with applicable provisions of Section 5 hereof. With respect to losses covered by such insurance which affect portions or elements of a Unit, or of more than one Unit to substantially the same or to different extent, the proceeds relating thereto shall be used, applied, and disbursed by the Trustees in a fair and equitable manner.

Section 5.8.4 The Trustees shall also so obtain and maintain, to the extent available, master policies of insurance with respect to the common areas and facilities, for the benefit of the Trustees and all of the Unit Owners, for (a) comprehensive public liability, including personal injury coverage which shall cover any claims of any Unit Owner; (b) Workmen's Compensation and employees' liability with respect to any manager, agent, or employee of the Trust, but excluding any independent agent or manager who shall furnish to the Trustees a Certificate of Insurance if such liability is otherwise uninsured against, it being agreed that the Trustees may waive such requirement in any particular instance, at their discretion; and (c) such other risks as the Trustees in their discretion deem it appropriate to insure. 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 above set forth with respect to noncancellation, waiver or subrogation, waiver of defense based on conduct of any insured, and noncontribution.

Section 5.8.5 Owner's Insurance and Responsibility for Increase in Premium of Master Policy. Each Unit Owner may obtain additional insurance for his or her own benefit at his or her own expense. No such policy shall be written so as to decrease the coverage under any of the policies obtained by the Trustees pursuant to Section 5.8.1 above, and each Unit Owner hereby assigns to the Trustees the proceeds of any such policy to the extent that any such policy does in fact result in a decrease in such coverage, said proceeds to be applied pursuant to the terms of this Section 5.8 as if produced by such coverage. Copies of all such policies (except policies covering only personal property of individual Unit Owners) shall be filed with the Trustees.

Section 5.8.6 Notice of Owner's Improvements. Each Unit Owner shall notify the Trustees of all improvement to his or her Unit (except personal property other than fixtures) which exceed a total value of One Thousand Dollars (\$1,000.00) within twenty (20) days after the commencement of construction of such improvements and upon receipt of such notice, the Trustees shall notify the insurer under any policy obtained pursuant to Section 5.8.1 hereof of any such improvements.

Section 5.8.7 Insurance a Common Expense. The cost of the insurance purchased pursuant to Section 5.8 shall be a common expense assessable and payable as provided in Section 5.4.

Section 5.9 Meetings.

Section 5.9.1 Meetings of Trustees. The Trustees shall meet annually on the date of the annual meeting of the Unit Owners and at such meeting may elect a Chairman, Treasurer, Secretary and any other officers they deem expedient. Other meetings may be called by any Trustee and in such other manner as the Trustees may establish; provided, however, that written notice of each meeting stating the place, day and hour thereof shall be given at least two days before such meeting to each Trustee. A majority of the Trustees then in office shall constitute a quorum at all meetings. Such meetings shall be conducted in accordance with such rules as the Trustees may adopt.

Section 5.9.2 Meetings of Unit Owners. There shall be an annual meeting of the Unit Owners on the first Tuesday of August in each year at 7:00 P.M., at such reasonable place as may be designated by the Trustees by written notice given by the Trustees to the Unit Owners at least seven days prior to the date so designated. 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 them upon the written request of Unit Owners entitled to more than thirty-three percent of the beneficial interest of the Trust. Written notice of any special meeting, designating the place, day, and hour thereof,

19388 180

shall be given by the Trustees to the Unit Owners at least seven days prior to the date so designated.

Section 5.9.3 Notice of Certain Matters; Quorum; Majority Vote. 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. Unit Owners entitled to more than 52% of the beneficial interest of this trust shall constitute a quorum at all meetings. Any action voted at a meeting shall require the vote of more than 52% of the beneficial interest in the Trust, except where the other provisions of this Trust of Chapter 183A requires a larger percentage.

Section 5.10 Notice to Unit Owners. Every notice to any Unit Owner required under the provisions of this Trust which may be deemed by the Trustees necessary or desirable in connection with the execution of the Trust created hereby or which may be ordered in any judicial proceeding shall be deemed sufficient and binding if in writing addressed to the Owner of such Unit last appearing on the Trustees' records, postage paid; to such person at his address last appearing on the Trustees records if other than the Unit or else mailed or delivered to the Unit at least seven days prior to the date fixed for the happening of the matter, thing or event of which such notice is given. The Owner or Owners of such Unit shall have the responsibility of providing the Trustees with the correct name of the present Owners of the Unit and any address other than the Unit to which they desire notices to be mailed as to which matters the Trustees shall have no duty of inquiring beyond their records.

Section 5.11 Inspection of Books; Reports to Unit Owners. Books, accounts and records of the Trustees shall be open to inspection to any one or more of the Trustees and the Unit Owner and first mortgagee of any unit at all reasonable times. The Trustees shall, as soon as reasonably possible after the close of each fiscal year, or more often if convenient to them, submit to the Unit Owners a report of the operations of the Trust for such year. If the Trustees so determine or if any Unit Owner so requests in writing to the Trustees, the report shall include financial statements by a certified public accountant which may, but need not be certified, as the Trustees shall determine, and shall be in such summary form and only in such detail as the Trustees shall deem proper. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees given by registered mail within a period of one month of the date of his or her receipt of the report shall be deemed to have assented thereto.

Section 5.12 Checks, Notes, Drafts and Other Instruments. Checks, notes, drafts, and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust may be signed by any two Trustees (or by one Trustee if there is only one), or by any person or persons to whom such power may at any time or from time to time have been delegated by not less than a majority of the Trustees.

Section 5.13 Fiscal Year. The fiscal year of the Trust shall be the year ending with the last day of December or such other date as may from time to time be determined by the Trustees.

ARTICLE VI

Rights and Obligations of Third Parties

Dealing with the Trustees

Section 6.1 Reliance or Identity of Trustees. No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear on record in the Registry of Deeds shall be bound to ascertain or inquire further as to the persons who are then trustees under this Trust, or be affected by any notice, implied or actual, otherwise than by a certificate thereof, 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 or more of them, for money or things paid or delivered to them or him shall be effectual discharges therefrom to the persons paying or delivering the same and no person from whom the Trustees, or any one or more of them, shall receive any money, property or other credit shall be required to see to the application thereof. No purchaser, mortgagee, lender or other person dealing with the trustees or with any real or personal property which then is or formerly was Trust property shall be 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 change is herein authorized or directed, or 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 of the occasion thereof.

Section 6.2 Personal Liability Excluded. No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued, or executed by the Trustees or by any agent or employee of the Trustees, or by

reason of anything done or omitted to be done or on behalf of them or any of them, against the Trustees individually, or against any such agent or employee, or against any beneficiary, either directly or indirectly, by legal or equitable proceedings, 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 any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to them from the Trustees, so that neither the Trustees nor the beneficiaries, present or future, shall be personally liable therefor provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Unit Owners under provisions of Section 3.8 or this Trust or 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 of this Trust, whether or not express reference shall have been made to this instrument.

Section 6.4 Further Matters of Reliance. This Declaration of Trust and any amendments to this Trust and any certificate required by the terms of this Trust to be recorded and 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 the Registry of Deeds and such record shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any matter whatsoever with the Trustees, the Trust property or any beneficiary thereunder shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be recorded with said Registry of Deeds. Any certificate signed by two Trustees in office at the time (only one Trustee if there is only one at the time), setting forth as facts any matters affecting the Trust, including statements as to who are the beneficiaries and as to matters determining the authority of the Trustees, or any one of them to do any act, when duly acknowledged and recorded with the Registry of Deeds shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees, acting in reliance thereon. 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, the existence of the facts therein set forth

and the existence of the authority of such one or more Trustees to execute and deliver the designated instrument on behalf of the Trust.

Section 6.5 Common Expenses in Event of Unit Mortgage Foreclosure. Any first mortgagee, in the event of foreclosure of its mortgage, shall take such Unit free of any claims for unpaid common expenses or assessments against such Unit to the extent provided by law.

Section 6.6 Common Expense Certificates. Notwithstanding any other provision of this Article VI, any certificate setting forth the amount of unpaid common expenses assessed against any unit owner as provided by subsection (d) of Section 6 of Chapter 183A shall be conclusive evidence of the facts stated therein if signed by any two Trustees then in office (or one if there be only one in office).

ARTICLE VII

Amendments and Termination

Section 7.1 Amendments. The Trustees, with the consent in writing of Unit Owners entitled to not less than seventy-five percent of the beneficial interest in this Trust, 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 should be altered or in any manner or to any extent whatsoever modified or affected, so as to be different from the percentage of the individual interest of such Unit Owner in the common areas and facilities as set forth in the Master Deed, and any amendment thereto, or (b) 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 as the case may be, signed, sealed and acknowledged in the manner required in Massachusetts for the acknowledgement of deeds by any two Trustees, if there be at least two then in office (or one Trustee if there be only one in office), setting forth in full amendment, alteration, 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. Nothing in third

19388 184

paragraph shall be construed as making it obligatory upon the Trustees to amend, alter, add to, or change the Declaration of Trust upon obtaining the necessary consent as hereinbefore provided.

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 therefor set forth in Section 19 thereof.

Section 7.3 Disposition of Trust Property Upon Termination. Upon the termination of this Trust, the Trustee 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 thereof, and, after paying or retiring all known liabilities and obligations of the Trustees and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, at valuations made by them which shall be conclusive, all other property then held by them in trust hereunder, to the Unit Owners according to their respective beneficial interest stated in this Trust. In making any sale under this section, the Trustees shall have power to sell by public auction or private sale or contract and to buy in or rescind or vary any contract of sale and to resell without being answerable for loss and, for said purposes, to do all things, including the execution and delivery of instruments, as may by their performance thereof be shown to be in their judgment necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distributions of Trust property may have passed.

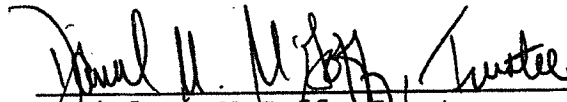
ARTICLE VIII

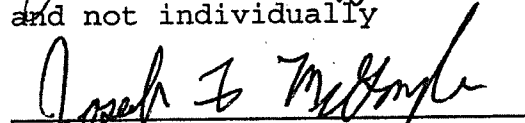
Construction and Interpretation

In the construction hereof, whether or not so expressed, words used in the singular or in the plural respectively include individuals, firms, associations, companies (joint stock or otherwise), trusts and corporations unless a contrary intention is reasonably required by the subject matter and context. The title headings of different parts hereof are inserted only for convenience of reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation or effect hereof. All the trusts, powers and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts. Unless the context otherwise indicates, words defined in Chapter 183A shall have the same meaning here.

19388 185

IN WITNESS WHEREOF, Daniel M. McGoff and Joseph F. McGonagle
Trustees of the aforesaid Trust have set their hands and seals on
the day and year first hereinbefore set forth.


Daniel M. McGoff, Trustee
and not individually



Joseph F. McGonagle, Trustee
and not individually

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

October 19, 1994

Then personally appeared the above named Daniel M. McGoff
and Joseph F. McGonagle, Trustees as aforesaid, and acknowledged
the foregoing instrument to be their free act and deed as Trustees,
as aforesaid, before me


Notary Public

My commission expires: 11-2-95

19388 186

EXHIBIT 1

<u>Unit Number</u>	<u>Percentage</u>
Unit 1	.516
Unit 2	.241
Unit 3	.243

EXHIBIT "A" incorporated into and made a part of the Declaration of Trust of 257-259 Main Street, Condominium Trust

BY-LAWS

257-259 Main Street, Condominium Trust

The provisions of this Exhibit A to 257-259 Main Street Condominium Trust shall constitute the By-Laws of 257-259 Main Street Condominium Trust, the organization of Unit Owners established by said Trust.

1. Powers and Duties of the Trustees

The Board of Trustees shall have all power necessary for the administration of the affairs of the Condominium as set forth in Massachusetts General Laws, Chapter 183A hereinafter referred to as "Chapter 183A", and they may do any and all acts necessary or desirable for the administration of the affairs of the Condominium except only for such acts as may not under law, or under the provisions of the Master Deed, or this Trust, be delegated to the Trustees by the Unit Owners. Such powers and duties of the Trustees shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of the common areas and facilities.
- (b) Determination of the Common Expenses required for the affairs of the Condominium, including, but not limited to the operation and maintenance of the common areas and facilities.
- (c) Collection of the Common Expenses, from the Unit Owners.
- (d) Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the common areas and facilities.
- (e) Subject to the provisions of Section 7 of these By-Laws, adoption, amendment, and administration (including waiver) of rules and regulations covering the details of the operation and use of the common areas and facilities.
- (f) Opening of bank accounts on behalf of the Condominium, and, subject to the provisions hereof, designating the signatories required therefor.
- (g) Leasing, managing and otherwise dealing with such facilities as may be provided for in the Master Deed as being common areas and facilities.
- (h) Owning, conveying, encumbering, leasing and otherwise dealing with units conveyed to the Trust or purchased by it as a result of enforcement of the lien for Common Expenses, or otherwise.

- (i) Obtaining of insurance for the Condominium, including the units pursuant to the provisions hereof.
- (j) Making of repairs, additions and improvements to, or alterations or restoration of, the Condominium, in accordance with the other provisions of this Trust.
- (k) Enforcing obligations of the Unit Owners, allocating income and expenses, and to do anything and everything else necessary and proper for the sound management of the Condominium.
- (l) Subject to the provisions of Subsection (B) of Section 29 of these By-Laws, purchasing or leasing a Unit.
- (m) Purchasing of units at foreclosure or other judicial sales.
- (n) Organizing and maintaining corporations, trusts, or other entities to act as nominee of the Condominium in acquiring title to units on behalf of all Unit Owners under the provisions hereof.
- (o) Conducting litigation as to any course of action involving the common areas and facilities or arising out of the enforcement of the By-Laws rules and regulations, and Master Deed, and this Trust. Notwithstanding any provision of the Master Deed, or the Declaration of Trust of the Condominium Trust, or of these By-Laws or the Rules and Regulations to the contrary, neither the Trustees acting in their capacity as such Trustees or acting as representatives of the Unit Owners, nor any class of Unit Owners acting as representatives of the Unit Owners, nor any class of Unit Owners shall bring any litigation whatsoever unless a copy of the proposed complaint in such litigation has been delivered to all of the Unit Owners, and not less than 66.66% all Unit Owners consent in writing to the bringing of such litigation within sixty (60) days after a copy of such complaint has been delivered to the Unit Owners and specifying as a part of the written consent a specific monetary limitation to be paid as legal fees and costs and expenses to be incurred in connection therewith, which amount shall be separately assessed as a special assessment effective forthwith at the time of said affirmative consent. Notwithstanding any provisions of the Master Deed, or of the Declaration of Trust of the Condominium Trust (including but not limited to the provisions of Section VII of the Declaration of Trust of the Condominium Trust), or these By-Laws or the Rules and Regulations, the provisions of this Paragraph (o) of this Section 1 shall not be amended except by vote of at least

66.66% of Unit Owners. The provisions of this paragraph (o) shall not apply to litigation by the Condominium Trust against Unit owners with respect to the recovery of overdue Common Expenses or Special Assessments, or to foreclose the lien provided by Chapters 183A, Section 6, and 254, Sections 5 and 5A as amended by Chapter 338 of the Acts of 1987 and Chapter 341 of the Acts of 1989, or to enforce any of the provisions of the Master Deed, or the Declaration of Trust of the Condominium Trust, or these By-Laws or Rules and Regulations thereto, or the unit deed, against Unit Owners.

- (p) Granting permits, licenses and easements over the common areas and facilities for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium Project.

2. Common Expenses and Profits

A. Commencing on the date of the recording of the Master Deed, each Unit Owner shall be liable for Common Expenses and shall be entitled to common profits of the Condominium in the same proportion as his beneficial interest in this Trust bears to the aggregate beneficial interest of all the other Unit Owners. The Trustees may at any time or times distribute common profits among the Unit Owners in such proportions. The Trustees shall at all times establish and maintain an adequate reserve fund for the periodic maintenance, repairs and replacement of improvements to the common areas and facilities and those limited common areas which the Trust may be obligated to maintain, and such reserve fund shall be funded by regular monthly assessments from regular assessments for Common Expenses, and such fund shall not be deemed to be common profits available for distribution.

B. In addition to the foregoing, (and not in substitution thereof) to ensure that this Trust will have the funds to meet unforeseen expenditures or to purchase any additional equipment or services, there shall be a working capital fund at least equal to two (2) months' estimated common charges for each unit. Any amounts paid into this fund shall not be considered as advance payments of regular assessments. Each unit's share of the working capital fund shall be collected at the time the sale of the unit is closed or at the time control of this Trust is transferred to the Trustees elected by unit owners other than the Declarant, as set forth in Section III of this Trust, whichever occurs earlier. When control of this Trust is transferred as set forth in the immediately preceding sentence, the working capital fund shall be transferred to this Trust for deposit to a segregated fund. During the term of the Initial Board (or while a majority of the Trustees are the Declarant, or nominees or designees of the Declarant) the working capital fund which is the subject of this Subsection cannot be used to defray the expenses, reserve contributions, or

19388 190

construction costs which are the responsibility of the Declarant in its role as developer of the Condominium or to make up budget deficits. The Declarant may reimburse itself for these payments from the funds collected at closing when the unsold units are sold.

C. In addition to the foregoing, (and not in substitution thereof), the Trustees may, to such extent as they deem advisable, set aside common funds of the Condominium as additional reserves and may use the funds so set aside for reduction of indebtedness or other lawful capital purposes, and, subject to the provisions of Section 4 of these By-Laws, for repair, rebuilding or restoration of the Condominium, or for improvements thereto, and for replacement of the common areas and facilities, and other proper contingencies, and the funds so set aside shall not be deemed to be common profits available for distribution.

D. 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 reasonable provision for contingencies and reserves, and for the reserve funds mentioned in Subsection C of the Section 2, and after taking into account any undistributed common profits from prior years, shall determine the assessment for Common Expenses to be made for such fiscal year. The Trustees shall promptly furnish copies of each budget on which such assessment is based to all Unit Owners, and, if requested, to their mortgagees. The Trustees shall promptly render statements to the Unit Owners for the respective shares of such assessment, and each Unit Owner thereafter shall pay one-twelfth of his share of the estimated Common Expenses monthly in advance on the first day of each month. The Trustees shall not be obligated to render monthly statements. In the event that at any time and from time to time the Trustees shall determine during any fiscal year that the assessment so made is less than the Common Expenses actually incurred, or to be incurred, including but not limited to provisions for proper reserve funds, the Trustees shall make a supplemental assessment or assessments and render statements therefor in the manner aforesaid, and such statements shall be payable and take effect as set forth in such statements. The Trustees may in their discretion provide for payments of such supplemental assessment statements in monthly or other installments. The Trustees shall have the authority and the duty to levy and enforce the collection of general and special assessments for Common Expenses.

E. The amount of each such statement, for regular or supplemental assessments, together with interest thereon, if not paid when due, at a rate equal to the prevailing rate of interest, together with all expenses, including attorneys' fees, incurred by the Trustees in any proceeding brought to collect such unpaid Common Expenses and assessments, shall constitute a lien on the unit of the Unit Owner assessed pursuant to the provisions of Section 6 of said Chapter 183A and Section 5 and 5A of Chapter 254,

19388 191

as amended by Chapter 338 of the Acts of 1987 and Chapter 341 of the Acts of 1989, and may be collected by the Trustees pursuant to said statutes. The Trustees shall take prompt action to collect any Common Expenses and assessments due from any Unit Owner which remains unpaid for more than thirty (30) days from the due date thereof including but not limited to action under the provisions of Massachusetts General Laws Chapters 183A and 254 as amended by Chapter 338 of the Acts of 1987 and Chapter 341 of the Acts of 1989. In the event that the Trustees bring an action to foreclose a lien on any unit pursuant to said statute, the Unit Owner shall pay a reasonable sum for use and occupancy of his unit from the date of foreclosure until the Unit Owner vacated the unit (the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same) but nothing in this sentence shall be deemed to grant any Unit Owner the right to remain in possession of his unit after such foreclosure. The Trustees, acting on behalf of all Unit Owners, shall have power to purchase such unit at the foreclosure sale and to acquire, hold, lease, mortgage (but not vote the vote to appurtenant to), convey or otherwise deal with the same. A suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same. In the event of any suit or foreclosure by the Trustees, the Trustees shall be entitled to interest at a rate equal to the prevailing rate of interest and all costs of collection, suit and foreclosure, including attorney's fees. In addition to the lien in favor of the Trustees for assessments for Common Expenses and assessments, such assessments shall also be the personal obligation of the owner of the unit at the time the assessment fell due.

F. The Trustees shall promptly provide any Unit Owner, or any Unit Buyer who has a duly executed Purchase and Sale Agreement or the acquisition of a unit, or any mortgagee, or the attorney of any such party, with a written statement of all unpaid Common Expenses due with respect to such unit, signed and acknowledged in proper form for recording, upon the written request of such Unit Owner or buyer or mortgagee or attorney. Notwithstanding anything to the contrary in this Declaration of Trust, including these By-Laws, such statements may be executed by any two (2) Trustees. Recording of such statement in the Suffolk County Registry of Deeds shall operate to discharge the unit from any lien for any other sums unpaid not enumerated as of the date of such statement to the extent provided by said Chapter 183A.

G. The Trustees shall expend common funds only for common expenses and lawful purposes permitted hereby and by the provisions of said Chapter 183A.

H. Notwithstanding anything to the contrary herein, 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 except as provided by law in Chapter 183A, Section 6. The lien for common expense assessments shall not be effected by any sale or transfer of a unit, except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for assessments which became payable prior to such sale or transfer except as provided by law pursuant to Chapter 183A, Section 6. Any such delinquent assessments which were extinguished pursuant to the immediately 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.

3. Insurance

A. The Trustees shall be required to obtain and maintain, to the extent obtainable, the following insurance: (and to pay premiums thereon as a Common Expense) (1) fire with extended coverage (covering other perils normally covered by the standard extended coverage endorsement) insuring all portions of the building, including the common areas and facilities of the Condominium, and all of the units and all of the fixtures installed therein on the date of recording of the Master Deed, but not including carpeting, drapes, fixtures, furniture, furnishing, or other personal property supplied to or installed by Unit Owners, covering the interest of the Condominium, the Trustees and all Unit Owners and their mortgagees, as their interests may appear, in an amount equal to 100% of current replacement cost of the building, common areas and facilities, and units, without deduction for depreciation, with loss payable to the Trustees, as Insurance Trustees for each unit owner and the holder of each unit's mortgage. The named insured shall be "the Trustees of 257-259 Main Street Condominium Trust, for the use and benefit of the individual unit owners and unit mortgagees". Such insurance shall also cover all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available; (2) worker's compensation insurance if the Trustees shall have an employee or employees; (3) comprehensive general liability insurance covering all common areas and facilities, and any other areas under the supervision of the Trustees in such amount and with such coverage as the Trustees shall from time to time determine, with a combined single limit for both personal injury, death and property damage, of not less than One Million (\$1,000,000.00) Dollars, but at least covering each member of the Trustees, the managing agent or the manager, if any, and each Unit Owner and with cross liability endorsement to cover liabilities of the Condominium to a Unit Owner, and a severability of interest provision precluding the insurer's denial of a unit

owner's claim because of negligent acts by this Trust or other unit owners; (4) Fidelity bonds in blanket form for all officers, directors, trustees and employees of the Trust and all other persons handling or responsible for funds administered by the Trust whether or not they receive compensation for their services. The total amount of fidelity bond coverage shall not be less than the estimated maximum funds, including reserve funds, in the custody of the Trust or the management agent, as the case may be, at any given time during the term of such bond, and, in any event, the aggregate amount shall not be less than a sum equal to three (3) months' aggregate assessments on all Unit plus reserve funds, or one and one-half times the insured's estimated annual operating expenses and reserves, whichever is greater. (i) The fidelity bonds shall name the Trust as an obligee; (ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expression; and (iii) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Trust and the Mortgagees which are listed as scheduled holders of first mortgages in the insurance policy; and (5) such other insurance as the Trustees may determine. Notwithstanding the provisions of Clause (4) of the immediately preceding sentence, the fidelity bonds set forth in said Clause (4) shall be required only if required under the provisions of subsection (e) of Section III of this Trust, and not otherwise. All such policies shall provide that adjustment of loss shall be made by the Trustees and that the net proceeds thereof shall be payable to the Trustees as Trustee for each unit owner and the holder of each unit's mortgage. Each Unit Owner, by accepting delivery of his unit deed, appoints the Trustees as Insurance Trustees (or any Insurance Trustee or Substitute Insurance Trustee designated by the Trustees) as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Trustees shall periodically reevaluate the amount of public liability insurance to be carried by them as set forth in clause (3) of this Section 3 to the end that limits of such insurance shall not be less than the amounts specified in said clause (3), or, not less than limits of such liability insurance as are carried by other Condominium Unit Owners' Associations in comparable condominiums in Charlestown, Massachusetts, whichever is higher.

B. All such policies of physical damage insurance shall, insofar as practicable, contain waivers of subrogation as to any claim against the Trustees, their agents and employees, Unit Owners, their respective employees, agents and guests, and of any defense based on invalidity arising from the acts of the insured and shall provide that the insurance will not be prejudiced by any

acts or omissions individual unit owners that are not under the control of the unit owners that are not under the control of the owner's association, and shall provide that such policies may not be canceled or substantially modified without at least ten (10) days' prior written notice to all of the insureds, including all unit owners and mortgagees of units, and 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 shall include a Special Condominium Endorsement (so called) or its equivalent. Agreed Amount, Inflation Guard and Construction Code endorsements shall be required if available. A steam boiler and machinery coverage endorsement shall also be required, which provides that the insurers minimum liability per accident at least equals the lesser of \$2,000,000.00 or the insurance value of the building housing the boiler or machinery. A certificate of insurance, showing the amount of insurance, shall be issued to the owners of each unit and the original shall be issued to the owners of each unit and the original or a certificate thereof shall, upon request, be delivered to the mortgagee of each unit. The Trustees shall periodically obtain an independent appraisal of the full replacement value of all portions of the building, including all of the units and all of the common areas and facilities, and additions, alterations and improvements, without deduction for depreciation, for the purposes of determining the amount of fire and extended coverage insurance to be effected pursuant to this Section, and the amount of such insurance shall in no event be less than the full replacement value so as determined.

C. Subject to the provisions of Section 4 of these By-Laws, insurance proceeds received by the Trustees shall be held in trust in an identified and segregated fund for the benefit of the unit Owners and all mortgagees of all units. If the cost of restoring the common areas and facilities, or any unit, is estimated by the Trustees to exceed the sum of One Thousand (\$1,000.00) Dollars, then the Trustees shall give written notice of such loss to all eligible Mortgage Holders and all eligible Insurers and Guarantors, as herein defined.

D. The cost of all such insurance obtained and maintained by the Trustees pursuant to the provisions of this Section 3 shall be a Common Expense of the Condominium.

E. Any such insurance obtained and maintained by the Trustees pursuant to the provisions of this Section 3 may have a deductible amount to be determined from time to time by the Trustees, (but in no event shall such deductible amount be greater than the lesser of \$10,000.00 or 1% of the policy face amount), who shall simultaneously specify, in writing with notice to all Unit Owners, how and by whom the amount of the deductible shall be paid in the event of a loss.

F. All insurance obtained and maintained by the Trustees

shall conform to applicable requirements of the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal National Mortgage Association ("FNMA") so long as FHLMC or FNMA hold one or more mortgages on units in the Condominium or any interest therein.

G. Each Unit Owner may carry insurance at his own expense for his own benefit insuring, inter alia, his carpeting, drapes, fixtures, furniture, furnishings and other personal property, and personal liability, and loss assessment coverage, 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 a Unit Owner. Each Unit Owner shall promptly notify the Trustees of all improvements made by him to his unit the insurable replacement cost of which exceeds one thousand (\$1,000.00) dollars, and such Unit Owner shall pay to the Trustees as an addition to his share of the Common Expenses of the Condominium otherwise payable by such owner any increase in insurance premium incurred by this Trust which results from such improvement.

H. Nothing shall be done or kept in any unit or in the common areas and facilities which will increase the rate of insurance on the buildings or the contents thereof without the prior written consent of the Trustees, unless the Unit Owner responsible for such increase shall agree to pay the amount of such increase.

4. Rebuilding and Restoration

A. In the event of damage to or destruction of the common areas and facilities as a result of fire or other casualty (unless Subsection F of this Section is applicable), 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 Subsection F 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 expense actually incurred in connection with such repair or restoration in appropriate progress payments and with appropriate retainage. All insurance proceeds paid to the Trustees as Insurance Trustees, on account of any casualty shall be dedicated first to the repair or restoration of the loss, and any application of said proceeds by the Trustees on account thereof shall be prior to the application of such proceeds for any other purposes.

B. In the event the insurance proceeds are not sufficient to cover the cost of repairs to the common areas and facilities and the units, the proceeds will be first allocated to the cost of repairs to the common areas and facilities and the balance, if any, to the cost of repairs to the units in proportion to the cost of

19388 196

all repairs to the respective units as determined by the insurer or by independent appraisal. To the extent the proceeds allocated as aforesaid are insufficient to cover the cost of repairs to the common areas and facilities, the balance of the cost of such repairs will be assessed against all Unit Owners as a Common Expense. To the extent the proceeds allocated as aforesaid are insufficient to cover the cost of repairs to the units, the balance of the cost of such repairs to each unit will be assessed against all Unit Owners as a Common Expense.

C. Whenever the estimated cost of repair or restoration exceeds, as to any one casualty or occurrence, on the basis of any independent appraisal, the sum of twenty-five thousand (\$25,000.00) dollars, 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 of the Trustees, or the manager, if any, or any employee or agent of such manager, to supervise the work of repair or restoration and no sums shall be paid by the Trustees on account of such repair or restoration except upon certification to them by such architect or engineer that the work for which payment is being made has been completed in a good and workmanlike manner in accordance with approved plans and specifications and that the estimated total cost of completion of said repair or restoration, less amount 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.

D. The Trustees may perform emergency work essential to the preservation and safety of the Condominium, including all parts of the building and the common areas and facilities and the units, or the safety of persons, or required to avoid the suspension of any essential service to the Condominium, including all parts of the building and the common areas and facilities and the units, without having first engaged an architect or engineer, adjusted the loss or obtained proceeds of insurance.

E. Subject always to the prior rights of the Unit Mortgagees, if there shall have been a repair or restoration pursuant to the foregoing and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds, if any, shall be added to the Condominium's reserve fund, or, at the option of the Trustees, divided among all Unit Owners in proportion to their respective interests in the common areas and facilities.

F. Notwithstanding the foregoing, if, as a result of fire or other casualty, the loss exceeds ten (10%) percent of the value of the Condominium, including all parts of the building and the common areas and facilities and the units prior to the casualty, and: (a) if 66.66% 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. Subject always to the prior rights of the Unit Mortgagees, the net proceeds of the partition sale together with any common funds shall be divided in proportion to the Unit Owners' respective undivided ownership in the common areas and facilities. Upon such sale, the condominium shall be deemed removed from the provisions of Chapter 183A of the Massachusetts General Laws; (b) 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 including all parts of the building and the common areas and facilities and the units, prior to the casualty, any Unit Owner who did not so agree may apply to the Superior Court of Suffolk County on such notice to the Trustees and Unit Owners as the Court shall direct, for an order directing the purchase of his unit by the Trustees at the fair market value thereof as approved by the Court. The cost of any such purchase shall be a Common Expense.

5. Condemnation

If more than ten (10%) percent in value of the Condominium is taken under the power of Eminent Domain, then the taking shall be treated as a casualty loss and the provisions of Section 4 of these By-Laws and the provisions of Massachusetts General Laws, Chapter 183A, Section 17 shall apply. Where one or more units have been substantially altered or rendered uninhabitable as a result of a partial taking, and the Unit Owners vote to restore and continue the Condominium pursuant to Section 17 of said Chapter 183A, the Trustees shall determine, provided that any Unit Owners of such remaining portion who does not agree with such determination may apply to the Superior Court of Suffolk County on such notice to the Trustees and the other Unit Owners as the Court shall direct, for an order directing the purchase of such remaining portion at the fair market value thereof as provided by the Court. Where as a result of a partial taking any unit is decreased in size or where the number of units is decreased by a partial taking, then the Trustees may make such provision for realignment of the percentage interest in the common areas and facilities as shall be just and equitable.

In the event of a total or partial taking under the powers of eminent domain, the Unit Owners shall be represented by the Condominium acting through the Trustees. In the event of a partial taking, the award shall be allocated to the respective Unit Owners according to their undivided interest in the common areas and

facilities, except as to such portion or portions of the award which are attributable to direct or consequential damages suffered by particular units as determined by the Court, which shall be payable the Owners of such Units or their mortgagees, as their interests may appear. Subject always to the prior rights of the Unit Mortgagees, in the case of a total taking of all units and the common areas and facilities, the entire award shall be payable to the Trustees to be distributed to the Unit Owners and their mortgagees in accordance with their respective percentage interests in common areas and facilities.

6. Improvements

A. If 66.66% or more of the Unit Owners may agree to make an improvement to the common areas and facilities and assess the cost thereof to all Unit Owners as a Common Expense, but if such improvement shall be cost in excess of ten (10%) percent of the then value of the Condominium, including the building and the common areas and facilities and the units, any Unit Owner not so agreeing may apply to the Superior Court of Suffolk County on such notice to the Trustees and Unit Owners as the Court shall direct, for an order directing the purchase of his unit by the Trustees at fair market value thereof as approved by the Court. The cost of any such purchase shall be a Common Expense.

7. Rules and Regulations

A. The Trustees have adopted the initial Rules and Regulations set forth on Exhibit B which is annexed hereto and is hereby incorporated herein by this reference and made a part hereof, governing the details of the operation and use of the common areas and facilities, and containing such restriction on, and requirements respecting the use and maintenance of, the common areas and facilities as are consistent with the provisions of the Master Deeds, and designed to prevent unreasonable interference with the use by the Unit Owners of the common and facilities.

B. The Trustees shall administer such rules and regulations.

C. The Trustees may at any time and from time to time, amend, rescind and waive, any or all of such rules and regulations.

D. The Trustees may at any time and from time to time, adopt other rules and regulations governing the details of the operation and use of the common areas and facilities, and containing such restrictions on, and requirement respecting the use and maintenance of, the common areas and facilities, as are consistent with the provisions of the Master Deed, and designed to prevent unreasonable interference with the use by the unit Owners of the common areas and facilities.

E. Notwithstanding the foregoing provisions of this Section

(i) The Trustees shall furnish copies of any new rule or regulation, or amendment of any existing rule or regulation, to the Unit Owners prior to the time when such new rule or regulation, or amendment, as the case may be, shall become effective, and

(ii) The Unit Owners, by majority vote, may, at any time and from time to time, rescind, amend or waive any rule or regulation promulgated by the Trustees (including but not limited to the initial rules and regulations referred to hereinabove); and

(iii) Any waiver, rescission, amendment, adoption or enforcement of a rule or regulation whether by the Trustees or the Unit Owners, as hereinbefore set forth, shall be uniformly binding upon all Unit Owners.

8. Meetings

A. The Board of Trustees shall meet annually on the date of the Annual Meeting of the Unit Owners. Other meetings may be called by any Trustee, and in such other manner as the Trustees may establish, provided, however, that written notice of each meeting, shall be given at least five (5) days before such meeting to each member of the Board of Trustees. A majority of the Trustees shall constitute a quorum at all meetings. All meetings shall be conducted in accordance with such rules as the Board of Trustees may adopt.

B. There shall be annual meeting of the Unit Owners on the first Tuesday of August in each year at 7:00 P.M. on the Condominium premises or at such other reasonable place and time (not more than twenty-one (21) days before or after said date) as may be designated by the Board of Trustees by written notice given to the Unit Owners at least fourteen (14) days prior to the date so designated. Special meetings of the Unit Owners may be called by them upon the written request of any Unit Owner. Written notice of any such meeting designating the place, day and hour thereof shall be given by the Board of Trustees to the Unit Owners at least fourteen (14) days prior to the date so designated. At the annual meeting of the Unit Owners, the Board of Trustees shall submit reports of the management and finances of the Condominium. Whenever at any meeting the Board of Trustees proposes 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 state and reasonably specify such matter. A quorum of Unit Owners shall consist of a majority in interest of Unit Owners.

C. Any Trustee or Unit Owner may, at any time, waive notice of any meeting in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Trustee or Unit Owner without objection to lack of notice at any meeting shall constitute a waiver of notice by such Trustee or Unit Owner

of notice of such meeting. If all of the Trustees are present at any meeting of the Trustees, or if all of the Unit Owners are present at any meeting of the Unit Owners, respectively, no notice shall be required and any business may be transacted at such meeting of the Trustees, or Unit Owners, respectively. 1988 200

9. Notices to Unit Owners

Every notice to any Unit Owner required under the provisions hereof, or which may be deemed by the Trustees necessary or desirable in connection with the execution of the Trust created hereby or which may be ordered in any judicial proceeding, shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one or more of the Trustees to such Unit Owner by leaving such notice with him at his residency in the Condominium or by mailing it, postage prepaid, addressed to such Unit Owner at his address as it appears upon the records of the Trustees, at least five (5) days prior to the date fixed for the happening of the matter, thing or event of which such notice is given, unless a different period for the giving of such notice is specified in these By-Laws.

10. Inspection of Books; Reports to Unit Owners

The Trustees shall keep detailed records of the actions of the Trustees, minutes of the meetings of the Trustees, minutes of the Trustees, minutes of the meetings of the Unit Owners, and financial records and books of account of the Condominium, including a chronological listing of receipts and expenditures, as well as a separate account of each unit, which among all other things, shall contain the amount of each assessment of Common Expenses against such unit, the date when due, the amounts paid thereon, and the balance remaining unpaid. Copies of the Master Deed, this Trust and these By-Laws, rules and regulations, and floor plans of the building, as the same may be amended from time to time, shall be maintained at the office of the Trustees. All of the foregoing records, accounts and documents shall be available for inspection by Unit Owners, their authorized agents, and lenders, mortgagees, holders, insurers and guarantors of any mortgage on any unit at all reasonable times. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances. The Trustees shall, as soon as reasonably possible, after the close of each fiscal year, or more often, if convenient to them, submit to the Unit Owners a report of the operation of the Trustees for such year, which shall include financial statements in such summary form and in such detail as the Trustees shall deem proper. Except in the case of fraud, committed by any Trustee, any person (other than a mortgagee or mortgage insurer or guarantor) who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees, given by registered or certified mail within a period of (60) days of the date of receipt by him, shall be deemed to have

assented thereto. The holders of fifty-one (52%) percent or more of first mortgages shall be entitled to have and audited statement prepared at their expense within a reasonable time of one is. not otherwise available.

19388 201

11. Checks and Notes

Checks, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust may be signed by any two (2) Trustees, or by any person or persons (who may be one of the Trustees) to whom such power may at any time or from time to time be designated by not less than a majority of the Trustees. All vouchers, if any, for the payment of any common expense shall be approved by not less than two (2) Trustees in each instance.

12. Seal

The Trustees may, at any time or from time to time, at their discretion, adopt a seal circular in form bearing the name of this Trust and the year in which this instrument was recorded in the Registry of Deeds, or a common or wafer seal, which shall be valid for all purposes.

13. Fiscal Year

The fiscal year of the Trust shall be the calendar year, or such other date as may from time to time be determined by the Trustees.

14. Management; Employees

A. The Trustees, at their discretion, may, but need not, appoint real estate management firm, or manager, to manage the Condominium, at such compensation, and upon such terms and conditions as the Trustees see fit. If such management firm, or manager, is so appointed, the Trustees may delegate to such firm or manager such duties as are customarily and usually performed by Condominium property managers in the Greater Boston area, or such duties as the Trustees may at any time and from time to time, expressly delegate, provided, however, that the duties and powers, and responsibilities of the Trustees under Sections 1(b); 1(d); 1(e); 1(f); 1(g); 1(h); 1(i); 1(k); 1(l); 1(m); 1(n); 1(o); 1(p); 2; 3; 4; 5; 6; 7; 8A; 12, 15, 16, 23, 29B, 30 and 34 of these By-Laws shall not be so delegated to anyone whomsoever except the Trustees themselves, or to such of the Trustees as the Trustees shall designate.

B. Notwithstanding anything to the contrary herein, any agreement for professional management of the Condominium shall provide that the management contract may be terminated without cause and without payment of a termination fee or penalty on ninety

(90) days' written notice, or less, and the term of any such contract shall not exceed one (1) year; except that the term of any such contract entered into at any time during the term of the Initial Board of Trustees shall not exceed six (6) months.

C. When professional management has been previously required by an eligible Mortgage Holder any decision to establish self management by the Trustees shall require the prior consent set forth in clause (n) of Section (D) of Section 33 hereof.

D. The consent of not less than (2) Trustees shall be necessary for the hiring and dismissal of any employees of the Condominium.

15. Use of Units

A. No unit, with the exception of Unit 2 and Unit 3, shall be occupied for other than residential purposes, by not more than one (1) family unit nor more than two (2) unrelated persons per bedroom.

B. Unit 1 is to be occupied for commercial purposes.

C. Notwithstanding the foregoing, until the Declarant, or their successors-in-title or their nominees have conveyed all of the units, the Declarant and their successors-in-title or nominees may use one or more units for a sales office or model, and may maintain "For Sale" signs on and in the building.

D. Each Unit Owner shall be obligated to maintain his or her own unit in good order and repair.

16. Use of Common Areas and Facilities

A Unit Owner shall not place or cause to be placed on the common areas and facilities any furniture, packages or objects of any kind. The stairways shall be used for no purpose other than for normal transit through them.

17. Attorneys, Accountants, Appraisers

The Trustees may, but need not, engage the services of attorneys, accountants, appraisers, architects, engineers, and other professionals in connection with their duties as such Trustees, upon the payment of such fees and upon such other terms and conditions as the Trustees shall decide, and such fees and other expenses in connection with such employment shall be common expenses of the Condominium. The Trustees, in the absence of fraud, shall be protected in reasonable relying upon the opinions of such attorneys, accountants, appraisers, architects, engineers, or other professionals engaged by the Trustees pursuant to their duties as such Trustees.

18. Electricity, Other Utilities

Electricity shall be supplied by the public utilities servicing the area in which the Condominium is located, directly to each unit through separate meters. Each Unit Owner shall be required to pay all bills and assessments for electricity, and other utilities (if any), consumed or used in his unit.

19. Violations by Unit Owners

The violation of any rule or regulation adopted by the Trustees, or breach of any of these By-Laws, or the breach of any provisions of the Master Deed or of this Trust or for the offending Unit Owner's Unit Deed, shall give the Trustees the right, in addition to any other rights set forth in these By-Laws, to enjoin, abate or remedy by appropriate legal proceeding, either at law or in equity (or both) the continuance of any such breach. In addition to the foregoing, and not in substitution therefor, the Trustees shall have the power to levy fines against Unit Owners for such violations. No fine may be levied for more than ten (\$10.00) dollars for any one violation but for each day a violation continues after notice it shall be considered a separate violation. Collection of fines may be enforced against the Unit Owner or Unit Owners involved as if the fines were Common Expenses owed by the particular Unit Owner or Unit Owners. In the case of persistent violations by a Unit Owner, the Trustees shall have the power, after notice and hearing pursuant to Section 34 hereof, to require such Unit Owners to post a bond to secure adherence to said rules and regulation, By-Laws, Master Deed, this Trust, or said Unit Deed.

20. Violation of Law

No noxious or unlawful activity shall be carried on in any unit or in the common areas and facilities nor shall anything be done therein, either willfully or negligently, which may be or become unreasonably annoying to the other Unit Owners or occupants. No Unit Owner shall make or permit any disturbing noises by himself, his family, guests, agents, servants, employees, licensees, or tenants, nor do or permit anything by such persons that will unreasonably interfere with the rights, comforts or conveniences of other Unit Owners or occupants. For purposes of this Section, any noise from within a unit which can be heard within another unit shall be deemed a disturbing noise.

21. Maintenance and Repairs

A. All maintenance and replacement of any repairs to any unit, ordinary or extraordinary other than to the common areas and facilities contained therein not necessitated by the negligence, misuse or neglect of the owner of such unit and to the doors and windows, and to electrical, plumbing, and heating fixtures within

204

the unit or belonging to the Unit Owner which are not a part of the common areas and facilities, and the washing of exterior glass of his unit shall be done by the Unit Owner at the Unit Owner's expense, excepting as otherwise specifically provided herein. Each Unit Owner shall be responsible for all damage to any and all other units and to the common areas and facilities that his failure so to do may engender.

B. All maintenance, and replacements of and repairs to the common areas and facilities as defined in the Master Deed, and all maintenance, and replacement of and repairs to the exterior walls of the building and to structural parts of the building and the painting and decorating of the exterior doors of the building and exterior window sash, shall be made by the Trustees and shall be charged to each of 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, in which case such expense shall be charges to such Unit Owner.

C. Maintenance responsibilities are more fully set forth in Exhibit B to this Trust, which Exhibit B is hereby incorporated herein by this reference.

22. Right of Access--Pass Keys

A. Subject to the provisions of said Chapter 183A, Section 4, Clause (2), the Trustees in their capacities as such Trustees, and any manger engaged by the Trustees, and any persons authorized by the Trustees or such manager shall have a right of access to all units in the Condominium, at any time in case of emergency, and at all other times during reasonable times by prior appointment with each Unit Owner, for the purpose of making inspections or repairs to either the unit to which such persons seek access, or to another unit, or any part of the common areas and facilities.

The Trustees or their designated agent shall retain a pass key to each unit, and no Unit Owner shall alter, change or install any locks without first providing the Trustees or their designated agent with a pass key with respect to any such changed, altered or new lock.

23. Pets

Ordinary domestic pets may be kept by any Unit Owner but no such pets shall be permitted in any part of the Condominium (other than within the unit of the owner thereof) unless carried or on a leash. After due notice and hearing, the Trustees may require any Unit Owner to dispose of any pet which has habitually been guilty of annoying or harassing any Unit Owner or occupant.

24. Structural Integrity

Nothing shall be done or maintained in any unit or in the common areas and facilities which will impair the structural integrity of any part of the building of the Condominium.

25. No Alterations

Neither the exterior of any unit nor the common areas and facilities nor the hallways or lobby shall be altered, constructed, removed, decorated or painted in any manner except with the written consent of the Trustees. Any Unit Owner is free to decorate the interior of his unit in any manner as he sees fit without requiring the consent of the Trustees so long as such decorations do not alter the structure of the unit or the building. Any Unit Owner shall be free to paint the exterior door or doors to his unit in any manner he sees fit.

26. Signs

Except only as set forth in Subsection B of Section 15 ("Use of Units") of the By-Laws of this Trust, no business, professional commercial or other signs, whether designed for profit, altruism or otherwise shall be maintained or permitted on any part of the property without the express consent of 2/3 of the Trustees, nor shall any "For Sale", "For Rent", or "For Lease" sign be permit thereon except by the Declarant during such time as the Declarant owns one or more units in the Condominium, and except for any Mortgagee who may become the owner or Mortgagee in possession of any unit, but in no event shall any such sign be larger than (2) square feet.

27. Combustible Materials

No Unit Owner shall permit or suffer the keeping at any time of any flammable, combustible or explosive fluid or substance on the property of the Condominium or in his unit except only for such lighting and cleaning fluids as are customary for residential use.

28. Safety

Each Unit Owner assumes complete responsibility for the safety of himself, his family, guests, agents, servants, employees, licensees and tenants while such persons are in his unit, or any other unit, or on the common areas and facilities of the Condominium.

29. Sale of Unit

A. No Severance of Ownership

No Unit Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his unit without including therein the Appurtenant Interests (as hereinafter

defined); it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Appurtenant Interests of any unit may be sold, transferred, or otherwise disposed of, except as part of 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 Interest of all units. "Appurtenant Interests", as used herein, shall include (i) the undivided interest of a Unit Owner in the common areas and facilities; and (ii) the interest of such Unit Owner in any other assets of this Trust, but the foregoing language shall not hinder or prevent any unit owner from conveying an easement or easements for the exclusive use of a Parking Space to another unit owner(s), and all easements so conveyed shall not be included in the term "Appurtenant Interests".

B. Financing of Purchase of Units by Trustees

With the prior written approval of at least 66.66% of the beneficial interests hereunder (the vote of the Unit Owner of the unit which is the subject of such vote shall not be counted), the Trustees may acquire or lease units of the Condominium. Acquisition or lease of units by the Trustees may be made from any funds in the hands of the Trustees; or if such funds are insufficient, the Trustees may levy an assessment against each Unit Owner in proportion to his beneficial interest as a common Expense; or the Trustees, in their discretion, may borrow money to finance the acquisition of such units, provided, however, that no financing may be secured by and encumbrance or hypothecation of any property other than specific unit or units with Appurtenant Interests so to be acquired by the Trustees. Nothing in this Subsection (B) of this Section shall be construed as compelling any Unit Owner to sell his unit. Nothing in this Subsection (B) of this Section shall have any effect, nor limit in any manner the rights and remedies of the Trustees under the provisions of Section 6 of Chapter 183A, or under the provisions of Subsections A and B of Section 2 hereof.

C. Waiver of Right of Partition

In the event that a unit shall be acquired by the Trustees, all Unit Owners shall be deemed to have waived all rights of partition with respect to such unit or units as are acquired by the Trustees.

D. Payment of Assessments

No Unit Owner shall convey, mortgage, pledge, hypothecate,

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 and until he shall have satisfied all unpaid liens against such unit. This paragraph shall not apply to any first mortgagee of any unit.

30. Tenants

Any Unit Owner may lease or rent his unit, subject, however, to the following conditions:

A. Any lease, or occupancy agreement, shall:

(i) be in writing and apply to the entire unit, and not merely a portion thereof; and

(ii) be for a term of not less than two (2) months; and

(iii) expressly provide that the lease, or occupancy agreement shall be subject in every respect to the Master Deed of the Condominium, the Declaration of Trust of the Condominium Trust, and the By-Laws and Rules and Regulations thereof, as the same have been amended most recently prior to the execution of the lease, or occupancy agreement; and

(iv) contain the following notice, in capital letters, double spaced:

IMPORTANT CLAUSE

"THE APARTMENT UNIT BEING LEASED (RENTED) UNDER THIS LEASE (OCCUPANCY AGREEMENT) IS LOCATED IN A CONDOMINIUM BUILDING--NOT A RENTAL APARTMENT HOUSE. THE CONDOMINIUM BUILDING IS OCCUPIED BY THE INDIVIDUAL OWNERS OF EACH APARTMENT (EXCEPT FOR CERTAIN APARTMENTS, SUCH AS THIS ONE, WHICH ARE BEING OCCUPIED BY TENANTS). THE TENANT UNDERSTANDS THAT HIS OR HER NEIGHBORS IN THE BUILDING ARE (EXCEPT AS AFORESAID) THE OWNERS OF THE HOMES WHICH THEY OCCUPY, AND NOT TENANTS LIVING IN A RENTAL APARTMENT HOUSE. THE TENANT, BY SIGNING THIS LEASE (OCCUPANCY AGREEMENT) ACKNOWLEDGES THAT HE OR SHE HAS BEEN FURNISHED WITH A COPY OF THE MASTER DEED OF THE CONDOMINIUM, THE DECLARATION OF TRUST OF THE CONDOMINIUM TRUST AND THE BY-LAWS AND RULES AND REGULATIONS THERETO, AND THAT HE OR SHE HAS READ AND UNDERSTANDS THE SAME, AND THAT HE OR SHE WILL BE EXPECTED TO COMPLY IN ALL RESPECTS WITH THE SAME, AND THAT IN THE EVENT OF ANY NONCOMPLIANCE, THE TENANT MAY BE EVICTED BY THE TRUSTEES OF THE CONDOMINIUM TRUST (WHO ARE ELECTED BY THE UNIT OWNERS) AND IN ADDITION, THE TENANT MAY HAVE TO PAY FINES, PENALTIES AND OTHER CHARGES, AND THAT THE PROVISIONS OF THIS CLAUSE TAKE PRECEDENCE OVER ANY OTHER PROVISION OF THIS LEASE

(v) Any failure by the tenant to comply in all respects with the provisions of the Master Deed of the Condominium, the Declaration of Trust of the Condominium Trust and the By-Laws and Rules and Regulations thereto, shall constitute a material default in the lease (occupancy agreement), and in the event of such default, the Trustees of the Condominium Trust shall have the following rights and remedies against both the Unit Owner and the tenant, in addition to all other rights and remedies which the Trustees and the Unit Owners (other than the owner of the affected unit) have or may in the future have, against both the owner of the affected unit and the tenant, all rights and remedies of the Trustees and the Unit Owners (other than the owner of the affected unit) being deemed at all times to be cumulative and not exclusive:

(a) The Trustees shall have the right to give written notice of the default to both the tenant and the Unit Owner. Said notice shall be deemed properly given if left in any part of the unit addressed to the tenant, and mailed, postage prepaid, registered or certified mail, return receipt requested, addressed to the owner of the unit as such address then appears on the records of Trustees, or by delivering said notice in hand, or by delivering said notice in any other manner permitted by law.

(b) If the default continues for five (5) days after the giving of said notice, then the Trustees shall have the right to: Levy fines against the owner of the affected unit in accordance with the provisions of Section 20 of the By-Laws, and terminate the tenancy by giving notice in writing to quit to the tenant in any manner permitted by law, in the name of the landlord (Unit Owner) or in the name of the Trustees, or both. In case of a tenancy at will, the time of such notice shall be sufficient if it is equal to the interval between the days of rent payment, or thirty (30) days, whichever is longer. In case of a lease, seven (7) days' notice shall be sufficient. In either event, a copy of such notice to quit shall be delivered or mailed to the landlord (Unit Owner) in the manner set forth hereinabove. Thereafter, the Trustees may initiate and prosecute a summary process action against the tenant under the provisions of General Laws, Chapter 239, in the name of the landlord, or in the name of the Trustees, or both.

(c) The Trustees shall be entitled to levy a fine, or fines, or give a notice, or notices to quit followed by a summary process action or actions, and the Trustee's election to pursue any of the foregoing remedies, either at the same time, or in the event of any further default.

(d) All of the expenses of the Trustees in giving notice, and notices to quit, and maintaining and pursuing summary process actions and any appeals therefrom, shall be entirely at the expense of the owner of the affected unit, and such costs and expenses may be enforced and collected against the Unit Owner and unit as if the same were Common Expenses owed by the unit or Unit Owner.

B.

(i) The Unit Owner shall make reasonable efforts, at his expense and upon his initiative to inform rental agents of the provision of this section, and shall, at his own expense, and upon his own initiative, furnish copies of the condominium documents to the tenant, and cause the lease or occupancy agreement to be prepared in conformity with the provisions of this section.

(ii) Any renewal or extension of any lease or occupancy agreement shall be subject to the prior written approval of the Trustees in each instance. Such approval shall not limit any rights or remedies of the Trustees or Unit Owners in the event of a subsequent default.

(iii) A true copy of the lease or occupancy agreement shall be delivered to the Trustees forthwith upon its execution.

(iv) The provisions of this section shall take precedence over any other section in the lease or occupancy agreement.

(v) Notwithstanding anything to the contrary herein, and notwithstanding any custom law, or usage to the contrary, it is expressly understood and agreed that neither the Trustees, nor the Unit Owners, shall ever bear any personal or individual responsibility with respect to said lease or occupancy agreement.

(vi) Every lease or occupancy agreement shall have attached thereto, and incorporated therein by reference, a copy of this section.

Notwithstanding anything to the contrary in this section, it is expressly understood and agreed that the provisions of this Section 30 shall not apply to the Declarant, nor to any first mortgagee in possession of a unit following default by the Unit Owner in his mortgage, or holding title to a unit by virtue of a mortgage foreclosure proceeding, or deed or other agreement in lieu of foreclosure.

31. Nondiscrimination

Notwithstanding anything to the contrary herein, no part of this Trust of By-Laws or the rules and regulations now or hereafter adopted or promulgated (including but not limited to the provisions

of Section 30) shall ever be deemed to prevent, restrict, discourage, or hinder, in fact, in any manner whatsoever the alienation, conveyance, mortgage, purchase, sale, rental, lease, license, use, or occupancy of units or any negotiations in connection therewith because of race, religion, creed, color, national origin, sex, sexual preference, age, ancestry, marital status, status as a veteran or member of the armed services, or any ethnic group, blindness, or by reason of the fact that children will occupy such unit, receipt of public assistance, or, in addition to the foregoing by any reason whatsoever prohibited by any federal, state, country or municipal law.

32. Percentage of Unit Owners

Whenever the term "Percentage of Unit Owners" or "Percentage of Units" is used in this instrument, said terms shall mean the owners of the specified percentage in the aggregate in interest of the undivided ownership in the common areas and facilities of the Condominium.

33. Protection of Mortgagees; Federal Home Loan Mortgage Corporation; Federal National Mortgage Association

A. Certain Definitions:

- (i) The term "FHLMC" means Federal Home Mortgage Corporation.
- (ii) The term "FNMA" means Federal National Mortgage Association.
- (iii) The term "eligible Mortgage Holder" means a holder of a first mortgage on a unit who has requested notice of certain matters from this Trust as set forth in these By-Laws.
- (iv) The term "eligible Insurer or Guarantor" means an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters as set forth in these By-Laws.
- (v) The term constituent documents means, collectively, the Master Deed, this Trust and the By-Laws and rules and regulations thereto and the Master Plans.

B. Certain Prohibitions:

Notwithstanding anything to the contrary in the Constituent Documents:

- (i) There shall be no restriction upon any Unit Owner's right of ingress or egress to his or her unit, which right shall be perpetual and appurtenant to the ownership of the unit.
- (ii) There shall be no restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her unit. There shall be

no "right of first refusal" so called or any similar restriction.

(iii) There shall be no restriction on the right of any Unit Owner to mortgage or otherwise encumber his unit.

(iv) The Condominium shall not be subject to "expansion" or "phases", so called.

(v) Prior to the passage of control of this Trust to consumer unit purchasers, no contract or lease (including management contracts) shall be entered into unless this Trust is provided with a right of termination of any such contract or lease with or without cause, exercisable without penalty at any time after transfer of control, upon not more than 90 days' notice to the other party thereto.

(vi) The Constituent Documents shall not be amended or modified if the result of any such amendment or modification would:

(vii) Add a "right of first refusal" so called.

(viii) Permit an addition or expansion to the condominium project in which sections or phases are established.

C. Rights of eligible Mortgage Holders and eligible Insurers or Guarantors:

Notice of Action: Upon written request to this Trust identifying the name and address of the mortgage holder, insurer or guarantor and the unit number or address, any first mortgagee and any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

(i) Any condemnation loss or any casualty loss that affects either a material portion of the project or any unit on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(ii) Any delinquency in the payment of assessments or charges owed, or default in the performance by the borrower of any obligation under the condominium constituent documents, by an owner of a unit subject to a first mortgage held, insured or guaranteed by such first mortgage holder or eligible holder or eligible insurer or guarantor, which remains uncured for a period of 60 days;

(iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Trust;

(iv) Any proposed action which would require the consent of a specified percentage of eligible mortgage holders.

D. Amendment to Documents

(i) Where unit owners are considering termination of the legal status of the project for reasons other than substantial destruction, or condemnation, of the property the consent of owners of units to which at least sixty-six and two-thirds ($66\frac{2}{3}\%$) percent of the votes in this Trust are allocated and the approval of eligible mortgage holders representing at least sixty-six and two-thirds ($66\frac{2}{3}\%$) percent of the votes of the mortgaged units shall be required to terminate the legal status of the project as a condominium.

(ii) The consent of the owners of units to which at least sixty-six and two-thirds ($66\frac{2}{3}\%$) percent of the votes in this Trust are allocated, and the approval of at least fifty-one (52%) percent of the eligible mortgage holders (based on one vote for each unit subject to a mortgage held by an eligible mortgage holder), 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:

- (a) voting rights;
- (b) assessments, assessment liens or subordination of such liens;
- (c) reserves for maintenance, repair and replacement of the common areas;
- (d) insurance or Fidelity Bond requirements;
- (e) rights to use of the common areas;
- (f) responsibility for maintenance and repairs;
- (g) expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;
- (h) definitions of unit boundaries;
- (i) the interests in the general or limited common areas;
- (j) convertibility of units into common areas or of common areas into units;
- (k) leasing of units;
- (l) reallocation of interests in the general or limited common areas, or rights to their use;
- (m) a decision by the Trust to establish self-management when professional management had been required previously by an eligible mortgage holder;
- (n) imposition of any restrictions on a unit owner's right to sell or transfer his or her unit;
- (o) restoration or repair of the project (after hazard damage or partial condemnation) in a manner other than that specified in the condominium constituent documents;
- (p) any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or
- (q) any provisions which are for the express benefit of Mortgage Holders, eligible Mortgage Holders or eligible Insurers or Guarantors of mortgages on units.

(iii) 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 which are not material who does not submit a response to the requesting party within thirty (30) days after the request is made shall be deemed to have approved such request. Additionally, if specifically provided by any applicable FNMA regulation, implied approval of any addition or amendment may be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment within 30 days after the proper notice of the proposal is received, provided the notice has been delivered to the mortgage holder by certified or registered mail, return receipt requested. This clause (iii) shall not apply to FHLMC.

E. Right of Action

This Trust and any aggrieved unit owner shall have a right of action against Unit Owners for failure to comply with the provisions of this Trust and the By-Laws and rules and regulations thereto, the Master Deed, the Master Plans and each unit deed and unit plan, and with decisions of the Trustees of this Trust. Each Unit Owner shall have a similar right of action against this Trust. Any such action may be brought in any court of competent jurisdiction.

F. 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 dues or charges which accrue prior to the acquisition of title to such unit by the mortgagee, except as provided in Chapter 183A, §6.

G. Additional Prohibitions

Except as provided by statute in case of condemnation or substantial loss to the units and/or common elements of the condominium project, unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned), or owners (other than the sponsor, developer or builder) of the individual condominium units have given their prior written approval, this Trust shall not be entitled to:

(i) by act or omission, seek to abandon or terminate the condominium project;

(ii) change the pro rata interest or obligations of any individual condominium unit for the purpose of (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (2) determining the pro rata share of ownership of each condominium unit in the common elements;

(iii) partition or subdivide any condominium unit;

(iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause);

(v) use hazard insurance proceeds for losses to any condominium property (whether to units or to common elements) for other than the repair, replacement or reconstruction of such condominium property.

(vi) 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 payment to condominium unit owners of insurance proceeds or condemnation awards for losses to or taking of condominium units and/or common areas and facilities.

H. 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.

I. Information

The Trust shall promptly deliver the following information, in writing, to any mortgagee, mortgage holder, mortgage servicer, FHLMC or FNMA, requesting same, without expense to the requesting party:

(i) 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 sixty (60) days;

(ii) a written certification as to whether or not the owner of any unit encumbered by a mortgage held or serviced, in whole or in part, by the requesting party, is more than one (1) month delinquent in the payment of condominium common area charges or assessments;

(iii) a 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;

(iv) a statement to the best of the Trust's 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.

J. FHLMC; FNMA.

The provisions of this Section 33 are set forth so that the condominium will comply with the requirements of FHLMC, and FNMA, and the provisions of this Section 33 shall be construed and interpreted in accordance with that intention. Notwithstanding anything to the contrary in the constituent documents, the provisions of this Section 33 shall at all times take precedence over all other provisions in the constituent documents, and this Section 33 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.

34. Right to Notice and Hearing

A. Whenever these By-Laws require that an action be taken after "Notice and Hearing", the following procedure shall be observed: All hearings shall be conducted by at least a majority of the Trustees. The Trustees shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing, or both, subject to reasonable rules of procedure established by the Trustees to assure a prompt and orderly resolution of the issues. The affected person shall have the right to question the Trustees and any witnesses with respect to the subject matter of the hearing. If the hearing involves an alleged breach, by the affected person, of any of the provisions of the Master Deed, the Condominium Trust, or the by-Laws and Rules and Regulations thereto, or any unit deed, the affected person shall be informed, with specificity, of the exact nature of the violation, and the provision which he or she has allegedly violated, and the affected person shall have the right to question any witness to such alleged violation. The Trustees need not comply with the strict legal rules of evidence observed by courts, but they shall consider only such evidence as reasonable

people customarily consider in making important decisions. Nothing herein shall be deemed to limit the right of the Trustees, the affected person, or any unit owners or occupants affected to bring legal action with respect to the subject matter of any hearing, or any decision of the Trustees.

B. When the subject matter of the hearing is Section III(d)(ii) of the Declaration of Trust, the reference to Trustees as the persons conducting the hearing shall be deemed to mean unit owners entitled to at least sixty-six and two-thirds (66-2/3%) percent of the beneficial interest under this Trust.