

COLD SPRING COMMON CONDOMINIUM TRUST

This DECLARATION OF TRUST made this 24th day of August, 1989 by Arthur N. Laflamme of Chicopee, Hampden County, Massachusetts; Scott J. Nielsen, of Amherst, Hampshire County, Massachusetts; and Andrew Crane of Chicopee, Hampden County, Massachusetts, (hereinafter the "Trustees", which term and any pronoun referring thereto shall be deemed to include their successors in Trust hereunder and to mean the Trustee or the Trustees for the time being hereunder, whichever the context so permits).

ARTICLE I

Name of Trust

The Trust hereby created shall be known as the Cold Spring Common Condominium Trust (hereinafter the "Trust"), and under that name, so far as legal, convenient and practicable, all business shall be carried on by the Trustees and all instruments shall be executed by the Trustees. Said name shall refer to the Trustees in their capacity as Trustees, and not individually or personally, and shall not refer to the officers, agents or employees of the Trust or to the Unit Owners.

ARTICLE II

The Trust and its Purpose

Section 2.1 - Unit Owners Organization

All of the rights and powers in and with respect to the Common Areas and Facilities (hereinafter the "Common Areas and Facilities" or "Common Elements") of the Cold Spring Common Condominium located in Belchertown, Hampshire County, Massachusetts, (hereinafter the "Condominium") established by a Master Deed (hereinafter the "Master Deed") of even date herewith and recorded herewith in the Hampshire County Registry of Deeds (hereinafter the "Registry"), which are, under the provisions of M.G.L.A., c. 183A as amended (hereinafter "Chapter 183A"), conferred upon or exercisable by the organization of Unit Owners of the Condominium and all property real and personal, tangible and intangible, conveyed to or held by the Trustees hereunder shall vest in the Trustees as joint tenants with right of survivorship, in trust, to exercise, manage, administer and dispose of the same and to receive the income thereof (a) for the benefit of the Owners of record from time to time (hereinafter the "Unit Owners") of the Units (hereinafter the "Units") of the

Cold Spring Common Condominium (hereinafter the "Condominium") according to the allocation of undivided Beneficial Interest in the Common Areas and Facilities (hereinafter the "Beneficial Interest") set forth in Article IV hereof, and (b) in accordance with the provisions of Chapter 183A.

This Trust is the organization of Unit Owners established pursuant to the provisions of Section 10 of Chapter 183A for the purposes therein set forth.

#### Section 2.2 - No Partnership

It is hereby expressly declared that a Trust and not a partnership has been created, and declared that the Unit Owners are cestuis que trustent 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 Trustees other than of cestuis que trustent, with only such rights as are conferred upon them as such cestuis que trustent hereunder and under and pursuant to the provisions of Chapter 183A.

### ARTICLE III The Trustees

#### Section 3.1 - Number of Trustees

There shall be a Board of Trustees (hereinafter the "Board" of the "Trustees") hereunder consisting of such number, not less than three (3) nor more than five (5), as shall be determined from time to time by a majority of the Unit Owners present in person or by proxy at an Annual Meeting of the Unit Owners (as provided in Article V, Section 5.13.1). The Trustees shall be chosen by vote of the Unit Owners, with the three (3) persons (or such number of persons as is equivalent to the number of Trustees as may be determined by the Unit Owners) receiving the greatest individual totals of percentage Beneficial Interest votes being the winners of the election. Trustees so elected shall serve until their successors are chosen and qualified at the next Annual Meeting of Unit Owners, or until a Trustee sooner dies, resigns, is removed or becomes disqualified.

Provided, however, that until the Phasing Termination Date, as set forth in Section 9 of the Master deed, the number of Trustees shall be three (3) persons, all of whom ARCLAIR BUILDERS, INC., the Grantor under the Master Deed (hereinafter the "Declarant" or "Grantor", which term and

any pronoun referring thereto herein shall be deemed to mean his executors, administrators, successors and assigns) shall have the right to appoint. No Trustee appointed by the Declarant need be a Unit Owner. The Term Grantor and any pronoun referring thereto in this Trust shall be expressly deemed to include his successors and assigns.

At such time as the Phasing Termination Date occurs or one hundred and twenty (120) days after seventy-five percent (75%) of the Units have been conveyed, whichever occurs earlier, the terms of office of the original Trustees or such other persons so designated shall be deemed vacant, but shall not expire until such vacancies have been filled in the manner hereinafter set forth.

Thereafter, the terms of office of the Trustees shall, except as hereinafter provided, be three (3) years, and such terms shall be staggered so that insofar as possible the terms of one-third (1/3) of the Trustees shall expire each year; provided, that in order to establish and maintain such staggering of terms, the terms of the persons first appointed as Trustees after the first annual meeting shall be one (1) year, two (2) years and three (3) years, respectively, the number of Trustees the terms of any then newly appointed Trustee or Trustees shall be one (1) year, two (2) years, or three (3) years, determined insofar as necessary by lot, so as to maintain such staggering of terms insofar as possible.

With respect to each person appointed or elected to be a Trustee hereunder as provided for in this Declaration of Trust, there shall promptly be recorded with the Registry a certificate of such appointment or election signed by any one (1) or more of the Trustees hereunder and an acceptance of such appointment signed by the person so appointed, and such appointment or election shall take effect upon such recording. The person so appointed or elected shall then be and become such Trustee and shall be vested with the title of the Trust property and with all the powers of the Trustees, jointly with the remaining or surviving Trustees or Trustee, without the necessity of any act of transfer or conveyance. Notwithstanding any other provisions in this Declaration of Trust, the failure to so record such acceptance shall in no way affect the validity of such Trustees' election.

### Section 3.1.1 - Vacancies; Appointment and Acceptance of Trustees

If and whenever the number of Trustees shall become less than three (3) or less than the number of Trustees as last determined due to death, disability, removal or resignation, each such vacancy shall be filled by an instrument in writing setting forth (a) the appointment of a natural person to act as such Trustee, signed (i) by the Declarant if the vacancy is in the office of a Trustee chosen by the Declarant, or (ii) by a majority of the Trustees then in office or the sole remaining Trustee, if only one (1), if the vacancy is in the office of a Trustee not chosen by the Declarant, certifying that such appointment was made by a Majority of Unit Owners at a duly held Special Meeting of Unit Owners (as provided in Article V, Section 5.13.1) or (iii) if the Declarant or such a Majority of Unit Owners have not within sixty (60) days after the occurrence of any such vacancy made such appointment signed by a majority of the then remaining Trustees, or by the sole remaining Trustee if only one (1), and (b) the acceptance of such appointment, signed and acknowledged by the person so appointed. Such appointment shall become effective upon the recording with the Registry of a certificate and acceptance as provided in Section 3.1 above. 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 vacant, 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 all Unit Owners and to such other, if any, given.

Notwithstanding anything contained herein to the contrary, despite any vacancy in the office of Trustee, however caused and for whatever duration, the then remaining or surviving Trustee or Trustees, in the manner prescribed hereinbelow. Trustees need not be Unit Owners. The Trustees shall be required to inform the municipality of their names, addresses, and business and home telephone numbers and the name, address and telephone number of the managing agent, if any, within fourteen (14) days of their election or appointment.

### Section 3.2 - Trustee Action

In any matters relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred, the Trustees may act by majority vote at any duly called meeting at which a quorum is present as provided in

Article V, Section 5.13.2. The Trustees may also act without a meeting by instrument signed by a majority of their number. Notwithstanding the above language, any instrument signed by a majority of those Trustees appearing from the records of the Registry 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 of that instrument were duly authorized by all Trustees.

### Section 3.3 - Resignation; Removal

Any Trustee may resign at any time by instrument in writing, signed and acknowledged in the manner required in Massachusetts for the acknowledgment of deeds and delivered to the remaining Trustees. Such resignation shall take effect upon the recording of such instrument with the Registry, unless specified to be effective at some other time. By vote of a majority of Unit Owners at a duly held Special Meeting, any Trustee may be removed with or without cause and the vacancy among the Trustees caused by such removal shall be filled in the manner above provided. Such removal shall become effective upon the recording with the Registry of a certificate of removal signed by a majority of the then remaining Trustees in office or by the majority of Unit Owners present at the special meeting referred to above. Provided, however, that any of the original Trustees and successor Trustees appointed by the Grantor may be removed only by the Grantor. Any of the original Trustees and successor Trustees appointed by the Grantor may be removed from office by the Grantor with or without cause.

### Section 3.4 - Bond or Surety

No Trustee named or appointed as hereinbefore provided, whether as original Trustee or as successor to or as substitute for another, shall be obliged to give any bond or surety or other security for the performance of any of his duties hereunder, provided, however that a majority of Unit Owners may at any time by instrument in writing signed by them and delivered to the Trustee or Trustees affected require that any one (1) or more of the Trustees shall give bond in such amount and with such sureties as shall be specified in such instrument. All expenses incident to any such bond shall be charged as a Common Expense of the Condominium.

established, or by reason of such Unit Owner's status, provided the Trustee or Unit Owner shall act in good faith and shall, upon request of any Unit Owner or Trustee, disclose the nature of his interest before the dealing, contract, or arrangement is entered into.

#### Section 3.8 - Indemnification

The Trust shall, to the extent legally permissible, indemnify each of its Trustees against all liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and counsel fees, reasonably incurred by him in connection with the defense or disposition of any action, suit or other proceedings, whether civil or criminal, in which he may be involved or with which he may be threatened, while in office or thereafter, by reason of his being or having been such a Trustee, except with respect to any matter as to which he shall have been adjudicated in any proceeding to have acted in bad faith or with willful misconduct or reckless disregard of his duties or not to have acted in good faith in the reasonable belief that his action was in the best interests of the Trust. The right of indemnification hereby provided shall not be exclusive of or affect any other rights to which any Trustee may be entitled herein or by contract or otherwise under law. As used in this Section, the term "Trustee" includes their respective heirs, executors and administrators. However, nothing in this Section shall be deemed to limit in any respect the powers granted to the Trustees in this instrument.

#### ARTICLE IV Beneficial Interest

#### Section 4.1 Beneficiaries and the Beneficial Interest in the Trust

The cestuis que trustent or beneficiaries shall be the Unit Owners of the Condominium at the present time. The Beneficial Interest in the Trust hereunder shall be divided among the Unit Owners in the percentages of undivided Beneficial Interest appertaining to the Units of the Condominium (hereinafter and hereinbefore sometimes referred to as the "Beneficial Interest") as follows:

A. For so long as the only Units in the Condominium are those comprised in Phase 1 of the Condominium as defined in such Units in Exhibit C of the Master Deed, which is incorporated herein and made a part hereof.

B. From and after the inclusion in the Condominium of other Additional Units (as defined in the Master Deed), the Beneficial Interest hereunder of each Unit then included in the Condominium shall be equal to the percentage of interest appertaining to such Unit as determined and specified pursuant to the provisions of Section 11 of the Master Deed.

Section 4.2 - Beneficial Interest Held by One (1) Person

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

ARTICLE V  
By-Laws

Section 5.0 By-Laws

The provisions of this Article V shall constitute the By-Laws (hereinafter the "By-Laws") of this Trust and the organization of Unit Owners established hereby and shall be applicable to the Property of the Condominium and to the use and occupancy thereof. The term "Property" as used herein shall include the land, the buildings and all other improvements thereon including the Units and Common Areas and the Facilities, owned in fee simple absolute, and all easements, rights and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith, all of which are intended to be submitted to the provisions of said Chapter 183A. The provisions of these By-Laws shall automatically become applicable to property which may be added to the Condominium upon the recording of an amendment to the Master Deed submitting such additional property to the provisions of Chapter 183A.

All present and future owners, mortgagees, lessees and occupants of Units and their employees, and any other

persons who may use the facilities of the Property in any manner are subject to these By-Laws, this Declaration of Trust, the Master Deed, the Rules and Regulations and covenants, agreements, restrictions, conditions, easements and declarations of record (hereinafter the "Title Conditions"). The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Unit by any of the above referenced persons, shall constitute an agreement that these By-Laws, this Declaration of Trust, the provisions of the Master Deed and the Rules and Regulations, as they may be amended from time to time, and the Title Conditions are thereby accepted and ratified and that they shall comply with all provisions thereof.

Title to Units may be taken in the name of an individual or in the name of two (2) or more persons, as tenants in common or as joint tenants or as tenants by the entirety, or in the name of a corporation or partnership, or in the name of a fiduciary.

#### Section 5.1 - Powers and Duties of Trustees

The Trustees shall, subject to all provisions of applicable laws, the Master Deed, this Declaration and these By-Laws, have the absolute control and management and disposition of the Trust Property as if they were the absolute owners thereof and shall have all of the powers necessary for the administration of the affairs of the Condominium and may do all such acts and things in connection therewith. The powers and duties of the Trustees shall include, but shall not be limited to, the following, all of which shall be exercised subject to the provisions of these By-Laws:

1. Operation, care, upkeep, management, leasing and maintenance of the Common Areas and Facilities of the Condominium or any part thereof;
2. Owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to or purchased by them as a result of enforcement of the lien for Common Expenses, action under Chapter 183A, Sections 17 and 18, or otherwise;
3. Conducting litigation on behalf of the Unit Owners and being subject to suit as to any course of action involving the Common Areas and Facilities or arising out of the enforcement of these



By-Laws, any and all Rules and Regulations of the Trustees or restrictions in the Master Deed or Unit Deeds;

4. Determination and budgeting of the Common Expenses required for the affairs of the Condominium and Trust, including, without limitation, the operation and maintenance of the Property;
5. Collection of the common charges (which for the purposes of these By-Laws shall mean such portion of the Common Expenses as are payable by the respective Unit Owners) from Unit Owners;
6. Employment and dismissal of the personnel necessary for the maintenance and operation of the Common Areas and Facilities;
7. Opening and utilizing bank accounts on behalf of the Trust and designating the signatories required therefor;
8. Obtaining of insurance pursuant to the provisions of these By-Laws;
9. Making of repairs, additions and improvements to or alterations of the Property and repairs to and restoration of the Property, in accordance with the other provisions of these By-Laws, after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;
10. Incurring obligations and paying, compromising, or adjusting all obligations incurred and rights acquired in the administration of the Trust;
11. Adoption and amendment of Rules and Regulations covering the details of the operation and use of the Common Areas and Facilities, the administration of the Condominium as contemplated by the Master Deed and the Trust, and in interpretation thereof;
12. Obtaining advice of counsel and relying thereon, and employing, appointing and removing such other persons, agents, managers, officers, brokers, engineers, architects, employees, servants and assistants as they shall deem advisable, and defining their respective duties and fixing their

pay and compensation; provided, however, no Trustee shall be held personally liable for the act or default of any such person;

13. Granting of permits, licenses and easements over the Common Areas for utilities, roads, and all other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium;
14. Enforcing obligations of the Unit Owners, including levying and enforcing the collection of general and special assessments for Common Expenses and the providing of adequate remedies for failure to pay such assessments, allocating income and expenses, levying reasonable fines against the Unit Owners for violations by the Unit Owners or persons for whom a Unit Owner is responsible of the Master Deed, Declaration of Trust, By-Laws and Rules and Regulations and in the case of persistent violation of the said Condominium Documents requiring such Unit Owner to post a bond to secure adherence thereto. Collection of fines may be enforced against the Unit Owner of the Unit involved as if the fines were Common Charges owed by the particular Unit Owner or Unit Owners;
15. Investing and reinvesting the Trust Property, or any part or parts thereof and from time to time and as often as they shall see fit to change investments including the power to invest in all types of securities and other property, of whatsoever nature and however denominated, all to such extent as to them shall seem proper, and without liability for loss, even though such property or such investments shall be of a character or in an amount not customarily considered proper for the investment of trust funds, or which may or may not produce income;
16. Providing for payment by the Trust of real estate taxes becoming due and payable after the date of recording of the Master Deed which are assessed upon all of the land and/or improvements included within the Condominium, instead of upon individual Units and their proportionate interests in the Common Areas and Facilities and levying an equitable assessment of said tax payments among the individual Unit Owners;

17. Incurring such liabilities, obligations and expenses, and to pay from the principal or the income of the Trust property in their hands all such sums, as they shall deem necessary or proper for the furtherance of the purposes of the Trust;
18. Determining as to all sums of money and other things of value received by them, whether and to what extent the same shall be deemed to be and shall be accounted for as principal or as income, and as to all charges or expenses paid by them, whether and to what extent the same shall be charged against principal or against income, including, without hereby limiting the generality of the foregoing, power to apportion any receipt or expense between principal and income, and power to determine what portion, if any of the actual income received upon any asset purchased or acquired at a premium or any wasting investment shall be added to principal to prevent a diminution thereof upon the maturity or exhaustion of such asset or investment;
19. Entering and having such access into Units in the Condominium as shall be reasonably necessary to the performance and exercise of the duties, obligations, rights and powers of the Trustees hereunder;
20. Suspending the membership rights of a Unit Owner including, without limitation, the right to vote and the right to use the recreation facilities, if any, for violation by the Unit Owner of any provision of the Condominium Documents including the requirements relating to payment of Common Area charges.
21. Notwithstanding any powers otherwise provided to the Trustees, the Trustees shall not, without the prior written approval of the Grantor, have any power or authority to take any action which would affect or interfere in any manner whatsoever with the Grantor's rights provided for in the Master Deed and herein to construct and develop future Phases of the Condominium;

22. Altering the layout, location, nature and/or use of any of the Common Elements, making installations therein, and moving and removing the same, subject however, to a Unit Owner's rights to use any appurtenances to his Unit as specified in the Master Deed;
23. Selling and exchanging the Trust property or any interest therein for such consideration and upon such terms as they deem advisable;
24. Purchasing and otherwise acquiring any real or personal property;
25. Borrowing money and mortgaging or pledging all or any part of the Trust property and issuing bonds, notes or other evidence of indebtedness;
26. Generally, in all matters not herein otherwise specified, controlling, managing and disposing of the Trust Property as if the Trustees were the absolute Owners thereof and doing any and all acts, including the execution of any instruments, which by their performance thereof shall be shown to be in their judgment for the best interest of Unit Owners.

Section 5.2 - Maintenance and Repair of Units; Trustee Access to Units

The Unit Owners shall be responsible for the proper maintenance, replacement of and repairs to their respective Units (other than to the Common Elements contained therein) as defined in the Master Deed including without limitation the exterior surfaces, windows and skylights; the utility fixtures and components therein exclusively serving the same and the nonstructural elements of any Common Element which is appurtenant to and/or exclusively used by the same (excluding Parking Spaces). If the Trustees shall at any time in their reasonable judgment determine that any Unit, any part thereof or such Common Element of which a Unit has exclusive use is in such need of maintenance or repair that the market value of one (1) or more other Units or any other part of the Property is being adversely affected or that the condition of any Unit or any fixtures, furnishings, facilities or equipment therein is hazardous to any Unit or the occupants thereof, the Trustees may, in writing, request the Unit Owner in question to perform the needed maintenance, repair or replacement to correct the hazardous condition. 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 completed, 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 that purpose. The cost of such work as is reasonably necessary therefor shall be charged to the Unit Owner thereof as if such charge were a Common Expense. The Trustees shall have a right of entry upon any Unit to make emergency repairs or other work reasonably necessary for the proper maintenance or operation of the Condominium whether the Unit Owner is present at the time or not. The Trustees may in their sole discretion additionally impose a fine upon a Unit Owner who in the Trustees' judgment, unreasonably fails to comply with a request made by Trustees hereunder. Should it be necessary that any part of a Unit, personal property of a Unit Owner, and/or any part of the Common Areas and Facilities to which a Unit Owner has the right of exclusive use, be required to be removed for the purpose of performing such work, such Unit Owner shall promptly comply with such request by the Trustees. Should such Unit Owner fail to so comply, or in the case of emergency, the Trustees may remove and store such part and/or property for the account of the Unit owner, the cost of which shall constitute an obligation attributable to such Unit. Such removal and storage shall be reasonable in manner, extent and terms.

Section 5.3 - Maintenance, Replacement and Repair of Common Areas and Facilities and Assessment of Common Expenses Thereof

The Trustees shall be responsible for arranging for the proper cleaning, replacement, maintenance and repair of the Common Areas and Facilities, including the Parking Spaces but excepting other Common Areas and Facilities, the nonstructural components of such of them as are appurtenant to and/or exclusively used by any Unit, and may do so through a Property manager, as hereinafter provided or any other(s) who may be so designated by the Trustees. The Trustees may approve payment of vouchers for such work, and the expenses of such replacement, maintenance and repair 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; provided, however, that such cleaning, replacement, maintenance and/or repairs as may be necessitated by the negligence, misuse or neglect of a Unit Owner, his family, servants, agents, employees, invitees, licensees or lessees, whether directly or by virtue of a Unit Owner's failure to properly maintain, repair or replace

the Unit, components thereof, or Common Elements to which such Unit Owner has exclusive use, shall be charged to such Unit Owner, constitute an obligation of such Unit Owner and be considered a Common Expense attributable to such Unit.

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

The Unit Owners shall be liable for Common Expenses and entitled to common profits of the Condominium in proportion to their respective percentages of the Beneficial Interest. The Trustees may at any time or times distribute common profits and/or surplus accumulations among the Unit Owners in such proportions as well.

##### Section 5.4.1 - Reserve Funds

The Trustees shall establish and maintain as hereinafter provided the following separate and segregated funds to be used for the purposes hereinafter specified:

1. Capital Expense Fund. The Trustees shall set aside from the regular monthly payments of Common Charges an amount as the Trustees shall in their judgment determine as adequate and appropriate, but in no event less than ten percent (10%) of the annual projected expenses, to provide a reserve for the periodic maintenance, repair, and/or replacement of the Common Elements and other capital purposes and may, to the extent consistent with these purposes, use the funds so set aside for the reduction of indebtedness or other lawful capital purpose or subject to the provisions of these By-Laws and the provisions of Chapter 183A, Section 17 and/or 18, for the repair, replacement, rebuilding, restoration or improvement of the Common Areas and Facilities. Such reserves shall be maintained in a separate and segregated account to be known as the Capital Expense Reserve Account and the funds so set aside shall not be deemed common profits available for distribution, but rather shall be considered as property of the Trust held for the account of the Unit Owners in accordance with their respective Beneficial Interests. The funds in said Account shall be duly accounted for in the appropriate manner as to each Unit at, inter alia, the time of transfer of title to a Unit or the termination of the Condominium.

Said Account, to the extent required by MHFA, FNMA and/or FHLMC, shall be initially funded by the Declarant and duly accounted for in accordance with the Beneficial Interest of such Unit upon the initial sale thereof.

2. Working Capital Fund. The Trustees shall maintain a fund in an amount as the Trustees shall in their judgment determine as adequate and appropriate, but in no event less than one-sixth (1/6th) of the annual projected operating expenses, to provide a reserve of available funds to meet unforeseen expenditures, or to acquire additional equipment or services deemed by the Trustees as necessary or desirable, and may, to the extent consistent with these purposes, use the funds so set aside for operating expenses consistent with the provisions of these By-Laws. Such reserves shall be maintained in a separate and segregated account to be known as the Contingency Reserve Account and the funds so set aside shall not be deemed common profits available for distribution, but rather, shall be considered as the property of the Trust held for the account of the Unit Owners in accordance with their respective Beneficial Interests. The funds in said Account shall be duly accounted for in the appropriate manner as to each Unit at inter alia, the time of transfer of title to a Unit or the termination of the Condominium.

Said Account shall be initially funded by each Unit Owner upon the initial purchase of his Unit.

3. Real Estate Tax Fund. The Trustees, for so long as the Condominium is subject to real estate taxes as a whole, shall maintain a fund sufficient in their judgment to provide a reserve to pay such real estate taxes when such are due and payable. Such reserve shall be maintained in a separate and segregated account to be known as the Tax Escrow Account and shall be utilized solely for the payment of said taxes.

Said Account shall be funded by the payment, at the time of sale of each Unit during such period as the Condominium is taxed as a whole, of an amount equal to the then known tax bill multiplied by the number of months expired in the then taxing period plus one (1) and further multiplied by such Unit's Beneficial Interest. Thereafter, the Unit Owner shall make monthly payments on the first of each month equal to the Units proportionate share of said tax bill so that said account equals the known tax bill one (1) month prior to its due date. The Trustees may make additional assessments or refund payments at such time as the actual bill to be paid is determined. Payments for unsold Units shall be made by the Declarant one (1) month prior to the date such tax payment is due. To the extent that any Unit Owner is required to make monthly payments on account of real estate taxes to a bank or institutional lender holding a first mortgage on such Unit, such Unit

Owner shall be excused from making payments to the said Account; provided, however that the Unit Owner thereof shall use his best efforts and cooperate with the Trustees in obtaining the consent of such mortgagee to payments to this Account in lieu of payments to such mortgagee.

At such time as the taxing authority assesses the Units and their respective Undivided Interest in the Common Elements separately, the funds held in said Account shall be refunded to the Unit Owners in proportion to their then held payments thereto and the Account closed.

Any late charge or penalty assessed by the taxing authority shall be paid, proportionately, by the Unit Owner, or Owners, so causing such.

Section 5.4.2 - Determination of Common Expenses and Fixing of Common Charges

Prior to the annual meeting, the Trustees shall prepare a budget for the Condominium by establishing the Common Expenses expected to be incurred during the ensuing fiscal year together with a reasonable provision for contingencies and reserves as referred to above, and after taking into account any undistributed common profits from prior years (reserves excepted), shall determine the assessment to be made for such fiscal year (hereinafter "Common Expenses"). The Common Expenses shall include, but in no way be limited to, all such amounts as the Trustees may deem proper for the operation and maintenance of the Condominium, including, without limitation, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained pursuant to the provisions of this Declaration, an amount for a capital expense reserve, an amount for a contingency reserve, and an amount to make up for any deficit in the Common Expenses for any prior year. The Common Expenses may also include such amount as may be required for the purchase or lease by the Trustees, on behalf of all Unit Owners, pursuant to the terms of the Declaration of Trust, if any Unit which is to be sold at foreclosure or other judicial sale. The Trustees shall promptly render statements to the Unit Owners for their respective shares of such assessment, according to their percentages of Beneficial Interest, and the amount shown on such statement shall, unless otherwise provided therein, be due and payable within thirty (30) days after the same is rendered. In the event an annual assessment is not made as above required, an assessment shall be presumed to have been made in the amount of the last prior assessment. In the event that the Trustees shall determine at any time 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, or in the event that the Trustees shall determine that it is advisable to establish a larger reserve otherwise, the Trustees may make one (1) or more supplemental assessments and render such statements as they may deem necessary therefore in the manner aforesaid, and the amount shown in such statement shall be payable and take effect as aforesaid.

#### Section 5.4.3 - Payment and Collection of Common Expenses

The Trustees shall, so far as reasonably possible, provide for payments of the annual assessment of Common Expenses in advance in monthly, substantially equal, installments, which shall be due upon the first day of each month. The amount of each such statement, together with the interest on that amount at the rate of one and one-half percent (1 1/2%) per month, plus late charges and reasonable attorneys' fees, if that amount is not paid when due, shall constitute a lien on the Unit of the Unit Owners assessed all pursuant to provisions of Chapter 183A, Section 6. The Trustees shall take prompt action to collect any Common Expenses due from any Unit Owner which remains unpaid for more than thirty (30) days from the due date for payment thereof. The Trustees shall have the right and duty to institute all proceedings deemed necessary or desirable by them to recover such unpaid Common Expenses. The Trustees shall have the right to accelerate the annual assessment of Unit Owners.

All obligations and charges to a Unit Owner and such Unit Owner's Unit shall for the purposes hereof be deemed a Common Expense attributable to such Unit and payment thereof shall be enforceable as herein provided.

#### Section 54.4 - Payment of Common Expenses Subsequent to Transfer

No Unit Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to a sale, transfer or other conveyance by him of such Unit. In addition, any Unit Owner may, subject to the terms and conditions specified in these By-Laws, provided that his Unit is free and clear of liens and encumbrances other than the statutory lien for unpaid Common Expenses, convey his Unit to the Trustees and in such event be exempt from Common Expenses thereafter assessed. A purchaser of a Unit shall be liable for the payment of Common Expenses assessed and unpaid against such Unit prior to the

acquisition by him of such Unit, except that a purchaser of a Unit at a foreclosure sale of such Unit by a First Mortgagee or any First Mortgagee who comes into possession of the Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure shall take the property free of any claims for unpaid assessments or charges against the mortgage Unit which accrue prior to the time such holder comes into possession of the Unit.

#### Section 5.4.5 - Default in Payment of Common Expenses

In the event of default by any Unit Owner in paying to the Trustees the Common Expenses attributable to his Unit (hereinafter the "Common Charge"), such Unit Owner shall be obligated to pay all expenses, including attorneys' fees, incurred by the Trustees in any proceeding brought to collect such unpaid Common Expenses, irrespective of the amount so unpaid. The Trustees shall have the right and duty to attempt to recover such unpaid Common Expenses, irrespective of the amount so unpaid, together with interest thereon, and the expenses of the proceeding, including attorneys' fees, in an action to recover the same brought against such Unit Owner, or by foreclosure of the lien on such Unit, shall constitute a lien as provided in Section 6 of Chapter 183A, as amended. In furtherance hereof, a defaulting Unit Owner hereby waives any argument upon such a proceeding that the expenses thereof, including attorneys' fees, are unreasonable and/or excessive when considered in the light of the amount so unpaid.

After a successful action brought by the Trustees to foreclose a lien on a Unit because of unpaid Common Expenses, a Unit Owner allowed by the Trustees to remain in his Unit for any period of time thereafter may, at the option of the Trustees, be required to pay a reasonable rental for the use of his Unit. 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 to vote the votes appurtenant thereto), 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, and may be brought simultaneously with an action to so establish and foreclosure upon said lien.

#### Section 5.4.6 - Application of Common Funds

The Trustees shall expend common funds only for Common Expenses and other purposes permitted hereby and by the provisions of Chapter 183A.

#### Section 5.4.7 - Notice of Default in Payment of Common Expenses

Upon the written request of the holder of any mortgage upon a Unit, the Trustees shall notify such holder of any default by a Unit Owner in the payment of his share of the Common Expenses.

#### Section 5.4.8 - Certificate of Unpaid Common Expenses

The Trustees shall promptly provide any Unit Owner requesting the same in writing, with a written statement in recordable form of all unpaid Common Charges due from such Unit Owner.

#### Section 5.5 - Rebuilding, Restoration and Condemnation

##### Section 5.5.1 - Casualty Loss

In the event of damage to or destruction of the Common Areas and Facilities of the Condominium as a result of fire or any other casualty, 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 as so determined does not exceed ten percent (10%) of such value, or in the event of damage to or destruction of one (1) or more Units in the Condominium as a result of fire or other casualty, whether or not the Common Areas and Facilities have been damaged or destroyed, the Insurance Trustees designated hereinbelow shall promptly adjust and collect the loss, arrange for the prompt repair or restoration of the same, and disburse the proceeds of all insurance policies in payment of all costs and expenses actually incurred in connection with such repair or restoration in appropriate progress payments and with appropriate retainage. All insurance proceeds paid to the Trustees on account of any casualty shall be dedicated solely to the repair or restoration of the loss, and any application of such proceeds by the Trustees on account thereof, shall be prior to the application of such proceeds for any other purpose.

The cost of all repairs and restoration shall be a Common Expense. In the event that the total cost of repair or restoration as estimated on the basis of an independent appraisal or estimate, or as determined during the course of repair or restoration, exceeds the total sum of available insurance proceeds and any available common funds, then the Insurance Trustees shall assess, levy or charge all Unit Owners, as a Common Expense in accordance with their Beneficial Interest, the amount estimated or actually required to repair or restore the Common Areas and Facilities and any such damaged Units (including any permanent improvements made by the Unit Owners but excluding any decoration, drapes, furniture, furnishings, equipment or other personal property of the Unit Owners). Provided, however, that to the extent such cost of repair and restoration of the damaged Unit(s) in excess of insurance proceeds is the result of a lack of insurance coverage caused by the failure of a Unit Owner to promptly and accurately report any and all improvements made by him to his Unit pursuant to the provisions of Section 5.12.11, the excess cost resulting from such failure shall be borne solely by the Unit Owner so failing to report the same. The extent to which the cost in excess of the insurance proceeds is attributable to such Unit Owner's failure to report improvements shall be as determined by the Trustees in their reasonable discretion. The Trustees may perform emergency work essential to the preservation and/or safety of the Property or the safety of persons, or required to avoid the suspension of any essential service to the Condominium without having first adjusted the loss or obtained proceeds of insurance.

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 shall be, at the option of the Trustees, divided among the Unit Owners in proportion to their respective Beneficial Interest in the Common Areas and Facilities; provided, however, that no provision herein shall be deemed to give a Unit Owner or any other party priority over any rights of the holder of a first mortgage (if any) on such Unit Owner's Unit pursuant to such mortgage in the case of a distribution to such Unit Owner of insurance proceeds for losses to Units and/or Common Elements. Mortgagees of Units will be entitled to priority with respect to any insurance proceeds distributed to their mortgagors.

Notwithstanding the foregoing, if such loss to the Condominium as so determined exceeds ten percent (10%) of the value of the Condominium, the Trustees shall forthwith submit to all Unit Owners a form of Agreement (which may be in several counterparts) (hereinafter the "Restoration Agreement") by the Unit Owners authorizing the Trustees to proceed with the necessary repair, rebuilding or restoration. Upon receipt by the Trustees of the Restoration Agreement signed by Unit Owners holding at least seventy-five percent (75%) of the Beneficial Interest, the Trustees shall proceed with the necessary repairs, rebuilding and restoration. The cost of all repairs, rebuilding and restoration shall be a Common Expense and the excess of such cost over any available insurance proceeds and available common funds shall be a Common Expenses which shall be assessed to the Unit Owners as provided above in accordance with their Beneficial Interest. Provided, however, if such excess cost exceeds ten percent (10%) of the value of the Condominium prior to the casualty, any Unit Owner who did not so agree to repair or restore may apply to the Superior Court on such notice to the Trustees as the Superior Court shall direct, for an order directing the purchase of his Unit by the Trustees at the fair market value thereof as approved by the Superior Court. The cost of any such purchase shall be a Common Expense.

If within one hundred twenty (120) days of the date of such loss, Unit Owners entitled to at least seventy-five percent (75%) of the Beneficial Interest (other than the Grantor) do not agree to proceed with repair or restoration (by executing the Restoration Agreement and timely returning the same to the Trustees), a Unit Owner's proportionate share of the insurance proceeds with respect to the Common Areas and Facilities, together with the portion of the insurance proceeds allocated to any Unit as a result of a loss to such Unit due to the casualty shall, to the extent permitted by law, be paid first to the holder of the first mortgage of such Unit, if any, up to, but not in excess of, the then principal balance secured thereby and any accrued interest and other charges then due the holder of the first mortgage and thereafter to the Unit Owners, and if First Mortgagees, of which the Trustees have received notice, holding mortgages on Units having at least fifty-one percent (51%) of the Beneficial Interest approve a suit for partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of a partition sale together with common funds of the trust (adjusted from insurance proceeds paid or payable to mortgagees as aforesaid) shall be divided all as

provided by law, distribution thereof with respect to the amounts due a Unit Owner shall be made first to the holders of the first mortgages on Units, if any, to the extent of the amounts respectively secured thereby, and thereafter to the Unit Owners. Upon such sale, the Condominium shall be deemed removed from the provisions of Chapter 183A.

Notwithstanding anything to the contrary contained in this Section 5.5.1, in the event that any Unit Owner 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 5.5.1 by notice in writing to the Trustees within ten (10) days after such determination or action, and such dispute shall not have been resolved within thirty (30) days after such notice, then either the Trustees or the dissenting Unit Owner may submit the matter to arbitration, and for that purpose, one (1) arbitrator shall be designated by the Trustees, one (1) by the dissenting Unit Owner and a third by the two (2) arbitrators so designated, and such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

Notwithstanding anything to the contrary contained in the preceding paragraphs of this Section 5.5.1, the Trustees shall not, in any event, be obliged to proceed with any repair or restoration unless and until they have received funds in an amount equal to the estimate of the Trustees of all costs thereof.

#### Section 5.5.2 - Eminent Domain

If more than ten (10%) percent of the Condominium is taken under any power of eminent domain, the taking shall be treated as a "casualty loss", and the provisions of Section 17 of Chapter 183A of Massachusetts General Laws shall apply. Where one (1) or more Units have been substantially altered or rendered uninhabitable as a result of a partial taking, and the Unit Owners vote to restore and continue the Condominium pursuant to the provisions of Section 17 of said Chapter 183A, the Trustees shall have the authority to acquire the remaining portions of such Units, for such price as the Trustees shall determine, provided that any Unit Owner of such remaining portion who does not agree with such determination may apply to the Superior Court on such notice to the Trustees as the Court shall direct, for an order directing the purchase of such remaining portion at the fair market value thereof as approved 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 interests in the Common Areas and Facilities as shall be just and equitable subject to the provisions of the Master Deed with respect to approval by First Mortgagees.

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 among the affected Units according to their appurtenant Beneficial Interest, and paid first to the extent permitted by law, to the holder(s) of the first mortgage of such Unit(s), if any, up to, but not in excess of the then principal balance secured thereby and any accrued interest and other charges then due the holder(s) of the first mortgage. 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 allocated among the Units according to their appurtenant Beneficial Interest, and paid first to the extent permitted by law, to the holder(s) of the first mortgage on such Unit(s), if any, up to, but not in excess of, the then principal balance secured thereby and any accrued interest and other charges then due the holder(s) of the first mortgage. As to any portion or portions of any award which are attributable to direct or consequential damages suffered by particular Units, they shall be payable to the Owners of such particular Units and their mortgagees, as their interests may appear.

Notwithstanding anything contained herein to the contrary any award attributable to improvements which the Grantor has constructed on the Condominium Land as part of the uncreated phases and/or attributable to the Grantor's right to create and develop additional Phases of the Condominium, shall be payable to the Grantor and his mortgagees.

#### Section 5.5.3 - Retention of Architect

Whenever the estimated cost, as determined by the Trustees, of repair or restoration exceeds as to any one (1) casualty or occurrence, ten percent (10%) of the value of the Condominium or twenty-five percent (25%) of the value with respect to any one (1) Unit, then the Trustees shall retain a registered architect or registered engineer, who shall not be directly or indirectly a Unit Owner or an employee or agent of any Unit Owner or a Trustee or any employee or agent of any Trustee, to supervise the work, 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 amounts theretofore advanced, does not exceed the undisbursed proceeds of insurance as augmented by funds obtained by assessment or assessments levied or chargeable to the Unit Owners as a Common Expense.

#### Section 5.6 - Improvements to Units

##### Section 5.6.1 - Permission of Trustee

No Unit Owner shall make any addition, alteration or improvement in or to his Unit or to any portion of the Common Areas and Facilities to which he has an exclusive use, which may affect the appearance, structure or mechanical systems of the Condominium without the prior written consent thereto of the Trustees (including without limitation all load bearing walls and knee walls in lofts). The Trustees shall have the obligation to answer any written request by a Unit Owner for approval of a proposed structural addition, alteration or improvement within thirty (30) days after receipt of the request, and failure to do so within this time period shall constitute consent of the Trustees.

As to any request for approval pursuant this Section the Trustees may engage, if they so choose, an architect or engineer or both, if necessary, to review the plans to be attached to said request, and such architect's or engineer's fees shall be paid by the requesting Unit Owner. If the said engineer and/or architect determine that the plans are consistent with the structural integrity and/or design character, as relevant to the particular request, of the Condominium, the Trustees may then, in their sole discretion, approve or disapprove said plans, or approve them subject to certain conditions including restrictions in the manner of performing such work and requirements.

All additions, alterations or improvements to any Unit (whether or not affecting the structural or mechanical systems of the Condominium) shall be performed in compliance with all applicable laws, regulations and codes, and when required thereby, by licensed contractors and shall be completed in a good and workmanlike manner. Each Unit Owner and his contractors shall cooperate with the Trustees and other Unit Owners so as not to unduly inconvenience or



disturb the occupants of the Condominium. Notwithstanding the provisions of Section 5.5.1, the cost, in excess of available insurance proceeds, of repairing or restoring any damage to the Common Areas and Facilities or to any Unit which is caused by any work being performed by or for a Unit Owner shall be charged solely to such Unit Owner.

#### Section 5.6.2 - Building Permit

Any application to any department of the municipality or to any other governmental authority for a permit to make an addition, alteration or improvement in or to any Unit shall be executed by the Trustees without, however, incurring any liability on the part of the Trustees or any other person on account of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom.

#### Section 5.6.3 - Notification of Trustees of Value

If the Trustees approve any request as provided hereinabove or if the Unit Owner makes any addition, alteration or improvement not requiring the consent of the Trustees, the Unit Owner shall promptly notify the Trustees of the insurable value of said improvement pursuant to the provisions of Section 5.12.11 hereof. Such notice shall state in reasonable detail the nature of the improvement and the value thereof. Each Unit Owner shall, upon request by the Trustees, also submit to the Trustees such further information relating to said improvements as the Trustees shall reasonably require.

#### Section 5.7 - Improvements to Common Areas and Facilities

If and whenever the Trustees shall propose to make any improvement to the Common Areas and Facilities or shall be requested in writing by Unit Owners holding at least twenty-five percent (25%) of the Beneficial Interest to make any such improvement, the Trustees shall submit to all the Unit Owners a form of agreement (which may be in several counterparts) (hereinafter the "Improvement Agreement") specifying the improvement or improvements proposed to be made and the estimated cost thereof, and authorizing the Trustees to proceed to make the same. Upon the receipt by the Trustees of such Improvement Agreement approved by Unit Owners holding at least seventy-five percent (75%) of the Beneficial Interest or the expiration of ninety (90) days after such agreement was first submitted to the Unit Owners, whichever of said events shall first occur, the Trustees shall notify all the Unit Owners of the aggregate

percentage of Beneficial Interest held by Unit Owners who have then approved such Improvement Agreement. If such percentage is equal to or exceeds seventy-five percent (75%), the Trustees shall proceed to make the improvement or improvements specified in such agreement and, in accordance with said Section 18 of Chapter 183A, shall charge the cost of such improvement to all Unit Owners as a Common Expense in accordance with their Beneficial Interest. Provided, however, that if the Trustees shall determine in their reasonable discretion that the cost of such improvement exceeds ten percent (10%) of the then value of the Condominium, any Unit Owner who did not so agree to proceed may apply to the Superior Court, on such notice to the Trustees as the Superior Court shall direct, for an order directing the purchase of his Unit by the Trustees at the fair market value thereof as approved by the Court. The cost of any such purchase shall be a Common Expense. If Unit Owners holding more than fifty percent (50%) but less than seventy-five percent (75%) of the Beneficial Interest so approve, the Trustees shall proceed to make such improvement or improvements and shall charge the same solely to the Unit Owners so approving.

AS LONG AS THE MASSACHUSETTS HOUSING FINANCE AGENCY IS THE MORTGAGEE OF ANY UNITS IN THE CONDOMINIUM, NO IMPROVEMENT SHALL BE MADE WITHOUT THEIR CONSENT.

Notwithstanding anything to the contrary contained in the preceding paragraph, (a) in the event that any Unit Owner or Owners 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 5.7 by notice in writing to the Trustees within ten (10) days after such determination or action, and such dispute shall not be resolved within thirty (30) days after such notice, then either the Trustees or the dissenting Unit Owner or Owners may submit the matter to arbitration, and for that purpose one (1) arbitrator shall be designated by the Trustees, one (1) shall be designated by the dissenting Unit Owner or Owners and a third shall be designated by the two (2) arbitrators so designated, and such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association and (b) the Trustees shall not in any event be obligated to proceed with any improvement unless and until they have received funds in an amount equal to the estimate of the Trustees of all costs thereof.

This Section 5.7 may only be amended with the approval of MHFA.

Section 5.8 - Unit Owners

For the purpose of these By-Laws and this Trust instrument, whenever it is herein stated that the approval, agreement consent or request of a certain percent of the Unit Owners is required, it shall mean the Owners of that percentage in the aggregate in interest of the Beneficial Interest hereunder as set forth in Chapter 183A. Section 1.

Section 5.9 - Pets

Dogs, cats and other animals may not be kept in any Unit without the prior written approval of the Trustees pursuant to the Rules and Regulations. If any pet is permitted by the Trustees, such pet or pets shall not be kept in any Unit in such number or of such type or under any circumstances as to be noisome or offensive to the other Unit Owners. The Trustees may, in their sole discretion exercise in such manner as they may determine, upon complaint made by any Unit Owner as to the noisomeness or offensiveness of any pet, order that such pet may not be kept in a Unit notwithstanding any prior permission to maintain such pet.

Section 5.10 - Rules, Regulations and Requirements

The use of the Condominium and each Unit Owner's Unit shall be restricted to and shall be in accordance with the provisions of said Master Deed, this Trust (including By-Laws and such administrative Rules and Regulations as the Trustees may adopt pursuant to this Trust), and all applicable laws, zoning ordinances, rules, regulations and requirements of all governmental bodies having jurisdiction over the Condominium or the use and occupancy thereof. The Trustees may eliminate any violation of any such provisions and the cost and expense of eliminating same shall constitute a Common Expense; except however, that if a violation is caused in whole or in part by any Unit Owner, his family, servants, employees, agents, visitors, lessees, or licensees, the cost and expense of eliminating such violation, or such portion of such cost and expense as the Trustees may determine, shall be charged to the Unit Owner's Common Expenses which shall be payable by the Unit Owner of such Unit upon demand and until same is paid by such Unit Owner, shall constitute a lien against such Unit pursuant to the provisions of this paragraph and Section 6 of said Chapter 183A.

The Trustees shall have the right (which right shall not be delegated at any time) to adopt, amend and rescind reasonable administrative rules and regulations governing the operation, appearance and use of the Units and the Common Areas and Facilities including without limitation Common Areas and Facilities the exclusive use of which is for one (1) or more Units (hereinafter the "Rules and Regulations"); provided however, that any such Rules and Regulations shall not be promulgated and/or amended in a manner which will materially adversely affect the holder of any first mortgage of which the Trustees have received notice without the written consent of such holder. All Rules and Regulations adopted hereby shall be deemed to be additional By-Laws and are incorporated herein by reference. A vote of a Majority of Unit Owners at an annual or special meeting may overrule and declare void any Rules and Regulations and any amendments or changes thereto shall be furnished by the Trustees to each Unit Owner.

The Rules and Regulations, Master Deed, Declaration of Trust and By-Laws, as from time to time amended, shall be enforced by the Trustees. The Trustees may eliminate any violation of any such documents and the cost and expense of eliminating same shall be chargeable to the Unit Owner who himself or whose family, servants, employees, agents, visitors, lessees, licensees, or pets are responsible for such violation and shall constitute a portion of such Unit Owner's Common Expenses which shall be payable by the Unit Owner of such Unit upon demand and until same is paid shall constitute a lien against such Unit pursuant to the provisions of this paragraph and Section 6 of said Chapter 183A. The Trustees may also levy reasonable fines against such Unit Owner for such violations and such fine shall constitute a portion of such Unit Owner's Common Expenses which shall be payable by the Unit Owner of such Unit upon demand and until same is paid by such Unit Owner shall constitute a lien against such Unit pursuant to the provisions of this paragraph and Section 6 of said Chapter 183A. For each day a violation continues after notice it shall be considered a separate violation. In the case of persistent violation of the Rules and Regulations by a Unit Owner, the Trustee shall have the power to require such Unit Owner to post a bond to secure adherence to the Rules and Regulations. All Rules and Regulations shall contain such restrictions and requirements respecting the use and maintenance of the Units and the use of the Common Areas and Facilities to prevent unreasonable interference with the use by Unit Owners of their Units and the Common Areas and Facilities.

### Section 5.11 - Manager

The Trustees may hire or appoint a Manager or Managing Agent to administer the Condominium who shall perform such duties in the administration, management and operation of the Condominium, including the incurring of expenses, the making of disbursements and keeping of accounts as the Trustees shall from time to time determine. However, notwithstanding the appointment of such a Manager, the Trustees shall retain ultimate control over the administration, management and operation of the Condominium. The Trustees or such Manager may appoint, employ and remove such additional agents, attorneys, accountants, or employees as the Trustees or such Manager may from time to time determine. Any agreement for professional management of the Condominium shall be terminable without cause and without incurring payment of a termination fee on thirty (30) days (or less) written notice. The term of such agreement shall not exceed three (3) years.

### Section 5.12 - Insurance

#### Section 5.12.1 - Casualty Insurance

The Trustees shall obtain and maintain, to the extent obtainable at reasonable costs as determined by the Trustees, and permitted by applicable law, so-called master policies of insurance providing fire with extended and all risk coverage insurance, insuring the Condominium, including, without limitation, the Common Areas and Facilities, all of the Units with all fixtures, additions, alterations and improvements thereof, all heating and cooling equipment and other service machinery, apparatus, equipment and installations comprised in the Common Areas and Facilities, and also all such portions and elements of the Units as are for insurance purposes normally deemed to constitute part of the buildings and customarily covered by such insurance, but not including any furniture, furnishings, household and personal property belonging to and owned by individual Unit Owners, in an amount equal to not less than one hundred percent (100%), minus the amount of any deductible, of the full replacement value thereof (as determined by the Trustees not less frequently than on an annual basis) without deduction for depreciation and shall include, if available, so-called Agreed Amount, Inflation Guard, Construction Code and Replacement Cost endorsements. The Trustees may purchase a so-called "blanket" policy covering the buildings, if they deem it advisable. In determining full replacement value, the Trustees may

reasonably rely upon the advice of the insurer or their insurance agent. The name of the insured under each required policy must be stated in form and substance similar to the following: "Trustees of The Condominium Trust for use and benefit of the individual Unit Owners". Such insurance shall contain the standard mortgagee clause and shall name the Trustees as Insurance Trustees for the use and benefit of all Unit Owners of the Condominium and their mortgagees, successors and assigns, as their interest may appear, with loss payable to and adjusted by the Trustees as Insurance Trustees in accordance with the provisions of these By-Laws.

The Trustees shall insure against 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, and machinery explosion or damage. The cost of all insurance obtained and maintained by the Trustees pursuant to the provisions of this Declaration of Trust shall be a Common Expense.

#### Section 5.12.2 - Terms and Conditions of Policies

Policies for such casualty insurance shall provide: (i) that the insurance company waive any right of subrogation against the Trustees, their agents and employees, Unit Owners, their respective employees, agents, tenants and guests; (ii) that the insurance shall not be prejudiced by any act or neglect of any Unit Owners or occupants or any other person or firm (including employees and agents of the Trustees) when such act or neglect is not within the control of the Trustees (or Unit Owners collectively) to comply with any warranty or condition with regard to any portion of the premises over which the Trustees (or Unit Owners collectively), have no control; (iii) that such policies may not be cancelled or substantially modified without at least twenty (20) days' prior written notice to all Unit Owners and mortgagees of Units to whom certificates of insurance have been issued; (iv) that recovery thereunder shall not be affected on account of the availability of proceeds under any policies obtained by individual Unit Owners covering their own Units; and (v) if available, that the company shall waive any right it may have under the policy to repair or restore damage should the Unit Owners elect to terminate the Condominium because of such damage.

Such insurance may provide for a reasonable deductible amount from the coverage thereof, as determined by the Trustees in their reasonable discretion. In the event of any loss which relates solely to the Common Areas and

Facilities, such deductible amount may be as assessed to all Unit Owners as a special assessment of Common Expenses hereunder. In the event of any loss which relates in whole or in part to items forming part of a Unit, the Trustees may assess to the Unit Owner of such Unit, as a special assessment, all or part of such deductible amount, such special assessment being in an amount directly proportional to the amount of such loss related to such Unit items and the amount of the loss related to the Common Areas and Facilities. Unit Owners shall be liable for such special assessments in addition to their respective shares of the Common Expenses, and until such charges are paid by such Unit Owners, the same shall constitute a lien against their Units pursuant to the provisions of Section 6 of said Chapter 183A.

#### Section 5.12.3 - Certificate of Insurance

Certificates of insurance with proper mortgagee endorsements shall be available upon request and shall show the amount of insurance covering the Unit and its interest in the Common Areas and Facilities.

#### Section 5.12.4 - Insurance Appraisal

Unless waived by unanimous vote of all Trustees then in office, the Trustees shall obtain at least annually an independent insurance company appraisal of the full replacement value of the property to be insured in accordance with the foregoing provisions of this Section, without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section, and the amount of such insurance shall in no event be less than the full replacement value as so determined, minus the amount of any deductible. If the Trustees in their discretion deem it necessary, they shall upon notification of improvements to be made to a Unit by a Unit Owner, increase the insurance coverage afforded by said master policy.

#### Section 5.12.5 - Notification of Mortgagees

Subject to the provisions hereof, insurance proceeds received by the Insurance Trustees shall be held in trust in an identified and segregated fund for the benefit of the Unit Owners and their mortgagees. The Trustees, on behalf of the organization of Unit Owners, shall give written notice to all mortgagees of which the Trust has received notice, of any loss to, or taking of, the Common Areas and Facilities, if such loss or taking exceeds TEN THOUSAND AND

NO/100 DOLLARS (\$10,000.00), and in addition, if the loss or taking to any Unit exceeds ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00), then the Trustees shall give written notice of such loss or taking to such mortgagees listed as holding mortgages on that Unit.

#### Section 5.12.6 - Liability Insurance

The Trustees shall obtain and maintain, to the extent obtainable; master policies of insurance with respect to the Common Areas and Facilities for the benefit and protection of the Trustees and all Unit Owners for: (i) comprehensive public liability insurance in such limits as the Trustees may, from time to time, determine but in no case less than ONE MILLION DOLLARS/ONE MILLION DOLLARS (\$1,000,000/\$1,000,000) in coverage, covering the Trust, the Trustees, the Manager and each Unit Owner with respect to liability arising out of ownership, maintenance or repair of those portions of the Condominium not reserved for exclusive use by the Owner or Owners of a single Unit, such insurance shall provide for cross claims by the coinsured, such insurance shall also contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Condominium Unit Owner because of negligent acts of the Condominium Association of Owners, the Trustees or other Unit Owners; (ii) workmen's compensation and employee's liability insurance with respect to any Manager, agent or employee of the Condominium but excluding any independent agent or Manager, and (iii) such other insurance as the Trustees may from time to time deem to be desirable or appropriate, including, without limitation, fiduciary liability insurance.

#### Section 5.12.7 - Unit Owners' Insurance

Unit Owners shall carry insurance for their own benefit insuring their furniture, furnishings and other property located within their respective Units; provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Trustees shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner. Unit Owners are advised to obtain loss assessment coverage to the extent required by the Federal National Mortgage Association.



#### Section 5.12.8 - Fidelity Coverage

To the extent required by the Federal National Mortgage Association, the Trustees shall obtain fidelity coverage against dishonest acts on the part of the Manager, Trustees, employees or volunteers responsible for handling funds belonging to or administered by the Trustees. The fidelity bond or insurance shall name The Condominium Trust as the named insured and shall be written in an amount sufficient to provided protection which is in no event less than three (3) months of the insured's estimated annual operating expenses plus reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The premiums for such coverage shall be a Common Expense of the Condominium and any such insurance or bond may not be cancelled or substantially modified without at least twenty (20) days prior written notice at all Unit Owners and mortgagees of such Units.

#### Section 5.12.9 - MHFA, FHLMC and FNMA Insurance Requirements

If MHFA, FHLMC or FNMA holds any interest in one (1) or more mortgages of Units on which the Trustees have received notice, the Trustees shall obtain and maintain to the extent obtainable, such other insurance as may be required from time to time by whichever of MHFA, FHLMC or FNMA holds such interest. All such policies shall provide that adjustment or loss shall be made by the Trustees, and if MHFA, FHLMC or FNMA holds any interest in one (1) or more mortgages on Units, all such policies shall be in such amounts and contain such terms as may be required from time to time by whichever of MHFA, FHLMC or FNMA holds such interest.

#### Section 5.12.10 - Authorized Insurance Representative

Notwithstanding any of the foregoing provisions and requirements to the contrary relating to physical damage or liability insurance, there may be named as an insured, on behalf of the Trustees, with Trustees' authorized representative, including any Trustee with whom such Trustees may enter into any Insurance Trust Agreement or any successor to such Trustee (each of whom shall be referred to hereinafter as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such physical damage or public liability insurance. Each Unit Owner appoints the 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 without limitation, 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 or any Insurance Trustee shall receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Unit Owners and their first mortgage holders of record, as their interest may appear, provided however, the extent any such proceeds represent losses attributable to improvements which the Grantor has constructed on the Condominium Land as part of uncreated Phases, such proceeds shall be paid to the Grantor and his mortgagees, as their interest may appear.

Section 5.12.11 - Notifications to Trustees of Improvements

Each Unit Owner shall notify the Trustees in writing of all improvements to his or her Unit (except personal property other than fixtures) 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 this Section of any such improvements and shall purchase additional insurance in such amounts as required by Section 5.12.1 and any premium increase caused by such improvements may be assessed to the Owner of the improved Unit as a Common Expense. No Unit Owner shall be entitled to receive insurance proceeds from the repair, replacement or restoration of any such improvements not so reported to the Trustees, unless otherwise consented to by unanimous vote of the Trustees.

Section 5.12.12 - Director's and Officer's Liability Insurance

The Trustees shall obtain, to the extent available, directors and officers liability coverage in such amounts and in such form as they deem advisable but in amounts not less than one million dollars (\$1,000,000.00). The premiums for such coverage shall be a Common Expense of the Condominium.

Section 5.13 - Meetings

Section 5.13.1 - Unit Owners Meeting; Quorum

There shall be an annual meeting of Unit Owners on the first Tuesday of April at 7:30 P.M. at the Condominium or at such other reasonable place and time as may be designated by the Trustees (not more than thirty (30) days before or after

said date) (hereinafter the "Annual Meeting"). If that day is a legal holiday, the meeting shall be held on the next succeeding day. The Trustees shall give written notice thereof to the Unit Owners at least fourteen (14) days prior to said date. At the Annual Meeting, the Trustees shall submit reports of the management and finances of the Condominium. 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 holding more than twenty-five percent (25%) of the Beneficial Interest hereunder (hereinafter "Special Meeting"). Written notice of any such Special Meeting designating the place, day and hour thereof shall be given by the Trustees to the Unit Owners at least fourteen (14) days prior to the day so designated. The Trustees shall give written notice of all Annual Meetings and Special Meetings to the holders of first mortgages who request in writing such notice. Whenever at any meeting the Trustees propose to submit to the Unit Owners any matter with respect to which approval of or action by the Unit Owners is necessary or appropriate, the notice of such meeting shall so state and reasonably specify such matter. Each Unit Owner, or a person designated by such Unit Owner to act as proxy on his behalf and who need not be a Unit Owner, shall be entitled to cast the votes appurtenant to his Unit at all meetings of Unit Owners which votes shall be the equivalent of such Unit Owner's percentage of Beneficial Interest hereunder. The designation of any such proxy shall be made in writing to the Trustees and shall be revocable at any time prior to the meeting at which it is to be used by written notice to the Trustees by the Unit Owner so designating. The vote of a majority of Unit Owners present in person or by proxy at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where otherwise provided by law or by this Trust.

Except as otherwise provided in this Trust, the presence in person or by proxy of Unit Owners holding at least twenty-five percent (25%) of the Beneficial Interest under the Trust shall constitute a quorum at all meetings of the Unit Owners.

#### Section 5.13.2 - Trustee Meeting

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 and Secretary, and may elect any other officers they deem expedient. Other meetings may be called by any Trustee; provided, however, that written

notice of each such other meeting stating the place, day and hour thereof shall be given at least two (2) days before such meeting to each Trustee. A majority of the number of Trustees then in office shall constitute a quorum at all meetings, and such meetings shall be conducted in accordance with such rules as the Trustees may adopt.. Accurate minutes of all Unit Owner and Trustee meetings shall be taken by a person designated by the Trustees and shall be maintained by the Trustees as part of the records of the Trust. Tape recordings of such meetings may be made in lieu of minutes.

#### Section 5.14 - 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 or which may be ordered in any judicial proceeding shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one (1) or more of the Trustees to such Unit Owner by leaving such notice, or mailing it postage prepaid and addressed to such Unit Owner, at his address at the Condominium, unless such Unit Owner has designated in writing to the Trustees some other address for the receipt of notices, at least seven (7) days prior to the date fixed for the happening of the matter, thing or event of which such notice is given.

#### Section 5.15 - Inspection of Books; Reports to Unit Owners

Books, accounts and records of the Trustees and of the organization of Unit Owners shall be open to inspection to any one (1) or more of the Trustees, to the Unit Owners and to First Mortgagees at all reasonable times. The Trustees shall, as soon as reasonably convenient to them, submit to the Unit Owners a report of the operations of the Trustees for such year, which report shall include financial statements in such summary form and in only such detail as the Trustees shall deem proper. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees, given by registered mail within a period of three (3) months of the date of the receipt by him, shall be deemed to have assented thereto.

#### Section 5.16 - 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 Trustee or by any Manager to whom such power may at any time, or from time to time, be delegated by not less than a majority of the Trustees.

Section 5.16.1 - Seal

The Trustees may sign any instrument under seal without being required to affix a formal, common or wafer seal.

Section 5.17 - Fiscal Year

The fiscal year of the Trust shall be each calendar year ending December 31 or such other date as may, from time to time, be determined by the Trustees.

Section 5.18 - Sale or Lease of Units

A Unit Owner may assign, lease, sell or otherwise transfer all of his interest in this Unit(s), together with: (i) the undivided interest in the Common Areas and Facilities appurtenant thereto; (ii) the exclusive right and easement of such Unit Owner, if any, to use an appurtenant automobile parking space and any other portion of the Common Areas and Facilities to which said unit Owner has an exclusive right and easement; (iii) the interest of such Unit Owner in any Units theretofore acquired by the Trustee or its designee, on behalf of all Unit Owners, or the proceeds of the sale or lease thereof, if any other assets of the Condominium ([i], [ii] and [iii] above hereinafter collectively called the "Appurtenant Interests") in the manner set forth below:

Any deed to a purchaser or lease to a lessee shall provide that the acceptance thereof shall constitute an assumption of the provisions of the Master Deed, the Trust, the By-Laws and the Rules and Regulations, as the same may be amended from time to time. Any such lease shall be consistent with these By-Laws and shall provide that the Trustees shall have power to terminate such lease and/or to bring summary proceedings to evict the tenant in the name of the landlord thereunder, in the event of default by the tenant in the performance of such lease, or in the event of the creation, continuance or sufference of a nuisance in or about the premises.

In the event and at the time a Unit Owner should assign, lease, sell or otherwise transfer his interest in his Unit, such Unit Owner shall notify the Trustees of the name and address of the persons to whom he is so transferring. The Unit Owner's new address and telephone number and such other information as the Trustees may require or deem desirable.

No Unit Owner shall execute any deed, lease, mortgage, or other instrument conveying or mortgaging title to his Unit without including therein the Appurtenant Interest, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, lease, mortgage, or other instrument purporting to affect one (1) or more of such interests, without including all such interest, 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, leased, transferred or otherwise disposed of, except as part of a sale, lease, transfer or other disposition of the Unit to which such interest are appurtenant, or as part of a sale, lease, transfer or other disposition of such part of the Appurtenant Interest of all Units.

Acquisition of Units by the Trustees for the Trust may be made from the working capital and common charges 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 ownership in the Common Areas and Facilities, as a common charge, or the Trustees, in their discretion, may borrow money to finance the acquisition of such Unit, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the Unit, together with the Appurtenant Interests, so to be acquired by the Trustees.

Notwithstanding the above, all leases or rental agreements with respect to a Unit shall be in writing and for a period of time of at least six (6) months and shall be subject to the provisions contained in the Master Deed.

#### Section 5.19 - Determining Fair Market Value

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 fair market value of a Unit or of the Condominium which must be ascertained pursuant to Chapter 183A, Section 17 or Section 18, and such dispute is not resolved within thirty (30) days of such notice, then either the Trustees or the Unit Owner(s) shall submit the matter to an arbitration board consisting of one (1) member chosen by the dissenting Unit Owner, one (1) member chosen by the organization of Unit Owners acting through the Trustees hereunder and one (1) member chosen by the two (2) members so selected. The Board shall have the right to seek the assistance of a professional real estate appraiser in making their determination, and the cost of his services

shall constitute a common charge to all Unit Owners. However, the members of the Board shall receive no compensation for their services, although they shall be reimbursed for their reasonable expenses which shall constitute common charges to all Unit Owners. The determination of value by the Board shall be binding upon all parties.

#### Section 5.20 - Right of Access

The Trustees or any other person authorized by the Trustees shall have a right of access to any Unit for the purpose of making inspections or for the purpose of correcting any conditions originating in the Unit or threatening another Unit or the Common Areas and Facilities, or for any other purpose reasonably necessary for the proper maintenance or operation of the Condominium; provided, however that such entry is made after advance notice and that any such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate.

#### Section 5.21 - Utilities

Utilities shall be supplied by the public utility company serving the area directly to each Unit through a separate meter and each Unit Owner shall be required to pay the bills for utilities consumed or used in his Unit. The utilities serving the Common Areas and Facilities shall be separately metered, and the Trustees shall pay all bills for utilities consumed in such portions of the Common Areas and Facilities as a Common Expense.

#### Section 5.22 - Water and Sewer Charges

Water shall be supplied by the Town of Belchertown to the Condominium through individual meters and the Unit Owners shall pay the bills for water consumed and associated sewer charges. The water and sewer charges shall be a Unit Owners Expense.

#### Section 5.23 - Unit First Mortgages

##### Section 5.23.1 - Notice to Trustees

Any Unit Owner may, without the prior written approval of the Trustees, mortgage his Unit to any person, firm or entity. A Unit Owner who mortgages his Unit, shall notify the Trustees of the name and address of his mortgagee and the Trustees shall maintain such information in a separate

book. The failure of a Unit Owner to so notify the Trustees shall not invalidate the mortgage or any other provisions or the rights of any holder of such mortgage.

Section 5.23.2 - Notice of Unpaid Common Charges or Other Default

The Trustees, whenever so requested in writing by a mortgagee of a Unit, shall promptly report (i) any then unpaid common charges due from, or any other default by, the Owner of the mortgaged Unit; (ii) any default in the performance by the Unit Owner of the mortgaged Unit of any obligation under the Master Deed, this Trust, or the Rules and Regulations which is not cured within sixty (60) days of notice to the Unit Owner; (iii) any condemnation loss or any casualty loss which affects a material portion of the project or any Unit on which there is a first mortgage held, insured or guaranteed by an eligible mortgage holder or eligible insurer or guarantor, as applicable; (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Condominium Trust; (v) any proposed action which requires the consent of a specified percentage of eligible mortgage holders as specified in the Master Deed or this Declaration of Trust; (vi) any proposed material amendment to this Trust, other than amendments only for the purpose of correcting technical errors or for clarification.

Section 5.23.3 - Lien Relates Only to Units

All taxes, assessments and charges which may become liens prior to a first mortgage on a Unit under local law shall relate only to the individual Units and not to the Condominium as a whole.

Section 5.24 - Special Uses of Common Areas and Facilities

Subject to the rights of the Grantor pursuant to the Master Deed, in addition to the exclusive right and easement for the use of one (1) parking space appurtenant to each Unit, the Trustees may from time to time assign additional parking spaces to particular Unit Owners. Such additional parking spaces shall be so assigned for such periods and for such monthly charges as the Trustees may in their discretion determine, all such charges to constitute common funds upon receipt by the Trustees. All such designations and assignments shall be made on a fair and equitable basis, taking into account the reasonable need of particular Unit Owners, provided, however, that no Unit Owner shall be assigned more than one (1) additional parking space unless and until all Unit Owners desiring an additional space have been assigned one (1).



The Trustees may require Unit Owners to enter a contractual undertaking with the Trustees with respect to landscaping and gardening areas allocated to the exclusive use of Unit Owners pursuant to the Master Deed to assure compliance by such Unit Owners with such rules, regulations and other requirements as the Trustees deem necessary or desirable as to the design, layout, care, maintenance and removal of any such landscaping or gardens.

The Trustees may at reasonable times and in accordance with Rules and Regulations from time to time adopted by the Trustees close recreational facilities or other Common Areas and Facilities of the Condominium to common use of the Unit Owners and temporarily allocate the use thereof to the Trustees, or upon application therefor, to any Unit Owner or Owners, for their exclusive use for meetings, social and other functions and other purposes consistent with the comfort and convenience of the Unit Owners and their enjoyment of the amenities of the Condominium, and upon payment of charges therefor from time to time established by the Trustees, which charges shall be in addition to Common Expenses and shall upon receipt by the Trustees constitute common funds.

#### Section 5.25 -Attorneys Fees and Costs

In such case as it is necessary for the Trustees to engage the services of an attorney, or attorneys, for the purpose of enforcing against a Unit Owner any provision of the Master Deed, the Declaration of Trust, the Rules and Regulations, or obligations thereunder, and the Trustees should prevail thereon, said Unit Owner shall be liable for, in addition to any other liability, the fees and costs of such attorneys in so proceeding thereto. The amount of such fees and costs shall constitute a lien upon the Unit enforceable to the same manner and extent as a lien for Common Expenses, and the Unit Owner shall be personally liable therefor.

#### Section 5.26 - Arbitration

In such event as there should arise a dispute between the Board of Trustees and any Unit Owner arising out of and/or under the provisions of the Master Deed, the Declaration of Trust, By-Laws and/or the Rules and Regulations except as to the collection of Common Area expenses, the matter shall be submitted to binding arbitration for determination. Such arbitration shall be before a single arbitrator and in accordance with the rules

of and under the aegis of the American Arbitration Association and shall be initiated as provided by such rules. The arbitrator shall award reasonable attorneys' fees and costs to the prevailing party. Pending determination, the costs of arbitration as assessed by the American Arbitration Association shall be borne equally.

Section 5.27 - Energy Conservation; Health and Safety

Notwithstanding anything contained in the Condominium Documents to the contrary, the Trustees shall have the right to perform work or add improvements to the Units but as a Common Expense if the purpose of the work relates to energy conservation, health, safety, or the convenience of the Unit Owners. Such work and installation may include, without limitation, storm windows, storm doors, water conservation measures, repairs to intercoms, heat detectors, etc.

ARTICLE VI

Rights and Obligations of Third Parties Dealing with the Trustees

Section 6.1 - Third Parties No Duty of Inquiry

No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record in the Registry shall be bound to ascertain; to inquire further as to the identity of said Trustees, or of any changes thereto. The receipts of the Trustees, or any one (1) or more of them, for moneys or things paid or delivered to them or him shall be effectual discharges therefrom to the persons paying or delivering the same and no person from whom the Trustees, or any one (1) or more of them, shall receive any money, property or other credit shall be required to see to the application thereof. No purchaser, mortgagee or lender of other property which then is or formerly was trust property shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, or otherwise as to the purpose or regularity of any of the acts of the Trustees, or any one (1) or more of them, purporting to be done in pursuance of any of the provisions or powers herein contained, or as to the regularity of the resignation or appointment of any Trustee.

Section 6.2 - No Recourse To Trustees

No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees or by

any agent or employee of the Trustees, or by reason of anything done or omitted to be done by or on behalf of them or any of them, against the Trustees individually, or against any such agent or employee, or against any beneficiary, either directly or indirectly, by legal or equitable proceeding, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with or having any claim against the Trustees, shall look only to the trust property for payment under contract or claim, or for the payment of any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to them for 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 Chapter 183A.

#### Section 6.3 - All Instruments Subject to Terms Hereof

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

#### Section 6.4 - Recording

This Declaration of Trust and any amendments hereto and any certificate herein required to be recorded and any other certificate or paper (including without limitation a certificate pursuant to General Laws, Chapter 183A, Section 6(d) signed by a majority of Trustees which may be deemed desirable to record shall be recorded with said Registry and such recording shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustees, the Trust property or any beneficiary 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. Any certificate signed by a majority of the Trustees in office at the time, setting forth as facts any matters affecting the Trust, including statements as to who are the beneficiaries, as to what action has been taken by the beneficiaries, and as to matters determining the authority of the Trustees to do any act, when duly acknowledged and recorded with said Registry shall be

conclusive evidence as the existence of any facts, the existence of which is necessary to authorize the execution of any instrument or the taking of any action by such Trustee or majority, as the case may be, shall, as to all persons acting in good faith in reliance thereon be conclusive evidence of the truth of the statements made in such certificate and of the existence of the facts therein set forth.

ARTICLE VII  
Amendment and Termination

Section 7.1 - Amendments to Declaration of Trust

The Trustees 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, provided such amendment, alteration, addition, or change is consented to in writing by a Majority of Unit Owners or if such amendment, alteration, addition or change affects a provision then requiring more than a majority, then by such larger percentage, with 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) made without the consent of the Grantor prior to the Phasing Termination Date as set forth in Section 9 of the Master Deed; or (b) according to the purport of which, the Grantor's rights under Section 1 of Article III hereof are changed in any way; or (c) according to the purport of which, the percentage of the Beneficial Interest hereunder of any Unit Owner would be altered, or in any manner or to any extent whatsoever modified or affected so as to be different than the percentage of the individual interest of such Unit Owner in the Common Areas and Facilities as set forth in said Master Deed except as provided for in Section 11 of the Master Deed, other than by consent of all the Unit Owners; or (d) which would render this Trust contrary to or inconsistent with any requirements or provisions of said Chapter 183A -- shall be valid or effective; provided further, however, that nothing herein contained shall be deemed or construed to vitiate or impair the rights reserved to the Grantor in and by provisions of Section 9 of the Master Deed to amend said Master Deed so as to include Additional Phases to the Condominium as therein defined and thereby to alter the percentages of Beneficial Interest as set forth in Article IV hereof.

### Section 7.1.1 - Consent of Mortgagees to Amendments

In addition, this Trust may not be amended (except for technical non-material corrections or additions) without the approval of First Mortgagees, of which the Trustees have received notice, holding mortgages on Units having at least fifty-one percent (51%) of the Beneficial Interest hereunder. Any such First Mortgagee who receives a written request to approve amendments who does not deliver a negative response to the requesting party within thirty (30) days shall be deemed to have approved such request.

### Section 7.1.2 - Effective Date of Amendment

Any amendment, alteration, addition or change pursuant to the foregoing provisions of this paragraph shall become effective upon the recording with the Registry of an instrument of amendment, alteration, addition or change, as the case may be, signed, sealed and acknowledged by a majority of the Trustees then in office, setting forth in full, the amendment, alteration, addition or change and reciting the consent of the Unit Owners herein required to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all prerequisites to the validity thereof, 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 this paragraph contained shall be construed as making it obligatory upon the Trustee to amend, alter, add to or change the Declaration of Trust upon obtaining the necessary consent(s) 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 of Chapter 183A.

### Section 7.3 - Actions Upon Termination

Upon the termination of this Trust, the Trustees may subject to and in accordance with provisions of Chapter 183A, sell and convert into money the whole of the Trust property or any part or parts thereof, and, after paying or satisfying all known liabilities and obligations of the Trustees and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, all other

property then held by them in trust hereunder to the Unit Owners as tenants in common, according to their respective percentages of Beneficial Interest hereunder. All valuations made by the Trustees shall be conclusive. In making any sale under this provision, the Trustees shall have power to sell by public auction or private 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 distribution of Trust property may have passed.

ARTICLE VIII  
Construction, Interpretation and Waiver

In the construction hereof, whether or not so expressed, words used in the singular or in the plural respectively include both the plural and the singular, words denoting males include females and words denoting persons include individuals, firms, associations, companies (joint stock or otherwise), trusts and corporations unless a contrary intention is to be inferred from them or required by the subject matter or context. The title headings of different parts hereof are inserted only for the convenience of referenced and are not to be taken to be any part hereof nor to control or affect the meaning, construction, interpretation or effect hereof. All the trusts, powers and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts. Unless the context otherwise indicates words defined in Chapter 183A shall have the same meaning herein and to the extent of any conflict between the terms hereof and the requirements of said part of this Trust or By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the balance of this Trust or By-Laws. No restriction, condition, obligation or provision contained in this Trust or By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

ARTICLE IX  
Assignment by Unit Owner of Rights and Options

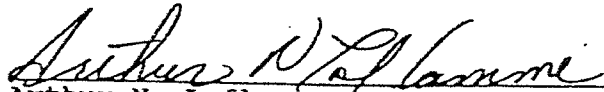
The right of any Unit Owner to vote, to grant or withhold any consent or approval, and to exercise any other right or option herein granted to a Unit Owner, may be assigned or transferred in writing to or restricted in favor of, any Mortgagee of a mortgage covering that Owner's Unit, and the Trustees and all other persons shall be bound by such assignment or transfer of which they have actual written notice.

ARTICLE X  
ARBITRATION AND DISPUTE RESOLUTION

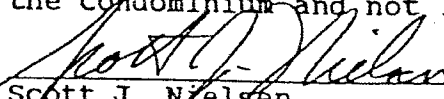
Any Unit Owner or Trustee may demand arbitration unless prohibited by applicable law. Arbitrable matters may include, but are not limited to any controversy or claim between the Unit Owners, Trustees or Managing Agent arising out of the operation of the Condominium, the interpretation and implementation of the Master Deed, By-Laws, Rules and Regulations and actions by the Trustees of the Condominium. Judgment upon the award rendered may be entered in any court having jurisdiction thereof. The party may seek arbitration either through the University of Massachusetts Mediation Project of Amherst, Massachusetts or the American Arbitration Association pursuant to the rules of the arbitration service selected.

IN WITNESS WHEREOF said Arthur N. Laflamme, Scott J. Nielsen and Andrew Crane as Trustees as aforesaid, have hereto set their hands and seals on the day and year first hereinabove set forth.

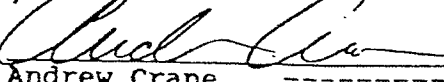
  
WITNESS

  
Arthur N. Laflamme, --- Trustee of  
the Condominium and not individually

  
WITNESS

  
Scott J. Nielsen, ----- Trustee of  
the Condominium and not individually

  
WITNESS

  
Andrew Crane, ----- Trustee of  
the Condominium and not individually

COMMONWEALTH OF MASSACHUSETTS

Hampshire,

ss

August 24 , 1989

Then personally appeared the above named Arthur N. Laflamme, as Trustee of the Cold Spring Condominium Trust and acknowledged the foregoing instrument to be his free act and deed, as Trustee aforesaid, before me,



Notary Public : PAUL D. BOUDREAU  
My commission expires: 12/15/89

COMMONWEALTH OF MASSACHUSETTS

Hampshire,

ss.

August 24 , 1989

Then personally appeared the above named Scott N. Nielsen, as Trustee of the Cold Spring Condominium Trust and acknowledged the foregoing instrument to be his free act and deed, as Trustee aforesaid, before me,



Notary Public : PAUL D. BOUDREAU  
My commission expires: 12/15/89

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss.

August 24, 1989

Then personally appeared the above named Andrew Crane, as Trustee of the Cold Spring Condominium Trust and acknowledged the foregoing instrument to be his free act and deed, as Trustee aforesaid, before me,



Notary Public : PAUL D. BOUDREAU  
My commission expires: 12/15/89