

**DERBY LOFTS CONDOMINIUM**

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**DECLARATION OF TRUST**

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DECLARATION OF TRUST of DERBY LOFTS CONDOMINIUM TRUST made at Salem, Essex County, Massachusetts by Derby Lofts LLC, a Massachusetts limited liability company, having a principal place of business at c/o RCG LLC, Ivaloo Street, Suite 100, Somerville MA 02143, hereinafter called the "Trustee", which term includes its successors in trust. The term "Trustee" or "Trustees" also means the Trustee or Trustees for the time being hereunder, whenever the context so permits.

**1. NAME OF TRUST.**

The trust created hereby shall be known as Derby Lofts Condominium Trust (the "Trust") and all activities carried on by the Trustees hereunder shall, insofar as legal, practical and convenient, be conducted under said name and style. The term "Trust" shall include this Declaration of Trust and the By-Laws and Rules and Regulations hereto.

**2. PURPOSES.**

(a) All of the rights and powers in, to and with respect to the common areas and facilities of the Derby Lofts Condominium established by Master Deed of even date and recorded herewith (hereinafter called the "Condominium"), which are by virtue of the provisions of Massachusetts General Laws, Chapter 183A, (the "Act") conferred upon or exercisable by the organization of unit owners (hereinafter defined) of the Condominium and all property, real and personal, tangible and intangible, conveyed to the Trustees hereunder shall vest in the Trustees as joint tenants, with right of survivorship, as Trustees of this Trust, BUT IN TRUST NEVERTHELESS, to exercise, manage, administer and dispose of the same and to receive the income thereof for the benefit of the Owners of record from time to time of the Units of the Condominium (hereinafter called the "Unit Owners"), according to the schedule of beneficial interest referred to in Section 4 hereof, and in accordance with the provisions of the Act. This Trust is the organization of the Unit Owners established pursuant to the provisions of the Act for the purposes therein set forth.

(b) It is hereby expressly declared that a trust, and not a partnership, has been hereby created and that the Unit Owners are beneficiaries and not partners or associates or any other relation whatever among themselves with respect to the Trust property, and hold no relation to the Trustees other than as such beneficiaries, with only such rights as are conferred upon them as such beneficiaries hereunder and under and pursuant to the provisions of the Act.

### 3. TRUSTEES.

#### (a) Appointment of Trustees

##### (1) Initial Board

The Initial Board shall consist of Derby Lofts, LLC, or any other person or persons from time to time appointed by Declarant as provided herein, hereinafter called the "Initial Board". The term of the Initial Board shall end upon the earliest to occur of the following events: (i) six (6) months after 75% of the Units have been conveyed to Unit Owners other than Derby Lofts LLC; or (ii) five (5) years following the conveyance of the first Unit. Notwithstanding any other term or provision of this Trust to the contrary: (A) the Unit Owners shall have no power or right to remove the Initial Board, namely, Derby Lofts LLC nor to appoint any additional or successor Trustees, until the expiration of the term of said Initial Board shall have expired as set forth in the immediately preceding sentence, and (B) during the term of the Initial Board, the Declarant shall have the right to appoint and/or remove any Trustees and any vacancy in the office of a Trustee, however caused, shall be filled only by the designation of the Declarant of the Master Deed.

##### (2) Subsequent Boards of Trustees

After the term of the Initial Board, there shall at all subsequent times be a Board of Trustees hereunder consisting of not less than five (5) nor more than seven (7) natural persons, but in any event an odd number, such number to be determined from time to time by plurality vote of Unit Owners, which vote shall be exercised in person or by proxy at any annual or special meeting of the Unit Owners, provided, however, at least one (1) trustee shall be the designee of an owner of a Commercial Unit. The term of office of Trustees succeeding the Initial Board shall be a period of one (1) year and until their successors have been elected and qualified. The Trustees need not be Unit Owners.

The Trustees shall elect from their number a Chairman, Treasurer and Secretary, who shall perform such duties as the Trustees may prescribe, and may elect such other officers as they shall desire. Any Trustee may hold more than one office.

Each person elected to serve as Trustee subsequent to the term of the Initial Board who wishes to so serve shall promptly file with the Secretary of the Trust his written acceptance of election, and upon receipt of such acceptance, the Secretary shall sign and record with the Essex South District Registry of Deeds a certificate of election setting forth the names of the new Trustees and reciting that they have been duly elected by the requisite vote of the Unit Owners and have filed their written acceptances of election with the Secretary, and upon the recording of such

certificate of election, the election of the Trustees named therein shall become effective and each such person named therein as a Trustee shall then be and become such Trustee and shall be vested with the title to the Trust property, jointly with the remaining or surviving Trustee or Trustees without the necessity of any act of transfer or conveyance.

(b) Vacancies

After the expiration of the term of the Initial Board, if for any reason there shall be a vacancy, other than a vacancy that occurs by reason of the expiration of the term of a Trustee, such vacancy may be filled by vote of the remaining Trustees, and the person so appointed shall serve until the next annual or special meeting of the Unit Owners, at which the Unit Owners shall elect a Trustee to fill the vacancy.

After the expiration of the term of the Initial Board, if for any reason there shall be fewer than five (5) Trustees for any consecutive period of more than sixty (60) days and shall at the end of that time remain unfilled, a Trustee or Trustees to fill such vacancy or vacancies may be appointed by any court of competent jurisdiction upon the application of any Unit Owner and notice to the other Unit Owners and all Trustees and to such other parties in interest, if any, to whom the court may direct that notice be given, and such appointment shall become effective upon the recording with the Essex South District Registry of Deeds of a certificate or order of such appointment.

Notwithstanding anything to the contrary in this subsection (b) despite any vacancy in the office of Trustees, however caused and for whatever duration, the remaining or surviving Trustees, subject to the provisions of the immediately following subsection (c), shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustees.

(c) Majority Vote

- (1) In all matters relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred, the Trustees shall act by majority vote, provided that subsequent to the expiration of the term of the Initial Board (but not prior thereto) in no case shall a majority consist of less than two (2) Trustees. The Trustees may so act without a meeting by instrument signed by all Trustees. Trustees may not vote by proxy.
- (2) During the term of the Initial Board, a majority vote shall consist of the vote of the sole member of the Initial Board acting alone. Such sole member may so act without a meeting by instrument signed by it alone.

(d) Resignation of Trustees; Removal

Any Trustee may resign at any time by instrument in writing, signed and acknowledged in proper form for recording and such resignation shall take effect upon the recording of such document with the Essex South District Registry of Deeds. After notice and opportunity to be heard before the Unit Owners called pursuant to Sections 8 and 33 of the By-Laws hereof, a Trustee (except a member of the Initial Board) may be removed from office with or without cause, by an instrument in writing signed by vote of Unit Owners entitled to not less than fifty-one (51%) percent of the beneficial interest hereunder, such instrument to take effect upon the recording thereof with said Essex South District Registry of Deeds.

(e) Bonds

The Trustees shall obtain and maintain fidelity bonds as set forth in Section 3 of the By-Laws of this Trust.

(f) Good Faith

No Trustee hereinbefore named, or appointed or designated as hereinbefore provided, shall under any circumstances or in any event be held liable or accountable out of his personal assets or estate or be deprived of compensation by reason of any action taken, suffered or omitted in good faith, or be so liable, accountable or deprived for more money or other property than he actually receives, or for allowing one or more of the other Trustees to have possession of the Trust books or property, or be so liable, accountable or deprived by reason of honest errors of judgment or mistakes of fact or law or by reason of the existence of any personal interest or gain or by reason of anything except his own personal and willful malfeasance, bad faith, or fraud.

(g) Conflict of Interest

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

It is understood and permissible for the Initial Board hereunder and any other Trustee designated by the Initial Board or who are employed by or affiliated or associated with the Declarant, to contract with the Declarant of the Master Deed (the "Declarant") and any corporation, limited liability company, firm, trust or other organization controlled by or affiliated or associated with the Declarant upon commercially reasonable terms without fear of being charged with self-

dealing.

(h) Compensation

The Trustees shall receive no compensation for their services as trustees, but with the prior written approval in each instance of the other Trustees, and upon presentation of proper vouchers, each Trustee may be reimbursed for actual out-of-pocket expenses paid or incurred by him pursuant to his duties as such Trustee, and such reimbursement shall be a Common Expense of the Condominium.

With the prior written approval in each instance of the other Trustees, each Trustee may receive reasonable compensation for any extraordinary or unusual services rendered by him in connection with this Trust, and such compensation shall be a Common Expense of the Condominium.

With the prior written approval in each instance of the other Trustees, any Trustee may be engaged to render services to this Trust, legal, accounting, or otherwise, at such compensation as shall be fixed by the Trustees, and any fees or other compensation shall be a Common Expense of the Condominium.

Notwithstanding anything to the contrary in this subsection (h) of this Section 3, no compensation or fees shall be paid to the Initial Board, and no reimbursement for out-of-pocket expenses shall be made to any member of the Initial Board, unless the same is reasonable and customary. A Trustee (other than the Initial Board) shall abstain from voting upon any question regarding reimbursement, compensation, or fees proposed to be paid to him pursuant to the provisions of this subsection (h) of this Section 3, or upon any question regarding the engagement of himself, or any firm, association, corporation or partnership of which he is a member, to render services, legal, accounting or otherwise to this Trust.

(i) Indemnity

The Trustees and each of them shall be entitled to indemnity both out of the Trust property and by the Unit Owners severally in proportion to their ownership in the common areas and facilities against any liability incurred by them or any of them in the execution of their duties hereunder, including, without limitation, liabilities in contract and in tort and liabilities for damages, penalties and fines (but not for fraud or willful misconduct). Each Unit Owner shall be personally liable for all sums lawfully assessed for his share of the Common Expenses of the Condominium and for his proportionate share of any claims involving the Trust property in excess thereof.

**4. BENEFICIARIES AND THEIR BENEFICIAL INTEREST.**

(a) The beneficiaries hereof shall be the Unit Owners of the Condominium. The beneficial

interest in this Trust shall be divided among the Unit Owners in the percentage of undivided beneficial interest appertaining to the Units of the Condominium, all as set forth on Exhibit C of the Master Deed, which is hereby incorporated herein by this reference and made a part hereof, with the same force and effect as though fully set forth in the body hereof.

(b) The beneficial interest of each Unit of the Condominium shall be held and exercised as a unit and shall not be divided among several owners of any such Unit. To that end, whenever any of said Units is owned of record by more than one person, the several owners of such Unit shall: (i) determine and designate which one of such owners shall be authorized and entitled to cast votes, execute instruments, and otherwise exercise the rights appertaining to such Unit hereunder; and (ii) notify the Trustees of such designation by a notice in writing signed by all of the record owners of such Unit. Any such designation shall take effect upon receipt by the Trustees of such notice, 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 of such owners for such purposes.

## **5. BY-LAWS.**

The By-Laws of this Trust are attached hereto as Exhibit A which is hereby incorporated herein by this reference and made a part hereof with the same force and effect as though fully set forth in the body hereof.

## **6. RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUST.**

(a) Any instrument signed and acknowledged in proper form for recording by a majority of the Trustees as they then appear of record in the Essex South District Registry of Deeds and recorded in the Essex South District Registry of Deeds may be relied on as conclusively establishing that such instrument was the free act of this Trust and shall be binding upon this Trust when so recorded.

(b) No purchaser, Mortgagee, lender, or other person dealing with a majority of the Trustees, as they then appear of record in the Essex South District Registry of Deeds shall be bound to ascertain or inquire further as to the persons who are then the Trustees hereunder or be affected by any notice, implied or actual, relative thereto, other than by a certificate thereof, so recorded, and such recorded certificate shall be conclusive evidence of the identity of said Trustees and of any changes therein. The receipts of a majority of the Trustees, for money paid or things delivered to them shall be effectual discharges therefrom to the persons paying or delivering the same, and no person from whom a majority of the Trustees shall receive any money, property or other credit, shall be required to see to the application thereof. No purchaser, Mortgagee, lender or other person dealing with a majority of the Trustees as they then appear of record in the Essex South District Registry of Deeds, or with any real or personal property which then is or formerly was Trust property shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, or otherwise as to the purpose of regularity of any of the acts of the Trustee(s)



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 Trustees. Any instrument of appointment of a new Trustee or resignation or discharge of a Trustee purporting to be executed by the Trustees, Unit Owners or other persons herein required to execute the same, shall upon the recording thereof, be conclusive evidence in favor of any such purchaser or other person dealing with the Trustees of the matters therein recited relating to such discharge, resignation or appointment.

(c) Notwithstanding anything to the contrary herein, and notwithstanding any custom or usage to the contrary, no recourse shall at any time be had under or upon any note, bond, contract, order, debt, claim, 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 proceedings, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with, or having any claim against the Trustees, shall look only to the Trust property for payment under such note, bond, contract, order, debt, claim, instrument, certificate, undertaking, obligation, covenant, or agreement, or for the payment of any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to them from the Trustees, so that neither the Trustees nor the beneficiaries, present or future, shall ever be personally or individually liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of the Unit Owners under the provisions of the Act.

(d) 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 be made to this instrument.

(e) This Declaration of Trust and amendments hereto and any Certificate herein required or which it may be deemed desirable to record, shall be recorded with the Essex South District Registry of Deeds and such record when executed according to the requirements of this Declaration of Trust 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 hereunder, 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 so recorded. Any certificate signed by a majority of the Trustees at the time as they then appear of record in the Essex South District Registry of Deeds setting forth as facts any matters affecting the Trust, including statements as to who are the Trustees, as to what action has been taken by the Trustees or beneficiaries, and as to matters determining the authority of the Trustees to do any act, when duly acknowledged and recorded with said Essex South District Registry of Deeds, shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees acting in reliance thereon. Any certificate executed by a majority of the Trustees as they then appear of record in the Essex South District Registry of

Deeds setting forth the existence of any facts, the existence of which is necessary to authorize the execution of any instrument or the taking of any action by such Trustees, shall, when duly acknowledged and recorded with said Essex South District Registry of Deeds, as to all persons acting in good faith in reliance thereon, be conclusive evidence of the truth of the statement made in such certificate and of the existence of the facts therein set forth.

## **7. AMENDMENTS; TERMINATION**

(a) Notwithstanding anything to the contrary herein, so long as the Declarant owns any Unit in the Condominium, the Declarant shall have the right, at any time and from time to time, to amend this Declaration of Trust (including but not limited to the By-Laws hereto and the Rules and Regulations hereto) without the consent of any Unit Owners or any of the Trustees of this Trust or any Mortgagees, to meet the requirements of any governmental or quasi-governmental body or agency, or the requirements of any insurance company or insurance underwriting office or organization, or the requirements of Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the secondary mortgage market, or any institutional lender, or to cure any ambiguity, inconsistency or formal defect or omission.

(b) Subject, however, to the provisions of Section 32 of the By-Laws hereto:

(1) A majority of the Trustees, with the consent in writing of sixty-seven (67%) percent in interest of Unit Owners, may at any time and from time to time amend, alter, add to, or change this Declaration of Trust in any manner or to any extent, the Trustees first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided, however, that no such amendment, alteration, addition or change shall be made: (i) without the prior written consent of the Declarant obtained in each instance during the term of the Initial Board for so long as the Declarant remains the owner of any Unit in the Condominium; or (ii) without the prior written consent of the owners of Units entitled to use balconies with respect to any proposed amendments dealing with balconies, or (iv) except under Section (n) of the Master Deed, 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 the Master Deed other than by consent of all of the Unit Owners whose percentage of the undivided interest is affected, in accordance with the Act, or (v) which would render this Trust contrary to or inconsistent with any requirements or provisions of the Act. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this Section shall become effective upon the recording with the Essex South District Registry of Deeds of an instrument of amendment, alteration, addition, or change, as the case may be, signed, sealed and acknowledged in proper form for recording, setting forth in full the amendment, alteration, addition, or change. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all

prerequisites to the validity of such amendment, alteration, addition, or change, whether stated in such instrument or not, upon all questions as to title or affecting the rights of third persons and for all other purposes.

- (2) The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of the Act in accordance with the procedure therefor set forth in the Act.
- (3) Upon the termination of this Trust, the Trustees may, subject to and in accordance with the provisions of the Act, sell and convert into money the whole of the Trust property, or any part or parts thereof, and, after paying or retiring all known liabilities and obligations of the Trustees and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, at valuations made by them which shall be conclusive if made in good faith, all other property then held by them in trust hereunder to the Unit Owners according to their respective percentages of beneficial interest hereunder. In making any sale under the provisions of this subsection of this Section 7, the Trustees shall have the power to sell 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.

The provisions of Section 32 of the By-Laws hereto shall at all times take precedence over the provisions of this Section 7.

## **8. CONSTRUCTION: INTERPRETATION.**

- (a) In the construction hereof, whether or not so expressed, words used in the singular or in the plural, respectively, shall include both the plural and singular; words denoting males include females; and words denoting persons include individuals, firms, associations, companies (joint stock or otherwise), partnerships, entities and quasi-entities, trusts and corporations; unless a contrary intention is to be inferred from or is required by the subject matter or context. The marginal and sectional captions and headings are inserted only for convenience of reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation, or effect hereof.
- (b) All of the trusts, powers, and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts in general, and with respect to the Act, in particular.
- (c) The invalidity of any provision or part of such provision hereof shall not impair or affect in any manner the remainder hereof, or the remainder of such provision or such part of such

provision.

(d) No restriction, condition, obligation or provision contained herein (including but not limited to the By-Laws hereof attached hereto as Exhibit A and incorporated herein by reference) shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number or frequency of violations or breaches thereof which may occur.

(e) In the event of any conflict between the provisions hereof (including but not limited to the By-Laws hereof attached hereto as Exhibit A and incorporated herein by reference) and the provisions of the Act, and the Master Deed, then the provisions of the Act, or of the Master Deed, as the case may be, shall control. Words defined in the Act and used herein shall have the same meaning herein as defined in the Act, unless the context clearly indicates otherwise.

## **9. NON-RECOURSE.**

Notwithstanding anything to the contrary contained in this Declaration of Trust or in the By-Laws and Rules and Regulations hereto, any recourse against the Declarant and its successors and assigns or the Initial Board shall be strictly limited to the Declarant's interest and that of its successors and assigns in the Subject Property, and in no event shall any of the Declarant's or its successors and assigns members, partners (or their constituent partners) or any director, officer, employee or shareholder of any of the foregoing be liable. Further, in no event shall any other damages of any kind, including, without limitation, consequential, indirect or punitive damages be sought.

EXECUTED as an instrument under seal at Somerville, Middlesex County, Massachusetts this \_\_\_\_\_ day of \_\_\_\_\_, 200 .

Signed and sealed in the presence of

DERBY LOFTS LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Alex M. Steinbergh, Manager Derby Lofts  
LLC and not individually

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. \_\_\_\_\_, 200

Then personally appeared the above-named Alex M. Steinbergh, Manager of Derby Lofts LLC and acknowledged the foregoing instrument to be the free act and deed of said Derby Lofts LLC and the free act and deed of said Derby Lofts LLC, before me,

\_\_\_\_\_  
Notary Public:

My Commission Expires:

## **EXHIBIT A**

Incorporated into and made a part of the Declaration of Trust of DERBY LOFTS CONDOMINIUM TRUST (the "Declaration of Trust"). Capitalized terms used herein and not otherwise defined shall have the same meaning ascribed to such terms in the Master Deed or in the Declaration of Trust.

### **BY-LAWS DERBY LOFTS CONDOMINIUM TRUST**

The provisions of this Exhibit A to DERBY LOFTS CONDOMINIUM TRUST shall constitute the By-Laws of DERBY LOFTS CONDOMINIUM TRUST, the organization of Unit Owners established by said Trust.

#### **1. Powers and Duties of the Trustees.**

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

- (a) Operation, care, upkeep and maintenance of the common areas and facilities.
- (b) Determination of the Common Expenses, R-Common Expenses and C-Common Expenses (as defined herein) required for the affairs of the Condominium, including, but not limited to the operation and maintenance of the common areas and facilities.
- (c) Collection of the Common Expenses, R-Common Expenses, C-Common Expenses and Move-In and Move-Out Fees from the Unit owners.
- (d) Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the common areas and facilities.
- (e) Subject to the provisions of Section 7 of these By-Laws, adoption, amendment, and administration (including waiver) of Rules and Regulations covering the details of the operation and use of the common areas and facilities.
- (f) Opening of bank accounts on behalf of the Condominium, and, subject to the provisions hereof, designating the signatories required therefor.
- (g) Leasing, managing and otherwise dealing with such facilities as may be provided for in the Master Deed as being common areas and facilities.

- (h) Owning, conveying, and encumbering, and otherwise dealing with Units conveyed to the Trust or purchased by it as a result of enforcement of the lien for Common Expenses, R-Common Expenses, C-Common Expenses, Move-In and Move-Out Fees, or otherwise.
- (i) Obtaining of insurance for the Condominium, including the Units, pursuant to the provisions hereof.
- (j) Making of repairs, additions and improvements to, or alterations or restoration of, the Condominium, in accordance with the other provisions of this Trust.
- (k) Subject to the provisions of Subsection (b) of Section 29 of these By-Laws, purchasing a Unit.
- (l) Purchasing of Units at foreclosure, judicial sales or other sales.
- (m) Organizing and maintaining corporations, trusts, or other entities to act as nominee of the Condominium in acquiring title to Units on behalf of all Unit Owners under the provisions hereof.
- (n) Borrowing money for any proper Condominium purpose, and granting to the lender a security interest and pledge of the Trust's receivables, including but not limited to amounts receivable in the future for Common Expenses, R-Common Expenses, C-Common Expenses and special assessments of any description.
- (o) Conducting litigation as to any course of action involving the common areas and facilities or arising out of the enforcement of the By-Laws, Rules and Regulations, and Master Deed, and this Trust. Notwithstanding any provision of the Master Deed, or the Declaration of Trust, or of these By-Laws or the Rules and Regulations to the contrary, neither the Trustees acting in their capacity as such Trustees or acting as representatives of the Unit Owners, nor any class of Unit Owners shall bring any litigation whatsoever unless a copy of the proposed complaint in such litigation has been delivered to all of the Unit Owners, and not less than eighty (80%) percent of all Unit Owners consent in writing to the bringing of such litigation within sixty (60) days after a copy of such complaint has been delivered to the Unit Owners and specifying as a part of the written consent a specific monetary limitation to be paid as legal fees and costs and expenses to be incurred in connection therewith, which amount shall be separately assessed as a special assessment effective forthwith at the time of said affirmative consent. Notwithstanding any provisions of the Master Deed, or of the Declaration of Trust of the Trust (including but not limited to the provisions of Section 7 of the Declaration of Trust), or these By-Laws or the Rules and Regulations, the provisions of this Paragraph (o) of this Section 1 shall not be amended except by vote of at least eighty (80%) per cent of Unit Owners. The provisions of this paragraph (o) shall not apply to litigation by the Trust against Unit Owners with respect to the recovery of overdue Common Expenses, R-Common Expenses, C-Common Expenses or Special Assessments, or to foreclose the lien provided by Section 6 of the Act, or to enforce any of the provisions of the Master Deed, or the Declaration of Trust of the Trust, or these By-Laws or Rules and Regulations thereto, or the Unit deed, against Unit Owners.

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

(q) Enforcing obligations of the Unit Owners, allocating income and expenses, and to do anything and everything else necessary and proper for the sound management of the Condominium.

## **2. Common Expenses and Profits, R-Common Expenses, C-Common Expenses, Move-In Move-Out Fees**

### Common Expenses

(a) Each Unit Owner shall be liable for common expenses ("Common Expenses") and shall be entitled to common profits of the Condominium in the same proportion as his beneficial interest in this Trust bears to the aggregate beneficial interest of all the other Unit Owners. The Trustees may at any time or times distribute common profits among the Unit Owners in such proportions. The Trustees shall at all times establish and maintain an adequate reserve fund for the periodic maintenance, repairs and replacement of improvements to the common areas and facilities and those limited common areas which the Trust may be obligated to maintain, and such reserve fund shall be funded by regular monthly assessments from regular assessments for Common Expenses, and such fund shall not be deemed to be common profits available for distribution. It is expected that initial Unit conveyances, completion of Units, and initial occupancy of Units will not take place simultaneously. Notwithstanding anything to the contrary in these By-Laws or in the Master Deed, the Initial Board may promulgate a budget or budgets under the provisions of this Section for the initial months of operation of the Condominium pursuant to which assessments will be minimal and reflective of the circumstance that during such period, few Units may be occupied and the cost of services will be correspondingly low.

(b) In addition to the foregoing, (and not in substitution thereof) to ensure that this Trust will have the funds to meet unforeseen expenditures or to purchase any additional equipment or services, there shall be a working capital fund at least equal to two (2) months' estimated Common Expenses for each Unit. Any amounts paid into this fund shall not be considered as advance payments of regular assessments. Each Unit's share of the working capital fund shall be collected at the time the sale of the Unit is closed or at the time control of this Trust is transferred to the Trustees elected by Unit Owners other than the Declarant, as set forth in Section 3 of this Trust, whichever occurs earlier. The Declarant may reimburse itself for these payments from the funds collected at closing when the unsold Units are sold. When control of this Trust is transferred as set forth above, the working capital fund shall be transferred to this Trust for deposit to a segregated fund. During the term of the Initial Board (or while a majority of the Trustees are the Declarant, or nominees or designees of the Declarant) the working capital fund which is the subject of this Subsection shall not be used to defray the expenses, reserve contributions, or construction costs which are the responsibility of the Declarant in its role as developer of the Condominium or to make up budget deficits.



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

(d) At least thirty (30) days prior to the commencement of each fiscal year of this Trust, the Trustees shall estimate the Common Expenses expected to be incurred during such fiscal year, together with reasonable provision for contingencies and reserves, and for the reserve funds mentioned in Subsection (c) of this Section 2, and after taking into account any undistributed common profits from prior years, shall determine the assessment for Common Expenses to be made for such fiscal year. The Trustees shall promptly furnish copies of each budget on which such assessment is based to all Unit Owners, and, if requested, to their Mortgagees. The Trustees shall promptly render statements to the Unit Owners for the respective shares of such assessment, and each Unit Owner thereafter shall pay one-twelfth of his share of the estimated Common Expenses monthly in advance on the first day of each month. In the event that the Trustees fail or neglect to promulgate such budget, then the budget for the immediately preceding year shall be deemed to be in effect until the Trustees promulgate a current budget. The Trustees shall not be obligated to render monthly statements. In the event that at any time and from time to time the Trustees shall determine during any fiscal year that the assessment so made is less than the Common Expenses actually incurred, or to be incurred, including but not limited to provisions for proper reserve funds, the Trustees shall make a supplemental assessment or assessments and render statements therefor in the manner aforesaid, and such statements shall be payable and take effect as set forth in such statements. The Trustees may in their discretion provide for payments of such supplemental assessment statements in monthly or other installments. The Trustees shall have the authority and the duty to levy and enforce the collection of general and special assessments for Common Expenses. As set forth in the Master Deed, all structural portions of the Buildings and all roofs shall be deemed to be a portion of the General Common Elements and not a portion of the R-Common Elements or the C-Common Elements, and all maintenance, repair and replacement of the General Common Elements shall be funded by Common Expenses and/or reserves.

#### R-Common Expenses.

(e) As set forth in Section (c) of the Master Deed, there are four (4) Commercial Units and fifty-four (54) Residential Units. As set forth in Section (n) of the Master Deed, the Commercial Units may be subdivided into additional Commercial Units from time to time. Because the Commercial Units are located on the first floor of the Building, and because the Commercial Units are expected to be devoted to retail, office and other commercial uses, the Residential Units will have different expense requirements than the Commercial Units (and the Commercial Units subdivided therefrom, if any). In order to provide for these different expense requirements, the Trustees shall be entitled to levy assessments as set forth in this subsection (e)

and subsections (f), (g) and (h) in addition to the Common Expenses and special assessments set forth in subsections (a), (b), (c) and (d) of this Section 2 and not in substitution therefor, against the owners of Residential Units based upon the differing expense requirements referred to above. The Trustees shall annually promulgate a budget (the "R-Budget") as set forth in subsection (h) which shall consist of all items, if any, in the good faith judgment of the Trustees properly attributable solely to the Residential Units and the R-Common Elements (as defined in the Master Deed) or which serve only the Residential Units. The Trustees shall assess, against the Residential Units and the owners thereof a charge, called the R-Common Expenses, which shall be assessed as set forth herein. The judgment of the Trustees as to whether a particular item or amount is properly allocated to the R-Budget or to the C-Budget (as defined in subsection (i) hereof) shall be conclusive if made in good faith. Each Owner of a Residential Unit shall be liable for R-Common Expenses and shall be entitled to common profits of the Condominium attributable solely to the Residential Units ("R-Common Profits") in the same proportion as his beneficial interest in this Trust bears to the aggregate beneficial interest of all other owners of Residential Units as set forth in the Master Deed. The Trustees may at any time or times distribute R-Common Profits among the Owners of Residential Units in such proportions. The Trustees shall at all times establish and maintain an adequate reserve fund for the periodic maintenance, repairs and replacement of the R-Common Elements, and such reserve fund shall be funded by regular monthly assessments from regular assessments for R-Common Expenses, and such fund shall not be deemed to be R-Common Profits available for distribution.

(f) In addition to the foregoing, (and not in substitution thereof) to ensure that this Trust will have the funds to meet unforeseen expenditures or to purchase or lease any additional equipment or services, there shall be a working capital fund (the "R-Working Capital Fund") at least equal to two (2) months' estimated R-Common Expenses for each Residential Unit. Any amounts paid into the R-Working Capital Fund shall not be considered as advance payments of regular assessments. Each Residential Unit's share of the R-Working Capital Fund shall be collected at the time the sale of the Unit is closed or at the time control of this Trust is transferred to the Trustees elected by Unit Owners other than the Declarant, as set forth in Section 3 of this Trust, whichever occurs earlier. The Declarant may reimburse itself for these payments from the funds collected at closing when the unsold Residential Units are sold. When control of this Trust is transferred as set forth above, the R-Working Capital Fund shall be transferred to this Trust for deposit to a segregated fund. During the term of the Initial Board (or while a majority of the Trustees are the Declarant, or nominees or designees of the Declarant) the R-Working Capital Fund which is the subject of this Subsection shall not be used to defray the expenses, reserve contributions, or construction costs which are the responsibility of the Declarant in its role as developer of the Condominium or to make up budget deficits.

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

(h) At least thirty (30) days prior to the commencement of each fiscal year of this Trust, the Trustees shall estimate the R-Common Expenses expected to be incurred during such fiscal year, together with reasonable provision for contingencies and reserves, and for the reserve funds mentioned in Subsections (f) and (g) of this Section 2, and after taking into account any undistributed R-Common Profits from prior years, shall determine the assessment for R-Common Expenses to be made for such fiscal year. The Trustees shall promptly furnish copies of each budget on which such assessment is based to all Residential Unit Owners, and, if requested, to their Mortgagees. The Trustees shall promptly render statements to the Residential Unit Owners for the respective shares of such assessment, and each Residential Unit Owner thereafter shall pay one-twelfth of his share of the estimated R-Common Expenses monthly in advance on the first day of each month. In the event that the Trustees fail or neglect to promulgate such budget, then the budget for the immediately preceding year shall be deemed to be in effect until the Trustees promulgate a current budget. The Trustees shall not be obligated to render monthly statements. In the event that at any time and from time to time the Trustees shall determine during any fiscal year that the assessment so made is less than the R-Common Expenses actually incurred, or to be incurred, including but not limited to provisions for proper reserve funds, the Trustees shall make a supplemental assessment or assessments and render statements therefor in the manner aforesaid, and such statements shall be payable and take effect as set forth in such statements. The Trustees may in their discretion provide for payments of such supplemental assessment statements in monthly or other installments. The Trustees shall have the authority and the duty to levy and enforce the collection of general and special assessments for R-Common Expenses.

#### C-Common Expenses.

(i) As set forth in Section (c) of the Master Deed, there are four (4) Commercial Units. Under the provisions of Section (n) of the Master Deed, the owners for the time being of the Commercial Units have the easement and right to subdivide the Commercial Units from time to time to create additional Commercial Units. Because the Commercial Units are located on the first floor of the building, and because the Commercial Units are expected to be devoted to retail, office and other commercial uses, the Commercial Units (and the Commercial Units subdivided therefrom, if any) will have different expense requirements than the Residential Units. In order to provide for these different expense requirements, the Trustees shall be entitled to levy assessments as set forth in this subsection (i) and subsections (j), (k) and (l), in addition to the Common Expenses set forth in subsections (a), (b), (c) and (d) of this Section 2 and not in substitution therefor, against the owners of all Commercial Units based upon the different expense requirements referred to above. The Trustees shall annually promulgate a budget (the "C-Budget") which shall consist of all items, if any, in the good faith judgment of the Trustees properly attributable solely to the Commercial Units or which serve only the Commercial Units or the C-Common Elements (as defined in the Master Deed). The C-Budget shall not include any expenses related to the elevators or the concierge. The Trustees shall assess, against the Commercial Units and the owners thereof, a charge, called the C-Common Expenses, which shall be assessed as set forth herein. The judgment of the Trustees as to whether a particular item or amount is properly allocated to the C-Budget or to the R-Budget (as defined in

subsection (e) hereof) shall be conclusive if made in good faith. Each Owner of a Commercial Unit shall be liable for C-Common Expenses and shall be entitled to common profits of the Condominium attributable solely to the Commercial Units ("C-Common Profits") in the same proportion as his beneficial interest in this Trust bears to the aggregate beneficial interest of all other owners of Commercial Units as set forth in the Master Deed. The Trustees may at any time or times distribute C-Common Profits among the Owners of Commercial Units in such proportions. The Trustees shall at all times establish and maintain an adequate reserve fund for the periodic maintenance, repairs and replacement of the C-Common Elements, and such reserve fund shall be funded by regular monthly assessments from regular assessments for C-Common Expenses, and such fund shall not be deemed to be C-Common Profits available for distribution.

(j) In addition to the foregoing, (and not in substitution thereof) to ensure that this Trust will have the funds to meet unforeseen expenditures or to purchase any additional equipment or services, there shall be a working capital fund (the "C-Working Capital Fund") at least equal to two (2) months' estimated C- Common Charges for each Commercial Unit. Any amounts paid into this fund shall not be considered as advance payments of regular assessments. Each Commercial Unit's share of the C-Working Capital Fund shall be collected at the time the sale of the Unit is closed or at the time control of this Trust is transferred to the Trustees elected by Unit Owners other than the Declarant, as set forth in Section 3 of this Trust, whichever occurs earlier. The Declarant may reimburse itself for these payments from the funds collected at closing when the unsold Commercial Units are sold. When control of this Trust is transferred as set forth in the immediately preceding sentence, the C-Working Capital Fund shall be transferred to this Trust for deposit to a segregated fund. During the term of the Initial Board (or while a majority of the Trustees are the Declarant, or nominees or designees of the Declarant) the C-Working Capital Fund which is the subject of this Subsection shall not be used to defray the expenses, reserve contributions, or construction costs which are the responsibility of the Declarant in its role as developer of the Condominium or to make up budget deficits.

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

(l) At least thirty (30) days prior to the commencement of each fiscal year of this Trust, the Trustees shall estimate the C-Common Expenses expected to be incurred during such fiscal year, together with reasonable provision for contingencies and reserves, and for the reserve funds mentioned in Subsections (j) and (k) of this Section 2, and after taking into account any undistributed C-Common Profits from prior years, shall determine the assessment for C-Common Expenses to be made for such fiscal year. The Trustees shall promptly furnish copies of each budget on which such assessment is based to all Commercial Unit Owners, and, if requested, to their Mortgagees. The Trustees shall promptly render statements to the Commercial Unit Owners for the respective shares of such assessment, and each Commercial Unit Owner thereafter shall pay one-twelfth of his share of the estimated C-Common Expenses

monthly in advance on the first day of each month. In the event that the Trustees fail or neglect to promulgate such budget, then the budget for the immediately preceding year shall be deemed to be in effect until the Trustees promulgate a current budget. The Trustees shall not be obligated to render monthly statements. In the event that at any time and from time to time the Trustees shall determine during any fiscal year that the assessment so made is less than the C-Common Expenses actually incurred, or to be incurred, including but not limited to provisions for proper reserve funds, the Trustees shall make a supplemental assessment or assessments and render statements therefor in the manner aforesaid, and such statements shall be payable and take effect as set forth in such statements. The Trustees may in their discretion provide for payments of such supplemental assessment statements in monthly or other installments. The Trustees shall have the authority and the duty to levy and enforce the collection of general and special assessments for C-Common Expenses.

(m) Except as otherwise set forth in the Master Deed or this Trust or these By-Laws, the responsibility to operate, maintain, repair and replace all portions of the heating, ventilating and cooling system serving the common areas and facilities shall be the responsibility of the Trustees.

(n) The amount of each statement, for regular or supplemental Common Expenses, R-Common Expenses, C-Common expenses, and Move-In and Move-Out Fees (as defined in Section 35 of these By-Laws) if not paid when due shall be deemed Delinquent Charges. To the extent permitted by law, the liability for Delinquent Charges, plus late fees as set forth in Section S hereof, together with all expenses, including but not limited to reasonable attorneys' fees, incurred by the Trustees in connection with the collection of Delinquent Charges, shall constitute a lien on the Unit of the person who owes the Delinquent Charges (the "Delinquent Unit Owner") pursuant to the provisions of Section 6 of the Act, and may be collected by the Trustees pursuant to said statute. The Trustees shall have the right and obligation to bring an action at law against the Unit Owner personally obligated to pay a Delinquent Charge and to foreclose the lien against the Unit of the Delinquent Unit Owner under the provisions of Section 6 of the Act, or under the provisions hereof, or both remedies, and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, conducting litigation in connection therewith, including but not limited to appeals, together with costs, disbursements and legal fees. The lien of the assessments provided for in this Section 2 shall have the same priority as set forth in Section 6 of the Act. No sale or transfer of a Unit shall relieve the owner thereof from liability for any assessments nor from the lien of any such assessments, nor shall a sale or transfer relieve the owner from personal liability for payment of any assessments which became due or payable while such owner owned such Unit. The Trustees shall take prompt action to collect any Delinquent Charges which remain unpaid for more than thirty (30) days from the due date thereof including but not limited to action under the provisions of the Act as the same may be amended. In the event that the Trustees bring an action to foreclose a lien on any Unit pursuant to the Act, the Unit Owner shall pay a reasonable sum for use and occupancy of his Unit, as the case may be, from the date of foreclosure until the Unit Owner vacates the Unit, as the case may be, (the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same) but nothing in this sentence shall be deemed to grant any Unit Owner the right to remain in possession of his Unit, after such foreclosure. The Trustees, acting on behalf of all Unit Owners, shall have power to purchase such Unit at the foreclosure sale and to acquire, hold, mortgage (but not vote the vote appurtenant to), convey or

otherwise deal with the same. A suit to recover a money judgment for unpaid Delinquent Charges shall be maintainable without foreclosing or waiving the lien securing the same. In the event of any suit or foreclosure by the Trustees, the Trustees shall be entitled to late charges as set forth in subsection S of this Section 2, and all costs of collection, suit and foreclosure, including attorney's fees whether or not a suit or foreclosure was commenced. In addition to the lien in favor of the Trustees for assessments for Delinquent Charges, such assessments shall also be the personal obligation of the owner of the Unit at the time the assessment fell due.

(o) Common Expenses and special assessments, R-Common Expenses and special assessments, C-Common Expenses and special assessments, and Move-In and Move-Out Fees not actually received by the Trustees within fifteen (15) days next after the due date thereof shall be subject to a late charge of twenty-five (\$25.00) dollars.

(p) The Trustees shall promptly provide any Unit Owner, or any Unit buyer who has a duly executed purchase and sale agreement for the acquisition of a Unit, or any Mortgagee, or the attorney of any such party, with a written statement of all unpaid Common Expenses, R-Common Expenses, C-Common Expenses, and Move-In and Move-Out Fees due with respect to such Unit, signed and acknowledged in proper form for recording, upon the written request of such Unit Owner or buyer, Mortgagees or attorneys. Notwithstanding anything to the contrary in the Declaration of Trust, or these By-Laws, such statements may be executed by one (1) Trustee during the term of the Initial Board, and thereafter by any two (2) Trustees. Recording of such statement in the Essex ~~South~~ District Registry of Deeds shall operate to discharge the Unit from any lien for any other sums then unpaid not enumerated as of the date of such statement to the extent provided by the Act.

(q) The Trustees shall expend funds derived from Common Expenses, R-Common Expenses, C-Common Expenses, Move-In and Move-Out Fees, and special assessments only for lawful purposes permitted hereby and by the provisions of the Master Deed, and by the provisions of the Act.

(r) Notwithstanding anything to the contrary herein, any first Mortgagee who obtains title to a Condominium Unit, pursuant to the remedies provided in its mortgage, or foreclosure of its mortgage, will not be liable for such Unit's unpaid Common Expenses, R-Common Expenses, C-Common Expenses, Move-In and Move-Out Fees, or assessments (including interest and costs of collection and legal fees relating to the collection thereof) which accrue prior to the acquisition of title to such Unit by the Mortgagee except as otherwise set forth in Section 6 of the Act. The lien for Common Expense assessments shall not be affected by any sale or transfer of a Unit, except that a sale or transfer pursuant to a foreclosure of a first Mortgagee shall extinguish a subordinate lien for assessments which became payable prior to such sale or transfer, except as otherwise set forth in Section 6 of the Act.

(s) All owners of Condominium Units, i.e., both the owners of Commercial Units and the owners of Residential Units shall be obligated to pay Common Expenses as set forth in subsections (a) through (d) hereof. In addition to Common Expenses and not in substitution therefor, the owners of Residential Units shall also be obligated to pay R-Common Expenses as set forth in subsections (e) through (h) hereof; and the owners of Commercial Units shall be

obligated to pay C-Common Expenses as set forth in subsections (i) through (l) hereof. Therefore, each owner of Condominium Unit, whether a Commercial Unit or a Residential Unit, shall be obligated to pay Common Expenses and in addition thereto, either C-Common Expenses or R-Common Expenses, depending upon whether his Condominium Unit is a Commercial Unit or a Residential Unit. The Trustees shall have all of the rights and remedies (specifically including but not limited to the so-called "superlien") to collect Common Expenses, C-Common Expenses, R-Common Expenses, and Move-In and Move-Out Fees, as set forth in Section 6 of the Act, to the same extent and with the same remedies set forth in Section 6 of the Act as if R-Common Expenses, C-Common Expenses, and Move-In and Move-Out Fees, were denominated merely as Common Expenses. To the extent necessary for the collection thereof under the provisions of the Section 6 of the Act, the Trustees shall have the right to treat R-Common Expenses, C-Common Expenses, and Move-In and Move-Out Fees in the same manner as Common Expenses as set forth in said Section 6 of the Act.

### **3. Insurance.**

- (a) The Trustees shall be required to obtain and maintain, to the extent obtainable, the following insurance:
  - (1) fire with extended coverage covering other perils normally covered by the "special cause of loss form" on an "all-in" basis (the "Property Insurance"). The Property Insurance shall cover (i) the Building and all other insurable improvements forming part of the common areas and facilities and including the heating equipment and other service machinery, apparatus, equipment and installations in the common areas and facilities, and (ii) including the Units, but not including, with respect to Units (x) any carpeting, wall covering other than paint, drapes and other window treatments, furniture, furnishings, or other personal property (not constituting fixtures) owned by Unit Owners, (y) improvements within a Unit made subsequent to the Original Construction (as hereinafter defined). The term "Original Construction" as used herein shall mean the construction performed by the Declarant of the Master Deed and its contractors, and as to Units, construction performed by the Unit Owner or his predecessor-in-title, prior to the occupancy of the Unit by its first occupant. Each Unit Owner shall inform the Trustees in writing, not later than the date of occupancy of his Unit by its first occupant, of any construction performed in the Unit by him or on his behalf. The Trustees shall maintain records of the Original Construction. The Property Insurance shall cover the interest of the Condominium, the Trustees and all Unit Owners and their Mortgagees, as their interests may appear, in an amount equal to one hundred (100%) percent of current replacement cost of the Buildings, common areas and facilities, and Units, without deduction for depreciation, with loss payable to the Trustees, as Insurance Trustees for each Unit Owner and the holder of each Unit's mortgage. The named insured shall be "the Trustees of The Derby Lofts Condominium Trust, for the use and benefit of the individual Unit Owners and Unit Mortgagees". The Property Insurance shall also cover all other perils which are customarily covered with

respect to projects similar in construction, location and use, including all perils normally covered by the standard "special cause of loss form" endorsement. The Trustees shall periodically obtain an independent appraisal of the full replacement value of all portions of the Buildings, including all of the Units (but not including the items referred to in clauses (x) and (y) and of this paragraph), and all of the common areas and facilities, without deduction for depreciation, for the purposes of determining the amount of fire and extended coverage insurance to be effected pursuant to this Section, and the amount of such insurance shall in no event be less than the full replacement value so as determined. The Property Insurance shall provide that adjustment of loss shall be made by the Trustees and that the net proceeds thereof shall be payable to the Trustees as Trustees for each Unit Owner and the holder of each Unit's mortgage. Each Unit Owner, by accepting delivery of his Unit deed, appoints the Trustees as Insurance Trustees (or any Insurance Trustees or Substitute Insurance Trustees designated by the Trustees) as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Property Insurance shall, insofar as practicable, contain waivers of subrogation as to any claim against the Trustees, their agents and employees, Unit Owners, their respective employees, agents and guests, and of any defense based on invalidity arising from the acts of the insured and shall provide that the insurance will not be prejudiced by any acts or omissions of individual Unit Owners that are not under the control of the owner's association, and shall provide that such policies may not be canceled or substantially modified without at least ten (10) days' prior written notice to all of the insured, including all Unit Owners and Mortgagees of Units, and recovery thereunder shall not be affected on account of the availability of proceeds under any policies obtained by individual Unit Owners covering their own Units and shall include a Special Condominium Endorsement (so called) or its equivalent. Agreed Amount, Inflation Guard and Construction Code endorsements shall be required. A steam boiler and machinery coverage endorsement shall also be required, which provides that the insurers minimum liability per accident at least equals the lesser of two million (\$2,000,000.00) dollars or the insurance value of the Buildings housing the boiler or machinery. A certificate of insurance, showing the amount of insurance, shall be issued to the owners of each Unit and the original or a certificate thereof shall, upon request, be delivered to the Mortgagee of each Unit. Any such insurance obtained and maintained by the Trustees pursuant to the provisions of this Section may have a deductible amount to be determined from time to time by the Trustees, (but in no event shall such deductible amount be greater than the lesser of ten thousand (\$10,000.00) Dollars or one (1%) percent of the policy face amount), who shall simultaneously specify, in writing with notice to all Unit Owners, how and by whom the amount of the deductible shall be paid in the event of a loss.

- (2) worker's compensation insurance if the Trustees shall have an employee or employees.



- (3) comprehensive general liability insurance covering all common areas and facilities, and any other areas under the supervision of the Trustees in such amounts and with such coverage as the Trustees shall from time to time determine, with an each occurrence limit of not less than one million (\$1,000,000.00) dollars and a general aggregate limit of not less than two million (\$2,000,000.00) dollars, but at least covering each member of the Trustees, the managing agent or the manager, if any, and each Unit Owner and with cross liability endorsement to cover liabilities of the Condominium to a Unit Owner, and a severability of interest provision precluding the insurer's denial of a Unit Owner's claim because of negligent acts by this Trust or other Unit Owners. The Trustees shall periodically reevaluate the amount of public liability insurance to be carried by them as set forth in this paragraph to the end that the limits of such insurance shall be the greater of (x) the amounts specified in this paragraph or (y) the limits of such liability insurance as are carried by other condominium unit owners' associations in comparable condominiums in Salem, Massachusetts.
- (4) Fidelity bonds (the "Fidelity Bonds") in blanket form for all officers, directors, Trustees and employees of the Trust and all other persons handling or responsible for funds administered by the Trust whether or not they receive compensation for their services. The total amount of fidelity bond coverage shall not be less than the estimated maximum funds, including reserve funds, in the custody of the Trust or the management agent, as the case may be, at any given time during the term of such bond, and, in any event, the aggregate amount shall not be less than a sum equal to three (3) months' aggregate assessments on all Units plus reserve funds, or one and one-half times the insured's estimated annual operating expenses and reserves, whichever is greater. The Fidelity Bonds shall name the Trust as an obligee and shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expression. The Fidelity Bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Trust and to the Mortgagees which are listed as scheduled holders of first mortgages in the insurance policy.

- (5) such other insurance as the Trustees may determine.

(b) Subject to the provisions of Section 4 of these By-Laws, insurance proceeds received by the Trustees shall be held in trust in an identified and segregated fund for the benefit of the Unit Owners and all Mortgagees of all Units. If the cost of restoring the common areas and facilities, or any Unit, is estimated by the Trustees to exceed the sum of one thousand (\$1,000.00) dollars, then the Trustees shall give written notice of such loss to all Eligible Mortgage Holders and all Eligible Insurers and Guarantors, as defined in Section 32.

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

(d) All insurance obtained and maintained by the Trustees shall conform to applicable requirements of the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal National Mortgage Association ("FNMA") so long as FHLMC or FNMA hold one or more mortgages on Units in the Condominium or any interest therein.

(e) Each Unit Owner shall carry insurance at his own expense for his own benefit insuring, inter alia, his carpeting, wall coverings other than paint, drapes and other window treatments, furniture, furnishings and other personal property owned by the Unit Owner, and personal liability, and loss assessment coverage, provided that all such policies shall contain waivers of subrogation, and further provided, that the liability of the carriers issuing insurance obtained by the Trustees shall not be affected or diminished by reason of any such additional insurance carried by a Unit Owner.

(f) Owners of Commercial Units shall carry comprehensive general liability insurance with an each occurrence limit of not less than one million (\$1,000,000.00) dollars and a general aggregate limit of not less than two million (\$2,000,000.00) dollars naming the Trust, the Trustees, and any managing agent or manager, if any, as additional insured, and shall deliver copies of all such policies, or certificates thereof, and proof of payment of premiums to the Trustees and to such managing agent or manager.

(g) Nothing shall be done or kept in any Unit or in the common areas and facilities which will increase the rate of insurance on the Buildings or the contents thereof without the prior written consent of the Trustees. If the Trustees grant such consent, they may condition such consent upon the agreement of the Unit Owner responsible for such increase to pay the amount of such increase.

#### **4. Rebuilding and Restoration.**

(a) In the event of damage to or destruction of the common areas and facilities as a result of fire or other casualty (unless Subsection (f) of this Section is applicable), or, in the event of damage to or destruction of any Unit as a result of fire or other casualty, whether or not the common areas and facilities have been damaged or destroyed (unless Subsection (f) of this Section is applicable), the Trustees shall promptly adjust the loss, arrange for the prompt repair or restoration of the same, and disburse the proceeds of all insurance policies in payment of all costs and 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 as insurance trustees, on account of any casualty shall be dedicated first to the repair or restoration of the loss, and any application of said proceeds by the Trustees on account thereof shall be prior to the application of such proceeds for any other purposes.

(b) In the event the insurance proceeds are not sufficient to cover the cost of repairs to the common areas and facilities and the Units, the proceeds will be first allocated to the cost of repairs to the common areas and facilities and the balance, if any, to the cost of repairs to the Units in proportion to the cost of all repairs to the respective Units as determined by the insurer or by independent appraisal. To the extent the proceeds allocated as aforesaid are insufficient to

cover the cost of repairs to the common areas and facilities, the balance of the cost of such repairs will be assessed against all Unit Owners as a Common Expense. To the extent the proceeds allocated as aforesaid are insufficient to cover the cost of repairs to the Units, the balance of the cost of such repairs to each Unit will be assessed against all Unit Owners as a Common Expense.

(c) Whenever the estimated cost of repair or restoration exceeds, as to any one casualty or occurrence, on the basis of an independent appraisal, the sum of twenty-five thousand (\$25,000.00) dollars, then the Trustees shall retain a registered architect or registered engineer, who shall not be directly or indirectly a Unit Owner or an employee or agent of any Unit Owner, or a Trustees or an employee or agent of any of the Trustees, or the manager, if any, or any employee or agent of such manager, to supervise the work of repair or restoration and no sums shall be paid by the Trustees on account of such repair or restoration except upon certification to them by such architect or engineer that the work for which payment is being made has been completed in a good and workmanlike manner in accordance with approved plans and specifications and that the estimated total cost of completion of said repair or restoration, less amounts theretofore advanced, does not exceed the un-disbursed proceeds of insurance as augmented by funds obtained by any assessment or assessments levied or chargeable to the Unit Owners as a Common Expense.

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

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

(f) Notwithstanding the foregoing, if, as a result of fire or other casualty, the loss exceeds ten (10%) percent of the value of the Condominium, including all parts of the Buildings and the common areas and facilities and the Units prior to the casualty, and: (1) if seventy-five (75%) percent of the Unit Owners do not agree within one hundred twenty (120) days after the date of the casualty to proceed with repair or restoration, the Condominium, including all Units, shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. Subject always to the prior rights of the Unit Mortgagees, the net proceeds of the partition sale together with any common funds shall be divided in proportion to the Unit Owners' respective undivided ownership in the common areas and facilities. Upon such sale, the Condominium shall be deemed removed from the provisions of the Act; (2) if seventy-five (75%) percent of the Unit Owners agree to proceed with the necessary repair or restoration, the cost of the rebuilding of the

Condominium, in excess of any available common funds including the proceeds of any insurance, shall be a common expense, provided, however, that if such excess cost exceeds ten (10%) percent of the value of the Condominium including all parts of the Buildings and the common areas and facilities and the Units, prior to the casualty, any Unit Owner who did not so agree may apply to the Superior Court of Essex County on such notice to the Trustees and Unit Owners as the Court shall direct, for an order directing the purchase of his Unit by the Trustees at the fair market value thereof as approved by the Court. The cost of any such purchase shall be a Common Expense.

## **5. Condemnation.**

If more than ten (10%) percent in value of the Condominium is taken under the power of eminent domain, then the taking shall be treated as a casualty loss and the provisions of Section 4 of these By-Laws and the provisions of Section 17 of the Act shall apply. Where one or more Units have been substantially altered or rendered uninhabitable as a result of a partial taking, and the Unit Owners vote to restore and continue the Condominium pursuant to Section 17 of the Act, 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 Owners of such remaining portion who does not agree with such determination may apply to the Superior Court of Essex County on such notice to the Trustees and the other Unit Owners as the Court shall direct, for an order directing the purchase of such remaining portion at the fair market value thereof as 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 interest in the common areas and facilities as shall be just and equitable.

In the event of a total or partial taking under the powers of eminent domain, the Unit Owners shall be represented by the Trustees in any related proceedings, negotiations, settlements or agreements, and each Unit Owner shall be deemed to have appointed the Trustees as attorney-in-fact for such purpose. In the event of a partial taking, the award shall be allocated to the respective Unit Owners according to their undivided interest in the common areas and facilities, except as to such portion or portions of the award which are attributable to direct or consequential damages suffered by particular Units as determined by the Court, which shall be payable to the Owners of such Units or their Mortgagees, as their interests may appear. Subject always to the prior rights of the Unit Mortgagees, in the case of a total taking of all Units and the common areas and facilities, the entire award shall be payable to the Trustees to be distributed to the Unit Owners and their Mortgagees in accordance with their respective percentage interests in the common areas and facilities.

## **6. Improvements.**

(a) If fifty (50%) percent or more but less than seventy-five (75%) percent of the Unit Owners agree to make an improvement to the common areas and facilities, the cost of such improvement shall be borne solely by the Owners so agreeing.

(b) Seventy-five (75%) percent or more of the Unit Owners may agree to make an improvement to the common areas and facilities and assess the cost thereof to all Unit Owners as a Common Expense, but if such improvement shall cost in excess of ten (10%) percent of the then value of the Condominium, including the Buildings and the common areas and facilities and the Units, any Unit Owner not so agreeing may apply to the Superior Court of Essex County on such notice to the Trustees and Unit Owners as the Court shall direct, for an order directing the purchase of his Unit by the Trustees at fair market value thereof as approved by the Court. The cost of any such purchase shall be a Common Expense.

## **7. Rules and Regulations.**

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

(b) The Trustees shall administer such Rules and Regulations.

(c) The Trustees may at any time and from time to time, amend, rescind and waive, any or all of such Rules and Regulations.

(d) The Trustees may at any time and from time to time, adopt other Rules and Regulations governing the details of the operation and use of the common areas and facilities, and containing such restrictions on, and requirements respecting the use and maintenance of, the common areas and facilities as are consistent with the provisions of the Master Deed, and designed to prevent unreasonable interference with the use by the Unit Owners of the common areas and facilities.

(e) Notwithstanding the foregoing provisions of this Section 7:

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

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

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

- (4) No rule or regulation shall unreasonably derogate from the rights of (a) the owners of Units entitled to use balconies with respect to any proposed rule or regulation dealing with balconies, and further provided that
- (5) The provisions of Section (o) of the Master Deed shall have precedence over the provisions of this Section 7.

The term "common areas and facilities" shall include balconies but no rule or regulation shall prevent any Unit Owner who owns an easement for the exclusive use of a balcony, to use the same in accordance with, and subject to, applicable provisions of the Master Deed of the Condominium and of the Declaration of Trust of the Trust.

## **8. Meetings.**

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

There shall be an annual meeting of the Unit Owners on the first Wednesday in December in each year at 8:00 P.M. on the Condominium premises or at such other reasonable place and time (not more than twenty-one (21) days before or after said date) as may be designated by the Trustees by written notice given to the Unit Owners at least fourteen (14) days prior to the date so designated. Special meetings of the Unit Owners may be called by them upon the written request of any Unit Owner. Written notice of any such meeting designating the place, day and hour thereof shall be given by the Trustees to the Unit Owners at least fourteen (14) days prior to the date so designated. At the annual meeting of the Unit Owners, the Trustees shall submit reports of the management and finances of the Condominium. Whenever at any meeting the Trustees propose to submit to the Unit Owners any matter with respect to which approval or action by the Unit Owners is necessary or appropriate, the notice of such meeting shall state and reasonably specify such matter. A quorum of Unit Owners shall consist of a majority in interest of Unit Owners.

Any Trustee or Unit Owner may, at any time, waive notice of any meeting in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Trustee or Unit Owner without objection to lack of notice at any meeting shall constitute a waiver of notice by such Trustees or Unit Owner of notice of such meeting. If all of the Trustees are present at any meeting of the Trustees, or if all of the Unit Owners are present at any meeting of the Unit Owners, respectively, no notice shall be required and any business may be transacted at such meeting of the Trustees, or Unit Owners, respectively.

Any action taken by unanimous written consent of all of the Trustees then in office shall be fully valid as though taken at a meeting. Such writing shall be filed with the records of the Trustees.

Any action taken by unanimous written consent of all of the Unit Owners shall be fully valid as though taken at a meeting. Such writing shall be filed with the records of the Unit Owners.

Unit Owners may vote by proxy at any annual or special meeting of the Unit Owners.

**9. Notices to Unit Owners.**

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

**10. Inspection of Books; Reports to Unit Owners.**

The Trustees shall keep detailed records of the actions of the Trustees, minutes of the meetings of the Trustees, minutes of the meetings of the Unit Owners, and financial records and books of account of the Condominium, including a chronological listing of receipts and expenditures, as well as a separate account for each Unit, which among other things, shall contain the amount of each assessment of Common Expenses, as the case may be, against such Unit, the date when due, the amounts paid thereon, and the balance remaining unpaid. Copies of the Master Deed, this Trust and these By-Laws, Rules and Regulations, and floor plans of the Buildings, as the same may be amended from time to time, shall be maintained at the office of the Trustees. All of the foregoing records, accounts and documents shall be available for inspection by Unit Owners, their authorized agents, and lenders, Mortgagees, holders, insurers and guarantors of any mortgage on any Unit at all reasonable times. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances. The Trustees shall, as soon as reasonably possible, after the close of each fiscal year, or more often if convenient to them, submit to the Unit Owners a report of the operation of the Trust for such year, which shall include financial statements in such summary form and in such detail as the Trustees shall deem proper. Except in the case of fraud committed by any Trustees, any person (other than a Mortgagee or mortgage insurer or guarantor) who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees, given by registered or certified mail within a period of sixty (60) days of the date of receipt by him, shall be deemed to have assented thereto. The holder, insurer or guarantor of any first mortgage shall be entitled, upon written notice to the Trustees prior to the end of any fiscal year, to have an audited statement prepared within one hundred twenty (120) days of the end of the Trust's fiscal year.

## **11. Checks and Notes.**

Prior to the expiration of the term of the Initial Board, checks, drafts and other instruments for the payment of money drawn or endorsed in the name of the Trustees or of the Trust may be signed by the sole member of the Initial Board. Prior to the expiration of the term of the Initial Board, all vouchers for the payment of any Common Expense, R-Common Expenses and C-Common Expenses shall be approved by the sole member of the Initial Board.

Subsequent to the expiration of the term of the Initial Board, checks, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust may be signed by any two (2) Trustees, or by any person or persons (who may be one of the Trustees) to whom such power may at any time or from time to time be designated by not less than a majority of the Trustees. Subsequent to the expiration of the term of the Initial Board, all vouchers, if any, for the payment of any Common Expense, R-Common Expenses and C-Common Expenses shall be approved by not less than two (2) Trustees in each instance.

## **12. Seal.**

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

## **13. Fiscal Year.**

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

## **14. Management; Employees.**

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



themselves, or to such of the Trustees as the Trustees shall designate.

Notwithstanding anything to the contrary herein, any agreement for professional management of the Condominium shall provide that the management contract may be terminated for cause and without payment of a termination fee or penalty on ten (10) days written notice, and without cause and without payment of a termination fee or penalty on ninety (90) days' written notice, or less, and the term of any such contract shall not exceed three (3) years; except that the term of any such management contract entered into when the Declarant controls the Board of Trustees shall be cancelable by the Trust with or without cause and without penalty or termination fee at any time after control of the Board of Trustees is transferred to the Unit Owners.

During the term of the Initial Board, the Initial Board may hire and dismiss any employees of the Condominium. Subsequent to the expiration of the term of the Initial Board, the consent of not less than two (2) Trustees shall be necessary for the hiring and dismissal of any employees of the Condominium.

## **15. Use of Units.**

(a) Commercial Units may be used for any purpose now or hereafter permitted by the zoning ordinance of the City of Salem (specifically including restaurants and bars, specifically including pizza restaurants and shops serving pizza and other food items for consumption on and /or off the premises), except that no Commercial Unit may be used for (1) the sale of alcoholic beverages unless such sales are by a (w) restaurant or (x) bar ancillary to a restaurant, or (y) retail food store, or (z) a retail store selling alcoholic beverages, (2) any form of live entertainment unless such live entertainment takes place in a restaurant or a bar ancillary to a restaurant, (3) massage parlor, (4) tattoo parlor, (5) so-called adult bookstore, (6) so-called adult cinema, (7) pinball arcade, (8) pet store, (9) a discount retail store which is part of a chain of at least ten stores, (10) a so-called t-shirt shop, or (11) any other use which would detract from the first class ambiance of the Condominium. No representation is hereby made that the Commercial Units may be used for the foregoing purposes under applicable law.

(b) The Residential Units are intended only for residential purposes; provided, however, that any of the Residential Units may also be used as an office/studio, but only (x) accessory to such residential use of such Unit or accessory to the residential use of another Unit in the Condominium owned by the same Unit Owner, and (y) only if and to the extent such accessory office/studio use is permitted by applicable zoning laws and (z) no one shall be employed in such office/studio except residents of the Unit, no clients or business invitees shall be permitted to visit such office/studio, and there shall be no signs in connection with such office/studio use.

(c) No Unit shall be used or maintained in a manner inconsistent with the By-Laws of the Trust and the Rules and Regulations from time to time adopted pursuant thereto; and

(d) Notwithstanding the foregoing, until the Declarant or its successors-in-title or their nominees, have sold and conveyed all of the Units, the Declarant or its successors-in-title or their nominees, may use one or more Units for sales offices, models and other purposes, and may rent, lease or license Units.

(e) If insurance premiums for the Condominium increase as the direct result of the nature of the business being conducted in a Commercial Unit, the owner of that Unit shall pay the amount of the increase to the Trust.

**16. Use of Common Areas and Facilities.**

A Unit Owner shall not place or cause to be placed on the common areas and facilities any furniture, packages or objects of any kind. The stairways and elevators shall be used for no purpose other than for normal transit through them. No access to any portion of the roof shall be permitted except with the prior permission of the Trustees.

**17. Attorneys, Accountants, Appraisers.**

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

**18. Heat, Cooling, Electricity, Gas, Other Utilities.**

Heat, cooling, electricity and gas, if any, shall be supplied by the public utilities or other entities servicing the area in which the Condominium is located, directly to each Unit through separate meters. Each Unit Owner shall be required to pay all bills and assessments for heat, cooling, electricity, gas and other utilities (if any), consumed or used in his Unit or used by the heating, ventilating and air conditioning system and hot water heater serving his Unit.

**19. Conduct; Violations by Unit Owners.**

(a) The violation of any rule or regulation adopted by the Trustees, or the breach of any of these By-Laws, or the breach of any provisions of the Master Deed or of this Trust or for the offending Unit Owner's Unit deed, shall give the Trustees the right, in addition to any other rights set forth in these By-Laws, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity (or both) the continuance of any such breach. In addition to the foregoing, and not in substitution therefor, the Trustees shall have the power to levy fines against Unit Owners for such violations. No fine may be levied for more than twenty-five (\$25.00) dollars for any one violation but for each day a violation continues after notice it shall be considered a separate violation. Collection of fines may be enforced against the Unit Owner or

Unit Owners involved as if the fines were Common Expenses owed by the particular Unit Owner or Unit Owners. In the case of persistent violations by a Unit Owner, the Trustees shall have the power, after notice and a hearing pursuant to Section 33 hereof, to require such Unit Owners to post a bond to secure adherence to the Rules and Regulations, By-Laws, Master Deed, the Declaration of Trust, or the Unit deed.

(b) No Unit Owner shall make, permit or suffer any disturbing noises or vibrations by means of a radio, phonograph, stereo, television, piano or other musical instrument or other device or form of technology of any description, by himself, his family, guests, agents, servants, or employees, nor do, permit or suffer anything by such persons that will unreasonably interfere with the rights, comforts or conveniences of other Unit Owners or occupants. No radio, phonograph, stereo, television or other device shall incorporate outside terrace, deck or balcony speakers. For purposes of this Section, any noise or vibration from within a Unit which can be heard or ascertained within another Unit shall be deemed a disturbing noise or vibration. No Unit Owner by himself, his family, guests, agents, servants, or employees, shall make, permit or suffer any smoke, whether from a cigarette, pipe, cigar, or other source, to be transmitted from his Unit to the common areas and facilities or to another Unit.

(c) No part of the Condominium shall be used for any purposes except as permitted in accordance with the Master Deed. None of the Units shall be used for any so-called time-sharing program or purpose, including without limitation, so-called time span ownership, interval ownership, or a time-sharing license or lease program. Nothing in this paragraph shall derogate from the right of a Unit Owner to lease his Unit, subject to the provisions of Section 35 of these By-Laws.

(d) There shall be no obstruction of the common areas and facilities nor shall anything be stored in the common areas and facilities without the prior consent of the Trustees, except as expressly permitted in the Master Deed or in the Declaration of Trust of the Trust.

(e) Each Unit owner shall be obligated to maintain and keep in good order and repair his own Unit in accordance with the provisions of the Master Deed and the Declaration of Trust of the Trust.

(f) Nothing shall be done or kept in any Unit or in the common the areas and facilities that will increase the rate of the insurance of the Buildings or the contents thereof. No Unit owner shall permit anything to be done, or kept in his Unit, or in the common areas and facilities, that will result in the cancellation of the insurance on the Buildings or the contents thereof or that would be in violation of any law.

(g) No waste shall be committed in any Unit or the common areas and facilities.

(h) Except for areas, if any, designated by the Trustees, there shall be no storing or parking of baby carriages, playpens, bicycles, wagons, toys, vehicles, trailers, tools, benches, chairs or other items, in any part of the common areas and facilities. There shall be no playing, lounging, riding of bicycles, wagon or toys or roller-blading in any part of the halls, stairways or elevators.

(i) Each Unit Owner shall keep his or her Unit (and any exclusive, appurtenant common areas) in a good state of preservation and cleanliness and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors or windows thereof, any dirt or other substance. The water closets and other water apparatus shall not be used for any purpose other than that for which they were constructed, and no sweepings, rubbish, rags, paper, ashes, or other substances, including diapers, feminine hygiene products (consisting of plastic and paper, biodegradable and non-biodegradable products) and the like, shall be thrown therein. Any damage to plumbing systems of the Condominium resulting from such misuse shall be paid for by the Unit Owner who shall have caused or permitted it and the Trustees may assess such Unit Owner therefor.

(j) All radio, television, and other electrical equipment of any kind or nature installed or used in any Unit shall fully comply with all rules, regulations, requirements, or recommendations of the Fire Insurance Rating Board and the public authorities having jurisdiction, and the Unit Owner shall be liable for any damage or injury caused by any radio, television, or other electrical equipment in his or her Unit, and the Trustees may assess such Unit Owner therefor.

(k) Subject to the rights and privileges of the Declarant granted, reserved, contained, or referred to in the Master Deed or the Declaration of Trust, any maintenance, repair or replacement of common areas and facilities which is the responsibility of a Unit Owner pursuant to the Master Deed or the Declaration of Trust shall be done only by contractors or workmen approved in advance by the Trustees and no unauthorized person including a Unit Owner, shall be permitted on the roof, or in any common mechanical, utility or like rooms and areas, of the Condominium without the prior consent of the Trustees.

(l) If any key or keys (or lock combination) are entrusted by a Unit Owner or occupant or by any member of his family, or by his agent, servant, employee, licensee, lessee or visitor, to a Trustees, or an agent or employee of the Trustees, including without limitation the managing agent of the Condominium, whether for such Unit, automobile, trunk, or other item of personal property, the acceptance of the key (or combination) shall be at the sole risk of such Unit Owner or occupant, and such Trustees, agent, employee, and the Trustees shall not be liable for injury, loss, or damage of any nature whatsoever directly or indirectly resulting therefrom or connected therewith.

(m) All personal property of the Unit Owners and any other occupants of a Unit, in Units, and elsewhere, as the case may be, shall be kept therein at the sole risk and responsibility of the respective Unit Owners, and none of the Trustees, their designated agents, the Declarant of the Master Deed, nor their respective successors or assigns, shall bear any responsibility therefor.

(n) In addition to the other By-Laws contained herein and promulgated from time to time, the use of a terrace, deck or balcony appurtenant to a Unit shall be subject to the following:

- (1) No open fires, except for barbecues and the like, will be allowed on or about a terrace, deck or balcony;
- (2) In no event shall a terrace, deck or balcony be enclosed or otherwise used for continuous dwelling purposes.

- (3) Nothing shall be placed on a terrace, deck or balcony which in the opinion of the Trustees unreasonably obstructs sight lines from other Units.
  - (4) Any lighting installed by a Unit Owner on a terrace, deck or balcony will be subject to the prior approval of the Trustees, and will be limited to incandescent accent lighting only. In no event will any such lighting be moving, flashing or neon, and no light on a terrace will have a wattage output greater than 175 watts. No terrace lighting will be directed towards a window or windows of any Unit or Units. All replacements of lighting fixtures shall conform with the original equipment specifications.
  - (5) The railings installed by the Declarant will be maintained or replaced, as appropriate, by the Trustees and at the expense of the Unit Owners to whose units the use thereof is appurtenant, in accordance with applicable provisions of the Master Deed, so as to maintain the intended and initially provided degree of privacy and so as to be of neat and slight appearance. Any variations will be subject to the prior written consent of the Trustees. All planting and other landscaping on a terrace, deck or balcony will be ornamental in nature (but may include herb gardens), and in no event will there be any artificial landscaping.
  - (6) Any and all furniture and furnishings placed on any terrace will be subject to the prior approval of the Trustees, and will be moveable, high quality, outdoor "patio" type furniture of a proper weight to take into account wind and storm conditions.
  - (7) No flags, windsocks, kites or wind-chimes will be permitted to be hung, displayed, draped or posted to or from any outside of windows or placed on the outside or doors of the Buildings, or on the entrance doors to Units, or from a terrace, deck or balcony.
- (o) Unit Owners shall be responsible for completely closing behind them all doors providing ingress to and egress from the Units and common areas of the Buildings and shall at no time place articles in doorways or otherwise impede the complete closing of such doors behind them for security purposes,
- (p) No Unit Owner or occupant shall send any employee of the managing agent out of the Buildings on any private business. Any complaints regarding any services in the Condominium shall be made in writing to the managing agent and the Trustees.
- (q) Any consent or approval given by the Trustees may be added to, amended, or repealed at any time by the Trustees.
- (r) The owner of each Commercial Unit shall, at his own cost and at his own initiative, provide for frequent and adequate removal of trash, garbage and refuse from the Unit and the Condominium consistent with the use of the Unit.

(s) No Unit Owner shall engage in or permit any noxious or offensive activity or any nuisance by himself, his family, servants, employees, agents, visitors, lessees, licensees, or business invitees, nor do himself or permit anything to be done by such persons, either willfully or negligently, that may be, or become an annoyance or nuisance to the other Unit Owners or occupants; will interfere with the rights, comforts, or convenience of other Unit Owners or occupants; may or does cause damage to any other Units or to the common the areas and facilities; or results in the removal of any article or thing of value from any other Unit Owners or from the common areas and facilities of the Condominium. Any Unit Owner making or permitting such a nuisance, interference, damage, or removal shall be responsible for the elimination of such nuisance or interference and for the costs of the repair of such damage or replacement of the item removed. The Trustees may assess to such Unit Owner such costs which shall be enforceable in the same manner as Common Expenses.

(t) Subject to the rights and privileges of the Declarant granted, reserved, contained, or referred to in the Master Deed of the Condominium or the Declaration of Trust of the Trust, nothing shall be altered in, constructed in, added to or removed from the common areas and facilities nor shall any entrance door to a Unit be altered, added, removed or replaced, except upon the prior written consent of the Trustees and in accord with the provisions of said Master Deed and said Trust.

(u) Without limitation, no improvements or alterations to, in or affecting any Unit, including any additions or alterations to electrical, plumbing, heating or other systems, equipment or facilities, shall diminish or otherwise adversely affect the sound and/or vibration insulation between Units or between a Unit and the common areas and facilities; and no ventilator or air conditioning device or any other equipment or apparatus shall be installed or used in, on or outside of any window.

(v) Subject to the rights and privileges of the Declarant granted, reserved, contained, or referred to in the Master Deed of the Condominium or the Declaration of Trust of the Trust, no part of the common areas and facilities of the Condominium shall be decorated or furnished by any Unit Owner in any manner nor shall the exterior surface of any entrance door to a Unit be painted or otherwise decorated in any manner, except with the prior written approval of the Trustees and in accord with the provisions of the Master Deed of the Condominium and the Declaration of Trust of the Trust.

(w) No wood stoves, coal stoves, kerosene heaters, space heaters or similar devices shall be permitted in any Unit. Other than the Declarant, no Unit owner shall install any heating or air conditioning device in any Unit without the prior written consent of the Trustees. The Trustees may enter any Unit to correct any non-compliance with this provision, at the expense and risk of the Owner of such Unit and the Trustees may assess such Unit Owner for the cost of such correction, which cost shall be assessed in the same manner as a Common Expense.

(x) All draperies, as well as any other window treatments and hanging material, must be fire resistant and in compliance with standards set by the New England Fire Insurance Rating Board, and may not be closer than one inch (1") to heating units. All draperies, window treatments and window coverings in every Unit visible from the exterior of the Buildings shall be lined with an

off-white material or shall be off-white on the facing side, visible from the exterior, such that when closed or drawn the appearance of the window or door from the exterior of the Buildings shall be off-white. This paragraph shall not apply to the Commercial Units.

(y) Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows of Residential Units or placed on the outside walls or doors of the Buildings or on the entrance doors to Units, or exposed on any part of the common areas and facilities, and no sign, awning, canopy, shutter, or (subject to the Telecommunications Act) radio or television antenna shall be affixed to or placed upon the exterior walls or doors, roof (except one or more so-called master antenna for the Buildings installed by or with the consent of the Trustees), or any part thereof, or exposed or at any window, without the prior written consent of the Trustees. Owners of Residential Units shall not be permitted to display their names in any entry, passageway, vestibule, hall, stairway or other common area, provided, however, that a Residential Unit Owner shall be permitted to place his name in the proper place on the mail box provided for the use of the Unit in print approved as to size and style by the Trustees. No public hall or other part of the common areas and facilities may be decorated or furnished by any Unit Owner in any manner.

(z) No religious items shall be displayed in the common areas and facilities, and no religious ceremonies or observances shall be conducted therein.

(aa) No door knockers or other ornamentation shall be placed upon doors of Residential Units, or in the common areas and facilities

## **20. Violation of Law.**

No noxious or unlawful activity shall be carried on in any Unit or in the common areas and facilities nor shall anything be done therein, either willfully or negligently, which may be or become unreasonably annoying to the other Unit Owners or occupants.

## **21. Maintenance and Repairs.**

A. Units. All maintenance and replacement of and repairs to any Unit, ordinary or extraordinary other than to the common areas and facilities contained therein not necessitated by the negligence, misuse or neglect of the owner of such Unit, and to the doors (glazed and unglazed), windows and glazed areas in exterior and interior walls of such Unit (whether or not a part of the Unit), and to electrical, plumbing, and heating, ventilating and air conditioning fixtures and equipment within the Unit or belonging to the Unit Owner, wherever located, which are not a part of the common areas and facilities, and the washing of interior glass shall be done by the Unit Owner at the Unit Owner's expense, excepting as otherwise specifically provided herein. Units Owners shall not be obligated to maintain, repair or replace any portion of an exterior wall (except windows and glazed areas therein) which is a part of a Unit. Notwithstanding the foregoing, the Trustees shall specify the materials, colors, and paint of exterior doors and window frames and sashes to Residential Units, whether or not such doors are part of the Unit. Each Unit Owner shall be responsible for all damage to any and all other Units and to the common areas and facilities that his failure so to do may engender.

B. Common Areas and Facilities and Exterior Walls. All maintenance, and replacements of and repairs to the common areas and facilities as defined in the Master Deed, and all maintenance, and replacement of and repairs to the exterior walls of the Buildings (including but not limited to such of same as are portions of Units), and to structural parts of the Buildings and the painting and decorating of the exterior doors of the Buildings and exterior window sash, and the washing of the exterior window glass, glazed doors, and other exterior glazed areas, shall be made by the Trustees and shall be a Common Expense, except to the extent that the same are necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner.

## **22. Right of Access; Pass Keys.**

Subject to the provisions of (a) Massachusetts General Laws, Chapter 183A, Section 4, Clause (2), and (b) subsection (b) of this Section 22, the Trustees in their capacities as such Trustees, and any manager engaged by the Trustees, and any persons authorized by the Trustees or such manager shall have a right of access to all Units, at any time in case of emergency, and at all other times during reasonable times by prior appointment with each Unit Owner, for the purpose of making inspections or repairs or maintenance to either the Unit, or to another Unit, or any part of the common areas and facilities.

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

## **23. Pets.**

Ordinary domestic pets and animals may be kept by any Unit Owner. No such pets shall be permitted in any part of the Condominium (other than within the Unit of the owner thereof) unless carried or on a leash. The Unit Owner or person walking such pet or animal shall immediately clean up any and all droppings for which his pet or animal is responsible in or about the Condominium, including, without limitation, the sidewalks and exterior landscapes. Any Unit Owner keeping a pet or animal in violation of the foregoing, or which causes any damage to or requires cleanup of any Unit (other than the Unit of the owner of such pet or animal) or the common the areas and facilities or which is offensive or causes or creates any nuisance or unreasonable disturbance or noise, shall be personally liable for the cost and expense of any repair of such repair, cleanup and/or elimination of such disturbance or nuisance. After due notice and hearing in accordance with Section 33 hereof, the Trustees may require any Unit Owner to permanently remove any pet which has habitually been guilty of annoying or harassing any Unit Owner or occupant. The Trustees shall assess to such Unit Owner all costs of enforcement and until paid the same shall constitute a lien against the Unit of such Unit Owner pursuant to the provisions hereof and Section 6 of the Act.

## **24. Structural Integrity.**

Subject to the rights of the Declarant as referred to in the Master Deed granted, reserved, contained, or referred to in the Master Deed or in the Declaration of Trust of the Trust, including



the Rules and Regulations, nothing shall be done in any Unit or in, or to the common areas and facilities, that will impair the structural and/ or architectural integrity of, or structurally or architecturally change, the Buildings or any common areas and facilities, or that will in any way destroy or adversely affect the water-tightness of the Buildings. No water beds, hot tubs or jacuzzis shall be permitted in any Unit without the prior written permission of the Trustees, which permission may be withheld in the sole discretion of the Trustees. No waterbeds, hot tubs or jacuzzis shall be permitted on any terrace, deck, or balcony or in any other common areas or facilities.

**25. No Alterations.**

Neither the exterior of any Unit nor the common areas and facilities nor the hallways or lobby shall be altered, constructed, removed, decorated or painted in any manner except with the written consent of the Trustees. Subject to the provisions of Section 19 hereof, any Unit Owner is free to decorate the interior of his Unit in any manner as he sees fit without requiring the consent of the Trustees so long as such decorations do not alter the structure of the Unit or the Buildings.

**26. Signs.**

Except for signs erected and maintained by owners of Commercial Units on the first floor level of the building, no business, professional, commercial or other signs, whether designed for profit, altruism or otherwise shall be maintained or permitted on any part of the property nor shall any "For Sale", "For Rent", or "For Lease" sign be permitted thereon except by the Declarant during such time as the Declarant owns one or more Units or one or more Parking Easements in the Condominium, and except for any Mortgagee who may become the owner or Mortgagee in possession of any Unit, but in no event shall any such sign be larger than two (2) square feet. Owners of Commercial Units shall have the right to erect and maintain signs on the exterior of Commercial Units, so long as such signs (w) comply with all relevant laws, ordinances and codes, (x) are professionally designed and constructed, (y) are dignified and in keeping with a first-class mixed use condominium and (z) if lighted, do not contain intermittent or flashing lights.

**27. Combustible Materials.**

No Unit Owner shall permit or suffer the keeping at any time of any flammable, combustible or explosive fluid or substance in or on any portion of the Condominium (including but not limited to his Unit) except only for such lighting and cleaning fluids as are customary for residential use.

**28. Safety.**

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

## **29. Sale of Units.**

(a) No Severance of Ownership. No Unit Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his Unit without including therein the Appurtenant Interests (as hereinafter defined); it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Appurtenant Interests of any Unit may be sold, transferred, or otherwise disposed of, except as part of a sale, transfer, or other disposition of the Unit to which such interests are appurtenant, or as part of a sale, transfer, or other disposition of such part of the Appurtenant Interest of all Units. "Appurtenant Interests", as used herein, shall include (i) the undivided interest of a Unit Owner in the common areas and facilities; and (ii) the interest of such Unit Owner in any other assets of this Trust.

(b) Financing of Purchase of Units by Trustees. With the prior written approval of at least fifty-one (51%) percent of the beneficial interests hereunder (the vote of the Unit Owner of the Unit which is the subject of such vote shall not be counted; the vote appurtenant to unsold Units owned by the Declarant will not be counted), the Trustees may acquire Units of the Condominium. Acquisition of Units by the Trustees may be made from any funds in the hands of the Trustees; or if such funds are insufficient, the Trustees may levy an assessment against each Unit Owner in proportion to his beneficial interest as a Common Expense; or the Trustees, in their discretion, may borrow money to finance the acquisition of such Units, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the specific Unit or Units with Appurtenant Interests so to be acquired by the Trustees. Nothing in this Subsection (b) of this Section shall be construed as compelling any Unit Owner to sell his Unit. Nothing in this Subsection (b) of this Section shall have any effect, nor limit in any manner the rights and remedies of the Trustees under the provisions of Section 6 of the Act, or under the provisions of Section 2 hereof.

(c) Waiver of Right of Partition. In the event that a Unit shall be acquired by the Trustees, all Unit Owners shall be deemed to have waived all rights of partition with respect to such Unit or Units as are acquired by the Trustees.

(d) Payment of Assessments. No Unit Owner shall convey, mortgage, pledge, hypothecate, or sell his Unit unless and until he shall have paid in full to the Trustees all unpaid Common Expenses theretofore assessed by the Trustees against his Unit and until he shall have satisfied all unpaid liens against such Unit. This paragraph shall not apply to any first Mortgagee of any Unit.

## **30. Nondiscrimination.**

Notwithstanding anything to the contrary herein, no provision of the Master Deed,

Declaration of Trust, By-Laws or the Rules and Regulations now or hereafter adopted or promulgated shall ever be deemed to prevent, restrict, discourage, or hinder in any manner whatsoever the alienation, conveyance, mortgage, purchase, sale, use, or occupancy of Units or any negotiations in connection therewith because of race, religion, creed, color, national origin, sex, sexual orientation, age, ancestry, marital status, status as a veteran or member of the armed services, or any ethnic group, blindness, or by reason of the fact that children will occupy such Unit, receipt of public assistance, or, in addition to the foregoing by any reason whatsoever prohibited by any federal, state, or municipal law.

**31. Percentage of Unit Owners.**

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

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

(a) Certain Definitions:

- (1) The term "FHLMC" means Federal Home Mortgage Corporation.
- (2) The term "FNMA" means Federal National Mortgage Association.
- (3) The term "Eligible Mortgage Holder" means a holder of a first mortgage on a Unit who has requested notice of certain matters from this Trust as set forth in these By-Laws.
- (4) The term "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters as set forth in these By-Laws.
- (5) The term Constituent Documents means, collectively, the Master Deed, the Declaration of Trust and the By-Laws and Rules and Regulations thereto and the Master Plans.

(b) Certain Prohibitions. Notwithstanding anything to the contrary in the Constituent Documents:

- (1) There shall be no restriction upon any Unit Owner's right of ingress or egress to his or her Unit, which right shall be perpetual and appurtenant to the ownership of the Unit.
- (2) Except as set forth in Section (g) of the Master Deed and Section 15 of these By-

laws, there shall be no restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her Unit. There shall be no "right of first refusal" so called or any similar restriction.

- (3) There shall be no restriction on the right of any Unit Owner to mortgage or otherwise encumber his Unit.
- (4) Except as otherwise set forth in the Master Deed, the Condominium shall not be subject to "expansion" or "phases", so called.
- (5) Prior to the passage of control of this Trust to consumer Unit purchasers, no management contract shall be entered into unless this Trust is provided with a right of termination of any such contract or lease with cause on ten (10) days notice, or without cause on ninety (90) days notice, in both cases exercisable without penalty at any time after transfer of control.
- (6) The Constituent Documents shall not be amended or modified if the result of any such amendment or modification would add a "right of first refusal" so called.

(c) Rights of Eligible Mortgage Holders and Eligible Insurers or Guarantors. Notice of Action: Upon written request to the Trustees identifying the name and address of the mortgage holder, insurer or guarantor and the Unit number or address, any first Mortgagee and any such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

- (1) Any condemnation loss or any casualty loss that affects either a material portion of the project or any Unit on which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable;
- (2) Any delinquency in the payment of assessments or charges owed, or default in the performance by the borrower of any obligation under the Constituent Documents, by an owner of a Unit subject to a first mortgage held, insured or guaranteed by such first mortgage holder or Eligible Holder or Eligible Insurer or Guarantor, which remains uncured for a period of 60 days;
- (3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Trust;
- (4) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

(d) Amendment to Documents.

- (1) Where Unit Owners are considering termination of the legal status of the project for reasons other than substantial destruction, or condemnation of the property the

consent of owners of Units to which at least sixty-seven (67%) percent of the votes in this Trust are allocated and the approval of Eligible Mortgage Holders representing at least sixty-seven (67%) percent of the votes of the mortgaged Units shall be required to terminate the legal status of the project as a Condominium. The approval of an Eligible Mortgage Holder may be assumed when an Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

- (2) Any action to terminate the legal status of the project after substantial destruction or condemnation occurs, shall require the consent of owners of Units to which at least sixty-seven (67%) percent of the votes in the Trust and Eligible Mortgage Holders representing at least fifty-one (51%) percent of the votes of the Units that are subject to mortgages held by Eligible Mortgage Holders.
- (3) Except as set forth in the Master Deed as to phasing, and except as set forth otherwise in the Master Deed, the consent of the owners of Units to which at least sixty-seven (67%) percent of the votes in the Trust are allocated, and at least fifty-one (51%) percent of the Eligible Mortgage Holders (based on one vote for each Unit subject to a mortgage held by an Eligible Mortgage Holder), shall be required to add or amend any material provisions of the constituent documents of the project, which establish, provide for, govern or regulate any of the following:
  - (i) voting rights;
  - (ii) increases in assessments that raise previously assessed amounts by more than twenty-five percent, assessment liens or the priority of such liens;
  - (iii) reductions in reserves for maintenance, repair and replacement of the common areas;
  - (iv) responsibility for maintenance and repairs;
  - (v) reallocation of interests in the general or limited common areas and facilities or rights to their use;
  - (vi) redefinition of any Unit boundaries;
  - (vii) except as set forth in the Master Deed and the Trust, expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project;
  - (viii) convertibility of Units into common areas and facilities or vice versa;
  - (ix) hazard or fidelity insurance requirements;

- (x) except as set forth in the Master Deed and this Trust, imposition of any restrictions on the leasing of Units;
  - (xi) a decision by the Trust to establish self-management if professional management had been required previously by an Eligible Mortgage Holder;
  - (xii) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
  - (xiii) restoration or repair of the project (after hazard damage or partial condemnation) in a manner other than that specified in the Condominium constituent documents; or
  - (xiv) any provisions which are for the express benefit of Mortgage Holders, Eligible Mortgage Holders or Eligible Insurers or Guarantors of mortgages on Units.
- (4) An addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An Eligible Mortgage Holder who receives a written request to approve additions or amendments which are not material who does not submit a response to the requesting party within thirty (30) days after the request is made shall be deemed to have approved such request. Additionally, if specifically provided by any applicable FNMA regulation, implied approval of any addition or amendment may be assumed when an Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within 30 days after the proper notice of the proposal is received, provided the notice has been delivered to the mortgage holder by certified or registered mail, return receipt requested. This clause (iii) shall not apply to FHLMC.

(e) Right of Action. Subject to the provisions of Section 1(o) hereof, the Trust and any aggrieved Unit Owner shall have a right of action against Unit Owners for failure to comply with the provisions of the Trust and the By-Laws and Rules and Regulations thereto, the Master Deed, the Master Plans and each Unit deed and Unit plan, and with decisions of the Trustees of this Trust. Each Unit Owner shall have a similar right of action against the Trust. Any such action may be brought in any court of competent jurisdiction.

(f) First Mortgagee Obtaining Title. Any first Mortgagee who obtains title to a Condominium Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Unit's unpaid dues or charges which accrue prior to the acquisition of title to such Unit by the Mortgagee except as otherwise set forth in subsection 6 of the Act.

(g) Additional Prohibitions. Except as provided by statute in case of condemnation or

substantial loss to the Units and/or common elements of the Condominium project, and except as otherwise set forth in the Master Deed as to phasing, and except as otherwise set forth in the Master Deed, unless at least two-thirds (2/3) of the first Mortgagees (based upon one vote for each first mortgage owned), or owners (other than the sponsor, developer or builder) of the individual Condominium Units have given their prior written approval, the Trust shall not be entitled to:

- (1) by act or omission, seek to abandon or terminate the Condominium project;
- (2) change the pro rata interest or obligations of any individual Condominium Unit for the purpose of (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (2) determining the pro rata share of ownership of each Condominium Unit in the common elements;
- (3) partition or subdivide any Condominium Unit;
- (4) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the Condominium project shall not be deemed a transfer within the meaning of this clause);
- (5) use hazard insurance proceeds for losses to any Condominium property (whether to Units or to common elements) for other than the repair, replacement or reconstruction of such Condominium property.
- (6) No provisions of the constituent documents shall give any Unit Owner or Owners or any other party or parties priority over any rights of first Mortgagees of Condominium Units pursuant to their mortgages in the case of a payment to Condominium Unit Owners of insurance proceeds or condemnation awards for losses to or taking of Condominium Units and/or common areas and facilities.

(h) Vote or Consent. The right of any Unit Owner to vote or grant or withhold any consent or exercise any rights pursuant to the provisions of the Declaration of Trust and the By-Laws and Rules and Regulations thereto or the Master Deed may be assigned to or restricted in favor of any Mortgagee, and the Trustees shall be bound by such assignment or restriction, provided, however, that such assignment or restriction does not conflict with the provisions of the Act and that the Mortgagee has notified the Trustees of such assignment or restriction in writing.

(i) Rights and Duties. Each Unit Owner shall be subject to all the rights and duties assigned to Unit Owners in the Constituent Documents. Except as expressly otherwise set forth in the Constituent Documents with respect to rights and easements reserved to the Declarant, the Declarant's rights and duties under the provisions of the Constituent Documents with respect to unsold Units shall be the same as any other Unit Owner.

(j) Information. The Trust shall promptly deliver the following information, in writing, to any Mortgagee, mortgage holder, mortgage servicer, holder, guarantor or insurer of a mortgage, FHLMC or FNMA, requesting same in writing (and furnishing the requesting party's name, address, and the number or address of the Unit on which it holds or insures or guarantees or services a mortgage), without expense to the requesting party:

- (1) notification of any default in the performance by the individual Unit borrower of any obligation under the Condominium Constituent Documents which is not cured within sixty (60) days;
- (2) a written certification as to whether or not the Owner of any Unit encumbered by a mortgage held or serviced, in whole or in part, by the requesting party, is more than one (1) month delinquent in the payment of Condominium common area charges or assessments;
- (3) a written certification as to the percentage of Unit Owners who are more than one (1) month delinquent in the payment of Condominium common area charges or assessments ;
- (4) a statement to the best of the Trust's knowledge as to the percentage of Units which have been sold and conveyed to bona fide purchasers (who have closed or who are legally obligated to close) and the percentage of Units which are occupied by individual Unit Owners as their primary year round residence.
- (5) any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage.
- (6) a lapse, cancellation or material modification of any insurance policy maintained by this Trust; and
- (7) any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

(k) FHLMC; FNMA. The provisions of this Section 32 are set forth so that the Condominium will comply with the requirements of FHLMC, and FNMA, and the provisions of this Section 32 shall be construed and interpreted in accordance with that intention. Notwithstanding anything to the contrary in the constituent documents, the provisions of Section (g) of the Master Deed and Section 15 of these By-laws shall at all times take precedence over all provisions in this Section 32.

### **33. Right to Notice and Hearing.**

(a) Whenever these By-Laws require that an action be taken after "Notice and Hearing", the following procedure shall be observed: All hearings shall be conducted by at least a majority of the Trustees. The Trustees shall give written notice of the proposed action to all Unit Owners or



occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing, or both, subject to reasonable rules of procedure established by the Trustees to assure a prompt and orderly resolution of the issues. The affected person shall have the right to question the Trustees and any witnesses with respect to the subject matter of the hearing. If the hearing involves an alleged breach, by the affected person, of any of the provisions of the Master Deed, the Declaration of the Trust, or the By-Laws and Rules and Regulations thereto, or any Unit deed, the affected person shall be informed, with specificity, of the exact nature of the violation, and of the provision which he or she has allegedly violated, and the affected person shall have the right to question any witness to such alleged violation. The Trustees need not comply with the strict legal rules of evidence observed by courts, but they shall consider only such evidence as reasonable people customarily consider in making important decisions. Nothing herein shall be deemed to limit the right of the Trustees, the affected person, or any Unit Owners or occupants affected to bring legal action with respect to the subject matter of any hearing, or any decision of the Trustees.

(b) When the subject matter of the hearing is Section 3(d) of the Declaration of Trust, the reference to Trustees as the persons conducting the hearing shall be deemed to mean Unit Owners entitled to at least fifty-one (51%) percent of the beneficial interest under this Trust.

#### **34. Environmental Matters.**

No Unit Owner shall (with or without negligence) cause, permit or suffer the release, escape or disposal of any biologically or chemically active or other hazardous substances or material on any part of the Condominium. No Unit Owner shall permit nor suffer the storage or use of such substances or materials nor allow same to be brought onto the Condominium.

Without limiting the generality of the foregoing language, hazardous substances and materials shall include those described in (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC Section 6901 et seq, (ii) the Resource Conservation and Recovery Act, as amended, 42 USC Section 6901 et seq, (iii) the Massachusetts Hazardous Waste Management Act, as amended, M.G.L. Chapter 21, and (iv) the Massachusetts Oil and Hazardous Material Release Prevention Act, as amended, M.G.L. Chapter 21E, and (v) any statutes similar to the foregoing, and any regulations adopted under any of said statutes.

If any Unit Owner, or anyone claiming by, through or under a Unit Owner (including but not limited to a tenant or occupant) shall ever bring a hazardous substance or material onto the Condominium, and if thereafter the Trustees, or any lender or governmental agency shall ever require testing to ascertain whether there has been any release of hazardous materials, then the reasonable cost thereof shall be reimbursed by such Unit Owner upon demand. In addition, each Unit Owner shall, at the request of the Trustees from time to time execute affidavits, representations and the like from such Unit Owner concerning such Unit Owner's best knowledge and belief regarding the presence of hazardous substances or materials on the Condominium. In all events, any Unit Owner responsible for the storage or release of any

hazardous materials or substances shall indemnify the Trustees and all other Unit Owners from any release of hazardous materials on the Condominium premises occurring during the term of his ownership or while he or anyone claiming by, through or under him is in possession of any portion of the Condominium premises and from any release of hazardous materials elsewhere if caused by the Unit Owner or anyone acting by, through or under him. The obligations of any Unit Owner under the provisions of this section for actions or omissions occurring during his period of Unit ownership or while he or anyone claiming by, through or under him was in possession of any portion of the Condominium premises, shall remain in full force and effect subsequent to the conveyance of his Unit, however caused.

35. Leases and Tenancies.

In the event any Unit Owner shall rent, let, lease, or license his Unit (which shall be done only in accordance with all applicable provisions and restrictions contained in the Master Deed and in the Trust and these By-Laws ), the party to whom the same is so rented, let, leased, or licensed shall in a written (i) lease or other written instrument evidencing such arrangement, and (ii) undertaking addressed directly to the Trustees, acknowledge and agree to comply with all applicable provisions of the Master Deed and the Trust, these By-Laws, and all Rules and Regulations promulgated pursuant thereto and hereto. An original counterpart of such instruments, signed and acknowledged by such Unit Owner and such party, shall be delivered to the Trustees as a condition precedent to the validity of such arrangement.

The Unit Owner shall be responsible for and shall bear all costs and expenses (including reasonable attorneys' fees and expenses) relating to any enforcement, eviction or similar proceedings resulting from the failure of the Unit Owner or any tenant or occupant claiming by, through or under such Unit Owner to comply with all of the applicable provisions and restrictions in the Master Deed, the Trust, these By-Laws, and the Rules and Regulations, and until any and all of the same incurred by the Trustees are paid by such Unit Owner the same shall, without limitation, constitute a lien against such Unit Owner's Unit pursuant to the provisions of this paragraph and Section 6 of the Act.

No portion of a Unit less than the whole Unit may be rented, let, leased or licensed. No rental, let, lease or license shall be for a term of less than one (1) month.

The Trustees shall have the right to impose a move-in fee (the "Move-In Fee") of one hundred (\$100.00) dollars, and a move-out fee (the "Move-Out Fee") of one hundred (\$100.00) dollars on the Unit Owner, other than the Declarant, of a Residential Unit whenever a tenant moves into, or out of, respectively, a Residential Unit. The Move-In Fee and the Move-Out Fee shall be a lien on the Unit, enforceable in the manner set forth in section 2(e) of these By-Laws. The Trustees shall have the right to change the amount of the Move-In and Move-Out Fees at their discretion, without the vote of the Unit Owners, but the Unit Owners, by vote of more than fifty (50%) percent of the beneficial interest in this Trust shall have the right to supersede any decision of the Trustees to change the Move-In and Move-Out Fees. Move-In and Move-Out Fees shall not be assessed in instances when a Unit Owner (as opposed to a tenant) moves.

**36. Cleaning, and Delivery Persons, Movers, and Contractors; Work in Units.**

No service personnel, cleaning person, contractor, delivery person, mover, or person other than the Unit Owner will be admitted to a Residential Unit by the Trustees unless the Unit Owner has first signed a permission form, in form and substance satisfactory to the Trustees.

No construction, renovation or other work may be conducted in any Residential Unit, whether by the Owner thereof or any contractor or tradesperson, except during days and hours designated by the Trustees in a uniform manner.

**37. Alarms and Other Security Devices.**

Unit Owners shall furnish to the Trustees all alarm codes for any alarm or other security device installed by the Unit Owner, the name, address and telephone number of the company servicing such alarm or device, a copy of the contract between the Unit Owner and such company, and a copy of the instructions for any such alarm or device.

**38. Performance of Work by Unit Owners.**

In the event that at any time or from time to time a Unit Owner wishes to perform any work in his Unit, the following procedure shall apply:

(a) Definitions:

- (1) "Cosmetic Work" shall mean and shall be limited to painting, carpets, replacement of appliances, tiling and installation of wallpaper of a nature that will involve no excessive noise, odor, vibration or dust. "Excessive noise, odor, vibration or dust" shall mean noise, odor, vibration or dust which is likely to annoy or inconvenience any Unit Owner or occupant.
- (2) "Renovation Work" shall mean work of any nature or description more intensive than Cosmetic Work, and shall include, but not be limited to Initial Work, as hereinafter defined.
- (3) The "Unit Owner" shall mean the then record owner or owners of the unit in which the work is to take place.
- (4) "Initial Work" shall mean work performed in order to make a Unit habitable, or to finish Unit purchased from the Declarant of the Master Deed as a so-called "shell".
- (5) "Prohibited Work" shall mean work (w) other than on the interior of the Unit, (x) which has the potential to affect the structure, plumbing stacks, heating, ventilating and air conditioning risers, utility chases or risers, or other mechanical or electrical risers, stacks or chases, or acoustical treatments of the Buildings, (y) which has the potential to affect any portion of the Buildings or its systems other than the interior of the Unit, or (z) which might delay the work on the Buildings and the Condominium being performed by the Declarant of the Master Deed to its contractors.

(b) Application of By-Law; Prohibited Work. This By-Law shall not apply to work performed by the Declarant of the Master Deed or its contractors. This By-Law shall apply to all work defined above, including but not limited to Initial Work. No Prohibited Work shall be performed by or at the behest of any Unit Owner.

(c) Renovation Work. In the case of Renovation Work, the Unit Owner shall send written

notice to the Trustees and to all Unit Owners of his intention to perform the Renovation Work, and such notice shall be accompanied by a detailed narrative description of the Renovation Work. In addition, with respect to work involving structural changes and/or demolition, such notice shall also be accompanied by (a) sketches of the Renovation Work, sufficient, in the judgment of the Trustees to explain the Renovation Work in detail, and (b) a plan drawn by an architect registered in Massachusetts ("Architect"), or by a structural engineer registered in Massachusetts ("Engineer"), showing the Renovation Work which the Unit Owner proposes to perform, and (c) a written statement by such Architect or Engineer that the Renovation Work will not impair the structural integrity of the Buildings or fall within the definition of Prohibited Work, and (d) a written agreement under which the Unit Owner obligates himself to the other Unit Owners and to the Trustees to proceed expeditiously with the Renovation Work according to such plan, in a first-class workmanlike manner, utilizing new materials, and that all the Renovation Work shall be done under the supervision of such Architect or Engineer, and that the Renovation Work shall not in any manner impair the structural integrity of the Buildings or fall within the definition of Prohibited Work and that all bills for labor and materials will be promptly paid by the Unit Owner, and that the Unit Owner will indemnify the other Unit Owners and the Trustees against any liens for labor or materials in connection with the Renovation Work, and that the Unit Owner shall pay for all costs of the Renovation Work, the fee of such Architect or Engineer, and the reasonable fees of any Architect or Engineer which the Trustees may engage to advise them as to any aspect of the Renovation Work (the Trustees may, but shall not be obligated to engage an Architect or Engineer to so advise them) and any other reasonable expenses of the Trustees arising from the Unit Owner's activities under the provisions of this section, and in which the Unit Owner agrees to be strictly bound by the provisions of this Section and any additional requirements which the Trustees impose with respect to the work, and (e) a deposit (the "Deposit") deposited with the Trustees (for the purposes set forth in Section 6 hereof) in an amount equal to the greater of (w) ten (10%) percent of the value of the contemplated work if the such work is expected to cost less than one hundred thousand (\$100,000.00) dollars, or (x) five (5%) percent of the value of the contemplated work if such work is expected to cost one hundred thousand (\$100,000.00) dollars or more, or (y) (\$1,000.00) dollars, except that (z) the Deposit for Initial Work shall be five thousand (\$5,000.00) dollars regardless of the expected cost of the Initial Work.

(d) Commencement of Work. No Renovation Work shall commence unless and until the Trustees shall have assented thereto in writing. The Trustees may withhold their consent for the reason that the Renovation Work is likely, in the sole judgment of the Trustees, to create noise, vibration, dust, or odor which will disturb other Unit Owners and occupants, and/or impair the structural integrity of the Buildings, or fall within the definition of Prohibited Work, but for no other reasons. Following such consent, the Unit Owner shall secure all necessary permits prior to the commencement of the Renovation Work. The Cosmetic Work or the Renovation Work, as the case may be, shall be performed in such manner as to minimize noise, vibration, dust, odor or disturbance to other Unit Owners and occupants.

(e) Stoppage of Work. The Trustees shall have the right at any time and from time to time to order the Unit Owner performing the Cosmetic Work or the Renovation Work to immediately cease such work, if in the sole judgment of the Trustees the work has created, or is about to create, noise, vibration, dust, or odor which will disturb other Unit Owners and occupants,

and/or, in the case of Renovation Work, has or is about to impair the structural integrity of the Buildings or falls within the definition of Prohibited Work. Such work stoppage order may be communicated to the Unit Owner in any manner the Trustees deems appropriate under the circumstances, and posting such order on or near the door to the Unit Owner's unit, or communicating such order to any contractor or worker performing work on behalf of the Unit Owner shall be sufficient. In such cases, the Unit Owner shall cease work forthwith. Any order to stop work by the Trustees under the provisions of this Section shall be effective notwithstanding (a) the Unit Owner's possession of a Buildings permit for the work and (b) that such stoppage would inconvenience the Unit Owner or cause the Unit Owner to suffer a financial loss and/or (c) that the Trustees previously waived any or all of the provisions of this section under the provisions of paragraph 8 hereof.

(f) Violations of this Section; Disturbance. In the event that the work causes vibration, dust, noise or odor, or the Unit Owner is in violation of a provision of this Section, the Trustees shall have the right at any time and from time to time to order the work to cease as set forth above, to impose a fine against the Unit Owner and the unit in the amount of one hundred (\$100.00) dollars per day for each day the violation continues (notwithstanding any contrary provision in these By-Laws or in the Master Deed), to remediate the problem at the expense of the Unit Owner, to apply for injunctive relief, and/or to exercise any other right or remedy available to the Trustees. The Trustees may apply the Deposit to the payment of such fine, the cost of clean-up, remediation of problems caused by the work, and the expenses of the Trustees in administering this Section, but the liability of the Unit Owner shall not be limited to the amount of the Deposit. The Unit Owner shall be liable for all costs incurred by the Trustees in administering this Section, including but not limited to remediation costs, and legal fees and disbursements of counsel representing the Trustees, whether any violation by the Unit Owner is established or whether litigation ensues.

(g) Completion. At the completion of the Renovation Work, the Unit Owner shall notify the Trustees, in writing, that the Renovation Work has been completed in all respects and that all bills for labor and materials in connection therewith have been paid in full, and such notice shall be accompanied by a written verification of such Architect or Engineer that the Renovation Work has been completed in all respects and that the performance of the Renovation Work has not impaired the structural integrity of the Buildings or fallen within the definition of Prohibited Work. The Deposit, less any amount applied by the Trustees under the provisions of this Section, shall be refunded to the Unit Owner after the work has been completed and the Trustees have received the above-mentioned Architect's or Engineer's verification.

(h) Waiver. If the work contemplated by the Unit Owner (whether Cosmetic Work or Renovation Work) is of such a minor nature that the Trustees believes that it will involve no excessive noise, odor, vibration or dust, the Trustees may, at their discretion, waive any or all of the provisions of this By-Law, provided that if, in fact, the work involves excessive noise, odor, vibration or dust, the Trustees shall have the right to subsequently re-impose any or all of the provisions hereof. In the case of Initial Work, the Trustees shall construe the provisions of this Section regarding excessive noise, odor, vibration and dust liberally in favor of the Unit Owner, as long as the Initial Work is completed within the time period specified by the Initial Board. Notwithstanding anything to the contrary in this Section 38, the Initial Board shall have the right

to grant blanket waivers to any Unit Owners with respect to Initial Work.

(i) Binding Obligation. Each present and future Unit Owner, by accepting delivery of his Unit Deed, shall be deemed to have expressly assented to the provisions of this Section of these By-Laws.

39. Usage Committee.

There shall be a Usage Committee (the "Usage Committee") appointed by the Trustees of the Condominium Trust from time to time. The Usage Committee shall be composed of five (5) members, three (3) of whom shall be owners of Residential Units and two (2) of whom shall be owners of Commercial Units. At least one (1) member shall be a Trustee. The Usage Committee shall establish standards which shall govern details such as commercial signage, use of water, sewer, trash, rubbish, traffic, deliveries, and use of building facilities. The Usage Committee shall have no authority itself to change or modify the Master Deed, the Condominium Trust, or the By-Laws and Rules and Regulations thereto.

If the Usage Committee is of opinion that one (1) or more Commercial Units are using more water and sewer than a Residential Unit of the same size as such Commercial Unit would use, the Usage Committee shall have the right to cause a sub-meter to be installed, at the expense of the owner of the Commercial Unit, or to charge the owner of such Commercial Unit for additional water and sewer charges, assessed as a c-common expense. In the absence of a sub-meter, the Usage Committee may engage the services of an engineer to make an estimate with respect to water and sewer usage, which estimate, if made in good faith, shall be binding upon the owner of the Commercial Unit, and the fee of such engineer shall be paid by the owner of the Commercial Unit. The Usage Committee shall have the right to charge owners of Commercial Units for similar over-use of utilities and building facilities.

The Usage Committee shall, by a similar procedure, charge the owners of Commercial Units for extra dumpster usage, the extra cost of premiums for master insurance policies caused by the use of the Commercial Units, and the Usage Committee shall have the right to make similar adjustments with respect to other costs, expenses and facilities.

The Usage Committee shall have the right to require owners of Commercial Units to cause their units to be treated for pest and vermin periodically, at the expense of the owner of the Commercial Unit.