

BK 18232 PG 282

RECEIVED AND RECORDED
NORFOLK COUNTY
REGISTRY OF DEEDS
DEDHAM, MA

CERTIFY

William P. O'Donnell
WILLIAM P. O'DONNELL, REGISTER

RIVERWALK COMMONS CONDOMINIUM TRUST

A N

A N

THIS DECLARATION OF TRUST made by OHC Manager LLC, having an address of P.O. Box 1034, Littleton, Massachusetts 01460 (hereinafter called the "Trustee" or "Trustees," which term and any pronoun referring thereto shall be deemed to include any successors in trust hereunder and to mean the trustees for the time being hereunder wherever the context so permits).

ARTICLE I - NAME OF TRUST

The Trust created hereby shall be known as Riverwalk Commons Condominium Trust and shall have a mailing address of P.O. Box 1034, Littleton, Massachusetts 01460.

ARTICLE II - THE TRUST AND ITS PURPOSES

2.1 General Purposes. This Trust is created as the organization of unit owners (hereinafter the "Owners" or "Unit Owners") as required by the provisions of Chapter 183A, as amended, of the Massachusetts General Laws (hereinafter "Chapter 183A") for the purpose of managing Riverwalk Commons, a condominium ("Condominium") established by master deed (hereinafter "Master Deed") dated the same as the date hereof and recorded herewith executed by OHC Bird Pond LLC (hereinafter the "Declarant," which term shall also include all persons or entities which may succeed to the Declarant's position as developer of the Condominium in accordance with the definition of Declarant contained in Section 18 of the Master Deed).

2.2 Definitions. Unless the context otherwise requires, the words defined in the Master Deed and the definitions contained in Section 1 of Chapter 183A shall be applicable to this Trust.

2.3 Trust and Not Partnership. It is hereby expressly declared that a trust and not a partnership or corporation is hereby created, and that the Unit Owners are beneficiaries and not partners or associates between or among themselves with respect to the trust property, and hold no relationship to the Trustees other than as beneficiaries hereunder.

2.4 Property Held in Trust. All property, real and personal, tangible and intangible, conveyed to or held hereunder by the Trustees shall vest in the Trustees, in trust, to manage, administer and dispose of the same, (exclusive of the disposition of Common Areas and Facilities, as defined in the Master Deed) and to receive and/or distribute the income and/or principal thereof for the benefit of the Owners from time to time of the Units of the Condominium. The beneficial interest of each Unit Owner is set forth in Exhibit B of the Master Deed, as the same may be amended from time to time, which interest is equal to the undivided interest unit percentage of each Owner's Unit in the Common Areas and Facilities of the Condominium.

035129

03 FEB 13 PM 3:51

N O T ARTICLE III - THE TRUSTEES

A N

A N

3.1 Number of Trustees; Term of Office; Vacancies: There shall be at all times three Trustees; provided, however, that until the "takeover event" as hereinafter defined, the number of Trustees shall be any number of persons or entities as designated by the Declarant, and may consist of as few as one Trustee. Upon the occurrence of the "takeover event," which shall be no later than the earlier of the following events: (a) four (4) months after all of the total possible Units included in all possible phases have been conveyed to Unit purchasers or (b) five (5) years following conveyance of the first Unit within the Condominium, the term of office of the original Trustees or their successors designated by the Declarant shall be deemed vacant so as to permit such vacancies to be filled in the manner hereinafter set forth. Until such vacancies have been filled, or until the expiration of a period of sixty (60) days after the occurrence of the takeover event, whichever shall first occur, the Trustees may continue to act hereunder. The term of office of the Trustees elected or appointed to fill the vacancies of the original Trustees or the successors to the original Trustees designated by the Declarant shall be for the period until the annual meeting of the Unit Owners immediately succeeding their election or appointment and until their successors have been elected or appointed and qualified. At the first election, the Trustee with the highest number of votes will serve for a three (3) year term, the Trustee with the next highest number of votes will serve for a two (2) year term and the third Trustee shall serve for a one (1) year term. Thereafter, the term of office of each Trustee shall be for a period of three (3) years.

3.2 Election of Trustees. Trustees shall be elected at a duly constituted meeting of the Trust at which a quorum is present, with those candidates obtaining the most votes winning the vacant seats. Each person elected to serve as Trustee 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 Norfolk County Registry of Deeds ("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 acceptance of election with the Secretary.

3.3 Vacancies. Following the takeover event, if and whenever the number of Trustees falls below three, a vacancy shall be deemed to exist, and the remaining Trustee or Trustees shall appoint a Trustee to fill the vacancy until the next annual meeting, at which time the Unit Owners shall elect a successor Trustee to serve out the remainder of the original term. Each appointment to fill a vacancy, other than by court proceeding as hereinafter provided, shall become effective upon recording with the Registry of Deeds of an instrument in writing signed by such successor and by a majority of the Trustees and acknowledged by such successor and by at least one of said Trustees. Any appointment by court proceeding shall become effective upon recording with said Registry of Deeds of a certified copy of the Court's decree and of the acceptance of such appointment subscribed and sworn to by the successor so appointed. If for any reason any successor shall not be so designated within sixty (60) days after the vacancy in office occurs, 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 upon notice to all Unit Owners and Trustees and to such others as the Court may direct. Notwithstanding the foregoing provisions of this Section, the remaining or surviving Trustees shall continue to exercise and

discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustees and any person appointed as a successor Trustee as hereinbefore provided 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 or transfer or conveyance.

3.4 Quorum and Action by Majority. The Trustees may act by a majority vote at any duly called meeting at which a quorum is present, and a quorum shall consist of a majority of the Trustees. The Trustees, may also act without a meeting if a written consent is signed by at least two-third (2/3) of the Trustees then in office.

3.5 Bond by Trustees. Any Trustee elected or appointed as hereinbefore provided, who is vested with authority or responsibility for handling funds belonging to or administered by the Trust, shall be covered by a fidelity bond conforming to the requirements of Section 5.6.1(f). All expenses incident to any such bond shall be charged as a common expense of the Condominium. In addition, during such time as the Declarant or its agents, employees or assigns continues to act as Trustee, directors and officers insurance shall be maintained. Directors and officers insurance may, at the Board's option, be subsequently maintained.

3.6 Resignation and Removal of Trustee. Any Trustee may resign by notice in writing given to the Secretary of the Trust, who shall in turn transmit written notice of such resignation to each of the other Trustees. Such written resignation shall be recorded by the Secretary of the Trust at the Registry of Deeds.

After reasonable notice and an opportunity to be heard, any Trustee except the Declarant or Trustee designated by the Declarant may be removed from office with or without cause relating to the performance or the non-performance, as the case may be, of his duties as a Trustee by vote of Unit Owners holding at least fifty-one percent (51%) of the beneficial interest hereunder, which vote shall be cast at any annual or special meeting of the Unit Owners, the notice of which shall specify that the removal shall be voted upon at such meeting.

After reasonable notice and an opportunity to be heard, any Trustee except the Declarant or Trustee designated by the Declarant may be removed from office by vote of the remaining Trustees for failure to attend three (3) or more consecutive duly noticed meetings of the Trustees, which vote shall be cast at any duly noticed meeting, the notice of which shall specify that the removal shall be voted upon at such meeting. Any such removal shall be evidenced by the recording at the Registry of Deeds of a certificate of removal signed by the Secretary of the Trust naming the Trustee so removed and reciting that the requisite votes of the Trustees were cast for the removal.

Under no circumstance may the Declarant or Trustee designated by the Declarant be involuntarily removed as Trustee.

3.7 Compensation of Trustees. No Trustee shall receive compensation for his services, except that, by a vote of a majority of the other Trustees, a Trustee may be reimbursed for his out-of-pocket expenditures associated with Trust business.

3.8 No Liability If In Good Faith. No Trustee shall be personally liable or accountable out of his personal assets by reason of any action taken, suffered or omitted in good faith, or for allowing one or more of the other Trustees to have possession of the Trust books or property, or by reason of honest errors of judgment, mistakes of fact or law, the existence of any personal or adverse interest, or by reason of anything except his own willful malfeasance or default.

3.9 Dealing with Trust Not Prohibited. No Trustee or Unit Owner shall be disqualified as a result of his status from contracting or dealing directly or indirectly with the Trustees or with one or more Unit Owners, nor shall any such dealing, contract or arrangement entered into in respect to this Trust, in which any Trustee or Unit Owner shall be in any way interested, be avoided, nor shall any interested Trustee or Unit Owner so dealing or contracting be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such Trustee's holding office or of the fiduciary relation hereby established, or by reason of such Unit Owners' status, provided the Trustee or Unit Owner shall act in good faith and shall disclose the nature of his interest before the dealing, contract or arrangement is entered into.

3.10 Indemnity. The Trustees and each of them shall be entitled to indemnity both out of the trust property and by the Unit Owners against any liability incurred by them or any of them in the execution hereof, including without limiting the generality of the foregoing, liabilities in contract and in tort and liabilities for damages, penalties and fines. 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, all as provided in Sections 6 and 13 of Chapter 183A. Nothing contained in this Section shall be deemed, however, to limit in any respect the powers granted to the Trustees in this instrument.

ARTICLE IV - BENEFICIARIES AND BENEFICIAL INTEREST

4.1 Percentage Interest. The beneficiaries shall be the Unit Owners of the Condominium from time to time. The beneficial interest in the trust hereunder shall be divided among the Unit Owners in the percentage of undivided beneficial interest appertaining to the Units of the Condominium as set forth in Exhibit B of the Master Deed, as said Exhibit B may be amended pursuant to Section 16 of the Master Deed.

4.2 Persons to Vote as Unit Owners. The beneficial interest of each Unit of the Condominium shall be held as a unit and shall not be divided among the 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 determine and designate which one of such owners or other person shall be authorized and entitled to cast votes, execute instruments and otherwise exercise the rights appertaining to such Unit hereunder, and it may be conclusively presumed that any Unit Owner attending any meeting has obtained such authorization unless an objection has been filed with the Trustees prior to or at such meeting.

Any such vote may be pursuant to a proxy executed for that purpose, which proxy must identify the name(s) of the Unit Owner(s), the Unit identification, and such meeting(s) at which such proxy may be exercised. Any such proxy shall be signed by all the Owners of the Unit and such signature(s) shall be witnessed by a disinterested party. O P Y

4.3 Voting Power of the Unit Owners. Each Unit Owner, including the Declarant, shall have voting power equal to his Unit's percentage interest in the Common Areas and Facilities as shown on Exhibit B to the Master Deed, as the same may be amended.

ARTICLE V - BY-LAWS

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

5.1 Powers and Duties of the Trustees. The Board of Trustees shall have the powers and duties specifically conferred upon them by Section 10(b) of Chapter 183A, the Master Deed and these By-Laws, and all other powers and duties necessary for the administration of the affairs of the Condominium (except as otherwise provided by law, the Master Deed or these By-Laws), including, without limiting the generality of the foregoing, the following powers and duties:

5.1.1 To appoint and remove at pleasure all officers, agents and employees of the Trust, prescribe their duties, fix their compensation, and require of them such security or fidelity bond(s) as they may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any Unit Owner or Trustee in any capacity whatsoever.

5.1.2 To establish, levy and assess, and collect general and special assessments for common expenses referred to in Section 5.5 hereof. The Trustees shall have the duty to take such action as they may deem reasonably required under the circumstances to collect from Unit Owners who fail to pay such assessments within thirty (30) days of the due date or within such shorter period of time as may be determined by the Trustees, including without thereby limiting the generality of the foregoing, the commencement of legal action. Assessments for common expenses shall commence for each phase upon conveyance of the first Unit in said phase.

5.1.3 To do all things necessary to operate, maintain, repair, improve, replace, alter and otherwise administer and care for the Common Areas and Facilities and, to the extent provided in the Master Deed and these By-Laws, to maintain, repair and care for the Units.

5.1.4 To obtain all policies of insurance required by these By-Laws and such other insurance as may be required by law or as the Trustees may from time to time determine.

5.1.5 To obtain any legal, architectural, accounting, administrative and other services deemed advisable by the Trustees, including the services of a manager and any other personnel, to whom the Trustees, except to the extent limited by Chapter 183A, the Master Deed, or these By-Laws, (including this Section 5.1), may delegate certain of its powers and duties. The

Trustees shall be entitled to rely upon the advise and counsel of attorneys, architects, accountants and other advisors hired by them and shall be protected in so doing.

O F F I C I A L O F F I C I A L

5.1.6 To adopt, amend, modify and rescind from time to time and enforce rules and regulations (the "Condominium Rules") governing the use of the Condominium and the personal conduct of the Unit Owners and their families, tenants and guests thereon.

5.1.7 To cause to be kept a complete record of all its acts and the affairs of the Trust and to present a statement thereof to the Unit Owners at the annual meeting of the Unit Owners.

5.1.8 To purchase, or otherwise acquire title to or an interest in, sell, and otherwise maintain, manage, hold, use and encumber and dispose of any property, real or personal, tangible or intangible, in the course of their administration and management of the Condominium; provided that, except in the event of condemnation or substantial loss to the Units and/or the Common Areas and Facilities subject to the provisions of Sections 5.7.5 and/or 5.7.1(b) hereof, the Trustees may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any part or all of the Common Areas and Facilities, other than by the granting of utility rights and easements, without the prior authorization of Unit Owners holding at least fifty-one percent (51%) of the total voting power of the Unit Owners hereunder, or such higher percentage as required pursuant to Chapter 183A.

5.1.9 To open and maintain bank accounts, and to authorize the drawing of checks and other financial instruments, and to keep a full and complete record of all financial transactions for mortgagees of the Units and to prepare periodic financial reports and accountings as may be reasonably required by the Unit Owners.

5.1.10 To purchase in its own name or the name of a nominee one or more Units in the Condominium at any public or private sale upon such terms and conditions as the Trustees may deem desirable (prior authorization not being required for Unit lien foreclosures); and to sell, lease, mortgage and otherwise maintain, manage, hold, encumber and dispose of such Units, upon such terms and conditions as the Trustees shall deem appropriate.

5.1.11 To borrow or in any other manner raise such sum or sums of money or other property as the Trustees shall deem advisable in any manner and on any terms, and to evidence the same by notes, bonds, securities or other evidences of indebtedness, which may mature at any time or times, and subject to any limitations imposed by law, the Master Deed or these By-Laws, to execute and deliver any mortgage, pledge, or other instrument to secure any such borrowing; provided, however, that the Trustees shall have no authority to bind the Unit Owners personally.

5.1.12 To establish committees from among the Unit Owners, define their powers and duties, and appoint and remove their members.

5.1.13 To grant easements and rights with respect to utilities to be installed in, upon, under or over the Common Areas and Facilities and to enter into such agreements and undertakings as shall be necessary therefor, and to grant the same rights to any owner of

contiguous land, provided that such grants do not materially adversely interfere with the intended use of the Units.

A N A N

O F F I C I A L O F F I C I A L

5.1.14 To approve the location and relocation of easements and rights for utilities which have been installed in, upon, under or over the Common Areas and Facilities, and to execute, acknowledge and record such instruments and plans identifying such easements as the Trustees deem necessary or desirable.

5.1.15 To, acting as a Design Review Committee, establish, pursuant to Section 5.10 hereof, review and approve modifications to the Building(s) or any other construction, modification or decoration activities with respect to a Unit which involve or impact the Common Areas and Facilities and/or over which the Trustees may specifically have review and approval authority under the provisions of the Master Deed and/or this Condominium Trust.

5.1.16 To sign, seal, acknowledge, deliver and record in any one or more public offices or places of recording all such instruments and documents as the Trustees shall deem necessary or desirable in the exercise of their powers and the discharge of their duties, and all documents necessary to acknowledge payment by the Unit Owners of their fees pursuant to this Trust in accordance with Section 6(d) of Chapter 183A, as amended (referred to as "6D Certificates").

5.1.17 To take such steps, including the expenditure of funds, to protect and preserve the Common Areas and Facilities of the Condominium.

5.1.18 To perform any and all obligations and responsibilities of the Trustees and/or Trust under and observe and at all times comply with any and all applicable requirements, conditions and restrictions set forth in the following recorded instruments, as may be amended or replaced from time to time (collectively, the "Property Operating Requirements"):

- (a) Superceding Order of Conditions for DEP File No. 315-579 issued by Massachusetts Department of Environmental Protection, recorded with the Registry of Deeds on May 15, 2002, as Instrument No. 84255, including, without limitation, maintenance, operation and reconstruction of the stormwater management system, maintenance of the plantings, and fertilizing as provided therein, as affected by applicable decisions and Final Order of Conditions;
- (b) Site Plan Approval Decision for Case No. 01-08 dated June 26, 2001, by the Walpole Planning Board, and recorded with the Registry of Deeds in Book 15593, Page 230;
- (c) Special Permit Decision of the Walpole Zoning Board of Appeals for Case No. 23/01 dated June 20, 2001, recorded with the Registry of Deeds in Book 15593, Page 225;
- (d) Operation and Maintenance Plan and Covenant dated January 22, 2003, by OHC Bird Pond LLC, and in favor of the Town of Walpole, and recorded herewith, and Plan of Land entitled "RIVERWALK COMMONS AT BIRD POND

WASHINGTON STREET IN WALPOLE, MASSACHUSETTS (NORFOLK COUNTY)" drawn by BSC GROUP, Inc, 384 Washington Street, Norwell, Massachusetts 02061, dated November 4, 2002, prepared for OHC Bird Pond LLC, P.O. Box 327, Wenham, MA 01984, recorded herewith (the "Plan of Land"), to the extent applicable;

- (e) Conveyance of Easements and Utilities dated January 22, 2003, from OHC Bird Pond LLC to the Town of Walpole, and recorded herewith, and the Plan of Land, to the extent applicable;
- (f) Conveyance of Passive/Pedestrian Easement dated January 22, 2003, from OHC Bird Pond LLC to the Town of Walpole, and recorded herewith, and the Plan of Land, to the extent applicable; and
- (g) Conveyance of Non-Exclusive Easement dated January 22, 2003, from OHC Bird Pond LLC to the Town of Walpole, and recorded herewith, and the Plan of Land, to the extent applicable.

Notwithstanding any provisions of this Trust and By-Laws to the contrary, the Trustees may not delegate to any manager or managing agent for the Condominium any of the following powers and duties:

- (a) The power to appoint the officers of the Trust.
- (b) The power to establish, levy and assess the assessments or charges for common expenses or special assessments.
- (c) The power to adopt, revise, modify and rescind the Condominium Rules.
- (d) The powers and duties described in Sections 5.1.8 and 5.1.9, to the extent that the Trustees must sign all checks drawn on any bank account in which reserve fees are deposited, and 5.1.10 through 5.1.16, inclusive (except for the execution of 6D Certificates) above.

5.2 Reserves and Working Capital. The Trustees shall be required to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and Facilities which the Trust is obligated to maintain. The fund shall be maintained out of regular assessments for common expenses, but shall be deposited in an account separate and segregated from operating funds.

Additionally, a working capital fund shall be established equal to at least two (2) months' estimated common charges for each Unit. Each Unit's share of the working capital fund must be collected from the Unit purchaser and transferred to the Trust at the time of the initial sale of each Unit from the Declarant to the Unit Owner, and maintained in a segregated account for the use and the benefit of the Trust. Amounts paid into the working capital fund shall not be considered as advance payment of regular assessments. The purpose of the working capital fund

is to insure that there will be cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Trustees. While the Declarant is in control of the Trust, the working capital funds cannot be used to defray Declarant's expenses, reserve contributions, or construction costs, or to make up any budget deficits.

After the takeover event, the Trustees may adjust the amount of the working capital fund to a level deemed reasonable. After the takeover event, the Trustees may apply any residue of funds to the reserve account or to the operating account or return the funds to the Unit Owners, as they see fit.

5.3 Maintenance and Repair of Units and Limited Common Elements.

5.3.1 Each Unit Owner shall be responsible for the proper maintenance, repair and replacement of his Unit (including garage), and the Limited Common Areas appurtenant thereto identified as the Unit Owner's responsibility in Section 7 of the Master Deed, and the maintenance, repair and replacement of utility fixtures serving the same which are not part of the Common Areas and Facilities, including, without limitation: interior walls, ceiling and floors, to include the concrete slab; windows, window glass, and window frames, including screens; window trim; doors; door glass; door frames and door trim; plumbing and sanitary waste fixtures and fixtures for water and other utilities; water heaters; fire suppression systems; radon vents and fans (if any); electrical service panel and electrical fixtures and outlets; heating and air conditioning equipment, if any (including the compressor and ancillary equipment located outside the Unit); and all wires, pipes, drains and conduits for water, electrical power and light, telephone, television and other utility services which are contained in and serve such Unit solely. Each Unit Owner shall be responsible for all damages for maintenance, repair and/or replacement obligations hereunder.

5.3.2 If the Trustees shall, at any time in their reasonable judgment, determine that a Unit is in such need of maintenance or repair that the market value of one or more other Units is being adversely affected or that the condition of the Unit or any fixtures, furnishing, facility or equipment therein is hazardous to any Unit or the occupants thereof, the Trustees shall, in writing, request the Unit Owner to perform the needed maintenance, repair or replacement or to correct the hazardous condition, and, in case such work shall not have been commenced within fifteen (15) days (or such reasonable shorter period in case of emergency as the Trustees shall determine) of such request and thereafter diligently pursued to completion, the Trustees shall be entitled to have the work performed for the account of such Unit Owner whose Unit is in need of work and to enter upon and have access to such Unit for such purpose; and the cost of such work as is reasonably necessary to complete the maintenance, repair or replacement or to correct the hazardous condition shall constitute a lien upon such Unit and the Unit Owner thereof shall be personally liable therefor.

5.4 Maintenance, Repair and Replacement of Common Areas and Facilities, Limited Common Areas, and Assessments of Common Expenses. The Trustees shall be responsible for the proper maintenance, repair and replacement of the Common Areas and Facilities of the Condominium, and Limited Common Areas that are not the Unit Owner's responsibility under

Section 7 of the Master Deed, including without limiting the generality of the foregoing, the Property Operating Requirements, subject to the provisions of Section 5.7 hereof with respect to repairs.

O F F I C I A L O F F I C I A L
C O P Y C O P Y

5.5 Common Expenses, Profits and Funds. The Unit Owners shall be liable for common expenses and entitled to common profits of the Condominium in proportion to their respective percentage of beneficial interest as set forth in Exhibit B of the Master Deed, as amended from time to time, provided, however, that each Unit Owner shall be solely responsible to any utility companies for the cost of utility services billed or assessed in connection with the furnishing of utilities to his Unit which are separately metered. The Trustees may at any time or times distribute common profits among the Unit Owners in such proportions.

5.5.1 At least thirty (30) days prior to the commencement of each fiscal year of this Trust (and within thirty (30) days after the recording hereof with respect to the portion of the fiscal year then remaining), the Trustees shall estimate the common expenses expected to be incurred during such fiscal year, together with a reasonable provision for contingencies and reserves, and, after taking into account any undistributed common profits from prior years, shall determine the assessment to be made for such fiscal year. The Trustees shall promptly render statements to the Unit Owners for their respective shares of such assessments according to their respective percentages of the undivided interest in the Common Areas and Facilities (as set forth in said Exhibit B, as the same may be amended), and such statements shall be due and payable in one-twelfth (1/12) installments on the first day of each month. If a Unit Owner is in default in the payment of an assessment for a period of more than sixty (60) days, the Trustees may accelerate any remaining installments of the assessment for the fiscal year. In the event that the Trustees determine during a fiscal year the assessment so made is less than the common expenses that actually incurred, or, in the reasonable opinion of the Trustees, likely to be incurred, they shall make a supplemental assessment or assessments and render statements for such assessments in the same manner as is done for annual assessments. The amount of each such payment, together with interest thereon shall if not paid when due, accrue at the rate of eighteen percent (18%) per annum or such lesser rate of interest as shall then be the maximum rate permitted by law, and shall constitute a lien on the Unit of the Unit Owner assessed, pursuant to the provisions of Section 6 of Chapter 183A. Failure of the Trust to formally adopt a new budget shall be deemed a re-adoption of the previous year's budget.

5.5.2 Each Unit Owner shall be personally liable for those common expenses assessed against his Unit which are due and payable during his period of ownership. No Unit Owner shall be liable for the payment of any part of the common expenses assessed against his Unit which become due and payable subsequent to a sale, transfer or other conveyance of such Unit. Any Unit Owner may, subject to the terms and conditions specified in these By-Laws, and subject to the approval of the Trustees in their sole discretion, provided that his Unit is free and clear of liens and encumbrances other than the statutory lien for unpaid common expenses, convey his or her Unit to the Trustees and, in such event, be exempt from common expenses thereafter becoming due. A purchaser of a Unit shall be personally liable for the payment of common expenses assessed and due, but unpaid, on account of such Unit prior to its acquisition by him, except that (a) a purchaser of a Unit at the foreclosure sale or (b) any first mortgagee who comes into possession of a Unit pursuant to the remedies provided in the mortgage or by virtue of

foreclosing the mortgage or taking a deed (or assignment) in lieu of foreclosure, shall take the property free of any claims for unpaid common expense assessments against the Unit which accrue prior to the time such purchaser or mortgagee comes into possession or takes title to the Unit, except as otherwise provided under Section 6 of Chapter 183A, as it may be amended from time to time.

5.5.3 In the event of default by any Unit Owner in paying to the Trustees his common expenses, such Unit Owner shall be obligated to pay all expenses, including attorneys' fees and court costs, incurred by the Trustees in proceedings brought to collect such unpaid common expenses. The Trustees shall have the right and duty to attempt to recover such common expenses, together with interest thereon, and the expenses of the proceeding, including attorneys' fees, in an action brought against such Unit Owner, or by foreclosure of the lien on such Unit as provided in Section 6 of Chapter 183A.

5.5.4 After a successful action brought by the Trustees to foreclosure a lien on a Unit because of unpaid common expenses, a Unit Owner, allowed by the Trustees to remain in the Unit for a period of time, may, at the option of the Trustees, and after entry of a judgment of foreclosure, be required to pay rental for the use of the Unit. The Trustees, acting on behalf of all Unit Owners, shall have power to purchase such Unit, together with its appurtenant interest, at the foreclosure sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same, provided that the Trustees shall not vote the interest appurtenant to such Unit. A suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

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

5.5.6 Within ten (10) business days after receiving appropriate request from a Unit Owner, a purchaser of a Unit under a written contract of sale therefor, or a Unit Mortgagee, addressed to the Trustees, together with payment of a reasonable fee, not to exceed Twenty Dollars (\$20.00), the Trustees shall supply a certificate in recordable form stating the amount of any unpaid assessments (including interest due thereon and cost of collection associated therewith) for common expenses against the Unit. Upon the recording at the Registry of Deeds of such certificate signed either by the Secretary of the Trust or by a majority of the Trustees who then appear to be serving according to the records of said Registry of Deeds, the Unit involved shall be discharged from any lien for unpaid common expenses which do not appear in said certificate.

5.6 Insurance.

5.6.1 The Trustees shall obtain and maintain, to the extent obtainable, the following insurance:

- (a) A master policy covering all of the Common Areas and Facilities (except land, foundation, excavation and other items normally excluded from coverage), including fixtures and building service equipment to the extent that they are part

of the Common Areas and Facilities of the Condominium, as well as common personal property and supplies, and other common personal property belonging to the Trust; the master policy shall also include any fixtures, equipment or other property within the Units which are customarily considered a part of the Unit for mortgage purposes (regardless of whether such property is a part of the Common Areas and Facilities).

The master policy shall afford protection at least against the following:

- (1) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;
- (2) All other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement.

The policy shall be in an amount equal to one hundred percent (100%) of current replacement cost of the Condominium, exclusive of land, foundation, excavation, and other items normally excluded from coverage, and shall include a so-called Replacement Cost Endorsement.

The named insured shall be the Trustees of the Trust "for the use and benefit of the individual owners." Each first mortgagee, its successors and assigns, shall be named in the standard mortgage clause for each Unit on which there is such a mortgage.

The policy shall contain a clause which provides that it may not be cancelled or substantially modified without a least ten (10) days prior written notice to the Trust and to each holder of a first mortgage which is listed as a scheduled holder of a first mortgage in the insurance policy.

In addition to the foregoing, the policy shall provide for the following:

- (1) Recognition of any Insurance Trust Agreement (if any there be);
- (2) A waiver of the right of subrogation against any Unit Owner individually;
- (3) The insurance shall not be prejudiced by any act or neglect of an individual Unit Owner which is not in the control of such Unit Owners collectively;
- (4) The policy is primary in the event the Unit Owner has other insurance covering the same loss, generally referred to as "Special Condominium Endorsement"; and

- (5) The policy shall provide, in the case of fire and other hazard insurance, that, where the provisions of the policy give the insurance company the option of restoring the damage in lieu of making a cash settlement, said option may not be exercised without the approval of the Trustees and/or the servicer(s) for the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association or like entity which may have loans with respect to the Condominium, nor may such option be exercised where it would conflict with any applicable requirement of law.

An Agreed Amount and Inflation Guard Endorsement shall be part of the policy, if available.

- (b) Liability Insurance for comprehensive general liability insurance coverage covering all of the Common Areas and Facilities owned by the Trust. Such coverage shall be for not less than One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence, and shall include, without limitation, legal liability of the insureds for property, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas and Facilities, legal liability arising out of law suits related to employment contracts of the Trust, and shall provide further that such policy or policies may not be cancelled or substantially modified by any party without at least ten (10) days' prior written notice to the Trust and/or to the holders of first mortgages which are listed as scheduled holders of first mortgages in the insurance policy.
- (c) Construction Code Endorsement, such as Demolition Cost Endorsement, a Contingent Liability for Operation of Building Loans Endorsement, and an Increased Cost of Construction Endorsement, if the Condominium is or becomes subject to a construction code provision which would become operative and require changes to undamaged portions of the building.
- (d) Workers' Compensation Insurance as required by law.
- (e) Such other insurance as the Trustees may from time to time determine or as may be required by law.
- (f) A fidelity bond or bonds in blanket form for all officers, directors, trustees and employees of the Trust and all other persons handling or responsible for funds belonging to or administered by the Trust, and if the Trust has delegated some or all of the responsibility for the handling of funds to a management agent, then such bonds shall cover the officers, employees and agents of the management agent handling or responsible for funds belonging to or administered on behalf of the Trust. The total amount of fidelity bond coverage shall not be less than the estimated maximum of 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 the (3) months aggregate assessments on all Units plus reserve funds. If, however, any mortgagee requires compliance with Federal Home Loan Mortgage Corporation guidelines, then the aggregate amount shall not be less than a sum equal to one and one-half times the estimated annual operating expenses plus reserve funds, unless the reserve funds are not in the control of the managing agent. The fidelity bonds shall: (i) name the Trust as an obligee; (ii) 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 expressions; and (iii) provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Trust and to the holders of first mortgages which are listed as scheduled holders of first mortgages in the insurance policy.

- (g) Directors and Officers Insurance. During such time as the Declarant or its agents, employees or assigns continue to act as Trustee, Directors or Officers Insurance shall be maintained and thereafter, may be maintained at the option of the Trustees.

5.6.2 The following additional insurance provisions shall be applicable:

- (a) The Trustees shall deal with the insurer or insurance agent in connection with the adjusting of all claims covered by insurance policies provided under Section 5.6.1 above and shall review with the insurer or insurance agent, at least annually, the coverage under said policies, and shall make any necessary changes in the policies provided for under Section 5.6.1 above in order to meet the coverage requirements thereof.
- (b) Each Unit Owner may obtain additional insurance for his own benefit and at his own expense. No such policy shall be written so as to decrease the coverage under any of the policies obtained by the Trustees, and each Unit Owner hereby assigns to the Trustees the proceeds of any such policy to the extent that any such policy does in fact result in a decrease to such coverage, said proceeds to be applied pursuant to the terms hereof as if produced by such coverage. Copies of all such policies, except policies covering only personal property owned or supplied by individual Unit Owners, shall be filed with the Trustees.
- (c) Each Unit Owner shall obtain insurance for his own benefit and at his own expense insuring all personal property presently or hereafter located in his Unit and/or its appurtenant Common Areas and Facilities and all improvements to his Unit which exceed a total value of One Thousand Dollars (\$1,000.00) and which are not reported in writing to the Trustees. Each such policy of insurance obtained by a Unit Owner must contain waivers of subrogation by the insurer as to claims against the Trustees, manager (if any), all Unit Owners, and other persons entitled to occupy any Unit or other portion of the Condominium and

each of their respective agents and employees. Unit Owners shall provide the Trustees with a certificate evidencing such insurance.

O F F I C I A L O F F I C I A L

- (d) Each Unit Owner, at the time of the commencement of construction of improvements to his Unit which exceed a total value of One Thousand Dollars (\$1,000.00), shall notify the Trustees of such construction, and, upon receipt of such notice, the Trustees shall notify the insurer under any policy obtained pursuant to Section 5.6.1 hereof of any such improvements, and shall increase the coverage under such policies accordingly. Unless otherwise determined by the Trustees, the cost of such additional coverage on account of a Unit Owner's improvements shall constitute a common expense attributable to the Unit involved and shall be payable to the Trustees on demand at such intervals as the Trustees shall establish, so that they shall have the money available to pay to the insurer.

5.6.3 The Trustees, as Insurance Trustees, shall collect and receive all casualty loss insurance proceeds and shall hold, use, apply and disburse the same in accordance with the applicable provisions of Section 5.7 hereof. With respect to losses covered by such insurance which affect portions or elements of a Unit or of more than one Unit to substantially the same or to different extents, the proceeds relating thereto shall be used, applied and disbursed by the Trustees in a fair and equitable manner.

5.6.4 The cost of all such insurance obtained and maintained by the Trustees pursuant to the provisions of this Section 5.6 shall be a common expense.

5.6.5 Certificates of insurance with proper mortgagee endorsements shall be issued to each Unit Owner and his mortgagee(s) when requested.

5.6.6 Notwithstanding anything in this Trust and By-Laws to the contrary, if a Unit Owner, by virtue of any activities he conducts in his Unit, causes an increase in the premiums for any insurance obtained by the Trustees, he shall pay the amount of all such increases to the Trustees on demand as an additional common expense attributable to his Unit.

5.6.7 Each Unit Owner hereby waives, discharges and releases all claims and rights to recovery against the Trustees, the manager (if any), all Unit Owners and other persons entitled to occupy any Unit or other portion of the Condominium and each of their respective agents and employees on account of any loss or damage, whether to person or property, insured against under the policies of insurance obtained by each Unit Owner for their own benefit. This waiver shall constitute a waiver of subrogation for purposes of such policies.

5.7 Rebuilding, Restoration and Condemnation.

5.7.1 In the event of any casualty loss to the Common Areas and Facilities, the Trustees shall determine, in their reasonable discretion, whether or not such loss exceeds ten percent (10%) of the value of the Condominium immediately prior to the casualty, and shall notify all Unit Owners of such determination.

- (a) If such loss as so determined does not exceed ten percent (10%) of such value, the Trustees, acting as Insurance Trustees, shall promptly adjust and collect the loss, arrange for the prompt repair or restoration of the damaged areas, and disburse the proceeds of all insurance policies in payment of all costs and expenses incurred in connection with such repair or restoration in appropriate progress payments and with appropriate retainage.
- (b) If such loss as so determined exceeds ten percent (10%) of such value and, if within one hundred twenty (120) days after the date of such loss, seventy-five percent (75%) or more of the Unit Owners do not agree to proceed with repair or restoration, each Unit Owner's proportionate share of the insurance proceeds with respect to the Common Areas and Facilities based upon the Unit's respective undivided interest in said Common Areas and Facilities, together with the portion of the insurance proceeds allocated to any Unit as a result of a loss to such Unit and/or its appurtenant Common Areas and Facilities due to the casualty, shall, to the extent permitted by law, be divided among the Unit Owners and shall be paid first to the holders of the first mortgages on their Units, if any, up to, but not in excess of, the amounts secured thereby, and thereafter to the Unit Owners, and the Condominium shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of a partition sale, together with any common funds of the Trust (adjusted for insurance proceeds paid or payable as aforesaid), shall be divided among the Unit Owners in proportion to their Units' undivided interests in the Common Areas and Facilities and shall be paid first to the holders of the first mortgages on their Units, if any, to the extent of the amounts secured thereby, and thereafter to the Unit Owners. If, on the other hand, seventy-five percent (75%) or more of the Unit Owners agree to proceed with the necessary repair or restoration, the Trustees shall arrange for the repair and restoration of the damaged areas, and disburse the proceeds of all insurance policies in payment of all costs and expenses incurred in connection therewith in appropriate progress payments and with appropriate retainage.
- (c) Notwithstanding the provisions of subparagraphs (a) and (b) hereof, any restoration or repair of the Condominium shall be performed substantially in accordance with the Condominium documents and the original plans and specifications unless other action is approved by "eligible holders of mortgages" (as the term "eligible mortgage holder" is defined and may from time to time be defined under Chapter 183A) on Units which have at least fifty-one percent (51%) of the votes of Units subject to eligible mortgages; and further provided that no reallocation of interests in the Common Areas and Facilities resulting from a Partial destruction or partial condemnation of the Condominium shall be effected without the prior approval of the eligible holders of mortgages on all remaining Units, whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining Units subject to eligible mortgages.

5.7.2 In the event that the total cost of repair and restoration as estimated on the basis of an independent appraisal, or as determined during the course of repair or restoration, exceeds the total sum of available insurance proceeds, then the Trustees shall assess all the Unit Owners, as a common expense, the amount in excess of available insurance proceeds necessary to cover the cost of the repair and restoration; provided, however, that the cost of repairing or restoring improvements to a Unit, which improvements exceeded a value of One Thousand Dollars (\$1,000.00) when they were made (said value to be determined in the reasonable judgment of the Trustees) and were not reported to the Trustees as required by Section 5.6.2(d) hereof, shall be borne exclusively by the Owner of the Unit involved; and provided further that if the casualty loss exceeds ten percent (10%) of the value of the Condominium as described in Section 5.7.1(b) hereof and if such excess cost of repairs over available insurance proceeds exceeds ten percent (10%) of the value of the Condominium prior to casualty, any Unit Owner not agreeing as provided in Section 5.7.1(b) hereof to proceed with the repair and restoration may apply to the Superior Court in which district the Condominium lies, on such notice to the Trustees 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.

5.7.3 The Trustees may perform emergency work essential to the preservation and safety of the Condominium, or the safety of persons, or required to avoid the suspension of any essential service to the Condominium, without having the first adjusted the loss or obtained the proceeds of insurance.

5.7.4 If there shall have been 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 divided into separate shares for the Trust and the Unit Owners of the damaged Units, in proportion to the respective costs of repair or restoration of the damaged portions of the Common Areas and Facilities and of each damaged Unit and its damaged appurtenant Common Areas and Facilities, and shall then be paid over to the Trustees and/or each such Unit Owner entitled to a share.

5.7.5 In the event that any of the Units or the Common Areas and Facilities of the Condominium are affected by eminent domain proceedings, the following shall apply:

- (a) If a Unit is acquired by eminent domain, or if a part of a Unit is acquired by eminent domain, leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Master Deed, the award shall compensate the Unit Owner for his Unit and its undivided percentage interest in the Common Areas and Facilities whether or not any of the Common Areas and Facilities have been acquired. Upon acquisition, unless the decree otherwise provides, that Unit's entire undivided interest in the Common Areas and Facilities and the beneficial interest under the Trust shall automatically be allocated to the remaining Units of the Condominium in proportion to the respective undivided interest of the remaining Units in the Common Areas and Facilities prior to the taking, and the Trustees shall promptly prepare, execute and record an amendment to the Master Deed and the Trust reflecting the

reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection shall thereafter be a part of the Common Areas and Facilities.

O F F I C I A L O F F I C I A L

- (b) Except as provided in subsection (a), if part of the Unit is acquired by eminent domain, the award shall compensate the Unit Owner for the reduction in value of the Unit and its undivided percentage interest in the Common Areas and Facilities. Upon acquisition: (i) that Unit's undivided interest in the Common Areas and Facilities shall be reduced on the basis of the reduction of the fair value of the Unit as of the date of such taking bears to the fair value of the remaining Units in the Condominium as of such date; and (ii) the reduction of interest in the Common Areas and Facilities of such Unit shall be divested from the Unit so acquired and shall automatically be reallocated to the remaining Units in proportion to the respective undivided interests of the remaining Units in the Common Areas and Facilities prior to the date of such taking.
- (c) If the Common Areas and Facilities or any part thereof are acquired by eminent domain, the Trustees shall be the party in interest to receive any such award and to pursue any additional awards due to such taking. Any such award or any action taken by the Trustees pursuant hereto shall be brought or paid to the Trustees naming the "Trustees of the Trust as Condemnation Trustees for the benefit of the Condominium, the several Unit Owners and their respective mortgagees." The Trustees shall divide any portion of the award not used for restoration or repair of the remaining Common Areas and Facilities among the Unit Owners in proportion to their respective undivided percentage interests before the taking, but any portion of the award attributable to the acquisition of a portion of the Common Areas and Facilities which had been exclusively reserved to any Unit pursuant to the terms of the Master Deed shall be paid to the Owner of such Unit or his mortgagee. Each Unit Owner hereby appoints the Trustees hereof as his attorney-in-fact for the foregoing purposes.

5.8 Improvements to Common Areas and Facilities.

5.8.1 If and whenever the Trustees shall propose to make any improvement to the Common Areas and Facilities of the Condominium it shall be in accordance with Chapter 183A, Section 18, as amended.

5.8.2 If and whenever any Unit Owner shall propose to make an improvement to or affecting the Common Areas and Facilities of the Condominium at such Unit Owner's own expense, and the Trustees determine in their reasonable discretion that such improvement would be consistent and compatible with the provisions and intent of the Master Deed, the Trustees, after consulting with the Design Review Committee hereof may, but shall not be obligated to, authorize such improvements to be made at the sole expense of the Unit Owner proposing the same, without the consent or approval of the other Unit Owners, as the Trustees in their reasonable discretion deem to be necessary or desirable in the circumstances.

5.9 Determination of Trustees Subject to Arbitration. Notwithstanding anything contained in Section 5.7 or Section 5.8 to the contrary: (a) In the event that any Unit Owner or Owners shall by notice in writing to the Trustees dissent from any determination of the Trustees with respect to the value of the Condominium or of any Unit or Units or any other determination or action of the Trustees under Section 5.7 or Section 5.8, and such disputes shall not be resolved within thirty (30) days after such notice, then either the Trustees or the dissenting Unit Owner or Owners may submit the matter to arbitration, and for that purpose one arbitrator shall be designated by the Trustees, one by the dissenting Unit Owner or Owners, and a third by the two arbitrators so designated, and such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association then obtaining; and (b) the Trustees shall not in any event be obligated to proceed with any repair, rebuilding or restoration, or any improvement, unless and until they have received funds in an amount equal to the estimate of the Trustees of all costs associated hereunder.

5.10 Design Review Committee and Procedures.

5.10.1 No Unit Owner shall make any addition, alteration or improvement in or to the Unit which could affect the structural integrity or fire rating of the Building in which the Unit is located or cause any dislocation or impairment of or interruption to the Common Areas and Facilities, unless the same shall have been approved by the Trustees in accordance with the provisions of this Section 5.10 and shall conform to the conditions set forth in Section 5.10.

5.10.2 The following procedures and conditions shall apply with respect to all additions, alterations, improvements, structures, installations or other work or activities (hereinafter individually or collectively referred to as the "Proposed Work") which are subject to the approval procedures and conditions of this Section 5.10:

Prior to the commencement of the Proposed Work:

- (i) The Unit Owner shall have submitted plans and specifications for the Proposed Work to the Trustees for their approval pursuant to the provisions of this Section 5.10. Such plans and specifications shall be in such detail as the Trustees may reasonably request and shall be prepared and signed by a Registered Architect, Registered Professional Engineer and/or Registered Land Surveyor satisfactory to the Trustees, if so requested by Trustees;
- (ii) The Unit Owner shall have submitted to the Trustees such supplemental information, in addition to the said plans and specifications, as the Trustees shall reasonably request in order to fully evaluate the Proposed Work; and
- (iii) The Trustees, acting as a Design Review Committee, shall have given their written approval of the Proposed Work, which approval shall not be unreasonably withheld.

5.11 Pets. No pets, other than common domestic animals, including, but not limited to, dogs, cats, birds, tropical fish and goldfish, shall be kept in any Unit or on any of the Common

Areas and Facilities. Under no circumstance are reptiles or "exotic" animals to be kept in any Unit or on the Common Areas or Facilities. Upon petition by any Unit Owner, the Trustee shall have the right to approve or disapprove the keeping of any pet other than those species and types listed above. Nonetheless, the Trustees may establish Rules for the conduct of pets in the Common Areas and Facilities and to establish standards pursuant to which the Trustees may require a pet to be prohibited from using the Common Areas and Facilities of the Condominium. There shall be no breeding of any animals in the Common Areas and Facilities. Any damage or accelerated wear and tear to the Common Areas and Facilities caused by a specific pet shall be repaired at the expense of the Unit Owner owning such pet, which expense shall constitute a common expense and shall be payable to the Trustees on demand.

5.12 Rules, Regulations, Restrictions and Requirements. The Trustees shall have the right (which right shall not be delegated) at any time and from time to time to adopt, amend and rescind administrative Rules governing the details of the operation and use of the Units and the Common Areas and Facilities. The restrictions on and requirements respecting the use and maintenance of the Units and the use of the Common Areas and Facilities are to be consistent with provisions of the Master Deed and this Trust and By-Laws, and are designed to prevent unreasonable interference with the use by the Unit Owners of their Units and of the Common Areas and Facilities. The Trustees shall have the power to enforce the Master Deed, these By-Laws and the Rules adopted pursuant hereto and shall have the power to levy fines against the Unit Owners for violations thereof. The Trustees may set reasonable fines for any violation, but each day a violation continues after notice shall be considered a separate violation. Fines may be enforced against the Unit Owner or Unit Owners involved as common expenses owed by the particular Unit Owner or Unit Owners. In the case of persistent violation of the Rules by a Unit Owner, the Trustees shall have the power to require such Unit Owner to post a bond to secure adherence to the Rules. Each Unit Owner may, if the Trustees choose not to enforce a violation of the Rules, seek to enforce such violation at the Unit Owner's sole cost and expense.

5.13 Manager. The Trustees may hire or appoint a manager or managing agent to perform such duties in the administration, management and operation of the Condominium, including the incurring of expenses, the making of disbursements and keeping of accounts, as the Trustees shall from time to time determine. However, notwithstanding the appointment of such a manager, the Trustees shall retain ultimate control over the administration, management and operation of the Condominium, and they may not delegate to such manager those powers and duties specified, under Section 5.1 hereof, not to be delegable. Any agreement for professional management of the Condominium shall be terminable without cause and without incurring payment of a termination fee on ninety (90) days' or less written notice. The term of such an agreement shall not exceed three (3) years.

5.14 Meetings.

5.14.1 The Trustees shall meet annually on the date of the annual meeting of the Unit Owners and at such meeting shall elect the Chairperson, Treasurer and Secretary. Other meetings of the Trustees may be called by the Chairperson and shall be called upon the written request of at least two (2) Trustees specifying the issue(s) to be discussed at the meeting,

provided, however, that written notice of each meeting, stating the place, day, hour and subject thereof, shall be given at least three (3) days before such meeting to each of the Trustees.

O F F I C I A L O F F I C I A L

5.14.2 The first annual meeting of the Unit Owners shall be held at 7:30 p.m. on the second Thursday of the month which is two (2) years following the date of recording of this Trust or if earlier, of the month in which the takeover event occurs, and the annual meeting thereafter shall be held on the second Thursday of such month in each subsequent year. The meeting shall be held at a location designated by the Trustees within five (5) miles of the Condominium. Special meetings of the Unit Owners may be called at any time by the Trustees, and special meetings of the Unit Owners shall be called by the Trustees upon the written request of Unit Owners holding at least thirty-three and three-tenths percent (33.3%) of the beneficial interests specifying the issue(s) to be discussed at the meeting. Written notice of any such special meeting designating the place, day, hour and subject 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 of or action by the Unit Owners is necessary or appropriate, the notice of such meeting shall so state and reasonably specify such matter.

The presence in person or by proxy of the holders of at least fifty percent (50%) of the beneficial interests hereunder shall be necessary to constitute a quorum at all meetings of the Unit Owners for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the Unit Owners, the Unit Owners present in person or represented by proxy shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented; once a quorum is obtained, any business may be transacted which could have been transacted at the meeting as originally called. Notwithstanding the foregoing, no such subsequent meeting shall be held more than sixty (60) days following the date of the originally called meeting.

Unless a greater vote of the Unit Owners shall be required by the provisions of Chapter 183A, the Master Deed or this Trust, a vote of the holders of at least fifty percent (50%) of the beneficial interests, present in person or by proxy at any meeting of the Unit Owners at which a quorum is present, shall be sufficient to transact the business of the Unit Owners, provided always that the Unit Owners may not act to rescind, reverse, modify or amend any decision of or action taken by the Trustees pursuant to their authority under this Trust, nor may the Unit Owners undertake to exercise in any manner the powers or functions of the Trustees hereunder, unless such action by the Unit Owners is authorized by the affirmative vote of the holders of at least two-third (2/3) of the beneficial interests hereunder.

5.15 Notices to Unit Owners. Every notice to any Unit Owner, required or permitted under the provisions hereof or which may be ordered in any judicial proceeding, shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one or more of the Trustees to such Unit Owner by leaving such notice with him at his residence in the

Condominium or by mailing it, postage prepaid, addressed to such Unit Owner at such address as may appear upon the records of the Trustees.

A N

O F F I C I A L O F F I C I A L

5.16 Record Date. The Trustees may, for a period not in excess of thirty (30) days prior to the date of any meeting of the Unit Owners, fix in advance a time as a record date for determining the Unit Owners having a right to notice of and to vote at such meeting, and in such case only Unit Owners of record on such record date shall have such rights, notwithstanding any transfer by a Unit Owner of his interest in the Unit after the record date. If no record date is fixed, the record date for the aforementioned purposes shall be 5:00 p.m. on the day next preceding the day on which notice of a meeting of the Unit Owners is given.

5.17 Order of Business. The order of business at all meetings of Unit Owners shall be as follows:

- (a) Certificate of Quorum.
- (b) Proof of notice of meeting.
- (c) Reading and Acceptance of the minutes of the preceding meeting.
- (d) Reports of officers.
- (e) Report of Trustees.
- (f) Reports of committees.
- (g) Election of Trustees (when required).
- (h) Other business that may, from time to time, be required.
- (i) Open comments of the Owners.

5.18 Voting at Meetings. At meetings of Unit Owners, each Owner may vote in person or by proxy. All proxies shall be (a) in writing signed by or on behalf of all the Owners of the Unit involved, (b) dated and (c) filed with the Secretary of the Trust. No proxy shall be valid beyond the date of the final adjournment of the first meeting of Owners, whether annual or special, held on or after the date thereof, and every proxy shall automatically terminate upon sale by the Owner of the Unit. A proxy may be revoked by notice given by an Owner of the Unit involved to the person presiding at the meeting at which it is to be cast. Any proxy which purports to be revocable without such notice shall be void.

The Trustees may utilize absentee ballots for Trustee election purposes.

5.19 Officers.

5.19.1 The Officers of the Trust shall be a Chairperson, a Treasurer, a Secretary and such other offices as the Trustees from time to time may determine.

O F F I C I A L O F F I C I A L

5.19.2 The officers shall be the original Trustees or the successors selected by the Declarant until the occurrence of the takeover event as defined in Section 3.1 hereof, and, thereafter, the Trustees, at their regular meeting, or if such regular meeting is not held or in the event of resignation, removal or decease of an officer, at any special meeting of the Trustees, shall elect the officers or fill any vacancies by majority vote.

5.19.3 All officers shall hold office for a term of one (1) year and until their successors are elected and qualified.

5.19.4 Any officer may resign at any time by written notice to the Chairperson or the Secretary, which notice shall take effect on the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any officer may be removed at any time, with or without cause, by a vote of a majority of the Trustees, provided that, if removal for cause shall be proposed, the officer(s) involved shall be granted the opportunity to be heard by the Trustees.

5.19.5 A vacancy in any office may be filled in the manner prescribed in Section 5.19.2 hereof. The officer selected to fill such a vacancy shall serve for the remainder of the term of the officer he replaces.

5.19.6 The Chairperson shall be a Trustee and shall preside at all meetings of the Trustees and of the Unit Owners and shall have such other powers and perform such other duties as are provided in the Master Deed or in this Trust and By-Laws or as may be designated by the Trustees or the Unit Owners from time to time or as are ordinarily exercised by the presiding officer of a corporation.

5.19.7 The Secretary shall record the votes and keep the minutes of all meetings of the Trustees and keep the minutes of all meetings of the Trustees and of the Unit Owners in a book or books to be kept for that purpose. He shall keep the records and documents of the Trustees and of the Unit Owners. He shall record in a book kept for that purpose the names of all Unit Owners, together with their addresses as registered by such Unit Owners, and shall have such other powers and duties as may be delegated to him by the Trustees or the Unit Owners from time to time. The Trustees may delegate such of the Secretary's powers and duties to the manager or managing agent as they deem to be advisable.

5.19.8 The Treasurer shall be responsible for the funds of the Trust and shall be responsible for keeping or having kept full and accurate financial records and books of account showing all receipts and disbursements of the Trust and any other financial data required by the Trustees or by the Unit Owners. He shall be responsible for the deposit of all funds in the name of the Trustees in such depositories as may be designated by the Trustees from time to time. The Trustees may delegate such of the Treasurer's powers and duties to the manager or managing agent as they deem to be advisable.

5.20 Inspection of Books, Report to Unit Owners. Books, accounts, and records of the Trustees shall be open to inspection to any one or more of the Trustees and the Unit Owners and first mortgage holders of the Units at all reasonable times. The Trustees shall, as soon as reasonably possible after the close of each fiscal year or more often if convenient to them, submit to the Unit Owners a report of the operations of the Trustees for such year which shall include financial statements in such summary form and in such detail as the Trustees shall deem proper. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees given by certified or registered mail within a period of ninety (90) days after the date of the receipt by him, shall be deemed to have assented thereto.

The books, account and records shall be reviewed annually by an independent certified public accountant.

5.21 Checks, Notes, Drafts and Other Instruments. Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust from the working capital or reserve account must be signed by any two Trustees. Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust from the operating account may be signed by any two Trustees or by any person or persons to whom such power may at any time or from time to time be delegated by not less than a majority of the Trustees. Notwithstanding the foregoing, until the takeover event, checks, notes, drafts and other instruments need only be signed by one Trustee or by any person or persons to whom such power may at any time or from time to time be delegated by the Trustee.

5.22 Seal. The Trustees may adopt a seal circular in form bearing an inscription of the name of this Trust as set forth in Article I, but such seal may be altered by the Trustees at their pleasure, and the Trustees may, at any time or from time to time, at their option, adopt a common or wafer seal which shall be valid for all purposes.

5.23 Fiscal Year. The fiscal year of the Trust shall be the calendar year.

5.24 Removal from Condominium Law. Until such time as the Declarant has no beneficial interest hereunder and no further phasing rights under the Master Deed, Unit Owners holding one hundred percent (100%) of the beneficial interests, the written consent of holders of all liens on the Units and the written consent of the Declarant shall be required to approve the removal of the Condominium described herein from the provisions from Chapter 183A, and thereafter the provisions of Section 19 of said Chapter 183A shall apply; provided, however, if during such time as the Declarant holds a portion of the beneficial interest hereunder or further phasing rights under the Master Deed, the Declarant approves of such removal, the approval of Unit Owners holding at least seventy-five percent (75%) of the beneficial interest hereunder, together with consent in writing of the holders of all liens on the Units, shall also be required for such removal, all as provided in said Section 19 of Chapter 183A.

5.25 Sale or Lease of Units. Subject to such restrictions as may otherwise be set forth in the Master Deed or in this Trust and By-Laws or in individual deed restrictions, a Unit Owner may assign, lease, sell or otherwise transfer all of the interest in his Unit, together with (a) the

undivided interest in the Common Areas and Facilities appurtenant thereto; (b) all rights in any Limited Common Areas reserved for the Unit; (c) the interest of such Unit Owner in any Units theretofore acquired by the Trustees or their designees on behalf of all Unit Owners or the proceeds of the sale or lease thereof, if any; and (d) the interest of such Unit Owner in any other assets of the Condominium. No right to any Unit may be sold, leased, transferred or otherwise disposed of, except as part of a sale, lease, transfer or other disposition of the Unit to which such interests are appurtenant, or as part of a sale, lease, transfer or other disposition of such part of all Units.

5.26 Acquisition of Units by the Trustees. With the approval of Unit Owners holding at least seventy-five percent (75%) of the beneficial interests under this Trust, the Trustees may acquire a Unit using funds from the working capital and common expenses 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 percentage of beneficial interests as set forth in said Exhibit B, as a common expense, or the Trustees, in their discretion, may borrow money to finance the acquisition of such Unit, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the Unit to be so acquired by the Trustees, provided that the foregoing shall not apply to the foreclosure of Condominium liens except as it relates to an encumbrance or hypothecation of any property other than the Unit to be so acquired by the Trustees.

ARTICLE VI - RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUSTEES

6.1 Dealing with Trustees. No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record in the Registry of Deeds need inquire further as to the persons who are then Trustees hereunder. The receipt of the Trustees or any one or more of them of monies or things paid or delivered to them shall be effectual discharges therefrom to the persons paying or delivering the same, and no person from whom the Trustees or any one or more of them shall receive any money, property or other credit shall be required to see to the application thereof. No purchaser, mortgagee, lender or other person dealing with the Trustees, or with any real or personal property which then is or formerly was Trust Property, shall be bound to ascertain or inquire as to the existence of or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, or otherwise as to the purpose or regularity of any of the acts of the Trustees or any one or more of them purporting to be done in pursuance of any of the provisions or powers herein contained.

6.2 Recourse Against Trustees. No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees or by reason of anything done or omitted to be done by or on behalf of them or any of them against the Trustees individually, or against any such agent or employee or against any beneficiary either directly or indirectly, by legal or equitable 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 contract or claim or for the payment of any debts, damage, judgment or decree or of any money that may otherwise become due and payable to them from the Trustees or that neither the

Trustees nor the beneficiaries, present or future, shall be personally liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Unit Owners under the provisions of Chapter 183A.

C O P Y O F F I C I A L C O P Y

6.3 Instruments Subject to Trust Terms. 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 referenced shall have been made to this instrument.

6.4 Certification by Trustees for Recording. 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 recorded with the said Registry of Deeds. Any certificate executed by the Secretary of this Trust setting forth the names of the Trustees hereunder, when recorded with the Registry of Deeds, shall be conclusive evidence of the identity of those persons who are serving as Trustees in favor of all third persons, including the Trustees, acting in reliance thereon. Any certificate, signed by a majority of the Trustees in office at the time, setting forth as facts any matters affecting the Trust, including statements as to who are the beneficiaries, as to what action has been taken by the beneficiaries, and as to matters determining the authority of the Trustees to do any act, when duly acknowledged and recorded with said Registry 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 hereunder, setting forth the existence of any facts, the existence of which is necessary to authorize the execution of any instrument or the taking of any action by the Trustees or any one or more of them, as the case may be, shall, as to the persons acting in good faith in reliance thereon, be conclusive evidence of the truth of the statements made in such certificate and of the existence of the facts therein set forth.

ARTICLE VII - AMENDMENTS AND TERMINATION

7.1 Amendment of Trust. The Trustees, with the consent in writing of Owners of Units holding at least fifty-one percent (51%) of the voting power thereunder, may, at any time and from time to time, amend, alter, add to or change this Declaration of Trust in any manner or to any extent, the Trustees first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided always, however, that no such amendment, alteration, addition or change shall be valid or effective if:

7.1.1 It would alter, or in any manner or to any extent whatsoever, modify or affect the percentage of beneficial interests of any Unit Owner hereunder so as to be different than the percentage of the undivided ownership interest in the Common Areas and Facilities which is appurtenant to such Owner's Unit as set forth in the Master Deed;

7.1.2 It is made without the consent of Declarant during such time as the Declarant holds any beneficial interest hereunder or has any additional phasing rights under the Master deed; or

N O T

N O T

7.1.3 It would render this Trustee contrary to or inconsistent with the Master Deed or any requirements or provisions of Chapter 183A. O F F I C I A L

C O P Y

C O P Y

7.2 Necessity for Recording Amendments, Alterations, Additions or Changes. Any amendment, alteration, addition or change, pursuant to the foregoing provisions of Article VII, shall become effective upon the recording with the Registry of Deeds of an instrument of amendment, alteration, addition or change, as the case may be, signed, sealed and acknowledged in the manner required for the acknowledgement of deeds by a majority of the Trustees, setting forth in full the amendment, alteration, addition or change, and reciting the consent of the Unit Owners herein required to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with the 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.

7.3 Termination. The Trustee hereby created shall terminate only upon the removal of the Condominium from the provisions of Chapter 183A in accordance with the procedure therefor set forth in Section 19 of Chapter 183A and as provided by Section 5.24 of this Trust.

7.4 Disposition of Property on Termination. Upon the termination of this Trust, the Trustees may, subject to and in accordance with the provisions of Chapter 183A, sell and convert into money the whole of the Trust Property, or any part or parts thereof, and, after paying or retiring all known liabilities and obligations of the Trust and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind (at valuations made by them which shall be conclusive), all other property then held by them in trust hereunder to the Unit Owners as tenants in common, according to their respective percentages of beneficial interest hereunder. In making any sale under this provision, the Trustees shall have power to sell or vary any contract of sale and 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.

ARTICLE VIII - CONSTRUCTION AND INTERPRETATION; WAIVER

8.1 Terms. In the construction hereof, whether or not so expressed, words used in the singular or in the plural respectively including both the plural and singular, words denoting males include females, words denoting females include males and words denoting persons include individuals, firms, associations, companies (joint stock, limited liability or otherwise), trusts and corporations, unless a contrary intention is to be inferred from or required by the subject matter or context. The cover, title, index, headings of different parts hereof, and the marginal notes, if any, are inserted only for the convenience of reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation or effect hereof. All the trusts, powers and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts.

8.2 Waiver. ~~The~~ Trustees shall have the power and authority to waive any provision of this Trust affecting or ~~limiting~~ the rights of a Unit Owner for any cause or reason determined to be reasonable by ~~such~~ Trustees in their discretion; provided, however, that no such waiver on any one occasion shall constitute a waiver on any future occasion, nor shall any waiver of a provision of this Trust affect the Trustees' rights and power to enforce all other provisions of this Trust. No restriction, condition, obligation or provision contained in this Trust or By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same.

8.3 Conflicts. If any provision of this Trust shall be invalid or shall conflict with Chapter 183A, or, if any provision of this Trust conflicts with any provision of the Master Deed, the following rules of construction shall be used:

8.3.1 In the event of a conflict between the Trust and Chapter 183A, as amended, the provisions of Chapter 183A shall control;

8.3.2 In the event of a conflict between any numerical or percentage voting requirements for action set forth in the Master Deed and any such requirements set forth herein, the provisions requiring the greater percentage or fraction for action to be taken or avoided shall control; and

8.3.3 In the event of any conflict other than as set forth in Section 8.3.2 of this Section between the provisions of the Master Deed and any other provision hereof, the provisions of the Master Deed shall control.

8.4 Severability. In the event that any provision of this Trust shall be determined to be invalid or unenforceable in any respect, it shall be interpreted and construed to be enforceable to the extent and in such situations as may be permitted by applicable law, and, in any event, the partial or total enforceability of such provision shall not affect in any manner the validity, enforceability or effect of the remainder of this Trust; and, in such event, all of the other provisions of this Trust shall continue in full force and effect as if such invalid provision had never been included herein.

Executed as a sealed instrument as of this 13th day of February, 2003.

OHC Manager LLC

By: Thomas M. Ellis
Thomas M. Ellis, its Manager

BK 18232PG310

NOT
COMMONWEALTH OF MASSACHUSETTS

Essex OFFICIAL COPY, SS COPY OFFICIAL COPY February 13, 2003

The personally appeared the above-named Thomas M. Ellis, manager of OHC Manager LLC, and acknowledged the foregoing to be his free act and deed and the free act and deed of OHC Manager LLC, before me.

Clare M. Baker
Notary Public: Clare M. Baker
My Commission Expires: 6-3-2005

#249204 v1/37372/8