

[43 pages]

**WAYLAND GARDENS CONDOMINIUM TRUST**

**THIS DECLARATION OF TRUST** made and entered into this 19th day of November, 2009, at Wayland, Middlesex County, Massachusetts, by **WAYLAND GARDENS, LLC**, a Massachusetts limited liability company with a principal address of 35 Boston Street, Middleton, Essex County, Massachusetts 01949 (hereinafter, together with its respective successor(s) as trustee(s) hereunder, called the "Trustees").

*\* AND ROCCO SCIAPPA*

**ARTICLE I**

**THE TRUST, ITS NAME, PURPOSE, BY-LAWS AND TABLE OF CONTENTS**

**Section 1.1. Name of Trust.** The Trust shall be known as the **WAYLAND GARDENS CONDOMINIUM TRUST**, and under that name so far as legal, convenient and practicable, all business shall be carried on by the Trustees, and all instruments shall be executed by the Trustees. The name and the word "Trust," whenever used in this Declaration of Trust, except where the context otherwise requires, shall refer to the Trustees in their capacity as trustees, and not individually or personally, and shall not refer to the agents or employees of the Trust or to the Unit Owners.

**Section 1.2. Declaration of Trust and Purpose.** The Trustees hereby declare that they hold all of the rights and powers in and with respect to the common areas and facilities (the "Common Elements") of the **WAYLAND GARDENS CONDOMINIUM** (the "Condominium") established by the Master Deed, of even date and being recorded herewith, which are by virtue of the provisions of Chapter 183A of the Massachusetts General Laws conferred upon or exercisable by the organization of Unit Owners of the Condominium. Also, they hold all other property, real and personal, tangible and intangible, rights, interests, powers, duties and responsibilities conveyed to them as Trustees hereunder or under the Master Deed, as joint tenants with the right of survivorship, in trust to exercise, manage, regulate, administer, 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 (said Units being referred to herein as the "Units," and said owners being hereinafter called the "Unit Owners"), according to the schedule of undivided beneficial interest in the Common Elements (hereinafter referred to as the "Beneficial Interests") as provided in Section 3.1 hereof and in accordance with the provisions of Chapter 183A, this trust being the organization of the Unit Owners established pursuant to the provisions of said Chapter 183A for the purposes therein set forth of managing and regulating the Condominium. The provisions of this Declaration of Trust shall automatically become applicable to property and Units which may be added to the Condominium upon the recording of an Amendment to the Master Deed submitting such additional property and Units to the provisions of said Chapter 183A.

**RETURN TO:  
 MULLANE, MICHEL & MCINNES  
 6 BENNETT STREET  
 CAMBRIDGE, MA 02138**

Section 1.3. Trust Relationship. It is hereby expressly declared that a trust (and not a partnership or joint venture) has been created. The Unit Owners are Beneficiaries, and not partners, associates or in any other business relationship whatever between themselves with respect to the Trust property. They hold no relation to the Trustees other than that of Beneficiaries of this Trust, and have only those rights as are conferred upon them as Beneficiaries hereunder, and under and pursuant to the provisions of Chapter 183A.

Section 1.4. By-Laws. This Declaration of Trust, as from time to time amended, shall be comprised of the By-Laws of the Condominium and of the Trust.

Section 1.5. Table of Contents. For convenience of reference, a Table of Contents identifying by caption the provisions of the Trust is appended hereto.

## ARTICLE II

### DEFINITIONS

As used in this Declaration of Trust, the following terms shall have the following meanings unless the context hereof otherwise requires:

**"Appurtenant Interests"** shall have the meaning set forth in Section 6.1 hereof.

**"Beneficiaries"** shall mean the holders of any Beneficial Interests in this Trust.

**"Beneficial Interests"** shall have the meaning set forth in Section 1.2 above and Section 3.1 hereof.

**"Building"** shall mean the building which contains the Units and as more particularly described in the Master Deed.

**"By-Laws"** shall mean the provisions of this Trust, as the same may be amended from time to time.

**"Chapter 183A"** shall mean Chapter 183A of the General Laws of Massachusetts, as amended from time to time.

**"Common Charges"** shall mean all charges made by this Trust to the Unit Owners.

**"Common Elements"** shall mean the common areas and facilities of the Condominium as described and designated in the Master Deed.

**"Common Expenses"** shall mean the expenses of administration, operation, maintenance, repair or replacement of the Condominium and the Common Elements, expenses declared to be Common Expenses herein or by Chapter 183A, and betterment

and other assessments referred to in Chapter 183A which are assessed by the Trustees.

**"Common Profits"** shall mean the balance of all income rents, profits and revenues from the Common Elements and Common Charges after the deduction of the Common Expenses.

**"Common Funds"** shall mean all funds held by the Trustees, other than those held by the Trustees pursuant to Section 5.16.

**"Condominium"** shall mean the WAYLAND GARDENS CONDOMINIUM submitted by the Master Deed to the provisions of Chapter 183A.

**"Declarant"** shall mean WAYLAND GARDENS, LLC, being a Massachusetts limited liability company with a principal business address of 35 Boston Street, Middleton, Essex County, Massachusetts 01949, and its heirs, successors and assigns, including without limitation its successors in interest through mortgage foreclosure or deed in lieu thereof.

**"Declaration of Trust"** shall mean this Declaration of Trust as the same may be amended, restated or modified from time to time. References in this Declaration of Trust to "hereof, herein" and "hereunder" shall be deemed to refer to this Declaration of Trust and shall not be limited to the particular text, article or section in which such words appear.

**"Dispose of"** shall mean only such right of the Trustees to dispose of trust assets, not including the Common Elements of the Condominium.

**"FHLMC"** shall mean Federal Home Loan Mortgage Corporation.

**"FNMA"** shall mean Federal National Mortgage Association.

**"Limited Common Area"** shall mean such Common Elements of the Condominium as to which one or more Unit Owners have (alone or in common with one another) exclusive use easements as described in the Master Deed.

**"Master Deed"** shall mean the Master Deed of the land and Buildings known and numbered as 336 Commonwealth Road, Wayland, Middlesex County, Massachusetts 01778, of even date and recorded herewith, which subjects the Condominium to Chapter 183A, as such Master Deed as may be amended, restated or modified from time to time.

**"Municipality"** shall mean the Town of Wayland, Massachusetts.

"**Person**" or "**persons**" shall mean any person or persons, whether acting in an individual, representative or fiduciary capacity, and any firm or firms, corporation or corporations, partnership or partnerships, and any legal entity or entities whatsoever, except as otherwise specifically provided.

"**Property**" shall mean the properties and assets subjected to Chapter 183A by the Master Deed and any addition or additions thereto and any and all property, whether real, personal or mixed, tangible or intangible, held by the Trustees under the terms and provisions of this Trust on behalf of the Trust.

"**Registered Mortgagee**" shall mean any holder of a mortgage on a Unit whose name and address have been furnished to the Trustees.

"**Registry**" shall mean the Middlesex South District Registry of Deeds.

"**Rules and Regulations**" shall mean the rules and regulations for operation of the Condominium adopted pursuant to Section 5.14 hereof, as the same may be amended from time to time.

"**Superior Court**" shall mean the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts sitting in and for Middlesex County.

"**Trust**" shall have the meaning set forth in Section 1.1 hereof.

"**Trustees**" shall mean the persons executing this Declaration of Trust and their successors as appointed as provided in Section 4.1 of Article IV hereof.

"**Unit**" shall mean any Unit in the Condominium as described in the Master Deed and in Section 1.2 above.

"**Unit Deed**" shall mean the deed of a Unit to a Unit Owner.

"**Unit Owner**" shall have the meaning set forth in Section 1.2 hereof.

"**Unit Representative**" shall have the meaning set forth in Section 3.2 hereof.

### **ARTICLE III**

#### **UNIT OWNERS**

Section 3.1. Beneficial Interests. The beneficiaries of the Trust shall be the Unit Owners from time to time. The total Beneficial Interests in the Trust shall be divided among the Unit Owners in the percentage of their undivided interest in the Common Elements appertaining to the Units, as set forth in the Master Deed and incorporated herein by reference, as the same may be amended.

Section 3.2. Beneficial Interest to be Voted by One Person. The Beneficial Interest of each Unit shall be held and exercised as a whole, and shall not be divided among several owners of the Unit. To that end, whenever any Unit is owned of record by more than one person, the several owners of such Unit shall designate, by a notice in writing to the Trustees signed by all of the record owners of such Unit, one of the owners or occupants of the Unit (the "Unit Representative"), and the Unit Representative shall be authorized and entitled to cast votes, execute instruments and otherwise exercise the rights hereunder appertaining to such Unit which are granted to the Unit Owner, all as if the Unit Representative were the sole Unit Owner. The designation shall take effect upon receipt by the Trustees of such notice of designation signed by all of the Unit's Owners, and the designation may from time to time be changed or revoked by written notice signed by any one or more of the Unit's Owners. In the absence of an effective Unit Representative designation, the Trustees may from time to time designate by written notice to all owners of the Unit, any one of such Unit's Owners for such purposes. Any notices which are given hereunder to Unit Owners shall be effective if properly given to the Unit Representative.

Section 3.3. Annual Meetings. The first annual meeting of the Unit Owners shall be held on the first Saturday of November, 2010, and thereafter annual meetings shall be held on such date in each succeeding year. The purposes for which an annual meeting is to be held, in addition to those prescribed by law or by this Declaration of Trust, and except as otherwise specifically provided, need not be specified by the Trustees.

Section 3.4. Special Meeting in Place of Annual Meeting. If no annual meeting has been held in accordance with the foregoing provisions, a special meeting of the Unit Owners may be held in place thereof, and any action taken at such special meeting shall have the same force and effect as if taken at the annual meeting, and in such case all references herein to the annual meeting of the Unit Owners shall be deemed to refer to such special meeting. Any such special meeting shall be called as provided in Section 3.5 hereof.

Section 3.5. Special Meetings. A special meeting of the Unit Owners may be called at any time by the Trustees. Upon written application of all of the Trustees, or of Unit Owners holding one hundred percent (100%) in interest of the Beneficial Interest, the Trustees shall call a special meeting. Each call of a special meeting (including a special meeting in place of an annual meeting) shall state the place, date, hour and purposes of the meeting.

Section 3.6. Place of Meetings. All meetings of the Unit Owners shall be held at the Condominium, or any place in the municipality in which the Building is located as the Trustees may designate by written notice to all Unit Owners and each Registered Mortgagee. Any adjourned session of any meeting of the Unit Owners shall be held at the same location as the initial session or at such other location as is consistent with the foregoing and as may be designated in the vote of adjournment.

Section 3.7. Notice of Meetings. A written notice of each meeting of the Unit Owners, stating the place, date, hour and the purposes (except as otherwise provided herein) of the meeting, shall be given at least ten (10) days before the meeting to each Unit Owner, by leaving such notice with him/her or at his/her residence or usual place of business, or by mailing it, postage prepaid, addressed to such Unit Owner at his/her address as it appears in the records of the Trust, and to each Registered Mortgagee (and, if FNMA or FHLMC holds any interest in one or more mortgages on Units, such other first mortgagees of record as may be required from time to time by whichever of FNMA or FHLMC (or both) holds any interest), by mailing it, postage prepaid, to such mortgagee at its usual or last known address. Such notice shall be given by the Trustees. No notice of any meeting of Unit Owners need be given to a Unit Owner or mortgagee if a written waiver of notice, executed before or after the meeting by such Unit Owner or mortgagee, as the case may be, or his/her or its attorney thereunto duly authorized, is filed with the records of the meeting.

Section 3.8. Quorum of Unit Owners. At any meeting of the Unit Owners, a quorum shall consist of a majority in interest of all of the Beneficial Interest hereunder, except when a larger quorum is required by law or by this Declaration of Trust. Any meeting may be adjourned from time to time by a majority in interest of the Beneficial Interest voting upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

Section 3.9. Action by Vote. Except when a larger vote is required by law, by this Declaration of Trust or by the Master Deed, at any meeting at which a quorum is present, the Unit Owners may act on a question or fill an office by vote of a majority in interest of the Beneficial Interest.

Section 3.10. Action by Writing and by Proxy. Any action to be taken by the Unit Owners may be taken without a meeting if all Unit Owners entitled to vote on the matter consent to the action by writings filed with the records of the meetings of the Unit Owners. Such consent shall be treated for all purposes as a vote at a meeting. Unit Owners entitled to vote may vote either in person or by proxy in writing. The Trustees shall make any necessary determinations as to the validity of proxies.

## ARTICLE IV

### TRUSTEES

#### Section 4.1. Trustees.

Section 4.1.1. Number and Designation of Trustees. The number of Trustees hereunder shall be no less than one (1), and no more than three (3), as shall be determined from time to time by majority vote of the respective Unit Owners. Individual Trustees shall be appointed by majority vote of Unit Owners, and upon appointment and acceptance thereof as provided in Section 4.1.2. hereafter, such person shall then be a 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 or transfer or

conveyance. A notice of such appointment shall be recorded with the Registry. The same person may be designated a Trustee by the Owner(s) of more than one Unit. The Trustees shall be natural persons. Notwithstanding the foregoing, for so long as the Declarant owns at least fifty percent (50%) of the Units, including Units to be added in subsequent phases, or three (3) years from the date of the recording of the Master Deed, whichever shall first occur, the Declarant shall have the right to designate all of the Trustees.

The foregoing provision is also intended to comply with the requirement imposed by the Federal National Mortgage Association ("FNMA") necessitating the transfer of control of the Condominium to the Unit Owners as above provided. For this purpose "control" means the right of the Declarant to control the Unit Owners, association or its Trustees, the Condominium itself or the Unit Owners in any manner except through votes allocated to Units owned by the Declarant on the same basis as votes pertaining to sold units.

Section 4.1.2. Acceptance of Trust. Each person hereafter appointed as a Trustee shall sign and acknowledge in the manner required in Massachusetts for the acknowledgment of deeds, an acceptance of such appointment which shall be recorded in the Registry. Notwithstanding any other provisions in this Declaration of Trust contained, the failure to record such acceptance in the Registry shall in no way affect the validity of such Trustee's appointment.

Section 4.1.3. Tenure. Except as otherwise provided by law or by this Declaration of Trust, the Trustees shall hold office until their successors, if any, are appointed and have accepted such appointment, or until a Trustee sooner dies, resigns, is removed, becomes disqualified or sells or otherwise conveys his/her Unit to a new owner. The failure of Unit Owners to appoint successor Trustees shall not in any manner impair full exercise of the powers, discretions and duties of the Trustees by the Trustees, or Trustee, if there be only one, then in office.

Section 4.1.4. Powers and Duties. The Trustees shall have the powers and duties necessary for the administration of the affairs of the Trust and the Condominium, and may perform all acts except those which by law, by the Master Deed or by this Declaration of Trust, may not be delegated to the Trustees by the Unit Owners. The powers and duties of the Trustees shall include, but shall not be limited to, the following:

- (a) To operate, care for, and provide upkeep, maintenance and replacement of the Common Elements;
- (b) To prepare the budget of the Condominium and determine the Common Expenses;
- (c) To collect the Common Expenses from the Unit Owners;

(d) To levy and enforce the collection of general and special assessments for the Common Expenses, and to provide adequate remedies for failure to pay such assessments;

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

(f) To sell, assign, convey, transfer, exchange and otherwise deal with or dispose of the Trust property, but not the whole thereof, free and discharged of any and all trusts, at public or private sale, to any person or persons for cash or on credit, and in such manner and on such restrictions, stipulations, agreements and reservations as they shall deem proper, including the power to take back mortgages to secure the whole or any part of the purchase price of any of the Trust property sold or transferred by them, and execute and deliver any deed or other instrument in connection with the foregoing;

(g) To purchase or otherwise acquire title to, and rent, lease or hire from others for terms which may extend beyond the termination of this Trust any property or rights to property, real or personal, and own, manage, use and hold such property and such rights;

(h) To organize corporations or other legally recognized entities, to act as nominees of the Trust in acquiring title to or leasing of Units on behalf of all Unit Owners;

(i) To own, convey, encumber, lease, vote the interest appurtenant to, and otherwise deal with Units conveyed to the Trust or purchased by it as the result of enforcement of the lien for Common Expenses, or otherwise;

(j) To enter into any arrangement for the use or occupation of the Trust property and/or Common Elements, or any part or parts thereof, and any parking spaces or other properties or facilities for which easements or rights are conveyed to, or held by, the Trust, including, without limitation thereby, leases, subleases, licenses, concessions, and the granting, entering into, extending or modifying of easements and easement agreements for the benefit of the property and/or other premises, for the use of driveways, walkways and other common areas now or hereafter existing on the property or on other premises, all upon such terms and conditions and with such stipulations and agreements as the Trustees deem desirable, even if the same extend beyond the possible duration of this Trust;

(k) To have the right to grant permits, licenses and easements over the common areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium;

(l) To invest and reinvest the Trust property, or any part or parts thereof, and from time to time, as often as they shall see fit, change investments, including



investment in all types of securities and other property, of whatsoever nature and however denominated, all to such extent as to them shall seem proper, and without liability for loss even though such property or such investments shall be of a character or in an amount not customarily considered proper for the investment of trust's funds or which does not or may not produce income;

(m) To incur such liabilities, obligations and expense, and pay from the principal or the income of the Trust property in their hands all such sums as they shall deem necessary or proper for the furtherance of the purposes of this Trust;

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

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

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

(q) To engage in such litigation in the name of and on behalf of the Trust as they deem necessary or proper to further the purposes of this Trust;

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

(s) To borrow or in any other manner raise such sum or sums of money or other property as they shall deem advisable in any manner and on any terms, and evidence the same by notes, bonds, securities or other evidences of indebtedness, which may mature at a time or times, even beyond the possible duration of this Trust, and execute and deliver any mortgage, pledge or other instrument to secure any such borrowing;

(t) To enforce obligations of the Unit Owners, levy reasonable fines against the Unit Owners for violations of the Rules and Regulations or of the provisions of Article V hereof, and in the case of persistent violation of the Rules and Regulations or of the provisions of Article V hereof by a Unit Owner, to require such Unit Owner to post a bond to secure adherence thereto. Collection of fines may be enforced against the Unit Owner or Unit Owners involved as if the fines were Common Charges owed by the particular Unit Owner or Unit Owners;

(u) To maintain books, accounts and records of the Condominium;

(v) To obtain insurance pursuant to the provisions of Section 5.8 hereof;

(w) To make repairs, additions, and improvements to, or alterations of, the Property and repairs to and restoration of the Property in accordance with the other provisions of this Declaration of Trust;

(x) To regulate the use of the parking area, if any, and the use of the parking spaces therein, provided such regulation shall not be unreasonable nor contrary to the grant of easement to any Unit Owner to use such parking area and spaces for their customarily intended use;

(y) To have a reasonable right of entry upon any unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of the Condominium;

(z) To adopt and amend the Rules and Regulations covering the details of the operation and use of the Property, subject to the rights of the Unit Owners to overrule the Trustees as provided in Section 5.14 hereof;

(aa) To employ, appoint and dismiss employees and agents of the Trust, including without limitation, managing agent, managers, superintendents, brokers, engineers, architects and counsel, as necessary or advisable; provided, however, that the Trustees shall not enter into any management agreement or other contract unless it complies with the requirements of Section 5.17 hereof; and

(bb) Generally, in all matters not herein otherwise specified, to control and do each and every thing necessary, suitable, convenient, or proper for the accomplishment of any of the purposes of the Trust or incidental to the powers herein or in said Chapter 183A, manage and dispose of the Trust property as if the Trustees were the absolute owners thereof and to do any and all acts, including the execution of any instruments, which by their performance thereof shall be shown to be in their judgment for the best interest of the Unit Owners.

Section 4.1.5. Meetings of Trustees. The Trustees shall meet annually immediately after the annual meeting of the Unit owners, and may meet monthly or more often as determined by the Trustees. Special meetings of the Trustees may be called by any Trustee, provided that written notice of each meeting stating the date, hour and place thereof shall be given to each Trustee by the Trustee calling the meeting. Written minutes or other records of action(s) taken by the Trustees at any annual, regular, or special meeting shall be kept and filed with the Trust Records.

Section 4.1.6. Notice to Trustees. It shall be sufficient notice to a Trustee to send notice by first class mail posted at least seven (7) days or by a facsimile at least seventy-two (72) hours before the meeting addressed to him/her at his/her usual or last known business or residence address or to give notice to him/her in person or by telephone at least forty-eight (48) hours before the date fixed for the meeting or the

event as to which the notice is given. notice of a meeting need not be given: (i) to any Trustee if a written waiver of notice, executed by him/her before or after the meeting, is filed with the records of the meeting; or (ii) to any Trustee who attends the meeting without protesting the lack of notice prior to the meeting or at its commencement. Neither notice of a meeting nor a waiver of a notice need specify the purpose(s) of the meeting.

Section 4.1.7. Quorum. At any meeting of the Trustees, a majority of the Trustees then in office shall constitute a quorum. Any meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

Section 4.1.8. Trustee's Action. The Trustees shall act in any matters relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred by unanimous vote of the Trustees then in office at any meeting at which a quorum is present. Any action required or permitted to be taken at any meeting of the Trustees may be taken without a meeting if written consents to such action are signed by all of the Trustees and such written consents are filed with the records of the meetings of the Trustees. Such consents shall be treated for all purposes as a vote at a meeting.

Section 4.2. Resignation, Removals and Compensation. Any Trustee of the Trust may resign at any time by instrument in writing, executed, acknowledged, and delivered to one or more of the Trustees. The instrument of resignation shall take effect upon delivery thereof to the Trustees unless the resignation is specified to be effective at some time in the future, in which case it will become effective on the date specified. In addition, the Trustee designated by the Owner(s) of a Unit shall be automatically removed as Trustee upon the conveyance by such Unit Owner(s) of title to their Unit to another party, and the first Unit Owner named in the new deed shall be the new Trustee for said Unit, unless another Trustee is designated by the new Unit Owner(s) in the manner provided by Section 4.1.1. above. A Trustee designated by the owners of more than one Unit may be removed from representation of any one or more of the Units which designated that Trustee while continuing as Trustee for the Owners of other Units who so designated him/her. A Trustee (including persons elected by Trustees to fill vacancies) may be removed from office: (a) with or without cause by the vote of the holders of a majority in interest of the Beneficial Interests, or (b) for cause by vote of a majority of the Trustees then in office. A Trustee may be removed for cause only after reasonable notice and opportunity to be heard before the body proposing to remove him/her. Notwithstanding anything to the contrary contained herein, Declarant by signed written instrument may remove, with or without cause, and without notice or a hearing any Trustee designated by Declarant. The resignation of any Trustee, or in the case of removal of a Trustee, a certificate of such removal signed by a majority of the remaining Trustees (or in the case of a removal of an original Trustee named at the beginning of this Declaration of Trust or any successor Trustee designated by the Declarant pursuant to Section 4.1.1, signed by the Declarant), in each case acknowledged in the manner

required in Massachusetts for the acknowledgment of deeds, shall be recorded with the Registry.

The Trustees shall be entitled to be reimbursed for their reasonable out-of-pocket expenses. The Trustees may not receive compensation for services rendered as Trustee, but this shall not preclude any such person from performing any other service for the Trust and receiving compensation therefor.

Section 4.3. Vacancies. Any vacancy in the office of Trustee may be filled by the Owner whose name first appears on the Unit Deed for each Unit, or otherwise by the Unit Owners as provided in Section 4.1.1. above, or in the absence of Unit Owner action for a period of thirty (30) days, by the Trustees by vote of a majority of the Trustees then in office, subject to the right of the Declarant to fill any vacancy in the office of Trustee so long as Declarant is entitled to designate a Trustee to fill such office as provided in Section 4.1.1. The Trustees shall have and may exercise all their powers notwithstanding the existence of one or more vacancies in their number.

Section 4.4. Indemnification. The Trustees of the Trust shall be indemnified, both out of the Property and by the Unit Owners, to the extent legally permissible, against any liability and expense, incurred by them or any of them while in office or thereafter, by reason of his/her/their being or having been a Trustee (while in office or thereafter), including, without limitation, amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and counsel fees, reasonably incurred by the Trustee in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, in which he/she may be involved or with which he/she may be threatened, except with respect to any matter as to which he/she shall have been adjudicated in any proceeding to have acted in bad faith or with willful misconduct or reckless disregard of his/her duties or not to have acted in good faith in the reasonable belief that his/her action was in the best interests of the Trust. The right of indemnification hereby provided shall not be exclusive of or affect any other rights to which any Trustee may be entitled by contract or otherwise under law. As used in this section, the term "Trustee" include their respective heirs, executors and administrators. Nothing contained in this section shall affect any rights to indemnification to which personnel, other than Trustees, may be entitled by contract or otherwise under law.

The Trustees shall have no personal liability with respect to any contract made by them on behalf of the Condominium other than their respective liability as Unit Owners, if any. The liability of any Unit Owner arising out of any contract made by the Trustees shall be limited to such proportion of the total liability thereunder as his/her interests in the common areas and facilities bears to all such interests.

Section 4.5. Self-dealing and Trustees' Bonds and Liability. No person shall be disqualified from holding any office by reason of any interest. In the absence of fraud, any Trustee or Unit Owner individually, or any concern in which any such Trustees, or Unit Owners, have any interest, may be a party to, or may be pecuniarily or otherwise interested in, any contract, transaction or other act of this Trust, and

(a) such contract, transaction or act shall not in any way be invalidated or otherwise affected by that fact;

(b) no such Trustee, Unit Owner or concern shall be liable to account to this Trust for any profit or benefit realized through any such contract, transaction or act; and

(c) any such Trustee may be counted in determining the existence of a quorum at any meeting of the Trustees which shall authorize any such contract, transaction or act, and may vote to authorize the same; provided, however, that such contract, transaction or act shall be duly authorized or ratified by all of the Trustees who are not so interested and to whom the nature of such interest has been disclosed, except that no such contract, transaction or act involving Declarant or any concern in which the original Trustees of this Trust have any interest shall require such authorization or ratification. The term "interest" shall include any personal interest and interest as a director, officer, stockholder, shareholder, trustee, member or beneficiary of any concern. The term "concern" shall mean any corporation, association, trust, partnership, firm or person other than this Trust.

To the extent permitted by law, the authorizing or ratifying vote of the holders of a majority in interest of the Beneficial Interests at an annual meeting or a special meeting duly called for the purpose (whether such vote is passed before or after judgment rendered in a suit with respect to such contract, transaction or act) shall validate any contract, transaction or act of this Trust, or of the Trustees or any committee thereof, with regard to all Unit Owners, whether or not of record at the time of such vote, and with regard to all creditors and other claimants under this Trust; provided, however, that with respect to the authorization or ratification of contracts, transactions or acts in which any of the Trustees, or Unit Owners have an interest, the nature of such contracts, transactions or acts and the interest of any Trustee or Unit Owner therein shall be summarized in the notice of any such annual or special meeting, or in a statement or letter accompanying such notice, and shall be fully disclosed at any such meeting; provided, also, that Unit Owners so interested may vote at any such meeting; and provided further, that any failure of the Unit Owners to authorize or ratify such contract, transaction or act shall not be deemed in any way to invalidate the same or to deprive this Trust, its Trustees, or employees of its or their right to proceed with such contract, transaction or act. No contract, transaction or act shall be avoided by reason of any provision of this subsection which would be valid but for those provisions.

No Trustee under any circumstances shall be held personally liable or accountable for any action taken, suffered or omitted in good faith, for more money or other property than he/she actually receives, or for allowing one or more of the other Trustees to have possession of the Trust books or Property, or for honest errors of judgment or mistakes of fact or law, by reason of the existence of any personal interest or gain which has been disclosed to the Trustees or by reason of anything except his/her own personal and willful malfeasance and default.

No Trustee shall be obligated to give any bond or surety or other security for the performance of any of his/her duties hereunder, provided, however, that Unit Owners entitled to a majority of the Beneficial Interest may at any time, by instrument in writing signed by them and delivered to the Trustee or Trustees affected, require that any one or more of the Trustees shall give a bond in an amount and with those sureties as shall be specified in the instrument, and provided further, that if FNMA or FHLMC holds any interest in one or more mortgages on Units, then Trustees' bonds in such amounts and with such sureties as may be required by whichever of FNMA or FHLMC (or both) holds such interest shall be obtained by the Trustees. All expenses incident to any Trustee(s) being issued a bond shall be charged as a Common Expense.

## ARTICLE V

### OPERATION OF THE PROPERTY

Section 5.1. Common Profits, Determination of Common Expenses and Fixing of Common Charge. The Unit Owners shall be liable for Common Beneficial Interests. The Trustees may, at any time, distribute the Common Profits among the Unit Owners in such proportions. The Trustees shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of the Common Charges payable by the Unit Owners to meet the Common Expenses expected to be incurred during the year, after taking into account any undistributed Common Profits from prior years, shall allocate and assess such Common Charges among the Unit Owners according to their respective Beneficial Interests. The Common Expenses shall include any amounts which the Trustees deem proper for the operation and maintenance of the Property, including, without limitation, amounts required to indemnify the Trustees under Section 4.4, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Trustees pursuant to the provisions of Section 5.8, and amounts for working capital of the Condominium, for general operating reserves, for a reserve for maintenance, repairs and replacements for those portions of the Common Elements which must be replaced on a periodic basis and to make up any deficit in the Common Expenses for any prior year. The Common Expenses may also include any amounts which may be required for the purchase or lease of any Unit by the Trustees, on behalf of all Unit Owners, pursuant to the provisions hereof, or to pay any other obligation of the Trust. The Trustees shall give timely written notice to each Unit Owner of the amount of the Common Charges payable by him/her, and shall furnish copies of each budget on which Common Charges are based to all Unit Owners and to the holder of a mortgage of a Unit or any proposed mortgagee thereof so requesting the same.

Section 5.2. Payment of Common Charges. All Unit Owners shall be obligated personally to pay the Common Charges assessed by the Trustees pursuant to the provisions of Section 5.1 in twelve (12) equal monthly installments in advance or at such other time or times as the Trustees shall determine. No Unit Owner shall be liable for the payment of any part of the Common Charges assessed against his/her unit subsequent to his/her sale, transfer or other conveyance of the Unit. Unless waived in writing by the Trustees pursuant to Section 6(d) of Chapter 183A, a purchaser of a Unit

shall be liable for the payment of unpaid Common Charges assessed against the Unit prior to the acquisition by him/her of the Unit; however, any first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage, shall not be liable for (and such Unit shall not be subject to) a lien for the payment of Common Charges assessed against the Unit prior to the acquisition of title to such Unit by such first mortgagee, except for no more than six (6) month's unpaid common charges as provided in M.G.L. C. 183A, Section 6(c).

Section 5.3. Collection of Assessments. The Trustees shall assess Common Charges against the Unit Owners from time to time (at least annually) and shall take prompt action to collect any Common Charge due from any Unit owner which remains unpaid for more than thirty (30) days from the due date or payment thereof.

Section 5.4. Statement of Common Charges. The Trustees shall promptly provide any Unit Owner, the holder of any mortgage of a Unit, or any proposed mortgagee thereof so requesting the same in writing with a written statement in recordable form of all unpaid Common Charges assessed to the Unit. Notwithstanding anything to the contrary in section 7.5 infra, such certificate issued pursuant to section 6(d) of Chapter 183A shall be valid if signed by any trustee then in office of record at the Registry of Deeds.

Section 5.5. Default in Payment of Common Charges. In the event of default by any Unit Owner in paying to the Trustees the Common Charges, the defaulting Unit Owner shall be obligated to pay interest thereon at the rate of eighteen (18%) percent per year from the due date thereof, together with all expenses, including reasonable attorneys' fees, incurred by the Trustees in any proceeding brought to collect the unpaid Common Charges. The Trustees shall have the right and duty to attempt to recover the unpaid Common Charges, interest thereon and the expenses of the proceeding in an action brought against the Unit Owner for the enforcement of the lien on the Unit as provided in Section 6 of Chapter 183A.

Section 5.6. Enforcement of Liens for Unpaid Common Charges. In any action brought by the Trustees to enforce a lien on a Unit because of unpaid Common Charges, the Unit Owner shall be required to pay a reasonable rental for the use of his/her Unit commencing at the time of entry of a final judgment not appealed from in an enforcement action, and the plaintiff in such enforcement action shall be entitled to the appointment of a receiver to collect the same. The Trustees, acting on behalf of all Unit Owners, shall have the power to purchase the Unit at the sheriff's sale and to acquire, hold, lease, mortgage, convey or otherwise deal with (but not to vote the Beneficial Interest appurtenant thereto) the Unit, provided however, that if the purchase price for the Unit is more than the amount of the outstanding Common Charges due for the Unit prior to such purchase, the Trustees shall obtain the written consent of all Unit Owners, other than the Owner of the Unit being sold. The existence of the right to enforce the lien for unpaid Common Charges shall not preclude the Trustees from suing a Unit Owner personally to recover a money judgment for unpaid Common Charges.

Section 5.7. Acquisitions of Units by Trustees. Acquisitions of Units by the Trustees, as permitted hereunder, may be made from Common Funds or, if such funds are insufficient, the Trustees may: (i) levy an assessment as a Common Charge against the Unit Owners in accordance with their Beneficial Interests hereunder or (ii) borrow money to finance the acquisition of such Unit(s), provided however; that no financing may be secured by an encumbrance or lien on any property other than the Unit, together with its Appurtenant Interests, to be acquired by the Trustees. In the event that a Unit shall be acquired by the Trustees, or their nominee, on behalf of all Unit Owners, all such Unit Owners shall be deemed to have waived all rights of partition with respect to such Unit.

Section 5.8. Insurance.

Section 5.8.1. Hazard Insurance. The Trustees shall obtain and maintain, to the extent obtainable and permitted by applicable law, master policies of multiperil type insurance, including casualty and physical damage insurance, for the benefit of the Trustees and all of the Unit Owners, naming as the insured, and with loss proceeds payable to, the Trustees hereunder for all of the Unit Owners and their respective mortgagees, as their interests may appear (hereinafter collectively referred to as the "Named Insureds"). The standard mortgage clause shall name each Unit's first mortgagee (if any) and its successors and assigns as their interests may appear. Such insurance shall cover the Units common personal property and supplies, and other common personal property of the Trust, all other portions of the Building, and all other insurable improvements forming part of the Common Elements; but not including the furniture, furnishings or other personal property of the Unit Owners, whether within the Units or elsewhere, improvements or additions within a Unit costing more than Five Thousand Dollars (\$5,000.00), as to which it shall be the separate responsibility of such Unit Owner to insure if said improvement cannot be covered under the master policy at no additional cost; provided, however, that, to the extent possible, such exclusion from insurance coverage for subsequent improvements or additions shall not apply to replacement of items originally covered by such insurance which are of essentially the same type as the items replaced. The master policy shall also include any fixtures (plumbing and electrical), kitchen cabinets, appliances (stove, refrigerator, dishwasher, disposal and the like), 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 Elements). Such insurance shall, unless the same is not obtainable, be maintained in an amount at least equal to One Hundred (100%) percent of the replacement cost of the insured property (exclusive of foundations) without deduction for depreciation, and shall insure against loss or damage by fire and other hazards covered by the standard extended coverage endorsement and such other hazards or risks which are customarily covered with respect to building similar in construction, location, and use, including, without limitation, vandalism, malicious mischief, windstorm and water damage, earthquake, flood and boiler and machinery explosion or damage, and any other perils normally covered by the Standard "all risk" endorsement. The policy shall include a so-called Replacement Cost Endorsement.



Section 5.8.2. Insurer's Agreements. All policies of casualty or physical damage insurance shall, to the extent obtainable: (i) provide that the policies may not be canceled, terminated or substantially modified without at least twenty (20) days' written notice to each Named Insured; (ii) provide that, notwithstanding any provisions thereof which give the insurer the right to elect to restore damage in lieu of making a cash settlement, such election may not be exercised without the approval of the Trustees and may not be exercised, in any event, if in conflict with the terms of this Declaration of Trust; (iii) include waivers of subrogation as to any claims against the Trust, the Trustees, the manager, the managing agent and their respective agents and employees, and the Unit Owners and their respective employees, agents and guests, and of any defense based on invalidity arising from the acts of the insured; (iv) 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 (generally referred to as the "special Condominium Endorsement"); (v) adjustments of loss shall be made by the Trustees; (vi) that any insurance trust agreement shall be recognized; and (vii) that an "Agreed Amount Endorsement" and an "Inflation Guard Endorsement" shall be part of the policy.

Section 5.8.3. Insurance Trustees. The Trustees, as insurance trustees hereunder for the benefit of the Unit Owners and mortgagees, shall collect all casualty loss insurance proceeds, shall hold such proceeds in an identified segregated fund and shall use, apply and disburse them for the purposes and in the manner set forth in this section and in Section 5.9. If repair and restoration are to be made pursuant to Section 5.9, all insurance loss proceeds shall be disbursed to defray the cost of repairs and restoration of the damaged Common Elements and the one or more damaged Units, and, with respect to losses which affect portions or elements covered by insurance of more than one Unit to different extents, the proceeds relating thereto shall be used, applied and disbursed by the Trustees, in their judgment, in a fair and equitable manner.

Section 5.8.4. Additional Coverage. The Trustees shall also obtain and maintain, to the extent applicable and obtainable, master policies of insurance with respect to the Common Elements for the benefit and protection of the Trustees and the Unit Owners, for:

A. Liability Insurance for comprehensive general liability insurance coverage covering all of the common areas and public ways of the condominium. Such coverage shall be for not less than \$1,000,000 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, legal liability arising out of lawsuits related to employment contracts of the Trust, and shall provide further that such policy or policies may not be canceled or substantially modified by any party without at least twenty (20) 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.

B. Fidelity Bonds (if required by majority vote of the Unit Owners) in blanket form for all directors, trustees, employees of the Trust, and all other persons handling or responsible for funds of 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 employees and agents handling or responsible for funds of 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 three (3) months' aggregate assessments on all units plus reserve funds.

(1) The fidelity bonds shall name the Trust as an obligee;

(2) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and

(3) The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment or 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.

C. Construction Code Endorsement (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws 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.

All such insurance shall be in such amounts and forms as the Trustees shall, in their discretion, deem appropriate, and shall, insofar as practicable, contain provisions as set forth in Section 5.8.2. Such insurance shall not cover the liability of any Unit Owner as to claims arising out of incidents occurring within his/her own Unit or claims arising out of incidents occurring within any area as to which he/she has an exclusive easement and as a result of his/her special rights to use the same, but it shall be the responsibility of each Unit Owner, as provided in Section 5.8.8. to maintain his/her own public liability insurance therefore. The Trustees may elect to include any manager, managing agent, trustee, employee or volunteer of the Condominium as a party insured under the policies of insurance described herein.

Section 5.8.5. Annual Review of Coverage. The Trustees shall evaluate and may cause an independent appraiser to evaluate at least annually, the amount of insurance coverage, and if necessary, shall increase the amount of coverage on the master insurance policy accordingly.

Section 5.8.6. Insurer's Qualifications. Each insurance carrier must be licensed or authorized by law to transact business within the Commonwealth of Massachusetts. To the extent possible, the Trustees shall not obtain policies of insurance which provide that (i) under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against a Unit Owner or his/her mortgagee, as an insured; (ii) by the terms of carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent a Unit Owner or his/her Mortgagee, as an insured, from collecting insurance proceeds.

Section 5.8.7. Premiums to be Common Expense. The cost of insurance obtained and maintained by the Trustees pursuant to all provisions of this Section 5.8 (other than Section 5.8.7) shall be assessed to the Unit Owners as a Common Expense. In the event that any Unit Owner does anything in the Condominium which causes an increase in the rate of insurance for the Condominium, as a result of: (i) an act of gross negligence; (ii) his/her willful default; or (iii) having done anything requiring the Trustees' consent without having obtained the Trustees' consent, the Trustees may, in their discretion, assess the amount of such increase directly to such Unit Owner as a Common Charge against such Unit.

Section 5.8.8. Unit Owner's Separate Insurance. Each Unit Owner may obtain public liability insurance covering claims arising out of incidents occurring within his/her own Unit, and for claims arising out of incidents occurring within any areas as to which he/she has an exclusive easement and as a result of his/her special rights to use the same, in such amounts and forms as shall be determined in his/her reasonable discretion.

Unit Owners may carry insurance for their own benefit insuring any wall, ceiling or floor decorations or coverings, drapes, furniture, furnishings, fixtures, equipment and other personal property not covered by the insurance maintained by the Trustees, provided that all such policies shall contain waivers of subrogation, and further provided that the liability of the carrier issuing insurance obtained by the Trustees shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner.

Each Unit Owner and/or his/her mortgagee may obtain such additional insurance at his/her or its own expense provided that all such insurance shall, to the extent obtainable, contain provisions similar to those contained in the Trust's master policy as hereinabove set forth in Section 5.8.2. If the proceeds from the master policies on account of any casualty loss shall be reduced due to proration with insurance individually purchased by a Unit Owner, the Unit Owner shall assign to the Trustees such portion of the proceed of his/her individual insurance as equals the amount of the reduction, which portion shall be distributed as above provided.

Section 5.8.9. FHLMC/FNMA Insurance Requirements. If FHLMC or FNMA holds any interest in one or more mortgages on Units, the Trustees shall obtain and maintain, to the extent maintainable, such other insurance as may be required from time to time by whichever of FHLMC or FNMA (or both) holds such interest, including without limitation, fidelity coverage against dishonest acts on the part of Trustees, managers, employees or volunteers responsible for handling the Trust funds and public liability insurance, which policies shall be in such amounts and contain such terms as may be required from time to time by whichever of FHLMC or FNMA (or both) holds such interest. In addition, if FHLMC or FNMA holds any interest in one or more mortgages on Units, then whenever any Unit and/or the Common Elements are damaged by fire or other hazard, the Trustees shall give notice of such damage to such persons as may be required by whichever of FHLMC or FNMA (or both) holds such interest.

Section 5.9. Repair or Reconstruction after Fire or other Casualty.

(a) In the event of damage to or destruction of (i) the Common Elements as a result of fire or other casualty (subject to the statutory requirements contained in Paragraph (f) of this section); or (ii) any Unit as a result of fire or other casualty, whether or not the Common Elements have been damaged or destroyed (unless the last paragraph of this section is applicable), the Trustees shall promptly adjust the loss, notify all Registered Mortgagees, arrange for the prompt repair or restoration of the same, and disburse the proceeds of all insurance policies in payment of all costs and expenses actually incurred in connection with such repair or restoration in appropriate progress payments and with appropriate retainage. All insurance proceeds paid to the Trustees on account of any casualty shall be dedicated solely to the repair or restoration of the loss, and any application of such proceeds by the Trustees on account thereof, shall be prior to the application of such proceeds for any other purpose.

(b) In the event that the total cost of repair or restoration, as estimated on the basis of an independent appraisal, or as determined during the course of repair or restoration, exceeds the total sum of available insurance proceeds, then the Trustees shall assess, levy or charge all Unit Owners as Common Expense for the amount in excess of the insurance proceeds available therefore necessary to complete the repair or restoration of the Common Elements, and those portions of the Unit(s) with respect to which the Trustees are required to maintain casualty or physical damage insurance, as provided in Section 5.8 hereof.

(c) Whenever the estimated cost of repair or restoration exceeds as to any one casualty or occurrence, on the basis of an independent appraisal, ten (10%) percent of the value of the Condominium prior to the casualty with respect to the Common Elements, and/or ten (10%) percent of the replacement cost prior to the casualty with respect to any affected Unit, then the Trustees shall retain a registered architect, who shall not be directly or indirectly a Unit Owner, employee or agent of any Unit Owner, or a Trustee, employee or agent of any Trustee, to supervise the work of repair or restoration, and no sums shall be paid by the Trustees on account of such repair or

restoration except upon certification to them by such architect or engineer that the work for which payment is being made has been completed in a good and workmanlike manner in accordance with approved plans and specifications, and that the estimated total cost of completion of said repair or restoration, less amounts theretofore advanced, does not exceed the undisbursed proceeds of insurance as augmented by funds obtained by 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 Property or the safety of persons, or required to avoid the suspension of any essential service to the Property without having first engaged an architect, adjusted the loss or obtained proceeds of insurance.

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

(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 prior to the casualty, and:

- (i) If at least seventy-five (75%) percent in Beneficial Interest hereunder do not agree within one hundred twenty (120) days after the date of the casualty to proceed with repair or restoration, the Condominium including all Units, shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of the partition sale together with any Common Funds shall be divided in proportion to the Unit Owners' respective Beneficial Interests, but to the extent permitted by law shall be paid first to the holder of any mortgage. Upon such sale of the Condominium, it shall be deemed removed from the provisions of Chapter 183A.
- (ii) If seventy-five (75%) percent or more in Beneficial Interest hereunder agree to proceed with the necessary repair or restoration, the cost of the rebuilding of the Condominium in excess of any available Common Funds including the proceeds of any insurance, shall be a Common Expense, provided however, that if such excess cost exceeds ten (10%) percent of the value of the Condominium prior to the casualty, any Unit Owner who

did not so agree may apply to the Superior Court with such notice to the Trustees as the Superior Court shall direct, for an order directing the purchase of his/her Unit by the Trustees at the fair market value thereof as approved by the Superior Court. The cost of any such purchase shall be a Common Expense.

Section 5.10. Maintenance and Repairs.

(a) Except as provided in Section 5.9, the Unit Owners shall be responsible for the proper maintenance and repair of their respective Units and the maintenance, repair and replacement of utility fixtures therein serving the same, including, without limitation, interior finish walls, ceilings, and floors, windows, and interior window trim, doors, door frames and interior door trim, plumbing and sanitary waste fixtures, fixtures for water and other utilities, electrical fixtures and outlets, and all wires, pipes, drains and conduits for water, sewerage, electric power and light, telephone, cable, and any other utility services which are contained in and serve such Unit. If the Trustees shall at any time in their reasonable judgment determine that the interior of any Unit is in such need of maintenance or repair that the market value of one or more other Units is being adversely affected, or that the condition of a Unit or fixtures, furnishings, facility or equipment therein is hazardous to any Unit or the occupants, 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 reasonably shorter period in case of emergency as the Trustees shall determine) of such request and thereafter diligently brought to completion, the Trustees shall be entitled to have the work performed for the account of such Unit Owner and to enter upon and have reasonable access to such Unit for that purpose. The reasonable cost of such work shall constitute a lien upon such Unit and the Unit Owner shall be personally liable therefor.

(b) Except for certain maintenance, repairs and replacement required to be performed by Unit Owners to any Limited Common Areas or other portions of the Common Elements to which Unit Owners have an exclusive use easement as set forth in the Master Deed, all maintenance, repairs and replacements to the Common Elements shall be done by the Trustees and shall be charged to all the Unit Owners as a Common Expense, reserving to the Trustees the right to recover all or part of the costs of such work from a Unit Owner (and, to the extent allowed by law, to have and enforce a lien on such Unit Owner's Unit for such costs) if such work was necessitated by the negligence, misuse or neglect of such Unit Owner or any occupant of the Unit of such Unit Owner, or any guest, invitee, agent, servant or employee of such Unit Owner or occupant. Any Trustee, the managing agent or superintendent, if any, and if authorized in writing by the Trustees, may approve payment of vouchers for any such work.

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

(d) Nothing herein contained shall affect the legal liability of one Unit Owner to another, or the Trust to a Unit Owner, arising from any action or omission of a Unit Owner or the Trust and the agents, servants or guests of either.

Section 5.11. Improvements.

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

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

(c) A petition for a proposed improvement shall be submitted to all Unit Owners by the Trustees on their own initiative, or at the request of not less than twenty-five (25%) percent of the Beneficial Interests. The petition shall describe the improvement(s) to be made and the estimated cost thereof. A copy of Section 18 of Chapter 183A shall be attached to the petition. Unit Owners shall have ninety (90) days to reach agreement by either fifty (50%) percent or more, but less than seventy-five (75%) percent, of the Beneficial Interests, in which case Paragraph (a) of this section shall be applicable, or by more than seventy-five (75%) percent of the Beneficial Interests, in which case Paragraph (b) of this section shall be applicable. If less than fifty (50%) percent of the Beneficial Interest reach agreement within the ninety (90) day period the improvement shall not be made, and any further proposal with respect to the same improvement shall likewise be subject to the requirements of this section.

(d) No Unit Owner shall make any addition, alteration or improvement of a structural nature in or to his/her unit, and no Unit Owner shall make any exterior alteration or addition (including painting, awnings, grills and the like), without in each instance the prior written consent of the Trustees, such consent not to be unreasonably withheld or delayed. All plans and specifications must be approved by the Trustees, and the work shall be performed strictly in accordance therewith. No work shall be commenced unless such work complies with all applicable statutes, regulations, and ordinances, and all required permits have been obtained. The Trustees shall not incur any liability to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom.

Section 5.12. Cost of Work to be Funded. Notwithstanding anything to the contrary in Section 5.9, 5.10, or 5.11 hereof, the Trustees shall be obligated to proceed with any repair, rebuilding, restoration or improvement, unless and until they have received funds in an amount equal to the estimate of the Trustees of all costs thereof.

Section 5.13. Right of Access. A Unit Owner shall grant a right of access to his/her Unit (at reasonable times and upon reasonable notice except in emergencies) to the Trustees, the managing agent, and/or any other person authorized by the Trustees, or the managing agent, for the purpose of making inspections for the purpose of correcting any conditions originating in his/her Unit and threatening another Unit or a Common Element, or for the purpose of performing installations, alterations, repairs or replacements to the Common elements in his/her Unit or elsewhere in the Building or on the land. In case of emergency, such right of access shall be immediate, whether or not the Unit Owner is present. In the event of the exercise of the rights of access provided in this section, any costs for repairs shall be borne in accordance with the provisions of Section 5.9.

Section 5.14. Rules and Regulations. The Trustees may promulgate, amend and/or rescind Rules and Regulations, which may govern the details of the operation and use of the Common Elements and impose such restrictions and requirements respecting the use and maintenance of the Units and the Common Elements as are consistent with the provisions of this Declaration of Trust and the Master Deed, and designed to prevent unreasonable interference with the use by the Unit Owners of their Units and the Common Elements; provided, however, that no such action shall be taken which will adversely affect the holder of any mortgage of a Unit without the written consent of such holder. Copies of any modifications or amendments to the Rules and Regulations shall be furnished by the Trustees to the Unit Owners prior to the time when the same shall become effective, to each Registered Mortgagee, to the holder of any other mortgage of a Unit, or any proposed mortgagee thereof so requesting the same in writing.

Section 5.15. Right of Action. The Trustees on behalf of the Condominium Trust and any aggrieved unit owner shall have a right of action against Unit Owners for failure to comply with the provisions of the Master Deed, Declaration of Trust and By-Laws, Rules and Regulations, or with decisions of the Trustees which are made pursuant thereto. Unit Owners shall have similar rights of action against the Trust.

If, after written notice, a Unit Owner fails to cure any breach as above specified, the Trustees shall have the right, in addition to any other rights set forth herein or in Chapter 183A, to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

Section 5.16. Exclusive Use of Common Areas. The Trustees at the request of a Unit Owner may authorize that temporary exclusive use of one or more common areas be assigned to such Units for such time and on such conditions as the



Trustees may determine, which conditions may, without limitation, include a requirement that the Unit Owners so benefited pay, as additional Common Expenses, such costs of said common areas as the Trustees from time to time may determine. The failure of the Trustees granting said exclusive use to require payment of any such costs as a condition of such exclusive use shall not preclude those Trustees, or any successor Trustees, from imposing reasonable additional Common Expenses for the exclusive use of said common areas. Such rights of exclusive use of common areas shall be personal to the Unit Owners to whom granted and shall terminate when such Unit Owners no longer own the Units so benefited.

Section 5.17. Manager. The Trustees may employ for the Condominium a manager at compensation established by the Trustees to perform such duties and services as the Trustees shall authorize. The Trustees may delegate to the manager all of the powers granted to the Trustees by this Declaration of Trust other than the powers set forth in Paragraphs (b), (f), (g), (i), (j), that portion of (o) relating to requiring bonds and levying (but not collecting) fines and (p) of Section 4.1.4. No agreement for such management shall exceed three (3) years, nor shall the Trustees enter into any management agreement or other contract which extends beyond the date through which the Declarant may designate a majority of the Trustees (as provided in Section 4.1.1 above) unless such agreement or contract provides that it may be terminated by the Trustees without cause and without payment of a termination fee within a reasonable time (not to exceed ninety (90) days) after such date. So long as FNMA/FHLMC holds any interest in one or more mortgages of the Units, and if FNMA/FHLMC so requires, any decision by the Trustees or Unit Owners to terminate professional management of the Condominium must be approved by the holders of all first mortgages of record on Units prior to the implementation of such decision.

Section 5.18. Condemnation.

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

for realignment of the Beneficial Interests by reallocating each of the affected Units' entire undivided interest in the Common Elements and the Beneficial Interest under the Trust to the remaining Units of the Condominium in proportion to the respective undivided interest of the remaining Units in the Common Elements prior to the taking, and shall prepare, arrange execution of, and record an amendment to the Master Deed reflecting the realignment. Any remnant of a Unit remaining after part of the Unit is taken under this section shall hereafter be a part of the Common Elements.

(b) Except as provided in the preceding paragraph, if part of a 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 Elements. Upon acquisition, (i) that Unit's undivided interest in the Common Elements shall be reduced on the basis of the reduction of the fair value of the Unit as at the date of such taking bears to the fair value of the remaining Units in the Condominium as at such date; and (ii) the reduction in interest in the Common Elements 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 interest of the remaining Units in the Common Elements prior to the date of such taking.

(c) In the event of a total or partial taking under the powers of eminent domain, the Unit Owners shall be represented in any proceeding by the Trust acting through the Trustees to whom any award shall be paid as "Condemnation Trustees." In the event of a partial taking, the award shall be allocated to the Unit Owners according to their respective Beneficial Interests, except as to any portion or portions of the award which are attributable to direct or consequential damages suffered by particular Units (including any portion of the award attributable to the acquisition of a portion of the Common Elements which had been exclusively reserved to the Unit), which shall be payable to the Owners of such Units or their mortgagees as provided in their mortgage instruments. In the case of a total taking of all Units and the Common Elements, the entire award shall be payable to the Trustees to be distributed to Unit Owners in accordance with their respective Beneficial Interests, their mortgagees as provided in their mortgage instruments, other lien holders as their interest may appear, or as may be required by law.

(d) No vote or consent required of a Unit Owner pursuant to this section shall be effective without the written consent thereto of any Registered Mortgagee, or the holder of any first mortgage of record of such Unit. No provision herein shall be deemed to give a Unit Owner or any other party priority over any rights of the holder of the first mortgage (if any) on such Unit Owner's Unit pursuant to such mortgage in the case of distribution to such Unit Owner of condemnation awards for taking of Units and/or Common Elements. Mortgagees of Units will be entitled to priority with respect to any awards distributed to their mortgagors. Each Unit Owner and Mortgagee hereby appoints the Trustees hereunder as his/her/its attorney-in-fact for the foregoing purposes.

**Section 5.19. Real Estate Taxes Prior to Separate Assessment of Units.**

For all fiscal years until the Units are separately assessed for real estate taxes, the Trustees shall have the right to collect each Unit Owner's pro rata portion of the real state taxes and betterment assessments levied on the Building and land of which the Unit is a part (in accordance with the Unit's Beneficial Interest), which tax payments shall be made to the Trustees at their election, either (i) no later than ten (10) days prior to the date when such taxes are due and payable to the Municipality, or if the Trustees have given a Unit Owner no notice thereof, within five (5) days after the Unit Owner's receipt of such notice, whichever is later, or (ii) in equal monthly installments of one-twelfth (1/12) of the amount estimated to be due for the Unit, with any deficiency to be paid before the taxes are due and any excess to be refunded to the Unit Owners after the taxes are paid. The Trustees shall have the right and duty to pay such collected taxes to the Municipality. The failure of a Unit Owner to make such tax payments after being required by the Trustees to do so, shall be treated in the same manner as any other default hereunder in the payment of Common Charges, including assessments of interest and enforcement of the statutory lien.

**Section 5.20. Separate Metering of Utilities.**

Electricity and gas shall be provided and furnished by the public utility companies servicing the area directly to each unit through a separate meter, and each unit owner shall be required to pay the bills for electricity and gas consumed in his/her unit. The electricity serving the common areas and facilities shall be separately metered, and the Trustees shall pay all bills for electricity consumed in such portions of the common areas and facilities as a common expense. Water supply and sewer service as provided by the Municipality shall also be a Common Expense unless separately metered and billed to each unit.

**ARTICLE VI**

**SALES, MORTGAGES, AND LEASES/RENTALS OF UNITS**

**Section 6.1. No Severance of Ownership.**

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

Section 6.2. Payment of Assessments. No Unit Owner shall convey, mortgage, pledge, hypothecate, sell or lease his/her Unit unless and until he/she shall have paid in full to the Trustees all unpaid Common Charges theretofore assessed by the Trustees against his/her Unit. Nothing herein shall be deemed to affect the validity of any mortgage given by a Unit Owner in contravention of this section.

Section 6.3. Mortgages of Units

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

(b) Notwithstanding anything to the contrary contained herein or in the Master Deed, no holder of a mortgage of a Unit shall be deemed to be entitled to notice from the Trustees hereunder or an opportunity to consent to or approve matters as to which such notice is given, unless the Trustees have been given notice of the name and address of such holder and of the Unit covered by such mortgage.

(c) The Trustees, whenever so requested in writing by the holder of a mortgage of a Unit, shall promptly report any then unpaid Common Charges due from, or any other default by, the owner of the mortgaged Unit. In addition, the Trustees shall give prompt written notice to the holder of a first mortgage of record of any default in the performance by the Unit Owner of the mortgaged Unit of any obligation under the Master Deed, this Trust, or the Rules and Regulations which is not cured within sixty (60) days. The Trustees, when giving notice to a unit Owner of a default in paying Common Charges or other default, shall send a copy of such notice to each Registered Mortgagee. In addition, the Trustees shall send written notice to all Registered Mortgagees and all holders of first mortgages of record of Units of any proposed amendment to this Declaration of Trust to be made pursuant to Section 8.1.

(d) After having given the Trustees reasonable prior notice, each Unit Owner and the holder of any mortgage of a Unit shall be permitted to examine the books of account and records of the Trust, and the books of account of any managing agent of the Condominium relating to the Condominium, at reasonable times on business days. Upon request, the Trustees shall furnish each such mortgagee with annual reports of the Trust and other financial data.

(e) If a mortgagee gives written notice to the Trustees that there is a default in a mortgage on a Unit held by it, or if a mortgagee gives written notice to the Trustees of an agreement or covenant by a Unit Owner that said mortgagee is to be the proxy of said Unit Owner, then such mortgagee shall be recognized as the proxy of the Unit

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

(f) The right of any Unit Owner to vote, grant, withhold any consent, and to exercise any other right or option herein granted to a Unit Owner may be assigned or transferred in writing to, or restricted in favor of, any holder of a mortgage covering that Owner's Unit, and the Trustees shall upon receipt of written notice thereof from such Unit Owner or mortgagee be bound by any such assignment or transfer which appears of record to be in full force and effect.

#### Section 6.4. Leases and Rentals of Units.

(a) Any Unit Owner may lease or rent his/her unit, subject however, to the following restrictions as to any and all such lease and occupancy agreements:

- (i) A lease must be in writing and apply to the entire unit, and not merely a portion thereof;
- (ii) An occupancy agreement must be pursuant to a lease agreement;
- (iii) The lease agreement for a unit must have a minimum initial term of not less than nine (9) months, unless otherwise approved in writing by the Trustees, which approval shall not be unreasonably withheld or delayed;
- (iv) A lease agreement, and an occupancy agreement, must expressly provide that it shall be subject in every respect to the Master Deed of the Condominium, the Declaration of Trust of the Condominium Trust, and the By-Laws and Rules and Regulations thereof;
- (v) A lease and occupancy agreement must contain the following notice, in capital letters, double-spaced:

#### IMPORTANT CLAUSE:

"THE UNIT BEING LEASED (RENTED) UNDER THIS LEASE (OCCUPANCY AGREEMENT) IS LOCATED IN A CONDOMINIUM BUILDING -- NOT A RENTAL APARTMENT HOUSE. THE CONDOMINIUM BUILDINGS ARE OCCUPIED BY THE INDIVIDUAL OWNERS OF EACH (EXCEPT FOR CERTAIN UNITS, SUCH AS THIS ONE, WHICH ARE BEING OCCUPIED BY TENANTS). THE TENANT UNDERSTANDS THAT HIS OR HER NEIGHBORS IN THIS BUILDING ARE (EXCEPT AS AFORESAID) THE OWNERS OF THE HOMES WHICH THEY OCCUPY, AND NOT TENANTS LIVING IN A RENTAL APARTMENT HOUSE. THE TENANT, BY SIGNING THIS LEASE

(OCCUPANCY AGREEMENT) ACKNOWLEDGES THAT HE OR SHE HAS BEEN FURNISHED WITH A COPY OF THE MASTER DEED OF THE CONDOMINIUM, THE DECLARATION OF THE CONDOMINIUM TRUST AND THE BY-LAWS AND RULES AND REGULATIONS THERETO, AND THAT HE OR SHE HAS READ AND UNDERSTANDS THE SAME, AND THAT HE OR SHE WILL BE EXPECTED TO COMPLY IN ALL RESPECTS WITH THE SAME, AND THAT IN THE EVENT OF ANY NON-COMPLIANCE, THE TENANT MAY BE EVICTED BY THE TRUSTEES OF THE CONDOMINIUM (WHO ARE ELECTED BY THE UNIT OWNERS) AND IN ADDITION, THE TENANT MAY HAVE TO PAY FINES, PENALTIES AND OTHER CHARGES, AND THAT THE PROVISIONS OF THIS CLAUSE TAKE PRECEDENCE OVER ANY OTHER PROVISION OF THIS LEASE;" and

(vi) The lease, or occupancy agreement, must contain the following section in addition to the foregoing notice:

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

- A. The Trustees shall have the right to give written notice of the default to both the tenant and the Unit Owner. Said notice shall be deemed properly given if left in any part of the unit addressed to the tenant, and mailed, postage pre-paid, registered or certified mail, return receipt requested, addressed to the owner of the unit as such address then appears on the records of Trustees, or by delivering said notice in hand, or by delivering said notice in any other manner permitted by law.
- B. If the default continues for five (5) days after the giving of said notice, then the Trustees shall have the right to levy fines against the owner of the affected unit in accordance with any rule or regulation pertaining thereto and promulgated as provided in Section 5.14 of this Trust, and terminate the tenancy by giving notice in writing to quit to the tenant in any manner permitted by law, in the name of the landlord (Unit Owner) or in the name of the Trustees, or both. In case of a tenancy at will, the time of such notice shall be sufficient if it is equal to the interval between the days of rent payment, or thirty (30) days, whichever is longer. In case of a lease, seven (7) days' notice shall be sufficient. In

either event, a copy of such notice to quit shall be delivered or mailed to the landlord (Unit Owner) in the manner set forth hereinabove. Thereafter, the Trustees may initiate and prosecute a summary process action against the tenant under the provisions of Massachusetts General Laws, Chapter 239, in the name of the landlord, or in the name of the Trustees, or both.

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

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

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

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

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

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

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

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

(j) Notwithstanding anything to the contrary in this section, it is expressly understood and agreed that the provisions of this section shall not apply to any first mortgagee in possession of a unit following default by the Unit Owner in his/her

mortgage, holding title to a unit by virtue of a mortgage foreclosure proceeding, deed or other agreement in lieu of foreclosure.

(vii) Contain a provision whereby the landlord/unit owner makes an assignment to the Condominium Trust of the rent due from the Tenant in an amount equal to any unpaid common charges assessed against the unit, and said provision shall further provide that the tenant shall be held harmless by the landlord/unit owner from any claim for non-payment of rent to the extent and amount of such payment by the tenant to the Condominium Trust of any past due common charges assessed to the unit.

(viii) Provide that the lease form must be countersigned by at least one condominium trustee then in office (or the manager of the condominium if one is then so employed) prior to being executed by the tenant, such countersignature being for the sole purpose of signifying that said lease form contains the provisions required by this Section 6.4.

Section 6.5. Non-discrimination. Notwithstanding anything to the contrary herein, no part of this Trust, By-Laws or the Rules and Regulations now or hereafter adopted or promulgated (including but not limited to the provisions of Section 6.4) shall ever be deemed to prevent, restrict, discourage, or hinder, in fact, or in any manner whatsoever, the alienation, conveyance, mortgage, purchase, sale, rental, lease, license, use, occupancy of units or any negotiations in connection therewith because of race, religion, creed, color, national origin, sex, age, ancestry, marital status, status as a veteran or member of the armed services, any ethnic group, blindness, or by reason of the fact that children will occupy said unit, receipt of public assistance, sexual preference, or, in addition to the foregoing by any reason whatsoever prohibited by any federal, state, county or municipal law.

## ARTICLE VII

### RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUSTEES

Section 7.1. No Duty of Inquiry by Third Parties. No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record with the Registry shall be bound to ascertain or inquire further as to the persons who are then Trustees hereunder, or be affected by any notice, implied, actual, or otherwise than by a certificate thereof, and such record or certificate shall conclusively evidence the persons who are then Trustees. The receipts of the Trustees, or any one or more of them, for moneys or things paid or delivered to them or him/her shall be effectual discharges therefrom to the persons paying or delivering the same, and no person from whom the Trustees, or any one or more of them, shall receive any money, property or other credit shall be required to see to the application thereof. No purchaser, mortgagee, lender or other person dealing with the Trustees, or with any real or personal property which then is or formerly was Property, shall be bound to ascertain or inquire as to the existence or occurrence of any fact or event or purpose in or for which a sale,



mortgage, pledge or charge is herein authorized or directed or otherwise, as to the purpose or regularity of any of the acts of the Trustees, or any one or more of them, purporting to be done in pursuance of any of the provisions or powers herein contained, or as to the regularity of the resignation, removal or election of any Trustee. Any records of the Trust purporting to be executed by persons herein required to execute the same shall be conclusive evidence in favor of any such purchaser or other person dealing with the Trustees of the matters therein recited.

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

Section 7.3. All Instruments Subject to Terms Hereof. Every note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees, or by any agent or employee of the Trustees, shall be deemed to have been entered into subject to the terms, conditions, provisions and restrictions hereof, whether or not express reference shall have been made to this Declaration of Trust.

Section 7.4. Checks, Notes, Drafts, and Other Instruments. Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust may be signed by any two Trustees (or by one Trustee if there is only one), or by any person or persons to whom such power may at any time or from time to time have been delegated by all of the Trustees.

Section 7.5. Recording in Registry. This Declaration of Trust, any amendments hereto, and any certificate herein required to be recorded, shall be recorded with the Registry. Any other certificate or paper signed by the Trustees or any of them which may be deemed desirable to record shall be recorded with the Registry. Such record shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof, and all persons dealing in any manner whatsoever with the Trustees, the Property, or any Unit Owner shall be held to have notice of any alteration or amendment of this Declaration of Trust or change of Trustees when the same shall have been recorded with the Registry. Any certificate signed by both of the Trustees in office at the time (or by one Trustee if there is only one at the

time), setting forth as facts any matters affecting the Trust, actions which have been taken by the Unit Owners, who the Unit Owners are, and matters relating to the authority of the Trustees to do any act, when duly acknowledged and recorded with the Registry shall be conclusive evidence as to the existence of such alleged facts and of the truth of the statements made therein in favor of all third persons, including the Trustees, acting in good faith in reliance thereon. Any certificate executed by any Trustee hereunder, or by both of the Trustees in office at the time (or by one Trustee if there is only one at the time) setting forth the existence of any facts, the existence of which is necessary to authorize the execution of any instrument or the taking of any action by such Trustee or Trustees, as the case may be, shall, as to all persons acting in good faith in reliance thereon be conclusive evidence of the truth of the statements made in such certificate and of the existence of the facts therein set forth.

Section 7.6. Application. All present and future owners, mortgagees, lessees and occupants of Units, their employees, and any other persons who may use the facilities of the Property in any manner are and shall be subject to provisions of the Master Deed, this Declaration of Trust, the Rules and Regulations and all covenants, agreements, restrictions, easements and declarations of record ("title conditions"). The acceptance of a Unit Deed or conveyance, the execution of a lease for a Unit, or the act of occupancy of a Unit shall constitute an agreement that the Master Deed, this Declaration of Trust, the Rules and Regulations, as any of them may be amended from time to time, and the title conditions, are all accepted, ratified, and will be complied with.

## ARTICLE VIII

### AMENDMENTS

Section 8.1. Amendments to this Declaration of Trust. Except as provided below in this section, this Declaration of Trust may be amended, altered or repealed in any manner or to any extent at any annual or special meeting of the Unit Owners called for that purpose, provided the notice of which shall specify the subject matter of the proposed alteration, amendment or repeal of the sections to be affected thereby, by the affirmative vote of Unit Owners holding at least seventy-five (75%) percent of the Beneficial Interest hereunder; the Trustees first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided always, however, that no such amendment, alteration or repeal shall be valid or effective:

- (i) which is made without the consent of Declarant prior to the date on which Declarant ceases to own any Units, or two (2) years from the date of recording of the Master Deed, whichever event shall first occur;
- (ii) according to the purport of which the percentage of the Beneficial Interest hereunder of any Unit Owner would be altered, or the basis for allocation of Common Expenses, Common Charges or distributions to Unit Owners, or the exclusive use right of any Unit(s) to a portion of the Common Elements would be changed, other than by affirmative vote of all of the Unit Owners;

- (iii) which would render this Trust contrary to or inconsistent with any requirements or provisions of Chapter 183A;
- (iv) which would amend, alter or repeal Sections 1.1 or 1.2 or this Section 8.1, other than by affirmative vote of all Unit Owners; or
- (v) which would amend, alter or repeal Section 7.2, other than by affirmative vote of all Trustees and all Unit Owners.

Section 8.2. Amendment Effective on Recording. Any amendment, alteration or repeal pursuant to the foregoing provisions of this section shall become effective upon the recording with the Registry of an instrument of amendment, alteration or repeal, as the case may be, signed, sealed and acknowledged by all of the Trustees in office at the time, setting forth in full the amendment, alteration or repeal and reciting the consent of the Unit Owners and any mortgagees herein required to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and compliance with all prerequisites to the validity of such amendment, alteration, or repeal, whether stated in the instrument or not, upon all questions as to title or affecting the rights of third persons and for all other purposes.

Section 8.3. Amendments Not to Disqualify Mortgages. The Master Deed and the Condominium Trust shall not be altered, amended or otherwise changed if such alteration or amendment will, in any manner, disqualify mortgages of units in the condominium for sale to FHLMC or FNMA. All provisions of this Condominium Trust and the Master Deed shall be construed so as to qualify any and all such mortgages for sale to FHLMC and FNMA.

Section 8.4. Corrective Amendments. Notwithstanding anything herein contained to the contrary, Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration of Trust at any time and from time to time which amends this Declaration of Trust: (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering Unit ownership; (iii) to bring this Declaration of Trust into compliance with Chapter 183A of the General Laws of the Commonwealth of Massachusetts; or (iv) to correct clerical or typographical errors in this Declaration of Trust, any exhibit thereto, or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to vote in favor of, make or consent to any such Special Amendment(s) on behalf of each Unit Owner. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof, shall be deemed to be a grant and acknowledgment of, and a consent to, the reservation of the power to the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to rights reserved or granted

under this section shall terminate at such time as the Declarant no longer holds or controls title to a Unit.

## ARTICLE IX

### MISCELLANEOUS

Section 9.1. Records. The Trustees or the manager shall keep records of their actions and financial records and books of account of the Trust, including a chronological listing of receipts and expenditures and a separate account for each Unit which, among other things, shall contain the amount of each assessment of Common Charges against the Unit, the date when due, the amounts paid thereon and any balance remaining unpaid. An annual report of the receipts and expenditures of the Trust shall be rendered by the Trustees to all Unit Owners promptly after the end of each fiscal year. An annual financial statement of the Trust shall be rendered by the Trustees to all Unit Owners and all mortgagees requesting same within ninety (90) days after the end of each fiscal year. In addition, if FNMA or FHLMC holds any interest in one or more mortgages on Units, such annual financial statement shall be audited by and contain the certification of a public accountant if required by whichever of FNMA or FHLMC (or both) holds such interest, the cost of such audit and certification to be charged as a Common Expense. Copies of the Master Deed, Rules and Regulations, this Declaration of Trust and floor plans of the Building and Units, as the same may be amended from time to time, and the records of the actions of the Trustees and financial records and books of account of the Trust shall be maintained by the Trustees and shall be available for inspection by Unit Owners and their authorized agents during reasonable business hours upon reasonable prior notice.

Section 9.2. Fiscal Year. Except as from time to time otherwise provided by the Trustees, the fiscal year of the Trust shall end on the thirty-first (31st) day of December in each calendar year.

Section 9.3. Invalidity. The invalidity of any part of this Declaration of Trust shall not impair or affect in any manner the validity, enforceability or effect of the balance of this Declaration of Trust.

Section 9.4. Captions. The Table of Contents and the captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration of Trust or the intent of any provision hereof.

Section 9.5. Gender. The use of the masculine gender in this Declaration of Trust shall be deemed to include the feminine and neuter genders, and the use of the singular shall be deemed to include the plural whenever the context so admits or requires.

Section 9.6. Waiver. No restriction, condition, obligation, or provision contained in this Declaration of Trust shall be deemed to have been abrogated or

waived by reason of any failure to enforce the same, regardless of the number of violations or breaches thereof which may occur.

Section 9.7. Conflicts. If any provision of this Trust shall be invalid or shall conflict with Chapter 183A, as amended, of the General Laws of Massachusetts, or if any provision of this Trust conflicts with any provision of the Master Deed, then the following rules of construction shall be used:

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

(b) In the event of a conflict between any numerical 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;

(c) In the event of any conflict (other than that set forth in Subparagraph (b) of this section) between the provisions of the Master Deed and any other provision hereof, the provisions of the Master Deed shall control.

Section 9.8. Notices. Except as otherwise specified in Sections 3.7 and 4.1.6, all notices hereunder shall be sent by registered or certified mail return receipt requested to the Trustees at the Condominium or to such other address as the Trustees may hereafter designate from time to time, by notice in writing to all Unit Owners. All notices to any Unit Owner shall be delivered in hand or shall be sent by registered or certified mail, return receipt requested, to the Condominium or to such other address as may have been designated by the Unit Owner from time to time in writing, to the Trustees. All notices shall be deemed to have been given when so mailed, except notices of change of address which shall be deemed to have been given when received.

Section 9.9. Arbitration of Disputed Trustee Action and All Other Disputes Related to the Ownership and Operation of the Condominium. In the event of a dispute between or among the Trustees and/or Unit Owners as to any matters involving this Trust, the Master Deed, or the operation of the Condominium generally, any of the disputing parties at his/her option may refer the matter to binding arbitration with the American Arbitration Association (so long as such institution shall exist, or such similar organization as may then be in existence). The AAA shall appoint an impartial arbitrator who need not be an attorney but s/he shall be a person qualified by his/her profession to deal with the matter in dispute. The arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association. The fees and costs of the arbitration shall be shared unless otherwise determined by the arbitrator. The findings and results of such arbitration shall be binding upon the parties and may thereafter be enforced by any Court of competent jurisdiction. Neither party shall bring any action in court with regard to any dispute as provided herein other than to enforce the decision of the arbitrator. In the event of any court action to enforce the decision of

the arbitrator, the prevailing Party shall be entitled to recover his costs and reasonable attorney's fees of said action from the other Party.

Section 9.10. Duration. The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of Chapter 183A in accordance with the procedures set forth in Section 19 thereof. Except as otherwise provided herein, the Unit Owners may remove all or a portion of the Condominium from the operation of Chapter 183A at any annual or special meeting of the Unit Owners by the affirmative vote of at least seventy-five (75%) percent in Beneficial Interest hereunder, provided that notice of the removal is given in the notice of the meeting and, provided, further, that the holders of all first mortgages on Units consent to such removal by written instruments duly recorded with the Registry.

Section 9.11. Disposition of Trust Property Upon 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 thereof, and, after paying or retiring all known liabilities and obligations of the Trustees and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, at valuations made by them which shall be conclusive, all other property then held by them in trust hereunder, to the Unit Owners according to their respective Beneficial Interest stated in this Trust. In making any sale under this section, the Trustees shall have power to sell by public auction or private sale or contract and to buy in or rescind or vary any contract of sale and to resell without being answerable for loss, and for said purposes, to do all things, including the execution and delivery of instruments, as may by their performance thereof be shown to be in their judgment necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distributions of Trust Property may have passed.

[SIGNATURE PAGE FOLLOWS]

EXECUTED under seal by the Declarant this 19th day of November, 2009.

WAYLAND GARDENS, LLC,

By: *Rocco Scippa*  
Rocco Scippa, Manager

The undersigned, being all of the original Trustee(s), have signed these presents under seal as such Trustee(s), as of the date first set forth above, and hereby accept appointment as such Trustee(s) and agree to be bound by and act in accordance with the foregoing provisions of the Trust and any duly enacted amendments thereof.

*Rocco Scippa Trustee*  
Rocco Scippa, Trustee

**COMMONWEALTH OF MASSACHUSETTS**

Middlesex, ss.

On this 19th day of November, 2009, before me, the undersigned notary public, personally appeared Rocco Scippa, proved to me through satisfactory evidence of identification, which was his current state driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he read and signed it voluntarily for all of its purposes stated therein, individually and in his capacity as Manager of Wayland Gardens, LLC.

*E. Peter Mullane*  
Notary Public: E. Peter Mullane  
My Commission Expires: 10/01/2010

[SEAL]



E. PETER MULLANE  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
October 1, 2010

**DECLARATION OF TRUST  
WAYLAND GARDENS CONDOMINIUM**

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