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TOWN OF CONCORD

BOARD OF APPEALS

YO

MSD 12/11/87 33:35:33 684 65.00

SEP 29 1997

Please take notice that in the matter of

petition }
 appeal } of Crosswhite Properties for a
 Special Permit for a Planned
 Residential Development under
 Sections 9, 9.2.11 and 10.6 for the conversion of
 Emerson Annex Building into 11 residential
 The Board of Appeals has this day rendered a decision

granting }
 denying } said petition

sustaining }
 dismissing } said appeal

and the record therein has this day been filed with the Town Clerk, Town House, Concord, Massachusetts. Appeals, if any, shall be made pursuant to Section 17 of the Zoning Act, Chapter 40A of Mass. General Laws, and shall be filed within 20 days after the date of this notice.

Myrtle B. Lang,

Clerk, Board of Appeals

*dwelling units at Parcel 809-A - 58 Stow Street

O/C.
 MARGINAL REFERENCE REQUESTED
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818752 P619

The following persons appeared in opposition thereto:

NONE

The Planning Board reported its action on the matter as follows:

See Planning Board's letter of July 9, 1987 and memo of July 16, 1987. See Natural Resources memo of July 16, 1987.

The Board thereupon took the following action:

VOTED: To approve the application of Crosswhite Properties for a Special Permit for a Planned Residential Development under Sections 9.2.11 and 10.6 of the Zoning By-law for the conversion of the Emerson Annex Building into 11 residential dwelling units at Parcel 809-A, 58 Stow Street.

The members of the Board voted thereon as follows:

O. MARIO FAVORITO	GRANTED
GERALD C. VIGNERON	GRANTED
IRVIN L. MCKITTRICK	GRANTED

The Board assigns the following as the reasons for the foregoing finding, ruling and decision:

This is an application for a Special Permit under Section 9.2.11 of the By-law which provides for the conversion of school and municipal buildings to residential use.

This section of the By-law outlines a step-by-step process of consideration and evaluation of the proposed Planned Residential Development (PRD) conversion. The process begins with an application to the Planning Board, and upon favorable review, the Planning Board shall submit a recommendation to the Town Meeting. Approval of the Town Meeting requires a two-thirds vote.

The By-law further provides that the applicant submit an application to the Board of Appeals for the PRD conversion in accordance with the procedures for approval as set forth in Subsection 9.3.

The Board held a Public Hearing on July 9, 1987 to consider the application and to hear from interested parties regarding the merits of the proposal. Upon review of the application at a meeting of the Board on July 15, 1987, the Board concluded that the requirements of Section 9.2.11 had been met and voted to approve the application. Specifically the Board found that the plans submitted conform substantially to the terms of the approval granted by the Town Meeting. The Board further found that the application conformed to the provisions found in Subsection 9.3.4.

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Accordingly the Board granted the application subject to the conditions of the Planning Board in their letter of July 9, 1987 and their memo of July 20, 1987 together with the recommendations of the Natural Resources Coordinator dated July 16, 1987 as well as the terms of the Master Deed, purchase and sale agreement and statement of buyer selection criteria as submitted to the Board.

A TRUE COPY: Attest

Mertie S. Linn

Clerk Board of Appeals

Filed with Town Clerk

SEP 29 1987

B 18752 P 622

EMERSON ANNEX CONDOMINIUM

MASTER DEED

Crosswhite Emerson Properties, Inc., a Massachusetts Corporation (hereinafter the "Declarant", which term shall include its successors and assigns) being the sole owner of the land with the buildings and improvements (hereinafter "Buildings") thereon situated in Concord, Middlesex County, Massachusetts, as more particularly described in Paragraph 2 below, by duly executing and recording this Master Deed does hereby submit said land with the Buildings erected thereon, and all easements, rights and appurtenances belonging thereto (hereinafter "premises") to the provisions of Chapter 183A of the Massachusetts General Laws, as from time to time amended (hereinafter referred to as "Chapter 183A") and proposes to create and does hereby create with respect to the Premises, a Condominium, subject to the reservations and matters set forth herein, to be governed by and subject to the provisions of Chapter 183A, and to that end declares thus:

1. Name: The name of the Condominium shall be: Emerson Annex Condominium (the "Condominium").
2. Description of Land: The Condominium consists of that certain parcel of real estate located at 58 Stow Street, Concord, Middlesex County, Massachusetts, which real estate is particularly described in Exhibit A attached hereto and made a part hereof and is also shown on the site plan recorded herewith. Said parcel is subject to and has the benefit of covenants and rights of way of record so far as are now in force and applicable, the right of the Declarant to grant easements with respect to the storage bins and other easements, restrictions, covenants and rights more particularly set forth in this Master Deed. Said parcel has the benefit of a lease from the Town of Concord for the use of certain parking spaces in a Municipal Parking Lot on the northeasterly side of Stow Street shown on the Site Plan recorded herewith. Each unit owner shall have the right to park a currently registered passenger automobile on an unassigned basis in the parking area designated on the site plan.
3. Description of Building: There is presently on the land hereinbefore described one (1) Building which is comprised of eleven (11) units. The Building is three and one-half stories in height above grade and one-half story below grade. The Building is constructed of fieldstone, brick and wood shingled exterior with a fieldstone foundation and asphalt shingled roof with interior walls of dry wall on wood and metal studs. The plumbing is pvc and copper tubing.

4. Floor Plans, Designations of Units and Their Boundaries: The attached plans of the Building showing the layout, location, unit description and dimensions of the units, stating the name of the Building, and bearing the verified statement of a registered architect certifying that the plans fully and accurately depict the same (hereinafter "Plans") are recorded with and are part of this Master Deed.

The Condominium Units of the Building (hereinafter "Units") their designations, location, approximate area, number and composition of rooms and the immediate common areas to which each has access are as shown on Exhibit B attached hereto.

The boundaries of each of the Units are as follows:

Floors: The upper surface of the subflooring.

Ceilings: The upper surface of the sheet rock, however to the extent that any lighting fixtures extends beyond the upper surface of the sheet rock, the unit shall include the entire light fixture.

Interior Building Walls: The interior surface of the wall studs.

With respect to duplex units, the area below the upper surface of the subflooring of the top level and the upper surface of the ceiling sheet rock of the bottom level shall be considered common areas.

Exterior Building Walls: The interior surface of the wall studs.

Exterior Doors and Windows: As to doors leading to common areas, the exterior surface of the doors and the interior unfinished surface of the door frame; as to windows, the interior unfinished surface of the window frame. Although the glass in the windows is not included within the Unit, the Unit Owner shall be responsible for cleaning the interior surfaces of the glass.

Subject to the provisions of Paragraphs 6 and 7 hereof, each Unit Owner may at any time and from time to time change the use and designation of any room or space within said unit subject always to the provisions of Paragraph 7(d) hereunder.

The Declarant reserves the right to connect Units with each other and with adjacent areas which are Common Elements for the purpose of creating a larger single Unit, prior to the initial conveyance of the affected Units by Declarant and for such purposes, cuts may be made in the common portions of the walls, floors and ceilings immediately adjoining the affected Units and Common Elements and walls and partitions may be

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removed, constructed or rearranged within the affected Units and Common Elements, provided that unaffected Units shall remain undisturbed. If such modifications to Units require an amendment to this Master Deed or the Plans or both, Declarant may so amend this Master Deed or the Plans, or both, without the consent of any Unit Owner. If Units are connected, the resulting Unit shall have all of the rights and obligations to the separate Units which were combined.

Each Unit shall have appurtenant thereto the exclusive rights and easements, exercisable subject to and in accordance with the provisions and requirements of Paragraph 5 of this Master Deed and the provisions of the Trust and the rules and regulations promulgated pursuant thereto: (a) To use any patio to which there is direct access from the interior of such Unit and to which there is no other means of access and which is designated on Exhibit B attached hereto; and (b) to use garage parking space(s) and storage bins, if any, which are more particularly described in Paragraph 5 hereunder.

5. Common Elements: The "Common Areas and Facilities" and also called herein "Common Elements" are hereby defined to consist of the Premises, including, without limitation, the following:

- (a) The land and any recreational facilities on the Premises included in the Premises, lawns, gardens, walks, pathways, trash sheds and other improved areas not within the Units.
- (b) All portions of the Buildings not included in any Unit by virtue of Paragraph 4 above including, without limitation, the following to the extent such may exist from time to time:
 - (1) The foundations, structural members, beams, supports, exterior walls, exterior doors, frames for exterior windows, roof and entrances and exits of the building, common walls within the building, and structural walls or other structural components contained entirely within any Unit;
 - (2) In the building, common hall, corridors, lobbies, intercom, the steps and stairways, the mailboxes, buzzer system, mechanical rooms, common storage areas on first and second floor;
 - (3) Installations of central services such as heat, electric power, gas, hot and cold water, including all equipment attendant thereto, but not including equipment contained within and servicing a single unit; security television system; hard wired smoke detection system;

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(4) All conduits, chutes, ducts, plumbing, wires, flues and other facilities for the furnishing of utility services which are contained in facilities within any Unit which serve parts of any Building other than the Unit within which such facilities are contained, together with an easement of access thereto, for maintenance, repair, and replacement, as aforesaid.

(c) Such additional common areas and facilities as may be defined in Chapter 183A.

The owners of each Unit shall be entitled to an undivided interest in the common areas and facilities in the percentages shown on Exhibit C attached to this Master Deed and incorporated herein by reference. These percentage interests have been computed in conformance with Chapter 183A, upon the approximate relation which the fair market value of each Unit on the date of this Master Deed bears to the aggregate fair market value of all the Units on that date. The common areas and facilities shall be subject to the provisions of the By-Laws of Emerson Annex Condominium Trust, recorded herewith ("the Condominium Trust") and any rules and regulations from time to time in effect pursuant thereto.

If any portion of the Common Elements of the Condominium shall actually encroach upon any Unit or if any Unit shall actually encroach upon any portion of the common areas or any other unit, as these are shown on the plans, there shall be deemed to be mutual easements in favor of the Unit Owners collectively as owners of the common areas and the respective individual Unit Owners involved to the extent of such encroachments so long as the same shall exist.

(d) Storage Bins: The Declarant reserves with respect to the storage bins and shown on the Plans the right to convey exclusive easements to Unit Owners (either in the Unit Deeds from the Declarant or by separate instruments) or to the Condominium Trust.

Such rights and easements shall not in any event be severed from ownership of the Unit to which they are appurtenant.

6. Statement of Purposes: Except as otherwise provided in Paragraph 7 hereof, the Units and the Common Areas and Facilities therein are intended to be used solely for residential purposes.

The Declarant, or any successor to its interest in the Condominium, may until all of the Units have been sold by the

Declarant or such successor(s) (a) lease Units which have not been sold, and (b) use any Units owned by the Declarant as models for display for purposes of sale or leasing of Units.

7. Restrictions on Use: Unless otherwise permitted in a writing executed by a majority of the Trustees of the Condominium Trust pursuant to the provisions thereof;

- (a) No Unit shall be used for any purpose not specified in Paragraph 6 above.
- (b) Each parking space is intended to be used only by the Unit Owner, the occupants of such Unit Owner's Unit and their guests and invitees and each such parking space is intended to be used for the parking of currently registered and licensed private passenger cars in operating condition, and not for trucks, boats, trailers or other vehicles or items except with the prior written permission of the Trustees.
- (c) No portion of a Unit (other than the entire Unit) may be leased or rented.
- (d) The architectural and structural integrity of the buildings and the units shall be preserved without modification, and to that end, no awning, screen, antenna, sign, banner or other device and no exterior change, addition, structure, projection, decoration or other feature shall be erected or placed upon or attached to the Buildings, any Unit, or any part thereof. This subparagraph (d) shall not restrict the right of Unit Owners to decorate the interior of their Units as they may desire, however, the Trustees shall have the right to approve window treatments which are visible from the exterior of the Building.
- (e) No Unit shall be used or maintained in a manner contrary to or inconsistent with the By-Laws of the Condominium Trust and the Rules and Regulations which may be adopted pursuant thereto.

These restrictions shall be for the benefit of all Unit Owners and shall be administered to on behalf of the Unit Owners by the Trustees of the Condominium Trust, and shall be enforceable solely by the Trustees, insofar as permitted by law, and shall be perpetual; and to that end may be extended at such time or times and in such manner as permitted or required by law for the continued enforceability thereof. No Unit Owner shall be liable for any breach of the provisions of this paragraph except such as occur during his or her Unit ownership.

8. Amendments: This Master Deed may be amended by a Vote of Unit

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Owners entitled to 75% or more of the undivided interest in the Common Areas and Facilities, unless a larger percentage is required by law, and (b) certified and acknowledged by a majority of the Trustees of the Condominium Trust, and (c) such Trustees certification duly recorded with the Middlesex South District Registry of Deeds; PROVIDED, HOWEVER, THAT;

- (a) No instrument of amendment which alters the dimensions of any Unit shall be of any force or effect unless the same has been signed by the owners of the Unit so altered;
- (b) No instrument of amendment which alters the percentage of undivided interest in the Common Elements to which any Unit is entitled shall be of any force or effect unless the same has been signed by all Unit Owners, and said instrument is recorded as an Amended Master Deed;
- (c) No instrument of amendment affecting any Unit in any manner which impairs the security of a first mortgagee of record shall be of any force or effect unless the same has been assented to by the holder of such mortgage.
- (d) No instrument of amendment which alters this Master Deed in any manner which would render it contrary to or inconsistent with any requirements or provisions of Chapter 183A shall be of any force or effect.

9. Provisions for Protection of Mortgagees: Notwithstanding anything in the Master Deed, the By-Laws of the Condominium Trust, or the Rules and Regulations promulgated pursuant thereto to the contrary, the following provisions shall apply for the protection of the holders of the first mortgages (hereinafter "First Mortgagees") of record which encumber the Units and shall be enforceable by any First Mortgagee. To the extent that there are inconsistencies in any voting requirements hereunder, the higher percentage necessary for approval shall prevail:

- (a) Any party who takes title to a Unit through foreclosure sale duly conducted by a First Mortgagee shall be exempt from any such right of first refusal adopted by the Unit Owners and incorporated in this Master Deed or the By-Laws of the Condominium Trust.
- (b) Any First Mortgagee who obtains title to a Unit by foreclosure or pursuant to any other remedies provided in its mortgage or by law shall not be liable for such Unit's unpaid common expenses or dues which accrued prior to the acquisition of title to such Unit by such First Mortgagee.
- (c) Except as provided by statute in case of condemnation or substantial loss to the Units and/or Common Elements

unless one hundred (100%) percent of the First Mortgagees (based upon one vote for each first mortgage owned) or owners (other than the Declarant, developer, or builder of the individual Condominium Units) have given their prior written approval, the Condominium Trust and the Unit Owners shall not be entitled to:

- (i) By any act or omission seek to abandon or terminate the Condominium, except in the event of substantial destruction of the Condominium by fire or other casualty or in the case of taking by condemnation or eminent domain; or
- (ii) Change the pro rata interest or obligations of any individual Unit for the purpose of:
 - a. Levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or
 - b. determining the pro rata share of ownership of each Unit in the Common Areas and Facilities.
- (iii) Partition or subdivide any Unit; or
- (iv) By any act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common areas and facilities provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas and Facilities shall not be deemed an action for which prior consent of the First Mortgagees shall be required pursuant to this clause; or
- (v) Use hazard insurance proceeds on account of losses to either the Units or the common areas and facilities for other than the repair, replacement or reconstruction thereof, except as otherwise provided by statute in case of a taking of or substantial loss to the Units and/or Common Areas and Facilities.
- (d) Consistent with the provisions of Chapter 183A, all taxes, assessments and charges which may become liens prior to a first mortgage under the laws of the Commonwealth of Massachusetts shall relate only to the individual Units and not to the Condominium as a whole.
- (e) In no event shall any provision of this Master Deed or the By-Laws of the Condominium Trust give a Unit Owner or any other party priority over any rights of a First

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Mortgagee pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of such Unit and/or the Common Areas and Facilities. The Condominium Trust shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the common areas, or part thereof, and the Condominium Trust is hereby appointed as attorney-in-fact for the foregoing purpose. In the event of a taking or acquisition of part or all of the common areas by a condemning authority, the award or proceeds of settlement shall be payable to the Condominium Trust for the use and benefit of the Unit Owners and their mortgagees as their interests may appear.

- (f) A First Mortgagee, which term shall include any holder, insurer or guarantor of any first mortgage, upon request made to the Condominium Trust shall be entitled to:
- (i) Written notification from the Condominium Trust of any default by its borrower who is an owner of a Unit with respect to any obligation of such borrower under this Master Deed or the provisions of the By-Laws of the Condominium Trust which is not cured within sixty (60) days;
 - (ii) Inspect the books and records of the Condominium Trust at all reasonable times;
 - (iii) Receive an annual audited financial statement of the Condominium Trust within ninety (90) days following the end of any fiscal year of the Condominium Trust;
 - (iv) Receive written notice of all meetings of the Condominium Trust and be permitted to designate a representative to attend all such meetings; and receive written notice of any proposed action which would require the consent of mortgage holders under the Master Deed or By-Laws;
 - (v) Receive prompt written notification from the Condominium Trust of any damage by fire or other casualty to the Unit upon which the First Mortgagee holds a first mortgage or any proposed taking by condemnation or eminent domain of said Unit of the Common Areas and Facilities;
 - (vi) Receive written notice of any lapse, cancellation or modification of any insurance or fidelity bond required to be obtained by the Trustee;

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(vii) Upon written request the Condominium Trust shall make available for inspection during normal business hours to any Unit Owner or mortgagee current copies of the Master Deed, Declaration of Trust, By-Laws, and other rules concerning the Condominium and the books, records, and financial statements of the Condominium Trust.

(g) No agreement for professional management of the Condominium or any other contract with the Declarant may exceed a term of three (3) years, and any such agreement shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days notice.

The Declarant intends that the provisions of this Paragraph 10 shall comply with the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association with respect to condominium mortgage loans, and except as provided in Paragraph 14, all questions with respect thereto shall be resolved consistent with that intention.

The provisions of this Paragraph 10 may not be amended or rescinded without the written consent of all First Mortgagees, which consent shall appear on the instrument of amendment as such instrument is duly recorded with the Suffolk County Registry of Deeds.

(h) Except for amendments to the Master Deed, Declaration of Trust and By-Laws for termination of the Condominium made as a result of destruction, damage or condemnation as above set forth:

(i) The consent of owners of units to which at least sixty-seven (67%) percent of the votes in the Trust are allocated and the approval of First Mortgagees on Units which have at least sixty-seven (67%) percent of the votes of units subject to eligible holder mortgages, shall be required to terminate the legal status of the Condominium; and

(ii) The consent of the owners of units to which at least sixty-seven (67%) percent of the votes in Trust are allocated and the approval of First Mortgagees on Units which have at least fifty-one (51%) percent of the votes of units subject to first mortgages, shall be required to add or amend any material provisions of the Condominium documents which establish, provide for, govern or regulate any of the following:

a. Voting;

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- b. Assessments, assessment liens or subordination of such liens;
- c. Reserves for maintenance, repair and replacement of the Common Areas (or Units, if applicable);
- d. Insurance or Fidelity Bonds;
- e. Rights to use Common Areas;
- f. Responsibility for maintenance and repair of the several portions of the Condominium;
- g. Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the project;
- h. Boundaries of any Unit;
- i. The interests in the Common Areas;
- j. Convertibility of Units into Common Areas or of Common Areas into Units;
- k. Leasing of Unit Estates;
- l. Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her Unit;
- m. Any provisions which are for the express benefit of mortgage holders, eligible mortgage holders or eligible insurers or guarantors of first mortgages on units.

Any first mortgage holder that does not deliver or mail (by first class mail, postage prepaid) to the Trustees a negative response within thirty (30) days of a written request by the Trustees for approval of any addition or amendment pursuant to this Paragraph shall be deemed to have consented to the addition or change set forth in such request. An affidavit by the Trustees making reference to this section, when recorded at the Registry, shall be conclusive as to the facts therein set forth as to all such parties and may be relied pursuant to the provisions of Section 6.4 of the Trust.

- (i) All leases or rental agreements for Units shall be in writing and specifically subject to the Master Deed, the

Declaration of Trust, the By-Laws, and the Rules and Regulations of the Condominium and no Unit shall be leased or rented for a period of less than thirty (30) days.

(j) To the extent permitted by applicable law, first mortgage holders shall also be afforded the following rights:

(i) Any restoration or repair of the project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Master Deed and the original plans and specifications, unless other action is approved by holders holding first mortgages on unit estates which have at least fifty-one (51%) percent of the votes of unit estates subject to first mortgages.

(ii) Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property shall require the approval of first mortgage holders holding mortgages on unit estates which have at least fifty-one (51%) percent of the votes of unit estates subject to first mortgages.

(iii) When professional management has been previously required by any first mortgage holder or insurer or guarantor, whether such entity became a mortgage holder or mortgage insurer or guarantor at that time or later, any decision to establish self-management by the Trust shall require the prior consent of owners of unit estates to which at least sixty-seven (67%) percent of the votes in the Trust are allocated and the approval of first mortgage holders holding mortgages on unit estates which have at least fifty-one (51%) percent of the votes of unit estates subject to first mortgages.

10. The Trust through which the Unit Owners will manage and regulate the Condominium established hereby is Emerson Annex Condominium Trust under Declaration of Trust recorded herewith. In accordance with Chapter 183A, the Declaration of Trust enacts By-Laws and establishes a membership organization of which all Unit Owners shall be members and in which the Unit Owners shall have a beneficial interest in proportion to the percentage of undivided interest in the Common Areas and Facilities to which they are entitled under this Master Deed.

The names and addresses of the original and present Trustees of the Condominium Trust, so designated in the Declaration of Trust, are as follows:

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John Crosswhite Bowman, III

83 Chestnut Street
Boston, MA 02108

Peter W. Smith

98 Seaverns Avenue
Boston, MA

11. Pipes, Wires, Flues, Ducts, Cables, Conduits, Public Utility Lines and Other Common Areas Located Inside of Units: Each Unit Owner shall have an easement in common with the owners of all other Units to use all pipes, wires, ducts, flues, cables, conduits, public utility lines and other common areas and facilities located in such Unit and serving other Units or Common Areas and Facilities or other portions of the Condominium. The Trustees shall have a right of access to each Unit to inspect the same, to remove or terminate interference therewith or abuse thereof, and to maintain, repair or replace the Common Areas or Facilities contained therein or elsewhere in the Buildings.
12. Units Subject to Master Deed, Unit Deed, By-Laws of the Emerson Annex Condominium Trust and Rules and Regulations: All of the Units of the Condominium shall be subject to the provisions of this Master Deed, the Unit Deed, the By-Laws of the Condominium Trust and Rules and Regulations, as they may be adopted or amended from time to time. The acceptance of a deed of a Unit shall constitute an agreement by the person or entity becoming the Unit Owner of such Unit, that the provisions of this Master Deed, the Unit Deed, the By-Laws of the Condominium Trust, and the Rules and Regulations, as they may be adopted or amended from time to time, are accepted and ratified by such owner and that all of such provisions shall be deemed and taken to be covenants running with the land, shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed and shall be binding upon any mortgagee or lien holder, tenant, visitor, servant, guest, licensee or occupant of such Unit.
13. Chapter 183A Governs: The Units and Common Areas and Facilities, the Unit Owners and Trustees of the Condominium Trust, shall have the benefit of, and be subject to the provisions of Chapter 183A in effect on the date this Master Deed is recorded, and in all respect not specified in this Master Deed or in the Condominium Trust and the By-Laws set forth therein, shall be governed by provisions of Chapter 183A in their relation to each other and to the Condominium established hereby, including, without limitation, provisions thereof with respect to removal of the Condominium premises or any portion thereof from the provisions of Chapter 183A.
15. Definitions: All terms and expressions used in this Master Deed which are defined in Chapter 183A shall have the same meanings here unless the context otherwise requires.

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Executed as a sealed instrument this day of , 198 .

CROSSWHITE EMERSON PROPERTIES, INC.

By: _____

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

1987

Then personally appeared the above named
of Crosswhite Emerson Properties, Inc. a Massachusetts Corporation,
and acknowledged the foregoing to be the free act and deed of
Crosswhite Emerson Properties, Inc., before me,

Notary Public
My Commission Expires:

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DECLARATION OF TRUST

EMERSON ANNEX CONDOMINIUM

DECLARATION OF TRUST made this _____ day of _____, 1987, at Concord, Middlesex County, Massachusetts, by John Crosswhite Bowman, III and Peter W. Smith (hereinafter called the Trustees, which term and any pronoun referring thereto shall be deemed to include their successors in trust hereunder and to mean the Trustee or the Trustees for the time being hereunder wherever the context so permits). The address of the Trustees is as follows:

John Crosswhite Bowman, III 83 Chestnut Street, Boston, MA

Peter W. Smith 98 Seaverns Avenue, Boston, MA

ARTICLE I

Name of Trust

The Trust hereby created shall be known as Emerson Annex Condominium Trust (the "Trust"), and under that name, so far as legal, convenient and practicable, shall all business carried on by the Trustees be conducted and shall all instruments in writing by the Trustees be executed.

ARTICLE II

The Trust Purposes

Section 2.1 - Unit Owners' Organization: All of the rights and powers in with respect to the common areas and facilities of Emerson Annex Condominium established by a Master Deed recorded herewith (the "Master Deed") which are by virtue of the Massachusetts General Laws, Chapter 183A ("Chapter 183A") conferred upon or exercised by the organization of Unit Owners of said Condominium, and all property, real and personal, tangible and intangible, conveyed to the Trustees hereunder shall vest in the Trustees as joint tenants with rights of survivorship as Trustees of this Trust, in trust, to exercise, manage, administer and dispose of the same and to receive the income thereof for the benefit of the owners of record from time to time of the Units of the Condominium (hereinafter referred to as the beneficial interest) set forth in Article IV hereof and in accordance with the provisions of section 10 of Chapter 183A for the purposes therein set forth. The provisions of this Declaration of Trust shall automatically become applicable to property which may be added to the Condominium upon the recording of an Amendment to the Master Deed submitting such additional property to the provisions of Chapter 183A of the Massachusetts General Laws.

Section 2.2 - Not a Partnership: It is hereby declared that a Trust and not a partnership has been created and that the Unit Owners are beneficiaries and not partners or associates nor in any other relation whatever

between themselves with respect to the Trust property, and hold no relation to the Trustees other than of beneficiaries, with only such rights as are conferred upon them as such beneficiaries hereunder and under and pursuant to the provisions of Chapter 183A.

ARTICLE III

The Trustees

Section 3.1 - Number of Trustees: Except for the original trustees of which there are two, there shall be at all times from three to seven Trustees as determined by Vote of Unit Owners entitled to more than fifty (50%) percent of the beneficial interest.

Section 3.1.1 - Term: The term of each Trustee shall be for three years and shall end at the annual meeting (or special meeting in lieu thereof) at which such Trustee's successor is due to be appointed; except that the term of any Trustee appointed to fill a vacancy in an unexpired term shall end when his or her predecessor's term would, but for the vacancy, have ended.

Notwithstanding anything to the contrary in this Declaration of Trust, the Declarant of Emerson Annex Condominium (the "Declarant"), or its successor in interest in the Condominium, shall be entitled to designate all Trustees or, any successor Trustee (in the case of any vacancy resulting from expiration of term, resignation, removal or death of a Trustee designated by the Declarant) by an instrument executed by the Declarant and recorded with the Middlesex South District Registry of Deeds ("Registry of Deeds") stating the Trustee's Name and Business Address and that said Trustee is being so designated and containing the Trustee's acceptance of designation duly acknowledged. The Trustees designated by the Declarant shall resign no later than the earlier of the following to occur:

- a. One hundred twenty (120) days after seventy-five (75%) percent of the Units have been conveyed to Unit Purchasers; or
- b. Three years following conveyance of the first Unit Deed.

At such time as the Trustees designated by the Declarant resign, the Unit Owners shall be entitled to fill the vacancies, and the successor trustees shall serve until the next annual meeting. In order to ensure the rights reserved to the Declarant in the Master Deed and By-Laws until all the units are sold by the Declarant, or by its successor in interest, the Trustees shall not be entitled to take any action which would unreasonably interfere with said rights.

Section 3.1.2 - Vacancies; Appointment and Acceptance of Trustees: If and whenever any Trustee's term is to expire or for any other reason, including, without limitation, removal, resignation or death of a Trustee, the number of Trustees shall be less than the number established under Section 3.1, a vacancy or vacancies shall be deemed to exist. Each vacancy

may be filled at any time by an instrument or instruments in writing which sets forth (i) the appointment of a natural person to act as Trustee, signed by any three Unit Owners who certify under oath that Unit Owners entitled to more than fifty (50%) percent of the beneficial interest have voted to make such appointment and (ii) the acceptance of such appointment signed and acknowledged by the person appointed. If the Unit Owners have not voted to make such appointments within thirty (30) days after the vacancy or vacancies first existed, then such vacancy or vacancies may also be filled by vote of the remaining Trustee(s) by an instrument or instruments in writing which sets forth (a) the Trustee(s) appointment of a natural person to act as Trustee, signed by a majority of the Trustees then in office (or by the sole Trustee if there be only one then in office) and (b) the acceptance of such appointment signed and acknowledged by the person appointed. Any vacancy which shall continue for more than sixty (60) days may also be filled by appointment by any court of competent jurisdiction upon the application of one or more Unit Owner(s) or Trustees and notice to all Unit Owners and Trustees and to such other parties in interest, if any, to whom the court may direct that notice be given.

Appointments of Trustees shall be effective upon recording with the Registry of Deeds the instrument of appointment and acceptance; and such person shall then become 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 of transfer or conveyance.

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

Section 3.2 - Trustee Action: In any matter relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred, the Trustees shall act by majority vote at any duly called meeting at which a quorum, as defined in Section 5.9.1, is present. The Trustees may act without a meeting in any case by unanimous written consent and in any cases requiring, in their sole judgment, response to an emergency by majority written consent.

Section 3.3 - Resignation; Removal: Any Trustee may resign at any time by instrument in writing signed and duly acknowledged by that Trustee. Resignations shall take effect upon the recording of such instrument with the Registry of Deeds. Trustees except those Trustees designated by the Declarant or its successors in interest may be removed with or without cause by vote of Unit Owners entitled to at least fifty-one (51%) percent of beneficial interest hereunder. The vacancy resulting from such removal shall be filled in the manner provided in Section 3.1.2. Any removal shall become effective upon the recording with the Registry of Deeds of a certificate of removal signed by a majority of the remaining Trustees in office, or by three (3) Unit Owners who certify under oath that Unit Owners holding at least fifty-one (51%) percent of the beneficial interest hereunder have voted such removal.

Section 3.4 - Fidelity Bond: The Condominium Association shall obtain adequate fidelity insurance and/or fidelity bonds naming the Condominium Trust as the insured at least in the minimum amounts required by the Federal Home Loan Mortgage Corporation (FHLMC) and The Federal National Mortgage Association (FNMA), whichever is higher, for all officers, employees and volunteers of the Condominium handling or responsible for Condominium funds. The premium on such bonds and/or insurance shall constitute a common expense.

Section 3.5 - Compensation of Trustees: With the approval of a majority of the Trustees, each Trustee may receive such reasonable remuneration for extraordinary or unusual services, legal or otherwise, rendered by him or her in connection with the Trust hereof, all as shall be from time to time fixed and determined by the Trustees, and such remuneration shall be a common expense of the Condominium. No compensation to Trustees may be voted for the Trustees appointed by the Declarant.

Section 3.6 - No Personal Liability: No Trustee shall under any circumstances or in any event be held liable or accountable out of his personal assets or be deprived of compensation by reason of any action taken, suffered or omitted in good faith or be so liable, accountable or deprived by reason of honest errors of judgment or mistakes of fact or law or by reason of the existence of any personal or adverse interest or by reason of anything except his own personal and willful malfeasance and defaults.

Section 3.7 - Trustees May Deal with Condominium: No Trustee shall be disqualified by his office from contracting or dealing with the Trustees or with one or more Unit Owners (whether directly or indirectly because of his interest in any corporation, firm, trust or other organization connected with such contracting or dealing or because of any other reason), as vendor, purchaser or otherwise, nor shall any such dealing, contract or arrangement entered into in any respect of this Trust in which any Trustee shall be interested in any way be avoided nor shall any Trustee so dealing or contracting or being so interested be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such Trustee's holding office or of the fiduciary relation hereby established, provided the Trustee shall act in good faith and shall disclose the nature of his interest before entering into the dealing, contract or arrangement.

Section 3.8 - Indemnity of Trustees: The Trustees and each of them shall be entitled to indemnity both out of the Trust property and by the Unit Owners against any liability incurred by them or any of them in the execution hereof, including, without limiting the generality of the foregoing, liabilities in contract and in tort and liabilities for damages, penalties and fines; and, acting by majority, the Trustees may purchase such insurance against liability as they shall determine is reasonable and necessary, the cost of such insurance to be a common expense of the Condominium. Each Unit Owner shall be personally liable for all sums lawfully assessed for his share of any claims involving the Trust property in excess thereof, all as provided in Sections 6 and 13 of Chapter 183A. Nothing in this paragraph shall be deemed to limit in any respect the powers granted to the Trustees in this Declaration of Trust.

ARTICLE IV

Beneficiaries and the Beneficial Interest in the Trust

Section 4.1 - Beneficial Interest: The beneficiaries of this Trust shall be the Unit Owners of Emerson Annex Condominium for the time being. The beneficial interest in this Trust shall be divided among the Unit Owners in the percentage of undivided beneficial interest appertaining to the Units of the Condominium as the Master Deed may be amended from time to time.

Section 4.2 - Each Unit to Vote by One Person: The beneficial interest of each Unit of the Condominium shall be held and exercised as a Unit and shall not be divided among several owners of any such Unit. To that end, whenever any Unit is owned of record by more than one (1) person, the several owners of such Unit shall (a) determine and designate which one of such owners shall be authorized and entitled to cast votes, execute instruments and otherwise exercise the rights appertaining to such Unit hereunder, and (b) notify the Trustees of such designation by a notice in writing signed by all of the record owners of such Unit. Any such designation shall take effect upon receipt by the Trustees and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Trustees may designate any one such owner for such purposes.

ARTICLE V

By-Laws

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

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

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

(ii) 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 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

- instruments in connection with the foregoing; and also 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.
- (iii) Purchase or otherwise acquire title, and rent, lease or hire from others for terms which may extend beyond the termination of this Trust any property or rights to property, real or personal, and own, manage, use and hold such property and such rights;
- (iv) Borrow or in any other manner raise such sum or sum of money or other property as they shall deem advisable in any manner and on any terms, and evidence of indebtedness, which may mature at a time or times even beyond the possible duration of this Trust, and execute and deliver any mortgage, pledge or other instrument to secure any such borrowing;
- (v) Enter into any arrangement for the use or occupation of the Trust property, or any part or parts thereof, including, without thereby limiting the generality of the foregoing, leases, subleases, easements, licenses or concessions, upon such terms and conditions and with such stipulations and agreements as they shall deem desirable, even if the same extend beyond the possible duration of this Trust;
- (vi) Invest and reinvest the Trust property, or any part or parts thereof, and from time to time, as often as they shall see fit, change investments, including investment in all types of securities and other property, of whatsoever nature and however denominated, all to such extent as to them shall seem proper, and without liability for loss even though such property or such investments shall be of a character or in an amount not customarily considered proper for the investment of trust funds or which may or may not produce income;
- (vii) Incur such liabilities, obligations and expenses and pay from the principal or the income of the Trust property in their hands all such sums as they shall deem necessary or proper for the furtherance of the purposes of this Trust;
- (viii) Determine whether receipt by them constitutes principal or income or surplus and allocate between principal and income and designate as capital or surplus any of the funds of the Trust;
- (ix) 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 or persons or to one or more of their number, vote, waive any notice or otherwise act in respect of any such shares;
- (x) 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;

- (xi) Engage in such litigation in the name of and on behalf of the Trust as they deem necessary and proper to further the purposes of this Trust;
- (xii) Maintain such offices and other places of business as they shall deem necessary or proper and engage in business in Massachusetts or elsewhere;
- (xiii) Employ, appoint and remove such agents, managers, officers, board of managers, brokers, engineers, architects, employees, servants, assistants and counsel (which counsel may be a firm of which one or more of the Trustees are members) as they shall deem proper for the purchase, sale or management of the Trust property, or any part or parts thereof, or for conducting the business of the Trust, and define their respective duties and fix and pay their compensation, and the Trustees shall not be answerable for the acts and defaults of any such person. The Trustees may delegate to any such agent, manager, officer, board, broker, engineer, architect, employee, servant, assistant or counsel any or all of their powers (including discretionary powers, except that the power to join in amending, altering, adding to, terminating or changing this Declaration of Trust and the Trust hereby created shall not be delegated) all for such times and purposes as they shall deem proper. Without hereby limiting the generality of the foregoing, the Trustees may designate from their number a Chairman, a Treasurer and a Secretary, and may from time to time designate one or more of their own number to be the Managing Trustees for the management and administration of the Trust property and the business of the Trust, or any part or parts thereof;
- (xiv) Generally, in all matters not herein otherwise specified, control and do each and every thing necessary, suitable, convenient or proper for the accomplishment of any of the purposes of the Trust or incidental to the powers herein or in said Chapter 183A, manage and dispose of the Trust property as if the Trustees were the absolute owners thereof and to do any and all acts, including the execution of any instruments, which shall be in their judgment for the best interests of the Unit Owners.

Section 5.2 - Maintenance and Repair of Units: The Unit Owners shall be responsible for the proper maintenance and repair of their respective Units and the maintenance, repair, and replacement of utility fixtures therein serving the same, including, without limitation, interior finish walls, ceilings and floors; interior window trim; doors, door frames and interior door trim; plumbing and sanitary waste fixtures and fixtures for water and other utilities; electrical fixtures and outlets; and all wires, pipes, drains and conduits for water, sewerage, electric power and light, telephone and any other utility services which are contained in and exclusively serve such Unit. Each Unit Owner shall also be responsible for the cleaning and shovelling of the balcony to which they have the exclusive right to use. 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, fur-

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nishings, facility or equipment therein is hazardous to any Unit or the occupants, the Trustees shall in writing request the Unit Owner to correct the hazardous condition, and in case such work shall not have been commenced within fifteen (15) days (or such reasonable shorter period in case of emergency as the Trustees shall determine) of such request and thereafter diligently been brought to completion, the Trustees shall be entitled to have the work performed for the account of such Unit Owner and to enter upon and have access to such Unit for that purpose. The reasonable cost of such work shall constitute a lien upon such Unit and the Unit Owner shall be personally liable therefor.

Section 5.3.1 - Maintenance, Repair and Replacement of Common Areas and Facilities; Assessment of Common Expenses Therefor: The Trustees shall be responsible for the proper maintenance, repair and replacement of the common areas and facilities of the Condominium (see Section 5.5 for specific provisions dealing with repairs and replacement necessitated because of casualty loss), which may be done through the managing agent, as hereinafter provided and any two Trustees (one if there then be only one in office) or the managing agent or any others who may be so designated by the Trustees may approve payment of vouchers for such work. The expenses of such maintenance, repair and replacement shall be assessed to the Unit Owners as common expenses of the Condominium at such times and in such amounts as provided in Section 5.4.

Section 5.3.2 - Connecting Unit; Exclusive Use of Common Areas: The Trustees may authorize that Units in common ownership be connected for the purposes of single occupancy and that for such purposes cuts be made in common walls or floors; provided, always, that the owners of the Units permitted so to combine them shall do any work in connecting Units at such owners' expense and only in the manner prescribed by the Trustees. Any such authorization shall be valid only if in writing signed by a majority of the Trustees then in office and assented to by First Mortgagees of record of the Units so affected and shall become void unless the work to connect the Units shall be commenced within six months after the date of the authorization and shall be completed within a reasonable time thereafter. At such time as connected Units are no longer to be in common ownership, the owners of such Units shall promptly restore the common walls and/or floors between the Units at their expense and upon failure to do so, the Trustees may perform or cause to be performed such work, in which event such Unit Owners shall be personally liable to the Trust for the cost of the work which, if not paid when demanded, shall constitute a lien on the Units in question in proportion to their respective common interests. Such lien shall be valid notwithstanding any conveyance of the Units, or any of them, out of common ownership prior to demand or any filing in the Registry of Deeds to enforce the lien.

The Trustees may authorize that exclusive use of one or more common areas be assigned to one or more Unit Owners 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 benefitted 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 such Unit Owners to pay such costs shall not preclude those

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Trustees, or any successor Trustees, from imposing reasonable additional common charges for the exclusive use of said common areas. Unless otherwise provided in writing signed by a majority of the Trustees and recorded with the Registry of Deeds, 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 benefitted. The provisions set forth herein shall not be in derogation of the right of the Declarant to combine Units as set forth in Paragraph 4 of the Master Deed.

Section 5.4 - Common Expense Funds:

Section 5.4.1 - Reserve Funds: The Unit Owners shall be liable for common expenses and, subject to the Trustees' judgment as to reserve and contingent liability funds stated below, shall be entitled to surplus accumulations, if any, of the condominium in proportion to their beneficial interest in the Trust. The Trustees may from time to time distribute surplus accumulations, if any, among the Unit Owners in such proportions. The Trustees shall set aside common funds for reserve or contingent liabilities and the Trustees may use the funds for reserve or contingent liabilities, and may use the funds so set aside for reduction of indebtedness or other lawful capital purpose, or, subject to the provisions of the following Sections 5.4.2 and 5.4.4, for repair, rebuilding or restoration of the Trust property or for improvements thereto, and the funds so set aside shall not be deemed to be common profits available for distribution. Working capital shall be at all times maintained in a segregated account for that purpose and not be considered as advance payments of regular assessments.

Section 5.4.2 - Estimates of Common Expenses and Assessments: At least thirty (30) days prior to the commencement of each fiscal year of this Trust, the Trustees shall estimate the common expenses expected to be incurred during the next fiscal year together with a reasonable provision for contingencies and reserves, and after taking into account any undistributed surplus accumulations from prior years, shall determine the assessment to be made for the next fiscal year.

During such time that real estate taxes (including betterment assessments) are assessed against the real property described in the Master Deed as one (or more) tax parcels, but not as Condominium Units, the Trustees may collect and expend, in the same manner as common expenses, all amounts necessary to pay such real estate taxes and betterment assessments for common benefit. Each Unit shall be assessed for such real estate taxes in proportion to its beneficial interest in the common areas and facilities of the Condominium. The Trustees may collect the funds for such real estate taxes in lump sums or installments, using such procedure, including installment payments in advance, as they in their sole discretion shall determine and they may charge any penalties for late payment imposed by the municipal authorities to the Unit(s) responsible therefor.

During such time as the Declarant owns unsold units which are not being offered for rental, the Declarant in lieu of paying the common expenses for those unsold units may elect to cover any deficit or shortage that may arise in the project's initial period of operation. The Declarant shall be legally bound to pay such deficit or shortage if it makes that election.

The Trustees shall promptly render statements to the Unit Owners for their respective share or assessments, according to their beneficial interest in the common areas and facilities, and such assessment shall, unless otherwise provided therein, be due and payable within thirty (30) days after the same is rendered. In the event that the Trustees shall determine during any fiscal year that the assessment so made is less than the common expenses actually incurred, or in the reasonable opinion of the Trustees likely to be incurred, the Trustees shall make a supplemental assessment or assessments and render statements therefor in the manner aforesaid. The Trustees may in their discretion provide for payments of assessments in monthly or other installments. The amount of each such assessment shall be a personal liability of each Unit Owner (jointly and severally among the owners of each Unit) and, if not paid when due, or upon the expiration of such grace period as the Trustees may (but need not) designate, shall carry a late charge in such amount or at such rate (which amount or rate need not be in proportion to the beneficial interests in this Trust) as the Trustees shall determine and, together with any such late amount or charge and attorneys' fees for collection as hereinafter provided, shall constitute a lien on the Unit pursuant to the provisions of Section 6 of Chapter 183A. Each Unit Owner, by acceptance of a Unit Deed, agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by the Trustees in collection of said assessments for common expenses and enforcement of said lien.

Section 5.4.3 - Trustees Authorize Tax Abatement Application: No Unit Owner shall file an application for abatement for real estate taxes without the written approval of the Trustees, which approval shall not be unreasonably withheld.

Section 5.4.4 - Application of Common Funds: The Trustees shall expend common funds only for the purposes permitted by this Trust and Chapter 183A.

Section 5.4.5 - Notice of Default to Mortgagees: Upon written request addressed to the Trustees by a first mortgagee of any unit, the Trustees shall notify such mortgagee of any default by the mortgagor of such unit in the performance of the mortgagor's obligations under the Master Deed or this Declaration of Trust.

Section 5.4.6 - The Trustees of the Condominium Trust and any aggrieved Unit Owner shall have a right of action against Unit Owners who fail to comply with the provisions of the Master Deed, By-Laws and Trust or decisions made by the Trustees of the Condominium Trust. Unit Owners shall also have similar rights of action against the Condominium Trust.

Section 5.5 - Rebuilding and Restoration, Improvements:

Section 5.5.1 - Determination of Scope of Casualty Loss: In the event of any casualty loss to the Trust property, the Trustees shall determine in their reasonable discretion whether such loss exceeds ten (10%) percent of the value of the Condominium immediately prior to the casualty, and shall notify all Unit Owners of such determination. If such loss as so determined does not exceed ten (10%) percent of such value, the Trustees shall

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proceed with the necessary repairs, rebuilding or restoration in the manner provided in paragraph (a) of Section 17 of Chapter 183A. If such loss as so determined exceeds ten (10%) percent of such value, the Trustees shall forthwith submit to all Unit Owners (a) a form of agreement (which may be in several counterparts) among the Unit Owners authorizing the Trustees to proceed with the necessary repair, rebuilding or restoration and (b) a copy of the provisions of Section 17; and the Trustees shall thereafter proceed in accordance with, and take such further action as they may in their discretion deem advisable in order to implement the provisions of Paragraph (b) of Section 17.

Section 5.5.2 - Submission of Proposed Improvements to Unit Owners: If and whenever the Trustees shall propose to make any improvement to the common areas and facilities of the Condominium or shall be requested in writing by the Unit Owners holding twenty-five (25%) percent or more of the beneficial interest in the Trust to make any such improvement, the Trustees shall submit to all Unit Owners (a) a form of agreement specifying the improvement or improvements proposed to be made and the estimated cost thereof, and authorizing the Trustees to proceed to make the same, and (b) a copy of the provisions of Section 18 of Chapter 183A. Upon the receipt by the Trustees of such agreement signed by the Unit Owners holding seventy-five (75%) percent or more of the beneficial interest or the expiration of ninety (90) days after such agreement was first submitted to the Unit Owners, whichever shall first occur, the Trustees shall notify all Unit Owners of the aggregate percentage of beneficial interest held by Unit Owners who have then signed such agreement. If such percentage exceeds seventy-five (75%) percent, the Trustees shall proceed to make the improvement or improvements specified in such agreement and, in accordance with Section 18 of Chapter 183A, shall charge the cost of improvement to all the Unit Owners. The agreement so circulated may also provide for separate agreement by the Unit Owners that if more than fifty (50%) percent, but less than seventy-five (75%) percent of the beneficial interest so consent, the Trustees shall proceed to make such improvement or improvements and shall charge the same to the Unit Owners so consenting.

Section 5.5.3 - Arbitration of Disputed Trustee Action: Notwithstanding the provisions in Section 5.5.1 and 5.5.2: (a) In the event that any Unit Owner(s), by written notice to the Trustees shall dissent from any determination of the Trustees with respect to the value of the Condominium or any other determination or action of the Trustees under Section 5.5 hereof, and such dispute shall not be resolved within thirty (30) days after such notice, then either the Trustees or the dissenting Unit Owner(s) shall submit the matter to arbitration. For that purpose, one arbitrator shall be designated by the Trustees, one by the dissenting Unit Owner(s) and a third by the two arbitrators so designated. Such arbitration shall be conducted in accordance with rules and procedures of the American Arbitration Association and shall be binding upon all parties. The Trustees' decision that work constitutes a repair, rebuilding or restoration other than an improvement shall be conclusive unless shown to have been made in bad faith. The Trustees shall in no event be obliged to proceed with any repair, rebuilding or restoration, or any improvement, unless and until they have received funds in an amount equal to the Trustees' estimate of all costs thereof.

Section 5.6 - Administrative Rules and Regulations: The Trustees may from time to time adopt, amend and rescind administrative rules and regulations governing the operation and use of the common areas and facilities and such restrictions and requirements respecting the use and maintenance of the units and the use of the common areas and facilities as are consistent with the Master Deed and are designed to prevent unreasonable interference with the use by the Unit Owners of their Units and of the common areas and facilities.

Section 5.7 - Managing Agent: The Trustees may, in their discretion, appoint a manager or managing agent to administer the management and operation of the Condominium, including the incurring of expenses, the making of disbursements and the keeping of accounts as the Trustees shall from time to time determine. The Trustees or such manager or managing agent may appoint, employ and remove such additional agents, attorneys, accountants or employees as the Trustees shall determine. Any agreement for professional management of the condominium project or any other contract providing for services of the developer, sponsor or builder may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee, upon no more than ninety (90) days' notice.

Section 5.8 - Insurance:

Section 5.8.1 - Basic Insurance: The Trustees shall obtain and maintain, to the extent available at reasonable cost, master policies of insurance of the following kinds, insuring the interests of the Trust, the Trustees, all Unit Owners, and their mortgagees as their interests may appear:

(A) Casualty or physical damage insurance in the buildings and all other insurable improvements forming part of the Condominium (including all of the units but not including furniture, furnishings and other personal property of the Unit Owners therein) now existing or as they may from time to time be increased by amendment to the Master Deed, together with the service machinery, apparatus, equipment and installations located in the Condominium and existing for the provisions of central services or for common use, in an amount not less than one hundred (100%) percent of their full replacement value (exclusive of foundations) against (1) loss or damage by fire and other hazards covered by the standard fire and extended coverage endorsement, together with coverage for the payment of common expenses with respect to damaged units during the period of reconstruction, and (2) such other hazards and risks as the Trustees from time to time in their discretion shall determine to be appropriate, including, but not limited to, vandalism, malicious mischief, windstorm and water damage, boiler and machinery explosion or damage, and plate glass damage. All policies of casualty or physical damage insurance shall provide (to the extent such clauses are so obtainable) (1) that such policies may not be cancelled or substantially modified without at least ten (10) days' prior written notice to each of the insureds, including each unit mortgagee, and (2) that the coverage thereof shall not be terminated for nonpayment of premiums without thirty (30) days' notice to each of the insureds, including each unit mortgagee. Certificates of such

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insurance and all renewals thereof, together with proof of payment of premiums, shall be delivered by the Trustees to Unit Owners and their mortgagees upon request at least ten (10) days prior to the expiration of the then current policies.

(B) Comprehensive public liability insurance in such amounts and forms as shall be determined by the Trustees covering the common elements, naming the Trust, the Trustees, the Unit Owners, and any manager or managing agent of the Condominium, with limits of not less than a single limit of \$1,000,000.00 for claims for bodily injury or property damage arising out of one occurrence, a limit of \$50,000.00 for each occurrence of water damage and legal liability endorsement to cover liability of any insured to other insureds.

(C) Workmen's compensation and employer's liability insurance covering any employees of the Trust.

The Trustees may, in their sole discretion, purchase such other insurance as they shall determine. The Trustees shall obtain any additional insurance which shall be necessary to comply with the requirements of both the Federal Home Loan Mortgage Corporation (FHLMC) and the Federal National Mortgage Association (FNMA).

Section 5.8.2 - Payment to Trustees in Case of Loss: Such master policies shall provide that all casualty loss proceeds thereunder shall be paid to the Trustees as insurance trustees under these by-laws. The duty of the Trustees as such insurance trustees shall be to receive such proceeds as are paid and to hold, use and disburse the same for the purposes stated in this Section and Section 5.5. If repair or restoration of the damaged portions of the Condominium is to be made, all insurance loss proceeds shall be held in shares for the Trust and the owners of damaged units in proportion to the respective costs of repair or restoration of the common areas and facilities and damaged units, with each share to be disbursed to defray the respective costs of repair or restoration of the damaged common areas and facilities and damaged units, and with any excess of any such share of proceeds above such costs of repair or restoration to be paid to the Trust or Unit Owners for whom held upon completion of repair or restoration; but if pursuant to Section 5.5 restoration or repair is not made, all insurance loss proceeds shall be held as common funds of the Trust and applied for the benefit of Unit Owners in proportion to their beneficial interests in the Trust if the Condominium is totally destroyed, and, in the event of a partial destruction, after payment for such restoration of the common areas and facilities as the Trustees may determine, to those Unit Owners who have suffered damage in proportion to the damage suffered by them. Such application for the benefit of Unit Owners shall include payment directly to a Unit Owner's mortgagee if the mortgage with respect to such unit so requires.

Section 5.8.3 - Other Provisions: In addition to the coverage and provisions set forth in Section 5.8.1, the Trustees shall see that all policies of physical damage insurance: (1) Shall contain waivers of subrogation by the insurer as to claims against the Condominium, the Trustees, their employees, Unit Owners and members of the family of any Unit Owner who

resides with said Unit Owner, except in cases of arson and fraud; (2) shall contain a waiver of defense of invalidity on account of the conduct of any of the Unit Owners over which the Trustees have "no control"; (3) shall provide that in no event shall the insurance under said policies be brought into contribution with insurance purchased individually by Unit Owners or their mortgagees; (4) shall exclude policies obtained by individual Unit Owners from consideration under any "no other insurance" clause. The Trustees may include a deductible provision, up to \$1,000.00, in their own discretion and in such greater amounts as the owners of all units may authorize in writing, in any of such insurance policies; (5) shall have an agreed amount endorsement or its equivalent and the Trustees shall cause to be reappraised, at least annually, the value of buildings and all other insurable improvements forming part of the Condominium, and if necessary shall increase the amount of coverage on the Master Policy; and (6) shall have an Inflation Guard Endorsement.

Section 5.8.4 - Owner's Insurance and Responsibility for Increase in Premiums of Master Policy: Each Unit Owner may obtain additional insurance for his or her own benefit at his or her own expense. No such policy shall be written so as to decrease the coverage under any of the policies obtained by the Trustees pursuant to Section 5.8.1 above, and each Unit Owner hereby assigns to the Trustees the proceeds of any such policy to the extent that any such policy does in fact result in a decrease in such coverage, said proceeds to be applied pursuant to the terms of this Section 5.8 as if produced by such coverage. Copies of all such policies (except policies covering only personal property of individual Unit Owners) shall be filed with the Trustees.

Section 5.8.5 - Improvements by Unit Owners:

(A) No Unit Owner shall make any addition, alteration or improvement in or to his unit which may affect the structural or mechanical systems of the Condominium without the prior written consent thereto of the Trustees, which consent shall not be unreasonably withheld but may contain such conditions as the Trustees deem appropriate, including, without limitation, restrictions in the manner of performing such work and requirements for builder's risk and liability insurance.

(B) All additions, alterations or improvements to any unit (whether or not affecting the structural or mechanical systems of the Condominium) shall be performed in compliance with all applicable laws, regulations and codes, and when required thereby, by licensed contractors, and in such manner as not unduly to inconvenience or disturb the occupants of the Condominium.

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

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(D) The provisions of this Section 5.8.5 shall not apply to Units owned by the Declarant prior to the initial sale thereof.

Section 5.8.6 - Insurance a Common Expense: The cost of the insurance purchased pursuant to Section 5.8 shall be a common expense assessable and payable as provided in Section 5.4.

Section 5.9 - Meetings:

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

Section 5.9.2 - Meetings of Unit Owners: There shall be an annual meeting of the Unit Owners on the second Wednesday of December in each year at 8:00 p.m. at such reasonable place as may be designated by the Trustees by written notice given by the Trustees to the Unit Owners at least seven days prior to the date so designated. Special meetings (including a meeting in lieu of a passed annual meeting) of the Unit Owners may be called at any time by the Trustees and shall be called by them upon the written request of Unit Owners entitled to more than thirty-three (33%) percent of the beneficial interest of the Trust. Written notice of any special meeting, designating the place, day and hour hereof, shall be given by the Trustees to the Unit Owners at least seven days prior to the date so designated.

Section 5.9.3 - Notice of Certain Matters; Quorum; Majority Vote: Whenever at any meeting the Trustees propose to submit to the Unit Owners any matter with respect to which specific approval of, or action by, the Unit Owners is required by law or this Declaration of Trust, the notice of such meeting shall so state and reasonably specify such matter. Unit Owners entitled to not less than fifty-one (51%) percent of the beneficial interest of this Trust shall constitute a quorum at all meetings. Any action voted at a meeting shall require the vote of fifty-one (51%) percent of the beneficial interest in the Trust except where other provisions of the Trust or Chapter 183A require a larger percentage.

Section 5.10 - Notices to Unit Owners: Every notice to any Unit Owner required under the provisions of this Trust or which may be deemed by the Trustees necessary or desirable in connection with the execution of the Trust created hereby or which may be ordered in any judicial proceeding shall be deemed sufficient and binding if given in writing by one or more of the Trustees to such Unit Owner by mailing it, postage prepaid, addressed to such Unit Owner at his address as it appears upon the records of the Trustees if other than at his unit in the Condominium or by mailing or delivering it to such unit if such unit appears as the Unit Owner's address or if no address appears, at least seven (7) days prior to the date fixed for the happening of the matter, thing or event as to which such

notice is given. The Owner or Owners of each unit shall have the responsibility of providing the Trustees with any address other than the unit to which he, she, or they desire notice to be mailed.

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

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

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

ARTICLE VI

Section 6.1 - Reliance on Identity of Trustees: No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record in the Registry of Deeds shall be bound to ascertain or inquire further as to the persons who are then Trustees under this Trust, or be affected by any notice, implied or actual, other than by a certificate thereof, and such record or certificate shall be conclusive evidence of the personnel of the Trustees and of any changes therein. The receipts of the Trustees, or of any one or more of them for moneys or things paid or delivered to them or him shall be effectual discharges therefrom to the persons paying or delivering the same and no persons from whom the Trustees, or any one or more of them, shall receive any money, property or other credit shall be required to see the application thereof. No purchaser, mortgagee, lender or other person dealing with the Trustees or with any real or personal property which then is or formerly was Trust property shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed or otherwise as to the purpose or regularity of any of the acts of the Trustees, and any instrument of appointment of a new Trustee or resignation or removal of an old Trustee purporting to be ex-

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cutted by the Trustees, Unit Owners or other persons required by this Trust to execute the same, shall be conclusive in favor of any such purchaser or other person dealing with the Trustees of the matters therein recited relating to such discharge, resignation, removal or appointment or the occasion thereof.

Section 6.2 - Personal Liability Excluded: No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees, or by reason of anything done or omitted to be done by or on behalf of them or any of them, against the Trustees individually, or against any such agent or employee, or against any beneficiary, either directly or indirectly, by legal or equitable proceedings or by virtue of any suit or otherwise, and all persons extending credit to, contracting with or having any claim against the Trustees shall look only to the Trust property for any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to them from the Trustees, so that neither the Trustees nor the beneficiaries, present or future, shall be personally liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Unit Owners under provisions of Section 3.8 of this Trust or under the provisions of Chapter 183A.

Section 6.3 - All Obligations Subject to this Trust: Every note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees, or by any agent or employee of the Trustees, shall be deemed to have been entered into subject to the terms, conditions, provisions and restrictions of this Trust, whether or not express reference shall have been made to this instrument.

Section 6.4 - Further Matters of Reliance: This Declaration of Trust any any amendments to this Trust and any certificate required by the terms of this Trust to be recorded and any other certificate or paper signed by the Trustees or any of them which it may be deemed desirable to record shall be recorded with said Registry of Deeds and such recording shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustees, the Trust property or any beneficiary thereunder shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be recorded with said Registry of Deeds. Any certificate signed by two Trustees in office at the time (or by the sole Trustee if there is only one at the time) setting forth as facts any matters affecting the Trust, including statements as to who are the beneficiaries, what action has been taken by the beneficiaries, or matters determining the authority of the Trustees, or any one of them to do any act, when duly acknowledged and recorded with said Registry of Deeds shall be conclusive evidence as to the existence of such alleged facts in favor of all persons, including the Trustees, acting in reliance thereon. Any certificate executed by any Trustee hereunder, or by a majority of the Trustees hereunder, setting forth the existence of any facts, the existence of which is necessary to authorize the execution of

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any instrument or the taking of any action by such Trustee or majority, as the case may be, shall, as to all persons acting in good faith in reliance thereon be conclusive evidence of the truth of the statements made in such certificate, the existence of the facts therein set forth and the existence of the authority of such one or more Trustees to execute and deliver the designated instrument on behalf of the Trust.

Section 6.5 - Common Expenses in Event of Unit Mortgage Foreclosure: Any first mortgage who comes into possession of a unit pursuant to the remedies provided in its mortgage, foreclosure of such mortgage or deed in lieu of foreclosure sale, shall take such unit free of any claims for unpaid common expenses or assessments against such unit which accrue prior to the time such mortgagee or said purchaser comes into possession of such unit. In such event, the Trustees shall issue a certificate pursuant to Chapter 183A, Section 6(d), upon the request of said mortgagee, or said purchaser, indicating that there are no outstanding common charges due as to the unit in question.

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

ARTICLE VII

Amendments and Termination

Section 7.1 - Amendments: The Trustees, with the consent in writing of Unit Owners entitled to not less than seventy-five (75%) percent of the beneficial interest in this Trust, may at any time and from time to time amend, alter, add to, or change this Declaration of Trust in any manner or to any extent (except those provisions granting special rights to the Declarant or its successor, including, without limitation, Section 3.1, 3.3 and 5.8.5), the Trustees first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided always, however, that no such amendment, alteration, addition or change (a) according to the purport of which the percentage of the beneficial interest hereunder of any Unit Owner would be altered or in any manner or to any extent whatsoever modified or affected, so as to be different from the percentage of the individual interest of such Unit Owner in the common areas and facilities as set forth in the Master Deed, and any amendment thereto, or (b) which would render this Trust contrary to or inconsistent with any requirements or provisions of Chapter 183A, shall be valid or effective. Any valid amendment, alteration, addition or change pursuant to the foregoing provisions of this paragraph shall become effective upon the recordation with the Registry of Deeds of an instrument of amendment, alteration, addition or change as the case may be, signed, sealed and acknowledged in the manner required in Massachusetts for the acknowledgment of deeds by any two Trustees, if there be at least two then in office (or by one Trustee if there be only one in office), setting forth in full the amendment, alteration, addition or change and reciting the consent of

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the Unit Owners required by this Trust to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all prerequisites to the validity of such amendment, alteration, addition or change whether stated in such instrument or not, upon all questions as to title or affecting the rights of third persons and for all other purposes. Nothing in this paragraph shall be construed as making it obligatory upon the Trustees to amend, alter, add to or change the Declaration of Trust upon obtaining the necessary consent as hereinabove provided.

Section 7.2 - Termination: The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of Chapter 183A in accordance with the procedure therefor set forth in Section 19 thereof.

Section 7.3 - Disposition of Trust Property Upon Termination: Upon the termination of this Trust, the 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, 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 in their judgment be necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distribution of Trust property may have passed.

ARTICLE III

Construction and Interpretation

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

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Unless the context otherwise indicates, words defined in Chapter 183A shall have the same meaning herein.

IN WITNESS WHEREOF, John Crosswhite Bowman, III and Peter W. Smith have set their hands and seals on the day and year first hereinabove set forth.

John Crosswhite Bowman, III

Trustees as aforesaid
and not individually.

Peter W. Smith

COMMONWEALTH OF MASSACHUSETTS

, ss.

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Then personally appeared the above named John Crosswhite Bowman, III and Peter W. Smith and acknowledged the foregoing to be their free act and deed, before me,

Notary Public
My commission expires:

J.M.K./J.K.C.
3/16/87

STATEMENT OF BUYER SELECTION CRITERIA
EMERSON ANNEX AFFORDABLE HOUSING UNITS

Background

Subsequent to an affirmative vote at 1987 Town Meeting, the Emerson Annex building will be converted into eleven (11) units of affordable housing. The conversion results from a partnership arrangement between the Town of Concord and Crosswhite Properties, Inc., of Boston, in which, in return for purchasing the building for the sum of \$1 the developer will finance and implement its conversion into affordable units which will be sold directly to qualified buyers at an affordable price.

In order to enable buyers to obtain mortgages at subsidized interest rates, the Town of Concord, through the Emerson Annex Project, is participating in the Massachusetts Housing Partnership Program. This will enable potential buyers of the units who meet both State and local criteria, to obtain mortgages through the Massachusetts Housing Finance Agency at subsidized interest rates or through the Housing Partnership Program at further reduced interest rates. Six of the units will be sold for \$110,000 and are considered to be in the affordable range; five will be sold for \$86,000 which is at the very affordable level.

Threshold Selection Criteria

In order to purchase a unit in the Emerson Annex, a potential buyer must meet the threshold criteria established by the Massachusetts Housing Finance Authority (affordable units) or the Massachusetts Housing Partnership Program (very affordable units). Those are as follows:

- (1) First time home buyer - potential buyer cannot have owned a house within the last three years.
- (2) Maximum Income Level - the potential buyer cannot earn more than the maximum income limit set by the Massachusetts Housing Finance Authority (MHFA) guidelines for the affordable units or the maximum as set by the Massachusetts Housing Partnership (MHP) Program guidelines for very affordable units.
- (3) Minimum Income Level - the potential buyer is required to earn the minimum income level to qualify for an MHFA mortgage rate or MHP mortgage rate.
- (4) Affirmative Action Plan - the Executive Office of Communities and Development requires that MHP Program participants develop and implement an

affirmative action plan. This means that there will be a goal to sell 13% or two of the Emerson Annex units to minorities. The 13% reflects the percentage of minorities in the Boston Standard Metropolitan Statistical Area (SMSA).

Local Selection Criteria

In addition to the State regulations, the Town establishes the following criteria for potential Emerson Annex unit buyers. The Emerson Annex units are considered family housing. Those families meeting the following criteria will receive priority throughout the selection process.

- (5) Town of Concord Resident - Current or former Town of Concord residents will be considered priority buyers. In order to be considered under this category, a potential buyer must be a current resident of Concord and have lived in Concord for at least one year. Former residents are those not currently residing in Concord but who have lived in Concord within the past seven (7) years. It will be the applicants responsibility to offer tangible evidence of current or former residency (i.e. voter registration, utility bill, public school enrollment, street listing, etc.).
- (6) Town of Concord Employee - Those individuals who are currently (at time of application) permanent employees of the Town of Concord, Concord Public Schools, or Concord-Carlisle Regional High School will also receive priority in the application/selection process.

Administrative Organization

With contributory funding from the Town, the Concord Housing Authority will hire a part-time affordable housing coordinator. This individual will report to the Executive Director of the Housing Authority and will be responsible for implementing the selection process and criteria. This includes soliciting buyer applications, organizing the process, disseminating information to the general public regarding the Program, administering the lottery based on guidelines set forth in this Statement, and qualifying buyers for the eleven Annex units.

The coordinator will facilitate the initial selection of eleven buyers for the units and then will monitor resale of the units, maintain a waiting list, and select buyers as necessary to purchase the units being resold.

The Fair Housing Committee will oversee implementation of the selection process to assure that the guidelines for selection are met (both State and local) and to act as an appeals committee. The Fair Housing Committee will set up an appeals process in

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conjunction with the coordinator, and will periodically report their activities to the Board of Selectmen.

An outline of the proposed selection process appears as Appendix A. The Fair Housing Committee through the Coordinator, has overall responsibility for seeing that the project goals are met both in the short term and over time. The Fair Housing Committee may recommend to the Selectmen changes in both selection process and criteria as deemed necessary to carry-out the process in a fair and equitable manner while maintaining the objective of providing affordable housing within the Emerson Annex project.

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APPENDIX A
Selection Process

The following is an outline of the process to be used to select buyers for the Emerson Annex affordable housing units. An effort is made to assure fairness to all applicants while maintaining affirmative action goals and preference for the priority groups established by above. The coordinator will adhere to this process; the Fair Housing Committee will oversee the process.

Applications

An initial application period will be established by the coordinator. Potential applicants will be allowed sufficient time to obtain and complete an application form and submit it to the Affordable Housing Coordinator. The availability of applications and deadline for filing will be advertised in a publication of local circulation and in any other publication deemed useful by the coordinator.

A series of briefing sessions will be arranged where potential applicants will receive information concerning eligibility for the program, completion of the application, the selection process, and will have an opportunity to ask questions. When the applications are received by the coordinator, they will be date and time-stamped.

Applications will remain on file with the coordinator.

Designation of Units by Price and Number of Bedrooms

A price will be assigned to each category of unit. There are eleven units; four units contain three bedrooms, five units have two bedrooms and the remaining unit has one bedroom. The prices by unit are as follows:

- a. the 1-bedroom unit will be priced \$110,000
- b. 3 of the 2-bedroom units will be priced @ \$110,000
- c. 2 of the 3-bedroom units will be priced @ \$110,000
- d. 3 of the 2-bedroom units will be priced @ \$ 86,000
- e. 2 of the 3-bedroom units will be priced @ \$ 86,000

Lottery System

There will be a three-tiered lottery. All applications received by the established deadline will be separated into three groups; For reference, the three groups will be referred to as Group 1, Group 2 and Group 3. Group 1 will be an affirmative action group; Group 2 will consist of both the residents and employee priority individuals; and Group 3 will consist of all other applicants who are neither in the affirmative action or resident/employee groups.

All applicants within each group will be further identified by family size and income level (eligibility for \$86,000 or \$110,000

mortgage financing).

In the initial sale of the eleven units, there will be a concerted effort to match family size with the number of bedrooms in the unit. The following represents a minimum guideline to initially match units to family:

<u>Number of Bedrooms</u>	<u>Minimum Family Size</u>
1	2 people
2	2 or more people
3	3 or more people

Whenever possible, qualified applicants will be allowed to select their unit from among the available units. Those applicants who qualify early in the lottery process will have a greater selection. As the units are filled, selection will become less and less possible. It will be the coordinator's responsibility to monitor selections and match applicants to units.

Group 1 Lottery

The first actual lottery will be among the Affirmative Action group. Applicants will be arranged on a list by order of the drawing. The first drawn will be first on the list, the second drawn will be second, and so on, until all the applications in the affirmative action pool have been drawn.

The goal is to sell two of the eleven units to minorities. The first applicant drawn will be matched with a specific unit; family size and income will be considered. The second applicant drawn will then be assigned to a unit. Both applicants will then be sent, by the coordinator, to the local lending institution where the applicants will be qualified for their mortgage loan.

If, for some reason, an applicant is disqualified after being selected, the next person on the list will then enter the process by being assigned a unit and proceeding with mortgage qualification. The process to qualify two minority buyers will continue until the Group 1 list is exhausted. If the two units have been allocated and there are persons remaining on the Group 1 list, those persons will be added to the next lottery of Group 2 applicants, and will receive a second chance to become a qualified buyer.

Group 2 Lottery

Group 2 consists of all applicants who are either residents or Town employees (as defined under Local Selection Criteria) plus any Group 1 applicants who were not selected in the first lottery but remain eligible.

A second lottery will then be conducted among Group 2. A random drawing of Group 2 will result in each applicant being placed

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on a list in order of the draw. The first applicant drawn will be first on the list, the second drawn will be second, etc., until all those in Group 2 have been drawn and assigned a place on the list. In effect, this will assign former Group 1 applicants a new position on the list; some may receive a more favorable position, others may receive a less favorable position than in the first lottery.

The selection process is again initiated whereby the first applicant on the Group 2 list is assigned one of the remaining units and sent to be qualified for a mortgage. If a selected applicant is subsequently disqualified, the next eligible person on the list enters the process.

Applicants on the Group 2 list will continue to be selected in order of the draw until all the remaining units are allocated and buyers qualified for mortgages. If all the units are sold and the Group 2 list has applicants remaining, they will be placed at the top of a waiting list for possible future resale of units.

Group 3 Lottery

If the Group 2 list is exhausted and units remain unsold, there will be a third lottery. Group 3 will consist of all applicants who did not qualify for Groups 1 or 2. After the third lottery, each applicant in Group 3 will be assigned to a list according to the draw. The selection/qualification process continues until all units are allocated.

Waiting List

After the eleven units are sold, the remaining applicants will constitute the waiting list for future resale of units. After the initial application period, if new applications are received, they will be added to the bottom of the waiting list in order received.

Upon resale of a unit, the next applicant on the waiting list will be considered. Preference for residents and employees will be maintained whenever possible.



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STANDARD FORM PURCHASE AND SALE AGREEMENT

From the Office of: Howard E. Cohen, Esquire Mintz, Levin, Cohn, Ferris Gloytsky & Popeo, P.C. Member Greater Boston Real Estate Board One Financial Center Boston, MA 02111

1. PARTIES (fill in)

This _____ day of September 19 87 Town of Concord

2. DESCRIPTION (fill in and include title reference)

hereinafter called the SELLER, agrees to SELL and Crosswhite/Emerson Properties, Inc. 83 Chestnut Street, Boston, MA 02108 hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises: +20,000 square feet of land located on Stow and Hubbard Street, Concord, Middlesex County and the +12,000 square foot building thereon, commonly known as the Emerson Annex Building, such land and building more fully described on Exhibit A attached (the "Premises").

3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES (fill in or delete)

Included in the sale as a part of said premises are the buildings, structures, and improvements now thereon, and the fixtures belonging to the SELLER and used in connection therewith including, if any, all wall-to-wall carpeting, drapery rods, automatic garage door openers, venetian blinds, window shades, screens, screen doors, storm windows and doors, awnings, shutters, furnaces, heaters, heating equipment, stoves, ranges, oil and gas burners and fixtures appurtenant thereto, hot water heaters, plumbing and bathroom fixtures, garbage disposers, electric and other lighting fixtures, manfets, outside television antennas, fences, gates, trees, shrubs, plants, and ONLY IF BUILT IN, refrigerators, air conditioning equipment, ventilators, dishwashers, washing machines and dryers; and

but excluding

4. TITLE DEED (fill in)

*Include here by specific reference any restrictions, easements, rights and obligations in party walls not included in (b), leases, municipal and other liens, other encumbrances, and make provision to protect SELLER against BUYER'S breach of SELLER'S covenants in leases, where necessary.

Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except

- (a) Provisions of existing building and zoning laws;
(b) ~~Existing rights and obligations in party walls which are not the subject of written agreement;~~
(c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
(d) Any liens for municipal betterments assessed after the date of this agreement;
(e) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the ~~present~~ use of said premises for multifamily residential use.

5. PLANS

If said deed refers to a plan necessary to be recorded therewith the SELLER shall deliver such plan with the deed in form adequate for recording or registration.

6. REGISTERED TITLE

In addition to the foregoing, if the title to said premises is registered, said deed shall be in form sufficient to entitle the BUYER to a Certificate of Title of said premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable the BUYER to obtain such Certificate of Title.

7. PURCHASE PRICE (fill in); space is allowed to write out the amounts if desired

The agreed purchase price for said premises is One (1.00) dollars of which

\$ have been paid as a deposit this day and
\$ 1.00 are to be paid at the time of delivery of the deed in cash, or by certified cashier's, treasurer's or bank check.
\$ *See paragraph 35 of the Rider attached hereto.
\$ 1.00 TOTAL



- 8. TIME FOR PERFORMANCE: DELIVERY OF DEED (fill in)

Such deed is to be delivered at 10:00 o'clock A.M. on the 30th day of ~~June~~ after BUYER obtains a special permit from the Town of Concord Zoning Board of Appeals for construction of the Premises in accordance with the terms of Registry of Deeds, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement. (The "Time of Closing" for the Proposal as hereinafter defined and all statutory appeal periods ~~thereof~~ have expired at the * Full possession of said premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said premises to be then (a) in the same condition as they now are reasonable use and wear thereof excepted, and (b) not in violation of said building and zoning laws, and (c) in compliance with provisions of any instrument referred to in clause 4 hereof. The BUYER shall be entitled to an inspection of said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.
- 9. POSSESSION AND CONDITIONS OF PREMISES. (attach a list of exceptions, if any)

See Paragraph 31 of the Rider attached hereto. *Add: If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of delivery of the deed the premises do not conform with the provisions hereof, ~~then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto unless the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty days.~~
- 10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM (Change period of time if desired).

See Paragraph 31 of the Rider attached hereto. *Add: If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of delivery of the deed the premises do not conform with the provisions hereof, ~~then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto unless the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty days.~~
- 11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc.

See Paragraph 33 of the Rider attached hereto. If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, ~~at any time during the period of this agreement or any extension thereof, the holder of a mortgage on said premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.~~
- 12. BUYER'S ELECTION TO ACCEPT TITLE

The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefor the purchase price without deduction, in which case the SELLER shall convey such title, ~~except that in the event of such conveyance in accord with the provisions of this clause, if the said premises shall have been damaged by fire or casualty insured against, then the SELLER shall, unless the SELLER has previously restored the premises to their former condition, either~~
 - (a) pay over or assign to the BUYER, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the SELLER for any partial restoration, or
 - (b) if a holder of a mortgage on said premises shall not permit the insurance proceeds or part thereof to be used to restore the said premises to their former condition or to be so paid over or assigned, give to the BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amounts reasonably expended by the SELLER for any partial restoration.
- 13. ACCEPTANCE OF DEED

The acceptance of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.
- 14. USE OF MONEY TO CLEAR TITLE

To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed.
- 15. INSURANCE *Insert amount (list additional types of insurance and amounts as agreed)

Until the delivery of the deed, the SELLER shall maintain insurance on said premises as follows:

Type of Insurance	Amount of Coverage
(a) Fire	*as presently insured
(b) Extended Coverage	
(c)	
- 16. ADJUSTMENTS (list operating expenses, if any, or attach schedule)

Collected rents, mortgage interest, water and sewer use charges, ~~operating expenses~~ ~~to the schedule attached hereto or set forth below, and to which the then unpaid portion of the purchase price shall be apportioned and net amount shall be deducted, as of the day of performance of this agreement, and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of delivery of the deed. Uncollected rents for the term of this period shall be apportioned if and when collected by either party.~~

*The BUYER agrees to use the Premises in accordance with Paragraph 32 hereof the Premises are conveyed pursuant to this Paragraph 12.

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17. ~~ADJUSTMENT OF UNASSESSED AND ABATED TAXES~~ ~~If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute ~~or institute proceedings for an abatement unless herein otherwise agreed.~~~~
18. ~~BROKER'S FEE~~ ~~A broker's fee for professional service of~~
~~(fill in fee with dollar amount or percentage; also name of Broker(s))~~ ~~is due from the SELLER to~~
~~the Broker(s) herein, but if the SELLER pursuant to the terms of clause 21 hereof retains the deposits made hereunder by the BUYER, said Broker(s) shall be entitled to receive from the SELLER an amount equal to one-half the amount so retained or an amount equal to the Broker's fee for professional services according to the contract, whichever is the lesser.~~
19. ~~BROKER(S) WARRANTY~~ ~~The Broker(s) named herein~~
~~(fill in name)~~ ~~warrant(s) that the Broker(s) is/are duly license(s) as such by the Commonwealth of Massachusetts.~~
20. ~~DEPOSIT~~ ~~All deposits made hereunder shall be held in escrow by the Broker(s)~~
~~(fill in, or delete reference to broker(s) if SELLER holds deposit)~~ ~~subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement, provided however that in the event of any disagreement the Broker(s) may retain said deposits pending instructions mutually given by the SELLER and the BUYER.~~
21. ~~BUYER'S DEFAULT DAMAGES~~ ~~If the BUYER shall fail to fulfill the BUYER'S agreements herein, all deposits made hereof by the~~
~~BUYER shall be retained by the SELLER as liquidated damages unless within thirty days after the time for performance of this agreement or any extension hereof, the SELLER otherwise notifies the BUYER~~
~~in writing.~~
22. ~~RELEASE BY HUSBAND OR WIFE~~ ~~The SELLER'S spouse hereby agrees to join in said deed and to release and convey all statutory and other~~
~~rights and interests in said premises.~~
23. ~~BROKER AS PARTY~~ ~~The Broker(s) named herein (is/are) in this agreement and become(s) a party hereto, insofar as any~~
~~provisions of this agreement expressly apply to the Broker(s) and to any amendments or modifications of such provisions to which the Broker(s) agree(s) in writing.~~
24. ~~LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, etc.~~ ~~If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, the~~
~~principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, expres-~~
~~s or implied, hereunder.~~
25. ~~WARRANTIES AND REPRESENTATIONS~~ ~~The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has~~
~~he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any~~
~~made by either the SELLER or the Broker(s):~~

See Paragraph 46
of Rider A
attached
hereto
26. ~~MORTGAGE CONTINGENCY CLAUSE~~ ~~In order to help finance the acquisition of said premises, the BUYER shall apply for a conventional, first~~
~~other institutional mortgage loan of \$ _____ payable in no less than _____ years~~
~~at an interest rate not to exceed _____. If despite the BUYER'S diligent~~
~~efforts a commitment for such loan cannot be obtained on or before _____, 19____, the BUYER~~
~~may terminate this agreement by written notice to the SELLER(S) and/or the Broker(s) as agent for~~
~~the SELLER, prior to the expiration of such time, whereupon any payments made under this agreement~~
~~shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement~~
~~shall be void without recourse to the parties hereto. In no event will the BUYER be deemed to have~~
~~used diligent efforts to obtain such commitment unless the BUYER submits a complete mortgage loan~~
~~application conforming to the foregoing provisions on or before _____, 19____.~~

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Rider to
PURCHASE AND SALE AGREEMENT
Dated September __, 1987
by and between
THE TOWN OF CONCORD ("SELLER")
AND
CROSSWHITE/EMERSON PROPERTIES, INC. ("BUYER")

31. In connection with Paragraph 9 hereof, SELLER hereby agrees to secure and maintain the Premises to prevent any deterioration thereof, with the exception of reasonable wear and tear. If the Premises are damaged prior to the Time of Closing, BUYER may elect to terminate this Agreement and all of BUYER'S obligations hereunder shall cease.
32. BUYER agrees to construct the eleven (11) affordable condominium units of family housing (the "Units") on the Premises in accordance with the Proposal attached hereto as Exhibit B (hereinafter, the "Proposal"). BUYER agrees to sell five (5) units at the Massachusetts Housing Partnership ("MHP") limit of \$86,000 and six (6) units at the Massachusetts Housing Finance Agency first-time homebuyer limit of \$110,000 (collectively, these prices for the units are hereinafter referred to as the "Final Unit Prices"). The parties hereto acknowledge that BUYER'S obligations hereunder are specifically contingent upon (i) the Proposal being accepted at the Town of Concord Town Meeting scheduled for April 6, 1987 (the "Town Meeting"); (ii) BUYER obtaining a special permit from the Town of Concord Zoning Board of Appeals for construction of the Premises in accordance with the terms of the Proposal (the "Special Permit"); and (iii) BUYER obtaining any and all building permits necessary for construction of the Premises in accordance with the terms of the Proposal (the "Building Permits").
33. With respect to SELLER'S obligations, pursuant to Paragraph 10 hereof, to use reasonable efforts to remove defects in title, deliver possession or make the Premises conform to the provisions hereof, the parties hereto agree that SELLER shall not be required to expend an amount greater than five thousand dollars (\$5,000).
34. The parties hereto agree that it shall be a condition of closing that SELLER shall execute and deliver to BUYER a lease, in a form and for a term mutually acceptable to the parties hereto, but in no event for a term less than Forty (40) years, providing for the exclusive use and occupancy of not less than eighteen

(18) parking spaces in the municipal parking lot located on Stow and Hubbard Street (the "Parking Lot") by BUYER, its successors and assigns. In addition, such lease shall provide that SELLER is responsible, at its sole expense, for maintenance of the Parking Lot and that SELLER shall maintain the Parking Lot in the same condition and according to the same standards as other municipally owned parking lots, areas and facilities within the Town of Concord.

35. The parties hereto acknowledge that BUYER has paid Ten Thousand Dollars (\$10,000) to SELLER as consideration for SELLER's review of the Proposal. In the event that (i) the Proposal is not accepted at the Town Meeting; (ii) BUYER is unable to procure the Building Permits; (iii) SELLER, at the expiration of the extension of time provided for in Paragraph 10 hereof, shall have failed to remove any defect in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed; or (iv) this Agreement is terminated, SELLER shall return \$5,000 to BUYER.

36. In addition to the purchase price required to be paid pursuant to Paragraph 7 hereof, upon execution of this Agreement, BUYER shall procure a Letter of Credit ("LOC") in the amount of Forty Thousand Dollars (\$40,000), substantially on the terms attached hereto as Exhibit C, to insure performance of the terms of this Agreement and the Proposal. Said LOC shall be returned to BUYER if (i) the BUYER does not obtain the Special Permit; (ii) the BUYER does not obtain the Building Permits; (iii) SELLER, at the expiration of the extension of time provided for in Paragraph 10 hereof, shall have failed to remove any defect in title, deliver possession or make the Premises conform, as the case may be, all as herein agreed; (iv) this Agreement is terminated; or (v) the Units are substantially completed in accordance with the Proposal. For the purposes of this Paragraph 36, the term "substantially completed" shall mean that certificates of occupancy for the construction of said Units have been issued by the Building Commissioner of the Town of Concord.

37. SELLER hereby agrees to deliver to BUYER, upon execution of this Agreement, a permitter survey of both the Premises and the Parking Lot.

38. The SELLER agrees that it shall use reasonable efforts to encourage the Building Commissioner to issue the Building Permits within thirty (30) days of BUYER's submission of an application therefore. This Paragraph 38 shall survive delivery of the deed hereunder.

39. BUYER hereby agrees to use reasonable efforts to substantially complete the construction of the Premises in accordance with the terms of the Proposal with ten (10) months of the date on which any and all appeal periods affecting the issuance of the Building Permits expire. For the purposes of this Paragraph 39 the term "substantial completion" shall be defined as that level of completion which would enable a certified architect to execute the American Institute of Architect's Certificate of Substantial Completion. BUYER shall submit a schedule of sale prices for the Units prior to substantial completion of said construction. This Paragraph 39 shall survive delivery of the deed hereunder.
40. Upon execution of this Agreement, BUYER shall have the right to enter upon the Premises to conduct any and all necessary architectural and environmental tests and reviews, including but not limited to surveys, structural examinations and borings. In the event the results of the aforementioned tests and reviews reveal substantial structural defect(s) in the Premises, BUYER shall give prompt notice thereof to SELLER and shall consult with SELLER as to the methods and costs of correcting said defect(s). If the reasonably estimated cost of correcting said defect(s) exceeds Ten Thousand Dollars (\$10,000), BUYER may elect to terminate this Agreement by written notice of such election to SELLER, whereupon all obligations of the parties hereto shall cease and this Agreement shall have no force or effect.
41. SELLER hereby agrees to provide the Premises with water, sewer and electric services separate and distinct from any adjacent structures. The availability of such services at or in a public way abutting the property boundary of the Premises shall be deemed to be full compliance with the terms of SELLER's obligations pursuant to this Paragraph 41. This Paragraph 41 shall survive delivery of the deed hereunder.
42. SELLER hereby agrees to indemnify and hold harmless BUYER, and any entity providing BUYER with construction and permanent financing for the Premises, from any and all liabilities arising from and other losses associated with (including lost profits) the release of oil or other hazardous substances, as defined in Massachusetts General Laws Ch. 21E, into the environment during the period of SELLER'S ownership of the Premises. SELLER hereby agrees to

execute any and all documents or instruments evidencing the indemnification provided for in this Paragraph 42. This Paragraph 42 shall survive delivery of the deed hereunder.

43. The parties hereto acknowledge that SELLER shall be responsible for the marketing and sale of the Units to be constructed on the Premises. SELLER hereby agrees to use best efforts to locate eleven (11) households or individuals qualified, in accordance with the terms of the Proposal, willing, able and committed to purchase the Units to be constructed on the Premises within thirty (30) days of the issuance of certificates of occupancy for said Units. In the event said Units have not been sold within thirty (30) days after the issuance of certificates of occupancy for said Units, SELLER shall pay BUYER an amount equal to the pro rata construction loan interest, pro rata insurance premium, pro rata real estate taxes and pro rata common area fees for each such Unit for the period after said thirty (30) days until said Unit is sold. This Paragraph 43 shall survive delivery of the deed hereunder.
44. BUYER hereby agrees that SELLER shall have the right to approve the terms and contents of the unit deeds for the Units. SELLER hereby agrees to use best efforts to provide BUYER, within one hundred and eighty (180) days from the date hereof, with a draft of the deed restrictions for the unit deeds for Premises.
45. BUYER agrees that the terms of this Agreement shall apply to its successor in interest to the Units, including but not limited to any trust, condominium association or unincorporated association of Unit owners.
46. SELLER represents and warrants that it has full power and authority to execute this Agreement and to consummate the transactions contemplated hereby and that the the consummation of the transactions hereby contemplated and performance of this agreement have been duly authorized by all necessary action and do not and will not result in any breach of, or constitute a default under, or conflict with any statute or other law, or any order, regulation or ruling of any court or other tribunal or any governmental or administrative agency or authority, or any agreement, charter or bylaw, or other instrument to which SELLER is a party or by which SELLER may be bound or affected.
47. Any and all notices required hereunder shall be effective when mailed, by registered or certified

B 1 8 7 5 2 P 6 6 9

mail, return receipt requested, addressed to BUYER at
c/o Jacqueline M. Kelly, Acting Town Manager, Town
Hall, Concord, MA 01742 and addressed to SELLER c/o
John C. Bowman, III, Crosswhite/Emerson Properties,
Inc., 83 Chestnut Street, Boston, MA 02108 with a copy
to Howard E. Cohen, Esquire, Mintz, Levin, Cohn,
Ferris, Glovsky & Popeo, P.C., One Financial Center,
Boston, MA. 02111, or at such other address hereafter
designated in a written notice of either party given
as specified herein and actually received by the other
party.

SELLER:
TOWN OF CONCORD

BUYER:
CROSSWHITE/EMERSON
PROPERTIES, INC.

By: _____
 its

By: _____
 John C. Bowman, III,
 its President

9004V

B 18752 P 670

EXHIBIT A

Legal Description

9004V

B 1 8 7 5 2 P 6 7 1

EXHIBIT 5

THE PROPOSAL

9004V

B 1 8 7 5 2 P 6 7 2

September __, 1987

Letter of Credit No. _____

Town of Concord
Board of Selectmen
Town Hall
Concord, MA

Gentlemen:

We hereby establish our Irrevocable Letter of Credit in your favor in the aggregate amount of \$40,000.

We hereby authorize you to draw on the undersigned ("Bank") for the account of Crosswhite/Emerson Properties, Inc. ("Borrower") a sum or sums which shall not exceed, in the aggregate, \$40,000. Partial and multiple drawings are permitted hereunder.

A draft for payment under this Letter of Credit must be accompanied by:

1. A written statement by a person purporting to be an authorized representative of the Town of Concord ("Town") that a default under the Purchase and Sale Agreement dated September __, 1987 (the "Agreement") by and between the Town and Borrower shall have occurred and that none of the events set forth in Paragraph 36 of said Agreement have occurred; and

2. This original Letter of Credit.

The draft must bear on its face that it is drawn under Irrevocable Letter of Credit No. _____ dated September __, 1987, issued by the Bank.

We hereby agree with the drawer of a draft drawn under and in compliance with this Letter of Credit that payment will be made upon the presentation of a draft accompanied by the above referenced documents without determination of the condition or facts pertaining to the Agreement.

All drafts hereunder shall be presented to an officer of this Bank through the close of business on September __, 1988, at which time this Irrevocable Letter of Credit expires. If this Letter of Credit shall not be extended or replaced by an irrevocable letter of credit in form and substance satisfactory

B 18762 P 673

to you in accordance with the terms of the Agreement on or before August __, 1988, you, or your successors or assigns shall have the right to draw the entire amount of this Letter of Credit.

To the extent not inconsistent with the express terms hereof, this Irrevocable Letter of Credit shall be governed by and construed in accordance with the terms and conditions of the Uniform Customs and Practices for Documentary Credits (1983 Revision, International Chamber of Commerce, Paris, France, Publication No. 400).

Very truly yours,

[BANK]

By _____
Title:

7701L

B18752 P674

TOWN OF CONCORD
BOARD OF APPEALS

THE BOARD OF APPEALS certifies as follows:

Name and Address of Owner: Town of Concord
P.O. Box 535
Concord, Va. 01742

Property Identification: Recorded in the Middlesex County Registry
(Deed Reference) of Deeds in Book 1696 at Page 333
dated 11-13-1888

This application and all subsequent proceedings comply with the requirements of General Laws, Chapter 40A, Section 1, et seq., for the issuance of variances and permits. Copies of this decision and all plans referred to herein have been filed with the Concord Planning Board and the Concord Town Clerk.

[Signature]
[Signature]
[Signature]

I, Alice Ingham, Town Clerk for the Town of Concord, hereby certify that twenty (20) days have elapsed since the filing of this decision and no appeal has been filed or, if filed, has been dismissed or denied.

Alice H. Ingham
October 28, 1987
(Date)

Any appeal from this decision shall be made pursuant to General Laws, Chapter 40A, Section 17, and shall be filed within twenty (20) days after the date of filing such decision or notice thereof in the office of the Town Clerk.