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XII STONEHOLM CONDOMINIUM TRUST

DECLARATION OF TRUST

THIS DECLARATION OF TRUST made as of this 4<sup>th</sup> day of January, 2006 by STONEHOLM ASSOCIATES, LLC, a Delaware limited liability company, having a place of business c/o The Hamilton Company, Inc., 39 Brighton Avenue, Boston, Massachusetts 02134 (such party, so long as it shall continue in office in accordance with the terms of this Declaration of Trust, and all other persons or parties who at the time in question have been duly elected or designated as trustees in accordance with this Declaration of Trust and are then in office are collectively referred to herein as the "Trustees").

ARTICLE I

Definitions

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

"Association" shall mean the Trust hereby created.

"Beneficial Interests" shall have the meaning set forth in Section 2.1 hereof.

"Bylaws" shall mean the provisions of this Trust, as the same may be amended from time to time.

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

"Common Charges" shall mean all charges hereinafter assessed by this Trust to the Unit Owners.

"Common Elements" shall mean the Common Elements of the Condominium as so defined, described and designated in the Master Deed.

"Common Expenses" shall mean the expenses of administration, operation, maintenance, repair or replacement of the Common Elements, expenses declared Common Expenses herein or by Chapter 183A, and betterment and other assessments referred to in Chapter 183A which are assessed by the Trustees.

"Common Funds" shall mean all funds held by the Trustees.

"Condominium" shall mean XII Stoneholm Condominium, a condominium submitted to the provisions of Chapter 183A by the Master Deed.

73779-2 DIONNE P GAPS, LLP  
131 Dartmouth Street  
Boston, MA 02114

Attested hereto  
Francis M. Roache  
Francis M. Roache  
Register of Deeds

“Declarant” shall mean Stoneholm Associates, LLC, a Delaware limited liability company, having a place of business c/o The Hamilton Company, Inc., 39 Brighton Avenue, Boston, Massachusetts 02134, and its successors and assigns.

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

“FHLMC” shall mean Federal Home Loan Mortgage Corporation.

“FNMA” shall mean Federal National Mortgage Association.

“Master Deed” shall mean the master deed of the XII Stoneholm Condominium (the condominium located at 12 Stoneholm Street, Boston, Suffolk County, Massachusetts), executed by Declarant, dated the date hereof and recorded contemporaneously herewith, which Master Deed subjects the Property to Chapter 183A, as such Master Deed is amended from time to time.

“Person” or “persons” shall mean any person or persons, whether acting in an individual, representative or fiduciary capacity, and any firm or firms, corporation or corporations, partnership or partnerships, and any legal entity or entities whatsoever.

“Property” shall mean the property and assets subjected to Chapter 183A by the Master Deed and any addition or additions thereto.

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

“Registry” shall mean the Suffolk County Registry of Deeds.

“Rules and Regulations” shall mean any rules and regulations for operation of the Condominium adopted pursuant to Section 5.13 hereof.

“Superior Court” shall mean the Superior Court of Suffolk County.

“Trust Estate” shall mean any and all property, whether real, personal or mixed, tangible or intangible, held by the Trustees under the terms and provisions of this Declaration of Trust on behalf of the Association.

“Trustees” shall have the meaning set forth at the beginning of this Declaration of Trust.

“Units” shall mean the units of the Condominium as so defined and described in the Master Deed.

“Unit Owner” shall mean the owner or owners of record of any Unit in the Condominium.

## ARTICLE II

### The Trust, Its Purpose, Bylaws and Name.

Section 2.1 Declaration of Trust and Purpose. The Trustees hereby declare that they hold all of the rights and power in and with respect to the Common Elements of the Condominium established by the Master Deed, which are, by virtue of provisions of Chapter 183A of the Massachusetts General Laws conferred upon or exercisable by the organization of unit owners of the Condominium, and all other rights, interests, powers, duties, and responsibilities granted to them as Trustees hereunder or under the Master Deed, as joint tenants with right of survivorship (if more than one), in trust to exercise, manage, administer and dispose of the same and to receive the income thereof for the benefit of the Unit Owners of record from time to time of the Units of the Condominium according to the schedule of undivided beneficial interest in the Common Elements (hereinafter referred to as the "Beneficial Interests") set forth in Section 3.1 hereof and in accordance with the provisions of said Chapter 183A this Trust being the organization of the unit owners established pursuant to the provisions of Section 10 of said Chapter 183A for the purposes therein set forth.

Section 2.2 Trust Relationship. It is hereby expressly declared that the Association is not intended to be, shall not be deemed to be, and shall not be treated as, a general partnership, limited partnership, joint venture, corporation or joint stock company 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 estate, and hold no relation to the Trustees other than of beneficiaries, with only such rights and liabilities as are conferred upon them as such beneficiaries hereunder and under and pursuant to the provisions of said Chapter 183A.

Section 2.3 Bylaws. This Declaration of Trust, as from time to time amended, shall be and comprise the Bylaws of the Association.

Section 2.4 Name of Trust. The name of the Trust created hereby shall be the XII STONEHOLM CONDOMINIUM TRUST and under that name, so far as legal, convenient and practicable, all business shall be carried on by the Trustees and all instruments shall be executed by the Trustees. Said name (and the word "Association" whenever used in this Declaration of Trust, except where the context otherwise requires) shall refer to the Trustees in their capacity as trustees, and not individually or personally, and shall not refer to the officers, agents or employees of the Association or to the Unit Owners.

ARTICLE III  
Unit Owners

Section 3.1 Beneficial Interests. The Unit Owners from time to time shall be the beneficiaries of the Association. The total Beneficial Interest in the Association shall be divided among the Unit Owners according to the Beneficial Interests appertaining to their respective Units as indicated in Exhibit B to the Master Deed, as amended from time to time.

Section 3.2 Beneficial Interest Held by One Person. Each Beneficial Interest shall be exercised by one person and shall not be divided among several Unit Owners of any Unit. To that end, whenever any Unit is owned of record by more than one person, the several Unit Owners of such Unit shall (a) determine and designate which one of such Unit 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 Unit Owner for such purposes.

Section 3.3 Annual Meeting. The annual meeting of the Unit Owners (the "Annual Meeting") shall be held on the third Wednesday of March of each year, unless a different date is fixed by the Trustees. If that day shall be a legal holiday at the place where the meeting is to be held, the meeting shall be held on the next succeeding day not a legal holiday at such place. Purposes for which an annual meeting is to be held, additional to those prescribed by law or by this Declaration of Trust, may be specified by the Trustees.

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

Section 3.5 Special Meetings. A special meeting of the Unit Owners may be called at any time by the Trustees. Upon written application of a majority of the Trustees or of Unit Owners holding at least thirty-three percent (33%) in interest of the Beneficial Interest, the Trustees shall call a special meeting. Each call of a special meeting shall state the place, date, hour and purposes of the meeting.

Section 3.6 Place of Meetings. All meetings of the Unit Owners shall be held at the principal office of the Association in Massachusetts, or any place in the City of Boston as the Trustees may designate. Any adjourned session of any meeting of the Unit Owners shall be held at the same place as the initial session, or at the place designated in the vote of adjournment.

## Section 3.7 Notices

Section 3.7.1 Notice of Meetings. A written notice of each meeting of the Unit Owners, stating the place, date and hour and the purposes of the meeting, shall be given at least seven (7) days before the meeting to each Unit Owner, by leaving such notice with him at his residence or usual place of business, by mailing it, postage prepaid, addressed to such Unit Owner at his address as it appears in the records of the Trust, and to each Registered Mortgagee (and, if FNMA or FHLMC (or both) holds any interest in one or more mortgages on Units, such other first mortgagees of record as may be required from time to time by whichever of FNMA or FHLMC holds any interest), by mailing it, postage prepaid, to such mortgagee at its usual or last known address. Such notice shall be given by the Trustees. No notice of any meeting of Unit Owners need be given to a Unit Owner or mortgagee if a written waiver of notice, executed before or after the meeting by such Unit Owner or mortgagee, as the case may be, or his or its attorney thereunto duly authorized, is filed with the records of the meeting.

Section 3.7.2 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 for which such notice is given. The Unit Owner or Unit Owners of each Unit shall have the responsibility of providing the Trustees with any address, other than the Unit, to which they desire notices to be mailed.

Section 3.8 Identification of Owners; Trustees Records of Ownership Conclusive. On each sale of a Unit, the new Unit Owners shall have the duty to give the Trustees written notice of their purchase and of the correct name of the Unit Owners. Records of ownership maintained by the Trustees shall be conclusive for all matters, including all actions taken at Unit Owners' meetings. The Trustees shall have no obligation to examine the records of the Registry of Deeds to determine ownership of Units, and all actions (including, without limitation, amendments to this Trust or to the Master Deed) shall be valid if taken by the requisite number of Unit Owners as they appear on the Trustees' list of Unit Owners.

Section 3.9 Quorum of Unit Owners. At any meeting of the Unit Owners, a quorum shall consist of a majority in interest of all Beneficial Interests, except when a larger quorum is required by law or by this Declaration of Trust. Any meeting may be adjourned from time to time by majority in interest of the Beneficial Interests voting upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

Section 3.10 Action by Vote. When a quorum is present at any meeting, a majority in interest of the Beneficial Interests voting upon any question shall decide the question, except when a larger vote is required by law, by the Master Deed or by this Declaration of Trust. No

ballot shall be required for any election unless requested by a Unit Owner present or represented at the meeting and entitled to vote in the election.

Section 3.11 Action by Writing. Any action to be taken by the Unit Owners may be taken without a meeting if all Unit Owners entitled to vote on the matter consent to the action by writings filed with the records of the meetings of the Unit Owners. Such consents shall be treated for all purposes as a vote at a meeting.

Section 3.12 Proxies. Unit Owners entitled to vote may vote either in person or by proxy in writing. The Trustees shall make any necessary determinations in their sole discretion as to the validity of proxies.

## ARTICLE IV

### Trustees and Officers

#### Section 4.1 Trustees.

Subsection 4.1.1 Number of Trustees. There shall at all times be Trustees consisting of such number, not less than three (3) nor more than five (5), as shall be determined from time to time by vote of the Unit Owners entitled to not less than fifty-one (51%) percent of the Beneficial Interests hereunder, except that there shall always be an odd number of Trustees.

Notwithstanding the foregoing or anything to the contrary in this Trust, until six (6) months after the earlier of (i) the date that Declarant has conveyed seventy-five percent (75%) of the Units to Unit Owners other than Declarant; or (ii) eighteen (18) months from the date of the recording hereof (the "Turnover Date"), there shall be no fewer than one (1) and no more than three (3) Trustees, all of which shall be appointed by Declarant. Notwithstanding anything to the contrary in this Trust, during the time Declarant is entitled to designate any Trustee, any vacancy resulting from expiration of term, resignation, removal or death of a Trustee designated by Declarant may be filled by an instrument executed by Declarant and recorded with the Registry stating the new Trustee's name and business address and that such Trustee is being so designated, and containing the Trustee's acceptance of designation duly acknowledged. Declarant's rights under this Section 4.1.1 shall inure to the benefit of any successor to Declarant's interest in the Condominium.

Subsection 4.1.2 Vacancies; Appointment and Acceptance of Successor Trustees. After the Turnover Date, if and when any Trustee's term is to expire or a Trustee is removed as stated in Section 4.1.6, the resulting vacancy or vacancies may be filled at any time by an instrument in writing which sets forth (i) the appointment of a natural person to act as Trustee signed by any three (3) Unit Owners who certify under oath that Unit Owners entitled to a majority 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 an appointment within thirty (30) days after the vacancy first exists, then such vacancy may also be filled by vote of the remaining Trustee(s) by an instrument 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. If and whenever, for any reason other than expiration of term, including without limitation, resignation or death of a Trustee, the number of Trustees shall be less than the number established under Subsection 4.1.1, the vacancy or vacancies shall be filled at any time by vote of the remaining Trustee(s) by an instrument 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 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 after 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.

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

Subsection 4.1.3 Acceptance of Trust. Each person hereafter elected as a Trustee shall sign and acknowledge in the manner required in Massachusetts for the acknowledgment of deeds, an acceptance of such election.

Appointments of Trustee(s) shall be effective upon recording with the Registry 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 other Trustee(s) then in office without the necessity of any act of transfer or conveyance. Notwithstanding any other provisions in this Declaration of Trust contained, the failure to record such appointment and acceptance in the Registry shall in no way affect the validity of such Trustees' election

Subsection 4.1.4 Tenure. Except as otherwise provided by law or by this Declaration of Trust, the Trustees shall hold office for three (3) years from the annual meeting of the Unit Owners (or special meeting in lieu thereof) at which the Trustee was appointed and until their successors are elected and qualified, or until a Trustee sooner dies, resigns, is removed or becomes disqualified. 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.

Subsection 4.1.5 Trustee Action. The Trustees shall meet at least annually on the date of the Annual Meeting of Unit Owners. Other meetings may be called by any Trustee, and in such other manner as the Trustees may establish, provided that written notice of each meeting shall be given at least five (5) days before such meeting to each Trustee. 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 4.1.9, is present. The Trustees may act without a meeting in any case by unanimous written consent and in cases requiring, in the sole judgment of a majority of the Trustees, response to an emergency by majority written consent.

Subsection 4.1.6 Resignation; Removal. Any Trustee may resign at any time by an instrument in writing signed and duly acknowledged by that Trustee. Resignations shall take effect upon the recording of such instrument with the Registry. Subject to the rights of Declarant recited in Section 4.1, any Trustee may be removed (a) in the event of a material breach of the Trustee's fiduciary duty by vote of Unit Owners entitled to a majority of the Beneficial Interest hereunder and (b) for other cause or without cause by vote of Unit Owners entitled to seventy five percent (75%) of the Beneficial Interest hereunder. The vacancy resulting from such removal shall be filled in the manner provided in Section 4.1.2. Any removal shall become effective upon the recording with the Registry 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 the requisite number of Unit Owners have voted such removal in accordance with the requirements of this Section.

Subsection 4.1.7 Bond or Surety. Except as may be required under Section 5.6, no Trustee, whether an original or successor Trustee, shall be obliged to give any bond or surety or other security for the performance of any of his or her duties hereunder, provided, however, that Unit Owners entitled to a majority of the Beneficial Interest of this Trust may at any time by instrument in writing, signed by them and delivered to the Trustee or Trustees affected, require that any one or more of the Trustees shall give bond in such amount and with such sureties as shall be specified in such instrument. All expenses incident to any such bond shall be charged as a Common Expense of the Condominium.

Subsection 4.1.8 Powers and Duties. The Trustees shall have the powers and duties necessary for the administration of the affairs of the Association and the Condominium and may do all such acts and things except as by law or by the Master Deed or by this Declaration of Trust may not be delegated to the Trustees by the Unit Owners. Such powers and duties of the Trustees shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep, and maintenance of the Common Elements;
- (b) Determination of the Common Expenses.
- (c) Collection of the Common Charges from the Unit Owners;
- (d) Employment, appointment and dismissal of employees and agents of the Trust, as necessary or advisable, including, but not limited to managers, officers, board of managers, brokers, engineers, architects, 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 may 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, a Secretary, and such other officers as they deem fit, and may from time to time designate one or more of their own number to be the Managing Trustee or Managing Trustees for the management and administration of the Trust property and the business of the Trust, or any part or parts thereof;

- (e) Adoption, amendment and rescission of Rules and Regulations covering the details of the operation and use of the Common Elements and subject in all events to the rights of the Unit Owners to use their respective Units for all purposes permitted by law, local ordinances and the Master Deed;
- (f) Opening of bank accounts on behalf of the Association and designating the signatories required therefor;
- (g) Leasing, managing and otherwise dealing with the Common Elements and any other properties or facilities for which easements or gifts are conveyed to, from, or held by, the Trust, including without limitation exercising to the exclusion of the rights of all others to do so, all rights and powers of the owner of the Property with respect to extending, modifying and exercising of rights under easements, agreements, licenses and other matters of record referenced in Exhibit A to the Master Deed, and other easements and the like which burden or benefit the Property (excluding easements for exclusive parking rights deeded to any Unit Owner), even if the same extend beyond the possible duration of this Trust;
- (h) Owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to the Association or purchased by it as the result of enforcement of the lien for Common Charges, or otherwise;
- (i) Obtaining of insurance for the Property, pursuant to the provisions of Section 5.6 hereof;
- (j) Making of repairs, additions and improvements to, or alterations of, the Property and repairs to and restoration of the Property in accordance with the other provisions of this Declaration of Trust;
- (k) Enforcing obligations of the Unit Owners, allocating income and expenses, levying reasonable fines against the Unit Owners for violations of the Rules and Regulations or of the provisions of Article V hereof, and in the case of persistent violation of the Rules and Regulations or of the provisions of Article V hereof by a Unit Owner, requiring such Unit Owner to post a bond to secure adherence thereto. Collection of fines may be enforced against the Unit Owner or Unit Owners involved as if the fines were Common Charges owed by the particular Unit Owner or Unit Owners;

- (l) Retaining the Trust property, or any part or parts thereof, in the same form or forms of investment in which received or acquired by them so far and so long as they shall think fit, without liability for any loss resulting therefrom;
- (m) Selling, assigning, conveying, transferring, exchanging and otherwise dealing with or disposing of the Trust property, but not the whole thereof, free and discharged of any and all trusts, at public or private sale, to any person or persons for cash or on credit, and in such manner and on such restrictions, stipulations, agreements and reservations as they shall deem proper, including the power to take back mortgages to secure the whole or any part of the purchase price of any of the Trust property sold or transferred by them, and execute and deliver any deed or other instrument in connection with the foregoing;
- (n) Purchasing or otherwise acquiring title to, and renting, leasing or hiring 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;
- (o) Borrowing or in any other manner raising such sum or sums of money or other property as they shall deem advisable in any manner and on any terms, evidencing the same by notes, bonds, securities or other evidences of indebtedness, which may mature at a time or times, even beyond the possible duration of this Trust, and executing and delivering any mortgage, pledge or other instrument to secure any such borrowing;
- (p) Investing and reinvesting the Trust property, or any part or parts thereof, and from time to time, as often as they shall see fit, changing 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 does or may not produce income;
- (q) Incurring such liabilities, obligations and expenses and paying 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;
- (r) Determining whether receipt by them constitutes principal or income or surplus and allocating between principal and income and designating as capital or surplus any of the funds of the Trust;
- (s) Voting 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 giving proxies to any person, persons or to one or more of their number, voting, waiving any notice or otherwise acting in respect of any such shares;

- (t) Engaging 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, provided, however, that notwithstanding any provision of the Master Deed, this Declaration of Trust, the Bylaws, or the Rules and Regulations to the contrary, neither the Trustees nor any Unit Owner shall bring any litigation whatsoever on behalf of the Condominium, the Association or the Unit Owners unless a copy of the proposed complaint in such litigation has been delivered to all of the Unit Owners, and not less than eighty percent (80%) of all Unit Owners consent in writing to the bringing of such litigation within sixty (60) days after a copy of such complaint has been delivered to the Unit Owners and specifying as part of the written consent a specific monetary limitation to be paid as legal fees and costs and expenses to be incurred in connection therewith, which amount shall be separately assessed as a special assessment effective forthwith at the time of said affirmative consent. Notwithstanding any provisions of the Master Deed, this Declaration of Trust, the Bylaws or the Rules and Regulations, the provisions of this subsection (t) shall not be amended except by vote of at least eighty percent (80%) of Unit Owners. The provisions of this subsection (t) shall not apply to litigation by the Trustees against Unit Owners with respect to the recovery of overdue Common Expenses or special assessments or to foreclose the lien provided by Chapter 183A, Section 6, and Chapter 254, Sections 5 and 5A, as amended, or to enforce any of the provisions of the Master Deed, this Declaration of Trust, the Bylaws, the Rules and Regulations or any unit deed against any Unit Owner, or to litigation brought by any Unit Owner individually at its sole cost and expense;
- (u) Maintaining such offices and other places of business as they shall deem necessary or proper and engaging in business in Massachusetts or elsewhere; and
- (v) Doing anything and everything else necessary and proper for the sound management of the Condominium.

Provided, however, that, except as provided by statute in case of condemnation or substantial loss to the Common Elements of the Condominium, unless at least sixty-seven percent (67%) of the Registered Mortgagees holding first mortgages on Units (based upon one vote for each first mortgage) have given their prior written approval, notwithstanding any other provision of this Declaration of Trust, neither the Unit Owners nor the Trustees (acting in their capacity as Trustees) shall be entitled to:

- (a) by act or omission, seek to abandon or terminate the Condominium;
- (b) change the Beneficial Interest or obligations of any individual Unit for the purposes of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the Beneficial Interest of each Unit in the Common Elements (other than in connection with Declarant's subdivision or combination of Units as permitted in the Master Deed, which shall not require mortgagee consent);

- (c) partition any Unit (other than in connection with the subdivision or combination of Units as permitted in Section 5(c)(ii) of the Master Deed, which shall not require mortgagee consent);
- (d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements, provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium and the exercise of other actions with respect to granting of special rights of use or easements of Common Elements and Limited Common Elements contemplated herein or in the Master Deed shall not be deemed an action for which any prior approval of a mortgagee shall be required under this Subsection; and further provided that the granting of rights by the Trustees to connect adjoining Units shall require the prior approval of only the mortgagees of the Units to be connected. (The exercise by Declarant of the rights reserved to it pursuant to Paragraph 5C of the Master Deed shall not be subject to this restriction);
- (e) use hazard insurance proceeds for losses to any property for other than the repair, replacement or reconstruction of such Condominium property.

Provided, further, however, that if FHLMC or FNMA holds any interest in one or more mortgages of Units, the prior written approval of all Registered Mortgagees holding a first mortgage on a Unit must be obtained for the following:

- (a) the abandonment of the condominium status of the Condominium except for abandonment provided by statute in case of substantial loss to the Common Elements;
- (b) the partition or subdivision of Common Elements (except as provided in the Master Deed);
- (c) a change in the Beneficial Interests (except as provided in the Master Deed).

Provided furthermore, that no amendment of a material nature may be made to this Declaration of Trust unless such is agreed to by Registered Mortgagees who represent at least fifty-one percent (51%) of the Beneficial Interest of the Units that are subject to first mortgages held by Registered Mortgagees. A change to any provisions governing the following shall be considered material:

- (i) Voting;
- (ii) Assessments, assessment liens or subordination of such liens;
- (iii) Reserves for maintenance, repair and replacement of the Common Elements;

- (iv) Insurance or Fidelity Bonds;
- (v) Rights to use the Common Elements;
- (vi) Responsibility for maintenance and repair of the Property;
- (vii) Expansion or contraction of the Property or the addition, annexation or withdrawal of the Property to or from the Condominium;
- (viii) Boundaries of any Unit except for subdivisions or combinations permitted by the Master Deed;
- (ix) Convertibility of Units into Common Elements or of Common Elements into Units;
- (x) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his/her/their Unit; and
- (xi) Any provisions which are for the express benefit of mortgage holders, Registered Mortgagees or eligible insurers or guarantors of first mortgages on Units.

Any such consent shall be deemed to be given if a Registered Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it received proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

An addition or amendment to the Declaration of Trust shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. A Registered Mortgagee who receives a written request to approve additions or amendments that are not material, and who does not submit a response to the requesting party, shall be deemed to have approved such request. Additionally, if specifically provided by any applicable FNMA regulation, implied approval of any addition or amendment may be assumed when a Registered Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after the proper notice of the proposal is received, provided the notice has been delivered to the Registered Mortgagee by certified or registered mail, return receipt requested. This clause shall not apply to FHLMC.

Subsection 4.1.9 Quorum. At any meeting of the Trustees a majority of the Trustees then in office shall constitute a quorum. Any meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

Subsection 4.1.10 Action by Vote. When a quorum is present at any meeting, a majority of the Trustees present may take any action, except when a larger vote is required by law or by this Declaration of Trust.

Subsection 4.1.11 Action by Writing. Any action required or permitted to be taken at any meeting of the Trustees may be taken without a meeting if written consents thereto are signed by all the Trustees and such written consents are filed with the records of the meetings of the Trustees. Such consents shall be treated for all purposes as a vote at a meeting.

Subsection 4.1.12 No Personal Liability. No Trustee shall under any circumstances or in any event be held liable or accountable out of his or her personal assets or be deprived of compensation by reason of any action taken, suffered or omitted in good faith in the reasonable belief that the action was in the best interests of this Trust, 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 negligence or any other reason except his own personal and willful dishonesty, malfeasance and defaults.

Subsection 4.1.13 Trustees May Deal with the 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 individually or the Trustees' interest or any Unit Owner's interest in any corporation, firm, trust or other organization connected with such contracting or dealing or because of any other reason) as vendor, purchaser or otherwise, nor shall any such dealing, contract or arrangement entered into in respect of this Trust in which any Trustee shall be 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.

Subsection 4.1.14 Meetings of Trustees. The Trustees shall meet annually on the date of the annual meeting of the Unit Owners and at such meeting may elect a Chairman, Treasurer, Secretary and any other officers they deem expedient. Other meetings may be called by any Trustee (if there be no more than three (3) then in office) or by any two (2) Trustees (if there be more than three (3) then in office) 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 seven 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. Any Trustee may waive notice of any meeting in writing. Attendance by a Trustee at any meeting shall constitute waiver of notice. If all the Trustees are present at any meeting, no notice shall be required and any business may be transacted at such meeting.

## Section 4.2 Officers and Agents.

Subsection 4.2.1 Enumeration; Qualification. The officers of the Association shall be such officers, if any, as the Trustees from time to time, may in their discretion elect or appoint.

The Association may also have such agents, if any, as the Trustees from time to time, may in their discretion appoint.

Subsection 4.2.2 Powers. Subject to law and to the provisions of this Declaration of Trust, each officer shall have such duties and powers as the Trustees may from time to time designate.

Section 4.3 Resignation; Compensation. Any officer may resign at any time by delivering his resignation in writing to the Trustees. Such resignation shall be effective upon receipt unless specified to be effective at some other time. Trustees and officers shall be entitled to be reimbursed for their reasonable expenses. No Trustee or officer shall receive any compensation for services rendered as such Trustee or officer but this shall not preclude any such person from performing any other service for the Trust, legal or otherwise, and receiving compensation therefor.

Section 4.4 Indemnification. The Association shall, to the extent legally permissible, indemnify each of its Trustees and officers (including any person who serves at its request as a director, officer, partner, Trustee or the like of another organization in which it has any interest, as a shareholder, creditor or otherwise) both out of the Trust property and by the Unit Owners against all liabilities and expenses, including, without limiting the generality of the foregoing, amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and counsel fees, reasonably incurred by him in connection with the defense or disposition of any action, suit or other proceedings, whether civil or criminal, in which he may be involved or with which he may be threatened, while in office or thereafter, by reason of his being or having been such a Trustee or officer, except with respect to any matters to which he shall have been adjudicated in any proceeding to have acted in bad faith or with willful misconduct or reckless disregard of his duties or not to have acted in good faith in the reasonable belief that his action was in the best interest of the Trust. Acting by majority, the Trustees may purchase such insurance against such 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 the Common Expenses of the Condominium and for his proportionate share of any claims involving the Trust property in excess thereof, all as provided in Sections 6 and 13 of Chapter 183A. The right of indemnification hereby provided shall not be exclusive of or affect any other rights to which any Trustee or officer may be entitled herein or by contract or otherwise under law. As used in this Section, the terms "Trustee" and "officer" include their respective heirs, executors and administrators. Nothing contained in this Section shall affect any rights to indemnification to which personnel other than Trustees and officers may be entitled by contract or otherwise under law.

## ARTICLE V

### Operation of the Property

Section 5.1 Determination of Common Expenses and Fixing of Common Charges. 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 not set aside for reserve or contingent liabilities, shall determine the assessment to be made for the next fiscal year, as follows:

<u>General Budget:</u>	For all expenses (including reserves) of the Condominium, to be assessed to all Units in the Condominium.
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Such assessments shall be allocated among the Unit Owners according to the terms and provisions hereof, and to the Units' respective Beneficial Interest. The Common Expenses shall include real estate taxes until separately assessed to the Unit Owners, general repair and maintenance costs for the Common Elements, utility service to Common Elements and to the Units if not separately metered, and the premiums for such insurance as the Trustees shall obtain pursuant to Section 5.6. The Trustees may charge any penalties for late payment of taxes imposed by the municipal authorities to the Unit(s) responsible therefor. The Trustees shall advise all Unit Owners, promptly in writing, of the amount of the Common Charges payable by each of them, respectively, as determined by the Trustees, as aforesaid, and shall furnish copies of each budget on which such Common Charges are based, to all Unit Owners.

The Trustees shall promptly render statements to the Unit Owners for their respective shares of assessments, and such assessment shall, unless otherwise provided therein, be due and payable within thirty (30) days after the same are 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 Interest in this Trust) as set forth in Section 5.3 or as the Trustees shall otherwise 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.

Subsection 5.1.1 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 above,



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 maintain a working capital fund in an amount as the Trustees shall in their judgment determine as adequate and appropriate, to provide available funds to meet unforeseen expenditures, to cover cash flow requirements, or to acquire additional equipment or services deemed by the Trustees as necessary or desirable, and may, to the extent consistent with these purposes, use the funds so set aside for operating expenses consistent with the provisions of these Bylaws. Such reserve shall be maintained in a separate and segregated account to be known as the Working Capital Reserve Account and the funds so set aside shall not be deemed common profits available for distribution, but, rather, shall be considered as the property of the Trust held for the account of the Unit Owners in accordance with their respective Beneficial Interests. Upon the initial sale of each Unit, the purchaser thereof shall fund the reserve by depositing with Trustees a sum equal to one-sixth (1/6<sup>th</sup>) of the annual Common Charges assessed with respect to such Unit. Thereafter, said Working Capital Reserve Account shall be maintained as herein provided for by general or special assessments to the Unit Owners. For so long as Declarant owns any Unit in the Condominium, in the event that the Trustees determine that any funds in the Working Capital Reserve Account are needed for any purpose consistent with these Bylaws, Declarant shall deposit its proportionate share of the funds needed (based on the number of Units then owned by Declarant) in said Working Capital Reserve Account.

Subsection 5.1.2 Application of Common Funds. The Trustees shall expend common funds only for the purposes permitted by this Trust and by Chapter 183A.

Subsection 5.1.3 Notice of Default to Mortgagees. Upon written request addressed to the Trustees by a Registered Mortgagee of any Unit, the Trustees shall notify such Registered 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.

Subsection 5.2 Payment of Common Charges. All Unit Owners shall be obligated to pay the Common Charges assessed by the Trustees pursuant to the provisions of Section 5.1, monthly, in advance or on such other regular installment basis as the Trustees shall determine. No Unit Owner shall be liable for the payment of any part of the Common Charges assessed against his Unit subsequent to a sale, transfer or other conveyance by him of such Unit. Except as waived in writing by the Trustees, a purchaser of a Unit shall be liable for the payment of Common Charges assessed and unpaid against such Unit prior to the acquisition by him of such Unit, except that a first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage shall not be liable for, and such Unit shall not be subject to, a lien for the payment of Common Charges assessed prior to the acquisition of title to such Unit by such first mortgagee, with the sole exception of the charges specified in Section 6 of Chapter 183A, as amended (except for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units including the mortgaged Unit).

Section 5.3 Default in Payment of Common Charges. In the event of a default by any Unit Owner in paying to the Trustees the Common Charges as determined by the Trustees, such Unit Owner shall be obligated to pay a late charge in an amount determined by the Trustees for

each payment not made within ten (10) days of the due date thereof plus interest at the legal rate of twelve (12%) percent per annum on such Common Charges from the due date thereof, together with all expenses, including attorney's fees, incurred by the Trustees in any proceeding brought to collect such unpaid Common Charges. The Trustees shall have the right to attempt to recover such Common Charges, together with interest thereon and any late charges, and the expenses of the proceeding, including attorney's fees, in an action to recover the same brought against such Unit Owner, or by foreclosure of the lien on such Unit as provided in Section 6 of Chapter 183A, as amended.

Section 5.4 Collection and Recovery of Unpaid Common Charges. In any action brought by the Trustees to foreclose a lien on a Unit because of unpaid Common Charges upon an entry of judgment of foreclosure the Unit Owner shall be required to pay a reasonable rental for the use of his Unit. The Trustees, acting on behalf of all Unit Owners, shall have the power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. A suit to recover a money judgment for unpaid Common Charges shall be maintainable without foreclosing or waiving the lien securing the same. In addition to commencing any action to collect unpaid Common Charges or to foreclose the lien for such charges, the Trustees may elect to collect any rents being paid to the defaulting Unit Owner, in accordance with provisions of Section 6 of Chapter 183A, as amended.

Section 5.5 Statement of Common Charges. The Trustees shall promptly provide any Unit Owner and potential purchaser of a Unit so requesting the same in writing, with a written statement in recordable form of all unpaid Common Charges due from such Unit Owner. Notwithstanding any other provision of this Article V, 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 (2) Trustees then in office (or one if there be only one in office).

Section 5.6 Insurance. The Trustees shall be required to obtain and maintain, to the extent obtainable at reasonable cost, and permitted by applicable law, master policies of insurance of the following kinds:

- (1) Casualty or physical damage coverage insuring the building and all other insurable improvements forming part of the Condominium (including all of the Common Elements and all of the Units and excluding only 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 provision of central services or for the Common Elements, such insurance to name the Trustees as insureds as Trustees for the benefit of all Unit Owners and their mortgagees, and, to the extent obtainable, to name as insureds said Unit Owners and their mortgagees, in an amount at least equal to the full replacement value of the Property without deduction for depreciation, with a standard Replacement Cost Endorsement and an Agreed Amount Endorsement or its equivalent, if available (exclusive of land footings, excavations, foundations and such other like items as are normally excluded from coverage), against (i) loss or

damage by fire and other hazards covered by the standard extended coverage endorsement and (ii) 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 sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage, boiler and machinery explosion or damage and plate glass damage;

- (2) Workers' Compensation Insurance and Employer's Liability Insurance for employees (if any) of the Association;
- (3) Comprehensive public liability insurance including so-called "Broadening Endorsement" with Severability of Interest Endorsement or equivalent coverage covering all of the Common Elements and including protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, elevator collision and such other risks as are customarily covered in similar projects, in each instance to the extent applicable to the Condominium, in such amounts as shall be determined by the Trustees, covering 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 for claims for bodily injury or property damage arising out of one occurrence, and with an endorsement to cover liability of any insured to other insureds. The Trustees shall review such limits at least annually;
- (4) Fidelity Insurance as mandated by the M.G.L. Chapter 183A;
- (5) Directors and Officers Liability Insurance with at least the same coverage limit as the comprehensive general liability insurance required above.
- (6) Such other insurance as the Trustees may determine;

All such policies of physical damage insurance shall contain, to the extent available, waivers of subrogation as to any claim against the Condominium, the Trustees, its agents and employees, Unit Owners, their respective employees, agents and guests, and members of the family of any Unit Owner who reside with said Unit Owner, except in cases of arson and fraud, and of any defense based on invalidity arising from the acts of the Unit Owners over which the Trustees have "no control" and shall provide that (a) such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the insureds, including all Registered Mortgagees, and (b) the coverage thereof shall not be terminated for nonpayment of premiums without thirty (30) days' notice to all of the insureds including each Registered Mortgagee. Recovery thereunder shall not be affected on account of the availability of proceeds under any policies obtained by individual Unit Owners covering their own Units.

Unit Owners shall carry fire and casualty insurance for their own benefit insuring their Unit's improvements, fixtures and contents and public liability insurance insuring against all claims, liabilities and damage based upon or arising out of bodily injury and property damage occurring in their respective Unit.

Each Unit Owner shall notify the Trustees in writing 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 5.6 hereof of any such improvements. Any premium increase caused by such improvements shall be assessed to the Owners of the improved Unit. No Unit Owner shall be entitled to receive insurance proceeds for the repair, restoration or rebuilding of any such improvements not so reported to the Trustees, unless otherwise consented to by unanimous vote of the Trustees. This provision shall not apply to Units owned by Declarant prior to the initial sale thereof.

Subsection 5.6.1 Payment to Trustees in Case of Loss. Subject to the provisions of Section 5.7, such master policies shall provide that all casualty loss proceeds thereunder shall be paid to the Trustees as insurance trustees under these Bylaws. 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 5.7. 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 damaged Common Elements and damaged Units, with each share to be disbursed to defray the respective costs of repair or restoration of the damaged Common Elements 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 or, at the option of the Trustees, set aside for reserve or contingent liabilities; but, if pursuant to Section 5.7, restoration or repair is not to be 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 Elements 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. If the cost of restoring the Common Elements is estimated by the Trustees to exceed the sum of Ten Thousand Dollars (\$10,000.00) then the Trustees shall give written notice of such loss to all Registered Mortgagees.

Subsection 5.6.2 Fidelity Coverage. The Trustees shall purchase and maintain fidelity coverage to protect against dishonest acts on the part of persons responsible for handling funds belonging to or administered by the Trust. The fidelity bond or insurance shall name the Trust as named insured and shall be in an amount not less than one and one-half the Trust's estimated annual operating expenses and reserves. Such bond or insurance shall include within coverage, by endorsement if necessary, those persons, including without limitation the Trustees, who serve the Trust without compensation. The requirements of this paragraph shall not restrict the Trustees from purchasing at common expense such further fidelity coverage or the like as they shall determine.

Section 5.7 Repair or Reconstruction After Fire or Other Casualty; Eminent Domain.

Subsection 5.7.1 Repair or Reconstruction After Casualty. In the event of damage to or destruction of the Common Elements of the Condominium as a result of fire or other casualty (unless the casualty exceeds ten percent (10%) of the value of the Property prior to the casualty and seventy-five percent (75%) or more of the Unit Owners do not agree to proceed with the repair or restoration as provided in the last paragraph of this Section), the Trustees shall promptly adjust the loss, arrange for the prompt repair or restoration of the same, and disburse the proceeds of all insurance policies in payment of all costs and expenses actually incurred in connection with such repair or restoration in appropriate progress payments and with appropriate retainage. All insurance proceeds paid to the Trustees on account of any casualty shall be dedicated solely to the repair or restoration of the loss, and any application of said proceeds by the Trustees on account thereof shall be prior to the application of such proceeds for any other purpose.

In the event that the total cost of repair or restoration as estimated on the basis of an independent appraisal, or as determined during the course of repair or restoration exceeds the total sum of available insurance proceeds, then the Trustees shall assess, levy or charge all Unit Owners a Common Expense, for so much of the amount estimated to repair or restore the Common Elements as exceeds the insurance proceeds available therefor.

Whenever the estimated cost of repair or restoration exceeds as to any one casualty or occurrence, on the basis of an independent appraisal, the sum of Ten Thousand Dollars (\$10,000.00) with respect to the Common Elements, then the Trustees shall retain a registered architect or registered engineer, who shall not be directly or indirectly a Unit Owner or an employee or agent of any Unit Owner or a Trustee or an employee or agent of any Trustee, to supervise the work of repair or restoration, and no sums shall be paid by the Trustees on account of such repair or restoration except upon certification to it by such architect or engineer that the work for which payment is being made has been completed in a good and workmanlike manner in accordance with approved plans and specifications and that the estimated total cost of completion of said repair or restoration, less amounts theretofore advanced, does not exceed the undisbursed proceeds of insurance as augmented by funds obtained by any assessment or assessments levied or chargeable to the Unit Owners as a Common Expense.

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

If there shall have been a repair or restoration pursuant to the foregoing and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds, if any, shall be added to the Trust's Common Funds or, at the option of the Trustees, divided among all the Unit Owners in proportion to their respective Beneficial Interests; provided, however, that no provision herein shall be deemed to give a Unit Owner or any other party priority over any rights of the Registered Mortgagee (if any) on such Unit Owner's Unit pursuant to such mortgage in the case of a distribution to such Unit Owner of

insurance proceeds for losses to Common Elements. Registered Mortgagees of Units will be entitled to priority with respect to any insurance proceeds distributed to their mortgagors.

Notwithstanding the foregoing, if as a result of fire or other casualty the loss exceeds ten percent (10%) of the value of the Condominium prior to the casualty, and

- (a) If seventy-five percent (75%) in interest of the Unit Owners do not agree within one hundred twenty (120) days after the date of the casualty to proceed with repair or restoration, the Condominium shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of the partition sale together with any Common Funds shall be divided in proportion to the Unit Owners' respective Beneficial Interests, but, to the extent permitted by law, shall be paid first to the holder of any mortgage. Upon such sale of the Condominium, it shall be deemed removed from the provisions of Chapter 183A.
- (b) If seventy-five percent (75%) in interest of the Unit Owners agree to proceed with the necessary repair or restoration, the cost of the rebuilding of the Condominium in excess of any available Common Funds including the proceeds of any insurance, shall be a Common Expense, provided, however, that if such excess cost exceeds ten percent (10%) of the value of the Condominium prior to the casualty, any Unit Owner who did not so agree may apply to the Superior Court on such notice to the Trustees as the Superior Court shall direct, for an order directing the purchase of his Unit by the Trustees at the fair market value thereof as approved by the Superior Court. The cost of any such purchase shall be a Common Expense.

#### Subsection 5.7.2 Eminent Domain.

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

In the event of a total or partial taking under the powers of eminent domain, the Unit Owners shall be represented by the Condominium acting through the Trustees. In the event of a

partial taking the award shall be allocated among the affected Units according to their appurtenant Beneficial Interest, and paid first, to the extent permitted by law, to the Registered Mortgagee(s) holding the first mortgage(s) on such Unit(s), if any, up to, but not in excess of, the then principal balance secured thereby and any accrued interest and other charges then due such Registered Mortgagee(s). In the case of a total taking of all Units and the Common Elements, the entire award shall be payable to the Trustees to be allocated among the Unit Owners according to their appurtenant Beneficial Interest, and paid first to the extent permitted by law, to the Registered Mortgagees holding the first mortgage(s) on such Unit(s), if any, up to, but not in excess of, the then principal balance secured thereby and any accrued interest and other charges then due such Registered Mortgagee(s). As to any portion or portions of any award which are attributable to direct or consequential damages suffered by particular Units, they shall be payable to the Unit Owners of such particular Units and their Registered Mortgagees, as their interests may appear.

#### Section 5.8 Maintenance and Repairs.

Subsection 5.8.1 Units. Except as provided in Section 5.7 above, all maintenance and replacement of and repairs to any Unit shall be done by the Unit Owner at the Unit Owner's expense, excepting as otherwise specifically provided herein, 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 serve such Unit. If the Trustees shall at any time in their reasonable judgment determine that the interior of any Unit is in such need of maintenance or repair that the market value or reasonable enjoyment of one or more other Units is being adversely affected or that the condition of a Unit or fixtures, furnishings, facility or equipment therein is hazardous to any Unit or the occupants, the Trustees shall in writing request the Unit Owner to perform the needed maintenance, repair or replacement or to correct the hazardous condition, and in case such work shall not have been commenced within fifteen (15) days (or such reasonable shorter period in case of emergency as the Trustees shall determine) of such request and thereafter diligently brought to completion, the Trustees shall be entitled to have the work performed for the account of the Owner(s) of such Unit 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 Owner(s) of such Unit shall be personally liable therefor.

Subsection 5.8.2 Common Elements. Except for certain maintenance, repairs and replacement required to be performed by Unit Owners with respect to their Units, all as set forth in the Master Deed, all maintenance, repairs and replacements to the Common Elements shall be done by the Trustees, which may be done through a managing agent, as hereinafter provided, and shall be charged to all the Unit Owners as a Common Expense, reserving to the Trustees the right to recover all or part of the costs of such work from a Unit Owner (and, to the extent allowed by law, to have and enforce a lien on such Unit Owner's Unit for such costs) if such work was necessitated by the negligence, misuse or neglect of such Unit Owner or any guest, invitee, agent, servant or employee of such Unit Owner or occupant. Any two Trustees (or the sole

Trustee if there is only one), the managing agent or manager or any others who may be so designated by a majority of the Trustees may approve payment of vouchers for such work.

Notwithstanding the foregoing, any expenses incurred by the Trustees in the maintenance, repair and/or replacement (including reserves) of any decks, balconies or terraces reserved to the exclusive use of adjacent Units shall be assessed by the Trustees to those Units so benefiting therefrom.

The Trustees and their agents shall have access to each Unit from time to time during reasonable hours for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom or for making emergency repairs therein necessary, in the Trustee's sole judgment, to prevent damage to the Common Elements or to another Unit or Units.

Subsection 5.8.3 No Work Shall Jeopardize Building. No work which would jeopardize the soundness or safety of the Building shall be done in a Unit or in the Common Elements unless in every such case the unanimous written consent of all Unit Owners of the Condominium is first obtained.

#### Section 5.9 Improvements

Subsection 5.9.1 Improvements to Common Elements. Improvements to the Common Elements may be proposed by the Trustees or requested in writing by the Unit Owners holding twenty-five (25%) percent or more of the Beneficial Interest in this Trust. The Trustees shall submit to all Unit Owners (a) a form of agreement (which may be in several counterparts) 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:

- (a) If fifty percent (50%) or more but less than seventy-five (75%) in interest of the Unit Owners agree to make an improvement to the Common Elements the cost of such improvement shall be borne solely by the Unit Owners so agreeing.
- (b) If seventy-five percent (75%) or more in interest of the Unit Owners agree to make an improvement to the Common Elements, the cost thereof shall be assessed to all Unit Owners as a Common Expense, but if such improvement shall cost in excess of ten percent (10%) of the then value of the Condominium, any Unit Owner not so agreeing may apply to the Superior Court, on such notice to the Trustees as the Court shall direct, for an order directing the purchase of his or her Unit by the Trustees at the fair market value thereof as approved by the Court. The cost of any such purchase shall be a Common Expense.

Subsection 5.9.2 Improvements by Unit Owners. No Unit Owner shall make any addition, alteration or improvement in or to his Unit which may affect the structure 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 they deem appropriate including without limitation restrictions in the manner of performing such work and requirements for builder's risk and liability insurance.

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, codes, and when required thereby, by licensed contractors, and in such manner as not to unduly inconvenience or disturb the occupants of the Condominium.

The provisions of this Subsection 5.9.2 shall not apply to Units owned by Declarant prior to the initial sale thereof.

Subsection 5.9.3 Subdividing and Connecting Units. Declarant or Trustees may authorize the subdivision or connection of Units, as set forth in the Master Deed.

Subsection 5.10 Exclusive Use of Common Elements. Subject to the rights of Declarant as set forth in the Master Deed, the Trustees may authorize that exclusive use of one or more Common Elements be assigned to one or more Units for such time and on such conditions as the Trustees may determine, which conditions may, without limitation, include a requirement that the Unit Owner(s) so benefitted pay, as additional common expenses, such costs of said Common Elements as the Trustees from time to time may determine. The failure of the Trustees granting said exclusive use to require payment of any such costs as a condition of such exclusive use shall not preclude those Trustees, or any successor Trustees, from imposing reasonable additional Common Charges for the exclusive use of said Common Elements.

Section 5.11 Right of Access. A Unit Owner shall grant access to his Unit to the Trustees, at reasonable times and after written notice and an opportunity to cure (except in emergencies), for the purpose of correcting any conditions originating in his Unit and threatening the health, comfort, convenience or safety of the occupants of another Unit or the use and enjoyment of the Common Elements. In case of an emergency such right of entry shall be immediate, whether the Unit Owner is present at the time or not. In the event of the exercise of the right of access provided in this Section 5.11, any costs for repairs shall be borne in accordance with the provisions of Section 5.8 above.

Section 5.12 Arbitration of Disputed Trustee Action. Notwithstanding anything in Sections 5.8 and 5.11, 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 said sections, 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 the 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 and binding on all Unit Owners unless shown to have been made in bad faith. The Trustees shall in no event be obligated to proceed with any repair,

rebuilding or restoration, or any improvement, unless and until they have received funds in an amount equal to the Trustees estimate of all costs thereof.

Section 5.13 Administrative Rules and Regulations.

Subsection 5.13.1 Rules and Regulations. The Trustees may from time to time adopt, amend and rescind such administrative rules and regulations and such restrictions on and requirements respecting the use and maintenance of the Units and the use of the Common Elements 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 Elements. Rules and Regulations concerning the use of the Common Elements are attached hereto as Exhibit A and made a part hereof. Copies of the Rules and Regulations shall be furnished by the Trustees to each Unit Owner and to each Registered Mortgagee.

The violation of any rule or regulation adopted by the Trustees, or the breach of any of these Bylaws, or the breach of any provisions of the Master Deed or of this Trust or of the offending Unit Owner's Unit Deed, shall give the Trustees the right, in addition to any other rights set forth in these Bylaws, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, or both, the continuance of any such breach. In addition to the foregoing, and not in substitution therefor, the Trustees shall have the power to levy fines against Unit Owners for such violations in such amount as the Trustees shall deem reasonable, and each day a violation continues after notice shall be considered a separate violation. Collection of fines may be enforced against the Unit Owner or Unit Owners involved as if the fines were Common Charges owed by the particular Unit Owner or Unit Owners. In the case of persistent violations by a Unit Owner, the Trustees shall have the power, after notice and hearing, to require such Unit Owners to post a bond to secure adherence to the Rules and Regulations, Bylaws, Master Deed, this Trust or the Unit Deed.

Section 5.14 Managing Agent. The Trustees may, at 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.

Section 5.15 Condemnation. If any public or quasi-public authority initiates a proceeding to take any portion of the Condominium under the power of eminent domain, the Trustees shall notify all Unit Owners and all mortgagees of record promptly after the commencement of such proceeding.

In the event of total or partial taking under the powers of eminent domain, the Unit Owners shall be represented by the Association acting through the Trustees. In the event of a partial taking, the award shall be allocated to the respective Unit Owners, according to their respective Beneficial Interests, except as to such portion or portions of the award which are attributable to direct or consequential damages suffered by particular Units which shall be payable to the Unit Owners of such Units or their mortgagees, as their interest may appear. In

the case of a total taking of all Units and the Common Elements, the entire award shall be payable to the Trustees to be distributed to the Unit Owners in accordance with their respective Beneficial Interest, or their mortgagees, as their interests may appear.

No vote or consent required of a Unit Owner pursuant to this Section shall be deemed effective without the written consent of any Registered Mortgagee and the holder of any first mortgage of record. No provision herein shall be deemed to give a Unit Owner or any other party priority over any rights of the holder of the first mortgage (if any) on such Unit Owner's Unit pursuant to such mortgage in the case of distribution to such Unit Owner of condemnation awards for taking of Units and/or Common Elements. Mortgagees of Units will be entitled to priority with respect to any awards distributed to their mortgagors.

## ARTICLE VI

### Sales and Mortgages of Units

Section 6.1 No Severance of Ownership. No Unit Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his Unit without including therein, the Beneficial Interest of such Unit Owner in the Common Elements and assets of the Association, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Beneficial Interests of any Unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Unit to which such Beneficial Interests are appurtenant, or as part of a sale, transfer or other disposition of such part of the Beneficial Interests of all Units.

Section 6.2 Mortgage of Units. A Unit Owner who mortgages his Unit shall notify the Trustees of the name and address of his mortgagee. The Trustees shall maintain such information in a book entitled "Mortgagees of Units." The failure of a Unit Owner to so notify the Trustees or to file a conformed copy with them shall not invalidate the mortgage or any of its provisions of the rights of any holder of such mortgage. The Trustees, whenever so requested in writing by a Registered Mortgagee of a Unit, shall promptly report any then unpaid Common Charges due from, or any other default by, the owner of the mortgaged Unit. In addition, the Trustees shall give prompt written notice to the Registered Mortgagee of any default in the performance by the Unit Owner of the mortgaged Unit of any obligation under the Master Deed, this Trust, or the Rules and Regulations which is not cured within thirty (30) days, and of any such default which is not cured within sixty (60) days. The Trustees, when giving notice to a Unit Owner of a default in paying Common Charges or other default, shall send a copy of such notice to each Registered Mortgagee. In addition, the Trustees shall send written notice to all Registered Mortgagees of any proposed amendment to this Declaration of Trust to be made pursuant to Section 10.1. Each Registered Mortgagee of a Unit shall be permitted to examine the books of account of any managing agent or manager relating to the Condominium at reasonable times of business days, and upon request the Trustees shall furnish each such Registered Mortgagee with annual reports of the Association and other financial data.

If a Registered Mortgagee gives written notice to the Trustees that there is a default in a mortgage on a Unit held by it, or if a Registered Mortgagee gives written notice to the Trustees of an agreement or covenant by a Unit Owner that said Registered Mortgagee is to be a proxy of said Unit Owner, then such Registered Mortgagee shall be recognized as the proxy of the Unit Owner of such Unit for all matters concerning the Condominium until the Registered Mortgagee revokes the same by written notice to the Trustees, or such mortgage is discharged of record; provided, however, that if such Registered Mortgagee is not represented at a meeting of Unit Owners, then the Unit Owner may, notwithstanding the foregoing, cast the vote attributable to his Unit. If two or more mortgagees of the same Unit give notice to seek to exercise rights hereunder, the mortgagee who in the good faith determination of the Trustees holds the senior lien upon the Unit shall have the rights granted in this Section.

## ARTICLE VII

### Rights and Obligations of Third Parties Dealing with the Trustees

Section 7.1 Third Parties; No Duty of Inquiry. No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record in the Registry shall be bound to ascertain or inquire further as to the persons who are then Trustees hereunder, or be affected by any notice, implied or actual, otherwise than by a certificate thereof, and such record or certificate shall conclusively evidence the persons who are then Trustees. The receipts of the Trustees, or any one or more of them, for money or things paid or delivered to them or him shall be effectual discharges therefrom to the person paying or delivering the same and no person from whom the Trustees, or any one or more of them, shall receive any money, property or other credit shall be required to see to the application thereof. No purchaser, mortgagee, lender or other person dealing with the Trustees or with any real or personal property which then is or formerly was Trust Estate shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed or otherwise as to the purpose or regularity of any of the acts of the Trustees, or any one or more of them, purporting to be done in the pursuance of any of the provisions or powers herein contained, or as to the regularity of the resignation, removal or election of any Trustee, and any records of the Association purporting to be executed by persons herein required to execute the same, shall be conclusive evidence in favor of any such purchaser or other person dealing with the Trustees of the matters therein recited.

Section 7.2 No Recourse to Trustees. No recourse shall be had at any time under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant, or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees or by reason of anything done or omitted to be done by or on behalf of them or any of them, against the Trustees individually, or against any such agent or employee, or 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 Estate for payment under such contract or claim, or for the payment of any debt, damage, judgment or decree, or of any money

that may otherwise become due or payable to them from the Trustees, so that neither the Trustees nor the Unit Owners, present or future, shall be personally liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Unit Owners under provisions hereof or under provisions of Chapter 183A.

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

Section 7.4 Recording in Registry. This Declaration of Trust and any amendments hereto and any certificate herein required to be recorded and any other certificate or paper signed by said Trustees or any of them which it may be deemed desirable to record shall be recorded with the Registry and such record shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustees, the Trust Estate or any Unit Owners thereunder shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be recorded with said Registry. Any certificate executed by any two Trustees in office at the time (or by one Trustee if there is only one at the time), setting forth as facts any matters affecting the Trust, as to what action has been taken by the Unit Owners, as to whether Common Charges are due with respect to a particular Unit and as to matters determining the authority of the Trustees to do any act, when duly acknowledged and recorded with said Registry shall be conclusive evidence as to the existence of such alleged facts in favor of all third 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 any instrument or the taking of any action by such Trustee or majority, as the case may be, shall, as to all persons acting in good faith in reliance thereon be conclusive evidence of the truth of the statements made in such certificate and of the existence of the facts therein set forth 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 7.5 Application. All present and future owners, mortgagees, lessees and occupants of Units and their employees, and any other persons who may use the facilities of the Property in any manner are subject to the Master Deed, this Declaration of Trust and the Rules and Regulations. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that the Master Deed, this Declaration of Trust and the Rules and Regulations, as they may be amended from time to time, are accepted, ratified, and will be complied with.

## ARTICLE VIII

### Protection of Mortgages; Federal Home Loan Mortgage Corporation and Federal National Mortgage Association

#### A. Definitions

- (i) The term “eligible Mortgage Holder” means a holder of a first mortgage on a unit who has requested notice of certain matters from this Trust as set forth in these Bylaws.
- (ii) The term “eligible Insurer or Guarantor” means an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters as set forth in these Bylaws.
- (iii) The Term “Constituent Documents” means collectively, the Master Deed, this Trust and the Bylaws and rules and regulations thereto and the Plans (as defined in the Master Deed).

#### B. Prohibitions

Notwithstanding anything to the contrary in the Constituent Documents:

- (i) There shall be no restriction upon any Unit Owner’s right of ingress or egress to his or her Unit, which right shall be perpetual and appurtenant to the ownership of the Unit.
- (ii) There shall be no restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her Unit. There shall be no “right of first refusal” so called or any similar restriction.
- (iii) There shall be no restriction on the right of any Unit Owner to mortgage or otherwise encumber his or her Unit.
- (iv) The Condominium shall not be subject to “expansion” or “phases.”
- (v) Prior to the passage of control of this Trust to consumer unit purchasers, no contract or lease (including management contracts) shall be entered into unless this Trust is provided with a right of termination of any such contract or lease with or without cause, exercisable without penalty at any time after transfer of control, upon not more than ninety (90) days’ notice to the other party thereto.
- (vi) The Constitution Documents shall not be amended or modified if the result of any such amendment or modification would:
  - (a) Add a “right of first refusal.”

- (b) Permit an addition or expansion to the Condominium project in which sections or phases are established.

C. Amendment to Documents

- (i) Where Unit Owners are considering termination of the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Property, the consent of at least sixty-seven percent (67%) of the Beneficial Interests and the approval of eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes of the mortgaged Units shall be required.

D. Right of Action

Any aggrieved Unit Owner shall have a right of action against Unit Owners for failure to comply with the provisions of this Declaration of Trust and the Bylaws and rules and regulations thereto, the Master Deed, the Plans and each unit deed and unit plan, and with decisions of the Trustees of this Trust. Each Unit Owner shall have a similar right of action against this Trust. Any such action may be brought in any court of competent jurisdiction.

E. Vote or Consent

The right of any Unit Owner to vote to, grant or withhold any consent or exercise any rights pursuant to the provisions of this Declaration of Trust or the Master Deed may be assigned to or restricted in favor of any mortgagee, and the Trustees shall be bound by such assignment or restriction, provided, however, that such assignment or restriction does not conflict with the provisions of said Chapter 183A and that the mortgagee has notified the Trustees of such assignment or restriction in writing.

F. Information

The Trust shall promptly deliver the following information, in writing, to any mortgagee, Mortgage Holder, mortgage servicer, FHLMC or FNMA requesting same, without expense to the requesting party:

- (i) notification of any default in the performance by the individual Unit Owner of any obligation under the Constituent Documents that is not cured within sixty (60) days;
- (ii) a written certification as to whether or not any Unit Owner of any Unit encumbered by a mortgage held or serviced, in whole or in part, by the requesting party, is more than one (1) month delinquent in the payment of Common Charges;
- (iii) a written certification as to the percentage of Unit Owners who are more than one (1) month delinquent in the payment of Common Charges;

- (iv) a statement to the best of the Trust's knowledge as to the percentage of Units that have been sold and conveyed to bona fide purchasers (who have closed or who are legally obligated to close) and the percentage of Units that are occupied by individual Unit Owners as their primary year-round residence.

G. FHLMC; FNMA

The provisions of this Article VIII are set forth so that the Condominium will comply with the requirements to FHLMC and FNMA, and the provisions of this Article VIII shall be construed and interpreted in accordance with that intention. Notwithstanding anything to the contrary in the Constituent Documents, the provisions of this Article VIII shall at all times take precedence over all other provisions in the Constituent Documents, and this Article VIII shall not be amended or modified without the express prior written consent of FHLMC and FNMA, except as expressly provided in the immediately following sentence. In the event that, at any time and from time to time, applicable rules and regulations of FHLMC or FNMA are changed or modified, then, and in any such event or events, the prohibition contained in the immediately foregoing sentence shall be deemed to be changed and modified so as to permit the amendment and modification of the Constituent Documents so that the Constituent Documents shall comply with such changed or modified rules and regulations of FHLMC or FNMA, or both.

ARTICLE IX

Miscellaneous

Section 9.1 Records. The Trustees or the managing agent or manager shall keep detailed records of the actions of the Trustees and financial records and books of account of the Trust, including a chronological listing of receipts and expenditures, as well as a separate account for each Unit which, among other things, shall contain the amount of each assessment of Common Charges against such Unit, the date when due, the amounts paid thereon, and balance remaining unpaid. An annual financial statement of the Association shall be rendered by the Trustees to all Unit Owners and all mortgagees requesting same within ninety (90) days after the end of each fiscal year. Copies of the Master Deed, Rules and Regulations, this Declaration of Trust and floor plans of the Building and Units, as the same may be amended from time to time, and the records of the actions of the Trustees and financial records and books of account of the Association shall be maintained at the office of the Trustees and shall be available for inspection by Unit Owners and their authorized agents during reasonable business hours.

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, and 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 (1) month of the date of his or her receipt of the report shall be deemed to have assented thereto.

Section 9.2 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 9.3 Fiscal Year. Except as from time to time otherwise provided by the Trustees, the fiscal year of the Association shall end on the last day of December in each year.

Section 9.4 Severability. The invalidity of any part of this Declaration of Trust shall not impair or affect in any manner the validity, enforceability or effect of the balance of this Declaration of Trust.

Section 9.5 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration of Trust, or the intent of any provision thereof.

Section 9.6 Gender. The use of the masculine gender in this Declaration of Trust shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires. 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.

Section 9.7 Interpretation. All the trusts, powers and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts. Unless defined herein or the context otherwise indicates, words defined in Chapter 183A shall have the same meaning here.

Section 9.8 Waiver. No restriction, condition, obligation, or provisions contained in this Declaration of Trust shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

## ARTICLE X

### Amendments to This Declaration of Trust

Section 10.1 Amendments to This Declaration of Trust. Except as provided in the next sentence, this Declaration of Trust may be altered, amended or repealed upon the written consent of the Trustees and Unit Owners representing sixty-seven (67%) or more of the Beneficial Interest. No amendment which purports to alter the Beneficial Interest of any Unit or the basis for allocation of Common Expenses, Common Charges or distributions to Unit Owners, shall be

of any force or effect unless the same has been signed by all Unit Owners affected thereby and recorded in the Registry. For so long as Declarant has not conveyed every Unit, this Declaration of Trust may not be amended so as to adversely affect Declarant without Declarant's consent.

Any amendment, alteration, addition or change pursuant to the foregoing provisions of this Section shall become effective upon the recordation with the Registry 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, (or one Trustee if there be only one then in office), setting forth in full the amendment, alteration, addition or change and reciting the consent of 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 hereinbefore provided.

## ARTICLE XI

### Conflicts

Section 11.1 Conflicts. This Declaration of Trust is set forth in compliance with the requirements of Chapter 183A. In case any provision of this Declaration of Trust conflicts with the provisions of said statute, or the Master Deed, the provisions of said statute or the Master Deed, as the case may be, shall control.

## ARTICLE XII

### Termination

Section 12.1 Termination. The Association hereby created shall terminate only upon the removal of the Condominium from the provisions of said Chapter 183A in accordance with the procedure therefor set forth in Section 19 of said Chapter. The Unit Owners may remove all or a portion of the Condominium from the operation of Chapter 183A of the General Laws as amended from time to time at any annual or special meeting of the Unit Owners by the affirmative vote of seventy-five percent (75%) in interest of the Unit Owners, provided that notice of such removal is given in the notice of the meeting and, provided, further, that the holders of all first mortgages consent to such removal by written instruments duly recorded with the Registry.

Section 12.2 Disposition of Trust Property Upon Termination. Upon the termination of this Trust, the Trustees may, subject to and in accordance with the provisions of Chapter 183A, sell and convert into money the whole of the Trust property, or any part thereof, and, after paying or retiring all known liabilities and obligations of the Trustees and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, at valuations made by them which shall be conclusive, all other property then held by them in trust hereunder, to the Unit Owners according to their respective beneficial

interest stated in this Trust. In making any sale under this section, the Trustees shall have power to sell by public auction or private sale or contract and to buy in or rescind or vary any contract of sale and to resell without being answerable for loss and, for said purposes, to do all things, including the execution and delivery of instruments, as may by their performance thereof be shown to be in their judgment necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distributions of Trust property may have passed.

IN WITNESS WHEREOF, the undersigned, being the sole Trustee, has signed these presents as such trust as of the date first set forth above, and hereby accepts appointment as such Trustee and agrees to be bound by and act in accordance with the foregoing provisions of the Trust and any duly enacted amendments thereof.

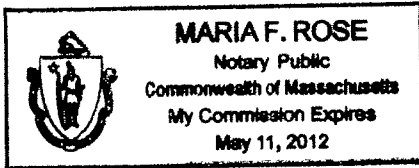
**STONEHOLM ASSOCIATES, LLC,**  
as Trustee

By: *[Signature]*  
Harold Brown, Manager

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

On this 4<sup>th</sup> day of January, 2006, before me, the undersigned Notary Public, personally appeared the above-named Harold Brown, proved to me by satisfactory evidence of identification, being license, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose, as the duly-authorized Manager of Stoneholm Associates, LLC.



*Maria F. Rose*  
(Print Name of Notary Public): \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Qualified in the State/Commonwealth of \_\_\_\_\_

EXHIBIT "A"

RULES AND REGULATIONS  
FOR  
XII STONEHOLM CONDOMINIUM

Pursuant to the provisions of the Declaration of Trust of XII Stoneholm Condominium Trust, the following rules and regulations are adopted:

1. There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements without the prior consent of the Trustees, except as expressly provided herein or in the Trust. Each Unit Owner shall be obligated to maintain and keep in good order and repair his own Unit and any area or facility, the exclusive use of which is provided to said Unit, in accordance with the provisions of the Trust and the Master Deed.
2. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance of the Building, or contents thereof, applicable for residential use, without the prior written consent of the Trustees. No Unit Owner shall permit anything to be done, or kept in his Unit, or in the Common Elements which will result in the cancellation of insurance on the Building or the contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Elements.
3. No Unit Owner shall cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls or doors of the Building or Units, and no sign, awning, canopy, shutter, or radio or television antenna (except for the master antenna system, if any) shall be affixed to or placed upon the exterior walls or doors, roof or any part thereof, or exposed on or at any window, without the prior consent of the Trustees.
4. No animals, reptiles or pets of any kind shall be raised, bred, kept or permitted in any Unit or in the Common Elements, except in accordance with the Master Deed.
5. No Unit Owner shall engage in or permit any noxious or offensive activities, or make or permit any noises by himself, his family, servants, employees, agents, visitors, lessees, licensees, or household pets, nor do himself or permit anything to be done by such persons or pets, either willfully or negligently, which:
  - (a) May be or become an annoyance or nuisance to the other Unit Owners or occupants,
  - (b) Will interfere with the rights, comforts or conveniences of other Unit Owners,

(c) May or does cause damage to any other Unit or to the Common Elements,  
or

(d) Results in the removal of any article or thing of value from any other Unit Owner's Unit or from the Common Elements.

The Unit Owner making or permitting such nuisance, interference, damage or removal shall be responsible for the elimination of such nuisance or interference and for the costs of the repair of such damage or replacement of the item removed. In the event that the Trustees determine that noise can be abated by the installation of carpeting, the Unit Owner shall install carpet to reduce noise level. The Trustees shall assess to such Unit Owner such costs.

Total volume of noise producing instrumentalities such as, but not limited to, television sets, radios, CD players, phonographs, and musical instruments, shall be turned down after 10:00 p.m. and shall at all times be kept at a sound level to avoid bothering the neighbors.

6. No clothes, sheets, blankets, laundry, rugs of any kind or other articles shall be hung out of the windows or sliding doors of any Unit or exposed on or in any part of the Common Elements. The Common Elements shall be kept free and clear of all rubbish, debris, and other unsightly materials and any large items of rubbish or materials for disposal must be removed from the Condominium by the Unit Owner responsible for such items.
7. Nothing shall be altered in, constructed in, or removed from the Common Elements except upon the written consent of the Trustees.
8. No part of the Common Elements of the Condominium shall be decorated or furnished by any Unit Owner in any manner without the prior written consent of the Trustees.
9. Each Unit Owner shall keep his Unit and any areas or facilities, the exclusive use of which is provided to said Unit, in a good state of preservation and cleanliness. The water closets and other water apparatus shall not be used for any purpose other than that for which they were constructed, and no sweepings, rubbish, rags, paper, ashes, or other substances shall be thrown therein. Any damage to plumbing systems of the Building resulting from such misuse shall be paid for by the Unit Owner who shall have caused it. Bicycles, baby carriages, carts and the like may be stored only in areas designated by the Trustees and in such a manner so as not to obstruct any Common Elements.
10. All radio, television or other electrical equipment of any kind or nature installed or used in each Unit shall fully comply with all rules, regulations, requirements, or recommendations of the Board of Fire Underwriters and the public authorities having jurisdiction, and the Unit Owner alone shall be liable for any damage or injury caused by any radio, television, or other electrical equipment in such Unit.

11. No exterior lighting equipment, fixtures, or facilities shall be attached to or utilized for any Unit without the prior consent of the Trustees.
12. Any maintenance, repair or replacement of Common Elements which is the responsibility of Unit Owners pursuant to the Master Deed or the Declaration of Trust shall be done only by contractors or workmen approved by the Trustees.
13. No Unit Owner or occupant or any of his agents, servants, employees, licensees, lessees, or visitors shall at any time bring into or keep in his Unit any flammable, combustible, or explosive fluid, material, chemical, or substance, except such lighting and cleaning fluids as are customary for residential use.
14. Wood and coal stoves or similar devices shall be permitted in Condominium Units only in accordance with applicable law and fire regulations and only upon the prior written approval of the Trustees, who shall as a condition of any such approval require (i) compliance with rules and regulations promulgated by them as to the installation, use, maintenance, repair and cleaning of any such device and the storage and handling of wood, coal or other fuels therefor, and (ii) the right of the Trustees to enter any Unit in which such a device is installed and to correct any non-compliance with such rules and regulations, all at the sole expense and risk of the Owner of such Unit; provided, however, that in no event shall such device be permitted to be used as a source of heat.
15. If any key or keys are entrusted by the Unit Owner or occupant or by any member of his family, or by his agent, servant, employee, licensee, lessee, or visitor, to a Trustee, agent or employee of the Trustees, whether for such Unit or an automobile, trunk, or other item of personal property, the acceptance of the key shall be at the sole risk of such Unit Owner or occupant, and such Trustee, agent or employee and the Trustees shall not be liable for injury, loss, or damage of any nature whatsoever directly or indirectly resulting therefrom or connected therewith.
16. The Trustees, or their designated agent, may retain a pass key to each Unit. No Unit Owner shall alter any lock or install a new lock or a knocker on any door of a Unit without the written consent of the Trustees. In case such consent is given, the Unit Owner shall provide the Trustees, or their designated agent, with an additional key pursuant to its right of access to the Unit.
17. All personal property of the Unit Owners in the Units, or the Common Elements, the exclusive use of which is provided to the Unit, and elsewhere, shall be kept therein at the sole risk and responsibility of the respective Unit Owners, and neither the Trustees, the Building management, nor their respective successors or assigns, shall bear any responsibility therefor.
18. Each Unit Owner assumes responsibility for his own safety, actions, and conduct, and that of his family, guests, agents, servants, employees, licensees, lessees and household pets.

19. No moving of furniture or other items to or from Units will be undertaken without the express consent of the Trustees, and then only if pads are installed in the elevator and precautions are taken to safeguard doors, moldings and other common elements.
20. Installation and programming of keyless entry systems will be undertaken only with the permission of the Trustee and at the sole cost of the Unit Owner.
21. Any consent or approval given by the Trustees under these Rules and Regulations may be added to, amended, or repealed at any time by the Trustees.

These Rules and Regulations may be amended from time to time as provided in the Trust.