

**SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST
DECLARATION OF TRUST**

DECLARATION OF TRUST of the **SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST** made at Peabody, Essex County, Massachusetts by Anthony Rosati, of 111 Foster Street, Peabody, Massachusetts and Paul Brzezinski, of 197 Portland Street, Boston, Massachusetts (hereinafter called the "Trustees"), which term includes their successors in trust. The term "Trustees" or "Trustee" also means the Trustees or Trustee for the time being hereunder, whenever the context so permits.

I. NAME OF TRUST

The trust created hereby shall be known as the **SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST**, and all activities carried on by the Trustees hereunder shall be conducted under said name and style, insofar as legal, practical and convenient.

II. PURPOSES

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

(b) It is hereby expressly declared that a trust, and not a partnership, has been hereby created, and that the Unit

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Owners are beneficiaries and not partners or associates or any other relation whatever among themselves with respect to the trust property, and hold no relation to the Trustees other than as such beneficiaries, with only such rights as are conferred upon them as such beneficiaries hereunder and under and pursuant to the provisions of said Chapter 183A.

III. TRUSTEES

(a) Appointment of Trustees

(i) Initial Board

The Initial Board shall consist of the Trustees named in the first paragraph of this Declaration of Trust, to wit: Anthony Rosati, of 111 Foster Street, Peabody, Massachusetts and Paul Brzezinski, of 197 Portland Street, Boston, Massachusetts, hereinafter called the "Initial Board." The term of the Initial Board shall end upon the earliest to occur of the following events: (a) 120 days after seventy-five percent (75%) of the total number of units in the Condominium have been conveyed to unit purchasers, or (b) three (3) years following the conveyance of the first unit. Notwithstanding any other term or provision of this Trust to the contrary, (A) the Unit Owners shall have no power or right to remove the Initial Board nor to appoint any additional or successor trustees, until the expiration of the term of said Initial Board shall have expired, as set forth in the immediately preceding sentence; and (B) during the term of the Initial Board, any vacancy in the office of a Trustee, however caused, shall be filled only by the designation of the Grantor of the Master Deed.

(ii) Subsequent Boards of Trustees

After the term of the Initial Board, there shall at all subsequent times be a Board of Trustees hereunder consisting of not less than three (3) nor more than five (5) natural persons, but in any event, an odd number, as shall be determined by vote of Unit Owners entitled to not less than fifty-one percent (51%) of the beneficial interest hereunder.

(b) Vacancies

After Initial Board's term expires, if and when the number of Trustees shall become less than three (3), a vacancy or vacancies in said office shall be deemed to exist. Each such

vacancy shall be filled by (i) vote of Unit Owners entitled to not less than fifty-one percent (51%) of the beneficial interest hereunder; or (ii) if the Unit Owner(s) entitled to such percentage have not made such an appointment within thirty (30) days after the occurrence of such vacancy, by the remaining Trustees. The acceptance of any such appointment must be signed and acknowledged in proper form for recording by the person so appointed. Such appointment shall become effective upon the recording with the Essex County Registry of Deeds of a certificate of such appointment, signed and accepted as aforesaid, and such person shall then be and become such Trustee and shall be vested with the title to the Trust property, jointly with the remaining or surviving Trustee or Trustees, without the necessity of any act of transfer or conveyance.

If, for any reason, any such vacancy in the office of Trustee shall continue for more than sixty (60) days and shall at the end of that time remain unfilled, a Trustee or Trustees to fill such vacancy or vacancies may be appointed by any court of competent jurisdiction upon the application of any Unit Owner and notice to the other Unit Owners and all Trustees and to such other parties in interest, if any, to whom the court may direct that notice be given, and such appointment shall become effective upon the recording with the Essex County Registry of Deeds of a certificate or order of such appointment. Notwithstanding anything to the contrary in this subsection (b), despite any vacancy in the office of Trustee, however caused and for whatever duration, the remaining or surviving Trustees, subject to the provisions of the immediately following subsection (c), shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustees.

(c) Majority Vote

In all matters relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred, the Trustees shall act by majority vote, and, subsequent to the expiration of the term of the Initial Board, in no case shall a majority consist of less than two (2). The foregoing sentence shall not apply during the term of the Initial Board. During the term of the Initial Board, whenever there shall be only one Trustee hereunder, all references in this instrument and in the Bylaws and Rules and Regulations hereto to "a majority of the Trustees" shall be deemed to refer to the sole Trustee. The Trustees may so act without a meeting by instrument signed by all Trustees.

(d) Resignation of Trustees

- (i) Any Trustee may resign at any time by instrument in writing, signed and acknowledged in proper form for recording, and such resignation shall take effect upon the recording of such document with said Essex County District Registry of Deeds.
- (ii) After reasonable notice and opportunity to be heard before the Unit Owners called pursuant to Sections 8 and 34 of the Bylaws hereof, a Trustee (except a member of the Initial Board) may be removed from office, with or without cause, by an instrument in writing signed by any thirteen (13) Unit Owners and acknowledged by at least three (3) of the signatories thereto, who certify under oath that Unit Owners entitled to not less than fifty-one percent (51%) of the beneficial interest hereunder have voted for such removal, such instrument to take effect upon the recording thereof with said Essex County District Registry of Deeds.

(e) Bonds

The Initial Board shall not be obligated to purchase and maintain fidelity bonds. If any such bonds are purchased, all expenses incident to any such fidelity bonds shall be charged as a Common Expense of the Condominium.

(f) Good Faith

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

(g) Conflict of Interest

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

It is understood and permissible for the Initial Board hereunder and any other Trustees designated by the Initial Board or who are employed by or affiliated or associated with the Grantor of the Master Deed, to contract with the Grantor and any corporation, firm, trust or other organization controlled by or affiliated or associated with the Grantor without fear of being charged with self-dealing.

(h) Compensation

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

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

With the prior written approval in each instance of the other Trustees, any Trustee may be engaged to render services to this Trust, legal, accounting, or otherwise, at such compensation as

shall be fixed by the Trustees, and any fees or other compensation shall be a Common Expense of the Condominium.

Notwithstanding anything to the contrary in this subsection (h) of this Section 3, no compensation, reimbursement, or fees shall be paid to the Initial Board pursuant to the provisions of subsection (a) of this Section III. A Trustee shall abstain from voting upon any question regarding reimbursement, compensation, or fees proposed to be paid to him or her pursuant to the provisions of this subsection (h) of this Section III, or upon any question regarding the engagement of himself or herself, or any firm, association, corporation or partnership of which he or she is a member, to render services, legal, accounting or otherwise to this trust.

(i) Indemnity

The Trustees and each of them shall be entitled to indemnity both out of the trust property, and by the Unit Owners severally in proportion to each Unit Owner's ownership in the common areas and facilities, against any liability incurred by them or any of them in the execution hereof, including, without limitation, liabilities in contract and in tort and liabilities for damages, penalties and fines. Each Unit Owner shall be personally liable for all sums lawfully assessed for his or her share of the Common Expenses of the Condominium and for his or her proportionate share of any claims involving the trust property in excess thereof.

IV. BENEFICIARIES AND THEIR BENEFICIAL INTEREST

- (a) The beneficiaries hereof shall be the Unit Owners of the Condominium for the time being. The beneficial interest in the Trust hereunder shall be divided among the Unit Owners in the percentage of undivided beneficial interest appertaining to the Units of the Condominium, all as set forth in Exhibit B of the Master Deed, which is hereby incorporated herein by this reference and made a part hereof, with the same force and effect as though fully set forth in the body hereof.
- (b) The beneficial interest of each Unit of the Condominium shall be held and exercised as a unit and shall not be divided among several owners of any such Unit. To that end, whenever any of said Units is owned of record by more than one person, the several owners of such Unit shall;

- (i) determine and designate which one of such owners shall be authorized and entitled to cast votes, execute instruments, and otherwise exercise the rights appertaining to such Unit hereunder; and
- (ii) notify the Trustees of such designation by a notice in writing signed by all of the record owners of such Unit. Any such designation shall take effect upon receipt by the Trustees of such notice, and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Trustees may designate any one of such owners for such purposes.

V. BYLAWS

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

VI. RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUST

- (a) Any instrument signed and acknowledged in proper form for recording by a majority of the Trustees as they then appear of record in the Essex County District Registry of Deeds, may be relied on as conclusively establishing that such instrument was the free act of this Trust and shall be binding upon this Trust when so recorded.
- (b) No purchaser, mortgagee, lender, or other person dealing with a majority of the Trustees, as they then appear of record in the Essex County Registry of Deeds, shall be bound to ascertain or inquire further as to the persons who are then the Trustees hereunder or be affected with any notice, implied or actual, relative thereto, other than by a certificate thereof, so recorded, and such recorded certificate shall be conclusive evidence of the personnel of said Trustees and of any changes therein. The receipts of a majority of the Trustees for money paid or things delivered to them shall be effectual discharges therefrom to the persons paying or delivering the same, and no person from whom a majority of the Trustees shall receive any money, property or other credit, shall be required to see to the application thereof. No purchaser, mortgagee, lender

or other person dealing with a majority of the Trustees, or with any real or personal property which then is or formerly was trust property, shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, or otherwise as to the purpose of regularity of any of the acts of the Trustee(s) purporting to be done in pursuance of any of the provisions or powers herein contained, or as to the regularity of the resignation or appointment of any Trustee. Any instrument of appointment of a new Trustee or resignation or discharge of a Trustee purporting to be executed by the Trustees, Unit Owners or other persons herein required to execute the same, shall be conclusive evidence in favor of any such purchaser or other person dealing with the Trustees of the matters therein recited relating to such discharge, resignation or appointment or the occasion thereof.

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

or by any agent or employee of the Trustees, shall be deemed to have been entered into subject to the terms, conditions, provisions and restrictions hereof, whether or not express reference shall be made to this instrument.

- (e) This Declaration of Trust and amendments hereto, and any Certificate herein required or that it may be deemed desirable to record, shall be recorded with the Essex County Registry of Deeds, and such record when executed according to the requirements of this Declaration of Trust shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof. All persons dealing in any manner whatsoever with the Trustees, the trust property, or any beneficiary hereunder, shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be so recorded. Any certificate, signed by a majority of the Trustees at the time as they then appear of record in the Essex County District Registry of Deeds, setting forth as facts any matters affecting the trust, including statements as to who are the Trustees, as to what action has been taken by the Trustees or beneficiaries, and as to matters determining the authority of the Trustees to do any act, when duly acknowledged and recorded with said Middlesex South District Registry of Deeds, shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees acting in reliance thereon. Any certificate executed by a majority of the Trustees as they then appear of record in the Essex County Registry of Deeds setting forth the existence of any facts, the existence of which is necessary to authorize the execution of any instrument or the taking of any action by such Trustees, shall, when duly acknowledged and recorded with said Essex County Registry of Deeds, as to all persons acting in good faith in reliance thereon, be conclusive evidence of the truth of the statement made in such certificate and of the existence of the facts therein set forth.

VII. AMENDMENTS; TERMINATION

- (a) Notwithstanding anything to the contrary herein, so long as the Grantor of the Master Deed owns any unit in the Condominium, the Grantor shall have the right, at any time and from time to time, to amend this Declaration of Trust (including but not limited to the Bylaws hereto and the Rules and Regulations hereto) without the consent of any

Unit Owners or any of the Trustees of this Trust, to meet the requirements of any governmental or quasi-governmental body or agency, or the requirements of any insurance company or insurance underwriting office or organization, or the requirements of Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the secondary mortgage market, or any lender, or to correct typographical or clerical errors, or to cure any ambiguity, inconsistency or formal defect or omission, or for any reason that is not prohibited by M.G.L. c. 183A.

(b) Subject, however, to the provisions of Section 33 of the Bylaws hereto:

(i) A majority of the Trustees, with the consent in writing of sixty-six and two-thirds percent ($66\frac{2}{3}\%$) in interest of Unit Owners, may at any time and from time to time amend, alter, add to, or change this Declaration of Trust in any manner or to any extent. However, the Trustees must first be duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided, however, that no such amendment, alteration, addition or change shall be made (a) without the prior written consent of the Grantor obtained in each instance, for so long as the Grantor remains the owner of any Unit or the easement to use any Underground Parking Space in the Condominium; or (b) according to the purport of which, the percentage of the beneficial interest hereunder of any Unit Owner would be altered, or in any manner or to any extent whatsoever, modified or affected so as to be different than the percentage of the individual interest of such Unit Owner in the common areas and facilities as set forth in the Master Deed, other than by consent of all of the Unit Owners whose percentage of the undivided interest is affected as set forth in Chapter 87 of the Acts of 1987; or (c) that would render this Trust contrary to or inconsistent with any requirements or provisions of said Chapter 183A. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this Section shall become effective upon the recording with the Essex County Registry of Deeds of an instrument of amendment, alteration, addition, or

change, as the case may be, signed by a majority of the Trustees hereof, and by any sixteen(16) Unit Owners (in addition to said Trustees) who all certify under oath in such instrument that the amendment has been approved by the requisite vote of Unit Owners and Trustees, and acknowledged in proper form for recording by at least three (3) of the signatories, setting forth in full the amendment, alteration, addition, or change, provided that no such amendment shall be valid unless signed by the Grantor as long as the Grantor remains the owner of any Unit or any Underground Parking Space. 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.

- (ii) The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of Chapter 183A in accordance with the procedure therefor set forth in said Chapter 183A.
- (iii) Upon termination of this Trust, the Trustees may, subject to and in accordance with the provisions of said Chapter 183A, sell and convert into money the whole of the trust property, or any part or parts thereof, and, after paying or retiring all known liabilities and obligations of the 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 that shall be conclusive if made in good faith, all other property then held by them in trust hereunder to the Unit Owners according to their respective percentages of beneficial interest hereunder. In making any sale under the provisions of this subsection (c) of this Section VII, the Trustees shall have the power to sell or vary any contract of sale and to resell without being answerable for loss, and, for said purposes, to do all

things, including the execution and delivery of instruments, as may by their performance thereof be shown to be in their judgment necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distribution of trust property may have passed.

The provisions of Section 33 of the Bylaws hereto shall at all times take precedence over the provisions of this Section VII.

VIII. CONSTRUCTION: INTERPRETATION

- (a) In the construction hereof, whether or not so expressed, words used in the singular or in the plural, respectively, shall include both the plural and singular; words denoting males include females; and words denoting persons include individuals, firms, associations, companies (joint stock or otherwise), partnerships, entities and quasi-entities, trusts and corporations; unless a contrary intention is to be inferred from or is required by the subject matter or context. The marginal and sectional captions and headings are inserted only for convenience of reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation, or effect hereof.
- (b) All of the trusts, powers, and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts in general, and with respect to Massachusetts General Laws, Chapter 183A, in particular.
- (c) The invalidity of any provision or part of such provision hereof shall not impair or affect in any manner the remainder hereof, or the remainder of such provision or such part of such provision.
- (d) No restriction, condition, obligation or provision contained herein (including but not limited to the Bylaws hereof attached hereto as Exhibit A and incorporated herein by reference) shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number or frequency of violations or breaches thereof that may occur.

- (e) In the event of any conflict between the provisions hereof (including but not limited to the Bylaws hereof attached hereto as Exhibit A and incorporated herein by reference) and the provisions of Massachusetts General Laws, Chapter 183A, and the Master Deed, the provisions of said Chapter 183A, or of the Master Deed, as the case may be, shall control. Words defined in said Chapter 183A shall have the same meaning herein as defined in said statute unless the context clearly indicates otherwise.

EXECUTED AS A SEALED INSTRUMENT THIS 5th DAY OF April, 2004.

SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST

By: *Anthony Rosati*
Anthony Rosati
Its Trustee and not individually

By: *Paul Brzezinski*
Paul Brzezinski
Its Trustee and not individually

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

April 5th, 2004

Then personally appeared the above named Anthony Rosati and Paul Brzezinski, as Trustees of SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST, as aforesaid and acknowledged the foregoing instrument to be the free act and deed of that Trust, before me,

Joseph J. Brodigan, Jr.

Joseph J. Brodigan, Jr.
Notary Public

My commission expires: 12/10/2010



JOSEPH J. BRODIGAN
Notary Public
Commonwealth of Massachusetts
My Commission Expires
December 10, 2010

EXHIBIT A

Exhibit A is hereby incorporated into and made a part of the Declaration of Trust of the **SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST**.

BYLAWS, SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST

The provisions of this Exhibit A to the **SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST** shall constitute the Bylaws of the **SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST**, the organization of Unit Owners established by said Trust.

1. Powers and Duties of the Trustees

The Board of Trustees shall have all power necessary for the administration of the affairs of the Condominium as set forth in Massachusetts General Laws, Chapter 183A ("Condominiums"), hereinafter called "Chapter 183A," and they may do any and all acts necessary or desirable for the administration of the affairs of the Condominium, except only for such acts as may not, under law, or under the provisions of the Master Deed or this Trust, be delegated to the Trustees by the Unit Owners. Such powers and duties of the Trustees shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of the common areas and facilities.
- (b) Determination of the Common Expenses required for the affairs of the Condominium, including but not limited to, the operation and maintenance of the common areas and facilities.
- (c) Collection of the Common Expenses from the Unit Owners.
- (d) employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the common areas and facilities.
- (e) Subject to the provisions of Section 7 of these Bylaws, adoption, amendment, and administration (including waiver)

of rules and regulations covering the details of the operation and use of the common areas and facilities.

- (f) Opening bank accounts on behalf of the Condominium, and subject to the provisions hereof, designating the signatories required therefor.
- (g) Leasing, managing and otherwise dealing with such facilities as may be provided for in the Master Deed as being common areas and facilities.
- (h) Owning, conveying, encumbering, leasing and otherwise dealing with units conveyed to the Trust or purchased by it as a result of enforcement of the lien for Common Expenses.
- (i) Obtaining insurance for the Condominium, including the units, pursuant to the provisions hereof.
- (j) Making repairs, additions and improvements to, or alterations or restoration of, the Condominium, in accordance with the other provisions of this Trust.
- (k) Enforcing obligations of the Unit Owners, allocating income and expenses, and doing anything and everything else necessary and proper for the sound management of the Condominium.
- (l) Subject to the provisions of Subsection (B) of Section 29 of these Bylaws, purchasing or leasing a unit.
- (m) Purchasing units at foreclosure or other judicial sales.
- (n) Organizing and maintaining corporations, trusts, or other entities to act as nominee of the Condominium in acquiring title to units on behalf of all Unit Owners under the provisions hereof.
- (o) Conducting litigation, including but not limited to, litigation as to any course of action involving the common areas and facilities or arising out of the enforcement of the Bylaws, Rules and Regulations, the Master Deed and this Trust. Notwithstanding any provision of the Master Deed, or the Declaration of Trust of the Mansion House Condominium Trust, or of these Bylaws or the Rules and Regulations to the contrary, neither the Trustees acting in their capacity as such Trustees or acting as representatives of the Unit Owners, nor any class of Unit Owners, shall bring any

litigation whatsoever unless a copy of the proposed complaint in such litigation has been delivered to all of the Unit Owners, and not less than ninety percent (90%) of all Unit Owners consent in writing to the bringing of such litigation within sixty (60) days after a copy of such complaint has been delivered to the Unit Owners and specifying as a part of their written consent a specific monetary limitation to be paid as legal fees and costs and expenses to be incurred in connection therewith, which amount shall be separately assessed as a special assessment effective forthwith at the time of said affirmative consent. Notwithstanding any provisions of the Master Deed, or of the Declaration of Trust of the **SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST** (including, but not limited to, the provisions of Section VII of the Declaration of Trust of the **SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST**), or these Bylaws or the Rules and Regulations, the provisions of this Paragraph (o) of this Section 1 shall not be amended except by vote of at least ninety percent (90%) of Unit Owners. The provisions of this Paragraph (o) shall not apply to litigation by the **SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST** against Unit Owners with respect to the recovery of overdue Common Expenses, Special Assessments or to foreclose the lien provided by Chapter 183A, Section 6, and Chapter 254, Sections 5 and 5A, as amended by 1987 Mass. Acts Chapter 338, or to enforce any of the provisions of the Master Deed, or the Declaration of Trust of the **SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST**, or these Bylaws or Rules and Regulations thereto against Unit Owners.

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

2. Common Expenses and Profits

- (i) Commencing on the date of the recording of the Master Deed, each Unit Owner shall be liable for Common Expenses and shall be entitled to Common Profits of the Condominium in the same proportion as his or her beneficial interest in this Trust bears to the aggregate beneficial interest of all the other Unit Owners. The Trustees may at any time or times distribute Common Profits among the Unit Owners in such proportions. The Trustees shall at all times establish and maintain an adequate reserve fund for the periodic maintenance, repairs and replacement of improvements to the

common areas and facilities and those limited common areas that the Trust may be obligated to maintain. Such reserve fund shall be funded by regular monthly assessments from regular assessments for Common Expenses and shall not be deemed to be Common Profits available for distribution.

- (ii) In addition to the foregoing (and not in substitution thereof), to ensure that this Trust will have the funds to meet unforeseen expenditures or to purchase any additional equipment or services, there shall be a working capital fund at least equal to two (2) months' estimated common charges for each unit. Any amounts paid into this fund shall not be considered as advance payments of regular assessments. Each unit's share of the working capital funds shall be collected at the time the sale of the unit is closed or at the time control of this Trust is transferred to the Trustees elected by Unit Owners other than the Grantor, as set forth in Section III of this Trust, whichever occurs earlier. When control of this Trust is transferred as set forth in the immediately preceding sentence, the working capital fund shall be transferred to this Trust for deposit to a segregated fund. For so long as the Grantor remains the owner of any Unit or the easement to use any Underground Parking Space, any funds contributed by the Grantor towards the operating costs of the Condominium shall offset and be applied to any condominium fees owed by the Grantor for the Units or any easements to use Underground Parking Space that Grantor owns.
- (iii) In addition to the foregoing (and not in substitution thereof), the Trustees may, to such extent as they deem advisable, set aside common funds of the Condominium as additional reserves and may use the funds so set aside for reduction of indebtedness or other lawful capital purposes, and, subject to the provisions of Section 4 of these Bylaws, for repair, rebuilding or restoration of the Condominium, or for improvements thereto, and for replacement of the common areas and facilities, and other proper contingencies. The funds so set aside shall not be deemed to be Common Profits available for distribution.
- (iv) At least thirty (30) days prior to the commencement of each fiscal year of this Trust, the Trustees shall estimate the Common Expenses expected to be incurred during such fiscal year, together with reasonable provision for contingencies and reserves, and for the reserve funds mentioned in Clause (i) of this Section 2, and after taking into account any

undistributed Common Profits from prior years, shall determine during any fiscal year that the assessment so made is less than the assessment for Common Expenses to be made for such fiscal year. The Trustees shall promptly furnish copies of each budget on which such assessment is based to all Unit Owners, and, if requested, to their mortgagees. The Trustees shall promptly render statements to the Unit Owners for the respective shares of such assessment, and each Unit Owner thereafter shall pay one twelfth (1/12) of his or her share of the estimated Common Expenses monthly in advance on the first day of each month. The Trustees shall not be obligated to render monthly assessments. In the event that at any time, and from time to time, the Trustees shall determine the Common Expenses actually incurred, or to be incurred, including but not limited to provisions for proper reserve funds, the Trustees shall make a supplemental assessment or assessments and render statements therefor in the manner aforesaid, and such statements shall be payable and shall take effect as set forth in such statements. The Trustees may in their discretion provide for payments of such supplemental assessment statements in monthly or other installments. The Trustees shall have the authority and the duty to levy and enforce the collection of general and special assessments for Common Expenses.

- (v) The amount of each such statement for regular or supplemental assessments, together with interest thereon, if not paid when due, at a rate equal to six percent (6%) above the prevailing prime lending rate for the Bank of America, then in effect (but not more than eighteen percent (18%) per annum) together with all expenses, including attorney fees, incurred by the Trustees in any proceeding brought to collect such unpaid Common Expenses and assessments, shall constitute a lien on the unit of the Unit Owner assessed pursuant to the provisions of Section 6 of said Chapter 183A and Sections 5 and 5A of Chapter 254, as amended by 1987 Mass. Acts Chapter 338, 1992 Mass. Acts Chapter 400 and 1993 Mass. Acts Chapter 1, and may be collected by the Trustees pursuant to said statutes. The Trustees shall take prompt action to collect any Common Expenses and assessments due from any Unit Owner that remain unpaid for more than thirty (30) days from the due date thereof, including but not limited to action under the provisions of Massachusetts General Laws Chapters 183A and 254, as amended by 1987 Mass. Acts Chapter 338, 1992 Mass. Acts Chapter 400 and 1993 Mass. Acts Chapter 1. In the

event that the Trustees bring an action to foreclose a lien on any unit pursuant to a said statute, the Unit Owner shall pay a reasonable sum for use and occupancy of his or her unit from the date of foreclosure until the Unit Owner vacates the unit (the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same), but nothing in this sentence shall be deemed to grant any Unit Owner the right to remain in possession of his or her unit after such foreclosure. The Trustees, acting on behalf of all Unit Owners, shall have power to purchase such unit at the foreclosure sale and to acquire, hold, lease, mortgage (but not vote appurtenant to), convey or otherwise deal with the same. A suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same. In the event of any suit or foreclosure by the Trustees, the Trustees shall be entitled to interest at a rate equal to six percent (6%) above the prevailing prime lending rate for the Bank of America, then in effect (but not more than eighteen percent (18%) per annum), and all costs of collection, suit and foreclosure, including attorney fees. In addition to the lien in favor of the Trustees for assessments for Common Expenses and assessments, such assessments shall also be the personal obligation of the owner of the unit at the time the assessment fell due.

- (vi) The Trustees shall promptly provide any Unit Owner, or any Unit Buyer who has a duly executed Purchase and Sale Agreement for the acquisition of a unit, or any mortgagee, or the attorney of any such party, with a written statement of all unpaid Common Expenses due with respect to such unit, signed and acknowledged in proper form for recording, upon the written request of such Unit Owner or buyer or mortgagee or attorney. Notwithstanding anything to the contrary in this Declaration of Trust, including these Bylaws, prior to the expiration of the term of the Initial Board, such statements may be executed by any one member of the Initial Board, and subsequent thereto, by any two (2) Trustees. Recording such statement in the Essex County Registry of Deeds shall operate to discharge the unit from any lien for any other unpaid sums not enumerated as of the date of such statement to the extent provided by said Chapter 183A.
- (vii) The Trustees shall expend common funds only for Common Expenses and lawful purposes permitted hereby and by the

provisions of said Chapter 183A.

(viii) Any first mortgagee who obtains title to a Condominium unit, pursuant to the remedies provided in its mortgage, or foreclosure of its mortgage, will not be liable for such unit's unpaid dues, common charges, or assessments (including interest and costs of collection and legal fees relating to the collection thereof) that accrue prior to the acquisition of title to such unit by the Mortgagee, provided, however, that notwithstanding the foregoing, such first mortgagee shall be liable for such unit's unpaid Common Expenses, costs and attorney fees as provided in subsection (c) of Section 6 of General Laws Chapter 183A, as amended by 1992 Mass. Acts Chapter 400 and 1993 Mass. Acts Chapter 1. The lien for Common Expense assessments shall not be affected by any sale or transfer of a unit, except that a sale or transfer pursuant to a foreclosure of a first mortgagee shall extinguish a subordinate lien for assessments that become payable prior to such sale or transfer, provided, however, that the lien for Common Expense assessments shall be affected by the sale or transfer of a unit to the extent set forth in subsection (c) of Section 6 of General Laws Chapter 183A, as amended by 1992 Mass. Acts Chapter 400 and 1993 Mass. Acts Chapter 1. Any such delinquent assessments which were extinguished pursuant to the immediately preceding sentence may be reallocated and assessed to all units as a Common Expense. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a unit for liability for, nor the unit from the lien of, any assessment made thereafter.

3. Insurance

A. The Trustees shall be required to obtain and maintain, to the extent obtainable, the following insurance (and to pay premiums thereon as a Common Expense):

- (1) fire insurance with extended coverage (covering other perils normally covered by the standard extended coverage endorsement) insuring all portions of the buildings, including the common areas and facilities of the Condominium, and fixtures, building service equipment, and common personal property and supplies belonging to the Condominium Trust, and all of the units and all of the fixtures installed therein on the date of

recording of the Master Deed, but not including carpeting, drapes, fixtures, furniture, furnishings, or other personal property supplied to or installed by Unit Owners, covering the interests of the Condominium, the Trustees and all Unit Owners and their mortgagees, as their interest may appear, in an amount equal to one hundred percent (100%) of current replacement cost of the buildings, common areas and facilities, and units, without deduction for depreciation, with loss payable to the Trustees, as Insurance Trustees for each Unit Owner and the holder of each unit's mortgage. The named insured shall be "the Trustees of the **SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST**, for the use and benefit of the individual Unit Owners and Unit Mortgagees." Such insurance shall also cover all other perils that are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available;

- (2) workers' compensation insurance if the Trustees shall have an employee or employees;
- (3) comprehensive general liability insurance covering all common areas and facilities, public ways, and any other areas under the supervision of the Trustees in such amounts and with such coverage as the Trustees shall from time to time determine;
- (4) such other insurance or bonds as the Trustees may determine.

All such policies shall provide that adjustment of loss shall be made by the Trustees and that the net proceeds thereby shall be payable to the Trustees as Trustee for each Unit Owner and the holder of each unit's mortgage. Each Unit Owner, by accepting delivery of his or her unit deed, appoints the Trustees as Insurance Trustee (or any Insurance Trustee or substitute Insurance Trustee designated by the Trustees) as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including (i) the collection and appropriate disposition of the proceeds thereof; (ii) the negotiation of losses and

- execution of releases of liability; (iii) the execution of all documents; and (iv) the performance of all other acts necessary to accomplish such purpose. The Trustees shall periodically reevaluate the amount of public liability insurance to be carried by them as set forth in clause.
- B. A certificate of insurance, showing the amount of insurance, shall be issued to the owners of each unit, and the original or a certificate thereof, upon request, shall be delivered to the mortgagee of each unit.
- C. Subject to the provisions of Section 4 of these Bylaws, insurance proceeds received by the Trustees shall be held in trust in an identified and segregated fund for the benefit of the Unit Owners and all mortgagees of all units. If the cost of restoring the common areas and facilities, or any unit, is estimated by the trustees to exceed the sum of ten thousand dollars (\$10,000.00), then the Trustees shall give written notice of such loss to all eligible Mortgage Holders and all eligible Insurers and Guarantors, as herein defined.
- D. The cost of all such insurance obtained and maintained by the Trustees pursuant to the provisions of this Section 3 shall be a Common Expense of the Condominium.
- E. Any such insurance obtained and maintained by the Trustees pursuant to the provisions of this Section 3 may have a deductible amount to be determined from time to time by the Trustees.
- F. Each Unit Owner may carry insurance at his or her own expense for his or her own benefit insuring, inter alia, his or her carpeting, drapes, fixtures, furniture, furnishings and other personal property, and personal liability, and loss assessment coverage, provided that all such policies shall contain waivers of subrogation, and further provided that the liability of the carriers issuing insurance obtained by the Trustees shall not be affected or diminished by reason of any such additional insurance carried by a Unit Owner. Each Unit Owner shall promptly notify the Trustees of all improvements made by him or her to his or her unit the insurable replacement cost of which exceeds one thousand dollars (\$1,000.00), and such Unit Owner shall pay to the Trustees as an addition to his or her share of the Common Expenses of the Condominium otherwise payable by such owner any increase in insurance

premium incurred by this Trust that results from such improvement.

- H. Nothing shall be done or kept in any unit, any parking space or in the common areas and facilities that will increase the rate of insurance on the buildings or the contents thereof without the prior written consent of the Trustees.

4. Rebuilding and Restoration

- A. In the event of damage to or destruction of the common areas and facilities as a result of fire or other casualty (unless Subsection F of this Section is applicable), or in the event of damage to or destruction of any unit as a result of fire or other casualty, whether or not the common areas and facilities have been damaged or destroyed (unless Subsection F of this Section is applicable), the Trustees shall promptly adjust the loss, arrange for the prompt repair or restoration of the same, and disburse the proceeds of all insurance policies in payment of all costs and expenses actually incurred in connection with such repair or restoration in appropriate progress payments and with appropriate retainage. All insurance proceeds paid to the Trustees as Insurance Trustees on account of any casualty shall be dedicated first to the repair or restoration of the loss, and any application of said proceeds by the Trustees on account thereof shall precede the application of such proceeds for any other purposes.
- B. In the event that the insurance proceeds are not sufficient to cover the cost of repairs to the common areas and facilities and the units, the proceeds will be first allocated to the cost of repairs to the common areas and facilities and the balance, if any, to the cost of repairs to the units in proportion to the cost of all repairs to the respective units as determined by the insurer or by independent appraisal. To the extent that the proceeds allocated as aforesaid are insufficient to cover the cost of repairs to the common areas and facilities, the balance of the cost of such repairs will be assessed against all Unit Owners as a Common Expense. To the extent that the proceeds allocated as aforesaid are insufficient to cover the cost of repairs to the units, the balance of the cost of such repairs to each unit will be assessed against all Unit Owners as a Common Expense.

- C. Whenever the estimated cost of repair or restoration exceeds, as to any one casualty or occurrence, on the basis of an independent appraisal, the sum of twenty-five thousand dollars (\$25,000.00), 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 of the Trustees, or the manager, if any, or any employee or agent of such manager, to supervise the work of repair or restoration, and no sums shall be paid by the Trustees on account of such repair or restoration except upon certification to them by such architect or engineer that the work for which payment is being made has been completed in a good and workmanlike manner in accordance with approved plans and specifications and that the estimated total cost of completion of said repair or restoration, less amounts theretofore advanced, does not exceed the undisbursed proceeds of insurance as augmented by funds obtained by any assessment or assessments levied or chargeable to the Unit Owners as a Common Expense.
- D. The Trustees may perform emergency work essential to the preservation and safety of the Condominium, including all parts of the buildings and the common areas and facilities and the units, or the safety of persons, or required to avoid the suspension of any essential service to the Condominium, including all parts of the buildings and the common areas and facilities and the units, without having first engaged an architect or engineer, adjusted the loss or obtained proceeds of insurance.
- E. If there shall have been a repair or restoration pursuant to the foregoing, and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds, if any, shall be added to the Condominium's reserve fund or, at the option of the Trustees, divided among all the Unit Owners in proportion to their respective interests in the common areas and facilities.
- F. Notwithstanding the foregoing, if, as a result of fire or other casualty, the loss exceeds ten percent (10%) of the value of the Condominium, including all parts of the buildings and the common areas and facilities and the units prior to the casualty, and:

(a) If Seventy-Five percent (75%) of the Unit Owners do not agree within one hundred twenty (120) days after the date of the casualty to proceed with repair or restoration, the Condominium, including all units, shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. Subject always to the prior rights of the Unit Mortgagees, the net proceeds of the partition sale together with any common funds shall be divided in proportion to the Unit Owners' respective undivided ownership in the common areas and facilities. Upon such sale, the Condominium shall be deemed removed from the provisions of Chapter 183A of the Massachusetts General Laws;

(b) If Seventy-Five percent (75%) 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.

5. Condemnation

If more than ten percent (10%) in value of the Condominium is taken under the power of eminent domain, then the taking shall be treated as a casualty loss, and the provisions of Section 4 of these Bylaws and the provisions of Massachusetts General Laws, Chapter 183A, Section 17 shall apply. Where one or more units have been substantially altered or rendered uninhabitable as a result of a partial taking, and the Unit Owners vote to restore and continue the Condominium pursuant to Section 17 of 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 of Essex County, on such notice to the Trustees and the other Unit Owners as the Court shall direct, for an order directing the purchase of such remaining portion at the fair market value thereof as approved by the Court. Where, as a result of a partial taking, any unit is decreased in size or where the number of units is decreased by a partial taking, then the Trustees may make such provision for realignment of the

percentage interest in the common areas and facilities as shall be just and equitable.

In the event of a total or partial taking under the powers of eminent domain, the Unit Owners shall be represented by the Condominium acting through the Trustees. In the event of a partial taking, the award shall be allocated to the respective Unit Owners according to their undivided interest in the common areas and facilities, except as to such portion or portions of the award that are attributable to direct or consequential damage suffered by particular units as determined by the Court, which shall be payable to the Owners of such Units or their mortgagees, as their interests may appear. Subject always to the prior rights of the Unit Mortgagees, in the case of a total taking of all units and the common areas and facilities, the entire award shall be payable to the Trustees to be distributed to the Unit Owners and their mortgagees in accordance with their respective percentage interests in the common areas and facilities.

6. Improvements

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

7. Rules and Regulations

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

- B. The Trustees shall administer such rules and regulations.
- C. The Trustees may, at any time and from time to time, amend, rescind and waive, any or all of such rules and regulations.
- D. The Trustees may, at any time and from time to time, adopt other rules and regulations governing the details of the operation and use of the common areas and facilities, and containing such restrictions on and requirements regarding the use and maintenance of the common areas and facilities as are consistent with the provisions of the Master Deed, and designed to prevent unreasonable interference with the use by the Unit Owners of the common areas and facilities.
- E. Notwithstanding the foregoing provisions of this Section 7:
 - (i) The Trustees shall furnish copies of any new rule or regulation, or amendment of any existing rule or regulation, to the Unit Owners prior to the time when such new rule or regulation, or amendment, as the case may be, shall become effective;
 - (ii) The Unit Owners, by majority vote, may, at any time and from time to time, rescind, amend or waive any rule or regulation promulgated by the Trustees (including, but not limited to, the initial rules and regulations referred to hereinabove); and
 - (iii) Any waiver, revision, amendment, adoption or enforcement of a rule or regulation, whether by the Trustees or the Unit Owners, as hereinbefore set forth, shall be uniformly binding upon all Unit Owners.

8. Meetings

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

- B. There shall be an annual meeting of the Unit Owners on the first Wednesday of April in each year at 8:00 p.m. on the Condominium premises or at such other reasonable place and time (not more than twenty-one (21) days before or after said date) as may be designated by the Board of Trustees by written notice given to the Unit Owners at least fourteen (14) days prior to the date so designated. Special meetings of the Unit Owners may be called by them upon the written request of Unit Owners entitled to not less than twenty-five percent (25%) of the beneficial interest hereunder. Written notice of any such meeting designating the place, day and hour thereof shall be given by the Board of Trustees to the Unit Owners at least fourteen (14) days prior to the date so designated. At the annual meeting of the Unit Owners, the Board of Trustees proposes to submit to the Unit Owners any matter with respect to which approval of or action by the Unit Owners is necessary or appropriate, the notice of such meeting shall state and reasonably specify such matter. A quorum of Unit Owners shall consist of a majority in interest of Unit Owners.
- C. Any Trustee or Unit Owner may, at any time, waive notice of any meeting in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Trustee or Unit Owner without objection to lack of notice at any meeting shall constitute a waiver of notice by such Trustee or Unit Owner of notice of such meeting. If all of the Trustees are present at any meeting of the Trustees, or if all of the Unit Owners are present at any meeting of the Unit Owners, respectively, no notice shall be required and any business may be transacted at such meeting of the Trustees or Unit Owners, respectively.

9. Notices to Unit Owners

Every notice to any Unit Owner required under the provisions hereof, or that may be deemed by the Trustees necessary or desirable in connection with the execution of the Trust created hereby, or that may be ordered in any judicial proceedings, shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one or more of the Trustees to such Unit Owner by leaving such notice with him or her at his or her residence in the Condominium or by mailing it, postage prepaid, addressed to such Unit Owner at his or her address as it appears upon the records of the Trustees, at least

five (5) days prior to the date fixed for the happening of the matter, things or event of which such notice is given, unless a different period for the giving of such notice is specified in these Bylaws.

10. Inspection of Books; Reports to Unit Owners

The Trustees shall keep detailed records of the actions of the Trustees, minutes of the meetings of the Trustees, minutes of the meetings of the Unit Owners, and financial records and books of account of the Condominium, including a chronological listing of receipts and expenditures, as well as a separate account for each unit, and each Underground Parking Space, which among other things shall contain the amount of each assessment of Common Expenses against such unit, the amount of each assessment against each Underground Parking Space, the date when due, the amounts paid thereon, and the balance remaining unpaid. Copies of the Master Deed, this Trust and these Bylaws, the rules and regulations, and floor plans of the buildings, as the same may be amended from time to time, shall be maintained by the Trustees. All of the foregoing records, accounts and documents shall be available for inspection by Unit Owners, their authorized agents, and lenders, mortgagees, holders, insurers and guarantors of any mortgage on any unit at all reasonable times. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances. The Trustees shall, as soon as reasonably possible, after the close of each fiscal year, or more often if convenient to them, submit to the Unit Owners a report of the operation of the Trustees for such year, that shall include financial statements in such summary form and in such detail as the Trustees shall deem proper. Except in the case of fraud, committed by any Trustee, any person (other than a mortgagee or mortgage insurer or guarantor) who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees, given by registered or certified mail within a period of thirty (30) days of the date of receipt by him or her, shall be deemed to have assented thereto.

11. Checks and Notes

Prior to the expiration of the term of the Initial Board, checks, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of

the Trust may be signed by any Trustee, or by any person or persons (who may be a Trustee) to whom such power may at any time or from time to time be designated by not less than a majority of the Trustees. Subsequent to the expiration of the terms of the Initial Board, all vouchers for the payment of any Common Expense shall be approved by a majority of the Trustees in each instance.

12. Seal

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

13. Fiscal Year

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

14. Management; Employees

- A. The Trustees, at their discretion, may, but need not, appoint a real estate management firm or manager to manage the Condominium, at such compensation, and upon such terms and conditions as the Trustees see fit. If such management firm or manager is so appointed, the Trustees may delegate to such firm or manager such duties as are customarily and usually performed by Condominium property managers in the Greater Peabody area, or such duties as the Trustees may, at any time and from time to time, expressly delegate, provided, however, that the duties, powers and responsibilities of the Trustees under Section 1(b), 1(d), 1(f), 1(g), 1(h), 1(i), 1(m), 1(p), 2, 3, 4, 5, 6, 7, 8A, 12, 15, 16, 23, 29B and 30 of these Bylaws shall not be so delegated to anyone whomsoever except the Trustees themselves, or to such of the Trustees as the Trustees shall designate.
- B. Notwithstanding anything contrary herein, any agreement for professional management of the Condominium shall provide that the management contract may be terminated without cause and without payment of a termination fee or penalty on ninety (90) days' written notice or less, and the term of any such contract shall not exceed one (1) year. The

term of any such contract entered into at any time during the term of the Initial Board shall not exceed six (6) months.

- C. Subsequent to the expiration of the term of the Initial Board, the consent of not less than two (2) Trustees shall be necessary for hiring and dismissing any employees of the Condominium.

15. Use of Units

- A. No unit shall be occupied for other than residential purposes, by not more than one (1) family unit nor more than two (2) unrelated persons per bedroom, provided, however, that any of the units may also be used as an office, but only accessory to such residential use and only if and to the extent such accessory office use is permitted by applicable zoning laws. So long as any unit mortgage or interest therein is held by the Federal National Mortgage Association ("FNMA"), no nonresidential space that is part of the Condominium may constitute, in FNMA's judgment, an inordinate amount of space devoted to nonresidential purposes.
- B. If any unit or units are used for office purposes accessory to such residential use as set forth in Subsection A hereof, no signs or advertising shall be displayed on the exterior of the unit or units so used or in any part of the common areas or in or upon any part of the Condominium.
- C. Notwithstanding the foregoing, until the Grantor of the Master Deed, or its successors-in-title or their nominees have conveyed all of the units, and all of the easements to the Underground Parking Spaces, the Grantor and its successors-in-title or nominees may use one or more units for a sales office or model, and may maintain "For Sale" signs on and in the buildings, and on the common areas and facilities.
- D. Each Unit Owner shall be obligated to maintain his or her unit in good order and repair.

16. Use of Common Areas and Facilities

A Unit Owner shall not place or cause to be placed on the common areas and facilities any furniture, packages or

objects of any kind. The stairways shall be used for no purpose other than for normal transit through them.

17. Attorneys, Accountants, Appraisers and Other Professionals

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

18. Electricity and Other Utilities

Electricity and other applicable utilities shall be supplied by the public utilities servicing the area in which the Condominium is located, directly to units through separate meters. Each Unit Owner shall be required to pay all bills and assessments for electricity and other utilities consumed or used in his or her unit.

19. Violations by Unit Owners

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. No fine may be levied for more than twenty-five dollars (\$25.00) for any one violation, but 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 Expenses owed by the particular Unit Owner or Unit Owners. In the case of persistent violations by a Unit Owner, the Trustees shall have the

power, after notice and a hearing pursuant to Section 34 hereof, to require such Unit Owners to post a bond to secure adherence to said rules and regulations, Bylaws, Master Deed, this Trust or said Unit Deed.

20. Violation of Law

No noxious or unlawful activity shall be carried on in any unit or in the common areas and facilities, nor shall anything be done therein, either willfully or negligently that may be or become unreasonably annoying to the other Unit Owners or occupants. No Unit Owner shall make or permit any disturbing noises by himself or herself, his or her family, guests, agents, servants, employees, licensees or tenants, nor do or permit anything by such persons that will unreasonably interfere with the rights, comforts or conveniences of other Unit Owners or occupants. For purposes of this Section, any noise from within a unit that can be heard within another unit shall be deemed a disturbing noise.

21. Maintenance and Repairs

- A. All maintenance and replacement of and repairs to any unit, ordinary or extraordinary (other than to the common areas and facilities contained therein not necessitated by the negligence, misuse or neglect of the owner of such unit), to the doors and windows, and to electrical, plumbing, equipment or fixtures within the unit or belonging to the Unit Owner, and HVAC Equipment serving the unit (whether located within or without the unit) that are not a part of the common areas and facilities, shall be done by the Unit Owner at the Unit Owner's expense, except as otherwise specifically provided herein. Each Unit Owner shall be responsible for all damage to any and all other units and to the common areas and facilities that his or her failure so to do may engender.
- B. All maintenance and replacements of and repairs to the common areas and facilities as defined in the Master Deed, and all maintenance and replacement of and repairs to the exterior walls of the Buildings and to structural parts of the Buildings and the painting and decorating of the exterior doors of the Buildings and exterior window sash, and washing of the exterior of exterior windows shall be made by the Trustees and shall be charged to each of the Unit Owners as a Common Expense, except to the extent that

the same are necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner.

22. Right of Access

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

23. Pets

Ordinary and usual domestic pet dogs, cats, and birds (not to exceed one pet per unit) may be kept by any Unit Owner during such time as such Unit Owner actually occupies his or her unit, but no such pets shall be permitted in any part of the Condominium (other than within the unit of the owner thereof) unless carried or on a leash. No pet can exceed the weight of ten pounds. During such times as a unit is occupied by anyone whomsoever other than the actual owner thereof (whether such nonowner occupant(s) be a tenant, lessee or other occupant) (gratuitous or otherwise), no pet or animal of any description shall be kept in such unit. After due notice and hearing pursuant to the provisions of Section 34 hereof, the Trustees may require any Unit Owner to dispose of any pet that has habitually been guilty of annoying or harassing any Unit Owner or occupant.

24. Structural Integrity

Nothing shall be done or maintained in any unit or in the common areas and facilities that will impair the structural integrity of any part of the buildings of the Condominium.

25. No Alterations

Neither the exterior of any unit (including exterior unit doors), nor the common areas and facilities, nor the hallways or lobbies shall be altered, constructed, removed, decorated or painted in any manner except with the written consent of the Trustees. Any Unit Owner is free to decorate the interior of his or her unit in any manner as he or she sees fit without requiring the consent of the Trustees so long as such decorations do not alter the structure of the unit or the Buildings.

26. Signs

Except only as set forth in Subsection B of Section 15 ("Use of Units") of the Bylaws of this Trust, no business, professional, commercial or other signs, whether designed for profit, altruism or otherwise, shall be maintained or permitted on any part of the property, nor shall any "For Sale," "For Rent" or "For Lease" sign be permitted thereon except by the Grantor during such time as the Grantor owns one or more units in the Condominium.

27. Combustible Materials

No Unit Owner shall permit or suffer to be kept at any time any flammable, combustible or explosive fluid or substance on the property of the Condominium or in his or her unit, in any parking space, or in his or her automobile, while on the Condominium premises, except for such lighting and cleaning fluids as are customary for residential use, and as to any such automobile except for the gasoline or diesel fuel in the tank thereof.

28. Safety

Each Unit Owner assumes complete responsibility for the safety of himself or herself, his or her family, guests, agents, servants, employees, licensees and tenants while such persons are in his or her unit, or any other unit, or on the common areas and facilities of the Condominium, or in the Garage or in Townhouse Garages or storage bins.

29. Sale of Units

A. No Severance of Ownership

No Unit Owner shall execute any deed, mortgage or other instrument conveying or mortgaging title to his or her unit

without including therein the Appurtenant Interest (as hereinafter defined), it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Appurtenant Interests of any unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the unit to which such interest are appurtenant, or as part of a sale, transfer or other disposition of such part of the Appurtenant Interest of all units. "Appurtenant Interests," as used herein, shall include (i) the undivided interest of a Unit Owner in the common areas and facilities; and (ii) the interest of such Unit Owner in any other assets of this Trust, but the foregoing language shall not hinder or prevent any Unit Owner from conveying easements for the exclusive use of Underground Parking Spaces, as defined in the Master Deed, to another Unit Owner(s), and all easements so conveyed shall not be included in the term "Appurtenant Interest."

B. Financing of Purchase of Units by Trustees

With the prior written approval of at least sixty-six and two-thirds percent (66 2/3%) of the beneficial interests hereunder (the vote of the Unit Owner of the unit that is the subject of such vote shall not be counted), the Trustees may acquire or lease units of the Condominium. Acquisition or lease of units by the Trustees may be made from any funds in the hands of the Trustees or, if such funds are insufficient, the Trustees may levy an assessment against each Unit Owner in proportion to his or her beneficial interest as a Common Expense, or the Trustees, in their discretion, may borrow money to finance the acquisition of such units, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the specific unit or units with Appurtenant Interests to be so acquired by the Trustees. Nothing in this Subsection (B) of this Section shall be construed as compelling any Unit Owner to sell his or her unit. Nothing in this Subsection (B) of this Section shall have any effect, nor limit in any manner the rights and remedies of the Trustees under the provisions of Section 6 of Chapter 183A, or under the provisions of Subsection A

and B of Section 2 hereof.

C. Waiver of Right of Partition

In the event that a unit shall be acquired by the Trustees, all Unit Owners shall be deemed to have waived all rights of partition with respect to such unit or units as are acquired by the Trustees.

D. Payment of Assessments

No Unit Owner shall convey, mortgage, pledge, hypothecate, sell or lease his or her unit unless and until he or she shall have paid in full to the Trustees all unpaid Common Expenses theretofore assessed by the Trustees against his or her unit and until he or she shall have satisfied all unpaid liens against such unit. This paragraph shall not apply to any first mortgagee of any unit.

30. Tenants

Any Unit Owner may lease or rent his or her unit, subject, however, to the following conditions.

A. Any lease or occupancy agreement shall:

- (i) be in writing and apply to the entire unit, and not merely a portion thereof;
- (ii) be for a term of not less than six (6) months;
- (iii) expressly provide that the lease or occupancy agreement shall be subject in every respect to the Master Deed of the Condominium, the Declaration of Trust of the Condominium Trust, and the Bylaws and Rules and Regulations thereof, as the same have been amended most recently prior to the execution of the lease or occupancy agreement; and
- (iv) contain the following notice, in capital letters, double spaced:

IMPORTANT CLAUSE

"THE APARTMENT UNIT BEING LEASED
[RENTED] UNDER THIS LEASE

[OCCUPANCY AGREEMENT] IS LOCATED IN A CONDOMINIUM BUILDING—NOT A RENTAL APARTMENT HOUSE. THE CONDOMINIUM BUILDING IS OCCUPIED BY THE INDIVIDUAL OWNERS OF EACH APARTMENT (EXCEPT FOR CERTAIN APARTMENTS, SUCH AS THIS ONE, WHICH ARE BEING OCCUPIED BY TENANTS). THE TENANT UNDERSTANDS THAT HIS OR HER NEIGHBORS IN THE BUILDING ARE (EXCEPT AS AFORESAID) THE OWNERS OF THE HOMES WHICH THEY OCCUPY, AND NOT TENANTS LIVING IN A RENTAL APARTMENT HOUSE. THE TENANT, BY SIGNING THIS LEASE [OCCUPANCY AGREEMENT] ACKNOWLEDGES THAT HE OR SHE HAS BEEN FURNISHED WITH A COPY OF THE MASTER DEED OF THE CONDOMINIUM, THE DECLARATION OF TRUST OF THE CONDOMINIUM TRUST AND THE BYLAWS AND RULES AND REGULATIONS THERETO, AND THAT HE OR SHE HAS READ AND UNDERSTANDS THE SAME, THAT HE OR SHE WILL BE EXPECTED TO COMPLY IN ALL RESPECTS WITH THE SAME, AND THAT IN THE EVENT OF ANY NONCOMPLIANCE, THE TENANT MAY BE EVICTED BY THE TRUSTEES OF THE CONDOMINIUM TRUST (WHO ARE ELECTED BY THE UNIT OWNERS) AND, IN ADDITION, THE TENANT MAY HAVE TO PAY FINES, PENALTIES AND OTHER CHARGES, AND THAT THE PROVISIONS OF THIS CLAUSE TAKE PRECEDENCE OVER ANY OTHER PROVISION OF THIS LEASE [OCCUPANCY AGREEMENT]"; and

- B. Any failure by the tenant to comply in all respects with the provisions of the Master Deed of the Condominium, the Declaration of Trust of the Condominium Trust and the Bylaws and Rules and Regulations thereto shall constitute a material default in the lease (occupancy agreement), and in the event of such default, the Trustees of the Condominium Trust shall have the following rights and remedies against both the Unit Owner and the tenant, in addition to all other rights and remedies that the Trustees and Unit Owners

(other than the owner of the affected unit) have or may in the future have, against both the owner of the affected unit and the tenant, all rights and remedies of the Trustees and the Unit Owners (other than the owner of the affected unit) being deemed at all items to be cumulative and not exclusive:

- (a) The Trustees shall have the right to give written notice of the default to both the tenant and the Unit Owner. Said notice shall be deemed properly given if left in any part of the unit addressed to the tenant, and mailed, postage prepaid, registered or certified mail, return receipt requested, addressed to the owner of the unit as such address then appears on the records of Trustees, or by delivering said notice in hand, or by delivering said notice in any other manner permitted by law.
- (b) If the default continues for five (5) days after the giving of said notice, then the Trustees shall have the right to levy fines against the owner of the affected unit in accordance with the provision of Section 20 of the Bylaws, and terminate the tenancy by giving notice in writing to quit to the tenant in any manner permitted by law, in the name of the landlord (Unit Owner) or, in the name of the Trustees, or both. In case of a tenancy at will, the time of such notice shall be sufficient if it is equal to the interval between the days of rent payment, or thirty (30) days, whichever is longer. In case of a lease, seven (7) days' notice shall be sufficient. In either event, a copy of such notice to quit shall be delivered or mailed to the landlord (Unit Owner) in the manner set forth hereinabove. Thereafter, the trustees may initiate and prosecute a summary process action against the tenant under the provisions of Massachusetts General Laws Chapter 239 in the name of the landlord, or in the name of the Trustees, or both.
- (c) The Trustees shall be entitled to levy a fine or fines, or give a notice or notices to quit followed by a summary process action or actions, and the Trustee's election to pursue any of the

foregoing remedies, either at the same time or in the event of any further default.

- (d) All of the expenses of the Trustees in giving notice and notices to quit, and maintaining and pursuing summary process actions and any appeals therefrom, shall be entirely at the expense of the owner of the affected unit, and such costs and expenses may be enforced and collected against the Unit Owner and unit as if the same were Common Expenses owed by the unit or Unit Owner.
- (e) The Unit Owner shall make reasonable efforts, at his or her expense and upon his or her initiative to inform rental agents of the provisions of this section, and shall, at his or her own expense, and upon his or her own initiative, furnish copies of the Condominium documents to the tenant, and cause the lease or occupancy agreement to be prepared in conformity with the provisions of this Section.
- (f) Any renewal or extension of any lease or occupancy agreement shall be subject to the prior written approval of the Trustees in each instance. Such approval shall not limit any rights or remedies of the Trustees or Unit Owners in the event of a subsequent default.
- (g) A true copy of the lease or occupancy agreement shall be delivered to the Trustees forthwith upon its execution.
- (h) The provisions of this Section shall take precedence over any other Section in the lease or occupancy agreement.
- (i) Notwithstanding anything to the contrary herein, and notwithstanding any custom, law or usage to the contrary, it is expressly understood and agreed that neither the Trustees nor the Unit Owners shall ever bear any personal or individual responsibility with respect to said lease or occupancy agreement.
- (j) Every lease or occupancy agreement shall have

attached thereto, and incorporated therein by reference, a copy of this Section.

Notwithstanding anything to the contrary in this Section, it is expressly understood and agreed that the provisions of this Section 30 shall not apply to the Grantor or to any tenancy in any Unit owned by Grantor, nor to any first mortgagee in possession of a unit following default by the Unit Owner in his or her mortgage, or holding title to a unit by virtue of a mortgage foreclosure proceeding, or deed or other agreement in lieu of foreclosure.

31. Percentage of Unit Owners

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

33. Protection of Mortgages; Federal Home Loan Mortgage Corporation; Federal National Mortgage Association

A. Definitions

- (i) The term "FHLMC" means Federal Home Loan Mortgage Corporation.
- (ii) The term "FNMA" means Federal National Mortgage Association.
- (iii) 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.
- (iv) 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.
- (v) The term "Constituent Documents" means, collectively, the Master Deed, this Trust and the Bylaws and rules and regulations thereto, and the Master Plans.

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) not more than ninety (90) days' notice to the other party thereto.
- (vi) The Constituent 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. Rights of Eligible Mortgage Holders and Eligible Insurers or Guarantors

Notice of Action: Upon written request to this Trust identifying the name and address of the mortgage holder, insurer or guarantor and the unit number or address, any first mortgagee and any such eligible Mortgage Holder or eligible Insurer or Guarantor will be entitled to timely written notice of:

- (i) Any condemnation loss or any casualty loss that affects either a material portion of the project or any unit on which there is a first mortgage held, insured or guaranteed by such eligible Mortgage Holder or eligible Insurer or Guarantor, as applicable;
- (ii) Any delinquency in the payment of assessments or charges owed, or default in the performance by the borrower of any

obligation under the Condominium Constituent Documents, by an owner of a unit subject to a first mortgage held, insured or guaranteed by such first Mortgage Holder or eligible holder or eligible Insurer or Guarantor, that remains uncured for a period of 60 days;

- (iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Trust;
- (iv) Any proposed action that would require the consent of a specified percentage of eligible Mortgage Holders.

D. RIGHT OF ACTION

This Trust and any aggrieved Unit Owner shall have a right of action against Unit Owners for failure to comply with the provisions of this Trust and the Bylaws and rules and regulations thereto, the Master Deed, the Master Plans and each unit deed and unit plan, and with decisions of the Trustees of this Trust. Each Unit Owner shall have a similar right of action against this Trust. The terms of this paragraph shall not impose any personal liability on any Trustees. Any such action may be brought in any court of competent jurisdiction.

F. First Mortgagee Obtaining Title

Any first mortgagee who obtains title to a Condominium unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such unit's unpaid dues or charges that accrue prior to the acquisition of title to such unit by the mortgagee.

G. Additional Prohibitions

Except as provided by statute in case of condemnation or substantial loss to the units and/or common elements of the Condominium project, unless at least two-thirds (66 2/3%) of the first mortgagees (based upon one vote for each first mortgage owned) or owners (other than the Grantor, developer or builder) of the individual Condominium units have given their prior written approval, this Trust shall not be entitled to:

- (i) By act or omission, seek to abandon or terminate the Condominium project;

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

H. *Vote or Consent*

The right of any Unit Owner to vote to, grant or withhold any consent or exercise any rights pursuant to the provisions of this 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.

I. *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 borrower of any obligation under the Condominium Constituent Documents that is not cured within sixty (60) days;
- (ii) a written certification as to whether or not the owner of any unit encumbered by a mortgage held or serviced, in whole or in part, by the requesting party, is more than one (1) month delinquent in the payment of Condominium common area charges or assessments;
- (iii) a written certification as to the percentage of Unit Owners who are more than one (1) month delinquent in the payment of Condominium common area charges or assessments;
- (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.

34. Right to Notice and Hearing

- I. Whenever these Bylaws require that an action be taken after "Notice and Hearing," the following procedure shall be observed.
 - (a) All hearings shall be conducted by at least a majority of the Trustees. The Trustees shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing.
 - (b) At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing, or both, subject to reasonable rules of procedure established by the Trustees to ensure prompt and orderly resolution of the issues. The affected person shall have the right to question the Trustees and any witnesses with respect to the

subject matter of the hearing. If the hearing involves an alleged breach by the affected person of any of the provisions of the Master Deed, the Condominium Trust, the Bylaws and Rules and Regulations thereto, or any unit deed, the affected person shall be informed, with specificity, of the exact nature of the violation, and of the provision that he or she has allegedly violated, and the affected person shall have the right to question any witness to such alleged violation. The Trustees need not comply with the strict legal rules of evidence observed by courts, but they shall consider only such evidence as reasonable people customarily consider in making important decisions.

(c) Nothing herein shall be deemed to limit the right of the Trustees, the affected person, or any Unit Owners or occupants affected to bring legal action with respect to the subject matter of any hearing, or any decision, or any decision of the Trustees.

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

35. Draperies; Window Treatments

All draperies, window coverings, and window treatments of every description, including but not limited to "Levelor" blinds, blinds of other descriptions and curtains, in each unit, as well as any other hanging material, must be fire resistant and comply with standards set by the New England Fire Insurance Rating Board.

EXHIBIT B

Exhibit B is hereby incorporated into and made a part of the Declaration of Trust of the **SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST**.

RULES AND REGULATIONS OF SIXTY FOUR FOSTER STREET CONDOMINIUM TRUST

No Obstruction of Common Areas and Facilities

No one shall unreasonably obstruct any part of the common areas and facilities or hallways without prior consent of the Trustees.

No Articles in Common Area

No clothes, sheets, blankets, laundry or other articles shall be hung out of a unit or exposed on any part of the common areas and facilities.

Toys, Baby Carriages, Etc.

No baby carriages, toys, playpens, bicycles, velocipedes, benches, chairs or other articles shall be placed on any part of the common areas and facilities except when such articles are in actual use by a Unit Owner or his or her family or guests. Such articles shall be stored in areas designated by the Trustees at all other times at the Unit Owner's risk.

Washing Automobiles

No washing of automobiles shall take place in the Underground Garage, or on the parking areas, or on any part of the Condominium property.

No Liability for Personal Property of Unit Owners

All personal property of the Unit Owners, or any other occupant of a unit, whether in the units or in the common areas and facilities, or in the Parking Spaces, or elsewhere on the Condominium property, shall be kept therein at the sole risk and responsibility of the respective Unit Owner or occupant, and the Trustees shall have no responsibility therefor.

Radios, Phonographs and Musical Instruments

The volume of television sets, radios, phonographs, high-fidelity sound reproduction devices, musical instruments, etc., shall not be operated in any manner that would result in sounds emanating therefrom being heard in any other unit, or outside of the unit from which the sounds are emanating.

No Offensive Activity

No noxious or offensive activity shall be carried on in the common areas and facilities, nor shall anything be done therein either willfully or negligently that may be or become an annoyance or nuisance to the other Unit Owners or occupants. No Unit Owner shall do or permit anything to be done by his or her family, servants, employees, agents, or visitors that will interfere with the rights, comforts or conveniences of other Unit Owners or occupants. No public hall shall be decorated or furnished by any Unit Owner in any manner.

Trash

All garbage and trash must be placed in the proper receptacles designed for refuse collection, and no garbage or trash shall be placed elsewhere upon any of the common areas and facilities.

Exterior Apparatus

Under no circumstances shall any air-conditioning apparatus, television or radio antennas, clothes line, clothes rack or any other such device or other item be installed on the exterior of any unit, or on the common areas and facilities, or be permitted to be hung out of a unit, except as allowed by the Trustees.

Parking

Parking shall be permitted only at designated parking spaces, pursuant to the terms of the Master Deed and Trust.

Employees

No Unit Owner or occupant shall request any employee of the Trust to perform errands or to move, park or drive any automobile. Employees and agents of the Trust are not authorized to accept packages, keys or articles of any description from or for the benefit of a Unit Owner. If any such items are left with any employees or agents of the Trust, the Unit Owner assumes the sole risk therefor, and the Unit Owner and not the Trust shall be liable for injury, loss or damage of any nature whatsoever, directly or indirectly resulting therefrom or connected therewith. The Trust does not assume any responsibility for loss or damage in such cases. Deliveries requiring entrance to a Unit Owner's unit will not be accepted without the prior written consent of the Unit Owner, accompanied by a written waiver of all liability in connection with such delivery.

Damage

Any damage to any building, equipment or common areas and facilities caused by a Unit Owner, or by such Unit Owner's family, visitor or pet, shall be repaired at the expense of the Unit Owner.

Moves

Except during the initial move-in for the original purchasers or lessees, move-ins and move-outs are restricted to the hours between 9:00 a.m. and 5:00 p.m., Monday through Saturday, excluding Sundays and holidays.

Doors

Unit doors opening into public halls, and building entry doors, shall be kept locked and secured at all times except when actually in use.

Plants

Planting plants, flowers, trees, shrubs or crops of any type is prohibited anywhere on the common areas and facilities, except with the express prior written consent of the Trustees.

Complaints

Complaints regarding the management of the Condominium or maintenance of the common areas and facilities, or

regarding actions of other Unit Owners or occupants, shall be made in writing to the Trustees. No Unit Owner shall attempt to direct, supervise or in any manner attempt to control or request favors of any employee of the Trust.