

A Tale of Two Families: Introducing REBA's Model Trust for a Two-Unit Condominium



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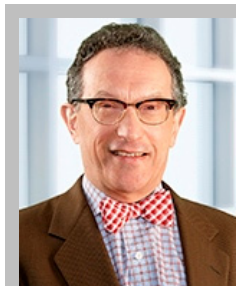
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A TALE OF TWO FAMILIES

INTRODUCING REBA'S MODEL DECLARATION OF TRUST FOR A TWO-UNIT CONDOMINIUM

Presentation by

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PLEASE NOTE

**This document is a draft document intended for discussion purposes only.
It is a work in progress and is not final. It is not an official REBA Form.**

_____ CONDOMINIUM

DECLARATION OF TRUST

TABLE OF CONTENTS

	Page
ARTICLE I THE TRUST, ITS PURPOSE, BY-LAWS AND NAME	1
Section 1.1. Declaration of Trust and Purpose	1
Section 1.2. Trust Relationship	1
ARTICLE II DEFINITIONS	1
Section 2.1. Beneficial Interests	1
Section 2.2. By-Laws	1
Section 2.3. Chapter 183A	1
Section 2.4. Common Expenses	1
Section 2.5. Common Charges	1
Section 2.6. Common Funds	1
Section 2.7. Declaration of Trust	2
Section 2.8. Declarant	2
Section 2.9. Insurance Trustees	2
Section 2.10. Manager or Managing Agent	2
Section 2.11. Master Deed	2
Section 2.12. Operating Event	2
Section 2.13. Organization of Unit Owners	2
Section 2.14. Registry of Deeds	2
Section 2.15. Rules and Regulations	2
Section 2.16. Trust	2
Section 2.17. Trustees	2
ARTICLE III THE TRUSTEES	2
Section 3.1. Number and Term	2
Section 3.2. Vacancies; Election; Appointment and Acceptance of Trustees	2
Section 3.3. Trustee Action	3
Section 3.4. Resignation	3
Section 3.5. Bond or Surety	3
Section 3.6. Compensation of Trustees	3
Section 3.7. No Personal Liability	3
Section 3.8. Trustees May Deal with Condominium	3
Section 3.9. Indemnity of Trustees	3
ARTICLE IV BENEFICIARIES AND THE BENEFICIAL INTERESTS IN THE TRUST	4
Section 4.1. Beneficial Interests	4
Section 4.2. Each Unit to Vote by One Person	4
Section 4.3. Proxies	4

TABLE OF CONTENTS
(continued)

	Page
ARTICLE V BY-LAWS	4
Section 5.1. Powers of the Trustees	4
Section 5.2. Maintenance and Repair of Units	6
Section 5.3. Common Charges; Expenses and Profits	7
Section 5.4. Rights of Mortgagees	8
Section 5.5. Rebuilding and Restoration, Improvements	8
Section 5.6. Rules and Regulations	9
Section 5.7. Managing Agent	9
Section 5.8. Insurance	9
Section 5.9. Meetings	12
Section 5.10. Notices to Unit Owners	12
Section 5.11. Inspection of Books; Reports to Unit Owners	13
Section 5.12. Checks, Notes, Drafts, and Other Instruments	13
Section 5.13. Fiscal year	13
Section 5.14. Pets	13
ARTICLE VI RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUSTEES	14
Section 6.1. Reliance on Identity of Trustees	14
Section 6.2. Personal Liability Excluded	14
Section 6.3. All Obligations Subject to This Trust	14
Section 6.4. Further Matters of Reliance	14
Section 6.5. 6(d) Certificate	14
ARTICLE VI AMENDMENTS AND TERMINATION I	15
Section 7.1. Amendments	15
Section 7.2. Termination	16
Section 7.3. Disposition of Trust Property Upon Termination	16
ARTICLE VIII CONSTRUCTION AND INTERPRETATION	16
Section 8.1. Terms	16
Section 8.2. Waiver	16
Section 8.3. Conflicts	16
Section 8.4. Recording	16
ARTICLE IX DISPUTE RESOLUTION	17
Section 9.1. Disputes	17
Section 9.2. Good Faith Effort	17
Section 9.3. Mediation	17
Section 9.4. Arbitration	17
RULES AND REGULATIONS	19

DECLARATION OF TRUST

CONDOMINIUM TRUST

[NOTE TO PRACTITIONERS: THIS DOCUMENT IS INTENDED FOR A RESIDENTIAL, NOT COMMERCIAL, CONDOMINIUM.]

This Declaration of Trust is made this ___ day of _____, 20___, by _____, with a mailing address of _____ (such party, so long as it shall continue in office in accordance with the terms of this Declaration of Trust, and all other parties who at the time in question have been duly elected or designated as trustees in accordance with this Declaration of Trust and are then in office are hereinafter together called the "Trustees" or "Initial Board").

ARTICLE I

The Trust, Its Purpose, By-Laws and Name

Section 1.1. Declaration of Trust and Purpose. The Trustees hereby declare that they hold all of the rights and power in and with respect to the Common Areas and Facilities of the Condominium established by the Master Deed, as hereinafter defined, which are by virtue of provisions of Chapter 183A of the Massachusetts General Laws conferred upon or exercisable by the organization of Unit Owners of said Condominium, and all other rights, interests, powers, duties, and responsibilities granted to them as Trustees hereunder or under the Master Deed, in trust to exercise, manage, administer the same and to receive the income thereof for the benefit of the owners of record from time to time of the units of said condominium, according to their respective undivided beneficial interest in the common areas and facilities (hereinafter referred to as the "Beneficial Interests") described in Section 4.1 hereof and in accordance with the provisions of said Chapter 183A for the purposes therein set forth.

Section 1.2. Trust Relationship. It is hereby expressly declared that the Condominium Trust is not intended to be, shall not be deemed to be, and shall not be treated as, a general partnership, limited partnership, joint venture, corporation or joint stock company and that the Unit Owners are beneficiaries and not partners or associates nor in any other relation whatever between themselves with respect to the trust estate, and hold no relation to the Trustees other than of beneficiaries, with only such rights and liabilities as are conferred upon them as such beneficiaries hereunder and under and pursuant to the provisions of said Chapter 183A. The Trustees shall have the highest duty of care towards the beneficiaries.

Section 1.3. Name of Trust. The name of the Condominium Trust shall be the _____ CONDOMINIUM TRUST (hereinafter referred to as the "Condominium Trust," or "Trust") and under that name, so far as legal, convenient, and practicable, all business shall be carried on by the Trustees and all instruments shall be executed by the Trustees.

ARTICLE II

Definitions

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

Section 2.1. "Beneficial Interests" shall have the meanings set forth in Sections 1.1 and 4.1.

Section 2.2. "By-Laws" shall mean the provisions of ARTICLE V of this Trust as the same may be amended from time to time.

Section 2.3. "Chapter 183A" shall refer to Chapter 183A of the General Laws of Massachusetts as from time to time amended.

Section 2.4. "Common Expenses" shall mean the expenses of administration, operation, maintenance, repair or replacement of the Common Elements, expenses declared Common Expenses herein or by Chapter 183A, and betterment and other assessments referred to in Chapter 183A which are assessed by the Trustees.

Section 2.5. "Common Charges" shall mean all charges hereinafter made by this Trust to the Unit Owners.

Section 2.6. "Common Funds" shall mean all funds held by the Trustees.

Section 2.7. "Declaration of Trust" shall mean this Declaration of Trust, as amended, restated or modified from time to time. References in this Declaration of Trust to "hereof", "herein", and "hereunder" shall be deemed to refer to the Declaration of Trust, as so amended, restated or modified, and shall not be limited to the particular text, article, or section in which such words appear.

Section 2.8. "Declarant" shall mean _____ its successors and/or assigns.

Section 2.9. "Insurance Trustees" shall have the meanings set forth in Section 3.5, Section 5.8.1 and Section 5.8.2 hereof.

Section 2.10. "Manager" or "Managing Agent" shall have the meaning set forth in Section 5.7 hereof.

Section 2.11. "Master Deed" shall mean the master deed of the Condominium executed by the Declarant as of the date hereof and recorded contemporaneously herewith, which subjects the Condominium to Chapter 183A, and any amendments, restatements, and/or modifications thereto.

Section 2.12. "Operating Event" shall have the meaning set forth in Section 3.1 hereof.

Section 2.13. "Organization of Unit Owners" shall have the meaning set forth in Section 1.1 hereof.

Section 2.14. "Registry of Deeds" shall mean the _____ County Registry of Deeds.

Section 2.15. "Rules and Regulations" shall mean any rules and regulations for the operation of the Condominium adopted pursuant to Section 5.6 hereof, as the same may be amended, restated or modified from time to time.

Section 2.16. "Trust" shall have the meaning set forth in Section 1.1 hereof.

Section 2.17. "Trustees" shall have the meaning set forth in the beginning of this Declaration of Trust.

Capitalized terms used herein which are defined in the Master Deed and which are not specifically defined herein shall have the meaning given to them in the Master Deed.

ARTICLE III The Trustees

Section 3.1. Number and Term. The Trustee initially designated hereunder shall serve, unless the Trustee opts to resign earlier, which the Trustee may do in the Trustee's sole discretion, until either: (a) the Declarant no longer owns or controls any Units in the _____ CONDOMINIUM; or (b) three (3) years from the date on which the first unit deed for any unit in the _____ CONDOMINIUM is recorded with the Registry of Deeds, whichever is sooner (which occurrence is hereinafter referred to as the "Operating Event"). Upon the occurrence of the Operating Event, one owner of each Unit shall be deemed a Trustee of the _____ CONDOMINIUM TRUST as set forth in Section 3.2 below.

Section 3.2. Vacancies; Election; Appointment and Acceptance of Trustees. Upon the occurrence of the Operating Event or if and whenever any Trustee's term is vacated for any reason, including without limitation, sale of a Unit, removal, resignation, or death of a Trustee, a vacancy or vacancies shall be deemed to exist.

The sole Unit Owner, if there is only one, the first grantee named on the unit deeds if there are two or more Unit Owners, the individual named as trustee of a trust (or the first named trustee), if a trust owns the Unit, the treasurer of a corporate Unit Owner, the first named manager of a limited liability company as filed with the Secretary of the Commonwealth if a duly organized and registered limited liability company owns a Unit, shall automatically become the Trustee appointed for that unit, and recording of a unit deed shall constitute acceptance of the office of Trustee. A Trustee other than as stated above may be appointed by all the owners of a Unit upon recording of an appointment and acceptance of same in the Registry of Deeds.

No provision of this Trust shall be interpreted so as to prevent a Unit Owner from appointing herself, himself or a third party non-Unit owner as Trustee.

A Trustee's term of office shall cease immediately upon the conveyance of title to the Unit for which the Trustee was appointed to a third party, without the necessity of recording a resignation.

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

Section 3.3. Trustee Action. In any matter relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred, the Trustees shall act by unanimous vote either at any duly called meeting, or without a meeting.

Any instrument signed by all of those individuals appearing from the records of the Registry of Deeds to be Trustees, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of delivery thereof the execution and delivery of that instrument was duly authorized by all Trustees; and instruments signed by any Trustee which contains or is accompanied by a certification that such Trustee or Trustees were, by appropriate vote of all the Trustees, authorized to execute and deliver the same, shall, in like manner be conclusive evidence in favor of every person relying thereon or claiming thereunder.

Section 3.4. Resignation. Any Trustee may resign at any time by instrument in writing signed and duly acknowledged by that Trustee. Resignations shall take effect upon the recording of such instrument with the Registry of Deeds.

Section 3.5. Bond or Surety. All Trustees, employees of the Trustees of the Trust, and volunteers responsible for handling funds belonging to or administered by the Trust shall be bonded, if the Trustees so elect, against dishonest acts on their part in an amount not less than one-fourth of the annual assessments, excluding special assessments, which bonds shall name as the named insured, and provide for loss proceeds payable to, the Trustees of the Trust as Insurance Trustees for all of the Unit Owners. Such bonds shall include a provision that calls for at least ten (10) days' written notice to the Trustees and the holder of each first mortgage on an individual Unit before the bond can be canceled or substantially modified for any reason. All expenses incident to any such bonds shall be charged as a Common Expense of the Condominium. Notwithstanding the preceding, when the Declarant no longer owns a Unit in the Condominium, the Organization of Unit Owners may modify this Section in accordance with Chapter 183A §10(m).

Section 3.6. Compensation of Trustees. No Trustee shall receive compensation for his/her services unless so provided by a vote of Unit Owners holding one hundred (100%) percent of the Beneficial Interests and any compensation so provided shall be from time to time fair and reasonable as fixed by the Unit Owners and shall be a Common Expense of the Condominium. No compensation to a Trustee may be voted during such time as the Declarant is entitled to any of the Beneficial Interests.

Section 3.7. No Personal Liability. No Trustee shall be held liable or accountable out of his/her personal assets or be deprived of compensation, if any, by reason of any action taken, suffered or omitted in good faith or be so liable, accountable or deprived by reason of honest errors of judgment or mistakes of fact or law or by reason of the existence of any personal or adverse interest or by reason of anything except his/her own personal and willful acts of bad faith or gross negligence.

Section 3.8. Trustees May Deal with Condominium. No Trustee shall be disqualified by his/ her office from contracting or dealing with the Trustees or with one or more Unit Owners (whether directly or indirectly because of his/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 because of any other reason), as vendor, purchaser or otherwise, nor shall any such dealing, contract or arrangement entered into with respect to this Trust in which any Trustee shall be interested in any way be avoided nor shall any Trustee so dealing or contracting or being so interested be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such Trustee's holding office or of the fiduciary relation hereby established, provided the Trustee shall act in good faith and shall disclose the nature of his/her interest before entering into the dealing, contract or arrangement and that such contract is fair and reasonable in its terms.

Section 3.9. Indemnity of Trustees. The Trustees and each of them shall be entitled to indemnity and to be held harmless both out of the Trust property and by the Unit Owners from and against any liability or expenses incurred by them or any of them in the execution hereof by reason of any action taken, suffered or omitted in good faith or by reason of the existence of any personal or adverse interest or by reason of anything except his or her own personal and willful acts of bad faith or gross negligence, including without limiting the generality of the foregoing, liabilities in contract and in tort and liabilities for damages, penalties and fines, all as provided in Chapter 183A, and, acting unanimously, may purchase such insurance against such liability as they shall determine is reasonable and necessary, the cost of such insurance to be a Common Expense of the Condominium. The Declarant of the Condominium, and its successors and assigns, and the Trustees, shall not be liable for breaches of security in the Buildings or Units, except as may arise from the gross negligence

or willful misconduct of the Declarant of the Condominium, its successors and assigns, or the Trustees. Each Unit Owner shall be personally liable for all sums lawfully assessed for his share of the Common Expenses of the Condominium and for his proportionate share of any claims involving the Trust property in excess thereof, including but not limited to, all indemnification and hold harmless expenses hereunder, all as provided in Sections 6 and 13 of Chapter 183A. Nothing in this Section shall be deemed to limit in any respect the powers granted to the Trustees in this Declaration of Trust.

ARTICLE IV
Beneficiaries and the Beneficial Interests in the Trust

Section 4.1. Beneficial Interests. The beneficiaries of this Trust shall be the Unit Owners as they are from time to time. The total Beneficial Interests in the Trust shall be divided among the Unit Owners in the same proportions as their respective undivided Beneficial Interests appertaining to the Units in Common Areas and Facilities, as set forth in the Master Deed, as modified from time to time.

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

Section 4.3. Proxies. Any person (who need not be a Unit Owner) designated by a Unit Owner in a writing filed with the Trustees to act as proxy on his/her behalf shall be entitled to act for the Unit Owner in all matters concerning the Trust and the Condominium within the authority granted by the proxy and until the proxy expires or is revoked in a writing filed with the Trustees, including without limitation casting any vote appertaining to the Unit at any meeting of the Unit Owners. Any proxy granted hereunder may provide by its terms that it is irrevocable. If a Unit is owned of record by more than one person, all such record owners must execute any proxy granted with respect to such Unit. The Trustees shall have the right to rely on the proxies set forth herein as conclusive evidence of the facts stated therein.

ARTICLE V
By-Laws

The provisions of this Article V shall constitute the By-Laws of this Trust ("By-Laws").

Section 5.1. Powers of the Trustees. The Trustees shall have all the powers and duties necessary for the administration of the offices of the Condominium and may do all things, subject to and in accordance with all applicable provisions of said Chapter 183A and the Master Deed. Without limiting the generality of the foregoing, the Trustees shall have the right, with full power and uncontrolled discretion (except as set forth herein), at any time and from time to time without the necessity of obtaining any approval or license of any court for leave to do so, to do the following:

- (i) to retain the Trust property, or any part or parts thereof, in the same form or forms of investment in which received or acquired by them so far and so long as they shall think fit, without liability for any loss resulting therefrom;
- (ii) to sell to the extent permitted by Chapter 183A, assign, convey, transfer, exchange and otherwise deal with or dispose of the Trust property but not the Common Areas and Facilities, free and discharged of any and all trusts, at public or private sale, to any person or persons for cash or on credit, and in such manner and on such restrictions, stipulations, agreements and reservations as they shall deem proper, including the power to take back mortgages to secure the whole or any part of the purchase price of any of the Trust property sold or transferred by them, and execute and deliver any deed or other instrument in connection with the foregoing;
- (iii) to purchase or otherwise acquire title to, and rent, lease or hire from others for terms which may extend beyond the termination of this Trust any property or rights to property, real or personal, and own, manage, use and hold such property and such rights;

- (iv) to borrow or in any manner raise such sum or sums of money or other property as they shall deem advisable in any manner and on any terms, and evidence the same by notes, bonds, securities or other evidence of indebtedness, which may mature at a time or times beyond the possible duration of this Trust, and execute and deliver any mortgage, pledge or other instrument to secure any such borrowing;
- (v) to enter into any arrangement for the use or occupation of the Trust property, including but not limited to, the Common Areas and Facilities and the Limited Common Areas and Facilities, or any part or parts thereof, including, without thereby limiting the generality of the foregoing, leases, subleases, easements, licenses or concessions, upon such terms and conditions and with such stipulations and agreements as they shall deem desirable, even if the same extend beyond the possible duration of this Trust;
- (vi) to invest and reinvest the Trust property, or any part or parts thereof, and from time to time, as often as they shall see fit, change investments, including investment in all types of securities and other property, of whatsoever nature and however denominated, all to such extent as to them shall seem proper, and without liability for loss even though such property or such investments shall be of a character or in an amount not customarily considered proper for the investment of trust funds or which does or may not produce income;
- (vii) to incur such liabilities, obligations and expenses and pay from the principal or the income of the Trust property in their hands all such sums as they shall deem necessary or proper for the furtherance of the purposes of this Trust;
- (viii) to determine whether receipt by them constitutes principal or income or surplus and allocate between principal and income and designate as capital or surplus any of the funds of the Trust;
- (ix) to vote in such manner as they shall think fit any or all shares in any corporation or trust which shall be held as Trust property, and for that purpose give proxies to any person, persons or to one or more of their number, vote, waive any notice or otherwise act in respect of any such shares;
- (x) to deposit any funds of the Trust in any bank or trust company, and delegate to any one or more of their number, or to any other person or persons, the power to deposit, withdraw and draw checks on any funds of the Trust;
- (xi) to maintain such offices and other places of business as they shall deem necessary or proper and to engage in business in Massachusetts or elsewhere;
- (xii) to employ, appoint and remove such agents, managers, brokers, engineers, architects, employees, contractors and counsel (which persons may be a firm of which one or more of the Trustees are members) as they shall deem proper for the purchase, sale or management of the Trust property, or any part or parts thereof, or for conducting the business of the Trust, and may define their respective duties and fix and pay their compensation, and the Trustees shall not be answerable for the acts and defaults of any such person. The Trustees may delegate to any such agent, manager, officer, board, broker, engineer, architect, employee, contractor or counsel any or all of their powers (including discretionary powers, except that the power to join in amending, altering, adding to, terminating or changing this Declaration of Trust hereby created shall not be delegated) all for such times and purposes as they shall deem proper;
- (xiii) to improve any property owned by the Trust;
- (xiv) to manage, maintain, repair, restore, and improve Common Elements, and when they shall deem necessary, the Units;
- (xv) to determine the Common Charges required for the affairs of the Condominium;
- (xvi) to collect the Common Expenses from the Unit Owners;
- (xvii) to adopt and amend rules and regulations covering the details of the operation and use of the Common Elements;
- (xviii) to obtain insurance covering the Condominium (including the Common Elements and the Units);

(xix) to enforce obligations of the Unit Owners and have the power to levy fines against the Unit Owners for violations of any of the terms and conditions of the Master Deed or of this Trust, including but not limited to the By-Laws and the Rules and Regulations established by the Trustees to govern the conduct of the Unit Owners. No fine may be levied for more than \$100.00 for any one violation, but for each day a violation continues after notice, it shall be considered a separate violation. Collection of fines may be enforced against the Unit Owner or Unit Owners involved as if the fines were Common Charges owed by the particular Unit Owner or Unit Owners. In the case of repeated or persistent violation of the Condominium documents including Rules and Regulations by a Unit Owner, the Trustees shall have the power to require such Unit Owner to post a bond to secure adherence to the Master Deed, this Trust and the Rules and Regulations; and

(xx) generally, in all matters not herein otherwise specified, to control and do each and everything necessary, suitable, convenient, or proper for the accomplishment of any of the purposes of the Trust or incidental to the powers herein or in said Chapter 183A, to manage the Trust property as if the Trustees were the absolute owners thereof and to do any and all acts, including the execution of any instruments, which by their performance thereof shall be shown to be in their judgment for the best interest of the Unit Owners and to take such steps and expend such funds to protect and preserve the Common Elements.

With regard to Sub-sections (xii) (employment of agents), (xiv) (management of Common Elements, except for improvements, which are specifically not included in the scope of this sub-paragraph), (xv) (determination of common charges), (xvi) (collection of common expenses), (xviii) (insurance) and (xix) (fines), in the event that either Trustee fails to perform its duties under these subsections, the other Trustee may, after reasonable notice, act alone on behalf of the Condominium Trust to carry out and enforce those duties.

Except in the case of Sub-section (xvi), disputes under this Section shall be addressed under the Dispute Resolution provisions of ARTICLE IX.

Section 5.2. Maintenance and Repair of Units. Each Unit Owner shall be responsible for the proper maintenance and repair of such Unit Owner's respective Unit and the maintenance, repair and replacement of utility fixtures therein which exclusively service the same, including, without limitation, interior finish walls, ceilings, and floors; doors; door frames and interior door trim; plumbing and sanitary waste fixtures and for water and other utilities; electrical fixtures and outlets; and all wires, pipes, drains and conduits for water, sewerage, electric power and light, telephone and any other utility services which are contained in and serve such Unit. Furthermore, each Unit Owner is responsible for insuring the aforesaid.

Any Unit Owner who installs hardwood, or any similar solid surface flooring within the Unit, shall install a layer of sound insulation to be approved by the Trustees, such approval not to be unreasonably withheld or delayed. All rooms in the Units, with the exception of the kitchen and bathrooms, must have carpeting covering at least seventy-five (75%) percent of the total floor space of each room. The foregoing requirements regarding sound insulation and carpeting shall not apply to any room that is located directly above another room within the same Unit, or any room that is not located above a room in another Unit.

In addition, each Unit Owner shall be responsible, to the extent applicable, for the proper maintenance and repair of heat pumps, hot water tank, fan, compressors, HVAC systems and other apparatus, which exclusively serve such unit, regardless of where such systems are located. Each Unit Owner shall be responsible for maintaining a constant temperature within his or her respective Unit that never falls below fifty-five (55°) degrees Fahrenheit. Each Unit Owner shall be responsible for the proper maintenance of laundry equipment (if any) which is contained in and serves such unit, including the installation of burst-proof water hoses, cleaning of dryer vents, or other maintenance that may be required by the Trustees. To the extent damage is not covered by insurance maintained by the Trustees hereunder, each Unit Owner shall be responsible for all damages to any and all other Units caused by such Unit Owner's failure to satisfy the maintenance, repair and/or replacement obligations hereunder.

[NOTE TO PRACTITIONERS: SOME PRACTITIONERS GIVE OWNERS THE MAINTENANCE RESPONSIBILITY FOR WINDOWS, WINDOW GLASS AND WINDOW FRAMES. MAKE SURE THE DECLARATION OF TRUST MAINTENANCE OBLIGATIONS MATCH THE MASTER DEED DESCRIPTION OF THE UNITS, AND THE CLIENT'S EXPECTATIONS OF WHO WILL BE RESPONSIBLE FOR WHAT MAINTENANCE AND REPAIRS.]

Repair of uninsured casualty loss or damage to Units caused by events in or the condition of the Common Elements may, in the Trustees' sole discretion, but need not be, paid from Common Funds.

Section 5.2.1. Maintenance, Repair and Replacement of Common Elements; Assessment of Common Expenses Therefor. The Trustees, except as otherwise provided in the Master Deed, shall be responsible for the maintenance, repair and replacement of the Common Elements which may be done through the Managing Agent, as hereinafter provided, and the Trustees or the Managing Agent or any others who may be so designated by the Trustees may approve payment of vouchers for such work. The expenses of such maintenance, repair and replacement shall be assessed to the Unit Owners as Common Expenses at such times and in such amounts as provided in Section 5.4; provided, however, that if such maintenance, repair and/or replacement is required due to the negligence or misuse of a Unit Owner, such expense may be assessed to said Unit Owner by the Trustee who is not that Unit Owner (or that Unit Owner's designee) and the Unit Owner shall be personally liable therefor.

Section 5.2.2. Maintenance of Limited Common Elements and Exclusive Use Areas. The Trustees shall, consistent with the provisions of the Master Deed, repair and maintain the Limited Common Areas and Facilities and the Exclusive Use Areas within the Condominium (as such areas are defined in the Master Deed) and shall bill such ordinary maintenance and repair costs to those parties having rights in the Limited Common Elements or such Exclusive Use Areas in the same manner as Common Expenses are billed to that specific Unit Owner. The aforesaid notwithstanding, in the event any repair or replacement to the Limited Common Areas and Facilities and Exclusive Use Areas is necessitated by the negligence or misuse of a Unit Owner and/or their guests or invitees, then the Trustee who is not that Unit Owner shall bill such Unit Owner directly, who shall be personally liable for such expenses. The Trustee shall provide at least ten (10) days' written notice to the Unit Owner regarding said repair, unless an immediate repair is required to prevent ongoing damage or hazards.

Section 5.3. Common Charges; Expenses and Profits.

Section 5.3.1 Common Expenses and Reserve Funds. 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 Beneficial Interest in this Trust bears to the aggregate Beneficial Interest of all the other Unit Owners. Except as otherwise provided herein, 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 one or more separate and adequate reserve funds (which shall not be less than the requirements of the secondary mortgage market) for the periodic maintenance, repairs and replacement of improvements to the Common Areas and Facilities and those Limited Common Areas which the Trust may be obligated to maintain, and such reserve fund(s) shall be funded by regular monthly assessments from regular assessments for Common Expenses, and such reserve fund shall not be deemed to be common profits available for distribution.

Section 5.3.2 Working Capital. 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 equal to at least 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 fund 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 Declarant, as set forth in Section 3.1 of this Trust, whichever occurs earlier. The Declarant may reimburse itself for these payments from the funds collected at closing when the unsold Unit is sold. When control of this Trust is transferred as set forth above, the working capital fund shall be transferred to this Trust for deposit to a segregated fund. During the term of the Initial Board (or while at least one of the Trustees is the Declarant, or nominees or designees of the Declarant) the working capital fund which is the subject of this Subsection shall not be used to defray the expenses, reserve contributions, marketing or sales expenses, Common Charges, or construction costs which are the responsibility of the Declarant in its role as developer of the Condominium or to make up budget deficits.

Section 5.3.3 Additional Reserves. 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 5.5 of these By-Laws, for repair, rebuilding or restoration of the Condominium, or for improvements thereto (subject to the provisions of Section 5.2 and Section 5.4), and for replacement of the Common Areas and Facilities, and other proper contingencies, and the funds so set aside shall not be deemed to be common profits available for distribution.

Section 5.3.4 Budget. 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 Section 5.4.3, and after taking into account any undistributed common profits from prior years, shall determine 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 Mortgagees if so requested. Each Unit Owner thereafter shall pay one-twelfth of his or her share of the estimated Common Charges monthly in advance on the first day of each month. In the event that the Trustees fail or neglect to promulgate such budget, then the budget for the immediately preceding year shall be deemed to be in effect until the Trustees promulgate a current budget. The Trustees shall not be obligated to render monthly statements. In the event that at any time and from time to time the Trustees shall determine during any fiscal year that the assessment so made is less than 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 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. Any Trustee shall have the authority and the duty to levy and enforce the collection of general and special assessments for Common Expenses.

The Trustees may assess to each unit owner his or her proportionate share of the cost for water, electricity and other utilities, as measured by meter or other devices attributed to the Unit and render statements thereof in the manner as aforesaid to be paid in installments, monthly or otherwise.

[NOTE TO PRACTITIONERS: IT MAY BE APPROPRIATE TO INCLUDE LANGUAGE TO THE EFFECT THAT SUB-METERS ARE TO BE PUT IN AT CONDO EXPENSE.]

Section 5.4. Rights of Mortgagees. Any holder of a mortgage on any Unit, upon written request to the Trustees, will be entitled to:

- (a) written notification from the Trustees of any default by its borrower who is an owner of a Unit with respect to any obligation of such borrower under this Master Deed or the provisions of the Condominium Trust which is not cured within sixty (60) days;
- (b) inspect the books and records of the Condominium Trust during normal business hours at such holder's expense;
- (c) receive at the mortgagee's expense an annual financial statement of the Condominium Trust within one hundred twenty (120) days following the end of any fiscal year of the Condominium Trust;
- (d) written notice of all meetings of the Condominium Trust, and be permitted to designate a representative to attend all such meetings;
- (e) prompt written notification from the Trustees of any damage by fire or other casualty to or proposed or actual taking by condemnation or eminent domain of the Common Elements or any portion thereof; and
- (f) prompt written notification from the Trustees of any damage by fire or other casualty to the Unit upon which the mortgagee holds a mortgage and of any proposed or actual taking by condemnation or eminent domain of said Unit.

Section 5.5. Rebuilding and Restoration, Improvements.

Section 5.5.1 Determination of Scope of Loss. In the event of any casualty loss to the Trust property, the Trustees shall determine, in their reasonable discretion, whether or not such loss exceeds ten (10%) percent of the value of the Condominium immediately prior to the casualty and shall notify all Unit Owners of such determination. If such loss as so determined does not exceed ten (10%) percent of such value, the Trustees shall proceed with the necessary repairs, rebuilding or restoration in the manner provided in paragraph (a) of Section 17 of Chapter 183A. If such loss as so determined exceeds ten (10%) percent of such value, the Trustees shall forthwith submit to all Unit Owners:

- (a) a form of agreement (which may be in several counterparts) authorizing the Trustees to proceed with the necessary repair, rebuilding or restoration, which agreement shall be forthwith signed and returned, absent which, authorization shall be deemed given and
- (b) a copy of the provisions of Section 17.

The Trustees shall thereafter proceed in accordance with, and take such further action as they may in their discretion deem advisable in order to implement the provisions of paragraph (b) of said Section 17.

With respect to any such casualty loss which exceeds ten percent (10%) of the value of the Condominium prior to such casualty, each Unit Owner (the "Covenanting Owner") hereby votes, and covenants and agrees with and for the benefit of the other Unit Owners (the "Other Owners") to vote at any meeting of Unit Owners in favor of repair or restoration of any casualty loss to any portion of the Condominium if:

- (a) the insurance proceeds payable with respect to such casualty loss, plus any sums which any one or more of the Other Owners may agree to contribute for such purpose, will be adequate to pay the amount by which the costs of such repair or restoration exceed any deductible amount provided for in the Condominium's master policy of property insurance; and
- (b) any damage to the portions of the Unit of the Covenanting Owner required to be insured by the Condominium under such master policy of property insurance can reasonably be expected to be repaired or restored within two (2) years from the time such repair or restoration work is commenced.

Section 5.5.2. Submission to Unit Owners of Proposed Improvements. If fifty (50) percent or more of the Unit Owners shall propose to make an improvement to the common areas or facilities of the Condominium that is reasonable to the nature of the Condominium, the improvement shall be made at the Condominium's cost.

[NOTE TO PRACTITIONERS: IN THE CASE OF A DISPROPORTIONATE PERCENTAGE SPLIT BETWEEN THE TWO UNITS OF THE CONDOMINIUM (IF THE BENEFICIAL INTEREST IS OTHER THAN 50% EACH), THE PRACTITIONER MAY CHOOSE TO PROVIDE THAT IF THE MINORITY OWNER OBJECTS TO ANY PROPOSED IMPROVEMENT, THE MATTER WILL BE RESOLVED UNDER THE DISPUTE RESOLUTION PROVISIONS OF SECTION IX.]

Section 5.6. Rules and Regulations. The Trustees may from time to time adopt, amend and rescind Rules and Regulations governing the operation and use of the Common Elements as are consistent with the Master Deed and are designed to prevent unreasonable interference with the use by the Unit Owners of their Units and of the Common Elements. The Trustees do hereby adopt the initial Rules and Regulations annexed to this Declaration of Trust. Any Trustee may enforce the Rules and Regulations by imposition of fines pursuant to Section 5.1.(xix) herein.

Section 5.7. Managing Agent. The Trustees may appoint a Manager or Managing Agent to administer the management and operation of the Condominium, including the incurring of expenses, the making of disbursements and the keeping of accounts, as the Trustees shall from time to time determine. The Managing Agent may be removed with or without cause, in accordance with the provisions of Section 10 of Chapter 183A. The Trustees or such Manager or Managing Agent may appoint, employ and remove such additional agents, attorneys, accountants or employees as the Trustees shall determine.

Section 5.8. Insurance.

Section 5.8.1. Basic Insurance. The Trustees shall obtain and maintain, to the extent available at reasonable cost, master policies of insurance of the following kinds, insuring the interests of the Trust, the Trustees, all Unit Owners, and their mortgagees as their interests may appear, with the loss proceeds payable to the Trustees hereunder as Insurance Trustees for all of the Unit Owners collectively and their respective mortgagees as their interests may appear:

- (a) Property Insurance.
 - (i) Master Policy for Condominium Property Insurance. The Trustees shall maintain master insurance polic(ies) which provide property insurance, with premiums being paid as a Common Expense, with a reasonable deductible to be approved by the Trustees. The property insurance polic(ies) shall cover all of the Common Areas and Facilities, Limited Common Elements and Units. This includes, without limitation, fixtures, buildings service equipment, and common personal property and supplies belonging to the Trust. The policy shall cover fixtures, improvements or betterments (i.e. permanent changes, alterations or upgrades made to an individual unit) and equipment inside individual Units, including replacement thereof, whether or

not the same is part of the Common Areas and Limited Common Area, but excluding furniture, furnishings and other personal property belonging to the Unit Owners or occupants not customarily considered to be a part of the Unit or the Common Areas and Facilities for mortgage purposes, which shall be the sole responsibility of the Unit Owner to insure in accordance with Section 5.2.

(ii) Required Property Insurance Coverage. The master insurance polic(ies) shall protect against at least the following: loss or damage by fire and all other hazards that are normally covered by policies which provide coverage for all risks of direct physical loss unless such loss is excluded or limited by other provisions in the policy, and including Boiler & Machinery/Equipment Breakdown coverage subject to standard exclusions and limitations applicable to such coverage.

(iii) Amount of Insurance. The limits of coverage applicable to the property insurance described herein shall cover one hundred percent (100%) of the current replacement cost of the property described in Section 5.8/1 (a) (i) as reasonably determined by the Trustees. Coverage need not include land, foundations, excavations or other items that are usually excluded from insurance coverage.

The Trustees shall review the limit of insurance annually. [Best Practices Recommendation: The Trustees shall obtain third party verification of one hundred percent (100%) replacement values at least every five years.]

(iv) Special Endorsements. The following endorsements are to be included to the extent reasonably available:

-- Agreed Amount and Inflation Guard Endorsement; and

-- So-called "Ordinance or Law" coverage if there is a construction code provision that requires (1) loss to an otherwise undamaged portion of the building; (2) costs associated with demolition of such undamaged portion; (3) increased costs associated with upgrading to code.

(v) Named Insured. Insurance policies for the Condominium shall identify the Named Insured as "[insert name] Condominium Trust, for the use and benefit of the individual Unit Owners."

The "loss payable" clause shall show the Trust or the Insurance Trustee as a trustee for each Unit Owner and the holder of each unit's mortgage.

The policy shall also contain the standard mortgagee clause and shall name each mortgagee, its successors and assigns, who holds mortgages on Units in the Condominium as a mortgagee.

(vi) Notices of Changes or Cancellation. Insofar as available, the insurance policy shall require the insurer to notify in writing the Trust or Insurance Trustee and each first mortgage holder named in the mortgagee clause at least thirty (30) days before it cancels, non renews, or substantially changes the condominium's coverage, and a ten (10) day notice of cancellation for non-payment.

(b) Flood Insurance. If any part of the property required to be insured pursuant to section (a), (1) of this Section 5.8.1 is in a special flood hazard area as defined by the Federal Emergency Management Agency, the Trustees shall maintain master " polic(ies) of property insurance which insures against flood and provide for the premiums to be paid as a Common Expense for all such property required to be insured pursuant to section (a) (i) of this Section 5.8.1 which is located within the designated hazard areas.

The amount of insurance shall be at least equal to the lesser of:

-- 100% of the current replacement cost of all buildings and other insurable property located in the flood hazard area as reasonably determined by the Trustees; or

-- the maximum coverage available for the property under the National Flood Insurance Program.

(c) Liability Insurance. The Trustees shall maintain a general liability insurance policy covering all Common Areas and Facilities, public ways and any other areas that are under their supervision. The policy shall provide coverage of at least \$1,000,000 per occurrence and \$2,000,000 general annual aggregate for bodily injury, personal injury and property damage resulting from the operation, maintenance or use of the Condominium Common Areas.

Insofar as available, the policy shall provide for at least thirty (30) days written notice to the Trustees before the insurer can cancel, non-renew, or substantially modify it, and for similar notice to be given to each holder of a first mortgage on an individual unit in the Condominium.

(d) Fidelity Insurance. A management agent that handles funds for the Trust shall be covered by its own fidelity insurance. At the Trustees' option, any person handling the Trust's money shall be covered by fidelity insurance.

Except for fidelity bonds that a management agent obtains for its personnel, all other bonds shall name the Trust as an obligee and shall have their premiums paid as a Common Expense by the Trustees. The fidelity bond shall cover the maximum funds that will be in the custody of the Trust or its management agent at any time while the bond is in force. In addition, the fidelity bond coverage shall at least equal the sum of three (3) months' assessments on all units in the Condominium, plus the reserve funds.

(e) Miscellaneous. The Trustees shall maintain such supplemental or other insurance coverage as may from time to time be required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. The Trustees may, in their sole discretion, purchase such other insurance for risks faced by the Condominium, the Trust or the Trustees in their capacity as trustees for the Trust as they shall determine.

Section 5.8.2. Payment to Trustees in Case of Loss. Such master polic(ies) shall provide that all property insurance loss proceeds shall be paid to the Trustees as Insurance Trustees under these By-Laws. The duty of the Trustees as such Insurance Trustees shall be to receive such proceeds as are paid and to hold, use and disburse the same for the purposes stated in this Section and Section 5.5. If repair or restoration of the damaged portions of the Condominium is to be made, all property insurance loss proceeds shall be held in share for the Trust and the owners of damaged Units in proportion to the respective costs of repair or restoration of the Common Elements and damaged Units, with each share to be disbursed to defray the respective costs of repair or restoration of the damaged Common Elements and damaged Units, and with any excess of any such share of proceeds above such costs of repair or restoration to be paid to the Trust or Unit Owners for whom held upon completion of restoration or repair. If, however, pursuant to Section 5.5 restoration or repair is not to be made, all insurance loss proceeds shall be held as Common Funds of the Trust and applied for the benefit of Unit Owners in proportion to their Beneficial Interests if the Condominium is totally destroyed, and, in the event of a partial destruction, after payment for such restoration of the Common Elements as the Trustees may determine, to those Unit Owners who have suffered damage in proportion to the damage suffered by them. Such application for the benefit of Unit Owners shall include payment directly to a Unit Owner's mortgagee if the mortgagee with respect to such unit so requires by notice to the Trustees. If the master polic(ies) insurance proceeds are insufficient to pay for the loss to a Unit, the Unit Owner shall bear the cost of repair or replacement, it being understood that the Unit Owner shall cover the balance of the loss and their portion of the master policy deductible, but in no event shall the Unit Owner look to the Trust for reimbursement.

Section 5.8.3. Other Provisions. In addition to the coverage and provisions set forth in Section 5.8.1, the Trustees, in their sole discretion, shall see that all policies of property and liability insurance: (1) shall contain waivers of subrogation by the insurer as to claims against the Condominium, the Trustees, their employees, Unit Owners and members of the family of any Unit Owner who reside with said Unit Owner, except in cases of arson and fraud; (2) shall contain a waiver of defense of invalidity on account of the conduct of any of the Unit Owners over which the Trustees have "no control"; (3) shall provide that in no event shall the insurance under said policies be brought into contribution with insurance purchased individually by Unit Owners or their mortgagees; and (4) shall exclude policies obtained by individual Unit Owners from consideration under any "no other insurance" clause. In the event of any loss which relates in whole or in part to insurable improvements forming part of a Unit, which loss is covered by such insurance carried pursuant hereto, the Trustees may assess to the Unit Owner or Owners of such Unit(s) as a special assessment, all or part of such deductible amount, such special assessment being in an amount directly proportional to the amount of such loss related to Unit improvements and the amount of the loss related to the Common Areas and Facilities. Each Unit Owner shall be liable for such special assessments in addition to any respective share of the Common Expenses.

Section 5.8.4. Owner's Insurance and Responsibility for Increase in Premiums of Trustee Procured Master Policies. Each Unit Owner shall obtain property and liability insurance for his or her own benefit at his or her own expense covering at least all furniture, furnishings and other personal property of the Unit Owner, regardless of whether the unit is owner occupied or rented to others. No such policy shall be written so as to decrease the coverage under any of the policies obtained by the Trustees pursuant to Section 5.8.1 above, and each Unit Owner hereby assigns to the Trustees the proceeds of any such policy to the extent that any such policy does in fact result in a decrease in such coverage, said proceeds to be applied pursuant to the terms of this Section 5.8 as if produced by such coverage. Copies of all such policies shall be made available to the Trustees upon request. Each unit owner agrees to waive all rights of subrogation against the Condominium, the Trust and the Trustees and have their policies so endorsed. Any Unit Owner who conducts or permits activity in a Unit resulting in an increase in the premium of the master insurance polic(ies) as determined by the Trustees, shall be required to pay for the increased premium, which amount shall be due and payable in accordance with Section 5.4.1 herein.

Section 5.8.5. Notice of Unit Owner's Improvements. Each Unit Owner must submit to the other Unit Owner and the Trustees for written approval, which shall not be unreasonably delayed, conditioned or withheld, all plans for improvements to his or her Unit (except personal property other than fixtures) which would exceed a total value of Twenty Five Thousand Dollars (\$25,000.00). This notification does not shift the responsibility away from the Trust to insure improvements and betterments. [Best Practices Recommendation: Any increase in premiums on the master polic(ies) associated with such improvements shall be allocated by the Trustees to the respective Unit Owner(s).] Any and all work shall be done in accordance with provisions of the Master Deed, Trust, By-Laws, Rules and Regulations promulgated pursuant thereto and in accordance with the following: all such work shall be done in a good and workmanlike manner, in conformity with all legal and warranty requirements, in a fashion that does not interfere unreasonably with the use and occupancy of the other Unit Owner or work being performed by the Declarant and in accordance with the plans and specifications which have been submitted to and approved in writing in advance of commencement of any such work, by the other Unit Owner.

Section 5.8.6. Insurance as Common Expense. The cost of the insurance purchased pursuant to Section 5.8, other than that set forth in Section 5.8.4, shall be a Common Expense assessable and payable as provided in Section 5.4.

Section 5.8.7. Condemnation. Subject to applicable law, including the provisions of Chapter 183A, in the event of a taking or acquisition of part of all of the Common Elements or Limited Common Elements by a condemning authority, any award or proceeds or settlement resulting therefrom shall be payable to the Trustees for the use and benefit of the Unit Owners and their mortgagees as their interest may appear, and shall otherwise be treated as a casualty loss in accordance with applicable provisions of these By-Laws.

Section 5.9. Meetings.

Section 5.9.1. Meetings of Trustees. The Trustees shall meet at least annually on a date mutually convenient to both Trustees. Other meetings may be called by any Trustee and in such other manner as the Trustees may establish; provided, however, that written notice of each meeting stating the place, day and hour thereof shall be given at least seven (7) days before such meeting to the other Trustee. Such meetings shall be conducted in accordance with such rules as the Trustees may adopt. Notice may be given to a Trustee electronically.

Section 5.9.2. Meetings of Unit Owners. The annual meeting of Trustees shall be deemed to be the annual meeting of Unit Owners on such date and at such reasonable time as the Trustees shall designate. Special meetings (including a meeting in lieu of a passed annual meeting) of the Unit Owners may be called at any time by the Trustees.

Section 5.9.3. Notice of Certain Matters; Quorum; Unanimous Vote. Whenever at any meeting the Trustees propose to submit to the Unit Owners any matter with respect to which specific approval of, or action by, the Unit Owners is required by law or this Trust, the notice of such meeting shall so state and reasonably specify such matter. Unit Owners entitled to one hundred (100%) percent of the Beneficial Interests shall constitute a quorum at all meetings. Any action voted at such a meeting shall require the vote of one hundred (100%) percent of the Beneficial Interest of those in attendance in person or by proxy at said meeting, except where the other provisions of this Trust or Chapter 183A requires a different percentage.

Section 5.10. Notices to Unit Owners. Every notice to any Unit Owner required under the provisions of this Trust which may be deemed by the Trustees necessary or desirable in connection with the administration of the Trust created hereby or which may be ordered in any judicial proceeding shall be deemed sufficient and binding if:

- (i) made in writing and addressed to the Owner of such Unit last appearing on the Trustees' records, and mailed, postage prepaid, to such person at his address last appearing on the Trustees' records if other than the Unit ; or
- (ii) delivered to the Unit; or
- (iii) delivered electronically.

Regardless of the method, all such notices shall be sent at least seven (7) days prior to the date fixed for the happening of the matter, thing or event of which such notice is given. The owner or owners of each Unit shall have the responsibility of providing the Trustees with the correct name of the present owners of the Unit (and their designated Trustees if other than the Unit Owners) and any mailing address other than the Unit to which they desire notices to be mailed, as well as current email addresses, as to which matters the Trustees shall have no duty of inquiring beyond their records. Notice to a Unit Owner shall also constitute notice to a Trustee, and vice versa, if they are one and the same person or entity.

Section 5.11. Inspection of Books; Reports to Unit Owners. Books, accounts and records of the Trustees shall be open to inspection to any one or more of the Trustees and the Unit Owners and any mortgagee of any Unit at all reasonable times. Within one hundred fifty (150) days after the close of each fiscal year (or more often, if convenient to them), a report of the operations of the Trust for such year shall be prepared. The Trustees may, in their sole discretion, cause an independent certified public accountant to conduct annual reviews of the report according to the standards of the American Institute of Certified Public Accountants. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees given by registered mail within a period of thirty (30) days of the date of his or her receipt of the report shall be deemed to have assented thereto. Notwithstanding the preceding, when the Declarant no longer owns a Unit in the Condominium, the Organization of Unit Owners may modify this Section in accordance with Chapter 183A § 10.

Section 5.12. Checks, Notes, Drafts, and Other Instruments. Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust may be signed by any Trustee, or by any person or persons to whom such power may at any time or from time to time have been delegated in writing by both Trustees.

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

Section 5.14. Pets. The keeping of orderly domestic pets (which includes only dogs, cats or caged birds) and aquarium fish is permitted; provided, however, that:

- (i) any pets (other than those contained at all times in aquariums or cages which shall be limited to a reasonable number) shall not exceed two (2) per Unit nor exceed seventy-five (75) pounds in weight each, without the written approval of the Trustees;
- (ii) such pets or fish are not kept or maintained for commercial purposes or for breeding; and
- (iii) any such pets causing or creating a nuisance or unreasonable disturbance may be permanently removed from the Condominium upon written notice from the Trustees specifying the problematic behavior and giving an opportunity to cure within twenty (20) days, after which if the nuisance or unreasonable disturbance continues, the pet must be removed.

No pets shall be allowed in the Condominium that would result in an increase of liability insurance premiums or result in the cancellation of the insurance policy of the Condominium. Pets of a vicious or aggressive disposition which are potentially harmful to the health and safety of others may be prohibited. Any Unit Owner who keeps or maintains any pet upon any portion of the Condominium shall indemnify and hold the Trust, the Condominium Managing Agent, other Unit Owners and the Declarant free and harmless from any loss, claim or liability of any kind of character whatever arising by reason of keeping or maintaining such pet within the Condominium. All pets shall be licensed and inoculated as required by law. No 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. Leashes may not exceed a length which will permit close control of the pet. Owners of pets must immediately and adequately clean up their pet's droppings in all areas of the Property including, without limitation, the sidewalks, exterior landscapes and all other areas.

[NOTE TO PRACTITIONER: SOME PRACTITIONERS INCORPORATE LEASE RESTRICTIONS AND PET RESTRICTIONS INTO THE MASTER DEED RATHER THAN (OR IN ADDITION TO) THE DECLARATION OF TRUST.]

ARTICLE VI
Rights and Obligations of Third Parties
Dealing with the Trustees

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

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

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

Section 6.4. Further Matters of Reliance. This Declaration of Trust and any amendments to this Trust and any certificate required by the terms of this Trust to be recorded and any other certificate or paper signed by the Trustees or any of them which it may be deemed desirable to record shall be recorded with the Registry of Deeds and such record shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustees, the Trust property or any beneficiary thereunder shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be recorded with said Registry of Deeds. Any certificate signed by all Trustees in office at the time (or only one (1) Trustee if there is only one at such time), setting forth as facts any matters affecting the Trust, including statements as to who are the beneficiaries, as to what action has been taken by the beneficiaries and as to matters determining the authority of the Trustees or any one of them to do any act, when duly acknowledged and recorded with the 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.

Section 6.5. 6(d) Certificate. Notwithstanding any other provision of this Article VI, any certificate setting forth the amount of unpaid Common Charges, including without limitation, monthly fees, special assessments, legal fees and fines, assessed against any Unit Owner as provided by Section 6(d) of Chapter 183A shall be conclusive evidence of the fact stated therein if signed by one (1) Trustee then in office who is not the Owner of the Unit that is the subject of the 6(d) certificate (or that Unit Owner's designated Trustee) or duly authorized Management Agent.

ARTICLE VII
Amendments and Termination

Section 7.1. Amendments. The Trustees, with the consent in writing of Unit Owners holding one hundred percent (100%) of the Beneficial Interest of this Trust, may at any time and from time to time, amend, alter, add to, or change this Declaration of Trust in any manner or to any extent, subject to the Trustees first being duly indemnified and held harmless to their reasonable satisfaction against existing or outstanding obligations and liabilities of any kind, whether asserted or unasserted, and whether known or unknown; provided always, however, that no such amendment, alteration, addition or change which would affect, in any manner, the provisions of Section 3.1. or Section 7.1.1. or render this Trust contrary to or inconsistent with any requirements or provisions of Chapter 183A, shall be valid or effective. Furthermore, any instrument or amendment which eliminates, impairs or otherwise adversely affects any rights special to or retained by the Declarant including but not limited to, the Declarant's right and ability to develop and/or market the Condominium, shall not be of any force or effect unless it is assented to in writing by the Declarant, or any successor to the Declarant's interest in the Condominium, and this assent is recorded with such amendment at the Registry of Deeds. Where mortgagee consent is required under the Declaration of Trust and/or Chapter 183A, the instrument of amendment shall be deemed assented to by the holders of the first mortgages or record with respect to the Units upon the giving of at least sixty (60) days written notices sent to said mortgagees by certified mail/return receipt requested. All consents obtained pursuant to this Section 7.1 shall be effective upon the recording of an affidavit by the Trustees stating that all necessary notices have been sent via certified mail/return receipt requested, and the receipt cards have been returned evidencing actual notice or refusal of notice to such mortgage holders of record. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this paragraph shall become effective upon the recording with the Registry of Deeds of any instrument of amendment, alteration, addition or change, as the case may be, signed, sealed and acknowledged in the manner required in Massachusetts for the acknowledgment of deeds by the Trustees, setting forth in full the amendment, alteration, addition or change, and reciting the consent of the Unit Owners required by this Trust to consent thereto and provided such instrument is recorded no later than six (6) months from its date thereof. 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 any question as to title or affecting the rights of third persons and for all other purposes.

Section 7.1.1. Special Amendment. Notwithstanding anything herein contained to the contrary, so long as the Declarant owns at least one Unit in the Condominium, the Declarant reserves the right and power to file and record a special amendment ("Special Amendment") to this Declaration of Trust at any time and from time to time which amends this Declaration of Trust, only in order:

- (a) to comply with requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veterans Administration or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities;
- (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Unit Ownerships;
- (c) to create any easements or Limited Common Areas and Facilities as reserved by the Declarant in the Master Deed;
- (d) to bring the Master Deed and this Declaration of Trust into compliance with Chapter 183A of the General Laws of Massachusetts, or to meet the requirements of applicable laws and governmental regulations, permits, approvals, or directives; or
- (e) to correct clerical or typographical errors or to cure any ambiguity, inconsistency, formal defect or omission in this Declaration of Trust or any exhibit hereto or any supplement or amendment hereto.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make or consent to a Special Amendment on behalf of each owner as proxy or attorney-in-fact, as the case may be but only as authorized hereunder and such authority shall be strictly construed. Each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof, shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power to the Declarant to vote in favor of, make, execute and

file and record Special Amendments only as expressly provided in this subsection. The right of the Declarant to act pursuant to rights reserved or granted under this section shall be automatically assigned to the Trustees of the _____ CONDOMINIUM TRUST at such time as neither the Declarant nor any assignee of the Declarant's rights hereunder shall hold or control title to any Unit.

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

Section 7.3. Disposition of Trust Property Upon Termination. Upon the termination of this Trust, the Trustees may, subject to and in accordance with the provisions of Chapter 183A, sell and convert into money the whole of the Trust property or any part thereof and, after paying or retiring all known liabilities and obligations of the Trustees and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, at valuations made by them which shall be conclusive, all other property then held by them in trust hereunder, to the Unit Owners according to their respective Beneficial Interests. In making any sale under this Section, the Trustees shall have power to sell by public auction or private sale or contract and to enter in or rescind or vary any contract of sale and to resell without being answerable for loss and, for said purposes, to do all things, including the execution and delivery of instruments, as may by their performance thereof be shown to be in their judgment necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distribution of Trust property may have passed.

ARTICLE VIII Construction and Interpretation

Section 8.1. Terms. In the construction hereof, whether or not so expressed, words used in the singular or in the plural respectively include individuals, firms, associations, companies, (joint stock or otherwise), trusts, partnerships, and corporations unless a contrary intention is reasonably required by the subject matter or context; and the use of the singular shall be deemed to include the plural, whenever the context so requires. Words designating a particular gender shall be interpreted to include persons of any gender unless a contrary intention is reasonably required by the subject matter or context. The title headings or captions of different parts hereof are inserted only for convenience of reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation or effect hereof. All the trusts, powers and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts. Unless the context otherwise indicates, words defined in Chapter 183A shall have the same meaning here.

Section 8.2. Waiver. No provisions contained herein shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

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

- (a) In the event of a conflict between this Trust and Chapter 183A, the provisions of Chapter 183A shall control.
- (b) The invalidity of any provision of the Trust shall not impair or affect the validity or enforceability of the other provisions of this Trust.
- (c) In the event of any conflict between the Master Deed, and any provision of this Trust, the Master Deed shall control.
- (d) In the event of any conflict with any statute or decisional law, the provisions of Chapter 183A shall control.

Section 8.4. Recording. All documents and instruments required to be recorded hereunder shall be so recorded with the Registry of Deeds.

ARTICLE IX
Dispute Resolution

Section 9.1. Disputes. In the event that a Unit Owner or Trustee disputes any action or non-action of another Unit Owner or Trustee, other than disputes listed in Section 9.4.9 below, the following procedure shall apply:

Section 9.2 Good Faith Effort. The affected Unit Owners or Trustees shall meet in person as soon as possible after the dispute arises, and make a good faith effort to resolve their differences.

Section 9.3. Mediation. If, following this direct negotiation, the parties agree that no resolution can be accomplished, then, upon notice to the other party pursuant to Section 5.10, either party may elect mediation by REBA Dispute Resolution, Inc. ("REBA/DR").

Section 9.3.1 Selection of Mediator. The mediator shall be selected by the executive director of REBA following consultation with both parties, and may be either a neutral engaged by REBA/DR or an experienced condominium practitioner who is a member in good standing of REBA.

Section 9.3.2. Role of Mediator. The mediator shall assist the parties in negotiating a mutually acceptable resolution, but shall have no authority to impose a settlement.

Section 9.3.3. Cost of Mediation. The cost of the mediation, including the mediator's fees and any charges charged by REBA/DR, is to be borne by the parties equally.

Section 9.4. Arbitration. If mediation fails to resolve the dispute, or if one party refuses to meet under Section 9.2 or mediate under Section 9.3, the dispute shall be arbitrated by REBA/DR. The executive director of REBA shall, following consultation with both parties, select an arbitrator who is either a neutral engaged by REBA/DR or an experienced condominium practitioner who is a member in good standing of REBA. If the parties agree, the arbitrator may be the same person as the mediator.

Section 9.4.1. Timing of Arbitration. The dispute will be arbitrated within 30 days of the selection of the arbitrator unless all parties agree to a different time-frame.

Section 9.4.2. Length of Arbitration. The arbitration hearing will be no longer than five hours in length unless all parties agree otherwise.

Section 9.4.3. Discovery in Arbitration. The arbitrator will have sole discretion to allow or limit discovery.

Section 9.4.4. Arbitration Decision Binding. The arbitrator's decision will be binding and enforceable by a court of competent jurisdiction.

Section 9.4.5. Cost of Arbitration. The cost of the arbitration, including the arbitrator's fees and any charges charged by REBA/DR, is to be borne by the parties equally.

[NOTE TO PRACTITIONERS: IF THE PRACTITIONER DESIRES TO PROVIDE AUTHORITY TO THE ARBITRATOR TO AWARD ATTORNEY'S FEES AND COSTS, THE FOLLOWING LANGUAGE SHOULD BE ADDED AT THE END OF SECTION 9.4.5: "HOWEVER, THE ARBITRATOR SHALL HAVE AUTHORITY, IN HIS OR HER SOLE DISCRETION, TO AWARD ATTORNEY'S FEES AND COSTS TO THE PREVAILING PARTY."]

Section 9.4.6. Counsel. Any party may be represented by counsel at any stage of the mediation/arbitration process at the sole expense of that party.

Section 9.4.7. Location. The place of the mediation/arbitration shall be the offices of REBA, unless the parties agree to a different location.

Section 9.4.8. Agreement to Forego Mediation. If the parties are in agreement, they may elect to forego the mediation stage of this dispute resolution process, and shall so inform the executive director of REBA at the time of their initial contact.

Section 9.4.9. Sole Dispute Resolution Mechanism. This provision shall be the sole mechanism for resolving disputes at the Condominium and under this Trust, except in the case of disputes over the collection of common area expenses and claims against the Developer or Declarant of the Condominium. In the case of disputes involving the Developer or Declarant, the parties may, by agreement, elect to proceed under this Dispute Resolution provision, and such agreement will be deemed a waiver of all parties' right to sue.

IN WITNESS WHEREOF the undersigned has/have set his/her hand(s) and seal(s) as of the date first written above.

Executed under seal this _____ day of _____, 20__.

By: _____
Name: _____
Title: _____

COMMONWEALTH OF MASSACHUSETTS

_____, SS

On this ___ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

- (as partner for _____, a partnership)
- (as _____ for _____, a corporation)
- (as attorney in fact for _____, the principal)
- (as _____ for _____, (a) (the) _____)

_____ (official signature and seal of notary)

Notary Public
My Commission Expires:

RULES AND REGULATIONS

The Condominium has been created with the objective of providing congenial, enjoyable, and dignified residential living. In order to accomplish this objective, the Trustees of the Condominium Trust (the "Trustees") responsible for the administration, operation and maintenance of the Condominium, have adopted the Rules and Regulations set forth below.

In order for the Unit Owners to better understand the Rules and Regulations, the defined terms used in the Master Deed of the Condominium and the Condominium Trust are used herein with the same meanings as used in said documents except that whenever these Rules and Regulations impose a duty or obligation upon a Unit Owner or a rule which a Unit Owner is to observe, obey, and comply with, the term "Unit Owner" as defined in the Master Deed shall include all family members, guests and invitees thereof, and any occupants of Units in the Condominium.

- (1) No Obstruction of Common Areas. Unit Owners shall not cause or permit any obstruction to the Common Elements other than Limited Common Areas and Facilities associated with such Unit.
- (2) Nameplates. Unit Owners may place their names only in such places outside their Units as may be provided for by the Trustees.
- (3) Laundry. No Unit Owner shall hang laundry, clothes, sheets, rugs, drapes, clotheslines or the like out of a Unit or window or door or balcony at any such Unit.

[NOTE TO PRACTITIONERS: CONSIDER WHETHER THE BAN ON CLOTHESLINES SHOULD BE ELIMINATED IN VIEW OF ENVIRONMENTAL CONCERNS.]

- (4) Abuse of Mechanical System. The Trustees may charge to a Unit Owner any damage to the Common Areas and Facilities, including but not limited to, the mechanical, electrical, or other building service systems of the Condominium caused by such Unit Owner by misuse of those systems.
- (5) Storage. All items of Unit Owners and personal property, effects, and other items of Unit Owners and all persons claiming by, through, or under said owners may be kept and stored at the sole risk and hazard of said owners, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leaking or bursting of water pipes, steam pipes, or other pipes, by theft or from other causes, no part of said loss or damage in excess of the amounts, if any, covered by its insurance policies, is to be charged or to be borne by the Condominium Trust, except that the Condominium Trust shall in no event be exonerated or held harmless from liability cause by its negligence.
- (6) Flammable Materials, etc. No Unit Owner or any of his agents, servants, employees, licensees, or visitors shall, at any time, bring into or keep in his Unit or any portion of the Common Elements any hazardous material, including but not limited to, gasoline, kerosene, or other flammable, combustible or explosive fluid, material, chemical, or substance, which would be in violation of the Massachusetts Fire Safety Code.
- (7) Real Estate Taxes. For so long as the Condominium is assessed as a single property rather than as separate condominium units, Unit Owners will be billed by the Trustees for their respective portions thereof (each Condominium Unit's percentage in the Common Elements of the total tax bill) during each July, October, January and April, which bill shall enclose a copy of the tax bill issued by the City of Boston (the "Municipality"). Each Unit Owner will forward payment of his percentage interest in the total tax bill to the Trustees by check made payable to the Condominium Trust no later than ten (10) days prior to the date on which payment may be made without incurring a penalty or interest thereon. Late payments by a Unit Owner must be made payable as directed by the Trustees, and will include interest and penalties as charged by the Municipality for late payment, together with costs of collection incurred by the Trustees, including reasonable attorney's fees. If taxes are collected by holders of mortgages on Units, each Unit Owner shall be responsible for causing the mortgage holders to forward payment as above required.

(8) Bicycles. No bicycles or motorized chairs may be stored in the Common Areas and Facilities (unless as otherwise designated).

(9) Smoking. Smoking shall be prohibited in nor shall be permitted to enter into the Common Areas and Facilities.

[NOTE TO PRACTITIONERS: IF THE ENTIRE CONDOMINIUM IS TO BE SMOKE-FREE, MAKE SURE THERE IS A PROVISION TO THIS EFFECT IN THE MASTER DEED]

(10) Nuisance. No unreasonable nuisance shall be allowed in or upon the Condominium nor shall any use or practice be allowed which unreasonably interferes with the peaceful possession or proper use of the Condominium by its residents.

(11) Trash. No trash shall be placed or kept at any time in the Common Areas and Facilities other than in plastic bags placed in barrels stored in the area designated for trash barrels.

(12) Window Coverings. Curtains and drapes (or linings thereof) which face on exterior windows or glass doors of the Units shall be white, white lined or white backed subject to the approval of the Trustees, such approval not to be unreasonably withheld.

(13) Roof. Except as provided for in Section 8(b) of the Master Deed, there shall be no access to the roof other than to the Unit Owner of Unit 2, which shall have the exclusive right and easement to use the Roof Deck as shown on the Plans, and to the Trustees.