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[This document is a transcription of the Lakecrest Condominium Trust on file with the Berkshire Middle District Registry of Deeds, and has merged the appropriate text from the amendment documents also on file (and which are also transcribed after this main document) into the main document. This document is provided for ease and continuity of reading but, as transcription and/or editorial errors incorporating amendments may have been made, should not be relied upon as an authoritative legal document. Any discrepancy between this document and the documents on file with the Registry of Deeds are to be resolved in favor of the documents on file with the Registry of Deeds. Entries throughout this document of the form [Pg. 1 Book 1167, Page 603■Pg. 2 Book 1167/604] refer to the page numbers of the original documents and their corresponding Book and Page number within the Registry of Deeds records.]

LAKECREST CONDOMINIUM TRUST

This DECLARATION OF TRUST made this 23rd day of October, 1986 by Robert R. Schwartz, Susan Schwartz and Jeffrey A. Loeb, all of Suite 1400, 18 East 48th Street, New York, NY 10017 (the "Trustees", which term and any pronoun referring thereto shall be deemed to include their successors in trust hereunder and to mean the trustee or the trustees for the time being hereunder, wherever the context so permits).

ARTICLE I Name of Trust

The Trust hereby created shall be known as the Lakecrest Condominium Trust (the "Trust"), and under that name, so far as legal, convenient and practicable, all business shall be carried on by the Trustees and all instruments shall be executed by the Trustees. Said name shall refer to the Trustees in their capacity as Trustees, and not individually or personally, and shall not refer to the officers, agents or employees of the Trust or to the Unit Owners.

ARTICLE II The Trust and Its Purpose

Section 2.1. Unit Owners Organization. All of the rights and powers in and with respect to the common areas and facilities (the "Common Areas and Facilities" or "Common

Elements") of the Lakecrest Condominium located in Pittsfield, Berkshire County, Massachusetts (the "Condominium") established by a Master Deed (the "Master Deed") of even date herewith and recorded herewith in the Berkshire County Registry of Deeds (the "Berkshire Registry"), which are, under the provisions of M.G.L. c.183A as amended ("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 or held by the Trustees hereunder shall vest in the Trustees as joint tenants with right of survivorship, in trust, to exercise, manage, administer and dispose of the same and to receive the income thereof (a) for the benefit of the owners of record from time to time (the "Unit Owners") of the units (the "Units") of the Lakecrest Condominium (the "Condominium") according to the allocation or undivided beneficial interest in the Common Areas and Facilities (the "Beneficial Interest") set forth in Article IV hereof, and (b) in accordance with the provisions of Chapter 183A. This Trust is the organization of Unit Owners established pursuant to the provisions of Section 10 of Chapter 183A for the purposes therein set forth. **[Pg. 1 Book 1167, Page 603■Pg. 2 Book 1167/604]**

Section 2.2. No Partnership. It is hereby expressly declared that a trust and not a partnership has been created, and that the Unit Owners are cestuis que trustent and not partners or associates nor in any other relation whatever between themselves with respect to the trust property, and hold no relation to the Trustees other than of cestuis que trustent, with only such rights as are conferred upon them as such cestuis que trustent hereunder and under and pursuant to the provisions of Chapter 183A.

ARTICLE III The Trustees

Section 3.1. Number of Trustees. There shall be a Board of Trustees (the "Board" or the "Trustees") hereunder consisting of such number, not less than three (3) nor more than nine (9), as shall be determined from time to time by a Majority of the Unit Owners present in person or by proxy at an Annual Meeting of the Unit Owners (as provided in Article V, Section 5.13.1). The Trustees shall be chosen by vote of the Unit Owners, with the three (3) persons (or such number of persons as is equivalent to the number of Trustees as may be determined by the Unit Owners) receiving the greatest individual totals of percentage beneficial interest votes being the winners of the election. Trustees so elected shall serve until their successors are chosen and qualified at the next Annual Meeting of Unit Owners, or until a Trustee sooner dies, resigns, is removed or becomes disqualified.

Provided, however, that until the Transfer Date, hereafter defined, the number of Trustees shall be three persons all of whom Lakecrest Development Company, the Grantor under the Master Deed (hereinafter sometimes the "Declarant"), which term and any pronoun referring thereto herein shall be deemed to mean his executors, administrators, successors and assigns) shall have the right to appoint. No Trustee appointed by the Declarant need be a Unit Owner.

The Declarant shall transfer control of the Trust to the Unit Owners no later than the earlier of: a) four months after 75% of the Units in the Condominium have been conveyed to Unit Purchasers; or, b) five years after the first unit has been conveyed (the "Transfer Date").

At such time as the Transfer Date occurs, the terms of office of the original Trustees or such other persons so designated shall be deemed vacant, but shall not expire until such vacancies have been filled in the manner hereinafter set forth.

[NEW: language per amendment dated September 20, 2006; Book 3684, Page 23:]

Thereafter, the terms of office of the Trustees shall, except as hereinafter provided, be three years, and such terms shall be staggered so that insofar as possible the terms of one-third of the Trustees shall expire each year; provided that, for any Trustee term commencing on or after the next annual Unit Owners' Meeting after the recording hereof, no Trustee may be eligible to be elected to a third consecutive three-year term or otherwise serve more than six consecutive years (a year for the purposes hereof being defined as commencing at the annual Unit Owners' Meeting where the Trustee is elected or the next annual Unit Owners' Meeting after said Trustee is appointed pursuant to Section 3.1.1 and ending at the following year's annual Unit Owners' Meeting) and that such Trustee (whose service having been terminated for having served six consecutive years or having been elected to two consecutive three-year term) may not serve again as trustee until the next annual Unit Owners' Meeting after said termination; provided further that the term of any trustee who is appointed pursuant to Section 3.1.1 shall expire at the following year's annual Unit Owners' Meeting; provided, further, that in order to establish and maintain such staggering of terms, the terms of the persons first appointed as Trustees after the 1990 annual meeting shall be one year, two years and three years, respectively, determined by lot, and thereafter upon any increase or decrease of the number of Trustees, the terms of any then newly appointed Trustee or Trustees shall be one year, two years or three years, determined insofar as necessary by lot, so as to maintain such staggering of terms insofar as possible.

~~[OLD: Thereafter, the terms of office of the Trustees shall, except as hereinafter provided, be three years, and such terms shall be staggered so that insofar as possible the terms of [Page 2, Book 1167, Page 604] one third of the Trustees shall expire each year; provided, that in order to establish and maintain such staggering of terms, the terms of the persons first appointed as Trustees after the 1990 annual meeting shall be one year, two years and three years, respectively, determined by lot, and thereafter upon any increase or decrease of the number of Trustees, the terms of any then newly appointed Trustee or Trustees shall be one year, two years or three years, determined insofar as necessary by lot, so as to maintain such staggering of terms insofar as possible.]~~

With respect to each person appointed or elected to be a Trustee hereunder as provided for in this Declaration of Trust, there shall promptly be recorded with the Berkshire Registry a certificate of such appointment of election signed by any one or more of the Trustees hereunder and an acceptance of such appointment signed by the person so appointed, and such appointment or election shall take effect upon such recording. The person so appointed or elected shall then be and become such Trustee and shall be vested with the title of the Trust property and with all the powers of the Trustees, jointly with the remaining or surviving Trustees or Trustee without the necessity of any act of transfer or conveyance. Notwithstanding any other provisions in this Declaration of Trust, the failure to so record such acceptance shall in no way affect the validity of such Trustees' election.

Section 3.1.1. Vacancies; Appointment and Acceptance of Trustees. If and whenever the number of Trustees shall become less than three (3) or less than the number of Trustees as last determined due to death, disability, removal or resignation, each such vacancy shall be filled by an instrument in writing setting forth (a) the appointment of a natural person to act as such Trustee, signed (i) by the Declarant if the vacancy is in the office of a Trustee chosen by the Declarant, or (ii) by a majority of the Trustees then in office or the sole remaining Trustee, if only one, if the vacancy is in the office of a Trustee not chosen by the Declarant, certifying that such appointment was made by a Majority of Unit Owners at a duly held Special Meeting of Unit Owners (as provided in Article V, Section 5.13.1) or (iii) if the Declarant or such a Majority of Unit Owners have not within sixty (60) days after the occurrence of any such vacancy made such appointment, signed by a majority of the then remaining Trustees, or by the sole remaining Trustee if only one, and (b) the acceptance of such appointment, signed and acknowledged by the person so appointed. Such appointment shall become effective upon the recording with the Berkshire Registry of a certificate and acceptance as provided in Section 3.1 above. If there shall be no remaining Trustee and a 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 [Page 3, Book 1167, Page 605■Page 4, Book 1167/606] and notice to all Unit Owners and to such other, if any, parties in interest to whom the court may direct that notice be given. Notwithstanding anything contained herein to the contrary, despite any vacancy in the office of Trustee, however caused and for whatever duration, the then remaining or surviving Trustee or Trustees shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustees, in the manner prescribed herein below. Trustees need not be Unit Owners.

Section 3.2. Trustee Action. In any matters relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred, the Trustees may act by majority vote at any duly called meeting at which a quorum is present as provided in Article V, Section 5.13.2. The Trustees may also act without a meeting by instrument signed by a majority of their number. Notwithstanding the above language, any instrument signed by a majority of those Trustees appearing from the records of the Berkshire Registry to be such, 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 were duly authorized by all Trustees.

Section 3.3. Resignation; Removal. Any Trustee may resign at any time by instrument in writing, signed and acknowledged in the manner required in Massachusetts for the acknowledgement of deeds and delivered to the remaining Trustees. Such resignation shall take effect upon the recording of such instrument with the Berkshire Registry unless specified to be effective at some other time. By vote of a Majority of Unit Owners at a duly held Special Meeting, any Trustee may be removed with or without cause and the vacancy among the Trustees caused by such removal shall be filled in the manner above provided. Such removal shall become effective upon the recording with the Berkshire Registry of a certificate of removal signed by a majority of the then remaining Trustees in office or by the Majority of Unit Owners present at the special meeting referred to above. Provided, however, that any of the original

Trustees and successor Trustees appointed by the Grantor may be removed only by the Grantor. Any of the original Trustees and successor Trustees appointed by the Grantor may be removed from office by the Grantor with or without cause.

Section 3.4. Bond or Surety. Except as provided in Section 5.12.8, no Trustee named or appointed as hereinbefore provided, whether as original Trustee or as successor to or as substitute for another, shall be obliged to give any bond or surety or other security for the performance of any of his duties hereunder, provided, however that a Majority of Unit Owners may at any time by instrument in writing signed by them and delivered to the Trustee or Trustees affected required that any one or more of the Trustees shall give bond in such amount [**Page 4, Book 1167, Page 606**■**Page 5, Book 1167/607**] and with such sureties as shall be specified in such instrument. All expenses incident to any such bond shall be charged as a Common Expense of the Condominium.

Section 3.5. Compensation of Trustees. No Trustee shall receive remuneration (which term shall not be deemed to include reimbursement for expenses incurred by a Trustee in connection with his duties, which reimbursement shall be permitted and charged as a Common Expense) for his services unless so provided by a vote of a Majority of Unit Owners and any remuneration so provided shall be from time to time fixed by said Unit Owners, and shall be a Common Expense of the Condominium. With the approval of a Majority of Unit Owners, any Trustee may receive such additional reasonable remuneration for extraordinary or unusual services, legal or otherwise, rendered by him in connection with the trusts hereof, all as shall be from time to time fixed and determined by the Trustees, and such remuneration shall be a Common Expense of the Condominium. No compensation to Trustees may be voted by the Trustees or the Unit Owners with respect to the period before the Grantor ceases to own twenty-five (25%) percent or more of the Units as provided in Article III, Section 3.1.

Section 3.6 No Personal Liability. No Trustee hereinbefore named or appointed as hereinbefore provided shall under any circumstances or in any event be held liable or accountable out of his personal assets or be deprived of compensation, if any, by reason of any action taken, suffered or omitted in good faith, 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 anything except his own personal and willful malfeasance and defaults.

Section 3.7. Trustee May Deal With the Condominium. No Trustee nor Unit Owner shall be disqualified by his office from contracting or dealing directly or indirectly with the Trustees or with one or more Unit Owners as vendor (including, but not limited to, a Manager or Management Company), purchaser or otherwise because of his, the Trustees' or any Unit Owner's organization connected with such contracting or dealing, nor shall any such dealing, contract or arrangement entered into in respect of this Trust in which any Trustee or Unit Owner shall be in any way interested be avoided nor shall any Trustee or Unit Owner 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, or by reason of such Unit Owner's status, provided the Trustee or Unit Owner shall act in good faith and shall, upon request of any Unit Owner or Trustee, disclose the nature

of his interest before the dealing, contract or arrangement is entered into. [Page 5, Book 1167, Page 607■Page 6, Book 1167/608]

Section 3.8. Indemnification. The Trust shall, to the extent legally permissible, indemnify each of its Trustees against all liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and counsel fees, reasonably incurred by him in connection with the defense or disposition of any action, suit or other proceedings, whether civil or criminal, in which he may be involved or with which he may be threatened, while in office or thereafter, by reason of his being or having been such a Trustee, except with respect to any matter as to which he shall have been adjudicated in any proceeding to have acted in bad faith or with willful misconduct or reckless disregard of his duties or not to have acted in good faith in the reasonable belief that his action was in the best interests of the Trust. The right of indemnification hereby provided shall not be exclusive of or affect any other rights to which any Trustee may be entitled herein or by contract or otherwise under law. As used in this Section, the term "Trustee" includes their respective heirs, executors and administrators. However, nothing in this Section shall be deemed to limit in any respect the powers granted to the Trustees in this instrument.

ARTICLE IV

Beneficiaries and the Beneficial Interest in the Trust

Section 4.1. Beneficiaries and Beneficial Interest. The cestuis que trustent or beneficiaries shall be the Unit Owners of the Condominium at the present time. The beneficial interest in the Trust hereunder shall be divided among the Unit Owners in the percentages of undivided beneficial interest appertaining to the Units of the Condominium (hereinafter and hereinbefore sometimes referred to as the "Beneficial Interest") as follows:

- A. For so long as the only Units in the Condominium are those comprised in Phase I of the Condominium as defined in the Master Deed, the percentages shall be as set forth for such Units in Exhibit C of the Master Deed, which is incorporated herein and made a part hereof.
- B. From and after the inclusion in the Condominium of other Additional Units (as defined in the Master Deed), the beneficial interest hereunder of each Unit then included in the Condominium shall be equal to the percentage of interest appertaining to such Unit as determined and specified pursuant to the provisions of Section 11 of the Master Deed.

Section 4.2. Beneficial Interest Held By One Person. The beneficial interest appertaining to each Unit 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 the [Page 6, Book 1167, Page 608■Page 7, Book 1167/609] Units 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 and acknowledged by all of the record owners of such Unit. Any such

designation shall take effect upon receipt by the Trustees and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Trustees may designate any one such owner for such purposes.

ARTICLE V

By-Laws

The provisions of this Article V shall constitute the By-laws (the "By-Laws") of this Trust and the organization of Unit Owners established hereby and shall be applicable to the Property of the Condominium and to the use and occupancy thereof. The term "Property" as used herein shall include the land, the buildings and all other improvements thereon including the Units and Common Areas and the Facilities, owned in fee simple absolute, and all easements, right and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith, all of which are intended to be submitted to the provisions of said Chapter 183A. The provisions of these By-Laws shall automatically become applicable to property which may be added to the Condominium upon the recording of an amendment to the Master Deed submitting such additional property to the provisions of Chapter 183A.

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

Title to Units may be taken in the name of an individual or in the names of two (2) or more persons, as tenants in common or as joint tenants or as tenants by the entirety, or in the name of a corporation or partnership, or in the name of a fiduciary. **[Page 7, Book 1167, Page 609■Page 8, Book 1167/610]**

Section 5.1. Powers and Duties of Trustees. The Trustees shall, subject to all provisions of applicable laws, the Master Deed, this Declaration and these By-Laws, have the absolute control and management and disposition of the Trust Property as if they were the absolute owners thereof and shall have all of the powers necessary for the administration of the affairs of the Condominium and may do all such acts and things in connection therewith. The powers and duties of the Trustees shall include, but shall not be limited to, the following, all of which shall be exercised subject to the provisions of these By-Laws.

- (a) Operation, care, upkeep, management, leasing and maintenance of the Common Areas and Facilities of the Condominium or any part thereof;
- (b) Owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to or purchased by them as a result of enforcement of the lien for Common Expenses, action under Chapter 183A, Section 17 and 18, or otherwise;

- (c) Conducting litigation on behalf of the Unit Owners and being subject to suit as to any course of action involving the Common Areas and Facilities or arising out of the enforcement of these By-Laws, any and all Rules and Regulations of the Trustees or restrictions in the Master Deed of Unit Deeds;
- (d) Determination and budgeting of the Common Expenses required for the affairs of the Condominium and Trust, including, without limitation, the operation and maintenance of the Property;
- (e) Collection of the common charges (which for the purposes of these By-Laws shall mean such portion of the Common Expenses as are payable by the respective Unit Owners) from Unit Owners;
- (f) Employment and dismissal of the personnel necessary for the maintenance and operation of the Common Areas and Facilities;
- (g) Opening and utilizing bank accounts on behalf of the Trust and designating the signatures required therefor;
- (h) Obtaining of insurance pursuant to the provisions of these By-Laws;
- (i) Making of repairs, additions and improvements to or alterations of the Property and repairs to and restoration of the Property, in accordance with the other provisions of these By-Laws, after damage or **[Page 8, Book 1167, Page 610■Page 9, Book 1167/611]** destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;
- (j) Incurring obligations and paying, compromising or adjusting all obligations incurred and rights acquired in the administration of the Trust;
- (k) Adoption and amendment of rules and regulations covering the details of the operation and use of the Common Areas and Facilities;
- (l) Obtaining advice of counsel and relying thereon, and employing, appointing and removing such other persons, agents, managers, officers, brokers, engineers, architects, employees, servants and assistants as they shall deem advisable, and defining their respective duties and fixing their pay and compensation; provided, however, no Trustee shall be held personally liable for the act or default of any such person;
- (m) Granting of permits, licenses and easements over the common areas for utilities, roads and all other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium;
- (n) Enforcing obligations of the Unit Owners, including the levying and enforcing the

collection of general and special assessments for Common Expenses and the providing of adequate remedies for failure to pay such assessments, allocating income and expenses, levying reasonable fines against the Unit Owners for violations of the Rules and Regulations or of the provisions of Article V hereof and in the case of persistent violation of the Rules and Regulations or of Article V hereof, by a Unit Owner, requiring such Unit Owner to post a bond to secure adherence thereto, collection of fines may be enforced against the Unit Owner of Unit Owners involved as if the fines were Common Charges owed by the particular Unit Owner or Unit Owners.

- (o) Investing and reinvesting the Trust Property, or any part or parts thereof and from time to time and as often as they shall see fit to change investments, including power to invest 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; **[Page 9, Book 1167, Page 611■Page 10, Book 1167/612]**
- (p) Providing for payment by the Trust of real estate taxes becoming due and payable after the date of recording of the master deed which are assessed upon all of the land and/or improvements included within the Condominium, instead of upon individual Units and their proportionate interests in the common areas and facilities and levying, an equitable assessment of said tax payments among the individual Unit Owners;
- (q) Incurring such liabilities, obligations and expenses, and to 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 the Trust;
- (r) Determining as to all sums of money and other things of value received by them, whether and to what extent the same shall be deemed to be and shall be accounted for as principal or as income, and as to all charges or expenses paid by them, whether and to what extent the same shall be charged against principal or against income, including, without hereby limiting the generality of the foregoing, power to apportion any receipt or expense between principal and income, and power to determine what portion, if any, of the actual income received upon any asset purchased or acquired at a premium or any wasting investment shall be added to principal to prevent a diminution thereof upon the maturity of exhaustion of such asset or investment.
- (s) Entering and having such access into Units in the Condominium as shall be reasonably necessary to the performance and exercise of the duties, obligations, rights and powers of the Trustees hereunder;
- (t) Generally, in all matters not herein otherwise specified, controlling, managing and

disposing of the Trust Property as if the Trustees were the absolute owners thereof and doing any and all acts, including the execution of any instruments, which by their performance thereof shall be shown to be in their judgment for the best interest of the Unit Owners.

Section 5.2. Maintenance and Repair of Units; Trustee Access to Units. The Unit Owners shall be responsible for the proper maintenance, replacement of and repairs to their respective Units (other than to the Common Elements contained therein) as defined in the Master Deed including without limitation painting of interior surfaces of doors and window sashes. If the Trustees shall at any time in their reasonable judgment determine that any Unit is in such need of maintenance or repair that the market value of one or more other Units or any other part of the Property is being adversely affected or **[Page 10, Book 1167, Page 612■Page 11, Book 1167/613]** that the condition of any Unit or any fixtures, furnishings, facilities or equipment therein is hazardous to any Unit or the occupants thereof, the Trustees may in writing request the Unit Owner in question to perform the needed maintenance, repair or replacement or to correct the hazardous condition. In case such work shall not have been commenced with fifteen (15) days (or such reasonable shorter period in case of emergency as the Trustees shall determine) of such request and thereafter diligently completed, the Trustees shall be entitled to have the work performed for the account of such Unit Owner and to enter upon and have access to such Unit for that purpose. The cost of such work as is reasonably necessary therefor shall be charged to the Unit Owner thereof as if such charge were a Common Expense. The Trustees shall have a right of entry upon any Unit to make emergency repairs or other work reasonably necessary for the proper maintenance or operation of the Condominium whether the Unit Owner is present at the time or not.

Section 5.3. Maintenance, Replacement and Repair of Common Areas and Facilities and Assessment of Common Expenses thereof. The Trustees shall be responsible for arranging for the proper cleaning, replacement, maintenance and repair of the Common Areas and Facilities and may do so through the Manager, as hereinafter provided, or any other(s) who may be so designated by the Trustees. The Trustees may approve payment of vouchers for such work, and the expenses of such replacement, maintenance and repair shall be assessed to the Unit Owners as Common Expenses of the Condominium at such times and in such amounts as provided in Section 5.4 excepting 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.

Section 5.4. Common Expenses, Profits and Funds.

Section 5.4.1 Reserve Funds. The Unit Owners shall be liable for Common Expenses and entitled to common profits of the Condominium in proportion to their respective percentages of beneficial interest as set forth in Article IV hereof. The Trustees may at any time or times distribute common profits among the Unit Owners in such proportions as well. The Trustees shall set aside from regular monthly payments by Unit Owners common funds of the Condominium as reserve or contingent funds for maintenance, repair and replacement of the common elements and other purposes and may, to the extent consistent with these purposes, use the funds to set aside for reduction of indebtedness or other lawful capital purpose, or, subject to

the provisions of these By-Laws and subject to the provisions of Chapter 183A, Section 17 and 18, for repair, rebuilding or restoration of the Common Areas and Facilities or for improvements thereto, and the funds so set aside shall not be deemed to be common profits available for distribution. The reserve funds shall be accounted for in an appropriate manner. **[Page 11, Book 1167, Page 613■Page 12, Book 1167/614]**

Section 5.4.2. Determination of Common Expenses and Fixing of Common Charges.
Prior to the annual meeting, the Trustees shall prepare a budget for the Condominium by *(amended from "be" by First Amendment dated May 8, 1991)* estimating the Common Expenses expected to be incurred during such fiscal year together with a reasonable provision for contingencies and reserves as referred to above in Section 5.4.1, and after taking into account any undistributed common profits from prior years, shall determine the assessment to be made for such fiscal year (hereinafter "Common Expenses" or "Common Charges"). The Common Expenses shall include but in no way be limited to, all such amounts as the Trustees may deem proper for the operation and maintenance of the Property, including without limitation, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained pursuant to the provisions of this Declaration, costs assessed against the organization of Unit Owners associated with the maintenance and repair of the roads within the subdivision, an amount for working capital of the Condominium, for a general operating reserve, and an amount to make up for any deficit in the Common Expenses for any prior year. During such time that real estate taxes (including betterment assessments) are assessed against the real property described in the Master Deed as one (or more) tax parcels, but not as condominium units, the Trustees may collect and expend, in the same manner as Common Expenses, all amounts necessary to pay such real estate taxes and betterment assessments for common benefits. Each Unit shall be assessed for such real estate taxes in proportion to its Beneficial Interest in the common areas and facilities of the condominium. The Trustees may collect the funds for such real estate taxes in lump sums or installments, using such procedure, including installment payments in advance, as they in their sole discretion shall determine and they may charge any penalties for late payment imposed by the municipal authorities to the Unit(s) responsible therefor. The Common Expenses may also include such amounts as may be required for the purchase or lease by the Trustees, on behalf of all Unit Owners, pursuant to the terms of this Declaration of Trust, of any Unit which is to be sold at foreclosure or other judicial sale. The Trustees shall promptly render statements to the Unit Owners (including a copy) for their respective shares of such assessment, according to their percentages of beneficial interest in the Common Areas and Facilities, and the amount shown on such statement shall, unless otherwise provided therein, be due and payable within thirty (30) days after the same is rendered. In the event an annual assessment is not made as above required, an assessment shall be presumed to have been made in the amount of the last prior assessment. In the event that the Trustees shall determine at any time during any fiscal year that the assessment so made is less than the Common Expenses actually incurred, or in the reasonable opinion of the Trustees, likely to be incurred, or the event that the Trustees shall determine that it is advisable to establish a larger reserve or other fund for projected capital or other **[Page 12, Book 1167, Page 614■Page 13, Book 1167/615]** expenditures or otherwise, the Trustees may make one or more supplemental assessments and render such statements as they may deem necessary therefor in the manner aforesaid, and the amount shown in such statements shall be payable and take effect as aforesaid.

Section 5.4.3. Payment and Collection of Common Charges. The Trustees shall, so far as reasonably possible, provide for payments of the Common Expenses in advance in monthly, substantially equal, installments. The amount of each such statement, together with interest on that amount of each such amount is not paid when due (at a rate equal to the Base Rate at the First National Bank of Boston or its successor's large business prime rate, in effect at the time of said statement, for short-term loans to large businesses with the highest credit standing, and in the absence of such prime rate, at a rate equal to 18% per annum) but in no event higher than the highest interest rate allowable by laws in the Commonwealth of Massachusetts shall constitute a lien on the Unit of the Unit Owner assessed, all pursuant to provisions of Chapter 183A, Section 6. The Trustees shall take prompt action to collect any common Expenses due from any Unit Owner which remains unpaid for more than thirty (30) days from the due date for payment thereof. The Trustees shall have the right to institute all proceedings deemed necessary or desirable by the Trustee, to recover such unpaid Common Expenses.

Section 5.4.4. Payment of Common Charges Subsequent to Transfer. No Unit Owner shall be liable for the payment of any part of the Common Charges assessed against his Unit subsequent to a sale, transfer or other conveyance by him of such Unit. In addition, any Unit Owner may, subject to the terms and conditions specified in these By-Laws, provided that his Unit is free and clear of liens and encumbrances other than the statutory lien for unpaid Common Charges, convey his Unit to the Trustees and in such event be exempt Common Charges thereafter assessed. A purchaser of a Unit shall not be liable for the payment of Common Charges assessed and unpaid against such Unit prior to the acquisition by him of such Unit, unless such purchaser has agreed to assume the obligation. A purchaser of a Unit at the foreclosure sale of such Unit or any first mortgagee who comes into possession of the Unit pursuant to the remedies provided in the mortgage, foreclosures of the mortgage or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrue prior to the time such holder comes into possession of the Unit.

Section 5.4.5. Default in Payment of Common Charges. In the event of default by any Unit Owner in paying to the Trustees the Common Charges, such Unit Owner shall be obligated to pay all expenses, including attorneys' fees, incurred by the Trustees in any proceeding brought to collect such unpaid Common Charges. The Trustees shall have the right and duty to **[Page 13, Book 1167, Page 615■Page 14, Book 1167/616]** attempt to recover such Common Charges, together with interest thereon, and the expenses of the proceeding, including attorneys' fees, in an action to recover the same brought against such Unit Owner, or by foreclosure of the lien on such Unit as provided in Section 6 of Chapter 183A.

After a successful action brought by the Trustees to foreclose a lien on a Unit because of unpaid Common Charges, a Unit Owner allowed by the Trustees to remain in his Unit for a period of time may, at the option of the Trustees, be required to pay a reasonable rental for the use of his Unit. The plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Trustees acting on behalf of all Unit Owners, shall have power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage (but not to vote the votes appurtenant thereto), convey or otherwise deal with the same. A suit to recover a money judgment for unpaid Common Charges shall be maintainable without foreclosing or

waiving the lien securing the same.

Section 5.4.6. Application of Common Funds. The Trustees shall expend common funds only for Common Expenses and other purposes permitted hereby and by the provisions of Chapter 183A.

Section 5.4.7. Certificate of Unpaid Common Expenses. The Trustees shall promptly provide any Unit Owner and potential purchaser of a Unit so requesting the same in writing, with a written statement in recordable form of all unpaid Common Charges due from such Unit Owner.

Section 5.5. Rebuilding, Restoration and Condemnation.

Section 5.5.1. Casualty Loss. In the event of damage to or destruction of the Common Areas and Facilities of the Condominium as a result of fire or any other casualty, the Trustee 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, or in the event of damage to or destruction to one or more Units in the Condominium as a result of fire or other casualty, whether or not the Common Areas and Facilities have been damaged or destroyed, the Insurance Trustees designated herein below shall promptly adjust and collect the loss, arrange for the prompt repair or restoration of the same, and disburse the proceeds of all insurance policies in payment of all costs and expenses actually incurred in connection with such repair or restoration in appropriate progress payments and with appropriate retainage. All insurance proceeds paid to the Trustees on account of any casualty shall be dedicated solely to the repair or restoration of the loss, and any application of such proceeds by the Trustees on account thereof, shall be **[Page 14, Book 1167, Page 616■Page 15, Book 1167/617]** prior to the application of such proceeds for any other purpose.

The cost of all repairs and restoration shall be a Common Expense. In the event that the total cost of repair or restoration as estimated on the basis of an independent appraisal or estimate, or as determined during the course of repair or restoration, exceeds the total sum of available insurance proceeds and any available common funds, then the Insurance Trustees shall assess, levy or charge all Unit Owners, as a Common Expense in accordance with their Beneficial Interest, the amount estimated or actually required to repair or restore the Common Areas and facilities and any such damaged Units (including any permanent improvements made by the Unit Owners but excluding any wall, ceiling or floor covering or decorations, drapes, furniture, furnishing, equipment or other personal property of the Unit Owners). Provided, however, that to the extent such cost of repair and restoration of the damages Unit(s) in excess of insurance proceeds is the result of a lack of insurance coverage caused by the failure of a Unit Owner to promptly and accurately report any and all improvements made by him to his Unit pursuant to the provisions of Section 5.12.11, the excess cost resulting from such failure shall be borne solely by the Unit Owner so failing to report the same. The extent to which the cost in excess of the insurance proceeds is attributable to such Unit Owner's failure to report improvements shall be as determined by the Trustees in their reasonable discretion.

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

If there shall have been a repair or restoration pursuant to the foregoing and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds, if any, shall be added to the Condominium's reserve fund or shall be, at the option of the Trustees, divided among the Unit Owners in proportion to their respective Beneficial Interest in the Common Areas and facilities; provided, however, that no provision herein shall be deemed to give a Unit Owner or any other party priority over any rights of the holder of a first mortgage (if any) on such Unit Owner's Unit pursuant to such mortgage in the case of a distribution to such Unit Owner of insurance proceeds for losses to Units and/or Common Elements. Mortgagees of Units will be entitled to priority with respect to any insurance proceeds distributed to their mortgagors.

Notwithstanding the foregoing, if such loss to the Condominium as so determined exceeds ten (10%) percent of the value of the Condominium, the Trustees shall forthwith submit **[Page 15, Book 1167, Page 617■Page 16, Book 1167/618]** to all Unit Owners a form of Agreement (which may be in several counterparts) (the "Restoration Agreement") by the Unit Owners authorizing the Trustees to proceed with the necessary repair, rebuilding or restoration. Upon receipt by the Trustees of the Restoration Agreement signed by Unit Owners holding at least seventy-five (75%) percent of the Beneficial Interest, the Trustees shall proceed with the necessary repairs, rebuilding and restoration. The cost of all repairs, rebuilding and restoration shall be a Common Expense and the excess of such cost over any available insurance proceeds and available common funds shall be assessed to the Unit Owners as provided above in accordance with their Beneficial Interest. Provided, however, if such excess cost exceeds ten (10%) percent of the value of the Condominium prior to the casualty, any Unit Owner who did not so agree to repair or restore may apply to the Superior Court on such notice to the Trustees as the Superior Court shall direct, for an order directing the purchase of his Unit by the Trustees at the fair market value thereof as approved by the Superior Court. The cost of any such purchase shall be a Common Expense.

If within one hundred twenty (120) days of the date of such loss, Unit Owners entitled to at least seventy-five (75%) percent of the Beneficial Interest (other than the Grantor) do not agree to proceed with repair or restoration (by executing the Restoration Agreement and timely returning the same to the Trustees), a Unit Owner's proportionate share of the insurance proceeds with respect to the Common Areas and Facilities, together with the portion of the insurance proceeds allocated to any Units as a result of a loss to such Unit due to the casualty shall, to the extent permitted by law, be paid first to the holder of the first mortgage of such Unit, if any, up to, but not in excess of, the then principal balance secured thereby and any accrued interest and other charges then due the holder of the first mortgage, and thereafter to the Unit Owners, and if first mortgagees, of which the Trustees have received notice, holding mortgages on Units having at least 51% of the Beneficial Interest approve a suit for partition then the Condominium shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of a partition sale together with common funds of the Trust (adjusted for insurance

proceeds paid or payable to mortgagees as aforesaid) shall be divided all as provided by law, distribution thereof with respect to the amounts due a Unit Owner shall be made first to the holders of the first mortgages on Units, if any, to the extent of the amounts respectively secured thereby, and thereafter to the Unit Owners. Upon such sale, the Condominium shall be deemed removed from the provisions of Chapter 183A.

Notwithstanding anything to the contrary contained in this Section 5.5.1, in the event that any Unit Owner shall dissent from any determination of the Trustees with respect to the **[Page 16, Book 1167, Page 618■Page 17, Book 1167/619]** value of the Condominium or any other determination or action of the Trustees under this Section 5.5.1 by notice in writing to the Trustees within ten days after such determination or action, and such dispute shall not have been resolved within thirty (30) days after such notice, then either the Trustees or the dissenting Unit Owner may submit the matter to arbitration, and for that purpose, one arbitrator shall be designated by the Trustees, one by the dissenting Unit Owner and a third by the two arbitrators so designated, and such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

Notwithstanding anything to the contrary contained in the preceding paragraphs of this Section 5.5.1, the Trustees shall not, in any event, be obliged to proceed with any repair or restoration unless and until they have received funds in an amount equal to the estimate of the Trustees of all costs.

Section 5.5.2. Eminent Domain. If more than ten percent (10%) of the Condominium is taken under any power of eminent domain, the taking shall be treated as a "casualty loss", and the provisions of Section 17 of Chapter 183A of Massachusetts General Laws shall apply. Where one or more Units have been substantially altered or rendered uninhabitable as a result of a partial taking, and the Unit Owners vote to restore and continue the Condominium pursuant to the provisions of Section 17 of said Chapter 183A, the Trustees shall have the authority to acquire the remaining portions of such Units, for such price as the Trustees shall determine, provided that any Unit Owner of such remaining portion who does not agree with such determination may apply to the Superior Court on such notice to the Trustees as the Court shall direct, for an order directing the purchase of such remaining portion at the fair market value thereof as approved by the Court. Where as a result of a partial taking any Unit is decreased in size or where the number of Units is decreased by a partial taking, then the Trustees may make such provision for realignment of the percentage interests in the Common areas and facilities as shall be just and equitable subject to the provisions of the Master Deed with respect to approval by First Mortgagees.

In the event of a total or partial taking under the powers of eminent domain, the Unit Owners shall be represented by the Condominium acting through the Trustees. In the event of a partial taking, the award shall be allocated among the affected Units according to their appurtenant Beneficial Interest, and paid first to the extent permitted by law, to the holder(s) of the first mortgage. 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 allocated among the Units according to their appurtenant Beneficial Interest, and paid first to the extent permitted by law, to the holder(s) of the first mortgage of such Unit(s), if any, up to, but not in **[Page 17, Book 1167,**

Page 619■Page 18, Book 1167/620] excess of, the then principal balance secured hereby and any accrued interest and other charges then due the holder(s) of the first mortgage. As to any portion or portions of any award which are attributable to direct or consequential damages suffered by particular Units, they shall be payable to the owners of such particular Units and their mortgagees, as their interests may appear.

Section 5.5.3. Retention of Architect. Whenever the estimated cost, as determined by the Trustees, of repair or restoration exceeds as to any one casualty or occurrence, 10% of the value of the Condominium or 25% of the value with respect to any one Unit, then the Trustees shall retain a registered architect or registered engineer, who shall not be directly or indirectly a Unit Owner or an employee or agent of any Unit Owner or a Trustee or an employee or agent of any Trustee, to supervise the work of repair or restoration, and no sums shall be paid by the Trustees on account of such repair or restoration except upon certification to 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, 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.

Section 5.6. Improvements to Units

Section 5.6.1. Permission of Trustees. No Unit Owner shall make any addition, alteration or improvement in or to his Unit or to any portion of the Common Areas and Facilities to which he has the exclusive use, which may affect the appearance, structure or mechanical systems of the Condominium without the prior written consent thereto of the Trustees (including without limitation all load bearing walls and knee walls in lofts). The Trustees shall have the obligation to answer any written request by a Unit Owner for approval of a proposed structural addition, alteration or improvement within thirty (30) days after receipt of the request, and failure to do so within this time period shall constitute a consent by the Trustees.

As to any request for approval pursuant to this Section the Trustees may engage, if they so choose, an architect or engineer or both, if necessary, to review the plans to be attached to said request, and such architect or engineer's fees shall be paid by the requesting Unit Owner. If the said engineer and/or architect determine that the plans are consistent with the structural integrity and/or design character, as relevant to the particular request, of the Condominium, the Trustee may then, in their sole discretion, **[Page 18, Book 1167, Page 620■Page 19, Book 1167/621]** approve or disapprove said plans, or approve them subject to certain conditions including restrictions in the manner of performing such work and requirements.

All additions, alterations or improvements to any Unit (whether or not affecting the structural or mechanical systems of the Condominium) shall be performed in compliance with all applicable laws, regulations and codes, and when required thereby, by licensed contractors and shall be completed in a good and workmanlike manner. Each Unit Owner and his contractors shall cooperate with the Trustees and other Unit Owners so as not to unduly inconvenience or disturb the occupants of the Condominium. Notwithstanding the provisions of Section 5.5.1, the

cost, in excess of available insurance proceeds, of repairing or restoring any damage to the Common Areas and Facilities or to any Unit which is caused by any work being performed by or for a Unit Owner shall be charged solely to such Unit Owner.

Section 5.6.2. Building Permit. Any application to any department of the City of Pittsfield or to any other governmental authority for a permit to make an addition, alteration or improvement in or to any Unit shall be executed by the Trustees without, however, incurring any liability on the part of the Trustees or any of them to any contractor, subcontractor or materialman or any other person on account of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom.

Section 5.6.3. Notification to Trustees of Value. If the Trustees approve any said request as provided hereinabove or if the Unit Owner makes any addition, alteration or improvement not requiring the consent of the Trustees, the Unit Owner shall promptly notify the Trustees of the insurable value of said improvement pursuant to the provisions of Section 5.12.11 hereof. Such notice shall state in reasonable detail the nature of the improvements and the value thereof. Each Unit Owner shall, upon request by the Trustees, also submit to the Trustees such further information relating to said improvements as the Trustees shall reasonably require.

Section 5.7. Improvements to Common Areas and Facilities. If and whenever the Trustees shall propose to make any improvement to the Common Areas and Facilities or shall be requested in writing by Unit Owners holding at least twenty-five (25%) percent of the Beneficial Interest to make any such improvements, the Trustees shall submit to all the Unit Owners a form of agreement (which may be in several counterparts) (the "Improvement Agreement") specifying the improvement or improvements proposed to be made and the estimated cost thereof, and authorizing the Trustees to proceed to make the same. Upon the receipt by the Trustees of such Improvement Agreement approved by Unit Owners holding at least **[Page 19, Book 1167, Page 621■Page 29, Book 1167/622]** seventy-five (75%) percent of the Beneficial Interest or the expiration of ninety (90) days after such agreement was first submitted to the Unit Owners, whichever of said events shall first occur, the Trustees shall notify all the Unit Owners of the aggregate percentage of Beneficial Interest held by Unit Owners who have then approved such Improvement Agreement. If such percentage is equal to or exceeds seventy-five (75%) percent, the Trustees shall proceed to make the improvement or improvements specified in such agreement and, in accordance with Section 18 of Chapter 183A, shall charge the cost of such improvement to all Unit Owners as a Common Expense in accordance with their Beneficial Interest. Provided, however, that if the Trustees shall determine in their reasonable discretion that the cost of such improvement exceeds ten (10%) percent of the then value of the Condominium, any Unit Owner who did not so agree to proceed may apply to the Superior Court, on such notice to the Trustees as the Superior Court shall direct, for an order directing the purchase of his Unit by the Trustees at the fair market value thereof as approved by the Court. The cost of any such purchase shall be a Common Expense. If Unit Owners holding more than fifty (50%) percent but less than seventy-five (75%) percent of the Beneficial Interest so approve, the Trustees shall proceed to make such improvement or improvements and shall charge the same solely to the Unit Owners so approving.

Notwithstanding anything to the contrary contained in the preceding paragraph, (a) in the

event that any Unit Owner or Owners shall dissent from any determination of the Trustees with respect to the value of the Condominium or any other determination or action of the Trustees under this Section 5.7 by notice in writing to the Trustees within ten days after such determination or action, and such dispute shall not be resolved within thirty days after such notice, then either the Trustees or the dissenting Unit Owner or Owners may submit the matter to arbitration, and for that purpose one arbitrator shall be designated by the Trustees, one shall be designated by the dissenting Unit Owner or Owners and a third shall be designated by the two arbitrators so designated, and such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association and (b) the Trustees shall not in any event be obligated to proceed with any improvement unless and until they have received funds in an amount equal to the estimate of the Trustees of all costs thereof.

Section 5.8. Unit Owners. For the purposes of these By-Laws and this Trust instrument, whenever it is herein stated that the approval, agreement, consent or request of a certain percent of the Unit Owners is required it shall mean the owners of that percentage in the aggregate in interest of the Beneficial Interest hereunder as set forth in Chapter 183A, Section 1. [Page 20, Book 1167, Page 622■Page 21, Book 1167/623]

Section 5.9. Pets. Dogs, cats and other animals may not be kept in any Unit without the prior written approval of the Trustees pursuant to the Rules and Regulations. If any pet is permitted by the Trustees, such pet or pets shall not be kept in any Unit in such number or of such type or under any circumstances as to be noisome or offensive to the other Unit Owners. The Trustees may, in their sole discretion exercised in such manner as they may determine, upon complaint made by any Unit Owner as to the noisomeness or offensiveness of any pet, order that such pet may not be kept in a Unit notwithstanding any prior permission to maintain such pet.

Section 5.10. Rules, Regulations, Restrictions and Requirements. The use of the Condominium and each Unit Owner's Unit shall be restricted to and shall be in accordance with the provisions of said Master Deed, this Trust (including By-Laws and such administrative rules and regulations as the Trustees may adopt pursuant to this Trust), and all applicable laws, zoning ordinances, rules, regulations and requirements of all governmental bodies having jurisdiction over the Condominium or the use and occupancy thereof. The Trustees may eliminate any violation of any such provisions and the cost and expense of eliminating same shall constitute a Common Expense; except, however, that if a violation is caused in whole or in part by any Unit Owner, his family, servants, employees, agents, visitors, lessees, or licensees, the cost and expense of eliminating such violation, or such portion of such cost and expense as the Trustees may determine, shall be charged to the Unit of such Unit Owner, and shall constitute a portion of such Unit Owner's Common Expenses which shall be payable by the Unit Owner of such Unit upon demand and until same is paid by such Unit Owner, shall constitute a lien against such Unit pursuant to the provisions of this paragraph and section 6 of said Chapter 183A.

The Trustees shall have the right (which shall not be delegated) at any time and from time to time to adopt, amend and rescind reasonable administrative rules and regulations and rescind reasonable administrative rules and regulations governing the operation, appearance and use of the Units and the Common Areas and Facilities including without limitation Common Areas and Facilities the exclusive use of which is for one or more Units (the "Rules and Regulations");

provided, however, that any such Rules and Regulations shall not be promulgated and/or amended which will materially adversely affect the holder of any first mortgage of which the Trustees have received notice without the written consent of such holder. All Rules and Regulations are incorporated herein by reference. A vote of a Majority of Unit Owners at any annual or special meeting may overrule and declare void any Rules and Regulations adopted by the Trustees subject to the same Regulations adopted by the Trustees subject to the same restrictions as set forth in Section 7.1 with respect to any Amendments to this Declaration. Any such Rules and Regulations shall be consistent with provisions of the Master Deed and this Declaration of Trust. Copies of such Rules and Regulations and **[Page 21, Book 1167, Page 623■Page 22, Book 1167/624]** any amendments or changes thereto shall be furnished by the Trustees to each Unit Owner.

The Rules and Regulations, as from time to time amended, shall be enforced by the Trustees. The Trustees may eliminate any violation of any such rules and regulations and the cost and expense of eliminating same shall be chargeable to the Unit Owner who himself or whose family, servants, employees, agents, visitors, lessees, licensees, or pets are responsible for such Common Expenses which shall be payable by the Unit Owner of such Unit upon demand and until same is paid shall constitute a lien against such Unit pursuant to the provisions of this paragraph and Section 6 of said Chapter 183A. The Trustees may also levy reasonable fines against such Unit Owner for such violations and such fine shall constitute a portion of such Unit Owner's Common Expenses which shall be payable by the Unit Owner of such Unit upon demand and until same is paid by such Unit Owner shall constitute a lien against such Unit pursuant to the provisions of this paragraph and Section 6 of said Chapter 183A. For each day a violation continues after notice it shall be considered a separate violation. In the case of persistent violation of the rules and regulations by a Unit Owner, the Trustee shall have the power to require such Unit Owner to post a bond to secure adherence to the Rules and Regulations. All Rules and Regulations shall contain such restrictions and requirements respecting the use and maintenance of the Units and the use of the Common Areas and Facilities to prevent unreasonable interference with the use by Unit Owners of their Units and the Common Areas and Facilities.

Section 5.11. Manager. The Trustees may hire or appoint a Manager or Managing Agent to administer the Condominium who shall perform such duties in the administration, 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. However, notwithstanding the appointment of such a Manager, the Trustees shall retain ultimate control over the administration, management and operation of the Condominium. The Trustees or such Manager may appoint, employ and remove such additional agents, attorneys, accountants, or employees as the Trustees or such Manager may from time to time determine. Any agreement for professional management of the Condominium shall be terminable without cause and without incurring payment of a termination fee on thirty (30) days (or less) written notice. The term of such agreement shall not exceed three (3) years and may not be terminated by the Trustees without the prior written consent of Unit Owners holding at least 67% of the Beneficial Interest and first mortgagees of Units holding at least 51% of the Beneficial Interest. **[Page 22, Book 1167, Page 624■Page 23, Book 1167/625]**

Section 5.12. Insurance.

[NEW added by Amendment dated December 10, 1996; Book 1541, Page 974:]

Section 5.12.1. Casualty Insurance. The Trustees shall obtain and maintain, to the extent obtainable, and permitted by applicable law, so-called master policies of insurance providing fire-with-extended and all risk coverage insurance, insuring the Condominium, including, without limitation, the Common Areas and Facilities, all heating and cooling equipment and other service machinery, apparatus, equipment and installations comprised in the Common Areas and Facilities. The Trustees may in their sole discretion obtain and maintain, to the extent obtainable, and permitted by applicable law, so-called master policies of insurance providing fire-with-extended and all risk coverage insurance, insuring the Units with fixtures, additions, alterations and improvements thereof, and also such portions and elements of the Units as are for insurance purposes normally deemed to constitute part of the buildings and customarily covered by such insurance, but not including any furniture, furnishings, household and personal property belonging to and owned by individual Unit Owners. Such insurance shall be in an amount equal to not less than one hundred percent (100%) of the full replacement value thereof (as determined by the Trustees not less frequently than on an annual basis) without deduction for depreciation and shall include, if available, so-called Agreed Amount, Inflation Guard, Construction Code and Replacement Cost Endorsements. The Trustees may purchase a so-called "blanket" policy covering the building if they deem it advisable. In determining full replacement value, the Trustees may reasonably rely upon the advice of the insurer or their insurance agent. The name of the insured under each required policy must be stated in form and substance similar to the following: "Trustees of The Lakecrest Condominium Trust for use and benefit of the individual unit owners". Such insurance shall contain the standard mortgagee clause and shall name the Trustees as Insurance Trustees for the use and benefit of all Unit Owners of The Lakecrest Condominium and their mortgagees as their interest may appear, with loss payable to and adjusted by the Trustees as Insurance Trustees in accordance with the provisions of these By-Laws.

The Trustees shall insure against such other hazards or risks as the Trustees from time to time in their discretion shall determine to be appropriate, including, but not limited to, vandalism, malicious mischief, windstorm and water damage, and machinery explosion or damage. The cost of all insurance obtained and maintained by the Trustees pursuant to the provisions of this Declaration of Trust shall be a Common Expense.

~~[OLD: Section 5.12.1. Casualty Insurance. The Trustees shall obtain and maintain, to the extent obtainable, and permitted by applicable law, so-called master policies of insurance providing fire-with-extended and all risk coverage insurance, insuring the Condominium, including, without limitation, the Common Areas and Facilities, all of the Units with all fixtures, additions, alterations and improvements thereof, all heating and cooling equipment and other service machinery, apparatus, equipment and installations comprised in the Common Areas and Facilities, and also all such portions and elements of the Units as are for insurance purposes normally deemed to constitute part of the buildings and customarily covered by such insurance,~~

~~but not including any furniture, furnishings, household and personal property belonging to and owned by individual Unit Owners, in an amount equal to not less than one hundred percent (100%) of the full replacement value thereof (as determined by the Trustees not less frequently than on an annual basis) without deduction for depreciation and shall include, if available, so-called Agreed Amount, Inflation Guard, Construction Code and Replacement Cost Endorsements. The Trustees may purchase a so-called "blanket" policy covering the building if they deem it advisable. In determining full replacement value, the Trustees may reasonably rely upon the advice of the insurer or their insurance agent. The name of the insured under each required policy must be stated in form and substance similar to the following: "Trustees of The Lakecrest Condominium Trust for use and benefit of the individual unit owners". Such insurance shall contain the standard mortgagee clause and shall name the Trustees as Insurance Trustees for the use and benefit of all Unit Owners of The Lakecrest Condominium and their mortgagees as their interest may appear, with loss payable to and adjusted by the Trustees as Insurance Trustees in accordance with the provisions of these By-Laws.]~~

~~[The Trustees shall insure against such other hazards or risks as the Trustees from time to time in their discretion shall determine to be appropriate, including, but not limited to, vandalism, malicious mischief, windstorm and water damage, and machinery explosion or damage. The cost of all insurance obtained and maintained by the Trustees pursuant to the provisions of this Declaration of Trust shall be a Common Expense.]~~

Section 5.12.2 (amended from "5.12.1" by First Amendment dated May 8, 1991) Terms and Conditions of Policies. Policies for such casualty insurance shall provide: (i) that the insurance company waive any right of subrogation against the Trustees, their agents and employees, Unit Owners, their respective employees, agents, tenants and guests; (ii) that the insurance shall not be prejudiced by any act or neglect of any Unit Owners or occupants or any other person or firm (including employees and agents of the Trustees) when such act [**Page 23, Book 1167, Page 625**■**Page 24, Book 1167/626**] or neglect is not within the control of the Trustees (or Unit Owners collectively) or by failure of the Trustees (or Unit Owners collectively) to comply with any warranty or condition with regard to any portion of the premises over which the Trustees (or Unit Owners collectively), have not control; (iii) that such policies may not be cancelled or substantially modified without at least twenty (20) days' prior written notice to all Unit Owners and mortgagees of Units to whom certificates of insurance have been issued; (iv) that recovery thereunder shall not be affected on account of the availability of proceeds under any policies obtained by individual Unit Owners covering their own Units; and (v) if available, that the company shall waive any right it may have under the policy to repair or restore damage should the Unit Owners elect to terminate the Condominium because of such damage.

Such insurance may provide for a reasonable deductible amount from the coverage thereof, as determined by the Trustees in their reasonable discretion, subject to the maximum allowable amounts established by FNMA and FHLMC, if applicable. In the event of any loss which relates solely to the Common Areas and Facilities, such deductible amount may be assessed to all Unit Owners as a special assessment of common expenses hereunder. 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, the Trustees may assess to the Unit Owner of such Unit, 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 such Unit improvements and the amount of the loss related to the Common Areas and Facilities. Unit Owners shall be liable for such special assessments in addition to their respective shares of the Common Expenses, and until such charges are paid by such Unit Owners, the same shall constitute a lien against their Units pursuant to the provisions of Section 6 of said Chapter 183A.

Section 5.12.3. Certificates of Insurance. Certificates of insurance with proper mortgagee endorsements, when requested, shall be issued to each Unit Owner. The certificates of insurance shall show the amount of insurance covering the Unit and its interest in the Common Areas and Facilities.

Section 5.12.4. Insurance Appraisal. Unless waived by unanimous vote of all Trustees then in *(amended from "if" by First Amendment dated May 8, 1991)* office, the Trustees shall obtain at least annually an independent insurance company appraisal of the full replacement value of the property to be insured in accordance with the foregoing provisions of this Section, without deduction for depreciation, for the purpose of this Section, without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section, and the amount of such insurance shall in no event be less than the full replacement value as so determined. If the Trustees in their discretion deem it necessary, they **[Page 24, Book 1167, Page 626■Page 25, Book 1167/627]** shall upon notification of improvements to be made to a Unit by a Unit Owner increase the insurance coverage afforded by said master policy.

Section 5.12.5. Notification of Mortgagees. Subject to the provisions hereof, insurance proceeds received by the Insurance Trustees shall be held in trust in an identified and segregated fund for the benefit of the Unit Owners and their mortgagees. The Trustees, on behalf of the organization of Unit Owners, shall give written notice to all mortgagees of which the Trust has received notice, of any loss to, or taking of, the Common Areas and Facilities if such loss or taking exceeds \$10,000, and in addition, if the loss or taking to any Unit exceeds \$1,000, then the Trustees shall give written notice of such loss or taking to such mortgagees listed as holding mortgages on that Unit.

Section 5.12.6. Liability Insurance. The Trustees shall obtain and maintain, to the extent obtainable master policies of insurance with respect to the Common Areas and Facilities for the benefit and protection of the Trustees and all Unit Owners for: (i) comprehensive public liability insurance in such limits as the Trustees may, from time to time, determine but in no case less than \$1,000,000/\$1,000,000 in coverage, covering the Trust, the Trustees, the Manager and each Unit Owner with respect to liability arising out of ownership, maintenance or repair of those portions of the Condominium not reserved for exclusive use by the Owner or Owners of a single Unit, such insurance to provide for waiver of cross claims by the co-insureds, such insurance policy shall also contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Condominium Unit Owner because of negligent acts of the condominium association of owners, the Trustees or other Unit Owners; (ii) workmen's compensation and employee's liability insurance with respect to any Manager, agent or employee of the Condominium but excluding any independent agent or Manager, and (iii) such other insurance as the Trustees may from time to time deem to be desirable or appropriate, including, without limitation, fiduciary liability insurance.

[NEW added by Amendment dated December 10, 1996; Book 1541, Page 974:]

Section 5.12.7 Unit Owners' Insurance. Unit Owners shall obtain and carry property and casualty insurance for their own benefit in the minimum amount of \$10,000.00 insuring their carpeting or other floor coverings, furniture, furnishings, walls, wall coverings, doors, windows and other property, additions or improvements located within or serving and controlled by their respective Units or which is part of the Unit as defined in paragraph 4 of the Master Deed recorded in the Berkshire Middle District Registry of Deeds in Book 1167, Page 565; 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 Unit Owners' Insurance. Notwithstanding the provisions of Section 5.12.1 above, such Unit Owners' Insurance shall constitute the primary coverage for property or casualty damage to the Units and all property, additions or improvements as defined in the first sentence of this Section 5.12.7, and any coverage maintained by the Trust under said Section 5.12.1 shall be secondary to the Unit Owners' Insurance required hereby. Except as provided herein, no such Unit Owners' Insurance policy shall be written so as to decrease the coverage under any of the policies obtained by the Trustees pursuant to Section 5.12.1 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 hereof as if produced by such coverage. Copies of all such policies (except policies covering only personal property owned or supplied by individual Unit Owners) shall be filed with the Trustees. If any improvements to a Unit causes any increase in the premium of the insurance carried by the Trustees pursuant to Section 5.12.1, such increase shall be paid as a common expense by the Owner of the Unit making said improvement.

~~[OLD Section 5.12.7. Unit Owners' Insurance. Unit Owners shall carry insurance for their own benefit insuring their carpeting or other floor coverings, furniture, furnishings and other property located within their respective Units; 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 any Unit Owner.]~~

Section 5.12.8. Fidelity Coverage. The Trustees shall obtain fidelity coverage against dishonest acts on the part of the Manager, Trustees, employees or volunteers responsible for **[Page 25, Book 1167, Page 627■Page 26, Book 1167/628]** handling funds belonging to or administered by the Trustees. The fidelity bond or insurance shall name The Lakecrest Condominium Trust as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The premiums for such coverage shall be a Common Expense of the Condominium and any such insurance or bond may not be cancelled or substantially modified without at least twenty (20) days prior written notice to all Unit Owners and mortgagees of such Unit.

Section 5.12.9. FHLMC and FNMA Insurance Requirements. If FHLMC or FNMA holds any interest in one or more mortgages on Units of which the Trustees have received notice, the trustees shall obtain and maintain to the extent obtainable such other insurance as may be required from time to time by whichever of FHLMC or FNMA holds such interest. All such policies shall provide that adjustment or loss shall be made by Trustees, and if FHLMA or FNMA holds any interest in one or more mortgages on Units, all such policies shall be in such amounts and contain such terms as may be required from time to time by whichever of FHLMC or FNMA holds such interest.

Section 5.12.10. Authorized Insurance Representative. Notwithstanding any of the foregoing provisions and requirements to the contrary relating to physical damage or liability insurance, there may be named as an insured, on behalf of the Trustees, the Trustees' authorized representative, including any trustee with whom such Trustees may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such physical damage or public liability insurance. Each Unit Owner appoints the Trustees, 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 without limitation the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Trustees or any Insurance Trustee shall receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Unit Owners and their first mortgage holders of record, as their interests may appear.

[NEW added by Amendment dated December 10, 1996; Book 1541, Page 974:]

Section 5.12.11. Notification to Trustees of Improvements. Each Unit Owner shall notify the Trustees in writing of all improvements to his or her Unit (except personal property other than fixtures) which exceed a total value of One Thousand (\$1,000.00) Dollars within twenty (20) days after the commencement of construction of such improvements, and upon receipt of such notice, the Trustees, provided the Trustees have elected to obtain and maintain insurance insuring the Units as provided in the second sentence of Section 5.12.1, as amended, shall notify the insurer under any policy obtained pursuant to this Section of any such improvements and shall purchase additional insurance in such amounts as required by Section 5.12.1 and any premium increase caused by such improvements may be assessed to the Owner of the improved Unit as a Common Expense. No Unit Owner shall be entitled to receive insurance proceeds for the repair, replacement or restoration of any such improvements not so reported to the Trustees, unless otherwise consented to by unanimous vote of the Trustees.

~~[OLD: Section 5.12.11. Notification to Trustees of Improvements. Each Unit Owner shall notify the Trustees in writing of all improvements to his or her Unit (except personal property other than fixtures) which exceed a total value of One Thousand (\$1,000.00) Dollars within twenty (20) days after the [Page 26, Book 1167, Page 628]■[Page 27, Book 1167/629] commencement of construction of such improvements, and upon receipt of such notice, the Trustees shall notify the insurer under any policy obtained pursuant to this Section of any such~~

~~improvements and shall purchase additional insurance in such amounts as required by Section 5.12.1 and any premium increase caused by such improvements may be assessed to the Owner of the improved Unit as a Common Expense. No Unit Owner shall be entitled to receive insurance proceeds for the repair, replacement or restoration of any such improvements not so reported to the Trustees, unless otherwise consented to by unanimous vote of the Trustees.]~~

Section 5.12.12. Director's and Officer's Liability Insurance. The Trustees shall obtain to the extent available directors and officers liability coverage in such amounts and in such form as they deem advisable. The premiums for such coverage shall be a Common Expense of the Condominium.

Section 5.13. Meetings

Section 5.13.1. Unit Owners Meeting; Quorum. There shall be an annual meeting of Unit Owners on the first Tuesday of July at 7:30 p.m. at the Condominium or at such other reasonable place and time as may be designated by the Trustees (not more than thirty (30) days before or after said date) (the "Annual Meeting"). If that day is a legal holiday, the meeting shall be held on the next succeeding day. The Trustees shall give written notice thereof to the Unit Owners at least fourteen (14) days prior to said date. At the Annual Meeting the Trustees shall submit reports of the management and finances of the Condominium. Special meetings (including a meeting in lieu of a passed annual meeting) of the Unit Owners may be called at any time by the Trustees and shall be called by them upon the written request of Unit owners holding more than twenty-five (25%) percent of the Beneficial Interest hereunder ("Special Meeting"). Written notice of any such special meeting designating the place, day and hour thereof shall be given by the Trustees to the Unit Owners at least fourteen (14) days prior to the date so designated. The Trustees shall give written notice of all Annual Meetings and Special Meetings to the holders of first mortgages who request in writing such notice. Whenever at any meeting the Trustees propose 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 so state and reasonably specify such matter. Each Unit Owner, or a person designated by such Unit Owner to act as proxy on his behalf and who need not be a Unit Owner, shall be entitled to cast the votes appurtenant to his Unit at all meetings of Unit Owners which votes shall be the equivalent of such Unit Owners' percentage of Beneficial Interest hereunder. The designation of any such proxy shall be made in writing to the Trustees and shall be revocable at any time prior to the meeting at which it is to be used by written notice to the Trustees by the Unit **[Page 27, Book 1167, Page 629■Page 28, Book 1167/630]** Owner so designating. The vote of a Majority of Unit Owners present in person or by proxy at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where otherwise provided by law or by this Trust.

Except as otherwise provided in this Trust, the presence in person or by proxy of Unit Owners holding at least fifty-one (51%) percent of the Beneficial Interest under the Trust shall constitute a quorum at all meetings of the Unit Owners.

For purposes of this Trust, a Majority of Unit Owners shall mean Unit Owners holding not less than fifty-one (51%) percent of the Beneficial Interest under the Trust, except the

election of Trustees, which procedure is governed by Section 3.1 hereinabove, and except for any other actions as to which different requirements are specifically provided for by law or in the Master Deed, this Declaration of Trust or the By-Laws.

Section 5.13.2. Trustee Meeting. The Trustees shall meet annually on the date of the annual meeting of the Unit Owners and at such meeting may elect a Chairman, Treasurer and Secretary, and may elect any other officers they deem expedient. Other meetings may be called by any Trustee; provided, however, that written notice of each such other meeting stating the place, day and hour thereof shall be given at least two (2) days before such meeting to each Trustee. A majority of the number of Trustees then in office shall constitute a quorum at all meetings, and such meetings shall be conducted in accordance with such rules as the Trustees may adopt.

Section 5.14. Notices to Unit Owners. Every notice to any Unit Owner required under the provisions hereof, or which may be deemed by the Trustees necessary or desirable in connection with the execution of the Trust or which may be ordered in any judicial proceeding 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, or mailing it postage prepaid and addressed to such Unit Owner, at his address at the Condominium, unless such Unit Owner has designated in writing to the Trustees some other address for the receipt of notices, at least seven days prior to the date fixed for the happening of the matter, thing or event of which such notice is given.

Section 5.15. Inspection of Books; Reports to Unit Owners. Books, accounts and records of the Trustees and of the organization of Unit Owners shall be open to inspection to any one or more of the Trustees, to the Unit Owners and to first mortgagees at all reasonable times. The Trustees shall, as soon as reasonably possible after the close of each fiscal year, or more often if convenient to them, submit to the Unit Owners a report of the operations of the Trustees for such **[Page 28, Book 1167, Page 630■Page 29, Book 1167/631]** year, which report shall include financial statements in such summary form and in only such detail as the Trustees shall deem proper. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees given by recording mail within a period of three (3) months of the date of the receipt by him shall be deemed to have assented thereto.

Section 5.16. 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 and Trustee or by any Manager to whom such power may at any time or from time to time be delegated by not less than a majority of the Trustees.

Section 5.16.1. Seal. The Trustees may sign any instrument under seal without being required to affix a formal, common or wafer seal.

Section 5.17. Fiscal Year. The Fiscal year of the Trust shall be each calendar year ending December 31 or such other date as may from time to time be determined by the Trustees.

Section 5.18. Sale or Lease of Units.

[Transcriber's note: the right of first refusal of the Board described in this section to purchase or lease units has, to the best knowledge and interpretation of the transcriber, expired as defined in sub-section f below as five years have passed since conveyance of the first unit]

Section 5.18.1. Selling and Leasing. No Unit Owner other than the Grantor, its designee, successor in interest or any future developer of the Development Land or Expansion Land may sell or lease his Unit except by complying with the following provisions:

Any Unit Owner who receives a bona fide offer to (a) purchase his Unit together with (i) the undivided interest in the Common Elements appurtenant thereto; (ii) the interest of such Unit Owner in any Units theretofore acquired by the Board of Trustees or its designee on behalf of all Unit Owners, or his interest in the proceeds of the sale or lease of such Units, if any; (iii) the undivided interest of such Unit Owner in the Common Elements; and (iv) the interest of such Unit Owner in any other assets of the Condominium, herein collectively called the "Appurtenant Interests" or (b) lease his Unit, such offer to purchase or lease a Unit, hereinafter called an "Outside Offer" the party making such Outside Offer is hereinafter called the "Outside Offeror", and the Unit Owner to whom the Outside Offer is made is called the "Offeree", which he intends to accept shall give notice by certified or registered mail to the Board of Trustees of the receipt of such Outside Offer. Said notice shall also state the name and address of the Outside Offeror, the terms of the proposed transaction and such other information as the Board of Trustees may reasonably require. The giving of such notice to the Board of Trustees shall constitute an offer by such Unit Owner to sell his Unit together with the Appurtenant Interests or to lease his Residential Unit to the Board of Trustees or its **[Page 29, Book 1167, Page 631■Page 30, Book 1167/632]** designee, corporate or otherwise, on behalf of all other Unit Owners, upon the same terms and conditions as contained in such Outside Offer and shall also constitute a warranty and representation by the Unit Owner who has received such Outside Offer, to the Board of Trustees, on behalf of all Unit Owners, that such Unit Owner believes the Outside Offer be bona fide in all respects. The Offeree Unit Owner shall submit in writing such further information with respect thereto as the Board of Trustees may reasonably have requested. Not later than 14 days after receipt of such notice together with such further information as may have been requested, the Board of Trustees may elect, by sending written notice to such Offeree Unit Owner, before the expiration of said 14 day period, by certified or registered mail, to purchase such Unit together with the Appurtenant Interests or to lease such Unit, as the case may be (or to cause the same to be purchased or leased by its designee, corporate or otherwise), on behalf of all Unit Owners upon the same terms and conditions as contained in the Outside Offer as stated in the notice from the Offeree Unit Owner.

In the event the Board of Trustees shall timely elect to purchase such Unit together with the Appurtenant Interests or to lease such Unit, or to cause the same to be purchased or leased by its designee, corporate or otherwise, title shall close or a lease shall be executed at the office of the attorneys for the Condominium, in accordance with the terms of the Outside Offer, within 45 days after the giving of notice by the Board of Trustees, of its election to accept such offer. If, pursuant to such Outside Offer to Purchase said Unit, the Outside Offeror was to assume or take title to the Unit subject to the Offeree Unit Owner's existing mortgage or mortgages, the Board of Trustees may purchase the Unit and assume or take title to the Unit subject to said existing mortgage or mortgages, as the case may be. At the closing, the offeree Unit Owner, if such Unit

together with the Appurtenant Interests is to be sold, shall convey the same to the Board of Trustees, or to its designee, on behalf of all other Unit Owners, by warranty deed with all tax and/or documentary stamps affixed at the expense of such Unit Owner, who shall also pay all other taxes arising out of such sale. Real estate taxes (including municipal charges if separately assessed), mortgage interest if any, and Common Charges shall be apportioned between the Offeree Unit Owner and the Board of Trustees or its designee, (corporate or otherwise), as of the closing date. In the event such Unit is to be leased, the Offeree Unit Owner shall execute and deliver to the Board of Trustees or to its designee (corporate or otherwise) a lease between the Offeree Unit Owner, as landlord, and the Board of Trustees, or its designee (corporate or otherwise), as tenant, covering such Unit, for the rental and term contained in such Outside Offer.

In the event the Board of Trustees or its designee shall fail to accept such offer within 14 days after receipt of **[Page 30, Book 1167, Page 632■Page 31, Book 1167/633]** notice, as aforesaid, the Offeree Unit Owner shall be free to accept the Outside Offer within 60 days after (i) notice of refusal is sent, or (ii) the expiration of the period in which the Board of Trustees or its designee might have accepted such offer, as the case may be. In the event the Offeree Unit Owner shall not, within such 60-day period, accept in writing the Outside Offer or if the Offeree Unit Owner shall accept the Outside Offer within such 60-day period but such sale or lease, as the case may be, shall not be consummated, then, should such Offeree Unit Owner thereafter elect to sell such Unit together with the Appurtenant Interests or to lease such Residential Unit, as the case may be, the Offeree Unit Owner shall be required to again comply with all the terms and provisions of this Section.

- a. Any deed to an Outside Offeror shall provide that the acceptance thereof by the grantee shall constitute an assumption of the provisions of the Master Deed, the Trust, the Bylaws and Rules and Regulations, as the same may be amended from time to time.
- b. Any lease executed in connection with the acceptance of any Outside Offer to lease a Unit shall be consistent with these Bylaws and shall provide that it may not be modified, amended, extended, or assigned, without the prior consent in writing of the Board of Trustees, that the tenant shall not assign his interest in such lease or sublet the demised premises or any part thereof without the prior consent in writing of the Board of Trustees and that the Board of Trustees shall have power to terminate such lease and/or to bring summary proceedings to evict the tenant in the name of the landlord thereunder, in the event of (i) a default by the tenant in the performance of its obligations under such lease, or (ii) a foreclosure of the lien granted by Massachusetts Federal Laws Chapter 183A, Section 6.
- c. Any lease executed by the Board of Trustees as tenant shall provide that the Trustees may enter into a sublease of the premises without the consent of the landlord.
- d. Any purported sale or lease of a Unit in violation of this Section shall be voidable at the election of the Board of Trustees and if the Trustees shall so elect, the Unit Owner shall be deemed to have authorized and empowered the Board of Trustees to institute legal proceedings to evict the purported tenant (in case of an unauthorized leasing), in the

name of said Unit Owner as the purported landlord. Said Unit Owner shall reimburse the Board of Trustees for all expenses (including attorneys' fees and disbursements) incurred in connection with such proceedings. [Page 31, Book 1167, Page 633■Page 32, Book 1167/634]

e. The foregoing restrictions of this Section 5.18 shall not apply to Grantor-Owned Units or any Units hereafter added to the Condominium pursuant to the Master Deed by the Grantor or its designees or successors in interest. The Grantor, or its Designee or its Successors in interest and future developers of the development land shall have the right to freely sell their respective Units or to freely lease all or any part thereof without having to first offer the same for sale or lease to the Board of Trustees.

f. Furthermore, the right of first refusal herein reserved to the Trustees shall cease on the Transfer Date as defined in Article III hereof.

Section 5.18.2. Consent of Unit Owners to Purchase or Lease of Residential Units by Board of Trustees. The Board of Trustees shall not exercise any option hereinabove set forth to purchase or lease any Unit without the prior approval of a majority of the Unit Owners present, in person or by proxy, and voting at a meeting at which a quorum is present.

Section 5.18.3. No Severance of Ownership. No Unit Owner shall execute any deed, lease, mortgage or other instrument conveying or mortgaging title to his Unit without including therein the Appurtenant Interests, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, lease, 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, leased, transferred or otherwise disposed of, except as part of a sale, lease, transfer or other disposition of the Unit to which such interests are appurtenant, or as part of a sale, lease, transfer or other disposition of such part of the Appurtenant Interests of all Units.

Section 5.18.4. Release of the Right of First Refusal. The right of first refusal contained in Section 1 of this Article may be released or waived by the Board of Trustees only in the manner provided in Section 5 hereof. In the event the Board of Trustees shall release or waive its rights of first refusal as to any Unit, such Unit, together with the Appurtenant Interests, may be sold, conveyed or leased, free and clear of the provisions of said Section 1.

Section 5.18.5. Certificate of Termination of Right of First Refusal. A certificate executed and acknowledged by the Secretary of the Condominium or by a Trustee of the Trust stating that the provisions of Section 1 of this Article have [Page 32, Book 1167, Page 634■Page 33, Book 1167/635] been met by a Unit Owner or stating that the right of first refusal contained therein has been duly released or waived by the Board of Trustees, and that as a result thereof the rights of the Board of Trustees thereunder have terminated, shall be conclusive upon the Board of Trustees and the Unit Owners in favor of all persons who rely on such certificate in good faith. The Board of Trustees shall furnish, without charge, such certificate upon request to any Unit Owner in respect to whom the provisions of such Section have, in fact terminated.

Section 5.18.6. Financing of Purchase of Units by Board of Trustees. Acquisition of Units by the Trustees for the Trust may be made from the working capital and common charges 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 ownership in the Common Areas and Facilities, as a Common Charge, which assessment shall be enforceable in the same manner as provided in Section 6 Massachusetts General Laws, Chapter 183A or the Trustees, in their discretion, may borrow money to finance the acquisition of such Unit, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the Unit, together with the Appurtenant Interests, so to be acquired by the Trustees.

Section 5.18.7. Exceptions. The provisions of Section 5.18.1 of this Article V shall not apply with respect to any lease, sale, or conveyance of any Residential Unit together with *(amended by adding "with" by First Amendment dated May 8, 1991)* its Appurtenant Interests by (a) to *(amended by adding "to" by First Amendment dated May 8, 1991)* the Unit Owner thereof, his spouse, adult children, parents, parents-in-law, adult siblings, or any one or more of them, (b) the Grantor or its Designees its successors in interest and any future developer of the Development Land, (c) the Board of Trustees or (d) any proper officer conducting the sale of a Unit in connection with the foreclosure of a mortgage or other lien covering such Unit or delivering a deed in lieu of such foreclosure; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Article.

Section 5.18.8. Gifts and Devises. Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise his Unit by will, or have his Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Article.

Section 5.18.9. Waiver of Right of Partition. In the event that any Unit shall be acquired by the Board of Trustees, or its designee, on behalf of all Unit Owners as tenants-in-common, all such Unit Owners as tenants-in-common all such Unit Owners shall be deemed to have waived all rights of partition with respect to such acquired Unit and the entire property as herein provided. **[Page 33, Book 1167, Page 635■Page 34, Book 1167/636]**

Section 5.18.10. Payment of Assessments. No Unit Owner shall be permitted to convey, mortgage, pledge, hypothecate, or lease his Unit unless and until he shall have paid in full to the Board of Trustees all unpaid Common Charges theretofore assessed by the Board of Trustees against his Unit and until he shall have satisfied all unpaid liens against such Unit, except permitted mortgages.

Section 5.18.11. Mortgage of Units. Subject to the preceding Section 10, each Unit Owner shall have the right to mortgage his Unit without restriction.

Section 5.18.12. Notwithstanding the above, all leases or rental agreements with respect to a Unit shall be in writing and for a period of time of at least three (3) months.

Section 5.19. Determining Fair Market Value. In the event that any Unit Owner(s) by

written notice to the Trustees, shall dissent from any determination of the Trustees with respect to the fair market value of a Unit or of the Condominium which must be ascertained pursuant to Chapter 183A, Section 17 or Section 18, and such dispute is not resolved within thirty (30) days of such notice, then either the Trustees or the Unit Owner(s) shall submit the matter to an arbitration board consisting of one member chosen by the dissenting Unit Owner, one member chosen by the organization of Unit Owners acting through the Trustees hereunder and one member chosen by the two members so selected. The board shall have the right to seek the assistance of a professional real estate appraiser in making their determination, and the cost of his services shall constitute a common charge to all Unit Owners. However, the members of the board shall receive no compensation for their services, although they shall be reimbursed for their reasonable expenses which shall constitute common charges to all Unit Owners. The determination of value by the board shall be binding upon all parties.

Section 5.20. Right of Access. The Trustees or any other person authorized by the Trustees shall have a right of access to any Unit for the purpose of making inspections or for the purpose of correcting any conditions originating in the Unit or threatening another Unit or the Common Areas and Facilities, or for any other purpose reasonably necessary for the proper maintenance or operation of the Condominium; provided, however that such entry is made after advance notice and that any such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency such right of entry shall be immediate.

Section 5.21. Electricity, Cable T.V. Electricity shall be supplied by the public utility company serving the area directly to each Unit through a separate meter and each Unit Owner shall be required to pay the bills for electricity consumed or used in his Unit. Cable T.V. shall be separately billed to each Unit. The electricity serving the Common Areas [**Page 34, Book 1167, Page 636**■**Page 35, Book 1167/637**] and Facilities shall be separately metered, and the Trustees shall pay all bills for electricity consumed in such portions of the Common Areas and Facilities as a Common Expense.

Section 5.22. Water and Sewer Charges. Water shall be supplied by the City of Pittsfield to the Condominium through one or more common meters and the Association shall pay the bills for water consumed and associated sewer charges. The water and sewer charges shall be a Common Expense.

Section 5.23. Unit First Mortgages.

Section 5.23.1. Notice to Trustees. Any Unit Owner may, without the prior written approval of the Trustees, mortgage his Unit to any person, firm or entity. A Unit Owner who mortgages his Unit shall notify the Trustees of the name and address of his mortgagee and the Trustees shall maintain such information in a separate book. The failure of a Unit Owner to so notify the Trustees shall not invalidate the mortgage or any other provisions or the rights of any holder of such mortgage.

Section 5.23.2. Notice of Unpaid Common Charges or Other Default. The Trustees, whenever so requested in writing by a mortgagee of a Unit, shall promptly report (i) any then unpaid common charges due from, or any other default by, the owner of the mortgaged Unit; (ii)

any other default in the performance by the Unit Owner of the mortgaged Unit of any obligation under the Master Deed, this Trust, or the Rules and Regulations which is not cured within sixty (60) days of notice to the Unit Owner; (iii) any condemnation loss or any casualty loss which affects a material portion of the project or any Unit on which there is a first mortgage held, insured, or guaranteed by an eligible mortgage holder or eligible insurer or guarantor, as applicable; (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Condominium Association; (v) any proposed action which requires the consent of a specified percentage of eligible mortgage holders as specified in the Master Deed or this Declaration of Trust; (vi) any proposed material amendment to this Trust, other than amendments only for the purpose of correcting technical errors or for clarification.

Section 5.23.3. Lien Relates Only to Units. All taxes, assessments and charges which may become liens prior to a first mortgage on a Unit under local law shall relate only to the individual Units and not to the Condominium as a whole.

Section 5.24. Special Uses of Common Areas and Facilities. Subject to the rights of the Grantor pursuant to the Master Deed, in addition to the exclusive right and easement for the use of one (1) parking space appurtenant to each Unit, the Trustees may from time to time assign additional parking spaces to particular Unit Owners. Such additional parking spaces shall be so assigned for such periods and for **[Page 35, Book 1167, Page 637■Page 36, Book 1167/638]** such monthly charges as the Trustees may in their discretion determine, all such charges to constitute common funds upon receipt by the Board. All such designations and assignments shall be made on a fair and equitable basis, taking into account the reasonable needs of particular Unit Owners, provided, however, that no Unit Owner shall be assigned more than one additional parking space unless and until all Unit Owners desiring an additional space have been assigned one.

The Trustees may require Unit Owners to enter a contractual undertaking with the Trustees with respect to landscaping and gardening areas allocated to the exclusive use of Unit Owners pursuant to the Master Deed to assure compliance by such Unit Owners with such rules, regulations and other requirements as the Trustees deem necessary or desirable as to the design, layout, care, maintenance and removal of any such landscaping or garden.

The Trustees may at reasonable times and in accordance with rules and regulations from time to time adopted by the Trustees close recreational facilities or other Common Areas and Facilities of the Condominium to common use of the Unit Owners and temporarily allocate the use thereof to the Trustees, or, upon application therefor, to any Unit Owner or Owners, for their purposes consistent with the comfort and convenience of the Unit Owners and their enjoyment of the amenities of the Condominium, and upon payment of charges therefor from time to time established by the Trustees, which charges shall be in addition to Common Expenses and shall upon receipt by the Trustees constitute common funds.

ARTICLE VI

Rights and Obligations of Third Parties Dealing with the Trustees

Section 6.1. Third Parties No Duty of Inquiry. No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record in the Berkshire Registry shall be bound to ascertain or inquire further as to the identity of said Trustees or 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 event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, nor otherwise as to the purpose or regularity of any of the acts of the Trustees, or any one or more of them, purporting to be done in pursuance [Page 36, Book 1167, Page 638■Page 37, Book 1167/639] of any of the provisions or powers herein contained, nor as to the regularity of the resignation or appointment of any Trustee.

Section 6.2. No Recourse to Trustees. 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 either directly or indirectly, by legal or equitable proceeding, 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 contract or claim, or for the payment of any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to them for the Trustees, so that neither the Trustees nor the beneficiaries, present or future, shall be personally liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Unit Owners under provisions of Chapter 183A.

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

Section 6.4. Recording. This Declaration of Trust and any amendments hereto and any certificate herein required to be recorded and any other certificate or paper [including without limitation a certificate pursuant to General Laws, Chapter 183A, Section 6(d)] signed by said Trustees or any of them which it may be deemed desirable to record shall be recorded with said Berkshire Registry and such recording shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustees, the Trust property or any beneficiary thereunder shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be recorded with said Berkshire Registry. Any certificate signed by a majority of the Trustees in office at the 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 to do any act, when duly acknowledged and recorded with said Berkshire Registry shall be conclusive evidence as to the existence of such alleged facts in favor of all third **[Page 37, Book 1167, Page 639■Page 38, Book 1167/640]** persons, including the Trustees, acting in reliance thereon. Any certificate executed by any Trustee hereunder, or by a majority of the Trustees hereunder, setting forth the existence of which is necessary to authorize the execution of any instrument or the taking of any action by such Trustee or majority, as the case may be, shall, as to all persons acting in good faith in reliance thereon be conclusive evidence of the truth of the statements made in such certificate and of the existence of the facts therein set forth.

ARTICLE VII

Amendment and Termination

Section 7.1. Amendments to Declaration of Trust. The Trustees 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, provided such amendment, alteration, addition, or change is consented to in writing by a Majority or Unit Owners or if such amendment, alteration, addition or change affects a provision then requiring more than a majority, then by such larger percentage, with the Trustees first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided always, however, that no such amendment, alteration, addition or change (a) made without the consent of the Grantor prior to the Transfer Date as set forth in Section 3.1 of this Trust; or (b) according to the purport of which, the Grantor's rights under Section 1 of Article III hereof are changed in any way; or (c) 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 said Master Deed except as provided for in Section 11 of the Master Deed, other than by consent of all the Unit Owners; or (d) which would render this Trust contrary to or inconsistent with any requirements or provisions of said Chapter 183A -- shall be valid or effective; provided further, however, that nothing herein contained shall be deemed or construed to vitiate or impair the rights reserved to the Grantor in and by provisions of Section 9 of the Master Deed to amend said Master Deed so as to include Additional Phases to the Condominium as therein defined and thereby to alter the percentage of Beneficial Interest as set forth in Article IV hereof.

Section 7.1.1. Consent of Mortgagees to Amendments. In addition, this Trust may not be amended (except for technical non-material corrections or additions) without the approval of first mortgagees, of which the Trustee have received notice holding mortgages on Units having at least fifty-one (51%) percent of the Beneficial Interest hereunder. Any such first mortgagee who receives a written request to approve amendments who does not deliver a negative response to the requesting **[Page 38, Book 1167, Page 640■Page 39, Book 1167/641]** party within thirty (30) days shall be deemed to have approved such request.

Section 7.1.2. Effective Date of Amendment. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this paragraph shall become effective upon the recording with the Registry of an instrument of amendment, alteration, addition or change, as the

case may be, signed, sealed and acknowledged by a majority of the Trustees then in office, setting forth in full the amendment, alteration, addition or change and reciting the consent of the Unit Owners herein required to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all prerequisites to the validity thereof, whether stated in such instrument or not, upon all questions as to title or affecting the rights of third persons, and for all other purposes. Nothing in this paragraph contained shall be construed as making it obligatory upon the Trustees to amend, alter, add to or change the Declaration of Trust upon obtaining the necessary consent(s) as herein before provided.

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

Section 7.3. Actions Upon Termination. Upon the termination of this Trust, the Trustees may, subject to and in accordance with provisions of Chapter 183A, sell and convert into money the whole of the trust property or any part or parts thereof, and, after paying or satisfying 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, all other property then held by them in trust hereunder, to the Unit Owners as tenants in common, according to their respective percentages of beneficial interest hereunder. All valuations made by the Trustees shall be conclusive. In making any sale under this provision, the Trustees shall have the power to sell by public auction or private contract and to buy in or rescind or vary any contract of sale and to resell without being answerable for loss and, for said purpose, 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. [Page 39, Book 1167, Page 641■Page 40, Book 1167/642]

ARTICLE VIII

Construction, Interpretation and Waiver

In the construction hereof, whether or not so expressed, words used in the singular or in the plural respectively include both the plural and the singular, words denoting males include females and words denoting persons include individuals, firms, associations, companies (joint stock or otherwise), trusts and corporations unless a contrary intention is to be inferred from them or required by the subject matter or context. The title headings of different parts hereof are inserted only for the convenience of reference and are not to be taken to be any part hereof nor 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 herein and to the extent of any conflict between the terms hereof and the requirements of said Chapter 183A, the latter shall govern. The invalidity of any part of this Trust or By-Laws shall not impair or affect in any manner the validity,

enforceability or effect of the balance of this Trust or by-laws. No restriction, condition, obligation or provision contained in this Trust or By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

ARTICLE IX

Assignment by Unit Owner of Rights and Options

The right of any Unit Owner to vote, to grant or withhold any consent or approval, and to exercise any other right or option herein granted to a Unit Owner, may be assigned or transferred in writing to or restricted in favor of, any Mortgagee of a mortgage covering that Owner's Unit, and the Trustees and all other persons shall be bound by any such assignment or transfer of which they have actual written notice.

IN WITNESS WHEREOF, said Robert R. Schwartz, Susan Schwartz and Jeffrey A. Loeb as Trustees as aforesaid, have hereunto set their hands and seals on the day and year first hereinabove set forth.

Robert R. Schwartz

Susan Schwartz

Jeffrey A. Loeb

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

October 23, 1986

Then personally appeared the above named Robert R. Schwartz, Susan Schwartz and Jeffrey A. Loeb as Trustees of the Lakecrest Condominium Trust and acknowledged the foregoing instrument to be their free act and deed as Trustees aforesaid, before me.

Harris N. Aaronson
Notary Public
My commission Expires: 6/18/87

FIRST AMENDMENT TO THE LAKECREST CONDOMINIUM TRUST

The Lakecrest Condominium Trust was duly established by Declaration of Trust dated October 23, 1986, and recorded with the Berkshire Middle District Registry of Deeds on October 23, 1986, in Book 1167, Page 603.

Pursuant to the powers reserved under Article VII thereof, the Trustees hereby amend said Trust Agreement to correct certain scrivener's errors contained therein and for the sole purpose of clarifying said document as follows:

1. Section 5.4.2 is amended by striking therefrom the word "be" appearing in the second line of the first paragraph, and substituting therefore the word "by", so that the first phrase shall read as follows:

Prior to the annual meeting, the Trustees shall prepare a budget for the Condominium by estimating the Common Expenses expected to be incurred during such fiscal year together with a reasonable provision for contingencies and reserves as referred to above in Section 5.4.1,...

2. Section 5.12.1, appearing on Page 23 of the Trust document and entitled "Terms and Conditions of Policies" is hereby amended by changing the Section reference thereto from 5.12.1 to 5.12.2.

3. Section 5.12.4 is hereby amended by striking from the second line of the first sentence thereof the word "if", and substituting in its place, the word "in". As amended, the first phase of said Section shall read as follows:

Unless waived by unanimous vote of all Trustees then in office,

4. Section 5.18.7 is hereby amended by adding thereto in the third line thereof the word "with" following the word "together" as appearing in the third line thereof, and by adding thereto in subsection (a) the word "to" in the fourth line thereof. As amended, said Section through subsection (a) shall read as follows:

The provisions of Section 5.18.1 of this Article V shall not apply with respect to any lease, sale, or conveyance of any Residential Unit together with its Appurtenant Interests by (a) to the Unit Owner thereof, his spouse, adult children, parents, parents-in-law, adult siblings, or any one or more of them,...

In all other respects, the provisions of said Trust are hereby ratified and confirmed.

IN WITNESS WHEREOF, Robert R. Schwartz, Susan Schwartz and Lawrence A. Garber as Trustees of said Trust, have hereunto set their hands and seals this 8th day of May 1991.

Robert R. Schwartz, Trustee

Susan Schwartz, Trustee

Lawrence A. Garber, Trustee

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

July 8, 1991

Then personally appeared the above-named Robert R. Schwartz, Trustee of Lakecrest Condominium Trust and acknowledged the foregoing instrument to be his free act and deed as Trustees aforesaid, before me,

Notary Public
My commission Expires: 5/20/94

AMENDMENT TO LAKECREST CONDOMINIUM TRUST

This Instrument of Amendment to the Lakecrest Condominium Trust is made this 10th day of December, 1996.

PRELIMINARY STATEMENT

A. THE LAKECREST CONDOMINIUM TRUST is the organization of Unit Owners of Lakecrest Condominium, a Condominium established pursuant to G.L.c. 183A, by Master Deed dated October 23, 1986 and recorded in the Berkshire Middle District Registry of Deeds in Book 1167, Page 565, as amended and by Declaration of Trust dated October 23, 1986 and recorded in the Berkshire Middle District Registry of Deeds in Book 1167, Page 603.

B. The current Trustees of the Trust are Bernice R. Gendelman, Ronald G. Langus, George D. Lane, Robert E. Becker and Robert H. Moses as set forth in the Certificate of Election dated August 11, 1996 and recorded in said Registry in Book 1526, Page 780.

C. The Trustees with the consent of a Majority of the Unit Owners as provided in Article VII, Section 7.1 of the Trust desire to amend the Declaration of Trust as set forth herein.

AMENDMENT

Now, therefore, the Trust with the consent of the undersigned Unit Owners, constituting a Majority of the Unit Owners, hereby amend the Declaration of Trust as follows, such Amendment to be effective upon the date this Amendment shall be recorded in the Berkshire Middle District Registry of Deeds:

1. *Definitions.* All capitalized terms utilized in this Amendment without definition shall have the meanings ascribed to them in said Master Deed and Declaration of Trust;
2. *Counterparts.* This Agreement may be executed in two or more counterparts, and may be delivered via telefacsimile, each of which counterparts shall be effective as a personally delivered original and all of which together shall constitute one and the same instrument.
3. *Amendment to Declaration of Trust.* Pursuant to the provisions of Article VII, Section 7.1, the Declaration of Trust is hereby amended as follows:

- a. Article V, Section 5.12.1 is amended to read, in its entirety, as follows:

Section 5.12.1. Casualty Insurance. The Trustees shall obtain and maintain, to the extent obtainable, and permitted by applicable law, so-called master policies of insurance providing fire-with-extended and all risk coverage insurance, insuring the Condominium, including, without limitation, the Common Areas and Facilities, all heating and cooling equipment and other service machinery, apparatus, equipment and installations comprised in the Common

Areas and Facilities. The Trustees may in their sole discretion obtain and maintain, to the extent obtainable, and permitted by applicable law, so-called master policies of insurance providing fire-with-extended and all risk coverage insurance, insuring the Units with fixtures, additions, alterations and improvements thereof, and also such portions and elements of the Units as are for insurance purposes normally deemed to constitute part of the buildings and customarily covered by such insurance, but not including any furniture, furnishings, household and personal property belonging to and owned by individual Unit Owners. Such insurance shall be in an amount equal to not less than one hundred percent (100%) of the full replacement value thereof (as determined by the Trustees not less frequently than on an annual basis) without deduction for depreciation and shall include, if available, so-called Agreed Amount, Inflation Guard, Construction Code and Replacement Cost Endorsements. The Trustees may purchase a so-called "blanket" policy covering the building if they deem it advisable. In determining full replacement value, the Trustees may reasonably rely upon the advice of the insurer or their insurance agent. The name of the insured under each required policy must be stated in form and substance similar to the following: "Trustees of The Lakecrest Condominium Trust for use and benefit of the individual unit owners". Such insurance shall contain the standard mortgagee clause and shall name the Trustees as Insurance Trustees for the use and benefit of all Unit Owners of The Lakecrest Condominium and their mortgagees as their interest may appear, with loss payable to and adjusted by the Trustees as Insurance Trustees in accordance with the provisions of these By-Laws.

The Trustees shall insure against such other hazards or risks as the Trustees from time to time in their discretion shall determine to be appropriate, including, but not limited to, vandalism, malicious mischief, windstorm and water damage, and machinery explosion or damage. The cost of all insurance obtained and maintained by the Trustees pursuant to the provisions of this Declaration of Trust shall be a Common Expense.

- b. Article V, Section 5.12.7 is amended to read, in its entirety, as follows:

Unit Owners' Insurance. Unit Owners shall obtain and carry property and casualty insurance for their own benefit in the minimum amount of \$10,000.00 insuring their carpeting or other floor coverings, furniture, furnishings, walls, wall coverings, doors, windows and other property, additions or improvements located within or serving and controlled by their respective Units

or which is part of the Unit as defined in paragraph 4 of the Master Deed recorded in the Berkshire Middle District Registry of Deeds in Book 1167, Page 565; 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 Unit Owners' Insurance. Notwithstanding the provisions of Section 5.12.1 above, such Unit Owners' Insurance shall constitute the primary coverage for property or casualty damage to the Units and all property, additions or improvements as defined in the first sentence of this Section 5.12.7, and any coverage maintained by the Trust under said Section 5.12.1 shall be secondary to the Unit Owners' Insurance required hereby. Except as provided herein, no such Unit Owners' Insurance policy shall be written so as to decrease the coverage under any of the policies obtained by the Trustees pursuant to Section 5.12.1 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 hereof as if produced by such coverage. Copies of all such policies (except policies covering only personal property owned or supplied by individual Unit Owners) shall be filed with the Trustees. If any improvements to a Unit causes any increase in the premium of the insurance carried by the Trustees pursuant to Section 5.12.1, such increase shall be paid as a common expense by the Owner of the Unit making said improvement.

- c. Article V, Section 5.12.11 is amended to read, in its entirety, as follows:

Section 5.12.11. Notification to Trustees of Improvements. Each Unit Owner shall notify the Trustees in writing of all improvements to his or her Unit (except personal property other than fixtures) which exceed a total value of One Thousand (\$1,000.00) Dollars within twenty (20) days after the commencement of construction of such improvements, and upon receipt of such notice, the Trustees, provided the Trustees have elected to obtain and maintain insurance insuring the Units as provided in the second sentence of Section 5.12.1, as amended, shall notify the insurer under any policy obtained pursuant to this Section of any such improvements and shall purchase additional insurance in such amounts as required by Section 5.12.1 and any premium increase caused by such improvements may be assessed to the Owner of the improved Unit as a Common Expense. No Unit Owner shall be entitled to receive insurance proceeds for the repair, replacement or restoration of any such improvements not so reported to the Trustees, unless otherwise consented to by

unanimous vote of the Trustees.

In witness whereof, the said LAKECREST CONDOMINIUM TRUST has caused this instrument to be signed, acknowledged and delivered in its name and behalf by Bernice R. Gendelman, Ronald G. Langus, George D. Lane, Robert E. Becker and Robert H. Moses, all the Trustees of said Trust on the day and date first written above.

LAKECREST CONDOMINIUM TRUST

BERNICE R. GENDELMAN, TRUSTEE

ROBERT H. MOSES, TRUSTEE

RONALD G. LANGUS, TRUSTEE

GEORGE D. LANE. TRUSTEE

ROBERT E. BECKER, TRUSTEE

December 13, 1999

AMENDMENT TO LAKECREST CONDOMINIUM TRUST

This Instrument of Amendment to the Lakecrest Condominium Trust is made this 20th day of September, 2006.

PRELIMINARY STATEMENT

- A. THE LAKECREST CONDOMINIUM TRUST is the organization of Unit Owners of Lakecrest Condominium, a Condominium established pursuant to G.L.c. 183A, by Master Deed dated October 23, 1986 and recorded in the Berkshire Middle District Registry of Deeds in Book 1167, Page 565, as amended and by Declaration of Trust dated October 23, 1986 and recorded in the Berkshire Middle District Registry of Deeds in Book 1167, Page 603 as amended.
- B. The current Trustees of the Trust are Robert H. Moses, Steven Adelman, Donald Weisberg, Myron ("Monty") Ginsburg and Eliot Gesner as set forth in the Certificate of Election dated August 20, 2006 and recorded in said Registry in Book 3615, Page 86.
- C. The Trustees with the consent of a Majority of the Unit Owners as provided in Article VII, Section 7.1 of the Trust desire to amend the Declaration of Trust as set forth herein.

AMENDMENT

Now, therefore, the Trust with the consent of the undersigned Unit Owners, constituting a Majority of the Unit Owners, hereby amend the Declaration of Trust as follows, such Amendment to be effective upon the date this Amendment shall be recorded in the Berkshire Middle District Registry of Deeds:

- 1. Definitions. All capitalized terms utilized in this Amendment without definition shall have the meanings ascribed to them in said Master Deed and Declaration of Trust;
- 2. Counterparts. This Agreement may be executed in two or more counterparts, and may be delivered via telefacsimile, each of which counterparts shall be effective as a personally delivered original and all of which together shall constitute one and the same instrument.
- 3. Amendment to Declaration of Trust. Pursuant to the provisions of Article VII, Section 7.1, the Declaration of Trust is hereby amended as follows:

- a. The fifth paragraph of Section 3.1 is amended to read, in its entirety, as follows:

Thereafter, the terms of office of the Trustees shall, except as hereinafter provided, be three years, and such terms shall be staggered so that insofar as possible the terms of one-third of the Trustees shall expire each year; provided that, for any Trustee term commencing on or after the next annual Unit Owners' Meeting after the recording hereof, no Trustee may be eligible to be elected to a third consecutive three-year term or otherwise serve more than six consecutive years (a year for the purposes hereof being

defined as commencing at the annual Unit Owners' Meeting where the Trustee is elected or the next annual Unit Owners' Meeting after said Trustee is appointed pursuant to Section 3.1.1 and ending at the following year's annual Unit Owners' Meeting) and that such Trustee (whose service having been terminated for having served six consecutive years or having been elected to two consecutive three-year term) may not serve again as trustee until the next annual Unit Owners' Meeting after said termination; provided further that the term of any trustee who is appointed pursuant to Section 3.1.1 shall expire at the following year's annual Unit Owners' Meeting; provided, further, that in order to establish and maintain such staggering of terms, the terms of the persons first appointed as Trustees after the 1990 annual meeting shall be one year, two years and three years, respectively, determined by lot, and thereafter upon any increase or decrease of the number of Trustees, the terms of any then newly appointed Trustee or Trustees shall be one year, two years or three years, determined insofar as necessary by lot, so as to maintain such staggering of terms insofar as possible.

In witness whereof, the said LAKECREST CONDOMINIUM TRUST has caused this instrument to be signed, acknowledged and delivered in its name and behalf by Robert H. Moses, Steven Adelman, Donald Weisberg, Myron ("Monty") Ginsburg and Eliot Gesner, all the Trustees of said Trust on the day and date first written above.

LAKECREST CONDOMINIUM TRUST

/s/Robert H Moses
/s/Donald Weisberg
/s/Eliot Gesner

/s/Steven Adelman
/s/Myron ("Monty") Ginsburg

COMMONWEALTH OF MASSACHUSETTS
BERKSHIRE, SS.

On this September 20th, 2006 before me, the undersigned notary public, personally appeared Donald Weisberg, proved to me through satisfactory evidence of identification, being (check whichever applies): ☐ driver's license or other state or federal government document bearing a photographic image, ☐ oath or affirmation or a credible witness known to me who knows the above signatory, or ☒ my own personal knowledge of the identity of the signatory, 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.

/s/Sharon T. Kus
Notary Public
My commission expires 9-11-09

WRITTEN CONSENT OF A MAJORITY OF UNIT OWNERS

We, the undersigned Unit Owners consent to the amendment of the Declaration of Trust by the Trustees:

/signed by/

Donald Weisberg, Judith Weisberg 28 Lakecrest Dr
Eliot G. Gesner, Sondra Gesner 5 Old Field Rd.
Robert H. Moses, Joyce Moses 7 Old Field Rd.
Steven Adelman, Cynthia Adelman, 26 Lakecrest Dr.
Myron ("Monty") Ginsburg, Laura Ginsburg, 1 Old Field Rd.
George Tillis, Myrna Tillis, 4 Fieldstone Rd
Susan Schwartz, Robert R. Schwartz
Nelson Bonheim, Carolyn Bonheim, 35 Lakecrest Dr.
Jacob Seidman, 43 Lakecrest Dr.
Richard Krantz, Ellen Krantz, 30 Lakecrest Dr.
Bernice R. Gendelman, 20 Lakecrest Dr.
Daniel H. Present, Jane Present, 3 Fieldstone Dr.
John F. Rodis, Mary T. Rodis, 9 Lakecrest Dr.
Yaacob Rone, Nina Rone, 29 Lakecrest Dr.
Alan D. Yohalem, 41 Lakecrest Dr.
Norma J. Lucey, 2 Old Field Rd.
Herman Berg, Eileen F. Berg, 8 Lakecrest Dr.
Emily Greenapple, Lawrence Greenapple
Fred Kaufman, Marsha Kaufman, 21 Fieldstone Dr.
Arlene Shalan, Leslie Shalan, 69
Robert Kohl, Enid Kohl, 25 Fieldstone Dr.
Judith B. Weisberg
Marcia Chalet, 23 Fieldstone Dr.