



2016 00051417

Bk: 56268 Pg: 205 Page: 1 of 80

Recorded: 06/14/2016 02:21 PM

ATTEST: Thomas M Ryan, Temp Register
Suffolk County Registry of Deeds

DECLARATION OF TRUST

OF

MILLENNIUM TOWER

1 Franklin Street
Boston, Massachusetts

Prepared by and upon recording
please return to:
DLA Piper LLP (US)
33 Arch Street, 26th Floor
Boston, Massachusetts 02110
Attn: John E. Rattigan, Jr.
Brian M. Awe

RETURN TO:

Maureen McGurige

Commonwealth Land Title Ins.

205 Franklin Street, 8th Floor

Boston, MA 02110 22064

TABLE OF CONTENTS

	Page
ARTICLE 1 CREATION, DESCRIPTION, NAME AND APPLICABILITY OF TRUST	1
1.1 Creation and Description	1
1.2 Name	1
1.3 Applicability of Declaration of Trust.....	1
ARTICLE 2 DEFINITIONS.....	1
2.1 Definitions.....	1
ARTICLE 3 PURPOSE OF THE TRUST	7
3.1 The Trust.....	7
3.2 Trust and Not Partnership	7
ARTICLE 4 TRUSTEES.....	8
4.1 Number; Qualification	8
4.2 Trustees	8
4.3 Initial Board	8
4.4 Composition of Subsequent Boards.....	8
4.5 Residential Trustees	9
4.6 Commercial Trustee.....	10
4.7 Officers	10
4.8 Resignation and Removal of Trustees	10
4.9 Vacancies	11
4.10 Acceptance of Trust; Appointment.....	11
4.11 Liability of the Trustees, Unit Owners and Trust	12
4.12 Indemnity	12
4.13 Fidelity Bonds.....	13
4.14 Self-Dealing	13
4.15 Compensation	14
4.16 Agreements and Other Instruments	14
ARTICLE 5 BENEFICIARIES AND THEIR BENEFICIAL INTERESTS IN THE TRUST	14
5.1 The Beneficiaries and their Beneficial Interests	14
5.2 Exercise of Beneficial Interest	14
ARTICLE 6 BY-LAWS	14

TABLE OF CONTENTS

(continued)

	Page
6.1 Powers and Duties of Trustees.....	14
6.2 Principal Office of Trustees	18
6.3 Managing Agent.....	18
6.4 Parking Manager/Operator; Residential Club Area.....	21
6.5 Unit Owners	21
6.6 Meetings of Trustees.....	24
6.7 Notices	25
6.8 Budget; Common Expenses, Charges, Profits; Utilities	26
6.9 Maintenance, Repairs And Improvements To Condominium	37
6.10 Insurance	40
6.11 Repair or Restoration After Fire or other Casualty.....	48
6.12 No Severance of Ownership; Acquisition of Units by Trustees.....	50
6.13 Condemnation	52
6.14 Rules and Regulations; Abatement of Violations.....	54
6.15 Records	55
6.16 Dispute Resolution and Limitation on Rights to Bring Lawsuits.....	55
6.17 Mortgages	59
ARTICLE 7 RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUSTEES	60
7.1 Reliance on Identity of Trustees	60
7.2 No Personal Liability in Trustees	61
7.3 All Obligations Subject to this Declaration of Trust	61
7.4 Further Matters of Reliance	61
ARTICLE 8 MISCELLANEOUS	61
8.1 Invalidity	61
8.2 Captions	61
8.3 Gender.....	62
8.4 Waiver.....	62
8.5 Conflicts.....	62
8.6 Counterparts.....	62
ARTICLE 9 AMENDMENTS TO DECLARATION OF TRUST.....	62

TABLE OF CONTENTS
(continued)

	Page
9.1 Amendments to Declaration of Trust.....	62
ARTICLE 10 TERMINATION OF TRUST	64
10.1 Termination of Trust	64
10.2 Winding Up of Trust After Termination.....	64

DECLARATION OF TRUST OF MILLENNIUM TOWER TRUST

This **DECLARATION OF TRUST OF MILLENNIUM TOWER TRUST** (as more specifically defined below, this “Declaration of Trust”) is made as of this 3rd day of June, 2016, at Boston, Suffolk County, Massachusetts, by **MP FRANKLIN TOWER CO LLC**, a Delaware limited liability company having an address of 1995 Broadway, 3rd Floor, New York, New York 10023.

ARTICLE 1

Creation, Description, Name and Applicability of Trust

1.1 Creation and Description. The Trust (as more specifically defined below) is the organization of the Unit Owners (as defined below) of Millennium Tower established pursuant to the provisions of Section 10 of Chapter 183A (as defined below) for the purposes therein set forth. Each Unit Owner shall at all times have a percentage interest in the Trust equal to such Unit Owner’s respective General Common Percentage Interest, as set forth in the Master Deed.

1.2 Name. The name of the Trust shall be “**MILLENNIUM TOWER TRUST**”. So far as legal, convenient and practicable, all business carried on by the Trustees (as defined below) shall be conducted and all instruments in writing by the Trustees shall be executed under the name of the Trust. Reference to the Trust name (and the word “Trustee” whenever used in this Declaration of Trust, except where the context otherwise requires) shall refer to the Trustees in their capacity as such and shall not refer to said individuals personally or to the officers, agents or employees of the Trust, or to the Unit Owners.

1.3 Applicability of Declaration of Trust. The terms and provisions of this Declaration of Trust shall apply to the Condominium (as defined below) and the use and occupancy thereof. All present and future Unit Owners, mortgagees, lessees, sublessees and other occupants of Units and guests of Unit Owners, and any other persons who may use, operate or maintain the facilities of the Condominium (including, without limitation, any portion of the Common Elements) are and shall be subject to the Condominium Documents (as defined below). The acceptance of a deed, mortgage or lease or the act of occupancy of any portion of the Condominium (including any Unit or any portion of the Common Elements) shall constitute an agreement by such Unit Owner, mortgagee, lessee, occupant or invitee that the Condominium Documents are accepted, ratified and are fully binding upon and enforceable against such individual or entity.

ARTICLE 2

Definitions

2.1 Definitions. Wherever used in this Declaration of Trust, the following terms shall have the respective meanings specified below. Capitalized terms used and not otherwise defined

herein but defined in the Master Deed shall have the meanings ascribed to them in the Master Deed.

2.1.1 “Annual Meeting(s)” shall mean annual meetings of the Unit Owners, as more particularly described in Section 6.5.1.

2.1.2 “Appurtenant Interests” shall have the meaning set forth in Section 6.12.1.

2.1.3 “BB Owner” shall mean the Owner (as such term is used in the REA) of the Burnham Parcel from time to time.

2.1.4 “Board” shall mean the board of Trustees of the Trust, as more particularly described in Article 4 hereof.

2.1.5 “Bound Party” shall have the meaning set forth in Section 6.16.1.

2.1.6 “Building” shall mean the structure located on the Land, which together with the Land and the other improvements thereon, comprises the Condominium.

2.1.7 “Burnham Parcel” shall mean that certain parcel of land shown as “Lot 1” on a plan entitled “Subdivision Plan of Land, Filene’s Block, Boston, Massachusetts” dated March 12, 2013, prepared by Harry R. Feldman, Inc. and recorded at the Registry in Plan Book 2013, Page 127, together with the buildings and other improvements from time to time located thereon.

2.1.8 “Burnham Parking Fee” shall mean such amounts as are paid to the Trustees by or on behalf of the BB Owner on account of the BB Designated Parking (as such term is used in the REA) pursuant to and as more specifically described in the REA.

2.1.9 “Chapter 183A” shall mean Chapter 183A of the Massachusetts General Laws, as the same may be amended from time to time.

2.1.10 “City Residences Residential Trustee” shall mean the Residential Unit Owner (or the officer, managing member, shareholder, partner, principal, trustee or beneficiary of any Residential Unit Owner) from time to time elected to serve as Trustee pursuant to Section 4.4.2, in its capacity as Trustee.

2.1.11 “City Residences Residential Unit Owner” shall mean the Residential Unit Owner of a City Residences Residential Unit.

2.1.12 “City Residences Residential Units” shall mean the Residential Units located on Floor 10 through Floor 32 of the Building.

2.1.13 “Claim” shall have the meaning set forth in Section 6.16.1.

2.1.14 “Claimant” shall have the meaning set forth in Section 6.16.2.

2.1.15 "Commercial Limited Common Elements" shall mean those areas and facilities of the Condominium that are designated for the exclusive use of the Commercial Unit Owner, as more particularly described in the Master Deed.

2.1.16 "Commercial Limited Common Expenses" shall mean those Common Expenses attributable to the Commercial Limited Common Elements.

2.1.17 "Commercial Limited Common Percentage Interest" shall mean the undivided ownership interest of the Commercial Unit Owner in the Commercial Limited Common Elements, as set forth on Exhibit B to the Master Deed, as the same may be adjusted from time to time.

2.1.18 "Commercial Trustee" shall have the meaning set forth in Section 4.4.3.

2.1.19 "Commercial Unit" shall mean the Commercial Unit of the Condominium, as defined in the Master Deed.

2.1.20 "Commercial Unit Owner" shall mean the Unit Owner of a Commercial Unit.

2.1.21 "Common Charges" shall have the meaning set forth in Section 6.8.5.

2.1.22 "Common Elements" shall mean the common areas and facilities of the Condominium, consisting of the General Common Elements, the Residential Limited Common Elements and the Commercial Limited Common Elements, all as more particularly described in the Master Deed.

2.1.23 "Common Expenses" shall have the meaning set forth in Section 6.8.4.

2.1.24 "Condominium" shall mean **MILLENNIUM TOWER**, which has been created by the Master Deed.

2.1.25 "Condominium Documents" shall mean the Master Deed (including the Plans) and this Declaration of Trust (including the by-laws and the Rules and Regulations herein), all as the same may be amended from time to time.

2.1.26 "Condominium Managing Agent" shall have the meaning set forth in Section 6.3.1.

2.1.27 "Declarant" shall mean MP Franklin Tower Co LLC, a Delaware limited liability company, which has established the Condominium by recording the Master Deed. The term "Declarant" includes any successors and assigns of the Declarant, as permitted pursuant to the Master Deed.

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

2.1.29 "First Annual Meeting" shall mean the first annual meeting of the Unit Owners, as more particularly described in Section 6.5.1.

2.1.30 "Fiscal Year" shall mean the calendar year, or such other twelve-month budget period as may be determined by the Trustees from time to time.

2.1.31 "Floors" shall mean the numbered floors of the Building. The Building contains (i) Floors numbered B-3, B-2 and B-1 corresponding to the third (3rd) through first (1st) floors below grade, respectively, (ii) a Floor numbered 1 corresponding to the floor located at grade, (iii) a Floor numbered 1M corresponding to the partial mezzanine floor located above a portion of Floor 1, (iv) Floors numbered 2 through 32 corresponding to the second (2nd) full floor above grade through the twenty-seventh (27th) floor above grade, respectively (there are no Floors numbered 4, 5, 6, 7 or 13), (v) Floors numbered 34 through 43 corresponding to the twenty-eighth (28th) floor above grade through the thirty-seventh (37th) floor above grade, respectively (there are no Floors numbered 33 or 44), (vi) Floors numbered 45 through 55 corresponding to the thirty-eighth (38th) floor above grade through the forty-eighth (48th) floor above grade, respectively, (vii) Floors numbered PH1, PH2, PH3, PH4 and GPH corresponding to the forty-ninth (49th) through fifty-third (53rd) floors above grade, respectively, and (viii) an unnumbered one (1) level mechanical penthouse located above Floor GPH.

2.1.32 "Garage Costs" shall mean, collectively and without duplication, (A) (i) the "Project Garage Operating Expenses" (as such term is used in the REA), (ii) the actual costs of (1) the purchase and installation of any Parking Equipment installed by the Trustees, (2) the maintenance, repair, relocation or replacement of any Parking Equipment installed by the Trustees, (3) all valet parking services, including any twenty-four hour per day, seven day per week valet parking services, (4) electricity allocable to the parking stackers (as reasonably determined by the Residential Trustees) and (5) the procurement, installation, maintenance, repair, relocation and replacement of any parking stackers and (iii) all other costs or expenses attributable to the operation of the Parking Garage (but excluding the REA Garage Fee and any such costs that are attributable to portions of the Project Garage that constitute General Common Elements) less (B) the Burnham Parking Fee.

2.1.33 "General Common Elements" shall mean those areas and facilities of the Condominium that are designated for the common use of all Unit Owners, as more particularly described in the Master Deed.

2.1.34 "General Common Expenses" shall mean those Common Expenses attributable to the General Common Elements.

2.1.35 "General Common Percentage Interest" shall mean the undivided ownership interest of a Unit Owner in the General Common Elements, as set forth on Exhibit B to the Master Deed, as the same may be adjusted from time to time.

2.1.36 "Grand Residences Residential Trustees" shall mean the Residential Unit Owners (or the officers, managing members, shareholders, partners, principals, trustees or beneficiaries of any Residential Unit Owners) from time to time elected to serve as Trustees pursuant to Section 4.4.1, in their capacities as Trustees.

2.1.37 “Grand Residences Residential Unit Owner” shall mean the Residential Unit Owner of a Grand Residences Residential Unit.

2.1.38 “Grand Residences Residential Units” shall mean the Residential Units located on Floor 34 through Floor GPH of the Building.

2.1.39 “Indemnatee Trustee” shall have the meaning set forth in Section 4.12.

2.1.40 “Initial Sales Period” shall have the meaning set forth in Section 6.8.9(A)(i).

2.1.41 “Initial Trustee” shall mean MP Franklin Tower Trustee LLC, a Delaware limited liability company, and any successors thereto.

2.1.42 “Land” shall mean the real property included within the Condominium, as more particularly described in the Master Deed.

2.1.43 “Listed First Mortgagee” shall have the meaning set forth in Section 6.17.5.

2.1.44 “Listed Mortgagee” shall mean a Mortgagee of which the Trustees have received written notice pursuant to and in conformance with the provisions of Section 6.17.5.

2.1.45 “Majority Vote” shall mean a simple majority (more than fifty percent (50%)) of votes actually cast at a duly called meeting at which a quorum is present.

2.1.46 “Master Deed” shall mean the Master Deed of Millennium Tower of even date and recorded herewith establishing the Condominium, as it may be amended from time to time.

2.1.47 “Mortgagee” shall mean any holder of a mortgage of record on a Unit, including, without limitation, a Listed Mortgagee.

2.1.48 “Parking Right Charge” shall have the meaning set forth in Section 6.8.9(A).

2.1.49 “Percentage Interests” shall mean the undivided ownership interest of a Unit Owner in the General Common Elements, the Residential Limited Common Elements and the Commercial Common Elements, as set forth on Exhibit B to the Master Deed, as the same may be adjusted from time to time.

2.1.50 “REA” shall mean that certain Amended and Restated Reciprocal Easement Agreement dated as of June 26, 2014 by and between MP Franklin Burnham Co LLC, a Delaware limited liability company, and MP Franklin Tower Co LLC, a Delaware limited liability company, and recorded with the Registry in Book 53151, Page 166.

2.1.51 “REA Garage Fee” shall have the meaning set forth in the REA.

2.1.52 “REA Garage Fee Share” shall have the meaning set forth in Section 6.8.10(A).

2.1.53 “Registry” shall mean the Suffolk County, Massachusetts Registry of Deeds.

2.1.54 “Required Amount” shall have the meaning set forth in Section 6.10.3(B).

2.1.55 “Residential Trustee(s)” shall mean the Grand Residences Residential Trustees and the City Residences Residential Trustee.

2.1.56 “Residential Limited Common Elements” shall mean those areas and facilities of the Condominium that are designated for the exclusive use of the Residential Unit Owners, as more particularly described in the Master Deed.

2.1.57 “Residential Limited Common Expenses” shall mean those Common Expenses attributable to the Residential Limited Common Elements.

2.1.58 “Residential Limited Common Percentage Interest” shall mean the undivided ownership interest of a Unit Owner in the Residential Limited Common Elements, as set forth on Exhibit B to the Master Deed, as the same may be adjusted from time to time.

2.1.59 “Residential Unit(s)” shall mean the Residential Unit(s) of the Condominium, as defined in the Master Deed.

2.1.60 “Residential Unit Owner” shall mean the Unit Owner of a Residential Unit.

2.1.61 “Respondent” shall have the meaning set forth in Section 6.16.2.

2.1.62 “Rules and Regulations” shall mean the rules and restrictions governing the use of the Condominium, attached hereto as Schedule 1, as the same may be amended from time to time.

2.1.63 “Service Charge” shall have the meaning set forth in Section 6.9.5.

2.1.64 “Service Order” shall have the meaning set forth in Section 6.9.5.

2.1.65 “Shared System” shall have the meaning set forth in the REA.

2.1.66 “Shared System Service” shall have the meaning set forth in the REA.

2.1.67 “Special Meeting(s)” shall mean special meeting(s) of the Unit Owners, as more particularly described in Section 6.5.2.

2.1.68 “Tangible Net Worth” shall mean total assets minus intangible assets (including without limitation, goodwill, patents, and copyrights) and total liabilities, all as calculated in accordance with generally accepted accounting principles, consistently applied.

2.1.69 “Taxes” shall mean all taxes, business improvement district assessments, payments in lieu of taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed, imposed or levied against the Land or any improvements thereon, or any part thereof or any interest therein, including, without limiting the generality of the foregoing, all general and special real estate taxes and assessments (including, but not limited to, special assessments and special service area taxes) or taxes assessed specifically in whole or in part in substitution of general real estate taxes or assessments, any taxes levied or a charge upon the rents, revenues or receipts therefrom which may be secured by a lien on the interest of an owner therein, all ad valorem taxes lawfully assessed upon the Land or any improvements thereon, or any part thereof or any interest therein, and any other charges in the nature of assessments lawfully made for improvements that may be secured by a lien on any portion of the Premises.

2.1.70 “Tower Building Systems” shall have the meaning set forth in the REA.

2.1.71 “Trust” shall mean the organization of unit owners formed pursuant to the provisions of Chapter 183A and this Declaration of Trust to manage and regulate the Condominium.

2.1.72 “Trustee(s)” shall mean the individual trustees of the Board, including the Commercial Trustee, the Residential Trustees and the Initial Trustee.

2.1.73 “Trustee Balcony Work” shall have the meaning set forth in Section 6.9.1.

2.1.74 “Turnover Date” shall have the meaning set forth in Section 4.3.

2.1.75 “Unit(s)” shall mean the Residential Units and the Commercial Unit and any additional Units created therefrom in accordance with the terms of the Master Deed.

2.1.76 “Unit Owner” shall mean the record owner of any Unit.

ARTICLE 3

Purpose of the Trust

3.1 The Trust. All of the rights and powers in and with respect to the Common Elements that are conferred under Chapter 183A upon or exercisable by the organization of unit owners of the Condominium and all real, personal, tangible and intangible property conveyed to the Trustees shall vest in the Trustees as joint tenants with the right of survivorship as Trustees of the Trust, in trust to exercise, manage, administer and dispose of and to receive the income from the same, for the benefit of Units and the Unit Owners, according to the applicable General Common Percentage Interests described in Article 5, and in accordance with the provisions of the Master Deed, this Declaration of Trust and Chapter 183A.

3.2 Trust and Not Partnership. A trust and not a partnership has been created. The Unit Owners are cestui que trust and not partners or associates and are not in any other relation between themselves with respect to the property of the Trust, nor do they hold any relation to the Trustees other than cestui que trust, with only such rights as are conferred upon them as such cestui que trust hereunder and under Chapter 183A.

ARTICLE 4

Trustees

4.1 Number; Qualification. As more particularly described herein, the affairs of the Condominium shall be governed by the Board. The Board shall be composed of only the Initial Trustee until the expiration of the term of the Initial Trustee, after which the Board shall be comprised of five (5) Trustees appointed or elected, as applicable, in the manner described below.

4.2 Trustees. With the exception of any Residential Trustee that is a representative of the Declarant, all Residential Trustees must own a Residential Unit or must be an officer, managing member, shareholder, partner, principal, trustee or beneficiary of a Residential Unit Owner. The Commercial Trustee shall be any person or entity designated by the Commercial Unit Owner pursuant to Section 4.6 regardless of such person's ownership interest in or affiliation with a Commercial Unit or Commercial Unit Owner. Each Trustee shall hold office until such time as (i) such Trustee's term expires as set forth in Sections 4.5 or 4.6, as applicable, (ii) such Trustee resigns or is removed in accordance with Section 4.8 or (iii) a successor has been duly elected in accordance with the terms and provisions of this Declaration of Trust. Except as otherwise provided in Sections 4.5 or 4.6, there shall be no limit on the number of terms (successive or otherwise) a particular individual may serve as Trustee. Some or all of the responsibilities of the Trustees may be carried out by the Condominium Managing Agent to the extent permitted under this Declaration of Trust, if approved by the Trustees.

4.3 Initial Board. The initial Board of Trustees shall be composed of only the Initial Trustee, who shall serve until the earlier to occur of (y) three hundred sixty five (365) days after the date that eighty (80%) of the total General Common Percentage Interests are no longer owned by the Declarant, its successors or assigns, or any mortgagee of record of the Declarant or its successors or assigns and (z) the Annual Meeting occurring in the fifth (5th) year following the conveyance of the first Unit to a Unit Owner other than the Declarant or its successors or assigns (the "Turnover Date"). The Initial Trustee shall serve in any event until its successors are appointed or elected, as applicable. The Initial Trustee shall be subject to removal by the Declarant, with or without cause, in the Declarant's sole and absolute discretion. Notwithstanding any other term or provision of this Declaration of Trust to the contrary, the Unit Owners shall have no power or right to remove the Initial Trustee nor to elect or appoint any additional or successor Trustees until the expiration of the term of said Initial Trustee as set forth in this Section 4.3.

4.4 Composition of Subsequent Boards. Upon the expiration of the term of the Initial Trustee as set forth in Section 4.3, the Board shall be comprised of five (5) Trustees, four (4) of which shall be Residential Trustees and one (1) of which shall be the Commercial Trustee. On the Turnover Date, whether by Annual Meeting or Special Meeting called for this purpose, the Trustees shall be appointed or elected, as applicable, to the Board as follows:

4.4.1 Three (3) Grand Residences Residential Unit Owners (or the officers, managing members, shareholders, partners, principals, trustees or beneficiaries of any Grand Residences Residential Unit Owners) shall be elected to the Board by affirmative vote of

Residential Unit Owners holding more than fifty percent (50%) of the total Residential Limited Common Percentage Interests present in person or by proxy and voting at any duly called meeting of the Unit Owners at which a quorum is present;

4.4.2 One (1) City Residences Residential Unit Owner (or the officer, managing member, shareholder, partner, principal, trustee or beneficiary of any City Residences Residential Unit Owner) shall be elected to the Board by affirmative vote of Residential Unit Owners holding more than fifty percent (50%) of the total Residential Limited Common Percentage Interests present in person or by proxy and voting at any duly called meeting of the Unit Owners at which a quorum is present; and

4.4.3 One (1) Trustee (the "Commercial Trustee") shall be appointed to the Board by the Commercial Unit Owner.

4.5 Residential Trustees.

4.5.1 Grand Residences Residential Trustees. The term of each Grand Residences Residential Trustee shall be for two (2) years and shall be staggered so that insofar as possible the term of at least one (1) Grand Residences Residential Trustee shall expire each year. In order to establish such staggering of terms, the term of the Grand Residences Residential Trustees first elected by the Residential Unit Owners shall be as follows: (i) the term of one (1) Grand Residences Residential Trustee shall be for one (1) year and (ii) the term of two (2) Grand Residences Residential Trustees shall be for two (2) years, all as determined by lot. No Grand Residences Residential Trustee shall be permitted to serve as Trustee for more than two (2) consecutive two (2) year terms without at least a one (1) year absence from the Board except that with respect to (i) the initial Grand Residences Residential Trustee chosen to serve a one (1) year term, such initial Grand Residences Residential Trustee shall not serve for more than three (3) consecutive years (i.e., one 1-year term and one 2-year term) without at least a one (1) year absence from the Board and (ii) the initial Grand Residences Residential Trustees chosen to serve a two (2) year term, such initial Grand Residences Residential Trustees shall not serve for more than four (4) consecutive years (i.e., two consecutive 2-year terms) without at least a one (1) year absence from the Board. Until such time as the Declarant no longer holds title to any Unit, the Declarant, an affiliate of the Declarant or an employee of either the Declarant or such affiliate may be a Grand Residences Residential Trustee.

4.5.2 City Residences Residential Trustee. The term of the City Residences Residential Trustee shall be for two (2) years. No initial City Residences Residential Trustee may serve for more than four (4) consecutive years (i.e., two consecutive 2-year terms) without at least a one (1) year absence from the Board. Until such time as the Declarant no longer holds title to any Unit, the Declarant, an affiliate of the Declarant or an employee of either the Declarant or such affiliate may be a City Residences Residential Trustee.

4.5.3 Failure to Meet Quorum. With respect to the election of Residential Trustees at any Annual Meeting or Special Meeting of the Unit Owners, if a quorum is not present either in person or by proxy at any such meeting, the Trustees shall adjourn and reschedule such meeting pursuant to and in accordance with Section 6.5.8 hereof and the election of the Residential Trustees shall occur at such rescheduled meeting.

4.6 Commercial Trustee. The Commercial Unit Owner shall appoint the Commercial Trustee. If the Commercial Unit is subdivided into more than one Unit, then the Commercial Unit Owners shall together appoint the Commercial Trustee. In connection with such appointment, each of such Commercial Unit Owners shall be entitled to cast votes equivalent to such Commercial Unit Owner's Commercial Limited Common Percentage Interest (or in such other manner as may be agreed in writing by the Commercial Unit Owners). The candidate that receives the greatest number of votes cast shall be appointed the Commercial Trustee. The term of the Commercial Trustee shall be for three (3) years. A Commercial Trustee may serve successive terms if duly appointed to serve as Commercial Trustee.

4.7 Officers. The Trustees may elect from their numbers a "Chairman", "Treasurer" and "Secretary", who shall perform such duties as the Trustees may prescribe, and the Trustees may elect such other officers as they desire. Any Trustee may hold more than one (1) office as an officer.

4.8 Resignation and Removal of Trustees. Any Trustee may resign at any time by an instrument in writing, and such resignation shall take effect upon the recording of the instrument of resignation with the Registry. Any removal of a Trustee under this Section 4.8 shall take effect upon the recording of the instrument of removal with the Registry.

4.8.1 After reasonable notice and an opportunity to be heard, any Residential Trustee (which, for the avoidance of doubt, does not include the Initial Trustee) may be removed from office at any Annual Meeting or Special Meeting of the Unit Owners: (i) for a material breach of duty hereunder by the affirmative vote of Residential Unit Owners holding more than fifty percent (50%) of the total Residential Limited Common Percentage Interests present in person or by proxy and voting at any duly called meeting of the Unit Owners at which a quorum is present, or (ii) for other cause, or without cause, by the affirmative vote of Residential Unit Owners holding at least seventy-five percent (75%) of the total Residential Limited Common Percentage Interests present in person or by proxy and voting at any duly called meeting of the Unit Owners at which a quorum is present. A qualified successor may, at such meeting or thereafter, be elected by affirmative vote of Residential Unit Owners holding more than fifty percent (50%) of the total Residential Limited Common Percentage Interests present in person or by proxy and voting at any duly called meeting of the Unit Owners at which a quorum is present to fill the vacancy thus created.

4.8.2 The Commercial Trustee may be removed at any time by a notice of removal filed with the Registry (with a copy to the other Trustees) signed by the record owner of the Commercial Unit along with an appointment for a new Commercial Trustee to serve the balance of the remaining term of such removed Commercial Trustee. If the Commercial Unit is subdivided into more than one Unit, then such notice of removal shall be signed by the Commercial Unit Owner(s) representing a majority of the total Commercial Limited Common Percentage Interests.

4.8.3 The Initial Trustee may only be removed or substituted by the Declarant (or its successors or assigns), with or without cause, in its sole and absolute discretion. Notwithstanding any other term or provision of this Declaration of Trust to the contrary, the Unit

Owners shall have no power or right to remove the Initial Trustee nor to elect or appoint any additional or successor Trustees until the expiration of the term of said Initial Trustee.

4.9 Vacancies.

4.9.1 All vacancies of the Initial Trustee shall be filled by the Declarant.

4.9.2 Any vacancy of a Grand Residences Residential Trustee caused by any reason other than the removal by vote of the Residential Unit Owners shall be filled by a Grand Residences Residential Unit Owner (or the officer, managing member, shareholder, partner, principal, trustee or beneficiary of any Grand Residences Residential Unit Owner) elected by a Majority Vote of the Residential Trustees at a special meeting of the Board at which a quorum is present held for that purpose promptly after the occurrence of such vacancy. Each person so elected shall be a Grand Residences Residential Trustee until a successor to such person shall be elected at the next Annual Meeting of the Unit Owners.

4.9.3 Any vacancy of the City Residences Residential Trustee caused by any reason other than the removal by vote of the Residential Unit Owners shall be filled by City Residences Residential Unit Owner (or the officer, managing member, shareholder, partner, principal, trustee or beneficiary of any City Residences Residential Unit Owner) elected by a Majority Vote of the Board at which a quorum is present held for that purpose promptly after the occurrence of such vacancy. The person so appointed shall be the City Residences Residential Trustee until a successor to such person shall be elected at the next Annual Meeting of the Unit Owners.

4.9.4 Any vacancy of the Commercial Trustee shall be promptly filled by the Commercial Unit Owner in the manner set forth in Section 4.6.

4.9.5 If, for any reason, 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 qualified Trustee may be appointed to fill such vacancy by a court of competent jurisdiction upon the application of a Trustee or Unit Owner and by notice to all Unit Owners and Trustees, and to such other parties in interest, if any, to whom the court may direct that notice be given.

4.10 Acceptance of Trust; Appointment.

4.10.1 With respect to any election or appointment of a Residential Trustee, there shall promptly be executed and recorded with the Registry (i) a certificate of such election signed by any three (3) Trustees, certifying that the election was made in accordance with the terms of this Declaration of Trust, and (ii) an acceptance of such election signed by the person so elected (which acceptance may be contained within the certificate of election or appointment).

4.10.2 With respect to any appointment of a Commercial Trustee, there shall promptly be executed and recorded with the Registry (i) a certificate of such appointment signed by Commercial Unit Owner(s) representing a majority of the total Commercial Limited Common Percentage Interests, certifying that the appointment was made in accordance with the terms of this Declaration of Trust, and (ii) an acceptance of such appointment signed by the person so appointed (which acceptance may be contained within the certificate of appointment).

4.10.3 An election or appointment made after the date hereof shall take effect upon the recording of the instrument of appointment with the Registry. Upon recording as aforesaid, the person so elected or appointed shall be and become a Trustee and shall be vested with the powers of a Trustee as set forth herein. Notwithstanding the foregoing, in the event of any vacancy in the office of Trustee, however caused and for whatever duration, the remaining Trustees shall (subject to the provisions of this Declaration of Trust relating to the necessity of a quorum) continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustees.

4.11 Liability of the Trustees, Unit Owners and Trust.

4.11.1 The Trustees shall not be liable to the Trust, any Unit Owner or any occupant or user of any portion of the Condominium for any (i) mistake of judgment, (ii) negligence, (iii) failure of water supply or other utility facilities or other services which are to be obtained or provided by the Trustees or paid for as a Common Expense, (iv) injury or damage to person or property caused by the elements, the Unit Owner of any Unit or any other person, or resulting from electricity, water, ice or other elements which may leak or flow from or over any portion of the Condominium or from any pipe, drain, conduit, appliance or equipment within the Condominium, or otherwise, except for their own personal willful malfeasance or bad faith. In addition to, and not in limitation of, the indemnity obligation set forth in Section 4.12, the Unit Owners, in proportion to each Unit Owner's General Common Percentage Interest, shall indemnify and hold harmless each of the Trustees from and against all contractual liability to others arising out of contracts made by the Trustees on behalf of the Trust unless any such contract shall have been made in bad faith or contrary to the provisions of Chapter 183A or the Condominium Documents, and except to the extent that such liability is satisfied by directors' and officers' liability insurance. No Trustee shall have any personal liability with respect to any contract made by the Trustees on behalf of the Trust except to the extent of such Trustee's own personal willful malfeasance or bad faith.

4.11.2 The liability of any Unit Owner arising out of any contract made by the Trustees, or out of the indemnification of the Trustees, or for damages as a result of injuries arising in connection with the Common Elements solely by virtue of ownership of a General Common Percentage Interest therein, or for liabilities incurred by the Trust, shall be limited to the total liability multiplied by such Unit Owner's General Common Percentage Interest.

4.11.3 Every agreement made by the Trustees or the Condominium Managing Agent on behalf of the Trust shall, if obtainable, provide that the Trustees or the Condominium Managing Agent, as the case may be, are acting only as agents for the Trust and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to the total liability thereunder multiplied by such Unit Owner's General Common Percentage Interest.

4.12 Indemnity.

4.12.1 Any Trustee (including without limitation the Initial Trustee) who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that such person or entity is or was a Trustee of the Trust (the

"Indemnatee Trustee") shall be indemnified both out of the Trust property and by the Unit Owners severally in proportion to each Unit Owner's General Common Percentage Interest against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred by the Indemnatee Trustee in connection with such action, suit or proceeding, which includes, without limitation, any threatened, pending or completed action, suit or proceeding against the Initial Trustee by the Unit Owners, the Trustees or the Trust.

4.12.2 The indemnification obligation of the Trust and the Unit Owners under this Section 4.12 includes the obligation to advance funds to pay for or reimburse the expenses (including attorneys' fees) incurred by the Indemnatee Trustee and submitted to the Trustees for payment, upon receipt of an undertaking by the Indemnatee Trustee to repay such funds if the Indemnatee Trustee is adjudicated to be not entitled to indemnification under this Section 4.12 which undertaking shall be accepted without reference to the financial ability of the Indemnatee Trustee to make repayment or a requirement that such repayment obligation be secured or bear interest. Any such indemnification shall be provided to the Indemnatee Trustee although the Indemnatee Trustee may no longer be a Trustee.

No indemnification shall be provided to any Indemnatee Trustee with respect to any matter as to which the Indemnatee Trustee shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable belief that such Indemnatee Trustee's action was in the best interest of the Trust; provided, however, that nothing in this paragraph shall limit the obligation of the Trust and the Unit Owners to advance funds to the Indemnatee Trustee as provided in the immediately foregoing paragraph.

4.13 Fidelity Bonds. The Trustees shall obtain and maintain fidelity bonds as set forth in Section 6.10.1(F).

4.14 Self-Dealing. Each Trustee shall exercise such Trustee's powers and duties in good faith and with a view to the interests of the Condominium, provided, however, that where the interests of the Commercial Unit may differ from that of the other Units, the Commercial Trustee may act in accordance with such interests without any liability to the Unit Owners. No contract or other transaction between the Trustees, or between the Trustees and any corporation, firm or association (including the Initial Trustee) in which any of the Trustees are owners, members, partners, trustees, or officers or are pecuniarily or otherwise interested, is either void or voidable because any such Trustee is present at the meeting of the Board or any committee thereof which authorizes, approves or ratifies the contract or transaction, or because such Trustee's vote is counted for such purpose, provided that such Trustee acts in good faith and any of the conditions specified in any of the following subsections exist:

4.14.1 The fact of the common management or interest is disclosed or known to the Trustees prior to such contract or transaction being entered into and noted in the minutes, and the Trustees authorize, approve or ratify such contract or transaction in good faith by a vote sufficient for the purpose; or

4.14.2 The contract or transaction is commercially reasonable to the Trustees at the time it is authorized, ratified, approved or executed and shall be no less favorable to the Trust than any dealing, contract or arrangement with an independent party.

4.15 Compensation. The Trustees shall serve their terms without compensation from the Trust; however, (i) the Commercial Trustee may be a paid employee of the Commercial Unit Owner and (ii) the Trustees may be reimbursed for their reasonable and actual expenses (exclusive of the value of their services or time) incurred in connection with the performance of such duties as Trustees.

4.16 Agreements and Other Instruments. All agreements, contracts, deeds, leases, checks and other instruments of the Trust shall be executed by, and payment vouchers shall be approved by, any two (2) Trustees or by such other person or persons as may be designated from time to time by the Trustees.

ARTICLE 5

Beneficiaries and their Beneficial Interests in the Trust

5.1 The Beneficiaries and their Beneficial Interests. The beneficiaries of this Trust shall be the Unit Owners of the Condominium. The beneficial interests in this Trust shall be determined with respect to each Unit Owner's General Common Percentage Interest, as set forth in Exhibit B to the Master Deed.

5.2 Exercise of Beneficial Interest. The beneficial interest of each Unit shall be held and exercised as a single Unit and shall not be divided among several owners of any Unit. Whenever any Unit is owned of record by more than one person, the several owners of such Unit shall (i) determine and designate which one of such owners shall be authorized and entitled to cast votes, exercise instruments, and otherwise exercise as proxy the rights pertaining to such Unit, and (ii) notify the Trustees of such designation by a written notice signed by all of the record owners of such Unit. Any such designation shall take effect upon receipt by the Trustees and may be revoked or changed at any time by such notice. In the absence of such notice of designation, the Trustees may, by Majority Vote, designate any one such owner for such purposes. Whenever any designated owner is not a natural person, the party making the designation shall likewise designate a natural person entitled to take all action on behalf of the designated owner. The beneficial interest of each Unit must be voted in full and may not be partially voted.

ARTICLE 6

By-Laws

The provisions of this Article 6 shall constitute the By-Laws of this Trust and the organization of Unit Owners established hereby.

6.1 Powers and Duties of Trustees. The Trustees shall have the powers and duties necessary for or incidental to the administration of the affairs of the Condominium, except such as by law or by the terms of the Master Deed or this Declaration of Trust may not be delegated to the Trustees. The Trustees shall execute their powers and functions in a reasonable manner and not unreasonably discriminate against any Unit Owner. The powers and duties of the Trustees shall include, but shall not be limited to, the following:

6.1.1 Managing, operating, caring for, maintaining, repairing and replacing the General Common Elements and the portions of the Residential Limited Common Elements and the Commercial Limited Common Elements that are to be maintained or operated by the Trustees, each to the extent provided in the Master Deed and this Declaration of Trust, including entering into contracts for utilities, services and supplies.

6.1.2 Determining and allocating the Common Expenses and Common Charges.

6.1.3 Assessing and collecting the Common Charges from Unit Owners.

6.1.4 Enforcing all obligations of the Unit Owners under the Condominium Documents.

6.1.5 Levying fines, imposing late charges and charging interest (in amounts or percentages reasonably established by the Trustees or the Condominium Managing Agent, as the case may be) against any Unit Owner for violations of the Condominium Documents (including the Rules and Regulations) and late payment of Common Charges or other charges. Upon such levying, said fines shall constitute a lien against the Unit from the time the assessment is due and shall be enforceable as a Common Charge.

6.1.6 Employing and dismissing such agents, managers (including, without limitation, managers to manage only certain aspects of the operation of the Condominium such as bookkeeping and accounting services), officers, brokers, employees, assistants and counsel as the Trustees deem necessary or advisable in connection with the performance of their duties hereunder, including the engagement of a manager or managing agents responsible for the maintenance or operation of any portion of the Common Elements that are to be maintained or operated by the Trustees, and in connection therewith, to define the respective duties and to determine and pay the compensation of such agents, managers, officers, brokers, employees, assistants and counsel; provided, however, the Trustees shall not be answerable for the acts and defaults of such individuals and entities, absent any personal willful malfeasance or bad faith on the part of the Trustees.

6.1.7 Opening and maintaining bank accounts on behalf of the Trust and designating the signatories required therefor.

6.1.8 Leasing, managing, licensing and otherwise dealing with the General Common Elements and the portions of the Residential Limited Common Elements and the Commercial Limited Common Elements that are to be maintained or operated by the Trustees, as provided in the Master Deed and this Declaration of Trust.

6.1.9 Owning, conveying, mortgaging, encumbering, leasing and otherwise dealing with any Unit conveyed to the Trustees or acquired by the Trustees (or their nominee) as the result of the enforcement of any lien for Common Charges or otherwise.

6.1.10 Organizing corporations or limited liability companies or trusts to act as designees of the Trust with respect to such matters as the Trustees may determine.

6.1.11 Obtaining and maintaining insurance for the Condominium, including the Units, and adjusting and settling insurance claims as provided herein.

6.1.12 Instituting legal proceedings on behalf or in defense of the Trust and executing releases, settlements or compromises of claims on its behalf.

6.1.13 Making additions and improvements to, or alterations of, the General Common Elements, the Residential Limited Common Elements and Commercial Limited Common Elements, as provided in the Condominium Documents.

6.1.14 Making repairs and restorations to the General Common Elements and the portions of the Residential Limited Common Elements and Commercial Limited Common Elements, or parts thereof, that are to be maintained or operated by the Trustees which may be damaged or destroyed by fire or other casualty or necessitated as a result of condemnation or eminent domain proceedings, as provided in the Condominium Documents.

6.1.15 Borrowing money on behalf of the Trust when required in connection with the operation, care, upkeep, replacement, restoration, and alteration of, or additions to, the General Common Elements or portions of the Residential Limited Common Elements and Commercial Limited Common Elements as provided in the Condominium Documents; provided, however, that the consent of Unit Owners holding sixty percent (60%) or more of the total General Common Percentage Interests shall be required for any borrowings in excess of the aggregate amount of \$500,000.00 in any one Fiscal Year (regardless of the balance of any loans outstanding from previous years) (except with respect to the purchase of an on-site manager's apartment pursuant to the Master Deed, in which case such Unit Owner consent shall not be required). If any sum borrowed by the Trustees pursuant to the authority conferred by this paragraph is not repaid by the Trustees when and as required, a Unit Owner who pays to the creditor a proportion of the total liability thereunder equal to such Unit Owner's General Common Percentage Interest shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor has filed or has the right to file against such Unit Owner's Unit, as the case may be.

6.1.16 Preparing, executing and recording on behalf of all Unit Owners, as their attorney-in-fact (said power hereby being coupled with an interest), a restatement of the Master Deed and/or this Declaration of Trust when, in the Trustees' reasonable estimation, it is advisable to consolidate and restate all amendments, modifications, additions and deletions theretofore made to the Master Deed or this Declaration of Trust.

6.1.17 Entering and having access to Units as reasonably necessary to the performance and exercise of the duties, obligations, rights and powers of the Trustees under the Condominium Documents.

6.1.18 The power to do everything necessary, suitable or proper for the accomplishment of any of the purposes, the attainment of any of the objectives, or the furtherance of any of the powers of the Trust, either alone or in conjunction with the Declarant and/or the Unit Owners, including, without limitation, the exercise of all rights and powers

conferred by Chapter 183A, except and to the extent otherwise provided in the Condominium Documents.

6.1.19 Granting and accepting easements through or over the Common Elements in accordance with Chapter 183A.

6.1.20 Except that:

(A) The rights and obligations of the Trust with regard to the operation of the Project Garage (whether under the REA or otherwise) are hereby delegated to the Residential Trustees. The Residential Trustees shall have the sole right to exercise voting control on behalf of the Trust with respect to matters concerning the operation of the Project Garage, provided that the Residential Trustees shall not cause or permit a lien to be placed on the Premises with regard to any non-payment of any amounts due with respect to the Project Garage under the REA.

(B) The rights and obligations of the Trust with regard to the portions of the Tower Club Terrace that are subject to the Tower Club Terrace Light and Air Easement are hereby delegated to the Residential Trustees. The Residential Trustees shall have the sole right to exercise voting control on behalf of the Trust with respect to matters concerning the portions of the Tower Club Terrace that are subject to such Tower Club Terrace Light and Air Easement, provided that the Residential Trustees shall not cause or permit a lien to be placed on the Premises with regard to any non-payment of any amounts due with respect to such portions pursuant to the REA or otherwise.

(C) The rights of the Trust under the REA to, subject to the provisions of the REA, install or construct within the Tower Reserved Light and Air Easement Building Systems (as such term is defined in the REA), utility equipment or other roof structures or penetrations are hereby delegated to the Commercial Trustee. The Commercial Trustee shall have the sole right to exercise voting control on behalf of the Trust with respect thereto, provided that the Commercial Trustee shall not cause or permit a lien to be placed on the Premises with regard to any non-payment of any amounts due with respect to such portions pursuant to the REA or otherwise.

(D) The rights and obligations of the Trust with regard to the Tower Building Systems are hereby delegated to the Commercial Trustee. The Commercial Trustee shall have the sole right to exercise voting control on behalf of the Trust with respect to matters concerning the Tower Building Systems, provided that the Commercial Trustee shall not cause or permit a lien to be placed on the Premises with regard to any non-payment of any amounts due with respect to the Tower Building Systems pursuant to the REA or otherwise. The Trust shall reasonably cooperate with the Commercial Trustee, without the expenditure of money, to facilitate compliance with the terms and provisions of the REA with respect to the Tower Building Systems.

(E) The rights and obligations of the Trust with regard to the Shared Systems are hereby delegated to the Commercial Trustee. The Commercial Trustee shall have the sole right to exercise voting control on behalf of the Trust with respect to matters concerning

the Shared Systems, provided that the Commercial Trustee shall not cause or permit a lien to be placed on the Premises with regard to any non-payment of any amounts due with respect to the Shared Systems pursuant to the REA or otherwise. The Trust shall reasonably cooperate with the Commercial Trustee, without the expenditure of money, to facilitate compliance with the terms and provisions of the REA with respect to the Shared Systems.

(F) The Trustees shall not sell, convey, lease, license or otherwise transfer any artwork of the Trust (which includes, without limitation, any paintings, sculptures or other media located in or on the Common Elements as of the date of the recording of this Declaration of Trust) without (i) a unanimous vote of the Trustees and (ii) the consent of Unit Owners holding seventy-five percent (75%) or more of the total General Common Percentage Interests.

6.2 Principal Office of Trustees. The principal office of the Trust shall be located at the Condominium or at such other location in the City of Boston reasonably convenient thereto as may be designated from time to time by a Majority Vote of the Trustees.

6.3 Managing Agent.

6.3.1 The Condominium may be self-managed if Unit Owners holding seventy-five percent (75%) or more of the total General Common Percentage Interests affirmatively vote to be self-managed, or, if not, the Trustees shall employ for the Condominium a managing agent (the "Condominium Managing Agent") at a compensation and on such other terms as are to be established by the Trustees. To the extent permitted by the Trustees, the Condominium Managing Agent shall have the right to delegate all or a portion of its duties to submanaging agents.

6.3.2 Requirements. Except for a Condominium Managing Agent that is an affiliate of the Declarant, the Condominium Managing Agent shall be a bona fide business enterprise that manages common interest communities. Such firm or its principals shall have a minimum of five (5) years' experience in first-class residential community or hotel management and shall employ persons possessing a high level of competence in the technical skills necessary for proper management of the Condominium. The Condominium Managing Agent shall provide the Trustees with evidence of insurance coverage, including coverage for errors and omissions, liability, workers' compensation and, if appropriate, care, custody and control coverage, and in all cases such coverage is to be satisfactory to the Trustees. The Condominium Managing Agent shall provide, at its sole cost and expense, blanket fidelity insurance coverage in an amount equal to at least twenty-five percent (25%) of the annual Common Charges or such greater amount as deemed adequate by the Trustees. Such fidelity insurance must name the Trust as the insured and include a provision requiring twenty (20) days' written notice to the Trustees in the event of cancellation or material modification.

6.3.3 Duties. The Condominium Managing Agent shall perform, or cause to be performed, such duties and services as the Trustees shall direct. Such duties and services may include, without limitation, the duties listed in Sections 6.1.1, 6.1.2, 6.1.3, 6.1.4, 6.1.5, 6.1.6, 6.1.7, 6.1.8, 6.1.10, 6.1.11, 6.1.12 (but only with respect to legal proceedings to recover unpaid Common Charges), 6.1.13, 6.1.14 and 6.1.17. The Trustees may delegate to such Condominium

Managing Agent all of the powers granted to the Trustees by this Declaration of Trust other than the powers set forth in Sections 6.1.9, 6.1.12 (except as permitted in the immediately foregoing sentence), 6.1.15 and 6.1.16. Such Condominium Managing Agent shall perform the obligations, duties and services delegated to it by the Trustees in compliance with the provisions of this Declaration of Trust and with Chapter 183A.

6.3.4 Financial Records. The Condominium Managing Agent shall be responsible for keeping all financial records of the Condominium, including the following:

(A) records of all receipts and expenditures, invoices and vouchers authorizing payments, receivables and bank statements relating thereto;

(B) records regarding the replacement reserve fund and any other funds of the Trust and bank statements relating thereto;

(C) audits, reviews, accounting statements, and financial reports relating to the finances of the Trust;

(D) contracts for work to be performed for or services to be provided to the Trust; and

(E) all current insurance policies of the Trust or policies which name the Trust as an insured party or obligee.

Such records shall be kept in an up-to-date manner within the Commonwealth of Massachusetts and shall be available for inspection by the Trustees and any Unit Owner or by any Mortgagee at any time during regular business hours. Access to said records shall include the right to photocopy said records at the expense of the person or entity requesting the copies. Such records shall be the property of the Trust and shall be retained for a period of at least seven (7) years.

6.3.5 Financial Standards. The Trustees shall impose appropriate standards of performance upon the Condominium Managing Agent. Unless the Condominium Managing Agent is instructed otherwise by the Trustees:

(A) the modified accrual method of accounting shall be employed;

(B) all checks in excess of \$50,000 shall be signed by two or more persons, consisting of at least one representative of the Condominium Managing Agent (which may be the employee of any financial services submanaging agent thereof) and one Trustee;

(C) cash accounts of the Trust shall not be commingled with the assets of the Condominium Managing Agent or with the assets of any other entity including accounts for or created on behalf of any of the Units. Separate and distinct accounts shall be maintained for the replacement reserve, for the operating funds and for any other fund of the Trust. These funds shall not be subject to the claims of any creditor of the Condominium Managing Agent or of any other entity;

(D) any discounts or rebates received by the Condominium Managing Agent from vendors, independent contractors or others providing goods or services to the Trust shall benefit the Trust;

(E) any financial or other interest which the Condominium Managing Agent may have in any firm providing goods or services for a separate fee or charge to the Trust shall be disclosed promptly to the Trustees; and

(F) a monthly written financial report and an annual written financial report shall be prepared for the Trustees containing:

(i) An "income statement" reflecting all income and expense activity for the preceding period on a modified accrual basis;

(ii) An "account activity statement" reflecting all receipt and disbursement activity for the preceding period on a cash basis;

(iii) An "account status report" reflecting the status of all accounts in an "actual" versus "projected" (budget) format;

(iv) A "balance sheet" reflecting the financial condition of the Trust on an unaudited basis;

(v) A "budget report" reflecting any actual or pending obligations that are in excess of budgeted amounts by an amount exceeding the operating reserves or ten percent (10%) of a major budget category (as distinct from a specific line item in an expanded chart of accounts);

(vi) A "delinquency report" listing all Unit Owners who are delinquent in paying Common Charges and describing the status of any actions to collect such assessments; and

(vii) Copies of all relevant bank statements and reconciliations for the replacement reserve fund and any other funds for which the Condominium Managing Agent has responsibility.

6.3.6 Termination of Managing Agent. Any management agreement between the Trustees and the Condominium Managing Agent shall be terminable by the Trustees without cause and without payment of a termination fee upon ninety (90) days' written notice (or with cause upon ten (10) days' written notice and without payment of a termination fee, provided that the Condominium Managing Agent shall have the opportunity to cure during such 10-day period). Upon termination, all books, records, funds and accounts in the possession of the Condominium Managing Agent shall be immediately delivered to the Trustees.

6.4 Parking Manager/Operator; Residential Club Area.

6.4.1 The Residential Trustees shall engage a Garage Operator to manage the Project Garage for compensation and on such other terms as shall be established by the Residential Trustees.

6.4.2 Subject to the Declarant's rights under Section 10.2 of the Master Deed, the Residential Trustees may engage a manager/operator to manage those portions of the Residential Club Area for which the Declarant has not reserved explicit rights pursuant to Section 10.2 of the Master Deed, for compensation and on such terms and shall be established by the Residential Trustees.

6.5 Unit Owners.

6.5.1 Annual Meetings. The first Annual Meeting (the "First Annual Meeting") of the Unit Owners shall be called by the Initial Trustee within twelve (12) calendar months from the recording of this Declaration of Trust. After the First Annual Meeting, subsequent annual meetings of the Unit Owners ("Annual Meetings") shall be held within thirty (30) days of the one (1) year anniversary after the preceding Annual Meeting, or on such other date as may be chosen by the Trustees but not later than ninety (90) days after the anniversary of the preceding Annual Meeting. At each Annual Meeting:

(A) Subject to Section 4.3 regarding the Initial Trustee, the Trustees shall be elected at each Annual Meeting as provided in Article 4;

(B) The Unit Owners may adopt amendments to (a) the Master Deed, as provided in Section 11 of the Master Deed, and/or (b) this Declaration of Trust or the Rules and Regulations, as provided in Article 9 hereof; and

(C) The Unit Owners may transact such other business of the Condominium as may properly come before them.

6.5.2 Special Meetings. The Trustees shall call a special meeting of the Unit Owners (a "Special Meeting") upon receipt of a petition signed by Unit Owners holding at least fifty percent (50%) of the total General Common Percentage Interests, or in connection with any provision of Section 6.16 that requires the approval of the Unit Owners, at which Special Meeting the Unit Owners may transact any business that may be transacted at an Annual Meeting.

6.5.3 Place of Meetings. Annual and Special Meetings of the Unit Owners shall be held at the Condominium or at such other location in the City of Boston reasonably convenient thereto as may be designated from time to time by the Trustees. If permitted by applicable law, Unit Owners may participate in an Annual Meeting or Special Meeting by means of a conference telephone or any similar communications equipment that allows all persons participating in such meeting to hear one another and such participation shall constitute presence at such meeting.

6.5.4 Notice of Meetings. The Trustees shall deliver or cause to be delivered to each Unit Owner a notice of each Annual Meeting or Special Meeting at least seven (7) days prior to the date fixed for such meeting, which notice shall state the purpose of the meeting as well as the time and place where such meeting will be held. To the extent not inconsistent with applicable Legal Requirements, the Trustees may from time to time promulgate Rules and Regulations to permit notices of any Annual Meeting or Special Meeting to be given by electronic means. Emergency meetings may be held on less than seven (7) days prior notice provided a written waiver is procured from any objecting Unit Owner.

6.5.5 Waiver of Notice. Any Unit Owner may at any time waive notice of any Annual Meeting or Special Meeting in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by any Unit Owner (either in person or through some person designated by such Unit Owner to act as proxy as provided below) shall constitute a waiver by such Unit Owner of notice thereof.

6.5.6 Voting and Other Action by Unit Owners.

(A) A Unit Owner either personally or through some person designated by such Unit Owner to act as proxy shall each be entitled to cast votes equivalent to the Unit Owner's General Common Percentage Interest at all meetings of the Unit Owners, or to cast votes equivalent to the Unit Owner's Residential Limited Common Percentage Interest or Commercial Limited Common Percentage Interest, as the case may be, for those votes specified in the Master Deed or this Declaration of Trust that require the approval or consent of a stated number of votes or percentage of the Residential Limited Common Percentage Interests or Commercial Limited Common Percentage Interests, as the case may be. The designation of any such proxy shall be made by prior written notice to the Trustees, and unless otherwise specifically provided in the proxy, shall be revocable at any time by the Unit Owner upon written notice to the Trustees, provided, however, that no designation to act as a proxy shall be effective for a period in excess of six (6) months, except for any designation of a Listed Mortgagee to act as the proxy of its mortgagor.

(B) The Unit Owners shall transact the business of the Condominium at a duly called meeting at which a quorum is present, except that any action to be taken by the Unit Owners may be taken without a meeting if all Unit Owners entitled to vote on the matter consent to the action by an instrument in writing. Such consent shall be treated for all purposes as a vote at a meeting.

(C) Notwithstanding the provisions of Section 6.5.6(A) and (B), the Trustees may, to the extent not inconsistent with applicable Legal Requirements, from time to time promulgate Rules and Regulations to permit the voting of Unit Owners by electronic means.

(D) No Unit Owner may vote at any Annual Meeting or Special Meeting or be elected to serve as Trustee if payment by such Unit Owner of any financial obligation to the Trust is delinquent for more than sixty (60) days and the amount necessary to bring the account current has not been paid at least five (5) days prior to such Annual Meeting or Special Meeting or election (subject to the immediately following sentence). If such Unit Owner

desires to make payment at the time of such meeting or election, then such payment must either be in the form of cash, certified check or money order.

6.5.7 Actions of Unit Owners. As used in this Declaration of Trust, the term "majority of", "majority in interest of the Unit Owners" or the like, shall mean Unit Owners holding more than fifty percent (50%) of the General Common Percentage Interests held by Unit Owners present in person or by proxy and voting at any duly called meeting of the Unit Owners at which a quorum is present and voting. As used in this Declaration of Trust, any stated percentage of the Unit Owners shall mean Unit Owners holding in the aggregate that stated General Common Percentage Interest of the total General Common Percentage Interests or, if specified, Unit Owners holding in the aggregate that stated (i) Residential Limited Common Percentage Interest of the total Residential Limited Common Percentage Interests or (ii) Commercial Limited Common Percentage Interest of the total Commercial Limited Common Percentage Interests, as the case may be. An affirmative vote by the majority of Unit Owners shall be binding upon all Unit Owners for all purposes except where in the Master Deed, or this Declaration of Trust, a higher percentage vote is required.

6.5.8 Quorum. Except as otherwise provided in the immediately following two sentences or elsewhere in this Declaration of Trust, the presence in person or by proxy of Unit Owners holding Percentage Interests equal to at least fifty percent (50%) of the total General Common Percentage Interests shall constitute a quorum at all meetings of the Unit Owners, except when a larger quorum is required by law or by this Declaration of Trust. If any meeting of the Unit Owners, including without limitation, any Annual Meeting or Special Meeting, cannot be held because a quorum has not attended in person or by proxy, the Trustees shall adjourn the meeting to a time not less than ten (10) days nor more than fourteen (14) days after the time for which the original meeting was called, and shall deliver or cause to be delivered to each Unit Owner a notice of such rescheduled meeting at least three (3) days prior to the date fixed for such meeting, which notice shall state the purpose of the meeting as well as the time and place where such meeting will be held. If Unit Owners holding at least fifty percent (50%) of the total General Common Percentage Interests fail to attend in person or by proxy such rescheduled meeting, then those Unit Owners present in person and by proxy at such rescheduled meeting shall constitute a quorum at such meeting. Notwithstanding the foregoing, there shall not be deemed to be any quorum for the purpose of conducting business or making any decisions which will have any material adverse impact on the Commercial Unit Owner(s), unless such specific Unit Owner is present (or unless such specific Unit Owner has been given notice of each meeting as contemplated above and fails to attend two successive meetings (in which case action may be taken at such second meeting) or unless a written waiver or assent to such action is executed by such specific Unit Owner.

6.5.9 Title to Units. Title to Units may be taken in the name of an individual or in the names of two or more persons, as tenants in common or as joint tenants or as tenants by the entirety, or in the name of a corporation, limited liability company, trust, partnership or any other entity, or in the name of a fiduciary.

6.6 Meetings of Trustees.

6.6.1 The Initial Board. For so long as there exists a single Initial Trustee, no meetings of the initial Board shall be required.

6.6.2 Regular Meetings of the Board. The first meeting of the Trustees elected or appointed by the Unit Owners shall be held not later than thirty (30) days after the date on which the Residential Trustees are elected, at such time and place as shall be determined at the time of such election. Thereafter, regular meetings of the Trustees shall be held from time to time as shall be determined by a Majority Vote of the Trustees, but at least two (2) such meetings shall be held during each Fiscal Year. Notice of regular meetings of the Trustees shall be given to each Trustee at least seven (7) days prior to the day chosen for such meeting.

6.6.3 Special Meetings. Special meetings of the Trustees may be called at the written request of any Trustee, by notice given to each Trustee at least seven (7) days prior to the day chosen for such special meeting (except in the event of an Emergency, in which event, such Trustee shall give as much notice as is reasonably practicable under the circumstances). Except with respect to the Initial Trustee, if the Trustees meet less frequently than every one hundred eighty (180) days, twenty-five (25) Unit Owners may deliver a written request to the Trustees requesting a special meeting of the Trustees and the Trustees shall schedule such special meeting to occur within ten (10) days of receipt of the written request therefor. Notice of special meetings of the Trustees shall include the time, place and purpose of the meeting.

6.6.4 Executive Sessions. All meetings of the Trustees shall be open to Unit Owners as observers, except that the Trustees may meet in executive session, which shall be closed to Unit Owners, on sensitive matters such as personnel, litigation strategy or hearings for violations of the Condominium Documents. Any final action taken by the Trustees in executive session shall be recorded in the minutes.

6.6.5 Place of Meetings. All meetings of the Trustees shall be held at the Condominium, or at such other location in the City of Boston reasonably convenient thereto as may be designated from time to time by a Majority Vote of the Trustees. If permitted by applicable law, the Trustees may participate in a meeting of the Trustees by means of a conference telephone or any similar communications equipment that allows all persons participating in such meeting to hear one another and such participation shall constitute presence at such meeting.

6.6.6 Waiver of Notice. Any Trustee may at any time waive notice of any meeting of the Trustees in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by any Trustee at a meeting of the Trustees shall constitute a waiver by such individual of notice thereof. If all Trustees are present at any meeting, no notice shall be required and any business may be transacted at such meeting.

6.6.7 Voting.

(A) In any matters relating to the administration of the Condominium and the exercise of the powers hereby conferred, the Trustees may act by a Majority Vote of the Trustees present at any duly called meeting at which a quorum is present, except that the consent

of the Commercial Trustee shall be required for any matter that adversely affects the use and enjoyment of any Commercial Unit, including without limitation, any actions by the Trustees that affect any Commercial Unit Owner's rights pursuant to Section 4.6 of the Master Deed. In the event that (i) the number of Trustees voting for a particular action is the same as the number of Trustees voting against such action and (ii) such action does not adversely affect the use and enjoyment of any Commercial Unit (including without limitation, any actions by the Trustees that affect any Commercial Unit Owner's rights pursuant to Section 4.6 of the Master Deed), the vote of the Commercial Trustee with respect to such action shall be disregarded and the votes of the Residential Trustees alone shall decide such action.

(B) The Trustees may also act without a meeting by an instrument in writing duly executed by all of the Trustees.

6.6.8 Quorum of the Board. Except for the Initial Trustee, at all meetings of the Trustees, two (2) Grand Residences Residential Trustees and one (1) other Trustee who are present and voting shall constitute a quorum for the transaction of business. Notwithstanding the foregoing, there shall not be deemed to be any quorum for the purpose of conducting business or making any decisions which will have any material adverse impact on the Commercial Unit Owner unless the Commercial Trustee is present (or unless the Commercial Trustee has been given notice of each meeting as contemplated above and fails to attend two successive meetings (in which case action may be taken at such second meeting)) or unless a written waiver or assent to such action is executed by the Commercial Trustee. If at any meeting of the Trustees there shall be less than a quorum present, a majority of the Trustees present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business that was to have been transacted at the originally scheduled meeting may be transacted without further notice.

6.6.9 Certification Regarding Status of Trustees. Any instrument signed by a majority of the Trustees as they appear of record at the Registry may be relied upon as conclusively establishing that the current Trustees are as stated in such instrument and that such instrument was the free act of the Trust, and upon such execution, said instrument shall be binding upon the Trust. No purchaser, Mortgagee, lender or other person dealing with the Trustees as they appear of record at said Registry shall be bound to ascertain or inquire further as to the identity of the persons who are the then-Trustees.

6.7 Notices.

6.7.1 Service of Notice. Whenever under the provisions of the Condominium Documents, notice is required to be given, whether to the Trustees, the Trust, any Commercial Unit Owner, any Residential Unit Owner, the Declarant or any Listed Mortgagee, or otherwise, the same shall be given in writing, addressed to the address for such entity as it appears in the records of the Condominium, and shall be sent by (i) hand delivery, (ii) Federal Express or other reputable overnight carrier, (iii) registered or certified mail, return receipt requested, or (iv) facsimile, with a confirmatory copy by regular or overnight mail. Notice shall be deemed given upon delivery or when delivery is refused. Any notices to be given to the Declarant shall be addressed to MP Franklin Tower Co LLC, c/o Millennium Partners, 1995 Broadway, 3rd Floor, New York, NY 10023, Attn: Chief Financial Officer (or at such other address which the

Declarant may provide to the Trustees from time to time). In addition to any notices delivered in accordance with the first sentence of this Section 6.7.1, any notice to a Residential Unit Owner that is required under the provisions of the Condominium Documents or otherwise shall be deemed sufficient and binding if delivered by leaving such notice with such Residential Unit Owner at its Residential Unit or by placing such notice under the door of its Residential Unit or by mailing it, first class mail, postage prepaid, and addressed to such Residential Unit Owner at its address appearing in the records of the Trust.

6.7.2 Waiver. Whenever any notice is required to be given under the provisions of the Condominium Documents or by law, a written waiver of such notice signed by the individual or entity entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

6.8 Budget; Common Expenses, Charges, Profits; Utilities.

6.8.1 Initial Budget and Working Capital Payment.

(A) Initial Budget. The Initial Trustee shall determine the initial budget, as defined in this Section 6.8, for the period commencing thirty (30) days after the recording of this Declaration of Trust in the Registry (or for any earlier period after the recording of this Declaration of Trust) and ending on the last day of the then current Fiscal Year in which such recording occurs. Such initial budget may be revised from time to time by the Initial Trustee as the costs and expenses incurred by the Trust increase as Unit sales are consummated and occupancy in the Building increases. Costs incurred by the Trust prior to the adoption of such initial budget may either be allocated to the initial budget expenses (as the initial budget may be revised as aforesaid), or, upon the request of the Initial Trustee, the Declarant may, but shall not be obligated to, pay for such costs itself, without any liability to the Trust. Common Charges shall be levied and become a lien against the Unit Owners during such period as provided in this Section 6.8.

(B) Working Capital Payment. The Trustees shall collect from each initial purchaser of a Unit a non-refundable "working capital payment" equivalent to two (2) months of the estimated installments of the annual assessment of Common Charges for such purchaser's Unit, except that (i) a Mortgagee or its nominee or designee who comes into possession of a Unit by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall not be required to pay the working capital payment for such Unit and (ii) such working capital payment shall not be required upon the Declarant's transfer of unsold Units in connection with the Declarant's assignment of its Declarant rights. The initial working capital payment shall not be deemed to constitute an advance payment of regular assessments. Such funds may be used to pay Common Expenses which become due prior to the receipt of scheduled payments of Common Charges or as a reserve fund, and for such other purposes as the Trustees may determine.

6.8.2 Preparation and Approval of Budget.

(A) Except for the initial budget, at least forty-five (45) days before the beginning of each Fiscal Year, the Trustees shall adopt a budget for the Trust containing an

estimate of the total amount considered necessary to pay costs, expenses and reserves to be incurred by the Condominium in such Fiscal Year, which may include, without limitation, the following:

(i) the cost of maintenance, management, operation, repair and replacement of those parts of the Common Elements which it is the responsibility of the Trustees to maintain, manage, operate, repair and replace pursuant to the Condominium Documents (including, without limitation, the Garage Costs);

(ii) the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by Chapter 183A, the Condominium Documents or a resolution of the Trustees and which cost will be required during the ensuing Fiscal Year for the administration, operation, maintenance and repair of the Common Elements and other parts of the Condominium for which the Trust is responsible pursuant to the Condominium Documents;

(iii) the Parking Right Charges, as determined pursuant to Section 6.8.9;

(iv) the tax liability of the Trust, if any; and

(v) such reasonable amounts as the Trustees consider necessary to provide working capital, a general operating reserve and reserves for replacements with respect to the Common Elements and other parts of the Condominium for which the Trust is responsible pursuant to the Condominium Documents.

The budget will contain funds sufficient to permit the Common Elements to be maintained in accordance with the maintenance standards set forth in Section 5.2 of the Master Deed and herein to the extent such standards are applicable to the Common Elements.

(B) The Trustees shall establish four (4) budgetary allocation categories and allocate the Common Expenses among such categories, which shall consist of (i) General Common Expenses (i.e., those costs and expenses and reserves attributable to the General Common Elements), (ii) Residential Limited Common Expenses (i.e., those costs and expenses and reserves attributable to the Residential Limited Common Elements, including, without limitation, a sub-category for Parking Right Charges), (iii) Commercial Limited Common Expenses (i.e., those costs and expenses and reserves attributable to the Commercial Limited Common Elements) and (iv) the REA Garage Fee. The Trustees shall assess each Unit Owner its allocable share of the General Common Expense, Residential Limited Common Expense, Commercial Limited Common Expense and the REA Garage Fee, as the case may be, in accordance with the Condominium Documents. All sums assessed to and collected from Unit Owners pursuant to each applicable budgetary allocation category shall be expended only on those items of cost and expense or reserve for which said sums were collected, with any annual excess or shortfall to be carried forward or collected from the Unit Owners for that budgetary allocation category, in proportion to their respective percentages as to that category.

(C) Upon the adoption of the budget for Common Expenses, the Trustees shall determine the amount of Common Charges payable by each Unit Owner, which

shall include, without limitation, the allocable Common Expenses, and shall allocate and assess the same among the Unit Owners in the manner described herein. Common Charges assessed for a Fiscal Year shall be deemed to be assessed as of the first day of each Fiscal Year, even though such amounts may be payable in installments. In the event the Trustees revise the budget during any Fiscal Year, it may specify the date on which the Common Charges affected by such revision shall be deemed to have been assessed. In the absence of such specification, Common Charges affected by a revision to the budget shall be deemed assessed as of the first day of the month following such revision by the Trustees.

(D) The Trustees shall promptly advise each Unit Owner in writing of the amount of the Common Charges payable by such Unit Owner and shall furnish each Unit Owner with a copy of the budget on which such Common Charges are based (and, if requested, to such Unit Owner's Listed Mortgagee). Such determination and notification shall be made not later than thirty (30) days prior to the commencement of each Fiscal Year and there shall be a redetermination and notification made as of the end of any calendar month in which the budget is revised.

6.8.3 Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Trustees to prepare or adopt a budget for any Fiscal Year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay the allocable share of the Common Expenses as provided in this Declaration of Trust whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay each periodic installment at the rate established for the previous Fiscal Year until notified of the periodic payment which is due at least ten (10) days after such new annual or adjusted budget is adopted.

6.8.4 Budget; Common Expenses. As used in this Declaration of Trust and elsewhere in the Condominium Documents, the term "Common Expenses" shall mean:

(A) all costs and expenses incurred by the Trustees in connection with the administration, operation, maintenance, repair and replacement of those parts of the Common Elements that are to be administered, operated, maintained, repaired and replaced by the Trustees, as provided in this Declaration of Trust and the Master Deed, including such amounts as the Trustees may deem proper for special assessments and for a general operating reserve or a reserve for working capital or capital replacements;

(B) Taxes, until such time as the Units are separately assessed;

(C) insurance premiums on all policies of insurance required to be or that have been obtained by the Trustees pursuant to the provisions of this Declaration of Trust;

(D) such amounts as the Trustees may deem proper to remedy any deficit in the Common Expenses for any prior Fiscal Year; and

(E) such other amounts as are specifically deemed to be Common Expenses under this Declaration of Trust or elsewhere in the Condominium Documents.

6.8.5 Common Charges. The term “Common Charges” shall mean the charges (including, without limitation, the Parking Right Charges and REA Garage Fee payable by certain Residential Unit Owners) assessed to the Unit Owners to meet the Common Expenses, along with such other charges and fees that are specifically deemed to be Common Charges under this Declaration of Trust or elsewhere in the Condominium Documents. Except as specifically set forth below and elsewhere in the Condominium Documents, Common Charges shall be allocated and assessed among the Unit Owners according to each such Unit Owner’s respective General Common Percentage Interest.

Notwithstanding the foregoing, the Common Charges pertaining to the following Common Elements, services or matters shall be allocated and assessed among the Unit Owners as set forth below:

(A) To the extent the Trustees can reasonably ascertain (whether by meter, survey or other method) the proportion of any Common Expenses that are attributable to usage of water, sewer, gas, electricity or any other utility or Building System by a particular Unit, the Trustees may allocate and assess such proportion of the Common Expenses, together with any operating or capital expenses attributable to any Building System utilized to provide such utility, directly to such Unit as a Common Charge.

(B) Taxes, until such time as the Units are separately assessed, shall be apportioned as follows:

(i) To the extent that Taxes for the residential portions of the Condominium and Taxes for the commercial portions of the Condominium are separately allocated or otherwise determined by the City of Boston Assessing Department (including, without limitation, to the extent set forth on the applicable tax bill or tax bills or pursuant to any payment in lieu of taxes agreement with the City of Boston), (A) the Taxes attributable to the residential portions of the Condominium (including, without limitation, Residential Limited Common Elements) shall be paid by the Residential Unit Owners in accordance with their Residential Limited Common Percentage Interests and (B) the Taxes attributable to the commercial portions of the Condominium shall be paid by the Commercial Unit Owner in accordance with its Commercial Limited Common Percentage Interests.

(ii) With respect to any Taxes for the Condominium that are not separately allocated or otherwise determined by the City of Boston Assessing Department in the manner described in Section 6.8.5(b)(i), such Taxes shall be reasonably allocated by the Trustees among the residential portions of the Condominium and the commercial portions of the Condominium and (A) the Taxes attributable to the residential portions of the Condominium (including, without limitation, Residential Limited Common Elements) shall be paid by the Residential Unit Owners in accordance with their Residential Limited Common Percentage Interests and (B) the Taxes attributable to the commercial portions of the Condominium shall be paid by the Commercial Unit Owner in accordance with its Commercial Limited Common Percentage Interests.

(C) Recognizing that any concierge, doormen and porters are for the exclusive benefit of Residential Unit Owners, the cost of such services shall be allocated to the

Residential Units only and paid by the Residential Unit Owners in accordance with their Residential Limited Common Percentage Interests. Without limiting the foregoing sentence, doormen shall assist with valet parking at the Building, and the fact that a doorman assists with valet parking shall not be a basis for allocating a portion of the cost of the doormen to those Residential Unit Owners that have the appurtenant right to park in the Project Garage; all cost and expenses related to the employment of doormen shall be allocated to all Residential Unit Owners in accordance with their Residential Limited Common Percentage Interest.

(D) Any costs or expenses of cleaning, maintenance, management, operation, repair and replacement of the Residential Limited Common Elements (except with respect to certain costs related to the Project Garage, which costs and expenses shall be allocated as set forth in Section 6.8.5(H)) incurred by the Trustees shall be a Residential Common Expense and paid by the Residential Unit Owners in accordance with their respective Residential Limited Common Percentage Interests.

(E) Any costs or expenses of cleaning, maintenance, management, operation, repair and replacement of the Commercial Limited Common Elements incurred by the Trustees shall be a Commercial Limited Common Expense and paid by the Commercial Unit Owner in accordance with its Commercial Limited Common Percentage Interest.

(F) The cost of cleaning the exterior surface of the Building, including, without limitation, the Trustee Balcony Work, shall be a General Common Expense and paid by the Residential Unit Owners in accordance with their Residential Limited Common Percentage Interests, except to the extent that (i) the Commercial Unit Owner has elected to modify the exterior surfaces of the Commercial Unit pursuant to Section 4.6.2 of the Master Deed, in which event the Commercial Unit Owner shall be solely responsible for any increased costs associated with cleaning, maintaining or repairing the exterior surfaces of the Commercial Unit to the extent arising from such modification or (ii) the Commercial Unit Owner has elected to clean the exterior surfaces of the Commercial Unit pursuant to Section 4.6.2 of the Master Deed, in which event the Commercial Unit Owner shall be solely responsible for the cleaning of the exterior surfaces to the Commercial Unit.

(G) Any charges for a Residential Unit Owner's use of the Residential Club Area for hosted events, or any other charges, costs or expenses incurred by a Residential Unit Owner in connection with the Residential Club Area shall be a Common Charge payable by such Residential Unit Owner.

(H) The Parking Right Charges and the REA Garage Fee payable by the Residential Unit Owners holding one or more Parking Rights shall be a Common Charge payable by such Residential Unit Owners in accordance with Section 6.8.9 and Section 6.8.10, respectively.

(I) All costs and expenses to maintain, repair and replace the Storage Spaces or any portion thereof shall be a Residential Common Expense and paid by the Residential Unit Owners in accordance with their Residential Limited Common Percentage Interests. Notwithstanding the foregoing, to the extent that the maintenance, repair or replacement of the Storage Spaces or any portion thereof are necessitated by the actions,

negligence, misuse or neglect of a Residential Unit Owner having the exclusive right to a Storage Space (or its tenants, occupants or invitees) or a violation of the terms and conditions as provided in the Condominium Documents, such costs and expenses shall be assessed directly to such Residential Unit Owner and the same shall constitute a Common Charge hereunder.

(J) The trash dumpster(s) is a General Common Element and may be used by all Unit Owners. To the extent that the use of the trash dumpster(s) by any Commercial Unit requires additional costs and expenses due to the nature or frequency of such use (including the frequency of the removal of such trash dumpster(s) as a consequence of such use), as reasonably determined by the Trustees, such additional costs and expenses shall be a Commercial Limited Common Expense and paid by the Commercial Unit Owner in accordance with its Commercial Limited Common Percentage Interest.

(K) Any costs and expenses to maintain, repair and replace the sprinkler, fire and suppression systems exclusively serving its Commercial Unit shall be a Commercial Limited Common Expense and paid by the Commercial Unit Owner in accordance with its Commercial Limited Common Percentage Interest.

6.8.6 Special Assessments.

(A) The Trustees at any time or from time to time may levy a special assessment in order to defray, in whole or in part, the cost of any construction, reconstruction or unexpected repair or replacement of the General Common Elements or for such other property for which the Trustees are responsible or to address any operational deficits, provided that any such assessment in excess of twenty percent (20%) of the then annual budget for General Common Expenses shall be approved by a vote of the Unit Owners holding more than fifty percent (50%) of the General Common Percentage Interests present in person or by proxy and voting at a duly called meeting of the Unit Owners at which a quorum is present called to consider such special assessment, provided further, however, that such limitation and affirmative vote by the Unit Owners shall not be applicable to any special assessment arising as a result of an Emergency.

(B) The Trustees at any time or from time to time may levy a special assessment in order to defray, in whole or in part, the cost of any construction, reconstruction or unexpected repair or replacement of the Residential Limited Common Elements or for such other property that exclusively serves two or more Residential Units for which the Trustees are responsible or to address any operational deficits with regard to Residential Limited Common Expenses, provided that any such assessment in excess of twenty percent (20%) of the then annual budget for Residential Limited Common Expenses shall be approved by a vote of the Unit Owners holding more than fifty percent (50%) of the total Residential Limited Common Percentage Interests present in person or by proxy and voting at a duly called meeting of the Unit Owners at which a quorum is present called to consider such special assessment, provided further, however, that such limitation and affirmative vote by the Unit Owners shall not be applicable to any special assessment arising as a result of an Emergency.

(C) The Trustees shall serve notice of any special assessments on all affected Unit Owners (and, with respect to any special assessments approved by the Unit Owners

as aforesaid, on all Listed Mortgagees) by a statement in writing giving the amount of and reasons for such special assessment, which special assessment shall be a lien upon the Units and may be payable, as the Trustees may determine, in lump sum or in installments, and, unless otherwise specified in the notice, shall be payable with the next due monthly installment of Common Charges which is due more than ten (10) days after the giving of such notice. All affected Unit Owners shall be obligated to pay the adjusted monthly amount or, if the special assessment is not payable in installments, the amount of such assessment in accordance with their respective General Common Elements Percentage Interests or Residential Limited Common Elements Percentage Interests, as applicable.

6.8.7 Reserves. The Trustees shall build up and maintain adequate reserves for operations (including losses due to insurance deductibles) and replacements as the same are associated with the Common Elements or other property required to be maintained or operated by the Trustees pursuant to the Condominium Documents. Extraordinary expenditures associated with the Common Elements or other property required to be maintained or operated by the Trustees not originally included in the annual budget which may become necessary during the year shall be charged first against such operating reserves, unless sufficient funds to meet such expenditures are in the operating account. Except for normal maintenance expenses shown in the annual operating budget, all expenses for replacement of physical assets maintained or operated by the Trustees shall be charged first against such replacement reserves. Unless otherwise determined by a vote of at least two-thirds (2/3) of the Trustees, the amount held as reserves shall not substantially exceed the amount reasonably required to assure the Trustees' ability to replace components as they reach the end of their useful lives. If regular annual maintenance extends the useful life of components so that reserves are excessive, the reserves shall be adjusted by reallocation to other budget items or by distribution to the Unit Owners as the Trustees may determine and may include interest payments. If the reserves are inadequate for any reason, including non-payment of any Unit Owner's assessment, the Trustees may at any time levy a further special assessment,

6.8.8 Utility Charges; User Fees. Domestic water, chilled water, sewer, electricity and gas utilities for the Units will either be measured by one or more master meters, separately metered, submetered or check-metered. The costs of utilities serving any portion of the Condominium not separately metered to specific Units shall be Common Expenses allocated pursuant to Section 6.8.5(A) hereof and may include allocations for any line loss or similar matters. Each Unit Owner shall additionally pay all costs of each utility that is separately metered directly to the provider thereof. In the event that any Unit Owner fails or neglects in any way to pay the costs of any such separately metered utilities to the provider thereof as and when due, the Trustees may, but shall not be obligated to, pay such costs on behalf of the applicable Unit Owner, provided that (i) the Trustees deliver to the Unit Owner written notice of their intention to pay such costs and (ii) the Unit Owner fails to cure its default within five (5) days after receiving such notice (except in the case of an Emergency in which event no prior notice is required). All sums expended and all costs and expenses incurred by the Trustees in connection with making the foregoing payment, together with interest thereon at the rate of two percent (2%) per month from the date on which the Trustees first incur any such cost or expense (but in no event in excess of the maximum rate permitted by law), shall be payable by such Unit Owner to the Trustees, and the same shall constitute a Common Charge hereunder. The Trustees may impose reasonable user fees, whether or not designated as Common Expenses, for the use of

personal property of the Trust or for the use and enjoyment of certain of the Common Elements, including, without limitation, the Residential Club Area and the Bicycle Storage Area, or for services provided by or arranged for through the Trustees to one (1) or more, but less than all, Unit Owners.

6.8.9 Parking Right Charge.

(A) Each Residential Unit that has as appurtenant to such Residential Unit one or more Parking Rights (as set forth in the initial Unit deed for such Residential Unit and/or in any subsequent instrument if parking rights are conveyed after the recordation of the initial Unit Deed) and the Trust, with respect to each Parking Right held by the Trust, shall be responsible for its proportionate share of the Garage Costs ("Parking Right Charge"). The Parking Right Charge attributable to each Parking Right shall be as follows with respect to the applicable period:

(i) For the period from the date of recording of the Master Deed through twenty-four (24) calendar months after the end of the calendar month in which such recording occurs (the "Initial Sales Period"), \$225 per month per Parking Right that has been permanently conveyed by the Declarant and, if applicable, the Trust (which amount shall be prorated on account of any partial month). During such period, the Declarant shall pay to the Trust on a monthly basis an amount (if any) equal to the Garage Costs attributable to such month less the total Parking Right Charges received from Residential Unit Owners and the Trust for such month. In the event that the total Parking Right Charges received from Residential Unit Owners and the Trust for a month during such period exceed the Garage Costs attributable to such month, (y) such excess amounts shall be held in reserve by the Trustees and applied to future Parking Right Charges and (z) no amounts shall be due from the Declarant pursuant to this Section 6.8.9(A)(i) for the applicable month and future months to the extent of such excess amounts.

(ii) For the period from the end of the Initial Sales Period until the earlier to occur of (a) such time as the Declarant no longer owns a Unit in the Condominium and (b) such time, if any, as the Declarant elects to relinquish the Parking Sale Right pursuant to Section 8.1.7 of the Master Deed, an amount equal to the total Garage Costs attributable to the applicable period times a fraction, the numerator of which shall be 1 and the denominator of which shall be equal to the greater of (1) 375 or (2) the sum of the number of Parking Rights that have been permanently conveyed by the Declarant as of the first day of such period plus the number of remaining Parking Rights that the Declarant, as of the first day of such period, anticipates conveying in connection with its exercise of the Parking Sale Right. During such period, the Declarant shall pay to the Trust on a monthly basis an amount equal to the Parking Right Charge attributable to each Parking Right (calculated in the manner set forth in the immediately preceding sentence) times the number of remaining Parking Rights that the Declarant, as of the first day of such period, anticipates conveying in connection with its exercise of the Parking Sale Right.

(iii) Thereafter, an amount equal to the total Garage Costs attributable to the applicable period times a fraction, the numerator of which shall be 1 and the

denominator of which shall be equal to the number of Parking Rights that have been permanently conveyed by the Declarant and, if applicable, the Trust as of the first day of such period.

(B) As set forth in Section 6.8.5, the Parking Right Charges shall be deemed part of the Common Charges payable by such Unit and shall be in addition to other Common Charges owed by such Unit. The Parking Right Charge shall be the same for each holder of an appurtenant parking right irrespective of whether such parking rights are Reserved Parking Rights, First-Priority Parking Rights, Non-Stacker Parking Rights or Unreserved Parking Rights. From and after the Initial Sales Period, the Trustees shall have the right from time to time, upon at least thirty (30) days' prior written notice to Residential Unit Owners obligated to pay the Parking Right Charge pursuant to this Declaration, to increase the Parking Right Charge if the Garage Costs exceed or are reasonably anticipated to exceed the then-assessed Parking Right Charge, however, any such increased amounts shall be used solely to offset such increased Garage Costs and not for any other purpose.

(C) Without limiting the other remedies set forth in this Article 6, a Residential Unit Owner's Parking Right may be subject to suspension and/or termination in the sole discretion of the Residential Trustees if such Residential Unit Owner fails to make full and timely payment of the Parking Right Charge attributable to such Parking Right.

6.8.10 REA Garage Fee.

(A) Each Residential Unit that has as appurtenant to such Residential Unit one or more Parking Rights (as set forth in the initial Unit deed for such Residential Unit and/or in any subsequent instrument if Parking Rights are conveyed after the recordation of the initial Unit Deed) and the Trust, with respect to each Parking Right held by the Trust, shall be responsible for its pro rata share of the REA Garage Fee (the "REA Garage Fee Share"). The REA Garage Fee Share attributable to each Residential Unit shall be an amount equal to the total REA Garage Fee attributable to the applicable period times a fraction, the numerator of which shall be 1 and the denominator of which shall be equal to the number of Parking Rights that have been permanently conveyed by the Declarant and, if applicable, the Trust as of the first day of such period.

(B) As set forth in Section 6.8.5, the REA Garage Fee Share shall be deemed part of the Common Charges payable by such Unit and shall be in addition to other Common Charges owed by such Unit. The REA Garage Fee Share shall be the same for each holder of an appurtenant Parking Right irrespective of whether such parking rights are Reserved Parking Rights, First-Priority Parking Rights, Non-Stacker Parking Rights or Unreserved Parking Rights.

(C) Without limiting the other remedies set forth in this Article 6, a Residential Unit Owner's Parking Right may be subject to suspension and/or termination in the sole discretion of the Residential Trustees if such Residential Unit Owner fails to make full and timely payment of the REA Garage Fee Share attributable to such Parking Right.

6.8.11 Payment of Common Charges and Other Assessments. Each Unit Owner shall be liable for payment of the Common Charges assessed to its Unit pursuant to the

provisions of this Declaration of Trust. Unless otherwise determined by the Trustees, Common Charges shall be payable monthly, in advance, on the first day of each calendar month. No Unit Owner shall be liable for Common Charges assessed to its Unit before the date of such Unit Owner's acquisition of its Unit or after the date of its disposition of such Unit, although the Unit shall continue to be subject to the lien provided for in Section 6 of Chapter 183A until such time as all Common Charges assessed with respect to such Unit have been paid in full. Each Unit Owner shall continue to be liable after disposition of its Unit for payment of Common Charges assessed during such Unit Owner's period of ownership. Any Listed First Mortgagee who comes into possession of a Unit pursuant to (i) the remedies provided in its mortgage, (ii) the foreclosure of such mortgage or (iii) deed in lieu of foreclosure, shall not be liable for such Unit's unpaid Common Charges which accrued prior to the time such mortgagee comes into possession of such Unit except as otherwise provided in Chapter 183A.

6.8.12 Collection of Common Charges. The Trustees shall assess Common Charges against the Unit Owners from time to time (at least annually) and shall take prompt action to collect any Common Charge due from any Unit Owner which remains unpaid for more than thirty (30) days from the due date for payment thereof. If the Trustees revise the budget during such Fiscal Year, the Trustees may specify the day as of which Common Charges based on such revision shall be deemed to be assessed. In the absence of such specification, the Common Charges based on such revision shall be deemed assessed as of the first day of the month following the Trustees' action.

6.8.13 Default in Payment of Common Charges. In the event that any Common Charges or other assessments owed by any Unit Owner are not paid when due, such Unit Owner shall be obligated to pay (a) a "late charge" equal to the greater of (i) \$25.00 and (ii) two and one-half percent (2.5%) (but in no event in excess of the maximum rate permitted by law) of such amounts that remain unpaid for more than ten (10) days after their due date (although nothing herein shall be deemed to extend the period within which such amounts are to be paid), and (b) interest at the rate of one and one-half percent (1.5%) per month (but in any event not more than the maximum rate permitted by law) on such unpaid amounts computed from the due date thereof, together with all expenses, including attorneys' fees, incurred by the Trustees in any proceeding brought to collect such unpaid Common Charges. All such "late charges", interest and expenses shall be added to and shall constitute Common Charges payable by such Unit Owner. The Trustees shall have the right and duty to take all reasonable steps to recover such Common Charges and other assessments, 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.

6.8.14 Subordination of the Lien to Mortgages. The lien of the assessments for Common Charges on each Unit shall be subordinate to (i) the lien for real estate taxes on such Unit and (ii) subject to the limited priority of the Trust's lien for past due Common Charges pursuant to Section 6(c) of Chapter 183A, any first mortgage of record affecting a Unit subject to assessment, provided, however, that said subordination to any first mortgage shall apply only to assessments that have become due and payable prior to the sale or transfer of a Unit pursuant to a foreclosure, or any other proceeding in lieu of foreclosure, under said first mortgage and only to the extent permitted under Chapter 183A. Such sale or transfer shall not relieve a Unit from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent

assessments, nor shall it relieve a Unit Owner from liability for payment of any assessments that became due and payable during such Unit Owner's period of ownership. This Section 6.8.14 may not be amended without the consent of the Listed Mortgagees.

6.8.15 Foreclosure of Liens and Other Enforcement Actions. If in any action brought by the Trustees to enforce a lien on a Unit because of unpaid Common Charges or other assessments the lien shall be foreclosed, then for such period as the Unit Owner shall continue to use its Unit, such Unit Owner shall be required to pay a reasonable rental for the use of its Unit and the plaintiff in such action shall be entitled to the appointment of a receiver to collect the same. The Trustees shall have the power to purchase any Unit at a 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 or other assessments shall be maintainable against the defaulting Unit Owner, without foreclosing or waiving the lien securing the same. In the event the net proceeds received at a foreclosure sale (after deduction of all legal fees, advertising costs, brokerage commissions and other costs and expenses incurred in connection therewith) are insufficient to satisfy the defaulting Unit Owner's obligations, such Unit Owner shall remain liable for the deficit.

6.8.16 Statement of Common Charges. The Trustees shall promptly provide any Unit Owner who shall request the same in writing with a written statement of all unpaid Common Charges and other assessments due with respect to its Unit which shall be in a form suitable for recording. The Trustees may, by an instrument recorded in the Registry, authorize one or more Trustees or, if permitted by Legal Requirements, the Condominium Managing Agent, to sign such written statement. The recording of such statement with the Registry shall operate to discharge the Unit from any lien for sums not referenced therein that are later claimed or determined to have been unpaid as of the date of such statement.

6.8.17 Common Revenues. Except as set forth below, the excess of all rents, profits and revenues derived from the rental or use of any space or facility forming a part of or included in any Common Elements (after deduction of any non-capital expenses paid or incurred in connection therewith and except for those amounts paid directly to the Declarant in connection with the RC Food/Beverage Operator or the RC Fitness Club Operator pursuant to the Master Deed), shall be collected by the Trustees as agent for and on behalf of the Unit Owners and applied by the Trustees from time to time to offset those Common Expenses that are payable by all Unit Owners in accordance with their General Common Percentage Interests (or (i) with respect to rents, profits and revenues derived from Residential Limited Common Elements other than "Parking Garage Revenue" (as such term is used in the REA), to offset those Common Expenses that are payable by Residential Unit Owners, (ii) with respect to "Parking Garage Revenue" (as such term is used in the REA), to offset Parking Right Charges or (iii) with respect to rents, profits and revenues derived from Commercial Limited Common Elements, to offset those Common Expenses that are payable by Commercial Unit Owner), or held in reserve for the benefit of the applicable Unit Owner(s). Notwithstanding any provision contained in this Declaration of Trust or elsewhere in the Condominium Documents to the contrary, in no event shall any rent, profit or revenue derived from the rental or use of any space in a Building be deemed to be derived from the rental or use of any floor slabs, ceilings or walls delineating or enclosing such space or the incidental use of any portion of any General Common Elements appurtenant to such space.

6.9 Maintenance, Repairs And Improvements To Condominium.

6.9.1 Maintenance, Repair and Improvements to the Units. Except as otherwise specifically provided herein or in the Master Deed, all maintenance, repairs, replacements and improvements to the Units, whether structural or non-structural, ordinary or extraordinary (other than maintenance, repairs and replacements to any Common Elements located therein), shall be undertaken by the owners of such Units, at each such Unit Owner's sole cost and expense. Each Unit shall be maintained in a first-class condition and in accordance with the requirements set forth in the Master Deed, and each Unit Owner shall promptly make or perform, or cause to be made or performed, all maintenance work, repairs and replacements in connection therewith, at its sole cost and expense. Except as otherwise permitted under the Condominium Documents, the owners and tenants of the Units shall not make any change, repair, replacements or improvements to or affecting the structural, mechanical, electric or plumbing or life safety elements of the Building without the prior written consent of the Trustees. As provided in the Master Deed, each Residential Unit Owner having direct access to its designated Balcony or Unit Terrace, as the case may be, from its Unit shall be responsible for (i) the ordinary cleaning and upkeep of such Balcony or Unit Terrace (including, without limitation, keeping drains, if any, free of snow, ice, accumulation of water, dirt and debris and, with respect to any Balcony or Unit Terrace, the ordinary cleaning of such portions of the General Common Elements as are located within such Balcony or Unit Terrace), (ii) the ordinary cleaning of the interior side of the Balcony or Unit Terrace, including, without limitation, the glass railings, windows and doors, and (iii) the cleaning, maintenance, repair and replacement of all pavers and other flooring located on or comprising a portion of the Balcony or Unit Terrace (excluding the roof membrane and other structural elements located below any such pavers or other flooring), all at such Unit Owner's sole cost and expense. All other maintenance, repairs and replacements to any such Balcony or Unit Terrace (including the railings thereof and including any leaks that are not caused by the negligence or misuse of the Unit Owners having access to the same) shall be made by the Trustees (the "Trustee Balcony Work"), and the costs and expenses thereof shall constitute a Common Expense to be allocated and assessed among all Residential Unit Owners in accordance with their respective Residential Limited Common Percentage Interests, unless caused by the negligence or misuse of the Residential Unit Owner having the appurtenant right to such Balcony or Unit Terrace (in which event such costs and expenses shall be assessed directly to such Unit Owner and the same shall constitute a Common Charge hereunder). Each Unit Owner shall ensure, at its sole cost and expense, that all portions of its Unit (including, without limitation, any Balcony or Unit Terrace located adjacent thereto) that are exposed to public view shall be kept in a good, clean and neat appearance and in conformity with the dignity and character of the Condominium.

Each Unit Owner shall be responsible for all damage to any portion of the Condominium (including, without limitation, other Units) caused by such Unit Owner's failure to maintain its Unit in the manner required by the terms and provisions of this Declaration of Trust or elsewhere in the Condominium Documents. In the event that any Unit Owner fails or neglects in any way to perform any required maintenance, repairs or replacements, the Trustees may, but shall not be obligated to, perform or cause to be performed any such maintenance, repair or replacement work, provided that (i) the Trustees deliver to the Unit Owner written notice that such work is necessary, and (ii) the Unit Owner fails to cure its default within ten (10) days after receiving such notice, or in the case of a default not reasonably susceptible to cure within such period, fails

to commence within such ten (10) day period (and thereafter to proceed with due diligence) the curing of such default (except in the case of an Emergency in which event no prior notice is required). All sums expended and all costs and expenses incurred by the Trustees in connection with the foregoing work, together with interest thereon at the rate of two percent (2%) per month from the date on which the Trustees first incur any such cost or expense (but in no event in excess of the maximum rate permitted by law) shall be payable by such Unit Owner to the Trustees, and the same shall constitute a Common Charge hereunder.

6.9.2 Maintenance and Repair of General Common Elements. All maintenance, repairs and replacements to the General Common Elements, whether structural or non-structural, ordinary or extraordinary, shall be performed by the Trustees and the costs and expenses thereof shall constitute a Common Expense to be allocated and assessed among the Unit Owners as a Common Charge in the manner described in Section 6.8.5, except and to the extent that the same are necessitated by the actions, negligence, misuse or neglect of a Unit Owner (or its tenants, occupants or invitees), in which event such costs and expenses shall be assessed directly to such Unit Owner and the same shall constitute a Common Charge hereunder. Payment vouchers for all such work shall be approved by the Trustees or Condominium Managing Agent to whom such authority is delegated by the Trustees. If, after prior written notice from the Commercial Unit Owner, the Trustees do not promptly commence and diligently prosecute to completion any maintenance, repairs or replacements (emergency or otherwise) of the Common Elements that serve or otherwise affect the operation of the Commercial Unit, then notwithstanding any provisions in the Condominium Documents to the contrary, the Commercial Unit Owner may undertake the same at its expense and recover its reasonable costs thereof as a Common Expense. Any such work by the Commercial Unit Owner shall be done in accordance with all Legal Requirements, and the Commercial Unit Owner shall provide to the Trustees evidence of the commercial general liability insurance that it is required to maintain under Section 6.10.3(A) (or self-insurance in lieu thereof to the extent permitted pursuant to Section 6.10.3(B)) prior to commencing such work, such insurance naming or treating, as applicable, the Trustees and the Trust as additional insureds. If, after prior written notice from the Unit Owner of the GPH Unit, the Trustees (or in the case of installations on the Tower Roof made by the Commercial Unit Owner pursuant to Section 4.6.4 or Section 9.1.3 of the Master Deed, the Commercial Unit Owner) do not promptly commence and diligently prosecute to completion any maintenance, repairs or replacements (emergency or otherwise) of the Rooftop Equipment in accordance with the provisions of Section 7.10.2 of the Master Deed, the Unit Owner of the GPH Unit may undertake the same at its expense and recover its reasonable third party out-of-pocket costs thereof as a Common Expense. Any such work by the Unit Owner of the GPH Unit shall be done in accordance with all Legal Requirements, and the Unit Owner of the GPH Unit shall provide to the Trustees evidence of the commercial general liability insurance that it is required to maintain under Section 6.10.3(A) prior to commencing such work, such insurance naming the Trustees and the Trust as additional insureds.

6.9.3 Maintenance and Repair of Residential Limited Common Elements. Except as otherwise provided in the Master Deed and in Section 6.9.5, all maintenance, repair and replacements to the Residential Limited Common Elements shall be performed by the Trustees and the costs and expenses thereof shall constitute a Residential Limited Common Expense to be allocated and assessed among all Residential Unit Owners in accordance with (i) their respective proportionate share of the Project Garage Charges, if any, with respect to the

Project Garage and (ii) their respective Residential Limited Common Percentage Interest, with respect to all other Residential Limited Common Element, except and to the extent that the same are necessitated by the actions, negligence, misuse or neglect of a Unit Owner (or its tenants, occupants or invitees), in which event such costs and expenses shall be assessed directly to such Unit Owner and the same shall constitute a Common Charge hereunder.

6.9.4 Maintenance and Repair of Commercial Limited Common Elements.

Except as otherwise provided in the Master Deed and in Section 6.9.5, all maintenance, repair and replacements to the Commercial Limited Common Elements shall be performed by the Commercial Unit Owner(s) subject to this Section 6.9 and Section 9.1 of the Master Deed.

6.9.5 Improvements to the Common Elements.

(A) If and whenever the Trustees shall propose to make any improvement to the Common Elements of the Condominium, or shall be requested in writing by the Unit Owners holding twenty-five percent (25%) or more of the total General Common Percentage Interests to make any such improvement, the Trustees shall submit to all Unit Owners (a) a form of agreement (which may be in several counterparts) specifying the improvement or improvements proposed to be made and the estimated cost thereof, and authorizing the Trustees to proceed to make the same, and (b) a copy of the provisions of Section 18 of Chapter 183A. Upon (i) the receipt by the Trustees of such agreement signed by the Unit Owners holding seventy-five percent (75%) or more of the total General Common Percentage Interests or (ii) the expiration of ninety (90) days after such agreement was first submitted to the Unit Owners, whichever of said sub-clause (i) and (ii) shall first occur, the Trustees shall notify all Unit Owners of the aggregate General Common Percentage Interests represented by the Unit Owners who have then signed such agreement. If such percentage equals or exceeds seventy-five percent (75%), the Trustees shall proceed to make the improvement or improvements specified in such agreement and, in accordance with said Section 18 of Chapter 183A, shall charge the cost of the improvement or improvements to all the Unit Owners. The agreement so circulated may also provide for separate agreement by the Unit Owners that if Unit Owners holding fifty percent (50%) or more, but less than seventy-five percent (75%), of the total General Common Percentage Interests so consent, the Trustees shall proceed to make such improvement or improvements and shall charge the same to the Unit Owners so consenting.

(B) If the Unit Owners holding seventy-five percent (75%) or more of the total General Common Percentage Interests agree to proceed to make such improvement or improvements and charge the cost thereof to all Unit Owners as a Common Expense, and if such improvements shall cost in excess of ten percent (10%) of the then value of the Condominium, any Unit Owner not so agreeing may apply to the Superior Court of Suffolk County, on such notice to the Trustees as the Court shall direct, for an order directing the purchase of his Unit by the Trust at fair market value thereof as approved by the Court. The cost of any such purchase shall be a Common Expense. Any claim by a Unit Owner under this Section 6.9.5(B) who is entitled to seek relief in the Superior Court of Suffolk County pursuant to the immediately foregoing sentence is not subject to Section 6.16.

6.9.6 Payment of Service Orders. If a Unit Owner, occupant, tenant, agent or anyone purporting to act on a Unit Owner's behalf, shall request that the Trustees, the

Condominium Managing Agent or their designees perform maintenance, repair or other work in, at or with respect to a Unit, a Residential Limited Common Element or a Commercial Limited Common Element to which a Unit Owner has the exclusive right to use, or if any such work is performed by the Trustees or the Condominium Managing Agent (or their designees) as a result of an Emergency determined by the Trustees or the Condominium Managing Agent in their sole discretion or as result of the exercise of the Trustees' rights under Sections 6.9.1 and 6.9.6 (a "Service Order"), the Unit Owner shall pay all charges assessed for the Service Order (the "Service Charge") when payable as provided in the invoice therefor. In the event such invoice has not been paid when due, the Trustees shall assess the "late charge" described in Section 6.8.13 hereof. Any unpaid Service Charge, together with accrued late charges, shall constitute a lien against the Unit, and such assessment shall be enforceable as a Common Charge in accordance with the provisions of Section 6 of Chapter 183A.

6.10 Insurance.

6.10.1 Insurance to be Maintained by the Board. The Trustees shall obtain and maintain the following insurance:

(A) Insurance on the improvements of the Condominium, including the Common Elements and such portions of the Units as are for insurance purposes normally deemed to constitute part of such improvements, including flooring, walls, ceilings, sinks, toilets, bathroom countertops and vanities (if affixed to the Unit) and kitchen countertops and cabinets (if affixed to the Unit) and the heating, ventilation and air conditioning system serving the Common Elements and the Units, but excluding (A) within any Unit, any appliances, furniture, carpeting, wall coverings, drapes or other window treatments, furnishings, light fixtures (unless included in the Unit prior to the initial conveyance of the Unit by the Declarant), equipment installed by a Unit Owner and other personal property; (B) unless a Unit Owner has strictly complied with Section 6.10.2, any improvements, alterations, betterments or additions made to a Unit by a Unit Owner after the initial conveyance of the Unit by the Declarant and (C) with respect to the Commercial Unit, trade fixtures and equipment, in an amount equal to the full replacement value thereof (including increased cost of construction and demolition) without deduction for depreciation, against all risks of direct physical loss or damage, including without limitation, the perils of fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, water damage, sprinkler leakage, vandalism, collapse, earthquake and flood. Said replacement value shall be determined by the Trustees based upon an insurance company or other commercially reasonable appraisal and shall be accepted by the company issuing such casualty loss policy and evidenced by a replacement cost endorsement, with any co-insurance provision waived;

(B) During any period when any repair or reconstruction of the Building is taking place pursuant to Section 6.11 and the insurance carried under clause (A) above would not be applicable, Builder's Risk Insurance on the improvements of the Condominium, with the inclusions and exclusions specified in clause (A) above, in completed value form against all risks of direct physical loss specified in clause (A) above in an amount not less than the amount required by clause (A) above;

(C) The insurance carried under clause (A) above shall include business income coverage for the Commercial Unit. The Commercial Unit Owner shall pay any premium increases resulting solely from such business income coverage being maintained under such policy of the Condominium, and notwithstanding anything in the Condominium Documents to the contrary, including, without limitation, Section 6.10.5 hereof, (a) all proceeds from such business income coverage insurance shall be paid to the Commercial Unit Owner or the First Listed Mortgagee thereof (if so directed by such First Listed Mortgagee); (b) the Trustees shall not make any changes to such business income coverage without first obtaining the consent of the Commercial Unit Owner and (c) the Trustees shall make any changes to such business income coverage as the Commercial Unit Owner may require provided that the Commercial Unit Owner pays any additional premium costs that result therefrom.

(D) Boiler and machinery insurance on the improvements of the Condominium, and the "objects" therein (as defined under such insurance) to the extent not covered by the insurance carried under clause (A) above, providing minimum coverage of \$50,000,000 per accident per location, with the inclusions and exclusions specified in clause (A) above;

(E) Workers' Compensation Insurance, Employers' Liability Insurance, and non-owned automobile liability insurance with respect to employees of the Trust, if any;

(F) Blanket fidelity insurance coverage in an amount equal to at least twenty-five percent (25%) of the total annual Common Charges covering the Trustees, employees, the Condominium Managing Agent and any subagent who handles or is responsible for the funds of the Trust, which coverage shall include an appropriate endorsement to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers up to a limit of \$250,000 per loss;

(G) Commercial general liability insurance with a blanket contractual endorsement and combined single limit of \$2,000,000 per occurrence for personal and bodily injury, death and property damage, and an "umbrella liability" policy, so-called, with a limit of \$10,000,000 per occurrence, or such higher limits as the Trustees may from time to time determine to be reasonable and proper;

(H) With respect to the Project Garage, (i) commercial general liability insurance in an amount not less than \$2,000,000 or such higher amount so as to comply with the insurance requirements set forth in the REA and (ii) garage keeper's legal liability insurance of no less than \$2,000,000 per occurrence or such higher amount so as to comply with the insurance requirements set forth in the REA.

(I) Such other insurance and endorsements to any of the foregoing insurance as the Trustees may from time to time determine to be reasonable and proper, including liquor liability insurance to the extent that the Trustees or the Trust hold the liquor license for the Residential Club Area.

All policies of insurance shall be issued by financially sound and responsible insurance companies authorized to do business in the Commonwealth of Massachusetts and, so long as Declarant owns any Units encumbered by a mortgage, having a claims paying ability of "A:X" or better by A.M. Best Company, Inc. (or its successor), or the then equivalent thereof, or otherwise approved by Declarant and Declarant's Listed Mortgagees. All policies of insurance shall be in such amounts as the Trustees shall determine consistent with the foregoing provisions. Such policies may provide for a deductible amount from the coverage thereof as the Trustees may from time to time determine to be reasonable and proper. In the event of any loss that relates solely to the General Common Elements, such deductible amount or any deductible amount in connection with insurance carried by the Trust shall constitute a General Common Expense. In the event of any loss that relates solely to the Residential Limited Common Elements, such deductible amount or any deductible amount in connection with insurance carried by the Trust shall constitute a Residential Limited Common Expense. In the event of any loss that relates solely to the Commercial Limited Common Elements, such deductible amount or any deductible amount in connection with insurance carried by the Trust shall constitute a Commercial Limited Common Expense. In the event of any loss that relates solely to insurable improvements forming a part of a Unit, such deductible shall be assessed directly to the owner of the Unit affected by such loss. In the event of any loss affecting the General Common Elements, the Residential Limited Common Elements, the Commercial Limited Common Elements and the Units, or any combination thereof, the deductible amount shall be apportioned by the Trustees among the Unit Owners in any manner reasonably determined by the Trustees. Each Unit Owner shall be liable for the special assessments described in this paragraph in addition to its respective share of the Common Expenses. Until such special assessments are paid by a Unit Owner, the same shall constitute a lien against such Unit Owner's Unit pursuant to the provisions of this Declaration of Trust. Any disputes among Unit Owners or between the Trustees and any Unit Owners arising under this Section 6.10.1 are subject to Section 6.16.

All policies of property damage insurance shall name as insureds the Trustees (as insurance trustee for the Trust), the Unit Owners and Listed Mortgagees, as their interests may appear, with the standard mortgagee clause in favor of each Listed Mortgagee, pursuant to such standard condominium property endorsement form as may from time to time be customarily used in the Commonwealth of Massachusetts. Such policies shall also provide:

(1) The following endorsements (or equivalent): (i) "no control" (to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or Unit Owner or their agents when such act or neglect is not within the control of the insured, or the Unit Owners collectively or is not within the scope of authority of any such occupant or a Unit Owner or their agents; nor by any failure of the insured, or the Unit Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the Unit Owners collectively, have no control); (ii) "cost of demolition"; (iii) "contingent liability from operation of building laws or codes"; (iv) "increased cost of construction"; (v) "condominium replacement cost" for the restoration of the Condominium; and (vi) "agreed amount" or elimination of co-insurance clause;

(2) That any "other insurance" clause expressly exclude individual Unit Owners' policies or, to the extent permitted pursuant to Section 6.10.3(B), self-insurance from its operation so that the property insurance policy purchased by the Trustees shall be deemed

primary coverage and any individual Unit Owners' policies or, to the extent permitted pursuant to Section 6.10.3(B), self-insurance shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Trustees hereunder provide for or be brought into contribution with insurance purchased or to the extent permitted pursuant to Section 6.10.3(B), self-insured by Unit Owners or their Mortgagees, unless otherwise required by law; and

(3) That the adjustment of loss shall be made by the Trustees and shall provide for waivers of the following rights:

(i) subrogation of claims against the Unit Owners, or tenants, subtenants or occupants of the Units;

(ii) any co-insurance provision;

(iii) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Trustees;

(iv) any invalidity, other adverse effect, or defense on account of any breach of warranty or condition caused by any Unit Owner (or any tenant or occupant of any Unit), or arising from any act, neglect, or omission of any insured or the respective agents, contractors and employees of any insured, or from any vacancy or unoccupancy of the Condominium;

(v) any right of the insurer to repair, rebuild or replace and, in the event that any improvement in the Condominium is not repaired, rebuilt or replaced following total loss, any right to pay under the applicable insurance policy an amount less than the lesser of the replacement value of the improvement in the Condominium or the actual cash value of the improvement in the Condominium;

(vi) notice of the assignment of any Unit Owner of its interest in the insurance by virtue of a conveyance of any Unit; and

(vii) any right to require any assignment of any mortgage to the insurer;

and that (notwithstanding the immediately following sentence) such policies may not be canceled or non-renewed or substantially modified by the insurer without at least thirty (30) days' prior written notice to the Trustees and all Listed First Mortgagees and then, only with the consent of all Listed First Mortgagees. Except as otherwise specifically provided herein, the Trustees, all Unit Owners and all Listed Mortgagees, shall have the exclusive right to bind all such parties with respect to all matters affecting the insurance policies carried by the Trustees, including the surrender, cancellation, and modification thereof, and no insurer need inquire as to the identity or rights of any Unit Owner or Listed Mortgagee. Duplicate originals of all policies of property damage insurance carried by the Trustees and of all renewals thereof, or in lieu thereof, certificates of all such policies of insurance and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Trustees to all Listed Mortgagees and binders or certificates of all such policies of insurance and of all renewals thereof shall be delivered by the

Trustees to all Unit Owners in each case at least ten (10) days prior to the expiration of the then-current policies, if so requested.

The commercial liability insurance maintained by the Trustees shall cover the Trust, the Trustees, and employees of the Trust, the Condominium Managing Agent, if any, the Declarant and its affiliates and Mortgagees, so long as the Declarant or any of its affiliates shall own any Unit, and each Unit Owner, against liability for all tort claims arising out of, on, in or in connection with the Condominium (but excluding the liability of a Unit Owner arising out of any occurrence within a Unit as a result of the condition of the interior of such Unit Owner's Unit), and shall cover cross liability claims of each insured against another insured. The coverage provided to the Declarant under the insurance policies obtained in compliance with this Section 6.10 shall not be deemed to protect or be for the benefit of any general contractor engaged by the Declarant nor shall such coverage be deemed to protect the Declarant against liability for (or waive any rights with respect to) warranty claims.

Notwithstanding any of the foregoing provisions of this Section 6.10.1, none of the Trustees, the Unit Owners, the Condominium Managing Agent or the Declarant shall be liable for failure to obtain any coverages or specific waivers required by this Section 6.10.1, or for any loss or damage resulting from such failure (i) if such failure is due to the unavailability of such coverages from reputable insurance companies, (ii) if such coverages are so available only at demonstrably unreasonable costs or (iii) if the Trustees' insurance professionals advise that the coverages required by this Section 6.10.1 are not necessary. If any insurance coverage required under this Declaration of Trust is not available as aforesaid, the Trustees shall promptly notify all Unit Owners of the unavailability of such coverage. Each Unit Owner is hereby notified that the Trustees will only carry the insurance required by this Section 6.10.1. The Trustees shall annually furnish to every Unit Owner a certification evidencing insurance coverage in accordance with this Section 6.10.1, if so requested. Additionally, written notice of subsequent changes in, or termination of, such insurance coverages shall be provided to all Unit Owners in compliance with Chapter 183A.

6.10.2 Periodic Review of Coverages. Within ninety (90) days after the election of the initial Residential Trustees and Commercial Trustee to the Board, and thereafter at least once every three (3) years, the Trustees shall review the insurance carried by the Trustees. In order to assist such review of insurance coverage, each Unit Owner shall report to the Trustees in writing within fifteen (15) days after written request therefor by the Trustees, and also both prior to commencement of construction and upon substantial completion of any additions, alterations, betterments or improvements that exceed by more than \$25,000 the full replacement cost of the improvements constituting the Unit existing as of the date of the initial conveyance of the Unit by the Declarant to a third party buyer, the estimated full replacement value of all additions, alterations, improvements or betterments made to such Unit since the date of the Master Deed, without deduction for depreciation, which are as a matter of law part of the real estate comprising such Unit. Failure to give such notice of the value of any such additions, alterations, betterments or improvements shall constitute a waiver by such Unit Owner of any portion of any insurance recovery carried pursuant hereto to such additions, alterations, improvements or betterments arising from any casualty or other events occurring prior to the date when such notice is given, but such waiver shall not take effect to the extent that (a) such waiver would reduce the total amount of insurance proceeds payable with respect to such casualty; or (b) the

failure of such Unit Owner to give notice did not, in the reasonable opinion of the Trustees, whose decision shall be final, reduce the amount of insurance recovery receivable by other Unit Owners with respect to any casualty or other events occurring prior to the date when such notice was given. By way of example, if (i) a Unit Owner replaces the flooring within a Unit with flooring that was not included in the Unit at the time of the initial conveyance of the Unit by the Declarant, (ii) the full replacement cost of the new flooring exceeds by more than \$25,000 the full replacement cost of the flooring in the Unit existing as of the date of the initial conveyance of the Unit by the Declarant to a third party buyer, (iii) the Unit Owner does not comply with the terms and provisions of this Section 6.10.2 and (iv) there is an insurable casualty that damages such new flooring, the Unit Owner will only be entitled to insurance proceeds attributable to the flooring that existed at the time of the initial conveyance of the Unit by the Declarant and not to the new flooring installed by the Unit Owner. Further, by way of example, if (i) a Unit Owner constructs a wall in a Unit that did not exist at the time of the initial conveyance of the Unit by the Declarant, (ii) the full replacement cost of such wall exceeds \$25,000, (iii) the Unit Owner does not comply with the terms and provisions of this Section 6.10.2 and (iv) there is a casualty that damages such new wall, the Unit Owner will not be entitled to any insurance proceeds with respect to any damage to such wall. If any additions, alterations, betterments or improvements made by a Unit Owner cause the premium for insurance coverage to materially increase, the amount of the increased premium attributable to such additions, alterations or improvements shall be paid by such Unit Owner. The Trustees shall have the right to inspect the Units in connection with such review, but only after reasonable advance notice to the Unit Owners of such Units. In the event of doubt on the part of the Trustees or on the part of the Unit Owner as to whether or not particular additions, alterations, betterments or improvements are part of the real estate, the estimated full replacement value of such item shall be separately stated. Additionally, if the premium or rates payable with respect to any policy or policies of insurance carried by or on behalf of the Trustees under this Declaration of Trust increases solely as a result of particular use of a Unit by a Unit Owner (as reasonably demonstrated by the Trustees), such Unit Owner shall pay such increase, which will be assessed as a Common Charge.

6.10.3 Insurance to be Maintained by Unit Owners.

(A) Subject to Section 6.10.3(B), each Unit Owner shall obtain insurance insuring those contents of such Unit Owner's Unit that are not as a matter of law part of the real estate comprising such Unit, for the full replacement value, covering the Unit, any appliances, furniture, wall coverings, floor coverings, carpeting, drapes or other window treatments, furnishings, equipment (unless included in the Unit prior to the initial conveyance of the Unit by the Declarant), light fixtures (unless included in the Unit prior to the initial conveyance of the Unit by the Declarant) and other personal property, as well as any improvements, betterments, alterations or additions made to the Unit by such Unit Owner that are not covered by the Trust's property insurance policy pursuant to Section 6.10.2 above (under "improvements and betterments coverage"). Each Residential Unit Owner shall maintain personal liability insurance in an amount of not less than \$1,000,000 except that those Unit Owners that have the right to use a Balcony or Unit Terrace shall maintain personal liability insurance in an amount not less than \$2,000,000 and each Commercial Unit Owner shall maintain commercial general liability insurance in an amount not less than \$2,000,000. Any lease or occupancy agreement of a Unit shall obligate the tenant to comply with the provisions of this Section 6.10.3(A). Each Unit Owner and any tenant, subtenant and occupant of a Unit shall

carry sufficient automobile insurance on its automobiles to be parked in the Project Garage. The Declarant, the Trustees, the Condominium Managing Agent, and the Project Garage operator and any submanager thereof shall not be liable for any damage caused to any Unit Owner's automobile or pet regardless of the cause or nature of such damage (including, without limitation, any damage caused by valet parking attendants). The Commercial Unit Owner may satisfy its insurance obligations under this Section 6.10.3(A) with respect to some or all of the Commercial Unit by obtaining the required insurance directly or, with respect to any tenant which leases space within the Commercial Unit, via insurance obtained by such tenant with respect to such tenant's leased premises. With respect to any Unit Owner that houses or maintains a pet pursuant to Section 7.7 of the Master Deed, the certificate of liability insurance required hereunder shall expressly include coverage for any injury to person or property caused by such pet. Each Unit Owner and any tenant, subtenant and occupant of a Unit shall have the right to carry other insurance for its own benefit provided that all such policies contain standard waivers of subrogation, providing that the insurance shall not be invalidated should the insured waive, prior to loss, any right of recovery against the Trust, the Trustees, and any or all other Unit Owners and tenants, subtenants and occupants of Units, and provided any such policies do not adversely affect or diminish any liability under any insurance obtained by the Trustees for the benefit of the Trust pursuant to the provisions of this Section 6.10. If any loss intended to be covered by insurance carried by the Trustees shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Unit Owner, or any tenant, subtenant or occupant of a Unit, such Unit Owner or tenant, subtenant or occupant of a Unit shall, without limiting or prejudicing other remedies of the Trustees, assign the proceeds of such insurance carried by it, to the extent of such reduction, to the Trustees, as applicable, for application to the same purposes as the reduced proceeds are to be applied.

(B) Notwithstanding the requirements of Section 6.10.3(A), the Commercial Unit Owner (or any tenant which leases space within the Commercial Unit, with respect to such tenant's leased premises) may satisfy the insurance obligations applicable to the Commercial Unit Owner or applicable portion thereof by self-insuring, by way of a larger deductible or self-insured retention, for the risks that would otherwise be covered by the insurance required to be obtained with respect to the Commercial Unit or applicable portion thereof, in each case pursuant to a commercially reasonable self-insurance program meeting the requirements of this Section 6.10.3(B).

(i) As used herein, the term "self-insure" shall mean that the party that is self-insuring is itself acting as though it were the insurance company providing the insurance required under the provisions of this Declaration of Trust, and such party shall pay any amounts due in lieu of insurance proceeds because of self-insurance, which amounts shall be treated as insurance proceeds for all purposes under this Declaration. All amounts that a self-insuring party pays or is required to pay, and all loss or damage resulting from risks for which such party has elected to self-insure, shall be subject to the waiver of subrogation provisions of Section 6.10.3(A) and shall not limit any of such party's other obligations set forth in the Condominium Documents. If an event or claim occurs for which a defense and/or coverage would have been available from an insurance company issuing the liability insurance coverage required by Section 6.10.3(A) with respect to the Commercial Unit (or applicable portion thereof), the self-insuring party shall (i) undertake the defense of any such claim at such party's sole cost and expense; and (ii) use its own funds to pay any claim or replace any property or

otherwise provide the funding that would have been available from insurance proceeds but for the election by such party to self-insure, and the Trustees and the Trust shall be entitled to the same notice and benefits from such self-insuring party as an "additional insured" as if such liability coverage were in place. If an event or claim occurs for which a defense and/or coverage would have been available from an insurance company issuing the property insurance coverage required by Section 6.10.3(A) with respect to the Commercial Unit (or applicable portion thereof), the self-insuring party shall use its own funds to pay any claim or replace any property or otherwise provide the funding that would have been available from insurance proceeds but for such election by such party to self-insure. To the extent any party self-insures as provided in this Section 6.10.3(B), such party shall be deemed to have waived any right to make claims against the Trustees, the Trust and each Unit Owner (and each tenant, subtenant and occupant of a Unit) for any damage or loss that would have been insured against by such party's insurance policies if insurance coverage required under Section 6.10.3(A) had been available and in effect, and such party shall indemnify, defend and hold the Trustees, the Trust and each Unit Owner (and each tenant, subtenant and occupant of a Unit) harmless from and against any and all liabilities, damages, costs and expenses (including reasonable attorneys' fees) which any of them would have been insured against by the self-insuring party's insurance policies if insurance coverage required under Section 6.10.3(A) had been available and in effect.

(ii) The right to self-insure and to continue to self-insure set forth in this Section 6.10.3(B) is conditioned upon and subject to, at all times during which the applicable party self-insures, (i) such party having a Tangible Net Worth of at least Two Hundred Fifty Million Dollars (\$250,000,000.00) and that is adequate such that the amount of exposure to such party under any such self-insurance program shall not exceed ten percent (10%) of such party's Tangible Net Worth (collectively, the "Required Amount") and (ii) no events occurring that make it apparent that such party's Tangible Net Worth has been diminished below the Required Amount (such as a bankruptcy of such party), (iii) such party (or its parent) shall maintain appropriate reserves in connection with such self-insurance as part of its (or its parent's) regularly maintained insurance and risk management program of which such party is a part. If at any time a party fails to satisfy the requirements of this Section 6.10.3(B), then for so long as such failure continues such party shall not have the right to self-insure.

6.10.4 Waiver of Subrogation. The Trustees, the Trust and each Unit Owner (and each tenant, subtenant and occupant of a Unit), waive all rights of recovery against the other for loss or injury against which the waiving party is protected by insurance (or, if applicable, self-insurance in accordance with Section 6.10.3(B)) that names or is deemed to name the other party as one of the insureds or contains provisions or is deemed to contain provisions that deny the insurer the acquisition of rights by subrogation or waivers of subrogation of claims against the other party, reserving, however, any rights with respect to any excess of loss or injury over the amount recovered under such insurance or, if applicable, self-insurance.

6.10.5 Insurance Proceeds; Insurance Trustee.

(A) Insurance proceeds received by the Trustees shall be held in trust in an identified and segregated fund for the benefit of Unit Owners and Listed Mortgagees. If restoration of any Unit involves structural repairs or if restoration of any Unit involves non-structural repairs and the cost of restoration of such Unit is estimated by the Trustees to exceed

\$50,000, then the Trustees shall give written notice of such loss to the Listed Mortgagee(s) holding the mortgage on such Unit. If restoration of the Common Elements involves structural or non-structural repairs and the costs of restoration thereof are estimated by the Trustees to exceed the sum of \$50,000, then the Trustees shall give written notice of such loss to the Listed Mortgagee(s) holding the mortgage on each Unit affected by such restoration. If restoration of the Common Elements involves structural or non-structural repairs and the costs of restoration thereof are estimated by the Trustees to exceed the sum of \$250,000, then the Trustees shall give written notice of such loss to all Listed Mortgagees.

(B) All physical damage insurance policies purchased by the Trustees shall be for the benefit of the Trust, the Unit Owners, their Mortgagees (including, without limitation, any Listed Mortgagees) and the Declarant, as their interests may appear, and shall provide that all proceeds of such policies shall be paid in trust to the Trustees or the Condominium Managing Agent as "insurance trustee" to be applied pursuant to the terms of this Section 6.10 and Section 6.11, provided that so long as HSBC Bank USA, National Association, as Agent, holds a first mortgage on any Unit, it shall be the "insurance trustee" hereunder. This provision shall supersede any provision to the contrary contained in any mortgage.

(C) The sole duty of the insurance trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in this Declaration of Trust, for the benefit of the insureds and their beneficiaries thereunder.

6.11 Repair or Restoration After Fire or other Casualty.

6.11.1 In the event of any damage to or destruction of the Condominium as a result of fire or other casualty, the Trustees shall determine in their reasonable discretion whether or not such loss exceeds ten percent (10%) of the value of the Condominium immediately prior to the casualty, and shall notify all Unit Owners and Listed Mortgagees of such determination.

6.11.2 If such loss as so determined does exceed ten percent (10%) of such value, the Trustees shall forthwith submit to all Unit Owners, with a copy to all Listed First Mortgagees (x) a form of agreement (which may be in several counterparts) by and among the Unit Owners authorizing the Trustees to proceed with the necessary repair, rebuilding or restoration, and (y) a copy of the provisions of Section 17 of Chapter 183A, and if Unit Owners holding at least seventy-five percent (75%) of the total General Common Percentage Interests do not agree within one hundred twenty (120) days after the date of the casualty to proceed with repair or restoration, the Condominium, including all Units, shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of the partition sale together with any common funds shall be divided among the Unit Owners, in proportion to their General Common Percentage Interests, provided, however, that no payment shall be made to a Unit Owner until there has first been paid out of its share of such funds, such amounts as may be necessary to discharge or reduce amounts owed for Common Charges or to any Listed Mortgagee holding a mortgage on such Unit. Upon such sale, the Condominium shall be deemed removed from the provisions of Chapter 183A. If the Unit Owners determine not to proceed with repair or reconstruction, all insurance proceeds paid to the Trustees as trustees on

account of any casualty, net of the expenses of collection thereof, shall be distributed to the Unit Owners pro rata in accordance with their respective General Common Percentage Interest.

6.11.3 If Unit Owners holding at least seventy-five percent (75%) of the total General Common Percentage Interests agree to proceed with the necessary repair or restoration within one hundred twenty (120) days after the date of the casualty, the cost of the rebuilding of the Condominium, in excess of any available common funds of the Trust including the proceeds of any insurance, shall be a Common Expense, provided, however, that if such excess cost exceeds ten percent (10%) of the value of the Condominium prior to the casualty, any Unit Owner who did not so agree may apply to the Superior Court of Suffolk County on such notice to the Trustees as the 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. The terms and provisions of this Section 6.11 are not subject to Section 6.16.

6.11.4 If the Unit Owners determine to proceed with repair or reconstruction, or if the loss was determined by the Trustees to be less than ten percent (10%) of the value of the Condominium prior to the casualty, then the Trustees shall promptly adjust the loss, contract for the prompt repair or restoration of the Condominium, disburse the proceeds of all insurance policies in payment of all costs and expenses actually incurred in connection with such repair or reconstruction in appropriate progress payments and with appropriate retainage, and otherwise proceed in accordance with the provisions of Sections 6.10 and 6.11 governing repair or reconstruction of the Condominium.

6.11.5 Notwithstanding anything in this Section 6.11 to the contrary, for so long as the Tower Garage is an Individual Garage of the Project Garage under the REA, in the event of (i) any damage to or destruction of the Project Garage as a result of fire or other casualty and (ii) the determination of the Unit Owners not to proceed with the necessary repair, rebuilding or restoration of the Condominium, the Trustees shall nevertheless be obligated to repair and restore any damage to the Project Garage to the extent required under the REA. The Trustees shall prepare or cause to be prepared the amended and updated plans required for any such repair or restoration for approval of the BB Owner in accordance with the Garage REA. The Trustees shall promptly adjust the loss, contract for the prompt repair or restoration of the Project Garage, disburse the proceeds of all insurance policies in payment of all costs and expenses actually incurred in connection with such repair or reconstruction in appropriate progress payments and with appropriate retainage, and otherwise proceed to repair or reconstruct the Project Garage to the extent required under the REA. The cost of the repair or reconstruction of the Project Garage, in excess of any available common funds of the Trust including the proceeds of any insurance, shall be a General Common Expense payable by each Unit Owner in proportion to its respective General Common Percentage Interest.

6.11.6 The Trustees may perform Emergency work essential to the prevention and safety of the Condominium or the safety of persons, or as may be required to avoid the suspension of any essential services to the Condominium, without having first adjusted the loss or obtained proceeds of insurance.

6.11.7 All insurance proceeds paid to the Trustees as trustees, or to the "insurance trustee" pursuant to Section 6.10.5, on account of any casualty, net of the expenses of collection thereof, shall be first applied to the repair or restoration of the loss. In the event that the total cost of repair or restoration of the Common Elements and/or any Units, as estimated on the basis of an independent appraisal, or as determined during the course of repair or restoration, exceeds the total sum of available insurance proceeds, then the Trustees shall assess all Unit Owners, as a Common Expense, the amount estimated to repair or restore in excess of the insurance proceeds available therefor, adjusted proportionately with respect to the costs to repair General Common Elements, Residential Limited Common Elements or Commercial Limited Common Elements, and each Unit Owner shall pay its share of such excess costs in proportion to its respective General Common Percentage Interest, Residential Limited Common Interest or Commercial Limited Common Percentage Interest, as the case may be. If there shall be repair or restoration pursuant to the foregoing provisions and the amount of insurance proceeds exceeds the cost of such repair or restoration, then such excess of insurance proceeds, if any, shall be added to the Trust's reserve fund or, at the option of the Trustees, divided among all the Unit Owners (and their Mortgagees as their interests may appear) in proportion to their respective General Common Percentage Interest, Residential Limited Common Interest or Commercial Limited Common Percentage Interest, as the case may be, depending on the allocation of such excess insurance proceeds with respect to General Common Elements, Residential Limited Common Elements or Commercial Limited Common Elements.

6.11.8 In the event of any damage or destruction in excess of \$1,000,000.00 or in any other case in which the Trustees deem it appropriate, 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), any Trustee or any employee or agent of the Trust, to supervise the work of repair or restoration. In such event, no sums shall be paid by the Trustees on account of such repair or restoration except upon certification to it by such architect or engineer that (i) the work for which payment is being made has been completed in a good and workmanlike manner in accordance with approved plans and specifications, (ii) all contractors and subcontractors shall have provided appropriate lien waivers, and (iii) that the estimated total cost of completion of said repair or restoration, less amounts theretofore advanced, does not exceed the undisbursed proceeds of insurance as augmented by funds obtained by any assessment or assessments to the Unit Owners as permitted herein. Disbursement of such restoration funds shall be made monthly in accordance with customary construction lending practices.

6.12 No Severance of Ownership; Acquisition of Units by Trustees.

6.12.1 No Severance of Ownership. No Unit Owner shall execute any deed, mortgage, lease or other instrument conveying, leasing, mortgaging or otherwise transferring its Unit without including therein the "Appurtenant Interests" (as defined below), it being the intention hereof to prevent any severance of such combined ownership. As used herein and elsewhere in the Condominium Documents, the term "Appurtenant Interests" shall mean the following:

(A) The undivided General Common Percentage Interest in the General Common Elements appurtenant to each Unit;

(B) The undivided Residential Limited Common Percentage Interest in appurtenant to each Residential Unit;

(C) The undivided Commercial Limited Common Percentage Interest in appurtenant to each Commercial Unit;

(D) The General Common Percentage Interest of a Unit Owner in any Unit theretofore acquired by the Trustees, or its designee, on behalf of all Unit Owners;

(E) The interests of a Unit Owner in any other assets of the Condominium as expressly provided in the Condominium Documents;

(F) The beneficial interest of the Unit Owner in the Trust;

(G) The Parking Rights to use the Project Garage, to the extent conveyed pursuant to Section 8.1 of the Master Deed;

(H) The Storage Spaces, to the extent conveyed in the manner described in Section 5.5.17 of the Master Deed;

(I) Other rights of a Residential Unit Owner to the exclusive use and enjoyment of certain Residential Limited Common Elements, if any, as provided in the Master Deed; and

(J) Other rights of a Commercial Unit Owner to the exclusive use and enjoyment of certain Commercial Limited Common Elements, if any, as provided in the Master Deed.

Any such deed, mortgage, or other instrument purporting to affect a Unit or one or more of the Appurtenant Interests, without including the Unit and all such Appurtenant Interests, shall be deemed and taken to include the Appurtenant Interest(s) 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, conveyed, transferred or otherwise disposed of, except (i) as part of a sale, transfer or other disposition of the Unit to which such Appurtenant Interests are appurtenant and (ii) as part of a sale, transfer or other disposition of such part of the Appurtenant Interests of all Units.

6.12.2 Acquisition of and Financing of Purchase of Units by Trustees. Acquisition of Units by the Trustees may be made from the working capital of the Trust, or if such funds are insufficient and Unit Owners holding at least seventy-five percent (75%) of the General Common Percentage Interests consent thereto, the Trustees may make a special assessment against each Unit Owner in proportion to each such Unit Owner's General Common Percentage Interest, which assessment shall be enforceable as provided in Section 6.8 herein, 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 applicable Unit. Notwithstanding the foregoing, no consent of any Unit Owners shall be required in order to acquire or finance the on-site manager's apartment. All costs of obtaining financing for the acquisition of a Unit and for the repayment of monies

borrowed for such purpose, including principal and interest, shall be Common Expenses of the Condominium and shall be payable by Unit Owners as Common Charges. The Trustees shall have the power to hold, lease, mortgage, convey or otherwise deal with any Unit acquired by it under the terms of this Declaration of Trust. In the case of an acquisition of a Unit by the Trustees, no voting rights shall be deemed appurtenant to such Unit for so long as such Unit is owned by the Trustees, and for purposes of determining voting percentages under the Master Deed or this Declaration of Trust such Unit shall not be taken into account.

6.12.3 Waiver of Right of Partition with Respect to Such Units as Are Acquired by the Trustees. In the event that a Unit shall be acquired by the Trustees, all Unit Owners shall be deemed to have waived all rights of partition with respect to such Unit.

6.12.4 Payment of Assessments. No Unit Owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease its Unit to the Trustees unless and until such Unit Owner shall have paid in full to the Trustees all unpaid common charges theretofore assessed by the Trustees against its Unit and until such Unit Owner shall have satisfied all unpaid liens against such Unit, except the lien of a mortgage then on record.

6.13 Condemnation.

6.13.1 Repair and Restoration After Condemnation. In the event of a taking by eminent domain, the Trustees shall represent each Unit Owner as its attorney-in-fact in an action to recover all awards with respect to the Units and the Common Elements. Unless Unit Owners (and their Mortgagees) holding at least seventy-five percent (75%) of the General Common Percentage Interests agree that repair or restoration shall not be undertaken, the net proceeds of the awards, after deducting: (i) related fees and expenses and (ii) the portions of the awards attributable in the taking proceedings or, failing such attribution, attributable by the Trustees, to the Units totally taken or partially taken and not economically feasible to restore, shall be held by the insurance trustee and first applied to the repair or restoration of the Common Elements and the remaining Units (but not the property of individual Unit Owners) to as nearly their condition prior to the taking as may be feasible in the same manner as provided in Sections 6.10 and 6.11 hereof for disbursement of proceeds of insurance policies in the event of fire or other casualty.

(A) In the event that the total cost of repair or restoration of the Common Elements and the remaining Units as estimated on the basis of an independent appraisal, or as determined during the course of repair or restoration, exceeds the total sum of the awards, the Trustees shall assess all remaining Unit Owners, as a Common Expense, the amount estimated to repair or restore in excess of the awards available therefor.

(B) Wherever the Trustees deem it appropriate, the Trustees may (or in the case of any taking in which the estimated value of the repair or restoration work exceeds \$1,000,000, the Trustees shall) retain a registered architect or registered engineer in accordance with Section 6.11.8 to supervise the work of repair or restoration. No sums shall be paid by the insurance trustee on account of such repair or restoration except upon certification to it by such architect or engineer that (i) the work for which payment is being made has been completed in a good and workmanlike manner in accordance with approved plans and specifications, (ii) all contractors and subcontractors have provided appropriate lien waivers and (iii) the estimated

total cost of completion of said repair or restoration less amounts theretofore advanced, does not exceed the undisbursed proceeds of the awards as augmented by funds obtained by any assessment or assessments to the Unit Owners as a Common Expense. Disbursement of such restoration funds shall be made monthly in accordance with customary construction lending practices.

(C) Notwithstanding the foregoing, the Trustees may perform Emergency work essential to the preservation and safety of the Condominium or the safety of persons, or required to avoid the suspension of any essential service to the Condominium, without having first recovered the awards.

(D) Notwithstanding anything in this Section 6.13 to the contrary, for so long as the Tower Garage is an Individual Garage of the Project Garage under the REA, in the event of a determination of the Unit Owners after a condemnation not to proceed with the necessary repair, rebuilding or restoration of the Condominium, the Trustees shall nevertheless be obligated to repair and restore any damage to the Project Garage to the extent required under the REA. The Trustees shall prepare or cause to be prepared the amended and updated plans required for any such repair or restoration for approval of the BB Owner in accordance with the Garage REA. The Trustees shall promptly contract for the prompt repair or restoration of the Project Garage, disburse the portion of the net proceeds attributable to the Project Garage in payment of all costs and expenses actually incurred in connection with such repair or reconstruction in appropriate progress payments and with appropriate retainage, and otherwise proceed to repair or reconstruct the Project Garage to the extent required under the REA. The cost of the repair or reconstruction of the Project Garage, in excess of any available common funds of the Trust including the proceeds of any insurance, shall be a General Common Expense payable by each Unit Owner in proportion to its respective General Common Percentage Interest.

6.13.2 Readjustments Following Condemnation. Notwithstanding the provisions of Section 6.13.1 hereof, if the loss to particular Units shall not be in the same relative proportions as the General Common Percentage Interests of the Unit Owners thereof, the Trustees shall distribute any such excess funds, and charge any excess expenses, in such proportions as are just and equitable, and such readjustments shall thereafter be made in such interests of the Unit Owners or in the allocation of Common Expenses or both as are just and equitable. Following any taking which reduces the number of Units in the Condominium, the Condominium and the Trust shall continue subject to and with the benefit of all the provisions of the Condominium Documents so far as the same are applicable to the remaining Units, and the interests of the Unit Owners shall be apportioned in the same relative proportion with respect to the remaining Units as existed among the remaining Units prior to the taking, except as readjusted under the preceding provisions.

6.13.3 Partition. If Unit Owners (and their Mortgagees) holding at least seventy-five percent (75%) of the General Common Percentage Interests agree that repair or restoration of the loss shall not be undertaken, the Condominium, including all Units, shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to repair or restore is filed. Except as otherwise provided in this Section 6.13, the net proceeds of all condemnation awards and of the partition sale together with any common funds shall be divided in proportion to the Unit Owners'

respective undivided General Common Percentage Interests, provided, however, that no payment shall be made to a Unit Owner until there has first been paid out of its share of such funds such amounts as may be necessary to discharge or reduce all unpaid liens on such Unit. Upon such sale, the Condominium shall be deemed removed from Chapter 183A.

6.13.4 Awards for Unit Owners' Property and Relocation Allowances. Where all or part of the Condominium is taken by eminent domain, each Unit Owner shall have the exclusive right to claim all of the award made with respect to its individual property and its Parking Rights, and any relocation, moving expense, or other allowance of a similar nature designed to facilitate relocation of a displaced business concern.

6.13.5 Notice to Unit Owners and Listed Mortgagees. The Trustees, promptly upon having knowledge of any taking by eminent domain of the Condominium, the Units, the Common Elements, or any portion thereof, or any threat thereof, shall notify all Unit Owners and Listed Mortgagees.

6.14 Rules and Regulations; Abatement of Violations.

6.14.1 Rules and Regulations. In order to provide for the congenial occupancy of the Condominium and for the protection of the values of the Units and to reasonably regulate activities within the Common Elements (including provision for the periodic exclusion of members of the public from portions of the Common Elements to prevent the establishment of any prescriptive rights therein), the use of the Units and the Common Elements shall be in accordance with the Rules and Regulations. The Rules and Regulations are a portion of this Declaration of Trust and by-laws of the Condominium for all purposes and may only be amended in accordance with procedures governing the amendment of this Declaration of Trust, except that the provisions of the Rules and Regulations that deal with only the Common Elements, and not with activities within Units, which are clearly described in the Rules and Regulations, may be amended from time to time upon a unanimous vote of all Trustees with a copy of any such amended Rules and Regulations provided to the Unit Owners. Notwithstanding anything contained herein to the contrary, the Trustees shall not enact any Rules and Regulations with respect to the loading docks in any manner that imposes additional obligations, fees or charges on the Commercial Unit Owner or materially limits the Commercial Unit Owner's rights with respect thereto without the prior written approval of the Commercial Trustee. The Trustees shall have the power to levy fines against the Unit Owners for violations of the Rules and Regulations and the other Condominium Documents by a Unit Owner (or any occupant or invitee of such Unit Owner) and such fines shall constitute Common Charges.

6.14.2 Abatement and Enjoinment of Violations by Unit Owners. The violation of any of the Condominium Documents by a Unit Owner or any other person or entity shall give the Trustees the right, in addition to any other rights set forth in this Declaration of Trust or elsewhere in the Condominium Documents, to enjoin, abate or remedy by appropriate legal proceedings, the continuance of any such breach. All expenses incurred by the Trustees in connection with any such violation by a Unit Owner shall constitute a Common Charge payable by such Unit Owner. In addition to, and without limitation of the foregoing, any violation of Section 7.8 of the Master Deed by a Unit Owner (or its tenant, subtenant, licensee or occupant) having the exclusive right to a Balcony or Unit Terrace that is not cured within twelve (12) hours

after written or oral notice to such Unit Owner by the Trustees or the Condominium Managing Agent, shall entitle the Trustees or the Condominium Managing Agent, without any additional notice to the Unit Owner, to cure such violation (including without limitation the right to access the Unit and Balcony or Unit Terrace of such Unit Owner), and the Unit Owner shall be liable for all costs and expense incurred by the Trustees in connection with curing such violation, in addition to any fines or penalties that the Trustees may assess against the Unit Owner pursuant to its rights under this Declaration of Trust and Chapter 183A.

6.15 Records.

6.15.1 Records and Audits. The Trustees or the Condominium Managing Agent shall keep detailed records of the actions of the Trustees, and minutes of the meetings of the Trustees. The Trustees or the Condominium Managing Agent or any submanaging agent shall keep and maintain, or cause to be kept and maintained, the financial records and books of account of the Trust including a chronological listing of receipts and expenditures, as well as a separate account for each Unit, which, among other things, shall contain the amount of each assessment of Common Charges against each Unit, the date when due, the amounts paid thereon, and the balance remaining unpaid. An annual statement of the Trust, certified by an independent certified public accountant, shall be rendered or caused to be rendered by the Trustees to all Unit Owners within ninety (90) days after the end of each Fiscal Year. Copies of the Master Deed, this Declaration of Trust and Rules and Regulations and the Plans, as the same may be amended from time to time, shall be maintained at the office of the Trustees and shall be available for inspection by Unit Owners, their authorized agents and Listed Mortgagees during reasonable business hours. The Trustees shall in all events maintain and provide to Unit Owners or cause the Condominium Managing Agent to maintain and provide such records and reports as are required to be maintained and provided pursuant to Section 10 of Chapter 183A.

6.15.2 Examination of Books. Each Unit Owner and Listed Mortgagee of a Unit shall be permitted to examine the books of account of the Condominium during reasonable business hours.

6.16 Dispute Resolution and Limitation on Rights to Bring Lawsuits.

6.16.1 Bound Parties; Claims.

The Declarant, the Trustees (including the Initial Trustee), the Trust, the Condominium Managing Agent, all Unit Owners and any other person or entity subject to the Condominium Documents, and any person or entity not otherwise subject to the Condominium Documents who agrees to submit to this Section 6.16 (each, a “Bound Party” and collectively, the “Bound Parties”), agree that it is in the best interest of all concerned to encourage the resolution of disputes involving the Condominium without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim unless and until it has first submitted each Claim to the alternative dispute resolutions procedures set forth in this Section 6.16 in a good faith effort to resolve such Claim, and with respect to any Claim brought by the Trust or the Trustees, the Trustees shall have first complied with Section 6.16.3.

As used in this Section 6.16, the term “Claim” shall refer to any claim, grievance or dispute among any two or more Bound Parties arising out of or relating to:

- (A) the interpretation, application, or enforcement of the Condominium Documents;
- (B) the rights, obligations or duties of any Bound Party under the Condominium Documents; or
- (C) the design or construction of a Unit or the Common Elements;

Notwithstanding the foregoing clauses (A), (B) and (C) and subject to the proviso in subparagraph (v) below, the following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 6.16.2:

- (i) any suit by the Trustees or the Trust to collect Common Charges or any other amounts due from any Unit Owner pursuant to the Condominium Documents or under Chapter 183A;
- (ii) any suit by the Trustees or the Trust to obtain a temporary restraining order (or other emergency equitable relief) in order to enforce the provisions of Article 7 of the Master Deed or enforce any provision of the Rules and Regulations, which includes without limitation, any suit at equity to prevent or enjoin any nuisance in the Building;
- (iii) any suit between Unit Owners, which does not include the Declarant, the Trust, the Trustees (including the Initial Trustee) or the Condominium Managing Agent as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Condominium Documents;
- (iv) any suit in which any indispensable party is not a Bound Party unless such party agrees to become a Bound Party; and
- (v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the notice required by Section 6.16.2, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Section 6.16; provided, however, that any suit by the Trustees or the Trust under this subparagraph (v) shall be considered a Claim in so far as the Trustees and the Trust shall first comply with Section 6.16.3 hereof prior to commencing any such suit.

6.16.2 Dispute Resolution Procedures.

(A) Notice. The Bound Party asserting a Claim (the “Claimant”) against one or more Bound Parties (each, a “Respondent”) shall give written notice to each Respondent and to the Trustees (if not a party to the Claim) stating plainly and concisely:

- (i) the nature of the Claim, including the persons involved and the Respondent’s role in the Claim;

(ii) the legal basis of the Claim (i.e., the authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(B) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the notice, the Trustees (if not a party to the Claim) may appoint a representative to assist the parties to negotiate a resolution of the Claim.

(C) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in Section 6.16.1 (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation to a mediator mutually agreed to by the parties; provided, however, that if the parties cannot agree on a mediator, then the Claimant may submit the Claim to mediation through the Massachusetts Real Estate Bar Association dispute resolution procedures.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled unless for good cause shown, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, and unless such 30-day period is extended by mutual agreement of the parties, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation has terminated. The Claimant shall thereafter be entitled to file or to initiate judicial proceedings on the Claim.

EACH BOUND PARTY HEREBY WAIVES, IRREVOCABLY AND UNCONDITIONALLY, TRIAL BY JURY IN ANY ACTION BROUGHT AGAINST ANY OTHER BOUND PARTY ON, UNDER OR BY VIRTUE OF OR RELATING IN ANY WAY TO ANY CLAIM (AS DEFINED IN THIS SECTION 6.16), THE CONDOMINIUM, ANY UNIT, THE COMMON ELEMENTS OR THE CONDOMINIUM DOCUMENTS, INCLUDING BUT NOT LIMITED TO, CLAIMS ARISING IN CONTRACT, TORT, NEGLIGENCE, FRAUD, OR BY ANY APPLICABLE STATUTE, OR IN ANY MANNER, DIRECTLY OR INDIRECTLY ARISING OUT OF ANY OF THE FOREGOING.

Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator; provided, however, that if the Claim is not settled in mediation and a party pursues its Claim(s) in court (or via an administrative proceeding), the prevailing party shall be reimbursed by the other party for all reasonable costs and expenses, including reasonable attorneys' fees and expenses, incurred by the substantially prevailing party in such action or proceeding and in any appeal in connection therewith.

(D) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section 6.16. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, reasonable attorneys' fees and court costs.

6.16.3 Initiation of Litigation by Trustees or Trust. Neither the Trustees nor the Trust shall initiate any judicial or administrative proceeding or bring a Claim that is subject to the alternative dispute resolution procedures described above in Section 6.16.2 above seeking damages in excess of \$100,000.00 or asserting a claim for specific performance or other equitable relief which, if enforced, would require the Respondent(s) to incur more than \$100,000.00 in costs unless (1) the Trustees have presented to the Unit Owners an opinion of counsel from a law firm specifically retained by the Trustees or the Trust for this purpose (i.e., not retained by the Trustees or the Trust to represent either the Trustees or the Trust in any litigation), indicating that there is a reasonable likelihood of success on the merits of the claim(s) to be brought by the Trustees or the Trust, which such opinion includes a good faith reasonable estimate of the attorneys' fees, expert witness fees and other costs and expenses reasonably likely to be incurred by the Trustees or the Trust in order to obtain a final nonappealable judgment from a court of competent jurisdiction (as used in this clause (1), the term "reasonable likelihood of success on the merits" means obtaining a final nonappealable judgment from a court of competent jurisdiction in the favor of the Trust or the Trustees), (2) with respect to any claims for construction or design defects to the Common Elements or the Units or for a breach of the implied warranty of habitability or for any other claims regarding the condition of the Building, the Trustees have presented to the Unit Owners an opinion of a duly qualified engineer that there is a substantial likelihood that the defects alleged by the Trustees or the Trust are in fact defects in the design or construction of the Common Elements and a recommendation from such engineer on solutions on how to cure any such alleged defects and the estimated cost of such cure and (3) first approved in writing by Unit Owners holding at least seventy-five percent (75%) of the total disinterested General Common Percentage Interests, except that no such approval or legal or expert opinions shall be required for the following actions or proceedings:

(A) any suit by the Trustees or the Trust to collect Common Charges or any other amounts due from any Unit Owner pursuant to a specific provision of the Condominium Documents or under Chapter 183A;

(B) initiated to challenge ad valorem taxation or condemnation proceedings;

(C) initiated against any contractor, vendor, or supplier of goods or services who is not a Bound Party arising out of a contract for services or supplies entered into between the Trustees and such non-Bound Party; or

(D) to defend claims filed in court against the Trustees or the Trust or to assert counterclaims in proceedings instituted against it.

This Section 6.16 shall not be amended unless approved in writing by Unit Owners holding at seventy-five percent (75%) of the total General Common Percentage Interests and otherwise in accordance with Article 9. Further, the fact that the Trustees or the Trust could not obtain the approval of Unit Owners holding at least seventy-five percent (75%) of the total disinterested General Common Percentage Interests required by the first paragraph of this Section 6.16.3 shall not be a basis for one or more Unit Owners to bring a derivative action on behalf of the Trustees or the Trust; meaning that one or more Unit Owners may not bring a derivative action against any Bound Party that would, as a direct suit, be subject to this Section 6.16.3 unless and until such Unit Owner(s) have obtained the requisite approval of Unit Owners holding at least seventy-five percent (75%) of the total General Common Percentage Interests. Upon written demand by one or more Unit Owners seeking to bring such a derivative claim, the Trustees shall call a Special Meeting of the Unit Owners in order to obtain such required approval of Unit Owners holding at least seventy-five percent (75%) of the total General Common Percentage Interests, which shall be the Trustees' sole obligation with respect to any such demand.

6.17 Mortgages.

6.17.1 Notice of Mortgage to Trustees. A Unit Owner that mortgages its Unit shall notify the Trustees of the name and address of its Mortgagee and shall file a true, correct and complete copy of the mortgage, as recorded at the Registry, with the Trustees. The Trustees shall cause such information to be maintained in a book or file entitled "Mortgages of Units." Each such Unit Owner shall thereafter provide written notice to the Trustees of any changes of its Mortgagee's name and address.

6.17.2 Notice of Unpaid Common Charges. The Trustees, whenever so requested in writing by a Listed Mortgagee, shall promptly report or cause to be reported any then unpaid assessments of Common Charges or other assessments due from, or any other default by, the owner of the mortgaged Unit.

6.17.3 Notice of Default, Casualty or Condemnation. When a Unit Owner is given notice of a default in paying any assessments of Common Charges or other assessments, or other default, the Trustees shall send, or cause to be sent, a copy of such notice to the Listed Mortgagees of such Unit. Each Listed Mortgagee shall also be promptly notified when the Unit Owner of any Unit on which such Listed Mortgagee holds a mortgage is in default in paying any assessments of Common Charges or other assessments for sixty (60) days or more, of any casualty when required by Sections 6.10 and 6.11, of all actions taken under Sections 6.10 and 6.11 of this Declaration of Trust, of any special assessment approved by the Unit Owners pursuant to Section 6.8.6 of this Declaration of Trust, and of any taking in condemnation or by eminent domain pursuant to Chapter 183A and actions of the Trust with respect thereto and any proposed action that requires the consent of a specified number of Mortgagees under this Declaration of Trust.

6.17.4 Notice of Change in Condominium Managing Agent. The Trustees shall give notice to all Listed Mortgagees requesting such notice at least thirty (30) days prior to changing the Condominium Managing Agent.

6.17.5 Listed Mortgagee. As used in this Declaration of Trust, "Listed Mortgagee" shall mean any holder of a mortgage of record on a Unit or a Mortgagee that has given written notice to the Trustees, specifying the address to which notices must be sent in all instances when the Trustees must send written notice to a Listed Mortgagee as required by the terms and provisions of the Condominium Documents or by law. Such Mortgagee shall remain a Listed Mortgagee until the Trustees receive written notice from such Listed Mortgagee of withdrawal of the listing or written evidence that the mortgage is discharged of record. The term "Listed First Mortgagee" shall mean a Listed Mortgagee with a first record priority on the Unit in question. HSBC Bank USA, National Association, as Agent, as the Mortgagee of the mortgage encumbering the Units owned by Declarant as of the date hereof is hereby deemed a Listed First Mortgagee, with such Mortgagee's address for notice being as set forth in such mortgage, and such Mortgagee is deemed to have requested all notices hereunder as to which a Listed Mortgagee may be entitled to notice.

6.17.6 Assignment by Unit Owner of Rights and Options. The right of any Unit Owner to vote to grant or withhold any consent, and to exercise any right or option herein granted to a Unit Owner, may be assigned or transferred in writing to or restricted in favor of any Listed Mortgagee, and the Trustees shall be bound by any such assignment, transfer or restriction upon notice in writing to the Trustees by the Unit Owner and such Listed Mortgagee setting forth the terms of such assignment. Notwithstanding the foregoing, the Initial Trustee shall be bound by any such assignment, transfer or restriction in favor of the Listed Mortgagee of all Units owned by the Declarant without the requirement of any such notice.

ARTICLE 7

Rights and Obligations Of Third Parties Dealing With The Trustees

7.1 Reliance on Identity of Trustees. No purchaser, Mortgagee, lender, or other person dealing with the Trustees, as they then appear of record in the Registry, shall be bound to ascertain or inquire further as to the identity of such Trustees, or be affected by any implied or actual notice, other than a certificate thereof, which record or certificate shall be conclusive evidence of the identity of the Trustees. The receipt of the Trustees for moneys or things paid or delivered to them shall effectively discharge the persons paying or delivering the same, and such persons shall not be required to see to the application thereof. No purchaser, Mortgagee, lender, or other person dealing with the Trustees or with any real or personal property which then is or formerly was Trust property shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge, or charge is herein authorized or directed, nor otherwise as to the purpose or regularity of any of the acts of the Trustees. Any instrument of appointment of a new Trustee or of discharge or resignation of an old Trustee purporting to be executed by the Trustees, Unit Owners, or other persons required by this Declaration of Trust to execute the same, shall be conclusive evidence in favor of any such purchaser or other person dealing with the Trustees of the matters recited therein relating to such discharge, resignation, or appointment or the occasion thereof.

7.2 No Personal Liability in Trustees. No Trustee shall under any circumstances or in any event be held liable or accountable out of such Trustee's personal assets by reason of any action taken, suffered or omitted in good faith, for allowing the other Trustees to have possession of the Trust books or property, or by reason of honest errors of judgment or mistakes of fact or law, or by reason of anything except such Trustee's own personal willful malfeasance or bad faith.

7.3 All Obligations Subject to this Declaration of Trust. Every oral or written note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant, or agreement made, issued, or executed by the Trustees, their agents or employees, shall be deemed to have been entered into subject to the terms, conditions, provisions, and restrictions of this Declaration of Trust, whether or not express references shall have been made to this instrument.

7.4 Further Matters of Reliance. This Declaration of Trust, any amendments hereto, any certificate required to be recorded and any other certificate or paper signed by any Trustee which it may be deemed desirable to record shall be recorded with the Registry. Such recording shall be deemed conclusive evidence of the contents and effectiveness of such instrument. All persons dealing with the Trustees, the Trust property or any beneficiary shall be held to have notice of any matter relating to this Trust when the same or a notice thereof shall be recorded with the 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 a certificate of unpaid common expenses as provided in Chapter 183A, Section 6(d), statements as to who are the beneficiaries, what action has been taken by the beneficiaries, and matters determining the authority of the Trustees to do any act, when duly acknowledged and recorded with the Registry, shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees, acting in good faith in reliance thereon. Any certificate executed by any Trustee, or by a majority of the Trustees, setting forth the existence of any facts, the existence of which is necessary to authorize the execution of any instrument or the taking of any action by such Trustee or majority, as applicable, shall, as to all persons acting in good faith in reliance, be conclusive evidence of the truth of the statements made and of the existence of the facts set forth in such certificate.

ARTICLE 8

Miscellaneous

8.1 Invalidity. The invalidity of any part of this Declaration of Trust shall not impair or affect in any manner the validity, enforceability or effect of the balance of this Declaration of Trust, however, in the place of such invalid or unenforceable provision, there shall be substituted a like, but valid and enforceable, provision which most nearly accomplishes the original intention of this Declaration of Trust.

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

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

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

8.5 Conflicts. This Declaration of Trust is set forth to comply with the mandatory requirements of Chapter 183A and the Master Deed, as the same may be amended from time to time. In the event any provision of this Declaration of Trust conflicts with the mandatory requirements of Chapter 183A or the Master Deed, such mandatory requirements of Chapter 183A or the Master Deed, as the case may be, shall control.

8.6 Counterparts. This Declaration of Trust may be executed in any number of counterparts and it shall be sufficient that the signature of each party appear on one or more such counterparts. All counterparts shall collectively constitute a single agreement.

ARTICLE 9

Amendments to Declaration of Trust

9.1 Amendments to Declaration of Trust. Except as otherwise provided in this Declaration of Trust and in the Master Deed (including, without limitation, Article 11 thereof), this Declaration of Trust (exclusive of certain provisions of the Rules and Regulations as more particularly set forth in Section 6.14 above and Schedule 1 attached hereto) may be amended only by (a) the affirmative vote of the Unit Owners holding at least seventy-five percent (75%) of the total General Common Percentage Interests and (b) the Majority Vote of the Trustees. Any such amendment shall be effective when an instrument in writing, signed and acknowledged in proper form for recording by a majority of the Trustees, who certify under oath in such instrument that the amendment has been approved by the requisite vote of the Unit Owners and the Trustees is duly recorded with the Registry, provided, however, that:

9.1.1 The date on which any instrument of amendment is first signed by a Unit Owner shall be indicated thereon as the date thereof and no such instrument shall be of any force or effect unless the same has been recorded with the Registry within six (6) months after such date;

9.1.2 No instrument of amendment that adversely affects a Residential Unit Owner's exclusive right to the use and enjoyment of any Balcony or Unit Terrace, Parking Right (or any other right to park in the Project Garage granted in accordance with to the Master Deed) or Storage Space shall be of any force or effect unless, in addition to the voting requirements specified above, the same has been signed by the Residential Unit Owner(s) whose Residential Unit(s) or right(s) is so affected;

9.1.3 No instrument of amendment that alters (i) the General Common Percentage Interest of any Unit Owner, (ii) the Residential Limited Common Percentage Interest

of any Residential Unit Owner or (iii) the Commercial Limited Common Percentage Interest of the Commercial Unit Owner shall be of any force or effect unless the same has been signed by the Unit Owner(s) whose Percentage Interest is being so affected;

9.1.4 No instrument of amendment that alters the dimensions of any Unit or adversely affects a Unit Owner's rights to use any Common Element or adversely affects a Unit Owner's appurtenant rights or easements shall be of any force or effect unless the same has been signed by the Unit Owner(s) whose Unit or rights are being so affected;

9.1.5 No instrument of amendment affecting any Unit in a manner that impairs the rights, priorities, remedies or interests of a Listed Mortgagee thereof, shall be of any force or effect unless, in addition to the voting requirements specified above, the same has been consented to by such Listed Mortgagee (which consent shall not be unreasonably withheld, conditioned or delayed);

9.1.6 Nothing in this Article 9 shall be deemed to impair the right of the Declarant, at any time and from time to time until the Declarant no longer holds or controls title to any Unit, to amend, alter, add to or change this Declaration of Trust without the consent of any Unit Owner (or any Mortgagee thereof), the Trustees, or any other person or entity, by an instrument in writing signed and acknowledged by the Declarant and duly recorded with the Registry for the specific purposes of: (a) making minor, clerical or factual corrections to the provisions of this Declaration of Trust or to any Plans or curing any ambiguity, inconsistency, formal defect or omission in this Declaration of Trust or any exhibit hereto or any supplement or amendment hereto; (b) complying with the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any other governmental agency or any other public, quasi-public or private entity that performs (or may in the future perform) functions similar to those currently performed by such entities in order to induce any such agencies or entities to make, purchase, sell, insure or guarantee institutional mortgages covering Unit ownership, (c) exercising its rights set forth in this Declaration of Trust or (d) bringing this Declaration of Trust into compliance with Chapter 183A or other Legal Requirements, to the extent of any non-compliance, in each case to the extent such amendment does not materially adversely affect any Unit Owner's use and enjoyment of its Unit or any portion of the Common Elements;

9.1.7 No instrument of amendment that alters the use to which any Unit may be put shall be effective unless, in addition to the voting requirements specified above, such instrument is signed by the owner(s) of the Unit(s) to be affected by such change;

9.1.8 No instrument of amendment that adversely affects a Commercial Unit Owner's use and enjoyment of its Commercial Unit or adversely affects the amount of Common Charges or any other costs to be paid by a Commercial Unit Owner shall be effective, unless in addition to the voting requirement specified above, such amendment is signed by the Commercial Unit Owner(s) so affected;

9.1.9 No instrument of amendment that alters the voting rights of any Unit Owner shall be effective unless, in addition to the voting requirements specified above, such instrument is signed by the owner(s) of the Unit(s) to be affected by such change;

9.1.10 No instrument of amendment that affects the Declarant's rights under this Declaration of Trust shall be effective unless in addition to the voting requirements specified above, such amendment is signed by the Declarant, its successors and assigns;

9.1.11 No instrument of amendment amending the dispute resolution provisions of Section 6.16 shall be effective unless in addition to the voting requirements specified in Section 6.16, such amendment is signed by the Declarant, its successors and assigns and Declarant's Listed Mortgagees; and

9.1.12 No instrument of amendment that adversely affects any rights explicitly reserved in the Condominium Documents to the GPH Unit(s) shall be of any force or effect unless the same has been signed by the Unit Owner(s) of the GPH Unit(s);

9.1.13 No instrument of amendment that alters this Declaration of Trust in any manner that would render it contrary to or inconsistent with any mandatory requirements or provisions of Chapter 183A shall be of any force and effect.

ARTICLE 10

Termination of Trust

10.1 Termination of Trust. This Trust shall terminate only upon the removal of the Condominium from the provisions of Chapter 183A in accordance with the procedure set forth in Chapter 183A, Section 19, provided such termination is consented to in writing by Unit Owners holding eight-five percent (85%) or more of the total General Common Percentage Interests. No such vote shall be effective, however, without the written consent (which consent shall not be unreasonably withheld, conditioned or delayed) of all Listed Mortgagees, if any, and without the written consent of the Declarant (until such time as the Declarant no longer holds or controls title to any Unit).

Any termination pursuant to the foregoing shall become effective upon the recording with the Registry of an instrument of termination or a certificate of termination signed by the Trustees, reciting the consent of the Unit Owners, Mortgagees, and the Declarant (if applicable) required to consent thereto. Such instrument or certificate shall be conclusive evidence of the existence of all facts and of compliance with all prerequisites to the validity of such termination.

10.2 Winding Up of Trust After 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 or any part(s) of the Trust property. After paying or retiring all known liabilities and obligations of the Trustees and providing for indemnity against any other outstanding liabilities and obligations, the Trustees shall divide the proceeds among and distribute in kind all other property then held by the Trustees in trust to the Unit Owners according to their respective General Common Percentage Interests. All valuations made by the Trustees shall be conclusive. In making any sale under this provision, the Trustees shall have power to sell by public auction, private sale or contract, to buy in or rescind or vary any contract of sale, to resell without being answerable for loss, and to do all things, including the execution and delivery of instruments, as may be necessary or desirable in their judgment for such

purposes. Such powers of sale and all other powers given to the Trustees hereunder shall continue as to all property at any time remaining in their hands or ownership, even though all times fixed herein for distribution of property of the Trust may have passed.

[Signature Page Follows]

EXECUTED under seal as of the date first set forth above.

DECLARANT:

MP FRANKLIN TOWER CO LLC,
a Delaware limited liability company

By: 

Name: Steven L. Hoffman

Title: Vice President

STATE OF NEW YORK)

) ss.

COUNTY OF NEW YORK)

On this 2nd day of June, 2016, before me, the undersigned, a notary public in and for said State, personally appeared Steven L. Hoffman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

IAN TYLER ROSS
Notary Public, State of New York
No. 01RO6279225
Qualified in New York County
Commission Expires 04/08/2017

Schedule 1

RULES AND REGULATIONS OF MILLENNIUM TOWER

The following Rules and Regulations (the "Rules") shall apply to Millennium Tower (the "Condominium") until such time as they are amended, modified, rescinded or limited in accordance with Section 6.14 of the Declaration of Trust of Millennium Tower Trust (the "Declaration of Trust"), as more particularly described in the following paragraph.

The terms and provisions of Sections A through F of these Rules are considered by-laws of the Condominium, are applicable to the use and occupancy of Units and the Common Elements, and may only be amended in the same manner as required in Article 9 of the Declaration of Trust for an amendment to the Declaration of Trust. The terms and provisions of Sections G through P are applicable only to the Common Elements, and are not restrictions on the use or occupancy of any Unit, and may be amended by a unanimous vote of the Board of Trustees (the "Trustees") pursuant to Section 6.14 of the Declaration of Trust.

A. GENERAL

1. Wherever in the Rules reference is made to "Unit Owner," such term shall apply to the record owner of any Unit, to such Unit Owner's tenants whether or not in residence, and such Unit Owner's (or such tenant's) family, employees, agents, visitors, invitees or licensees. Wherever in the Rules reference is made to "Commercial Unit Owner," such term shall apply to the record owner of any Commercial Unit, to such Commercial Unit Owner's tenants and such Commercial Unit Owner's (or such tenant's) employees, agents, customers, visitors, invitees or licensees. Wherever in the Rules reference is made to "Residential Unit Owner," such term shall apply to the record owner of any Residential Unit, to such Residential Unit Owner's tenants whether or not in residence, and such Residential Unit Owner's (or such tenant's) family, employees, agents, contractors, visitors, guests, invitees or licensees. The applicable Unit Owner is responsible for any violation of the Rules by any of the foregoing person or persons or entities, as may be applicable. Wherever in these Rules reference is made to the "Trust," such reference shall include Millennium Tower Trust, the Trustees and the Condominium Managing Agent of the Condominium (the "Condominium Managing Agent").

2. The Unit Owners shall comply with all the Rules hereinafter set forth governing the Building, the Condominium, and the Units therein, and all General Common Elements, Residential Limited Common Elements and Commercial Limited Common Elements, including, without limitation, the elevators, stairwells, Building entrances, Balconies or Unit Terraces, grounds, and any other appurtenances.

3. The Trustees reserve the right to alter, amend, modify, repeal or revoke these Rules and any consent or approval given hereunder in accordance with the procedures set forth in these Rules and in the Declaration of Trust.

4. These Rules shall be deemed supplemental to the Master Deed of the Condominium (the "Master Deed") and the Declaration of Trust. In the event of any conflict between these Rules and the Master Deed or the Declaration of Trust, the Master Deed and Declaration of Trust shall control, in that order. Capitalized terms not defined herein shall have the meanings set forth in the Master Deed and Declaration of Trust.

B. RESTRICTIONS ON USE—UNITS

1. The Commercial Unit may be used for any lawful purpose not otherwise prohibited by the terms of the Master Deed and Declaration of Trust. Each Residential Unit shall be used as a private residence and not for any commercial or other revenue producing activity except as expressly set forth in the Master Deed.

2. No Unit Owner shall do or permit anything to be done or kept in the Unit or on the Common Elements which will result in the cancellation of insurance on the Building or contents thereof or which would be in violation of any Legal Requirement. No gasoline, inflammable batteries or devices (including, without limitation, hoverboards) or other explosive or inflammable material may be kept in any Residential Unit. Gasoline, inflammable batteries or devices or other explosive or inflammable materials may be kept in the Commercial Unit only in compliance with all applicable Legal Requirements and with notice to the Trustees.

3. The toilets and other water and sewer apparatus shall be used only for the purposes for which they were designed, and no sweepings, rags, ashes or other improper articles shall be thrown therein. The cost of repairing any damage resulting from misuse of any of such apparatus shall be borne by the Unit Owner causing such damage.

4. Each Unit Owner shall keep its Unit in a good state of preservation, repair and cleanliness, and nothing shall be swept or thrown from the doors, windows, Balconies, Unit Terraces or any other portion of any Unit.

5. Nothing shall be done in any Unit or on the Common Elements that may impair the structural integrity of the Building or the mechanical, electrical, plumbing, soundproofing or life safety systems, or which may structurally change the Building, except as permitted by the Master Deed.

6. No improper, offensive or unlawful use shall be made of the Condominium or any part thereof and all Legal Requirements shall be observed. All valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed, and all laws, orders, rules, regulations or requirements of any governmental agency relating to any Unit shall be complied with, by and at the sole expense of the applicable Unit Owner. No hazardous materials or dangerous substances shall be kept within any Unit, except as expressly permitted by and subject to Sections B.2 or O.11. All persons shall be appropriately attired when appearing in any common area or facility of the Condominium, and shall refrain from any profane language or unruly or disruptive conduct in such area.

7. No Residential Unit Owner shall make or permit any disturbing noises in its Unit or do or permit anything which may interfere with the rights, comforts or convenience of others. For the avoidance of doubt, sounds from whatever source which are audible from outside of a

Residential Unit Owner's Residential Unit (whether from another Residential Unit or from Common Elements) between the hours of 11:00 p.m. and the following 8:00 a.m. shall presumptively be deemed to interfere with the rights, comforts or convenience of others and shall be prohibited except with the prior written approval of the Trustees or the Condominium Managing Agent. No televisions or any other type of audio or visual personal property or equipment that emits sound may be installed, mounted or placed on any wall in any Residential Unit that shares a common boundary or demising wall with another Residential Unit or directly on the floor of any Unit without first having obtained the prior written consent of the Trustees and each Residential Unit Owner that abuts such common boundary, demising wall or floor to such installation, mounting or placement. The volume of any radio, television, musical instrument or other sound producing device in a Residential Unit shall be sufficiently reduced at all times so as not to disturb other occupants. Despite such reduced volume, no such sound producing devices shall be operated in a Residential Unit between the hours of 11:00 p.m. and the following 8:00 a.m. if such operation shall disturb or annoy other occupants of the Condominium. The Trustees may order any Residential Unit Owner to cease and desist from engaging in any offending activities, and levy fines for failure to cease, and may seek legal or equitable judicial relief (including relief in the form of an injunction, as to which each Unit Owner agrees upon acceptance of the deed to its Unit that failure to abide by any Trustees cessation order will conclusively presume "irreparable harm" to the Condominium and to each of its Unit Owners). No treadmills, elliptical trainers, Stairmasters, rowing machines or other mechanical fitness equipment shall be permitted in any Residential Unit if the use or operation of such equipment interferes with another Unit Owner's use and enjoyment of its Unit, as reasonably determined by the Trustees.

8. Except as expressly permitted by the Master Deed, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, shall be conducted, maintained or permitted in any part of the Condominium except as expressly permitted by the Master Deed, nor shall any "For Sale", "For Rent" or "For Lease" signs or other window displays or advertising be maintained or permitted in any Residential Unit, nor shall any Residential Unit be used or rented for transient, hotel or motel purposes, including, without limitation, through (i) so-called "couch surfing" internet websites such as "airbnb.com" and other websites that offer similar services and (ii) so-called time sharing programs or purposes, whereby a Unit Owner sells, leases, licenses or otherwise grants an interest or a right of occupancy in or to any such Unit or portion thereof for one or more fixed or floating intervals within any two (2) or more successive years, including, without limitation, so-called time span ownership, interval ownership, vacation or other time-sharing licenses or lease programs or purposes. The right is reserved for the Declarant, the Commercial Unit Owner, the Trustees and the Condominium Managing Agent to place "For Sale", "For Rent" or "For Lease" signs on any unsold or unoccupied Units.

9. All draperies, window treatments, window coverings and other hanging material in any Unit must be fire-resistant and in compliance with standards set by the New England Fire Insurance Rating Board and may not be closer than one inch (1") to heating units. Draperies, window treatments, curtains or Venetian blinds, if installed by a Residential Unit Owner on windows and sliding glass doors of a Residential Unit, must be so maintained at all times so that the exterior color will appear off-white. No signs, posters, artwork or articles of any kind shall be hung, placed or displayed inside or adjacent to the windows of any Residential Unit in a

manner as to be visible from the exterior. No clothes, sheets, blankets, laundry, rugs, or any kind of articles shall be hung out of the windows of a Unit or in any part of the Common Elements. The restrictions of this Section B.9 are explicitly not applicable to the Commercial Unit.

10. Each Residential Unit Owner shall maintain the exterior of its Residential Unit, including but not limited to the windows, Balconies, Unit Terraces and front doors, in an aesthetically pleasing manner as determined in the sole but reasonable discretion of the Trustees. Nothing shall be placed, hung, displayed or exposed on the exterior of a Residential Unit or on the Common Elements located on the residential floors in the Building, whether through or upon the windows, doors or masonry, including, without limitation, laundry, clothing, rugs, welcome mats, umbrella stands, awnings, shutters, radio or television antennas, satellite dish receivers, bicycles, fixtures, cooking grills or any other items, except as otherwise required by any applicable Legal Requirement or as expressly permitted under the Condominium Documents. Under no circumstances shall any exhaust fan, air conditioning apparatus, television, radio antennas, satellite dish receivers or other items be affixed to or placed upon the exterior windows, walls, doors or Roof of the Building, except as otherwise required by any applicable Legal Requirement. No clothesline, clothes rack or any other device may be used to hang any items on any Balcony or Unit Terrace, nor may such device be used anywhere else on the Common Elements. Only standard outdoor furniture and plantings shall be placed on Balcony or Unit Terrace and, except as otherwise required by any applicable Legal Requirement, no other personal property or fixture shall be permitted thereon, including without limitation, any antenna, arrays or satellite dishes or any awnings or other enclosures. The Trustees' prior written approval shall be required for any outdoor furniture and plantings desired to be installed on a Unit Terrace located on Floor 10 of the Building. The Trustees may establish a schedule of approved outdoor furniture for those Unit Terraces located on Floor 10 of the Building, in which case a Residential Unit Owner shall not be required to obtain the prior written approval of any of its outdoor furniture to the extent such furniture is described on such schedule. Notwithstanding the foregoing, no outdoor umbrellas may be installed on any Balcony or Unit Terrace. Each Balcony and Unit Terrace and any furniture, planters or any other item installed, placed, used, located or found on any Balcony or Unit Terrace at any time shall be kept in a good, clean and neat appearance and in conformity with the dignity and character of the Condominium and secured against the elements at all times. The Trustees may from time to time make determinations as to a Unit Owner's non-compliance with the obligations set forth in the immediately preceding sentence, provided, however, that in no event shall any such determination derogate from the applicable Unit Owner's responsibilities and liabilities pursuant to the immediately preceding sentence or result in any liability to the Trust or the Trustees. All outdoor furniture must be rust-proof "patio/terrace" furniture. Plants may not exceed a height of six (6) feet and must be contained in waterproofed containers so as not to cause water leakage. Plants and their containers may not exceed ten (10) pounds per square foot of uniformly distributed load. Storage of personal property, including, without limitation, tires, skis, bicycles, toys, and golf clubs, on Balconies or Unit Terraces is prohibited. No cooking or barbecuing using an open flame shall be permitted on the Balconies and Unit Terraces or any other Common Element, nor shall any propane or other gas-powered heaters, grills, hibachis or fire pits be present or placed thereon. Notwithstanding the foregoing, Residential Unit Owners having the exclusive right to use Unit Terraces located adjacent to Residential Units on Floor GPH shall be permitted to use gas grills on such Unit Terraces provided the gas lines for such grills are directly connected to the gas lines serving such Residential Units and provided such use complies with

all Legal Requirements (including, without limitation, applicable requirements of the Boston Fire Department). Unless constructed by Declarant, no Balcony or Unit Terrace shall be enclosed by a Unit Owner without the prior written consent of the Trustees. The restrictions set forth in this paragraph shall not affect the Trustees' and a Commercial Unit Owner's right to install certain signage, lighting and fixtures on the Common Elements of the Building pursuant to Master Deed.

11. No water beds, spas, hot tubs or similar water-filled objects (other than bathtubs in bathrooms equipped with spa-type jets) shall be installed, maintained or permitted in any Unit or within the Common Elements, including, without limitation, Balconies and Unit Terraces, unless (A) such objects are included in the Unit prior to the initial conveyance of the Unit by the Declarant or (B) such objects do not (i) adversely affect the Building Systems or the mechanical or structural integrity of the Building, as determined by the Trustees after reviewing plans and specifications for the installation of such objects or (ii) materially and adversely affect any other Unit Owner's use and enjoyment of its Unit or the Common Elements. Other than kitchen and bathroom appliances and facilities (appropriately connected, maintained, and drained), there shall be no other equipment, facilities, amenities, or art objects (e.g., fountains, built-in aquariums, etc.) installed or operating within a Residential Unit which utilize running water or large volumes of water, without the prior written consent of the Trustees, which may be withheld in the sole discretion of the Trustees.

12. No bicycles shall be tied up or locked to any portion of the Building, including, without limitation, any Balcony or Unit Terrace, corridors, hallways or other common areas and facilities of the Condominium, or exterior property of the Condominium except for in the Units and Bicycle Storage Area. No bicycles shall be brought into the Residential Elevators from the Floor 1 lobby of the Building; Unit Owners transporting bicycles shall be vertically transported within the Building only by the Service Elevators or Garage Elevator, as applicable (and never by the Residential Elevators).

13. The maintenance, keeping, boarding and/or raising of pot belly pigs, rodents (i.e., mice, rats, gerbils, hamsters, guinea pigs, rabbits, ferrets etc.) and other animals, livestock, poultry or reptiles of any kind (including, without limitation, snakes and lizards), regardless of number, is prohibited within any Unit or upon the Common Elements, except that, subject to this provision and the Rules and Regulations, the keeping of orderly domestic pets (which includes only dogs, cats or caged birds) and aquarium fish is permitted; provided, however, that (i) any orderly domestic pets (other than those contained at all times in aquariums or cages which shall be limited to a reasonable number) shall not exceed two (2) per Residential Unit without the approval of the Trustees; (ii) such orderly domestic pets or fish are not kept or maintained for commercial purposes or for breeding; and (iii) any such orderly domestic pets or fish causing or creating a nuisance or unreasonable disturbance, as determined by the Trustees in their sole and absolute discretion, may be temporarily or permanently removed from the Condominium upon ten (10) days written notice to the Unit Owner from the Trustees. Notwithstanding the foregoing, orderly domestic pets shall be permitted if necessary for persons with disabilities. For the purposes hereof, a "person with disabilities" shall mean a person deemed to be such under the Americans with Disabilities Act of 1990. Notwithstanding the foregoing, any breed of dog that results in a cancellation or notice of cancellation of a Unit Owner's or the Trust's liability insurance policy or increases the premium paid by the Trust or a Unit Owner shall not be allowed to be kept in the Condominium. Any Residential Unit Owner who keeps or maintains

(or whose tenant keeps or maintains) any pet upon any portion of the Condominium shall indemnify and hold the Trust, the Trustees, the Condominium Managing Agent, other Unit Owners and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Condominium. A photograph of each pet, with the name and Unit number of the pet owner, along with the required certificate of liability insurance evidencing affirmative coverage for any injury to person or property caused by such pet(s), shall be delivered to the Trustees as a condition precedent to the entry of such pet into the Condominium. All pets shall be licensed and inoculated as required by applicable Legal Requirements and copies of such licenses and inoculations shall be provided to the Trustees upon request. The Trustees may establish reasonable fees for registration of pets. No pets shall be left unattended on any Balcony or Unit Terrace, and no Balcony or Unit Terrace shall be used as an area for a pet to relieve itself. No pets shall be permitted on the Podium Roof, and pets shall not be permitted in any other part of the Condominium (other than in transit to or from and within the Unit of the owner thereof). Pets in transit to or from the Unit of the owner thereof shall be either carried or leashed, which leash may not exceed a length which will permit close control of the pet. No pets may be brought into the Residential Elevators from the Floor 1 lobby of the Building; pets and their owners entering the Building from Floor 1 shall be vertically transported within the Building by the Service Elevators only (and never by the Residential Elevators). Pets and their owners entering the Building from a level in the Project Garage may be vertically transported within the Building only by the Garage Elevator and transferred to the Service Elevator at Floor 1. No pet walking is permitted in any outdoor areas of the Condominium, and owners of pets must immediately and adequately clean up their pet's droppings in all areas of the Premises including, without limitation, the sidewalks, exterior landscapes and all other areas. The Trustees may establish such other Rules and Regulations concerning pets as they deem necessary or appropriate, including, without limitation, the right to prohibit pets (other than pets needed by persons with disabilities). The Trustees may regulate any dog walking service engaged by a Unit Owner, including without limitation, the right to restrict or prohibit any dog walking service from the Building or to condition the admittance of the dog walking service to the Building upon evidence of satisfactory insurance or bonding, all within the Trustees' sole discretion. In the event of the adoption of a rule prohibiting pets (other than pets needed by persons with disabilities), any Unit Owner who owned a pet at the time of the adoption of such rule shall have the right to retain such pet (unless such pet is otherwise deemed to constitute a nuisance or be in violation of these provisions or the Rules and Regulations), but shall not have the right to replace such pet or subsequently acquire additional pets. Any Unit Owner keeping a pet or animal in violation of these provisions or which causes any damage to or requires cleanup of any Unit or the Common Elements or which is offensive or creates any nuisance, danger or unreasonable disturbance or noise, shall be personally liable for the cost and expense of such repair, clean up or elimination of such disturbance or nuisance.

C. STORAGE, HANDLING OF PERSONAL PROPERTY

1. No personal property may be stored on the Common Elements, except for storage in the applicable Storage Spaces as provided in the Master Deed. All personal property placed in Storage Spaces whether located in the Condominium or elsewhere on the Property shall be at the sole risk of the Unit Owner, and the Trustees shall in no event be liable for the loss, destruction, theft or damage to such property.

2. Should an employee of the Trust at the request of a Unit Owner move, handle or store any articles of personal property belonging to a Unit Owner, then, and in every such case, such employee shall be deemed the agent of the Unit Owner. The Trust shall not be liable for any loss, damage or expense that may be suffered or sustained in connection therewith.

D. ENTRY INTO UNITS

1. Each Unit Owner shall provide to the Condominium Managing Agent (or to the Trustees), and the Condominium Managing Agent shall have the right to keep, a working copy of any keys or other access devices required to gain entry to any Unit. Such keys shall be coded in such a way as to prevent identification by unauthorized persons and secured by the Condominium Managing Agent in a locked box for use when entry to such Unit is necessitated by the fact or threat of fire, flood, or any other condition which may adversely affect the Unit, the Common Elements or other Units or if requested by the Unit Owner by filing a completed Unit Admittance Form with the Condominium Managing Agent or otherwise permitted under the Condominium Documents. The Condominium Managing Agent shall establish and implement, subject to prior approval of the Trustees, procedures and controls to ensure the proper use of such emergency keys. Although a written authorization from a Unit Owner shall not be required in order for the Condominium Managing Agent or the Trustees to enter a Unit, a Unit Owner shall, upon the request of the Condominium Managing Agent or the Trustees, provide written authorization to the Condominium Managing Agent or the Trustees, as the case may be, to enter its Unit, in which case such written authorization shall be deemed to release the Trust, the Trustees and the Condominium Managing Agent from any claims or liability associated with entry to the Unit. No Unit Owner shall alter any lock or install additional locks, or a knocker, or a bell or any other fixture on any doors of a Unit without the prior written consent of the Trustees, which may be withheld in their sole discretion.

2. The Trustees or the Condominium Managing Agent, and any contractor or workman authorized by the Trustees or the Condominium Managing Agent, may enter any Unit or in any Residential Limited Common Element to which a Unit Owner may have an exclusive right, upon reasonable notice to the Unit Owner at any reasonable hour of the day (except in case of Emergency in which case entry may be immediate and without such permission) for the purpose of exercising and discharging their respective powers and responsibilities, including, without limitation, inspecting such Unit for the presence of any vermin, insects or other pests, for the purpose of taking such measures as may be necessary to control or exterminate any such vermin, insects or other pests, for performing any valve or utility shut-offs and for changing filters in HVAC units, if any.

3. Other than the concierge, security personnel, employees and agents of the Trust are not authorized to accept packages, keys or other access devices, money or articles of any description from or for the benefit of a Residential Unit Owner. If packages, keys or other access devices (whether for a Unit or an automobile), money or articles of any description are left with the employees or agents of the Trust, the owner thereof assumes the sole risk therefor and such Unit Owner, not the Trust, shall be liable for injury, loss or damage of any nature whatsoever directly or indirectly resulting therefrom or connected therewith. Deliveries requiring entrance to a Residential Unit will not be accepted in the absence of the Residential

Unit Owner unless a properly completed Unit Admittance Form has been filed with the Condominium Managing Agent.

E. CONSTRUCTION ACTIVITIES

1. No construction or repair work or other installations involving noise shall be conducted in any Residential Unit except on weekdays (not including legal holidays) between the hours of 10:00 a.m. and 5:00 p.m., unless necessitated by an Emergency. Construction, repair or other work shall be permitted in a Commercial Unit on a 24 hours per day, 7 days per week, 365 days per year basis. If, however, in the Trustees' or Condominium Managing Agent's sole discretion, any construction or repair work within a Residential Unit interferes with any Unit Owner's peaceful use and enjoyment of its Unit for its intended use, the Trustees or the Condominium Managing Agent may require that the Residential Unit Owner undertaking construction and repair work modify the hours of such work and the method by which such work is conducted in order to minimize the impact of such work on the Unit(s) adversely affected thereby.

2. All construction and repair work requiring deliveries of materials or equipment and/or disposal of trash or debris shall be scheduled at least seventy-two (72) hours in advance with the Condominium Managing Agent to ensure the availability of loading dock facilities, dumpsters and the Service Elevators. Each Unit Owner shall be responsible for ensuring that its contractors follow the rules pertaining to the use of the loading bay, dumpsters and the Service Elevators and follow instructions of the Condominium Managing Agent concerning the use of such facilities. Each Unit Owner shall be responsible for any damage to the Common Elements or other Units attributable to such Unit Owner's construction or repair work. Prior to the commencement of such construction or repair work, each Unit Owner must provide the Trustees with evidence of such insurance as the Trustees may require pursuant to the provisions of the Master Deed and the Declaration of Trust.

3. All construction or repair work shall be carried out in accordance with the provisions of the Master Deed and Declaration of Trust. The terms and provisions of this Section E shall not apply to the Declarant.

F. CONSIDERATION IN USE OF UNITS

1. All radio, television, computer or other electrical equipment of any kind or nature installed or used in each Unit shall fully comply with all rules, regulations, requirements or recommendations of the Board of Fire Underwriters and the public authority having jurisdiction over such equipment, and the Unit Owner alone shall be liable for any damage or injury caused by any radio, television or other electrical equipment in such Unit.

2. The installation of additional major appliances in any Residential Unit is prohibited (excluding any refrigerated wine chiller, which is permitted upon the written consent of the Trustees). Such prohibited appliances include, but are not limited to, additional washing machines, dryers, refrigerators, freezers, and additional dishwashers. Replacement of existing major appliances with other than comparable equipment is permitted only with the prior written approval of the Trustees.

3. Unit Owners are cautioned against excessive use of soaps and other detergents in their appliances or plumbing apparatus which may cause overflow of suds in any Unit or in any central waste disposal system. Detergents and soaps shall be used only pursuant to manufacturer's directions. Unit Owners shall be liable for any damage to the Common Elements or other Units caused by the negligence or misuse of soaps and other detergents in their appliances or plumbing apparatus.

4. Residential Unit doors opening into the corridors shall be kept closed and secured at all times except when in use for entering or exiting a Residential Unit.

5. Sufficient carpeting, rug padding, and/or acoustic material over/under wood or other hard-surface floors shall be maintained on a minimum of seventy-five percent (75%) of the floor surfaces (excluding kitchens, bathrooms and utility rooms) in all Residential Units. No sound deadening materials originally installed beneath carpeting or beneath the floors of kitchens, bathrooms or utility rooms shall be removed unless replaced with a base layer of resilient underlayment at least 5-7 millimeters thick or other material of equal or better sound deadening performance.

G. CONDOMINIUM ASSOCIATION OPERATIONS

1. All charges and assessments imposed by the Trustees are due and payable on the first day of each month, unless otherwise specified. Payment shall be made at the Condominium Managing Agent's office, either by mail or hand delivery, by check or money order, or by any other means acceptable to the Trustees or the Condominium Managing Agent, at such other address that may be provided by the Trustees. Cash will not be accepted. In the event that any such charges and assessments owed by any Unit Owner are not paid when due, such Unit Owner shall be obligated to pay late charges, interest and expenses on such unpaid amounts in accordance with Section 6.8.13 of the Declaration of Trust.

2. Complaints regarding the management of the Condominium or regarding actions of other Unit Owners shall be made in writing to the Condominium Managing Agent or the Trustees, as applicable.

3. No Unit Owner shall direct, supervise or in any manner attempt to assert control over or request favors of any employee of the Condominium Managing Agent or the Trust.

H. GENERAL

1. The planting of plants, flowers, trees, shrubbery and other landscaping of the Common Elements shall be the sole responsibility of the Trustees, except with respect to the rights of the Commercial Unit Owner to install planters and the like as more particularly set forth in the Master Deed.

2. Solicitors are not permitted within the Condominium. Leafleting under doors of Residential Units by any Residential Unit Owner or their tenants, invitees or tenant's invitees is prohibited (except that the foregoing is not deemed to prohibit the Trustees or the concierge from contacting any Unit Owner in this manner). If any Unit Owner is contacted by a solicitor on the Property, the Condominium Managing Agent or the Trustees should be notified immediately.

I. GARBAGE AND TRASH

1. All garbage, trash and recyclable products from Units must be placed in the proper receptacles for refuse disposal or collection and must be separated in accordance with all applicable Legal Requirements (or other rules promulgated by the Trustees from time to time) prior to disposal and shall be placed in areas designated by the Trustees and in no other area of the Building. Such designated areas may be different for Residential Units than for Commercial Units, as to which the Trustees may promulgate separate reasonable rules and regulations governing trash disposal. Any fines levied against the Trustees or the Trust for failure to comply with local disposal laws shall be the responsibility of the violating Unit Owner(s).

2. Specifically, all Residential Unit Owners shall dispose of trash or other refuse for disposal in the trash rooms located on each floor of the Building, and only in the trash chute or in the designated containers or areas in such trash rooms, unless otherwise provided for herein. Only garbage and refuse that fits appropriately into the trash chutes may be disposed in the trash chutes, and all garbage and refuse that does not fit appropriately in the trash chutes, including bulky items such as rugs, brooms and large boxes, shall be located in the containers or areas so designated in the trash rooms or elsewhere as directed by the Trustees. Notwithstanding the foregoing, the following items may not be placed in the trash chutes under any circumstances:

- a. clothing hangers;
- b. non-trash plastic bags (e.g., dry cleaning bags, grocery bags, film plastic wrap);
- c. cardboard boxes;
- d. pizza boxes;
- e. hazardous or flammable materials or aerosol cans;
- f. ceramics, light bulbs, mirrors, glass cups, china;
- g. batteries;
- h. medical waste, including syringes; and
- i. construction debris including dry wall, and decorating left-overs such as rolls of carpet (see below for additional restrictions).

3. Use of trash chutes before 8:00 a.m. and after 11:00 p.m. is prohibited.

4. All garbage must be securely bagged in leak-proof plastic bags or containers before being transported to the trash room or being deposited in the trash chutes. All food waste and other perishable items shall be disposed of in such leak-proof bags in the trash chute.

5. For those items that are either prohibited from being disposed of in the trash chutes or which do not fit appropriately in the trash chutes (e.g., bulky items such large boxes),

the Residential Unit Owner shall notify the Condominium Managing Agent promptly after disposing of such items, and Building staff will remove the same from the trash room.

6. Cat litter, diapers and other noxious smelling items may be disposed of in trash chutes, except they first must be contained in leak-proof plastic bags that are securely tied.

7. Construction debris, including dry wall and decorating left-overs such as rolls of carpet, or rugs, furniture or appliances (including shipping boxes or crates for any of the foregoing) may not be disposed of in the trash room and must be removed from the Building at the Residential Unit Owner's sole cost and expense.

J. MOVING, DELIVERIES

1. Move-ins and move-outs of, and deliveries to, Residential Units are restricted to the hours between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding legal holidays. The loading berth area, the loading dock and the Service Elevators are located within the General Common Elements and shall be used for any such move-ins and move-outs, and the Residential Elevators shall not be used for any such move-ins, move-outs or deliveries. Each Residential Unit Owner is responsible for the proper removal of trash, debris, crating or boxes relating to that Unit Owner's move-in, move-out or delivery. Each Unit Owner shall be responsible for any damage to the Common Elements or other Units which, in the Condominium Managing Agent's reasonable opinion, is attributable to such Unit Owner's moving in or out of, or deliveries to, the Condominium. All move-ins, move-outs and deliveries must be scheduled at least seventy-two (72) hours in advance with the Trustees and/or Condominium Managing Agent. Further, reasonable notice of any such move-ins and move-outs must be given to the Trustees. Failure to properly schedule a move-in, move-out or delivery may result in a loss of access to the loading berth area, loading dock and the Service Elevators. A reasonable administrative charge may be established by the Trustees to defray the cost of administering move-ins, move-outs and deliveries. The Trustees and the Condominium Managing Agent shall not be liable for any damages (including consequential damages) to a Unit Owner in the event a move-in, move-out or delivery is delayed or rescheduled due to elevator maintenance, repairs to other Common Elements, scheduling mishaps, or a breakdown of Building systems or other Common Elements.

2. A Residential Unit Owner scheduling a move-in, move-out or delivery will be required to provide the Condominium Managing Agent with a refundable deposit check in the amount of \$500.00, payable to Millennium Tower Trust, at least seventy-two (72) hours prior to the scheduled move or delivery date. Such deposit, less any damage charges, will be returned to the Residential Unit Owner within thirty (30) business days after the move or delivery, as the case may be, is complete. The terms and provisions of this Section J.2 are not applicable to a move-in following the conveyance of a Residential Unit from the Declarant to the first Residential Unit Owner thereof.

3. Condominium employees on duty will not be available to stand by during the move-in or delivery if a Residential Unit Owner is not able to be present. Residential Unit Owners may arrange for an off-duty Condominium employee to stand by during the move-in or delivery process at a charge of \$250.00 per day.

4. All movers and delivery personnel must enter and exit the Building via the loading dock service entrance. The Loading Dock is approximately 12' 8" feet high, which accommodates standard size moving trucks. Any truck serving a Residential Unit exceeding 12' 8" in height is not permitted to access the loading dock.

5. The moving/delivery company is required to carry liability insurance with the following coverage amounts: \$1,000,000.00 per each occurrence, \$2,000,000.00 aggregate, \$2,000,000.00 umbrella, statutory worker's compensation insurance and \$1,000,000.00 employer's liability insurance. A certificate of insurance evidencing the required coverage and additional insureds must be delivered to the Condominium Managing Agent no later than seventy-two (72) hours in advance of the move/delivery date. The following shall be named as additional insureds on such policies: (1) Millennium Tower Trust; (2) Trustees of Millennium Tower Trust; and (3) Millennium Partners Massachusetts Property Management LLC or such other party as may be the Condominium Managing Agent from time to time, and any other persons or entities that the Trustees may determine from time to time.

6. All packages, including, without limitation, those containing perishable items, delivered by outside personnel must be delivered to the area therefor designated by the Trustees or Condominium Managing Agent. Deliveries of perishable items will be held in the designated area for no longer than 24 hours, and after such 24-hour period, the perishable item shall be disposed of by the Condominium Managing Agent personnel. Other than the concierge, security personnel, employees and agents of the Trust are not authorized to accept packages, keys or other access devices money or articles of any description from or for the benefit of a Unit Owner.

K. MOVER/DELIVERY PERSONNEL RULES AND REGULATIONS

1. Movers and delivery personnel must sign in and out at the security operations center adjacent to the Loading Dock to receive an access badge. This badge must be worn in a visible location at all times while in the Building. A Unit Admittance Form must also be completed and registered with the Condominium Managing Agent if the Residential Unit Owner will not be present during the move or delivery and the Unit Owner would like the Condominium Managing Agent to provide access to such Unit Owner's Unit. Any moving or delivery personnel found in the Building without a badge may be escorted to the security operations center and potentially off-property. To receive a badge, movers and delivery personnel will be required to submit a government-issued photo identification card in trade for the access badge. The photo identification card will be returned upon receipt of the identification badge.

2. All employees of the movers or delivery company will conduct themselves in a manner consistent with the standards, quality and image of the Condominium. Abusive language or swearing is prohibited and will not be tolerated in any way. The Condominium Managing Agent may require movers or delivery personnel to be removed from the Building without prior notice if they violate any of these requirements.

3. All packages, bags and toolboxes of movers and delivery personnel are subject to random search by the security officer on duty upon entry to and departure from the Condominium.

4. Only the designated Service Elevator(s) may be used to transport moving and delivery personnel and equipment and items being moved or delivered.

5. Moving and delivery vehicles may be parked at the loading dock to unload cargo, equipment and supplies only. Once such cargo, equipment and supplies are unloaded, such vehicle must be parked off-site; it may not remain in the loading dock.

6. Family and friends of movers are not permitted in the Building.

7. All movers and delivery personnel are required to abide by the Rules and Regulations of the Condominium at all times, including the prohibition on smoking in any of the Common Elements.

8. No alcoholic beverages, illegal drugs, narcotics or weapons are permitted in the Condominium or on the property by movers or any other contractors or service providers to Residential Unit Owners.

9. All moving activity must be conducted so that minimal disturbance is caused to Residential Unit Owners.

10. All hallways, elevators and lobbies must be protected and cleaned throughout the day by the mover or delivery personnel. Movers/delivery personnel must install all necessary precautions (i.e. masonite over carpeting, corner guards on corners for the path of egress to the Unit, etc.) to protect the Building and its contents. The Service Elevators will be padded by the Condominium Managing Agent, and the Condominium Managing Agent will determine the required level of corridor protection in its sole and absolute discretion.

11. No trash or debris related to the move, including moving boxes and packing materials, may be disposed of through the trash chute, nor left in the trash room, nor disposed of in the Building's trash facilities at the loading dock. All such trash and debris shall be removed from the Property by the Residential Unit Owner or the moving/delivery company.

12. The dimensions and weight limitations of the Service Elevators are:

Door Height: 96"

Door Width: 48"

Interior Height 130"

Interior Depth (front to back): 89"

Interior Width: 69"

Maximum Weight: 4000 lbs

13. Residential Unit Owners are responsible for ensuring that the moving or delivery company, as the case may be, is aware of the dimensions of the loading dock and the Service Elevators.

14. The Condominium Managing Agent will conduct a pre-move and post-move inspection of the egress pathway to the Unit. These inspections shall be conducted in the presence of the Residential Unit Owner or the Residential Unit Owner's authorized agent. Any damage found during the post move inspection, or as a result of any delivery, will be deducted from the Residential Unit Owner's security deposit (described above). If a Residential Unit Owner elects not to participate or be present during such inspections, he/she agrees to accept the findings of the Condominium Managing Agent. If no security deposit is provided, a Residential Unit Owner shall nonetheless be responsible for any damage caused to the Building by any move or delivery.

L. MOVER AND DELIVERY PERSONNEL HEALTH AND SAFETY RULES

1. Movers and delivery personnel will perform their work safely by following all OSHA requirements and all Legal Requirements, the Rules and Regulations of the Condominium and any directives of the Trustees or the Condominium Managing Agent.

2. Prior to entry into the Building, movers and delivery personnel must submit a list of all chemicals and hazardous materials brought into the Building. All chemicals and hazardous materials brought into the building must be appropriately labeled.

3. Moving and delivery companies are responsible for supervising, training, and communicating all pertinent information to their employees and contractors that will be accessing the Building.

4. Any and all unsafe conditions or hazards encountered while performing work for a Residential Unit Owner must be reported to the security operations center immediately.

5. Any and all injuries or accidents that occur during any move or delivery must be reported to the security operations center immediately.

6. All fire exits, extinguishers and alarms must be clear of obstructions at all times during any move or delivery. Movers will keep an active and charged fire extinguisher on the floor at all times during all moves.

7. Movers are required to maintain a clean worksite and conduct frequent clean ups.

8. Danger tags or lockout devices on any equipment must not be removed by movers or delivery personnel.

9. Movers and delivery personnel will conduct safety checks of their employees and equipment.

10. The Condominium Managing Agent or the Trustees may expel, or deny entry to, any moving or delivery company, or any of their personnel, that fail to comply with the Rules

and Regulations of the Building or with any directives of the Condominium Managing Agent or the Trustees.

M. CONTRACTOR DELIVERY INSTRUCTIONS

1. All construction materials and equipment related to alterations, modifications or repairs to Residential Units must be transported via the loading dock and Service Elevators only. Contractors' vehicles will be allowed to use the loading dock to unload their materials only; no parking of contractors' vehicles shall be permitted in the loading dock. Residential Unit Owners must notify the Condominium Managing Agent at least seventy-two (72) hours in advance of any large deliveries to confirm Service Elevator and loading dock availability. The Trustees may require contractors of Residential Unit Owners to provide evidence of insurance, pursuant to Section 9.7 of the Master Deed, prior to allowing entry of contractors or delivery of construction materials to the Building.

2. Residential Unit Owners are responsible for ensuring that their contractors are aware of the dimensions of the loading dock and the Service Elevator, as specified in Section K above.

3. The Condominium Managing Agent may conduct periodic inspections of the egress pathways to the Residential Unit on which work is being performed. These inspections shall be conducted in the presence of the Residential Unit Owner and/or the Residential Unit Owner's authorized agent. Any and all damage found during the inspections will be charged to the Residential Unit Owner. If a Residential Unit Owner elects not to participate or be present during such inspections, he/she agrees to accept the findings of the Condominium Managing Agent.

4. All hallways, elevators and lobbies must be protected and cleaned throughout the day by the Residential Unit Owner's contractors. Contractors must install all necessary precautions (i.e. masonite over carpeting, corner guards on corners for the path of egress to the Unit, etc.) to protect the Building. The Service Elevator will be padded by the Condominium Managing Agent, and the Condominium Managing Agent will determine the required level of corridor protection in its sole and absolute discretion.

5. All construction debris and associated trash must be removed by the Contractor from the Building on a daily basis; it may not be disposed of in the trash rooms or in the Building's trash facilities in the loading dock or elsewhere.

6. All construction materials must be removed from their crates prior to being moved into a Residential Unit(s) and such materials shall be promptly moved into the Residential Unit. The crates and packing materials must be loaded back onto the contractor's truck promptly. Contractors must conduct field-cutting of tile, marble, wood, etc., at a stationary work point which is inside of the Unit and not in Common Elements of the Condominium, including the loading dock.

N. CONTRACTOR'S HEALTH AND SAFETY RULES

1. The health and safety rules applicable to movers and delivery personnel specified in Section L above shall apply equally in all respects to the contractors of Residential Unit Owners performing work in the Building.

O. RESTRICTIONS AFFECTING EXCLUSIVELY THE COMMON ELEMENTS

1. No Unit Owner shall do or permit anything to be done in or kept on the Common Elements which will result in the cancellation of insurance on the Building or contents thereof or which would be in violation of any Legal Requirement.

2. The Common Elements shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the Units. The walkways, entrances into the Condominium, elevators and stairwells and corridors within the Condominium shall be used for no purpose other than for normal transit.

3. Nothing shall be done or kept in any of the Common Elements which will increase the rate of insurance for the Building or the contents thereof without the prior written consent of the Trustees. No waste shall be committed on the Common Elements.

4. No articles of personal property shall be stored, temporarily or permanently or otherwise left unattended in the Common Elements except for in the applicable Unit Owner's Storage Space(s) in accordance with the Master Deed.

5. Nothing shall be done in or on the Common Elements which may impair the structural integrity of the Building or the mechanical, electrical, plumbing or life safety systems, or which may structurally change the Building, nor shall anything be altered or constructed on or removed from the Common Elements, except as permitted by the Master Deed.

6. No improper, offensive or unlawful use shall be made of the Common Elements or any part thereof and all Legal Requirements shall be observed.

7. No Unit Owner shall make or permit any disturbing noises in the Common Elements or do or permit anything in the Common Elements which may interfere with the rights, comforts or convenience of others. For the avoidance of doubt, (i) sounds from whatever source which are audible from outside of a Residential Unit Owner's Residential Unit between the hours of 11:00 p.m. and the following 8:00 a.m. shall presumptively be deemed to interfere with the rights, comforts or convenience of others and shall be prohibited except with the prior written approval of the Trustees or the Condominium Managing Agent and (ii) except as otherwise approved by the Trustees or the Condominium Managing Agent, no person other than occupants of a Residential Unit shall be permitted to gather or loiter in the residential lobby or other Common Elements between the hours of 11:00 p.m. and the following 8:00 a.m. The Trustees may order any Unit Owner to cease and desist from engaging in any offending activities, and levy fines for failure to cease, and may seek legal or equitable judicial relief (including relief in the form of an injunction, as to which each Unit Owner agrees upon acceptance of the deed to its

Unit that failure to abide by any Trustees cessation order will conclusively presume "irreparable harm" to the Condominium and to each of its Unit Owners).

8. Except as otherwise permitted by the Trustees or the Condominium Managing Agent, each guest of an occupant of a Residential Unit that arrives at the Building between the hours of 11:00 p.m. and the following 8:00 a.m. shall not be granted access to the Building or permitted to proceed to such Residential Unit unless such guest is either accompanied by the occupant of the Residential Unit or such occupant greets the guest in the Building's lobby and escorts such guest to the Residential Unit.

9. Smoking shall be prohibited in the Common Elements, including, without limitation, in the lobbies, the Project Garage, the hallways, stairwells, corridors and the outside sidewalks and entryways that constitute Common Elements, except for any portion of the Common Elements which the Trustees, may, but shall not be obligated to, dedicate for smoking.

10. There shall be no playing, lounging, riding or storing or parking of baby carriages, playpens, wagons, toys, vehicles, trailers, tools, benches, chairs, hoverboards/Segways or similar devices (except to the extent required by law) or other items in any part of the Common Elements.

11. Gasoline or other explosive or inflammable material may be kept in the Project Garage only in compliance with all applicable laws and regulations and with notice to the Trustees (except that no notice is necessary with respect to the normal and lawful storage of gasoline, oil and/or diesel fuel in the Project Garage).

P. RESIDENTIAL CLUB AREA

1. The Trustees reserve the right to adopt rules and regulations, in addition to those set forth in this Section P, with respect to the use, operation and management of the Residential Club Area, upon the unanimous consent of the Residential Trustees.

2. The Trustees may license to Residential Unit Owners, on a temporary basis, all or portions of the Residential Club Area for the exclusive use of a Residential Unit Owner. In connection with any such license, the Trustees may require a Residential Unit Owner to enter into a license agreement with the Trustees, on terms and conditions acceptable to the Trustees, including without limitation a requirement that such Residential Unit Owner provide evidence of personal liability insurance in amounts reasonably determined by the Trustees, but not less than \$1,000,000 per occurrence and in the aggregate, naming the Trust, the Trustees and the Condominium Managing Agent as additional insureds. The Trustees may also require evidence of appropriate insurance coverage from any contractors or vendors hired by such Residential Unit Owner in connection with such Residential Unit Owner's use of the Residential Club Area (but at all times subject to the Declarant's rights under Section 10.2 of the Master Deed).

3. Pursuant to Section 5.5.15 of the Master Deed, and in connection therewith, the Trustees shall have the right to charge to Residential Unit Owners a fee for such Residential Unit Owner's use of the Residential Club Area, which such charge shall be a Common Charge pursuant to Section 6.8.5 of the Declaration of Trust. Such charges may vary depending on the particular use of the Residential Club Area by the Residential Unit Owner. By way of example,

the Trustees may charge a Residential Unit Owner a fee for the use of the screening room and a different fee for the use of the dining facilities.

4. Subject to the Declarant's rights in Section 10.2 of the Master Deed, the Trustees may determine the hours of operation of the Residential Club Area.