

**TWELVE OAKS VILLAGE TRUST  
DECLARATION OF TRUST**

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Index

	<u>Page</u>
	DECLARATION OF TRUST ..... 1
ARTICLE I	INTRODUCTION ..... 1
Section 1.1	Name of Trust ..... 1
Section 1.2	Development in Phases ..... 1
ARTICLE II	THE TRUST AND ITS PURPOSES ..... 1
Section 2.1	Unit Owners' Organization ..... 1
Section 2.2	No Partnership ..... 1
ARTICLE III	THE TRUSTEES ..... 2
Section 3.1	Number of Trustees ..... 2
Section 3.1.1	Trustees' Term in Office ..... 2
Section 3.1.2	Vacancies ..... 2
Section 3.2	Trustee Action ..... 3
Section 3.3	Resignation and Removal ..... 3
Section 3.4	Bond or Surety ..... 3
Section 3.5	Compensation of Trustees ..... 4
Section 3.6	No Personal Liability ..... 4
Section 3.7	Trustees May Deal with the Condominium ..... 4
Section 3.8	Indemnity of Trustees ..... 4
ARTICLE IV	THE BENEFICIARIES ..... 5
Section 4.1	The Beneficiaries and Their Beneficial Interest ..... 5
Section 4.2	Each Unit to Vote by One Person ..... 5
ARTICLE V	THE BY-LAWS ..... 5
Section 5.1	Powers of the Trustees ..... 6
Section 5.2	Maintenance and Repair of Units and Limited Common Facility ..... 8
Section 5.3	Maintenance, Repair and Replacement of Common Areas and Facilities ..... 9
Section 5.4	Common Expense Funds ..... 10
Section 5.4.1	Liability for Common Expenses ..... 10
Section 5.4.2	Assessments of Common Expenses ..... 10
Section 5.4.3	Trustees Must Authorize Tax Abatement Applications ..... 11
Section 5.4.4	Default in Payment of Common Expenses ..... 11 Foreclosure of Liens for Unpaid Expenses
Section 5.4.5	Application of Common Funds ..... 11

Section 5.4.6	Acquisition of Units by Trustees.....	12
Section 5.5	Rebuilding and Restoration After Casualty .....	12
Section 5.5.1	Casualty Loss.....	12
Section 5.5.2	Proposed Improvements .....	12
Section 5.5.3	Arbitration of Disputed Trustee Action .....	13
Section 5.5.4	Condemnation.....	13
Section 5.6	Rules and Regulations .....	13
Section 5.7	Managing Agent.....	14
Section 5.8	Insurance .....	14
Section 5.8.1	Coverages to be Obtained .....	14
Section 5.8.2	Payment to Trustees in Case of Loss.....	15
Section 5.8.3	Other Provisions of Insurance Policies .....	16
Section 5.8.4	Unit Owner's Insurance and Responsibility for Increase in Premiums of Master Policy .....	16
Section 5.8.5	Insurance a Common Expense.....	16
Section 5.9	Design Review Procedures.....	16
Section 5.10	Meetings.....	18
Section 5.10.1	Meetings of Trustees.....	18
Section 5.10.1.1	Trustees' Votes.....	18
Section 5.10.2	Meetings of Unit Owners.....	18
Section 5.10.3	Quorum of Unit Owners .....	19
Section 5.11	Trustees' Records of Unit Owners and Unit Mortgagees Deemed Conclusive.....	19
Section 5.11.1	Notices to Unit Owners.....	19
Section 5.12	Inspection of Books .....	20
Section 5.13	Checks, Notes, Drafts and Other Instruments .....	20
Section 5.14	Fiscal Year .....	20
Section 5.15	Mortgages .....	20
Section 5.15.1	Notice to Trustees.....	20
Section 5.15.2	Notice of Default.....	20
Section 5.15.3	Examination of Books.....	20
Section 5.16		
Enforcement.....		20
ARTICLE VI	RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUSTEES.....	21
Section 6.1	Reliance on Identity of Trustees .....	21
Section 6.2	No Personal Liability In Trustees.....	21
Section 6.3	All Obligations Subject to This Trust.....	21
Section 6.4	Further Matters of Reliance .....	22
Section 6.5	Statement of Common Expenses .....	22
Section 6.6	Federal Home Loan Mortgage Corporation Association Compliance .....	22
ARTICLE VII	AMENDMENTS AND TERMINATION.....	27

Section 7.1	Amendments.....	27
Section 7.2	Termination.....	28
Section 7.3	Disposition of Trust Property Upon Termination.....	28
ARTICLE VIII	MISCELLANEOUS.....	29
Section 8.1	Construction.....	29
Section 8.2	Waiver.....	29
Section 8.3	Partial Invalidity.....	29
SIGNATURES	.....	29

TWELVE OAKS VILLAGE TRUSTDECLARATION OF TRUST

DECLARATION OF TRUST made this 27 day of May 2003 at Lenox, Berkshire County, Massachusetts by ANITA I. COSTANTINI, of Lenox, Massachusetts and FRANK A. COSTANTINI, of Lenox, Massachusetts (hereinafter called the "Trustees", which term and any pronoun referring thereto shall be deemed to include their successors in trust hereunder and to mean the Trustee or the Trustees for the time being hereunder wherever the context so permits) and to be recorded with the Berkshire Middle District Registry of Deeds (the "Registry of Deeds").

## ARTICLE I

INTRODUCTION

Section 1.1 Name of Trust. The Trust hereby created shall be known as the "TWELVE OAKS VILLAGE TRUST," and under that name, so far as legal, convenient and practicable, shall all business carried on by the Trustees be conducted and shall all instruments in writing by the Trustees be executed.

Section 1.2 Development in Phases. It is hereby acknowledged that the Declarant (hereinafter defined) intends to develop the Twelve Oaks Village (the "Condominium") established by a Master Deed recorded herewith (the "Master Deed") in phases, all as more particularly set forth in the Master Deed. The Trustees shall in no event discharge their obligations hereunder so as to infringe upon the rights of the Declarant to develop the Condominium in phases or in a manner which will prevent the Declarant from exercising its rights under the Master Deed to develop the Condominium in phases.

## ARTICLE II

THE TRUST AND ITS PURPOSES

Section 2.1 Unit Owners' Organization. All of the rights and powers in and with respect to the common areas and facilities of the Condominium which are by virtue of Massachusetts General Laws, Chapter 183A ("Chapter 183A"), conferred upon or exercisable by the organization of Unit Owners of said Condominium (the "Unit Owners"), and all property, real and personal, tangible and intangible, conveyed to the Trustees hereunder shall vest in the Trustees as joint tenants with rights of survivorship as Trustees of this Trust, in trust, to exercise, manage, administer and dispose (except for common areas and facilities) of the same and to receive the income thereof for the benefit of the owners of record from time to time of the Units of the Condominium (hereinafter referred to as the beneficial interest) set forth in Article IV hereof and in accordance with the provisions of section 10 of Chapter 183A for the purposes therein set forth.

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

## ARTICLE III

THE TRUSTEES

Section 3.1 Number of Trustees; Declarant's Right to Designate Trustees. Except as expressly set forth herein, there shall be at all times an odd number of Trustees consisting of not less than three (3) nor more than five (5), as shall be determined from time to time by vote of the Unit Owners entitled to not less than fifty-one percent (51%) of the beneficial interest hereunder; provided however, that until TWELVE OAKS, LLC, declarant of the Condominium, or any successor to the declarant's interest in the Condominium (the "Declarant"), (a) has conveyed twenty-eight (28) units, or (b) seven (7) years after the date of recording the first Unit Deed in Phase I of the Condominium, whichever first occurs ("Initial Period"), the number of Trustees shall be two (2), consisting of ANITA I. COSTANTINI and FRANK A. COSTANTINI, the original Trustees named herein (the "Initial Trustees", which expression shall include their successors designated by the Declarant). During the Initial Period, the Declarant shall be entitled to designate, remove and re-designate the Trustees and no Trustee designated by the Declarant need be a Unit Owner. Notwithstanding anything to the contrary in this Trust, during the Initial Period, any vacancy resulting from expiration of the term, resignation, removal or death of a Trustee designated by the Declarant may be filled by an instrument executed by the Declarant and recorded with the Registry of Deeds stating the new Trustee's name and business address so designated, and containing the Trustee's acceptance of designation duly acknowledged. The Declarant's rights under this Section 3.1 shall inure to the benefit of any successor to the Declarant's interest in the Condominium.

Section 3.1.1 Trustees' Term in Office. After the Initial Period, the terms of office of the Initial Trustees shall be deemed ended, but, they shall not expire until successor Trustees are elected at the next annual meeting of the Unit Owners (or special meeting in lieu thereof) in the manner hereinafter set forth. Thereafter, the terms of office of the Trustees shall, except as hereinafter provided, be three (3) years (a term shall commence at the annual meeting of Unit Owners (or special meeting in lieu thereof) at which the Trustee was appointed and end at the annual meeting (or special meeting in lieu thereof) at which such Trustee's successor is due to be appointed), and such terms shall be staggered so that the term of one of the Trustees shall expire each year; provided that, in order to establish and maintain such staggering of terms, the terms of the persons first appointed as Trustees after the expiration of the terms of office of the Initial Trustees shall be one (1) year, two (2) years and (3) years, respectively, determined by lot. Notwithstanding anything herein to the contrary, the term of any Trustee appointed to fill a vacancy in an unexpired term shall end when his or her predecessor's term would, but for the vacancy, have ended.

Whenever a Trustee's term expires (but in no other circumstance), provided that a successor Trustee has been appointed by the Unit Owners as required under this Trust to fill the vacancy, the Trustee whose term is ending shall continue to exercise and discharge all of the rights and powers of a Trustee until the instrument of the successor's appointment and acceptance is recorded with the Registry of Deeds as provided in Section 3.1.2.

Section 3.1.2 Vacancies; Appointment and Acceptance of Successor Trustees.

Subject to the rights of the Declarant recited in Section 3.1 concerning the filling of vacancies during the time the Declarant is entitled to designate Trustees, if and whenever any Trustee's term is to expire or for any other reason, including, without limitation, removal, resignation or death of a Trustee, the number of Trustees shall be less than three

(3), a vacancy or vacancies shall be deemed to exist. Each vacancy may be filled at any time by an instrument in writing which sets forth (i) the name and address of a natural person being appointed as a Trustee, (ii) the certification of any three Unit Owners that the Unit Owners have appointed such person by vote of not less than fifty-one percent (51%) of the beneficial interest hereunder, and (iii) the acceptance of such appointment signed and acknowledged by the person appointed. If the Unit Owners have not voted to make such appointment within thirty (30) days after the vacancy or vacancies first existed, then such vacancy or vacancies may be filled by vote of the remaining Trustee(s) for a term ending at the next annual meeting of the Unit Owners (or special meeting in lieu thereof) by an instrument in writing which sets forth (a) the Trustee(s)' appointment of a natural person to act as Trustee signed by a majority of the Trustees then in office (or by the sole Trustee if there be only one then in office) and (b) the acceptance of such appointment signed and acknowledged by the person appointed. Any vacancy which shall continue for more than sixty (60) days may also be filled by appointment by any court of competent jurisdiction upon the application of one or more Unit Owner(s) or Trustees after notice to all Unit Owners and Trustees and to such other parties in interest, if any, to whom the court may direct that notice be given.

Appointments of Trustees shall be effective immediately upon recording with the Registry of Deeds the instrument of appointment and acceptance and such person shall then become a Trustee and shall be vested with the title to the trust property jointly with the other Trustee then in office without the necessity of any act of transfer or conveyance.

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

Section 3.2 Trustee Action. In any matter relating to the administration of the trust hereunder and the exercise of the powers hereby conferred, the Trustees shall act by majority vote at any duly called meeting at which a quorum, as defined in Section 5.9.1, is present. The Trustees may act without a meeting in any case by unanimous written consent and in cases requiring, in the sole judgment of a majority of the Trustees, response to an emergency, by majority written consent.

Section 3.3 Resignation and Removal. Any Trustee may resign at any time by instrument in writing signed and duly acknowledged by that Trustee. Resignations shall take effect upon the recording of such instrument with the Registry of Deeds. Any Trustee, except for a Trustee designated by the Declarant during the Initial Period, may be removed with or without cause by vote of Unit Owners entitled to seventy-five percent (75%) of the beneficial interest hereunder. The vacancy resulting from such removal shall be filled in the manner provided in Section 3.1.2. Any removal shall become effective upon the recording with the Registry of Deeds of a certificate of removal signed by a majority of the remaining Trustees in office, or by three Unit Owners, who certify under oath that the Unit Owners have voted such removal in accordance with the requirements of this Section 3.3. The Declarant may remove, with or without cause, any Trustee which the Declarant is entitled to designate and to appoint a successor as provided in Section 3.1 hereof.

Section 3.4 Bond or Surety. Except as may be required under Section 5.8.1, no Trustee, whether an original or successor Trustee, shall be required to provide security for the performance of any of his or her duties hereunder, provided, however, that Unit Owners entitled to a majority of the beneficial interest of this Trust may at any time by instrument in writing signed by them and delivered to the Trustee or Trustees affected require that any

one or more of the Trustees shall give bond in such amount and with such sureties as shall be specified in such instrument. All expenses incident to any such bond shall be charged as a common expense of the Condominium.

Section 3.5 Compensation of Trustees. With the approval of Unit Owners holding no less than fifty-one percent (51%) of the beneficial interest in this Trust, each Trustee may receive such reasonable remuneration for his services and also additional reasonable remuneration for extraordinary or unusual services, legal or otherwise rendered by him or her in connection with the trust hereof, all as shall be from time to time fixed and determined by such Unit Owners, and such remuneration shall be a common expense of the Condominium. No compensation to Trustees may be voted for during the Initial Period or while the Declarant owns more than fifty percent (50%) of the beneficial interest of this Trust.

Section 3.6 No Personal Liability. No Trustee shall under any circumstances or in any event be held liable or accountable out of his personal assets or be deprived of compensation by reason of any action taken, suffered or omitted in good faith or be so liable, accountable or deprived by reason of honest errors of judgment or mistakes of fact or law or by reason of the existence of any personal or adverse interest or by reason of negligence or any other reason except his own personal and willful dishonesty, malfeasance and defaults or gross negligence. Actions taken (1) by a successor Trustee after appointment by the Unit Owners and prior to recording of the written instrument required under Section 3.1.2 and (2) by the outgoing Trustee after filing of said instrument, in both cases in the good faith belief that such person holds the rights and powers of a Trustee, shall not create any liability for such person beyond that which he or she would have had as a Trustee.

Section 3.7 Trustees May Deal with the Condominium. No Trustee shall be disqualified by his office from contracting or dealing with the Trustees or with one or more Unit Owners (whether directly or indirectly because of his interest individually or the Trustees' interest or any Unit Owner's interest in any corporation, firm, trust or other organization connected with such contract or dealing or because of any other reason) as vendor, purchaser or otherwise, nor shall any such dealing, contract or arrangement entered into in respect of this Trust in which any Trustee shall be interested in any way be avoided, nor shall any Trustee so dealing or contracting or being so interested be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such Trustee's holding office or of the fiduciary relation hereby established, provided the Trustee shall act in good faith and shall disclose the nature of his interest before entering into the dealing, contract or arrangement.

Section 3.8 Indemnity of Trustees. Each Trustee and, to the extent stated in Section 3.6, any outgoing and successor Trustee as to actions taken as a Trustee before the person became entitled or after the person ceased to be entitled to exercise the rights and powers of a Trustee, shall be entitled to indemnity both out of the Trust property and by the Unit Owners against any liability incurred by them or any of them in the execution hereof and performance of their obligations hereunder, including without limiting the generality of the foregoing, liabilities in contract and in tort and liabilities for damages, penalties and fines; and, acting by majority, the Trustees may purchase such insurance against such liability as they shall determine is reasonable and necessary, the cost of such insurance to be a common expense of the Condominium. Each Unit Owner shall be personally liable for all sums lawfully assessed for his share of the common expenses of the Condominium and for his proportionate share of any claims involving the Trust property in excess thereof, all as provided in Sections 6 and 13 of Chapter 183A. Nothing in this paragraph shall be deemed to limit in any respect the powers granted to the Trustees in this Declaration of Trust.



## ARTICLE IV

THE BENEFICIARIES

Section 4.1 The Beneficiaries and Their Beneficial Interest. The beneficiaries of this Trust shall be the Unit Owners of the Twelve Oaks Village from time to time. The beneficial interest in this Trust shall be divided among the Unit Owners in the percentage of undivided beneficial interest appertaining to the Units of the Condominium stated in the Master Deed of the Condominium as it may be amended from time to time.

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

All rights of a Unit Owner under this Trust may be exercised by written proxy. The Trustees shall make any necessary determinations in their sole discretion as to the validity of proxies.

## ARTICLE V

THE BY-LAWS

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

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

Section 5.1 Powers of the Trustees. The Trustees shall have all the powers, duties, and functions necessary for the administration of the affairs of the Condominium and may do

and perform in relation thereto all such acts and things except such as, by virtue of the provisions of Chapter 183A, the Master Deed of said Condominium or these by-laws, may not be delegated by the Unit Owners to the Trustees. The powers, functions and duties of the Trustees shall include, but shall not be limited to, the following:

- (a) operation, maintenance, cleaning and care of the common areas and facilities;
- (b) determination of the common expenses required for the affairs of the Condominium, including without limitation, the operation and maintenance of the Property, and preparation of budgets therefor;
- (c) assessment and collection of the common charges from the Unit Owners;
- (d) employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the common areas and facilities;
- (e) promulgation of rules and regulations relating to the use and the operation of the Condominium property;
- (f) opening of bank accounts on behalf of the association and designation of the signatories required therefor;
- (g) leasing, managing, and otherwise dealing with such community facilities as are provided for in the Master Deed of the Condominium as being common areas and facilities;
- (h) owning, conveying, encumbering, leasing, and otherwise dealing with units of the Condominium acquired by the Trustees pursuant to provisions of Chapter 183A, said Master Deed or these by-laws;
- (i) obtaining of insurance for the Condominium property pursuant to the provisions hereof;
- (j) making of repairs, additions, and improvements to, or alteration of, the Condominium property and repairs to and restoration of the property pursuant to and in accordance with the provisions of Chapter 183A, the Master Deed or these by-laws;
- (k) management of the finances of the association including allocation of income and expenses;
- (l) enforcement of obligations of Unit Owners pursuant to and in accordance with provisions of Chapter 183A, this Trust, the Master Deed and these by-laws, including, without limitation, the power to seek equitable relief or damages for failure to comply with said obligations, the power to impose charges or to charge interest for the late payment of common expense assessments or other charges, and to levy reasonable fines, and other charges against the Unit Owner or persons for whom a Unit Owner is responsible, for violations of the Master Deed, Trust, by-laws, restrictions, rules or regulations of the Trust;

- (m) allocation of use of portions of the common areas and facilities and, if permitted by the Master Deed and these by-laws, the collection of special charges therefor which shall be common funds of the Condominium;
- (n) making arrangements for the furnishing of utility services to the Condominium property, including the granting of licenses and easements required in connection therewith; and
- (o) all such other powers, functions, and duties as are reasonably required by or implicit in the foregoing, including, but not limited to, the following:
  - (i) to retain the Trust property, or any part or parts thereof, in the same form or forms of investment in which received or acquired by them so far and so long as they shall think fit, without liability for any loss resulting therefrom;
  - (ii) to sell, assign, convey, transfer (except for common areas and facilities), exchange and otherwise deal with or dispose of the Trust property, but not the whole thereof, free and discharged of any and all trusts, at public or private sale, to any person or persons for cash or on credit, and in such manner and on such restrictions, stipulations, agreements and reservations as they shall deem proper, including the power to take back mortgages to secure the whole or any part of the purchase price of any of the Trust property sold or transferred by them, and execute and deliver any deed or other instrument in connection with the foregoing;
  - (iii) to purchase or otherwise acquire title to, and rent, lease or hire from others for terms which may extend beyond the termination of this Trust any property or right to property, real or personal, and own, manage, use and hold such property and such rights;
  - (iv) to borrow or in any other manner raise such sum or sums of money or other property as they shall deem advisable in any manner and on any terms, and evidence the same by notes, bonds, securities or other evidences of indebtedness, which may mature at a time or times, even beyond the possible duration of this Trust, and execute and deliver any mortgage, pledge or other instrument to secure any such borrowing;
  - (v) to enter into any arrangement for the use or occupation of the Trust property, or any part or parts thereof, including, without thereby limiting the generality of the foregoing, leases, subleases, easements, licenses or concessions upon such terms and conditions and with such stipulations and agreements as they shall deem desirable, even if the same extend beyond the possible duration of this Trust;
  - (vi) to invest and reinvest the Trust property, or any part or parts thereof, and from time to time, as often as they shall see fit, change investments, including investments in all types of securities and other property, of whatsoever nature and however denominated, all to such extent as to them shall seem proper, and without liability for loss even though such property or such investments shall be of a character or in an amount not customarily considered proper for the investment of trust funds or which does not or may not produce income;

- (vii) to incur such liabilities, obligations and expenses and pay from the principal or the income of the Trust property in their hands all such sums as they shall deem necessary or proper for the furtherance of the purposes of this Trust;
- (viii) to determine whether receipt by them constitutes principal or income or surplus and allocate between principal and income and designate as capital or surplus any of the funds of the Trust;
- (ix) to vote in such manner as they shall think fit any or all shares in any corporation or trust which shall be held as Trust property, and for that purpose give proxies to any person, persons or to one or more of their number, to vote, waive any notice or otherwise act in respect of any such shares;
- (x) to deposit any funds of the Trust in any bank or trust company, and delegate to any one or more of their number, or to any other person or persons, the power to deposit, withdraw and draw checks on any funds of the Trust;
- (xi) to engage in such litigation in the name of and on behalf of the Trust as they deem necessary and proper to further the purposes of this Trust;
- (xii) to maintain such offices and other places of business as they shall deem necessary or proper and engage in business in Massachusetts or elsewhere;
- (xiii) to employ, appoint and remove such agents, managers, officers, board of managers, brokers, engineers, architects, employees, servants, assistants and counsel (which counsel may be a firm of which one or more of the Trustees are members) as they shall deem proper for the purchase, sale or management of the Trust property, or any part or parts thereof, or for conducting the business of the Trust, and may define their respective duties and fix and pay their compensation, and the Trustees shall not be answerable for the acts and defaults of any such person. The Trustees may delegate to any such agent, manager, officer, board, broker, engineer, architect, employee, servant, assistant or counsel any or all of their powers (including discretionary powers, except that the power to join in amending, altering, adding to, terminating or changing this Declaration of Trust and the Trust hereby created shall not be delegated) all for such times and purposes as they shall deem proper. Without hereby limiting the generality of the foregoing, the Trustees may designate from their number a Chairman, a Treasurer, a Secretary, and such other officers as they deem fit, and may from time to time designate one or more of their own number to be the managing Trustee or managing Trustees for the management and administration of the Trust property and the business of the Trust, or any part or parts thereof;
- (xiv) Generally, in all matters not herein otherwise specified, to control and do each and every thing necessary, suitable, convenient, or proper for the accomplishment of any of the purposes of the Trust or incidental to the powers herein or in Chapter 183A, manage and dispose of the Trust property (except for common areas and facilities) as if the Trustees were the absolute owners thereof, and to do any and all acts, including the execution of any instruments, which by their performance thereof shall be shown to be in their judgment for the best interest of the Unit Owners.

## 5.2 Maintenance and Repair of Units and Limited Common Facilities.

5.2.1 (a) Each Owner shall be solely responsible for the proper maintenance, repair and replacement of his Unit including the interior and non-structural portions thereof and those utility fixtures and installations including heating, hot water and air conditioning equipment and systems serving his Unit which are not part of the Common Areas and Facilities. Each Owner shall be responsible for all damage to other Units and/or the Common Areas and Facilities caused by his failure to satisfy his maintenance and repair obligations hereunder.

(b) Each Unit Owner is aware that the Twelve Oaks Village community is intended as a first-class residential community, and that failure of any Unit owner to maintain his Unit in a neat, clean and attractive manner will derogate from the value and salability of other Units. The standards required of each Unit Owner under the provisions of this Section 5.2.1, and the remedies available to the Trustees in the event of the failure of any Unit Owner to adhere to same, shall be strictly construed in favor of the Trustees and against each Unit Owner.

(c) In the event that any Unit Owner fails to strictly adhere to the provisions of this Section 5.2.1, the Trustees shall have both the right and also the obligation to notify such Owner in writing of such failure, specifying with reasonable particularity the action that such Owner must take in order to remedy such failure. If such Owner fails to take such action within fifteen (15) days of the giving of such notice by the Trustees, then the Trustees shall have the right and obligation to cause the necessary work of maintenance, repair or replacement to take place, using such personnel or contractors as the Trustees in their sole discretion may decide, and the entire cost thereof, plus an administrative fee of ten percent (10%) of the cost thereof, shall be payable by such Owner to the Trustees forthwith; and the amount thereof shall be a lien on the Unit Owner enforceable to the extent and with the priorities set forth in Section 5.4 hereof and Section 6 of the Act.

5.3 Maintenance, Repair and Replacement of Common Areas and Facilities and Assessments of Common Expenses. The Trustees shall be responsible for the proper maintenance, repair and replacement of the Common Areas and Facilities of the Condominium, as defined in Section 4 of the Master Deed and also subject to the provisions of Section 5.5 hereof with respect to repairs and replacements necessitated because of casualty loss or a taking under the powers of eminent domain. The majority of the Trustees or the Manager, or any others who may be designated by the Trustees, may approve payment of vouchers for such work. The expenses of such maintenance, repair and replacement shall be assessed to the Owners as Common Expenses of the Condominium at such times and in such amounts as provided in Section 5.4 hereof; provided, however, that if the maintenance, repair or replacement of the Common Areas and Facilities is necessitated by the negligence or misuse of an Owner, either directly or by virtue of his failure to properly maintain, repair or replace his Unit, which he is responsible to maintain and repair, the expenses of such maintenance and repair may be charged to the particular owner as a Common Expense by the Trustees and it shall be payable to the Trustees on demand.

5.3.1 The Trustees shall have the obligation and duty to treat each of the Units in the Condominium with equal consideration with respect to repairs, replacement and maintenance of the Common Areas and Facilities of the Condominium, so that the Common Areas in the vicinity of each Unit shall be equally maintained, but shall have no responsibility or right to make any repair or replacement to a Unit, except as set forth in Section 5.2.1 hereof.

Section 5.4 Common Expense Fund.

Section 5.4.1 Liability for Common Expenses: Reserve Funds. The Unit Owners shall be liable for common expenses and, subject to the Trustees' obligations with respect to reserve funds stated below, shall be entitled to surplus accumulations, if any, of the Condominium in proportion to their beneficial interest in the Trust. The Trustees may from time to time in their sole discretion distribute surplus accumulations, if any, among the Unit Owners in such proportions. The Trustees shall set aside common funds in order to establish and maintain an adequate replacement reserve fund collected as part of the common expenses and shall deposit the same in an account or accounts separate and segregated from operating funds, and may use the funds so set aside for reduction of indebtedness or other lawful capital purpose, or, subject to the provisions of the following Sections 5.4.2 and 5.4.5, for repair, rebuilding or restoration of the Trust property or for improvements thereto. Such reserve fund shall be funded by regular monthly assessments from the regular assessment for common expenses referred to below and the funds so set aside shall not be deemed to be common profits available for distribution.

Section 5.4.2 Assessments of Common Expenses: Taxes. At least thirty (30) days prior to the commencement of each fiscal year of this Trust, the Trustees shall estimate the common expenses expected to be incurred during the next fiscal year together with a reasonable provision for contingencies and reserves, and after taking into account any undistributed surplus accumulations from prior years not set aside for reserve or contingent liabilities, shall determine the assessment to be made for the next fiscal year.

During such time that real estate taxes (including betterment assessments) are assessed against the real property described in the Master Deed as one (or more) tax parcels, but not as condominium units, the Trustees may collect and expend, in the same manner as common expenses, all amounts necessary to pay such real estate taxes and betterment assessments for common benefit. Each Unit shall be assessed for such real estate taxes in proportion to its beneficial interest in the common areas and facilities of the Condominium. The Declarant shall be responsible to pay on behalf of each Unit Owner a portion of each Unit Owner's share of the taxes imposed on the Common Area and Facilities (the "Unit Owner's Share") determined by multiplying each Unit Owner's Share by a fraction the numerator of which shall be twenty-eight (28) minus the number of phased-in Units and the denominator of which shall be twenty-eight (28). If the tax assessor for the Town of Lenox assesses the land and/or the amenities such as the pool, tennis courts and club house separately, the Declarant shall pay the entire amount of such separate tax bill until twenty-eight units have been phased into the condominium. The Trustees may collect the funds for such real estate taxes in lump sums or installments, using such procedure, including installment payments in advance, as they in their sole discretion shall determine and they may charge any penalties for late payment imposed by the municipal authorities to the Unit(s) responsible therefor.

The Trustees shall promptly render statements to the Unit Owners for their respective shares of assessments, according to their beneficial interest in the common areas and facilities, and such assessment shall, unless otherwise provided therein, be due and payable within thirty (30) days after the same are rendered. In the event that the Trustees shall determine during any fiscal year that the assessment so made is less than the common expenses actually incurred, or in the reasonable opinion of the Trustees likely to be incurred (with respect to all Units or to any one or more Units), the Trustees shall make a supplemental or special assessment or assessments and render statements therefor in the manner aforesaid. The Trustees may in their discretion provide for payments of assessments in monthly or other installments. The amount of each such assessment shall be a personal

liability of each Unit Owner (jointly and severally among the owners of each Unit) and, if not paid when due, or upon the expiration of such grace period as the Trustees may (but need not) designate, shall carry a late charge in such amount or at such rate (which amount or rate need not be in proportion to the beneficial interests in this Trust) as the Trustees shall determine and, together with any such late amount or charge and attorneys' fees and all other costs of collection as hereinafter provided, shall constitute a lien on the Unit pursuant to the provisions of Section 6 of Chapter 183A. The Trustees in their sole discretion may for good cause waive all or any portion of the late charge, attorneys' fees and the other costs of collection; provided (i) that Trustees shall be disqualified from voting with respect to any Unit owned or occupied by such Trustee and (ii) Trustees designated by the Declarant or elected while the Declarant owns Units having more than 50% of the beneficial interest in the Trust shall be disqualified from voting regarding any such waiver with respect to any Unit owned by the Declarant or any person affiliated with the Declarant. Each Unit Owner, by acceptance of a Unit deed, agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by the Trustees in collection of said assessments for common expenses, delinquent fees, charges, penalties and interest charged to a delinquent owner, and such charges and fees as may be incurred in the enforcement of said lien.

Section 5.4.2.1 Declarant's Share During Initial Period. Notwithstanding any terms to the contrary contained elsewhere in this Declaration of Trust, until the expiration of the Initial Period, defined in section 3.1, the Declarant shall be obligated to pay a percentage of each Unit Owner's common expenses and the taxes imposed on the Common Area and Facilities determined by multiplying such Unit Owner's monthly common expenses by a fraction the numerator of which shall be (twenty-eight) (28) minus the number of phased-in Units) and the denominator of which shall be twenty-eight (28). (For example, if there are two (2) Units, each Unit Owner's percentage share of the common expenses would be determined as provided in the Master Deed; to wit: the value of the Unit over the total value of all Units. The Declarant would then be obligated to pay 92.858% of each Unit Owner's share.) If such Unit Owner is being assessed a tax on the Common Area and Facilities, such Unit Owner shall pay its share of the taxes imposed on the Common Area and Facilities as provided in Section 5.4.2.

Section 5.4.2.2 Pro-Rated Assessments. When a Unit is conveyed by the Declarant to any party, and the conveyance does not occur on the first day of a real estate tax period, the tax shall be equitably pro-rated.

Section 5.4.3 Trustees Must Authorize Tax Abatement Applications. No Unit Owner shall file an application for abatement of real estate taxes without the written approval of the Trustees, which approval shall not be unreasonably withheld.

Section 5.4.4 Default in Payment of Common Expenses: Foreclosure of Liens for Unpaid Common Expenses. In the event of a default by any Unit Owner in the payment of his or her share of the common expenses, the Trustees may seek to recover such common expenses, interest, and charges by 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 or in any other manner permitted by law.

In any action brought by the Trustees to foreclose a lien on a Unit because of unpaid common expenses, the Unit Owner shall, to the extent permitted by law, be required to pay the costs and expenses of such proceedings and reasonable attorneys' fees and, further, to pay a reasonable rental for the use of his or her unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Trustees, acting on behalf of all Unit Owners, shall have power to purchase such Unit at the

foreclosure sale and to acquire, hold, lease, mortgage (but not to vote the votes appurtenant to), convey, or otherwise deal with the same. A suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

Section 5.4.5 Application of Common Funds. The Trustees shall expend common funds only for the purposes permitted by this Trust and by Chapter 183A.

Section 5.4.6 Acquisition of Units by Trustee. Acquisition of Units by the Trustees for the Trust, which is authorized by a vote of Unit Owners holding at least 75% of the percentage interest in the Condominium may be made from the working capital and common expenses in the hands of the Trustees, or if such funds are insufficient, the Trustees may levy an assessment against each Unit Owner in proportion to his or her ownership in the common areas and facilities, as a common expense, or the Trustees, in their discretion, may borrow money to finance the acquisition of such Unit provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the Unit, so to be acquired by the Trustees.

Section 5.5 Rebuilding and Restoration After Casualty; Improvements.

Section 5.5.1 Casualty Loss. In the event of any casualty loss to the Condominium property, 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 of such determination. If such loss as so determined does not exceed ten percent (10%) of such value, the Trustees shall proceed with the necessary repairs, rebuilding or restoration as provided in paragraph (a) of Section 17 of Chapter 183A. If such loss as so determined exceeds ten percent (10%) of such value, the Trustees shall forthwith submit to all Unit Owners (a) a form of agreement (which may be in several counterparts) by the Unit Owners authorizing the Trustees to proceed with the necessary repair, rebuilding or restoration, and (b) a copy of the provisions of Section 17; and the Trustees shall thereafter proceed in accordance with and take such further action as they may in their discretion deem advisable in order to implement the provisions of paragraph (b) of Section 17.

Section 5.5.2 Proposed Improvements. If and whenever the Trustees shall propose to make any improvement to the common areas and facilities of the Condominium, or shall be requested in writing by the Unit Owners holding twenty-five percent (25%) or more of the beneficial interest in this Trust 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 the receipt by the Trustees of such agreement signed by the Unit Owners holding seventy-five (75%) percent or more of the beneficial interest or the expiration of ninety (90) days after such agreement was first submitted to the Unit Owners, whichever shall first occur, the Trustees shall notify all Unit Owners of the aggregate percentage of beneficial interest held by Unit Owners who have then signed such agreement. If such percentage exceeds seventy-five percent (75%), the Trustees shall proceed to make the improvement or improvements specified in such agreement and, in accordance with Section 18 of Chapter 183A, shall charge the cost of such improvement to all the Unit Owners. The Agreement so circulated may also provide for a separate agreement by the Unit Owners that if more than fifty percent (50%), but less than seventy-five percent (75%) of the beneficial interest so consent, the Trustees shall proceed to make such improvement or improvements and shall charge the same to the Unit Owners so consenting.



Section 5.5.3 Arbitration of Disputed Trustee Action. Notwithstanding anything in Sections 5.5.1 and 5.5.2, in the event that any Unit Owner(s), by written notice to the Trustees, shall dissent from any determination of the Trustees with respect to the value of the Condominium or any other determination or action of the Trustees under this Section 5.5, and such dispute shall not be resolved within thirty (30) days after such notice, then either the Trustees or the dissenting Unit Owner(s) shall submit the matter to arbitration. For that purpose, one arbitrator shall be designated by the Trustees, one by the dissenting Unit Owner(s) and a third by the two arbitrators so designated. Such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association and shall be binding upon all parties. The Trustees' decision that work constitutes a repair, rebuilding and restoration rather than an improvement shall be conclusive and binding on all Unit Owners unless shown to have been made in bad faith. The Trustees shall in no event be obliged to proceed with any repair, rebuilding or restoration, or any improvement, unless and until they have received funds in an amount equal to the Trustees' estimate of all costs thereof.

Section 5.5.4 Condemnation. In the event of any condemnation of the Trust property, the Trustees shall estimate the cost of restoring what remains of the Trust property and shall notify all Unit Owners of such estimate. Until the Unit Owners instruct the Trustees otherwise by majority vote, the Trustees in their discretion shall proceed with rebuilding and restoration of the remaining Trust property as far as practical to the condition and standards existing before the taking and the cost thereof shall be a common expense. Any award in connection with condemnation of Trust property shall be common funds and the Trustees shall have all power and authority to deal with all persons, including without limitation, the taking authority, in connection therewith.

The Condominium Trustees shall represent the Unit Owners in all proceedings, negotiations, settlements or agreements with the taking authority and any proceeds received from said authority shall be paid to the Condominium Trustees for the benefit of the Unit Owners and their mortgagees.

From and after any condemnation which includes one or more Units or parts thereof, (i) the beneficial interests of the remaining Units, and the corresponding percentage interest of each as stated in the Master Deed, shall be in proportion to their original beneficial interests, with equitable adjustments based on diminution in fair market value as to any Unit partially taken, and (ii) those Units entirely taken shall have no beneficial interest hereunder nor any percentage interest under the Master Deed. Any award or portion thereof for taking of any Unit or portion thereof paid by the taking authority to the Trustees shall be paid to the Owners, mortgagees and other lien holders of such Unit as their interests may appear.

Section 5.6 Rules and Regulations. The Trustees may, at any time and from time to time, adopt, amend and rescind rules and regulations governing the details of the operation and use of the common areas and facilities and such restrictions on and requirements respecting the use and maintenance of the Units and the use of the common areas and facilities as are consistent with Chapter 183A, the Master Deed, and these by-laws, and are designed to prevent unreasonable interference with the use by the Unit Owners of their Units and of the common areas and facilities. The Trustees do hereby adopt the initial Rules and Regulations annexed to this Declaration of Trust.

Section 5.7 Managing Agent. The Trustees may, at their discretion, appoint a manager or managing agent to administer the management and operation of the

Condominium, including the incurring of expenses, the making of disbursements and the keeping of accounts, as the Trustees shall from time to time determine. The Trustees or such manager or managing agent may appoint, employ and remove such additional agents, attorneys, accountants or employees as the Trustees shall determine. In any contract between a manager or managing agent and the Condominium Trust, the Condominium Trust shall have a right to terminate the contract for cause with ten days' notice, during which time the manager or managing agent shall have an opportunity to cure. The Condominium Trust shall in no case be required to provide more than ninety days' notice if the contract is terminated without cause.

Section 5.8 Insurance.

Section 5.8.1 Insurance Coverages to be Obtained. The Trustees shall obtain and maintain, to the extent obtainable, the following insurance:

A. Fire insurance with extended coverage and vandalism and malicious mischief endorsements insuring the Common Areas and Facilities in the Condominium (but not the units). Such insurance shall be in an amount at least equal to 100% of the replacement value of the property so covered, shall include coverage for costs of debris removal and demolition and shall be payable to the Trustees as Insurance Trustees for the Owners and their mortgagees, as their respective interests may appear.

All policies of casualty and physical damage insurance shall provide (to the extent such clauses are so obtainable) (1) that such policies may not be canceled or substantially modified without at least ten (10) days' prior written notice to all of the insureds, including each Unit mortgagee and (2) that the coverage thereof shall not be terminated for nonpayment of premiums without ten (10) days' notice to all of the insureds including each Unit mortgagee. Certificates of such insurance and all renewals thereof, together with proof of payment of premiums, shall be delivered by the Trustees to Unit Owners and their mortgagees upon request at least ten (10) days prior to the expiration of the then current policies.

B. Public Liability Insurance. Comprehensive public liability insurance including so-called "Broadening Endorsement" with Severability of Interest Endorsement or equivalent coverage covering all of the common areas and facilities and including protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, liability arising out of lawsuits relating to employment contracts to which the Trust is a party, and such other risks as are customarily covered in similar projects, in each instance to the extent applicable to the Condominium, in such amounts as shall be determined by the Trustees, covering the Trust, the Trustees, the Unit Owners and any manager or managing agent of the Condominium, with limits of not less than a single limit of One Million (\$1,000,000.00) Dollars for claims for bodily injury or property damage arising out of one occurrence, and with an endorsement to cover liability of any insured to other insureds. Each such policy shall provide for at least ten (10) days' prior written notice to all of the insureds, including each mortgagee before any cancellation or substantial modification thereof by the insurer.

C. Worker's Compensation Insurance. Worker's compensation and employer's liability insurance with respect to any manager, agent or any employees of the Trust.

D. Fidelity Coverage. The Trustees shall obtain and maintain in the name of the Condominium Trust blanket fidelity insurance coverage for anyone, including said Trustees, who either handles or is responsible for funds held or administered by the Trustees or on behalf of the Condominium Trust whether or not such persons receive compensation for their services. All expenses incident to any such insurance coverage shall be charged as a common expense of the Condominium and shall name the Condominium Trust as an obligee.

Said fidelity insurance coverage shall cover the maximum funds that will be in custody of the Trustees or the Condominium Trust or its management agent at any time while the insurance is in force. In addition, the fidelity insurance coverage must at least equal the sum of three (3) months' assessment on all Units in the Condominium plus any reserve funds maintained in accordance herewith.

The fidelity insurance coverage must include a provision for ten (10) days' written notice to the Condominium Trust or the Trustees, as insurance trustees, before the insurance can be canceled or substantially modified for any reason. The same notice must also be given to each servicer that services an FNMA-owned mortgage in the Condominium.

A management agent that handles funds for the Condominium Trust shall be covered by its own fidelity insurance in the same manner and to the same extent as provided above.

E. Flood Insurance. If any part of the Condominium is located in a special flood hazard area designated by the Federal Emergency Management Agency, or its successor, under the National Flood Insurance Administration Program, flood insurance covering the buildings and any other property located within such designated flood hazard area, in an amount at least equal to the lesser of (i) 100% of the current replacement cost of all buildings and other insurable property located in such flood hazard area, or (ii) the maximum coverage available for such buildings and property under the National Flood Insurance Administration Program.

F. Directors and Officers Liability Insurance. In the Trustees' sole discretion, Directors and Officers Liability Insurance covering the Trustees and other Unit Owners participating in the governance of the Condominium.

G. Other Insurance. In the Trustees' sole discretion, such other insurance coverage as they shall deem desirable.

If FNMA or FHLMC shall hold any interest in one or more first mortgages of Units in the Condominium, upon the written request of FNMA, FHLMC or the holder of record of a first mortgage on a Unit, the Trustees shall purchase, to the extent available, such other insurance coverages as may be required from time to time by FNMA or FHLMC, as applicable.

Section 5.8.2 Payment to Trustees in Case of Loss. Such master policies shall provide that all casualty loss proceeds thereunder shall be paid to the Trustees as insurance trustees under these By-laws. The duty of the Trustees as such insurance trustees shall be to receive such proceeds as are paid and to hold, use and disburse the same for the purposes stated in this Section and Section 5.5. If repair or restoration of the damaged portions of the Condominium is to be made, all insurance loss proceeds shall be held in shares for the Trust and the owners of damaged Units in proportion to the respective costs of repair or restoration

of the common areas and facilities and damaged Units, with each share to be disbursed to defray the respective costs of repair or restoration of the damaged common areas and facilities and damaged Units, and with any excess of any such share of proceeds above such costs of repair or restoration to be paid to the Trust or Unit Owners for whom held upon completion of repair or restoration; but if pursuant to Section 5.5, restoration or repair is not to be made, all insurance loss proceeds shall be held as common funds of the Trust and applied for the benefit of Unit Owners in proportion to their beneficial interests in the Trust if the Condominium is totally destroyed, and, in the event of a partial destruction, after payment for such restoration of the common areas and facilities as the Trustees may determine, to those Unit Owners who have suffered damage in proportion to the damage suffered by them. Such application for the benefit of Unit Owners shall include payment directly to a Unit Owner's mortgagee if the mortgage with respect to such Unit so requires.

Section 5.8.3 Other Provisions of Insurance Policies. In addition to the coverage and provisions set forth in Section 5.8.1, the Trustees shall, in their discretion, see that all policies of physical damage insurance, insofar as practicable: (1) contain waivers of subrogation by the insurer as to claims against the Condominium, the Trustees, their employees, Unit Owners and members of the family of any Unit Owner who reside with said Unit Owner, except in cases of arson and fraud; (2) contain a waiver of defense of invalidity on account of the conduct of any of the Unit Owners over which the Trustees have no control; (3) provide that the insurance policies shall be primary and that in no event shall the insurance under said policies be brought into contribution with insurance purchased individually by Unit Owners or their mortgagees; and (4) exclude policies obtained by individual Unit Owners from consideration under any "no other insurance" clause. The Trustees may include a deductible provision, which may be the lesser of (i) \$10,000.00 or (ii) 1% of the policy face amount, in their own discretion and in such greater amounts, if permitted under FNMA and FHLMC guidelines, as may be authorized by the owners of all Units in writing or by majority vote at any Unit Owners' meeting.

Section 5.8.4 Unit Owner's Insurance and Responsibility for Increase in Premiums of Master Policy. Each Unit Owner may (and is solely responsible to) obtain additional insurance for his or her own benefit, including without limitation personal property, public liability and loss assessment insurance, at his or her own expense. No policy may be written so as to decrease the coverage under any of the master policies obtained by the Trustees and each Unit Owner hereby assigns to the Trustees the proceeds of any such policy to the extent that any such policy does in fact result in a decrease in such coverage, said proceeds to be applied pursuant to the terms of these Sections 5.8 as if produced by such coverage. Copies of all such policies (except policies covering only personal property of individual Unit Owners) shall be filed with the Trustees.

Section 5.8.5 Insurance a Common Expense. The cost of the insurance to be purchased by the Trustees shall be a common expense assessable and payable as provided in Section 5.4, except as otherwise expressly provided.

Section 5.9 Design Review Procedures.

5.9.1 Any Owner may make any alteration or improvement in or to the interior of his Unit, which will not affect or cause any dislocation or impairment of or interruption to the Common Areas and Facilities of the Condominium. Any such work that shall cause any such dislocation, impairment or interruption to said Common Areas and Facilities above described shall not be commenced unless the same shall have been approved by the Trustees in accordance with the provisions of this Section 5.9 and shall conform to the conditions set forth in this Section 5.9. Any addition, alteration or improvement to the exterior of a Unit

shall not be commenced unless the same shall have been approved by the Trustees in accordance with the provisions of this Section 5.9 and shall conform to the conditions of this Section 5.9. Also, no Owner shall undertake any work or activity described in Section 6(b) of the Master Deed, unless the same shall have been approved by the Trustees in accordance with the provisions of this Section 5.9 and shall conform to the conditions set forth in this Section 5.9.

5.9.2 The following procedures and conditions shall apply with respect to all alterations, improvements, landscaping, shrubbery and flower installations, or other work or activities (hereinafter individually and collectively referred to as the "Proposed Work") which are subject to the approval procedures and conditions of this Section 5.9:

- (a) Prior to the commencement of the Proposed Work:
  - (i) The Owner shall have submitted plans and specifications for the Proposed Work to the Trustees for their approval pursuant to the provisions of this Section 5.9. Such plans and specifications shall be in such detail as the Trustees may reasonably request, and shall be prepared and signed by a Registered Architect, Registered Professional Engineer and/or Registered Land Surveyor satisfactory to the Trustees, if so requested by the Trustees;
  - (ii) The Owner shall have submitted to the Trustees such supplemental information, in addition to said plans and specifications, as the Trustees shall reasonably request in order to fully evaluate the proposed work;
  - (iii) The Trustees shall withhold approval of the Proposed Work unless they are satisfied that the performance of the Proposed Work will not derogate from the appearance and harmony of the community at Twelve Oaks Condominium. In making a decision with respect to any Proposed Work, the Trustees may use any criteria reasonable and uniform under the circumstances, in order to insure that the Proposed Work will not derogate from the character, appearance and harmony of the community. The Trustees shall be entitled to withhold their consent on purely aesthetic grounds.
  - (iv) The Owner involved and/or his contractor(s) shall have obtained and delivered to the Trustees such policies of casualty, public liability, worker's compensation and other insurance insuring the Trustees, the Owners and such other persons as the Trustees may designate against such risks of loss and in such amount of coverage as the Trustees shall reasonably determine to be appropriate under the circumstances; and
  - (v) The Owner involved shall have obtained and delivered to the Trustees such security running to the benefit of the Trust, as the Trustees may reasonably require, so as to assure that the Proposed Work is duly, satisfactorily and expeditiously completed. Such security may take one or more of the following forms, as approved by the Trustees, who shall determine whether the amount, form and substance thereof is satisfactory:

- a. Deposits of cash or negotiable securities;
  - b. Letters of Credit;
  - c. Performance bonds and/or guarantees; and
  - d. Such other types of security as the Trustees shall determine to be adequate and appropriate for the purpose.
- (b) The Proposed Work shall be performed expeditiously in a good and workmanlike manner in full compliance with all Federal, State and local laws, ordinances, codes, bylaws and rules and regulations, including those relating to zoning, building, health, safety and sanitation; and all necessary permits required for the work, including a building permit (if required by law) shall be duly obtained and complied with.
- (c) No materials, supplies, equipment, tools or other items associated with the Proposed Work shall be stored or left overnight in or upon any of the Common Areas and Facilities, without the prior written authorization of the Trustees.

5.9.3 By reviewing and approving the Owner's Proposed Work, the Trustees are not undertaking nor shall they thereby assume any liability or responsibility for the structural or other soundness of the Proposed Work; and each Owner for himself, his family and all other occupants of his Unit, hereby irrevocably releases each of the Trustees from any and all liability on account of any errors or defects in or failures or omissions with respect to the plans and specifications for and/or construction implementation of the Proposed Work and agrees to indemnify, defend and hold harmless, jointly and severally, the Trustees and all other Owners from and against all loss, liability, damage and expenses, including court costs and attorneys' fees, resulting from or arising in connection with any loss or damage to property or injury to person, actual or claimed, on account of the Proposed Work.

#### Section 5.10 Meetings.

Section 5.10.1 Meetings of Trustee. The Trustees shall meet annually on the date of the annual meeting of the Unit Owners and at such meeting may elect a Chairman, Treasurer, Secretary and any other officers they deem expedient. Other meetings may be called by any Trustee and in such other manner as the Trustees may establish, provided, however, that written notice of each meeting stating the place, day and hour thereof shall be given at least ten (10) days before such meeting to each Trustee. A majority of the Trustees then in office shall constitute a quorum at all meetings. Such meetings shall be conducted in accordance with such rules as the Trustees may adopt.

Section 5.10.1.1 Trustees' Votes: Majority Vote Defined. Each Trustee shall have one vote. A "majority" and a "majority vote" shall mean the vote of a majority of Trustees then in office.

Section 5.10.2 Meetings of Unit Owners. There shall be an annual meeting of the Unit Owners on the second Monday in June in each year at 8 p.m. (or on such other day and time at least once each calendar year as may be designated by the Trustees) at such reasonable place as may be designated by the Trustees by written notice given by the Trustees to the Unit Owners at least ten (10) days prior to the date so designated. Special meetings (including a meeting in lieu of a passed annual meeting) of the Unit Owners may

be called at any time by the Trustees and shall be called by them upon the written request of the Unit Owners entitled to more than thirty-three percent (33%) of the beneficial interest of the Trust. Written notice of any special meeting, designating the place, day and hour thereof, shall be given by the Trustees to the Unit Owners at least seven (7) days prior to the date so designated. Whenever at any meeting the Trustees propose to submit to the Unit Owners any matter with respect to which approval of or action by the Unit Owners is necessary or appropriate, the notice of the meeting shall so state and reasonably specify such matter.

Section 5.10.3 Quorum of Unit Owners; Majority Vote of Unit Owners Defined; Unit Owner Action by Consent in Lieu of Meetings. Unit Owners entitled to more than fifty percent (50%) of the beneficial interest of this Trust shall constitute a quorum at all meetings. "Majority" and "majority vote" of Unit Owners as used in this Trust shall mean the votes at a duly noticed meeting of Unit Owners in person or by proxy of Unit Owners entitled to more than fifty percent (50%) of that portion of the beneficial interest represented in person or by proxy at any meeting at which a quorum is present at the commencement of the meeting or such larger portion of the beneficial interest represented at the time of the vote. All actions by the Unit Owners shall require a majority vote except where the provisions of this Trust or Chapter 183A require a larger percentage. The Unit Owners may take any action requiring a vote without a meeting only by unanimous written consent.

Section 5.11 Trustees' Records of Unit Owners and Unit Mortgagees Deemed Conclusive. On each transfer of an ownership interest in or the grant of any mortgage on a Unit, the person or persons acquiring the interest or granting the mortgage shall have the duty to give the Trustees written notice of their interest in or mortgage on the Unit and, in the case of persons acquiring an ownership interest, of the correct name of all the owners of the Unit and of any mortgagee thereof. Unless otherwise required by law, records of owners and mortgagees maintained by the Trustees shall be conclusive for all purposes, including without limitation, for all notices to Unit Owners, for owners' meetings and all owner votes and for amendments to the Master Deed and this Condominium Trust; and the Trustees may, but shall have no obligation to, examine the records of the Registry of Deeds to determine ownership of Units. Unless otherwise required by law, all actions, including without limitation amendments to this Trust or to the Master Deed of the Condominium, shall be valid if taken by the requisite number of Unit Owners as they appear on the Trustees' records of ownership; provided, as to actions filed and registered with the Registry of Deeds, that the Trustees so certify under oath and such certificate is filed and registered with the Registry of Deeds.

Section 5.11.1 Notices to Unit Owners. Every notice to any Unit Owner required under the provisions of this Trust or which may be deemed by the Trustees necessary or desirable in connection with the execution of the trust created hereby or which may be ordered in any judicial proceeding shall be deemed sufficient and binding if given in writing by one or more of the Trustees to such Unit Owner by mailing it, postage prepaid, addressed to such Unit Owner at his address as it appears upon the records of the Trustees if other than at his Unit in the Condominium or by mailing or delivering it to such Unit if such Unit appears as the Unit Owner's address or if no address appears, at least seven (7) days prior to the date fixed for the happening of the matter, thing or event of which such notice is given. The Owner(s) of each Unit shall have the responsibility of providing the Trustees with any address other than the Unit to which the Owner(s) desire notices to be mailed.

Whenever at any meeting the Trustees propose to submit to the Unit Owners any matter with respect to which specific approval of, or action by, the Unit Owners is required

by law or this Trust, the notice of such meeting shall so state and reasonably specify such matter.

Section 5.12 Inspection of Books; Reports to Unit Owners. Books, accounts, and records of the Trustees shall be open to inspection to any one or more of the Trustees, the Unit Owners, and their respective first mortgagees at all reasonable times. The Trustees shall, within one hundred twenty (120) days after the close of each fiscal year, or more often if convenient to them, complete a report of the operations of the Trustees and the Trust for such year. The report shall include, without limitation, a balance sheet, an income and expense statement, and a statement of funds available in the various funds of the Trust. A copy of the report shall be made available, by the Trustees, to all Unit Owners, within thirty (30) days of completion and a copy of the report shall be made available, upon request, to any mortgagee holding a recorded mortgage on a Unit. The Trustees shall cause a review of the report to be prepared by an independent certified public accountant if so required by a vote of the Unit Owners as set forth in Chapter 183A, Section 10(d). A Unit Owner or Unit mortgagee shall have the right to have a review or audit prepared as provided for by the provisions of Chapter 183A.

Section 5.13 Checks, Notes, Drafts and Other Instruments. Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust may be signed by any two Trustees (or by one Trustee if there is only one), or by any person or persons to whom such power may at any time or from time to time, in accordance with the provisions of Chapter 183A, Section 10(g), be delegated by not less than a majority of the Trustees.

Section 5.14 Fiscal Year. The fiscal year of the Trust shall be the year ending with the last day of December or such other date as may from time to time be determined by the Trustees.

Section 5.15 Mortgages.

Section 5.15.1 Notice to Trustees. A Unit Owner who mortgages his or her Unit shall notify the Trustees of the name and address of his or his mortgagee. The Trustees shall maintain such information in a book entitled "Mortgagees of Units."

Section 5.15.2 Notice of Default. The Trustees, when giving notice to a Unit Owner of a default in paying common funds or other default, shall send a copy of such notice to each holder of a mortgage covering such Unit whose name and address has theretofore been furnished to the Trustees, if the mortgagee has requested the same.

Section 5.15.3 Examination of Books. Each Unit Owner and each mortgagee of a Unit shall be permitted to examine the books of account of the Condominium, at reasonable times, on business days.

Section 5.16 Enforcement. The Trust, acting by its Trustees, shall have the right to levy, without further legal action, fines or other charges for violations of the restrictions contained in this Trust, the Master Deed, and in any of the rules and regulations adopted pursuant hereto. Any fine or charge so levied is to be collected in the same manner as a common expense against the particular Unit Owner involved, and collection may be enforced by the Trustees in the same manner as they are entitled to enforce collection of common charges. Such levy of fines or charges shall not replace nor abrogate any action for damages or injunctive relief as provided by law.



## ARTICLE VI

RIGHTS AND OBLIGATIONS OF THIRD PARTIES  
DEALING WITH THE TRUSTEES

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

Section 6.2 No Personal Liability In Trustees. No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees, or by reason of anything done or omitted to be done by or on behalf of them or any of them, against the Trustees individually, or against any such agent or employee, or against any beneficiary, either directly or indirectly, by legal or equitable proceedings, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with or having any claim against the Trustees shall look only to the Trust property for any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to them from the Trustees, so that neither the Trustees nor the beneficiaries, present or future, shall be personally liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Unit Owners or the indemnity of the Trustees under provisions of Section 3.8 of this Trust or under provisions of Chapter 183A.

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

Section 6.4 Further Matters of Reliance. This Declaration of Trust and any amendments to this Trust and any certificate required by the terms of this Trust to be

recorded and any other certificate or paper signed by the Trustees or any of them which it may be deemed desirable to record shall upon such recording be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustees, the Trust property or any beneficiary thereunder shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be recorded with the Registry of Deeds. Any certificate signed by two Trustees in office at the time (only one Trustee if there is only one at the time, or only one Trustee for the purpose of delivering a 6(d) Certificate (as such term is defined in Section 6.5)) setting forth as facts any matters affecting the Trust, including statements as to who are the beneficiaries, as to what action has been taken by the beneficiaries and as to matters determining the authority of the Trustees, or any one of them to do any act, when duly acknowledged and recorded with the Registry of Deeds shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees, acting in reliance thereon. Any certificate executed by any Trustee hereunder, or by a majority of the Trustees hereunder, setting forth the existence of any facts, the existence of which is necessary to authorize the execution of any instrument or the taking of any action by such Trustee or majority, as the case may be, shall, as to all persons acting in good faith in reliance thereon be conclusive evidence of the truth of the statements made in such certificate, the existence of the facts therein set forth and the existence of the authority of such one or more Trustees to execute and deliver the designated instrument on behalf of the Trust.

Section 6.5 Statement of Common Expenses. The Trustees shall, in accordance with Chapter 183A, upon the written request of any Unit Owner or any encumbrancer or prospective encumbrancer of a Unit, upon payment of a reasonable fee not to exceed the amount specified by law, issue to a person so requesting a written statement (which shall be valid and effective if signed by any one of the Trustees then in office (a "6(d) Certificate")), setting forth the unpaid common expenses with respect to the Unit covered by the request, which shall be conclusive upon the remaining Unit Owners and upon the Trustees in favor of all persons who rely thereon in good faith.

In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his or her share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee, *provided, however,* that any such grantee shall be entitled to a statement from the Trustees setting forth the amount of the unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth. No Unit Owner may exempt himself or herself from liability for his or her contribution toward the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his or her Unit.

Section 6.6 Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Compliance. To the extent required to qualify the Units of the Condominium for Unit mortgages under the then prevailing regulations of the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC"), the following provisions shall apply notwithstanding any other provisions of this Condominium Trust or the Master Deed.

(a) Except as provided by Chapter 183A, in case of condemnation or substantial loss to the Units and/or common areas and facilities of the Condominium, unless at least 67% of the first mortgagees holding mortgages on individual Units of the Condominium (based

upon one vote for each first mortgage owned and representing at least 67% in percentage interest of the mortgaged units in the Condominium) have given their prior written approval, neither the Unit Owners nor the Trustees of the Condominium Trust, by amendment to this Condominium Trust or otherwise, shall:

- (i) by act or omission, seek to abandon or terminate the Condominium;
- (ii) change the pro-rata interest or obligations of any individual Unit for the purpose of: (a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (b) determining the pro-rata share of ownership of each Unit in the common areas and facilities;
- (iii) partition or subdivide any Unit;
- (iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common areas and facilities, provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the common areas and facilities by the Condominium shall not be deemed an action for which any prior approval of a mortgagee shall be required under this subsection; and
- (v) use hazard insurance proceeds for losses to any property of the Condominium (whether to Units or to common areas and facilities) for other than the repair, replacement or reconstruction of such property of the Condominium.

(b) Except as may be otherwise provided by applicable law, any first mortgagee who obtains title to a Unit by foreclosure or pursuant to any other remedies provided in the mortgage or by law will not be liable for such Unit's unpaid common charges or dues which accrued prior to the acquisition of title to such Unit by the mortgagee.

(c) Except as may be otherwise provided by applicable law, in no case shall any provision of this Condominium Trust give a Unit Owner or any other party priority over any rights of the first mortgagee of a Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of such Unit and/or the common areas and facilities of the Condominium.

(d) Any agreement for professional management of the Condominium shall provide for termination by either party without cause and without payment of a termination fee on no more than ninety (90) days notice. Any agreement for professional management of the Condominium with Declarant, or any entity affiliated with Declarant, shall be terminable by the Trustees without cause and without payment of a termination fee at any time after the Initial Period.

(e) Unless otherwise required by applicable law, any holder, insurer or guarantor of a first mortgage on a Unit, upon written request to the Trustees of the Condominium Trust, which includes its name and address and the Unit against which the mortgage in question has been placed, will be entitled to:

- (i) timely written notification of any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit on which it holds the mortgage;
- (ii) timely written notification of any 60-day delinquency in the payment of assessments or charges owed by the owner of the Unit on which it holds the mortgage;
- (iii) timely written notification of a lapse, cancellation or material modification of any insurance policy or fidelity insurance coverage maintained by the Condominium Trust;
- (iv) timely written notification of any proposed action that requires the consent of a specified percentage of "Eligible Mortgage Holders", as hereinafter defined;
- (v) inspect the books and records of the Condominium Trust during normal business hours or as otherwise specified in Chapter 183A;
- (vi) receive an audited annual financial statement of the Condominium Trust within one hundred twenty (120) days following the end of any fiscal year of the Condominium Trust where the Condominium consists of fifty (50) or more Units, or, if the Condominium consists of fewer than 50 Units and there is no audited statement available, or less than 51% the beneficial interest of the Condominium Trust voted to have an audited statement prepared, then such holder, insurer or guarantor of a first mortgage will be entitled to pay for the cost of preparing such audited financial statement; and
- (vii) timely written notice of all meetings of the Condominium Trust, and to be permitted to designate a representative to attend all such meetings.

(f) Unless Unit owners representing at least sixty-seven (67%) percent of the percentage interest in the common areas and facilities, and at least fifty-one (51%) percent (by percentage interest) of the "Eligible Mortgage Holders", as hereinafter defined, have given their prior approval, no amendment shall be adopted which would make any material change to the Master Deed or this Condominium Trust (i.e. other than amendments to correct technical errors or for clarification). A change with respect to any of the following matters is hereby deemed to be material:

- (i) voting rights;
- (ii) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens or the priority of such liens;
- (iii) reductions in reserves for maintenance, repair and replacement of common areas;
- (iv) responsibility for maintenance and repair of the Condominium;

- (v) reallocation of interests in the general or limited common areas, or rights to their use;
- (vi) boundaries of any Unit;
- (vii) convertibility of Units into common areas or of common areas into Units;
- (viii) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium except as provided in the Master Deed;
- (ix) hazard or fidelity insurance requirements;
- (x) imposition of any restrictions on the leasing of Units;
- (xi) imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her Unit;
- (xii) a decision by the Condominium Trust, where the Condominium consists of 50 or more Units, to establish self management when professional management had been required previously by this Condominium Trust or the Master Deed or by an Eligible Mortgage Holder;
- (xiii) restoration or repair of the Condominium premises (after a casualty loss or partial condemnation) in a manner other than as specified in the Master Deed and this Condominium Trust;
- (xiv) any action to terminate the Condominium after substantial destruction or condemnation occurs; and
- (xv) any provisions that expressly benefit holders, insurers or guarantors of mortgages on Units.

As used herein, an "Eligible Mortgage Holder" is any holder of a first mortgage on a Unit who has requested in writing that the Condominium Trust notify it of any proposed action as set forth in this subsection (f).

Any Eligible Mortgage Holder that does not deliver or post to the Condominium Trust a negative response within thirty (30) days of a written request by the Trustees for approval of any addition or amendment pursuant to this subsection (f), provided such written request is delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to the addition or change set forth in such request. An affidavit by a majority of the Trustees making reference to this Section, when filed at the Registry of Deeds shall be conclusive against all persons as to the facts set forth therein.

(g) Any lien of the Condominium Trust for common expense assessments or other charges becoming due and payable on or after the date of filing of a first mortgage on any Unit shall have priority with respect to said mortgage as provided by Chapter 183A. A lien for common expense or other assessments shall not be affected by any sale or transfer of a Unit, except that a sale or transfer pursuant to a foreclosure of a first mortgage, or deed in

lieu of foreclosure, to the holder of a first mortgage, shall extinguish a subordinate lien for assessments which became due and payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a Unit from liability for, nor the Unit from the lien of, any assessment made thereafter.

(h) An initial working capital fund shall be established by the Declarant equal to at least two months' estimated common area expenses for each Unit. Each Unit's share of the working capital fund must be collected and transferred to the Condominium Trust either at the time of closing of the sale of each Unit or when control of this Condominium Trust is transferred to the Trustees elected by Unit Owners other than the Declarant, whichever shall first occur. Said fund shall be maintained in a segregated account for the use and the benefit of the Condominium Trust. Amounts paid into the working capital fund shall not be considered as advance payment of regular assessments. The purpose of the working capital fund is to insure that there will be cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Trustees. During the term of the Initial Trustees, the working capital fund established pursuant to this section cannot be used to defray the expenses, reserve contributions or construction costs which are the responsibility of the Declarant in its role as developer of the Condominium or to make up budget deficits.

(i) In the event that the Unit Owners shall amend the Master Deed or this Condominium Trust to include therein any right of first refusal in connection with the sale of a Unit (or the right to provide a substitute buyer) such right of first refusal shall not impair the rights of a first mortgagee to:

- (a) foreclose or take title to a Unit pursuant to the remedies provided in its mortgage; or
- (b) accept a deed (or assignment) in lieu of a foreclosure in the event of default by a mortgagor; or
- (c) sell or lease a Unit acquired by the first mortgagee through the procedures described in subparagraphs (a) and (b) above.

(j) Consistent with the provisions of Chapter 183A, all taxes, assessments and charges which may become liens prior to a first mortgage under the laws of the Commonwealth of Massachusetts shall relate only to the individual units and not to the Condominium as a whole.

(k) Nothing in the Master Deed or this Condominium Trust shall be construed to impair the right of each Unit Owner to unrestricted ingress and egress to its Unit, which right shall be perpetual and shall run with the Land (as defined in the Master Deed) as an appurtenant right to each Unit.

(l) Any person taking title to a Unit through a foreclosure sale duly conducted by a first mortgagee shall be exempt from any right of first refusal adopted by the Unit Owners and incorporated in the Master Deed or this Condominium Trust.

The Trustees intend that the provisions of this Section 6.6 and all other provisions of this Condominium Trust, including Sections 5.4.2 and 5.8.1, comply with the requirements of FNMA and FHLMC with respect to condominium mortgage loans and, except as otherwise required by the provisions of Chapter 183A, all questions with respect thereto shall be resolved consistent with that intention. In the event of any conflict between the percentage

requirements of FNMA, FHLMC, other sections of the Master Deed and Condominium Trust and Chapter 183A with respect to any action or non-action to be taken or omitted by the Unit Owners or the Trustees, or with respect to any other matter, the greater percentage requirement shall control. The provisions of this Section 6.6 and Section 5.4.2 and 5.8.1 may not be amended without the prior written approval of first mortgage lenders representing at least sixty-seven percent (67%) in number and percentage interest of the mortgaged Units in the Condominium, and sixty-seven percent (67%) in percentage interest of the owners of Units in the Condominium.

## ARTICLE VII

### AMENDMENTS AND TERMINATION

Section 7.1 Amendments. Except as stated in Section 6.6, the Trustees, with the consent in writing of Unit Owners entitled to not less than sixty-seven percent (67%) of the beneficial interest in this Trust, may at any time and from time to time amend, alter, add to, or change this Declaration of Trust in any manner or to any extent, the Trustees first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities.

Any such amendment is subject to the provision however that:

(a) no instrument of amendment that alters the dimensions of any Unit or affects the use of a Unit or the exclusive use of a common area reserved to a Unit shall be of any force or effect unless the same has been signed by the owner of the Unit affected;

(b) Except as provided in Section 5.5.4 hereof or otherwise in the Master Deed, no instrument of amendment that alters the percentage of the undivided interest to which any Unit is entitled in the common areas and facilities shall be of any force or effect unless the same has been signed by the owner of the Unit affected;

(c) No instrument of amendment affecting any Unit in a manner which impairs the security of a first mortgage of record or which would disqualify it for sale to Federal Home Loan Mortgage Corporation or Federal National Mortgage Association under any law or regulation applicable thereto shall be of any force or effect unless the same has been assented to by the holder or holders thereof and no amendment which relates to matters described in Section 6.6 of this Trust and which has not been assented to by the appropriate percentage of the holders of first mortgages as described in said Section 6.6 shall be of any force or effect;

(d) No instrument of amendment according to the purport of which would eliminate, impair or otherwise adversely affect any rights special to the Declarant (i.e., not appertaining generally to all Unit Owners) shall be of any force or effect unless assented to in writing by the Declarant; and

(e) No instrument of amendment that alters this Condominium Trust in any manner that would render it contrary to or inconsistent with any requirements or provisions of Chapter 183A shall be of any force or effect.

Any amendment, alteration, addition or change pursuant to the foregoing provisions of this paragraph shall become effective upon the recording with the Registry of Deeds of an instrument of amendment, alteration, addition, or change as the case may be, signed, sealed and acknowledged in the manner required in Massachusetts for the acknowledgment of

deeds by any two Trustees, if there be at least two then in office (or one Trustee if there be only one in office), setting forth in full the amendment, alteration, addition or change and reciting the consent of the Unit Owners required by this Trust to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all questions as to title or affecting the rights of third persons and for all other purposes. Nothing in this paragraph shall be construed as making it obligatory upon the Trustees to amend, alter, add to or change the Declaration of Trust upon obtaining the necessary consent as hereinbefore provided.

The Declarant reserves for itself and any successors to the Declarant's interest in the Condominium during such time as the Declarant is entitled to appoint the Trustees of the Condominium Trust the right, without the consent or signature of any other Unit Owner or Mortgagee, to amend this Condominium Trust to conform it with the requirements of FNMA and/or FHLMC as they may apply to the Condominium.

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

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

## ARTICLE VIII

### MISCELLANEOUS

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

Section 8.2 Waiver. The provisions of this Trust shall be waived only in writing by the party charged therewith, and not by conduct, no matter how often repeated.



Section 8.3 Partial Invalidity. The invalidity of any provision of this Trust shall not impair or affect the validity of the remainder of this Trust and all valid provisions shall remain enforceable and in effect notwithstanding such invalidity.

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Trust under seal this 27 day of May, 2003

Anita I. Costantini  
ANITA I. COSTANTINI

Frank A. Costantini  
FRANK A. COSTANTINI

Twelve Oaks, LLC, a Massachusetts limited liability company hereby acknowledges and accepts its responsibilities as Declarant under this Declaration of Trust.

Twelve Oaks, LLC

By: Frank A. Costantini  
Frank A. Costantini, Manager

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

May 27, 2003

Then personally appeared the above-named, Anita I. Costantini and Frank A. Costantini acknowledged the foregoing to be their free act and deed, before me.

George J. Lewis  
Notary Public  
My commission expires: 11/26

