

50 Box 138

**THE AVERY AT SWAMPSCOTT CONDOMINIUM
DECLARATION OF TRUST AND BY-LAWS**

THIS DECLARATION OF TRUST AND BY-LAWS is made on the date set forth below, by **Swampscott Living, LLC**, a Massachusetts limited liability company having an address of PO Box 780, Lynnfield, Massachusetts 01940 (the "**Declarant**").

ARTICLE I

NAME OF TRUST

The Trust hereby created shall be known as **The Avery at Swampscott Condominium Trust** (the "**Trust**") and under that name, so far as legal, convenient and practicable, all activities shall be carried on by the trustee(s) of the Trust (hereinafter, the "**Trustee(s)**" or "**trustee(s)**," which term shall be deemed to include all successors hereunder).

ARTICLE II

THE TRUST AND ITS PURPOSE

Section 2.1. Unit Owners Organization. All of the rights and powers in and with respect to the common areas and facilities (the "**Common Areas and Facilities**" or "**Common Elements**") of The Avery at Swampscott Condominium, a condominium located in Swampscott, Essex County, Massachusetts (the "**Condominium**") established by a Master Deed (the "**Master Deed**") of even date herewith and recorded herewith in the Essex South District Registry of Deeds ("**Registry of Deeds**"), which are, under the provisions of Massachusetts General Laws c. 183A, as amended (the "**Act**"), conferred upon or exercisable by the organization of Unit Owners of the Condominium and all property, real and personal tangible and intangible, conveyed to or held by the Trustee(s) (the "**Trust Property**") hereunder shall vest in the Trustees, in trust, to exercise, manage, administer and dispose of the same and to receive the income thereof: (a) for the benefit of the owners of record from time to time (the "**Unit Owners**") of the units (the "**Units**") of the Condominium according to the allocation of undivided interest in the Common Areas and Facilities set forth in the Master Deed of the Condominium, and (b) in accordance with the provision of the Act. This Trust is the organization of Unit Owners established pursuant to Section 10 of the Act for the purposes therein and herein set forth.

Section 2.2. Entity Created. It is hereby expressly declared that a trust and not a partnership has been created, and that the Unit Owners are *cestuis que trustent* and not partners or associates nor in any other relation whatsoever between themselves and with respect to the Common Elements and/or Trust Property other than as Unit Owners of the Condominium, and hold no relation to the Trustee(s) other than of *cestuis que trustent*, with only such rights as are conferred upon them as such *cestuis que trustent* hereunder and under the provisions of the Act.

ARTICLE III

THE TRUSTEE(S)

Section 3.1. Number of Trustees. Until the "Transition Date," described in Section 3.4 below, the Trustee(s) shall be appointed by the Declarant or its successors and assigns. After the Transition Date, there shall be a board of trustees (the "**Board**" or the "**Board of Trustees**") consisting of five (5) natural persons who shall be elected as hereinafter provided. Such natural persons shall be Unit Owners or spouses of Unit Owners. In such case as title to a Unit is held by a trust, partnership, limited liability company or other business or corporate entity, such natural person may be the fiduciary, officer, director, manager or partner of such trust or entity.

Section 3.2. Terms of Trustees. After the Transition Date, the term of each Trustee shall be for a period of three (3) years from the date on which such Trustee is elected or appointed in accordance with the provisions hereunder; provided, however, that such terms shall be on a staggered basis so that in each year one or two terms will expire. To that end, at the initial election after the Transition Date, one Trustee shall be elected for a term of one year, two for two years, and two for three years. Any Trustee whose term has expired shall continue in office until a successor is elected or appointed as hereinafter provided.

Section 3.3. Vacancies, Election, Appointment and Acceptance of Trustees. After the Transition Date, if and when the number of Trustees shall become less than five (5) due to death, disability, removal or resignation, a vacancy shall be deemed to exist, whereupon Unit Owners may by Majority Vote (as defined in Section 4.4) elect a replacement to fill the term. In the event that the Unit Owners should fail to elect a successor Trustee within a thirty (30) day period from the creation of the vacancy, then the Trustee(s) then remaining may appoint a natural person or person, as aforesaid, to fill such vacancy or vacancies, as the case may be. In the event that the Trustee(s) fail appoint a successor Trustee within thirty (30) days from the date they are entitled to appoint a successor to fill the vacancy, or if there is no remaining Trustee, then such vacancy or vacancies shall, upon the petition therefor of any Unit Owner, with notice to all other Unit Owners, be filled by the appointment or appointments of a court of competent jurisdiction. The election or appointment of Trustees shall become effective upon such election or appointment. An instrument certifying such election or appointment shall be recorded with the Registry of Deeds, acknowledged and subscribed to by a majority of the then Trustees, (1) referencing this Declaration of Trust; (2) reciting the election or appointment of the successor Trustee; and (3) containing an acceptance of such election or appointment by the successor Trustee. The failure or delay in recording said instrument shall not affect the validity of such Trustee's appointment or election.

Section 3.4. Trustee during Initial Period of Condominium; Transition Provisions. Notwithstanding the foregoing, during the period beginning with the establishment of the Condominium – that is, the recording of the Master Deed and this Declaration of Trust – until the later of (a) conveyance by the Declarant, or its successors or assigns, of all of the Units which may be included in the Condominium to third-party purchasers, or (b) four (4) years from the conveyance of the first Unit, there shall be one or more Trustee(s) appointed by the Declarant. As described above, the original Trustee appointed by the Declarant is **Swampscott Living, LLC**. The Declarant, at its option, may expand the initial Board of Trustees from one member to two or more members, all of which shall be designated by the Declarant. Within one hundred twenty (120) days after the occurrence of the later of (a) conveyance by the Declarant, or its successors or

assigns, of all of the Units which may be included in the Condominium to third-party purchasers, or (b) seven (7) years from the conveyance of the first Unit (the "**Transition Date**"), the Declarant shall call a special meeting of the Unit Owners for the purpose of electing five (5) Trustees who shall serve as described above as the successor Board. Such Trustees shall be elected by the vote, in person or by proxy, of the Unit Owners. The Declarant may, at its sole option, choose to accelerate the Transition Date to a date which is earlier than that determined as set forth above.

Section 3.5. Trustee Action. In any matter relating to the administration of the Condominium and the exercise of the powers herein conferred, the Trustee(s) may act by majority vote of their number at any duly called meeting at which a quorum is present as hereinafter provided. The Trustees may also act without a meeting by written instrument or instruments executed by all of their number. Notwithstanding anything contained herein to the contrary, despite any vacancy in the office of Trustee, however caused and for whatever duration, the then remaining or surviving Trustees or Trustee shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustees.

Section 3.6. Trustee Meetings; Quorum. Until the Transition Date, regular Trustee meetings shall not be necessary, but may be called by any Trustee upon seven (7) days' written notice to any and all other Trustee(s). After the Transition Date, the Trustees shall meet annually on the date of the annual meeting of the Unit Owners, immediately following such, and at such meeting may elect from their number officers ("**Officer(s)**") including a Chairman, Treasurer and a Secretary, and any other officers they deem expedient. The Trustees shall thereafter meet at such regular intervals, times and places as determined, and specially upon the request of any two Trustees; provided, however, that written notice of each such special meeting setting the place, day, hour and purpose thereof shall be given at least seven (7) days before such meeting to each Trustee, unless such notice is waived by all Trustees. A majority of the number of Trustees then in office shall constitute a quorum at all meetings, and such meetings shall be conducted in accordance with such rules as the Trustees may adopt. Trustee meetings may be held by teleconference or video conference.

Section 3.7. Officers; Committees. After the Transition Date, there shall be from among the Trustees, in addition to such other officers as they may elect from their number, for a term of one (1) year, the following officers who shall have the following listed duties:

- a. Chairman. The Chairman shall be chief executive officer of the Trust. He or she shall preside at all meetings of the Unit Owners and of the Trustees. If the Chairman is unable to act at any time, the remaining Trustees shall appoint some other of their number to act in the place of the Chairman on an interim basis.
- b. Treasurer. The Treasurer shall have the responsibility for overseeing the Trust's funds and securities and shall be responsible for maintaining full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data. He or she shall be responsible for the deposit of all monies and other valuable effects in the name of the Trust in such depositories as may from time to time be designated by the Trustees.

- c. Secretary. The Secretary shall maintain the minutes of all meetings of the Unit Owners and of the Trustees; he or she shall have charge of such books and papers of the Trust; and he or she shall, in general, perform all of the duties incident to the office of clerk or secretary of a business corporation organized under Massachusetts law.

There shall, additionally, be such committees which shall have members ("**Committee Members**") with such duties and responsibilities as designated by the Trustees.

Section 3.8. Resignation and Removal. Any Trustee may resign at any time by an instrument in writing, signed and acknowledged in the manner required in Massachusetts for the acknowledgement of deeds and delivered to the remaining Trustees. Such resignation shall take effect upon the recording of such instrument with the Registry of Deeds, unless specified to be effective at some other time in said instrument. The remaining Trustees or Trustee shall forthwith cause said instrument to be duly recorded with the said Registry of Deeds. Upon a failure thereof, or the absence of other Trustees, the resigning Trustee may so record said instrument and shall notify the Unit Owners thereof.

Any Trustee appointed by the Declarant may be removed by the Declarant only. After the Transition Date, any Trustee may, (1) with cause, be removed by a vote of majority of the then serving Trustees, or (2) with or without cause, be removed by a vote of Unit Owners entitled to at least fifty-one percent (51%) of the Beneficial Interests at a special meeting duly called therefore. In either case, the Trustee to be removed shall be afforded the opportunity to be heard at a meeting of the Board or the Unit Owners. The vacancy so resulting shall be filled in the manner provided in Section 3.3. Any removal shall become effective upon the recording of a certificate thereof with the Registry of Deeds executed by one or more of the then remaining Trustees in office or, upon a failure thereof, by the Declarant (if prior to the Transition Date).

Section 3.9. Bond or Surety. No Trustee shall be obliged to give any bond or surety or other security for the performance of any of his duties hereunder; provided, however, that Unit Owners entitled to at least fifty-one percent (51%) of the Beneficial Interests may at any time require that any one or more of the Trustees, except a Declarant-appointed or court-appointed Trustee, shall give bond in such amount and with such sureties as shall be specified in such vote. All expenses incident to any such bond shall be charged as a Common Expense (as hereinafter defined) of the Condominium. The foregoing shall not affect any fidelity coverages hereinafter required under the insurance provisions of this Trust.

Section 3.10. Compensation of Trustees, Officers and Committee Members. No Trustee, Officer or Committee Member shall receive remuneration (which term shall not be deemed to include reimbursement for expenses incurred by such person in connection with his duties, which reimbursement shall be permitted and charged as a Common Expense) for his services unless so provided for by a vote of Unit Owners entitled to at least fifty-one percent (51%) of the Beneficial Interests and any remuneration so provided shall be from time to time fixed by said Unit Owners, and shall be a Common Expense of the Condominium. With the approval of a majority of the Trustees, any Trustee, Officer, or Committee Member may receive reasonable remuneration for extraordinary or unusual services, professional or otherwise, rendered by him to the Trust, all as shall be from time to time fixed and determined by said Trustees, and such remuneration shall be a Common Expense of the Condominium. No compensation to Trustees may be voted by the

Trustees or the Unit Owners with respect to the period while the Declarant, its successors or assigns, has the right to designate Trustees as provided in Section 3.4.

Section 3.11. No Personal Liability. No Trustee, Officer, or Committee Member shall under any circumstances or in any event be held liable or accountable out of his personal assets or be deprived of compensation, if any, by reason of any action taken, suffered or omitted in good faith, or for allowing one or more of the other Trustees, Officers, or Committee Members to have possession of the Trust books or property, or be so liable, accountable or deprived by reason of honest errors of judgment or mistakes of fact or law or by reason of anything except if he is adjudicated by a court of competent jurisdiction to have acted with his own personal and willful malfeasance and defaults, and/or such other conduct as would exempt him from indemnification as provided in Section 3.13 hereof.

Section 3.12. Trustees, Officers and Unit Owners May Deal with the Condominium. No Trustee nor Unit Owner shall be disqualified by his office or status from contracting or dealing, directly or indirectly, with the Trustees or with one or more Unit Owners as vendor, purchaser or otherwise because of his, the Trustees', Officers', or any Unit Owner's interest in any corporation, firm, trust, partnership or other organization connected with such contracting or dealing, nor shall any such dealing, contract or arrangement entered into in respect of this Trust in which any Trustee, Officer, or Unit Owner, shall in any way be interested be avoided nor shall any Trustee, Officer, or Unit Owner, so dealing or contracting or being so interested be liable to account for any profit realized by any such dealing, contact or arrangement by reason of such Trustee's or Officer's holding office or of the fiduciary relation hereby established, or by reason of such Unit Owner's status, provided the Trustee, Officer or Unit Owner shall act in good faith and shall disclose the nature of his interest before the dealing, contract or arrangement is entered into.

Section 3.13. Indemnification. The Trust shall, to the maximum extent legally permissible, defend and indemnify each of its Trustees, Officers and Committee Members against all liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and counsel fees, reasonably incurred by him in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, in which he may be involved or with which he may be threatened, while in office, or thereafter, by reason of his being or having been such a Trustee, Officer or Committee Member, except with respect to any matter as to which he shall have been adjudicated in any proceeding to have acted in bad faith or with willful misconduct or reckless disregard of his duties. The right of indemnification hereby provided shall not be exclusive of or affect any other rights to which any Trustee, Officer or Committee Member may be entitled herein or by contract or otherwise under applicable law. As used in this Section, the terms "Trustee," "Officer" and "Committee Member" includes his respective heirs, executors and administrators. Nothing in this Section shall, however, be deemed to limit in any respect the powers granted to the Trustees and Officers in this instrument.

Section 3.14. Limited Declarant Liability. Notwithstanding anything to the contrary herein, and notwithstanding any custom or usage to the contrary, it is expressly understood that only the interest in the Condominium of the Declarant shall be bound by the provisions of this Trust and the Master Deed. No member, manager, officer, director or employee of the Declarant shall have any personal liability hereunder.

ARTICLE IV

BENEFICIARIES AND THE BENEFICIAL INTEREST IN THE TRUST

Section 4.1. Beneficiaries and the Beneficial Interests. The beneficiaries of the Trust shall be the Unit Owners of the Condominium as they may be from time to time. The Beneficial Interests in the Trust hereunder shall be divided among the Unit Owners in the same percentages as the undivided interest in the Common Areas and Facilities as specified in the Master Deed (the "**Beneficial Interests**").

Section 4.2. Beneficial Interest Held by One Person. The Beneficial Interest appertaining to each Unit shall not be divided among several Owners of any Unit. To that end, whenever any of the Units is owned of record by more than one person, the several owners of such Unit shall (a) determine and designate which one of such Owners shall be authorized and entitled to cast votes, execute instruments and otherwise exercise the rights appertaining to such Unit, and (b) notify the Trustees of such designation by a notice in writing signed and acknowledged by all of the Owners of such Unit. Any such designation shall take effect upon receipt thereof by the Trustees and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Trustees may designate any one such Owner for these purposes. For Units to which title is held by a fiduciary, the fiduciary shall be the designee. For Units to which title is held by a corporation or business entity, a duly authorized officer, director, manager or partner of such entity shall be the designee.

Section 4.3. Meetings of Unit Owners. Until the Transition Date, regular Unit Owner meetings shall not be necessary, but may be called by any Trustee upon fourteen (14) days' advance written notice. After the Transition Date, there shall be an annual meeting of Unit Owners on the third Thursday of September at 6:30 P.M. at the Condominium or at such other reasonable date, place and time as may be designated by the Trustees (the "**Annual Meeting**") in writing. The Trustees shall give written notice thereof to the Unit Owners at least fourteen (14) days prior to the Annual Meeting date, which notice shall include an agenda and a full description of all matters to be voted upon, if any. At the Annual Meeting, the Trustees shall submit reports of the management and finances of the Condominium, conduct elections as are necessary, and conduct such other business as is proper. Special meetings (including a special meeting in lieu of an annual meeting) of the Unit Owners may be called at any time by the Trustees and shall be called by them upon the written request of Unit Owners holding at least fifty-one percent (51%) of the Beneficial Interests (a "**Special Meeting**"). A request for such a Special Meeting from the Unit Owners shall be accompanied by a delineation of the items the requestors wish to have considered at said meeting, including the text of any proposed amendment to the Condominium documents. Written notice of any Special Meeting designating the place, day and hour thereof, together with a full description of the matter(s) to be considered and/or voted upon, shall be given by the Trustees to the Unit Owners at least fourteen (14) days prior to the date so designated. Accurate minutes of all Unit Owner meetings shall be taken by a person designated by the Trustees and shall be maintained by the Secretary as part of the records of the Trust.

Section 4.4. Voting. Each Unit shall have one (1) vote, which vote shall be weighted in relation to the votes of other Units in accordance with said Unit's Beneficial Interest, as amended from time to time. Unless otherwise specifically provided herein or by law, the vote of a majority of the Beneficial Interests of Unit Owners (weighted as described above) present in person or by proxy

at a duly convened meeting of the Unit Owners at which a quorum is present (“**Majority Vote**”), shall be binding as to those matters within the purview of the Unit Owners. A quorum for the purposes of conducting business at meetings of the Unit Owners shall equal representation of at least twenty-five percent (25%) of the Beneficial Interests.

A Unit Owner may grant to any natural person, upon a form specified by the Trustees, his proxy to vote and/or attend meetings of the Unit Owners. This right to grant proxies shall in no manner vitiate the provision contained in Section 4.2 where a Unit is owned of record by more than one person. The Board may adopt reasonable rules and requirements regarding the use of proxies from time to time.

ARTICLE V

BY-LAWS

The provisions of this Article V shall constitute the By-Laws (the “**By-Laws**”) of this Trust and the organization of Unit Owners established hereby and shall be applicable to the Property of the Condominium, the Trust Property and to the use and occupancy thereof. The term “**Property**” as used herein shall include the Land, Building(s) and all other improvements thereon including the Units and Common Areas and Facilities, owned in fee simple absolute, or otherwise, 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 said the Act. The term “**Trust Property**” shall refer to all property to which title is held by the Trust. The provisions of these By-Laws shall automatically become applicable to real property which may be added to the Condominium upon the recording of an amendment to the Master Deed submitting such additional real property to the provisions of the Act.

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 Condominium and/or the Property and/or the Trust Property in any manner, are subject to these By-Laws, this Declaration of Trust, the Master Deed, the rules and regulations promulgated hereunder, and all covenants, agreements, restrictions, conditions, easements and declarations of record (the “**Title Conditions**”). The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that these By-Laws, this Declaration of Trust, the provisions of the Master Deed and the rules and regulations, as they may be amended from time to time, and the Title Conditions are accepted, ratified and will be complied with.

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

- a. Operating, caring for, keeping up, leasing, managing and maintaining the Common Areas and Facilities of the Condominium or any part thereof.

- b. Owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to or purchased by them as a result of enforcement of the lien for Common Expenses, action under the Act, Section 17 and 18, or otherwise.
- c. Conducting litigation as to any course of action involving the Common Areas and Facilities or arising out of the enforcement of the By-Laws, Rules and Regulations, and Master Deed and this Trust.
- d. Determining and budgeting of the Common Expenses required for the affairs of the Condominium and this Trust, including, without limitation, the operation and maintenance of the Property.
- e. Collecting the Common Charges (which for the purposes of these By-Laws shall mean such portion of the Common Expenses as are payable by the respective Unit Owners) from Unit Owners.
- f. Employing and dismissing necessary for the maintenance and operation of the Common Areas and Facilities.
- g. Opening and utilizing bank accounts on behalf of the Trust and designating the signatories required therefor.
- h. Obtaining such insurance as the Trustees deem appropriate.
- i. Making repairs, additions and improvements to or alterations of the Property and repairs to and restoration of the Property.
- j. Incurring obligations and paying, compromising or adjusting all obligations incurred and rights acquired in the administration of the Trust.
- k. Adopting and amending rules and regulations covering the details of the operation and use of the Common Areas and Facilities, the administration of the Condominium as contemplated by the Master Deed and this Trust, and its interpretation thereof.
- l. Obtaining advice of counsel and relying thereof, and employing, appointing and removing such other persons, agents, managers, officers, brokers, engineers, architects, employees, servants and assistants as they shall deem advisable, and defining their respective duties and fixing their pay and compensation.
- m. Granting of permits, licenses and/or easements and/or leases over, under, through and/or to the Common Elements for utilities, roads and/or all other purposes reasonably necessary and/or beneficial, useful for and/or to the proper maintenance and/or operation of the Condominium and/or the convenience of the Unit Owners, and modifying the terms and provisions of any easements, permits and/or licenses beneficial to the Common Elements and/or the Condominium.

- n. Altering the layout, location, nature and/or use of any of the Common Elements, making installations therein, and moving and removing the same, subject, however, to a Unit Owner's rights to use any appurtenance to this Unit as specified in the Master Deed.
- o. Enforcing obligations of the Unit Owners, including, but not limited to, the levying of general and special assessments for Common Expenses and the providing of adequate remedies for failure to pay such assessments, levying reasonable fines, attorneys' fees, fines, costs and expenses against the Unit Owners for violations by the Unit Owners or persons for whom a Unit Owner is responsible, of the rules and regulations or of the provisions of the Trust or the Master Deed, and in the case of persistent violations of the rules and regulations or of this Trust or the Master Deed by a Unit Owner, or persons for whom a Unit Owner is responsible, requiring such Unit Owner to post a bond to secure adherence thereto.
- p. Investing and reinvesting the funds of the Condominium, or any part of parts thereof, and from time to time and as often as they shall see fit to change investments, including power to invest 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 investment shall be of a character or in an amount not customarily considered proper for the investment of trust funds, or which does or may not produce income.
- q. Selling and exchanging Trust Property or any interest therein for such consideration and upon such terms as they deem advisable.
- r. Purchasing and otherwise acquiring any real or personal property.
- s. Borrowing money and mortgaging or pledging all or any part of the Trust Property, and/or the Condominium's funds, and issuing bonds, notes or other evidence of indebtedness.
- t. Providing for payment by the Trust of real estate taxes becoming due and payable after the date of recording of the Master Deed which are assessed upon all of the land and/or improvements included within the Condominium, instead of upon individual Units and their proportionate interests in the Common Areas and Facilities, and levying an equitable assessment of said tax payments among the individual Unit Owners.
- u. Incurring such liabilities, obligations and expenses, and paying from the principal or the income of the Condominium's funds all such sums, as they shall deem necessary or proper, for the furtherance of the purposes of the Trust.
- v. Determining as to all sums of money and other things of value received by them, whether and to what extent the same shall be deemed to be and shall be accounted for as principal or as income, interest, late charges, attorneys' fees, fines, costs and/or expenses, and as to all charges or expenses paid by them, whether and to what extent the same shall be charged against principal or against interest, late charges, attorneys' fees, fines, costs and/or

expenses, including, without hereby limiting the generality of the foregoing power, to apportion any receipt or expense between principal income, interest, late charges, attorneys' fees, fines, costs and/or expenses, and the power to determine what portion, if any, of the actual income received upon any asset purchased or acquired at a premium or any wasting investment shall be added to principal to prevent a diminution thereof upon the maturity or exhaustion of such asset or investment.

- w. Entering into and having such access to Units and Common Elements reserved to Units in the Condominium as shall be reasonably necessary to the performance and exercise of the duties, obligations, rights and powers of the Trustee(s) hereunder.
- x. Executing any and all instruments incidental or necessary to carry out any of the foregoing powers.
- y. Generally, in all matters not herein otherwise specified, controlling, managing the Property (excluding the Units, except to the extent of use thereof or conduct therein as set forth under the terms of the Master Deed, the Trust, these By-Laws or the Rules and Regulations) as if the Trustee(s) were the absolute owners thereof and doing any and all acts, including the execution of any instruments, which by their performance thereof shall be shown to be in their judgment for the best interest of the Condominium and its Unit Owners.

Section 5.2. Maintenance and Repair of Units; Trustee Access to Units. Except as hereinafter provided, the Unit Owners shall be responsible for the proper maintenance, replacement and repair of their respective Units. Each Unit Owner shall also maintain and care for any Limited Common Area appurtenant to his or her Unit, including any balcony or patio area. Each Unit Owner shall be responsible for any and all damage to any and all other Units and/or the Common Areas and Facilities caused by his failure to satisfy this maintenance obligation, including all costs, charges, attorneys' fees, fines and expenses incurred by the Trust. If the Trustee(s) shall at any time in their reasonable judgment determine that a Unit, or any part thereof, is in such need or maintenance or repair that the market value of one or more other Units is being adversely affected, or that the condition of a Unit, any part thereof, or any fixtures, furnishings, facilities or equipment therein, is hazardous to any Unit or the occupants thereof and/or adversely affects any other Unit and/or the Common Elements and/or the Common Expenses, the Trustee(s) shall in writing request the Unit Owner thereof to perform the needed maintenance, repair, replacement and/or work and/or to correct the relevant condition and/or its cause. In such case as action thereon shall not have been commenced within the time as may be reasonably set by the Trustee(s) and thereafter diligently brought to completion, the Trustee(s) shall be entitled to have such performed for the account of such Unit Owner whose Unit, or Limited Common Elements, is in need thereof and to enter upon and have access to such Unit or Limited Common Elements for these purposes. In the case of an emergency which necessitates immediate action and the Unit Owner is unavailable or fails to take immediate action, the Trustee(s) may proceed thereto without delay. The cost incurred by the Trustee(s) including, but not limited to, attorneys' fees and expenses for such as is reasonably necessary therefor shall constitute an obligation of the applicable Unit Owner and shall be considered a Common Expense attributable to such Unit. The Trustee(s) may in their discretion additionally impose a fine upon a Unit Owner who, in the Trustee(s)' judgment, unreasonably fails to comply with a request made by the Trustee(s) hereunder. The Trustee(s) may also, in their

discretion, impose requirements and rules regarding the time and manner of work within Units, construction access, and related parameters.

Should it be necessary that any part of a Unit, personal property of a Unit Owner, and/or any part of the Common Areas and Facilities to which a Unit Owner has the right of exclusive use, be required to be removed for the purpose performing such work, or for the purpose of the Trustee(s) performing work upon the Common Elements, such Unit Owner shall promptly comply with such request by the Trustee(s). Should such Unit Owner fail to so comply, or in the case of emergency, the Trustee(s) may remove and store such part and/or property for the account of the Unit Owner, the cost of which, including, but not limited to, attorneys' fees, fines and expenses shall constitute an obligation of the applicable Unit Owner and shall be considered a Common Expense attributable to such Unit. Such removal and storage shall be commercially reasonable in manner, extent and terms.

In addition to the foregoing, each Unit Owner shall be required to maintain appropriate climate control, keep his or her Unit clean, and take necessary measures to retard and prevent mold from accumulating in the Unit. Each Unit Owner shall be required to clean and dust the Unit on a regular basis and to remove visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces as soon as reasonably possible and must not block or cover any heating, ventilation, or air-conditioning ducts. Unit Owners are required to report immediately in writing to the Trustees: (i) any evidence of water leak or water infiltration or excessive moisture in the Unit, common hallways, if any, and any other Common Areas and Facilities; (ii) any evidence of mold that cannot be removed with a common household cleaner; (iii) any failure or malfunction in heating, ventilation or air conditioning, and (iv) any inoperable doors or windows and each Unit Owner shall be responsible for damage to the dwelling unit and personal property as well as any injury to the Unit Owner and/or occupants of the Unit resulting from the Unit Owner's failure to comply with these terms. Each Unit Owner is fully responsible and liable for the entire amount of all cleaning expenses and remediation costs incurred by the Trustees to remove mold from the Unit if the Unit Owner fails to remediate same and each Unit Owner shall be responsible for the repair and remediation of all damages to the Unit caused by mold.

In connection with all required maintenance, repair and replacement work to be carried out by the Unit Owner(s) hereunder, the Unit Owner shall: (1) obtain, at the Unit Owner's expense, all necessary approvals, variances, permits and/or licenses; (2) perform such work in a good and workmanlike manner and in full compliance with all applicable federal, state and local laws, ordinances, codes, bylaws and rules, including those relating to zoning, building, health, safety and sanitation; and (3) comply with all reasonable rules and requirements promulgated by the Board relative to construction, modification, noise and access. Upon the Board's request, the Unit Owner shall provide the names and contact information of all contractors who perform any work on the Unit.

Section 5.3. Maintenance, Replacement and Repair of Common Areas and Tort Immunity. Except as stated in the Master Deed or in Section 5.2, the Trustee(s) shall be responsible for arranging for the proper cleaning, replacement, maintenance and repair of the Common Areas and Facilities and such other portions of the Condominium as may be herein specified within the budgetary constraints of the Condominium. The Trustee(s) may approve payment of vouchers for such work, and the expenses of such replacement, maintenance and repair shall be assessed to the Unit Owners

as Common Expenses of the Condominium at such times and in such amounts as provided in Section 5.5; provided, however, that such cleaning, replacement, maintenance and/or repair as may be necessitated by the negligence, misuse or neglect of a Unit Owner, his family, servants, agents, employees, invitees, lessees, licensees, pets, or others upon the Property at the Unit Owner's behest, whether directly or by virtue of a Unit Owner's failure to properly maintain, repair or replace the Unit, components thereof, or Common Elements to which such Unit Owner has exclusive use, including all charges, fines, attorneys' fees, costs and expenses, shall be charged to such Unit Owner, constitute an obligation of such Unit Owner and be considered a Common Expense attributable to such Unit, except to the extent such as are covered by the Trust's master insurance policy.

The Trust and Trustees shall not be liable, in any legal action brought by or on behalf of a Unit Owner, resident or visitor, for bodily injury or death occurring to a Unit Owner, resident or visitor on the Trust's Common Areas and Facilities, on Limited Common Elements of a Unit unless the Trust or Trustees are adjudicated after final appeal to have acted with gross negligence, recklessness or willful misconduct.

Section 5.4. Right of Access. The Trustee(s) or any other person authorized by the Trustee(s), shall have a right of access to any Unit, and/or Common Elements to which a Unit has an exclusive right of use, for the purpose of making inspections, or for the purpose of correcting any conditions originating in the Unit and/or said Common Elements, or threatening another Unit or the Common Areas and Facilities, or for any other purpose reasonably necessary for the proper maintenance or operation of the Condominium, or for any other purpose as herein provided for which access to a Unit and/or said Common Elements is necessary; provided, however, that such entry is made after forty-eight (48) hours' advance written notice and that any such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, however, or in such case as a Unit Owner fails to cooperate with the Trustee(s) after notice as aforesaid, such right of entry shall be immediate and without notice where such is impractical, and may be completed whether or not the Unit Owner is present. In furtherance hereof, the Trustees may require that each Unit Owner shall provide to the Trustee(s) duplicate keys or appropriate key fobs or other technology to all locks upon every means of access to a Unit.

Section 5.5. Common Expenses, Profits and Funds. The Unit Owners shall be liable for Common Expenses and entitled to common profits of the Condominium in proportion to their respective percentages of the Beneficial Interests. The Trustees may round installments of Common Expenses to the nearest whole dollar. The Trustee(s) may at any time or times, as they in their sole discretion may determine, distribute common profits and/or surplus accumulation among the Unit Owners in such proportions.

a. Reserve Funds. The Trustee(s) shall establish and maintain as hereinafter provided the following separate and segregated funds to be used for the purposes hereinafter specified:

i. Capital Expense Fund. The Trustee(s) shall set aside from the regular monthly payments of Common Charges an amount to be adequate and appropriate to provide a reserve for the periodic repair and/or replacement of the Common Elements and other capital purposes and may, to the extent consistent with these purposes, use the funds so set aside for the reduction of indebtedness or other lawful capital purpose, or subject to the provisions of these By-Laws and the provisions of the

Act, Section 17 and/or 18, for the repair, replacement, rebuilding, restoration or improvement of the Common Areas and Facilities. Such reserves shall be maintained in a separate and segregated account to be known as the Capital Expense Reserve Account and the funds so set aside shall not be deemed common profits available for distribution; but, rather, shall be considered as property of the Trust held for the account of the Unit Owners in accordance with their respective Beneficial Interests. To ensure the adequacy of such Capital Expense Reserve Account, the Trustee(s) may periodically engage an appropriate professional to undertake a capital reserve study, and/or to up-date one previously undertaken, and based thereon establish an appropriate policy to fund such capital expense needs as therein determined.

- ii. Working Capital. The Trustee(s) may maintain a working capital reserve in an amount as the Trustee(s) shall in their judgment determine as adequate and appropriate, to provide available funds to meet unforeseen expenditures, to cover cash flow requirements, or to acquire additional equipment or services deemed by the Trustee(s) as necessary or desirable, and may, to the extent consistent with these purposes, use the funds so set aside consistent with the provisions of these By-Laws. Such Working Capital Reserve Account shall be maintained in a separate and segregated account to be known as the Working Capital Reserve Account and the funds so set aside shall not be deemed common profits available for distribution, but, rather, shall be considered as the property of the Trust. The purchasers of each Unit from the Declarant shall be responsible for the payment of an additional amount equal to two months' Common Charges to initially fund the Working Capital Reserve Account. Such amounts shall not be considered an advance on the payment of Common Charges but, rather, a separate cost. Subsequent purchasers may also be required to contribute funds for Working Capital Reserve as determined by the Trustee(s).

- b. Determination of Common Expenses and Fixing of Common Charges. The Trustee(s) shall prepare a budget for the Condominium by establishing the Common Expenses expected to be incurred during the ensuing fiscal year together with a reasonable provision for contingencies and reserves as referred to above, and after taking into account any undistributed common profits from prior years (reserves excepted), shall determine the assessment to be made for such fiscal year (herein referred to as "**Common Expenses**"). The Common Expenses shall include, but in no way be limited to, all such amounts as the Trustee(s) may deem proper for the operation and maintenance of the Condominium including, without limitation, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained pursuant to the provisions of this Declaration of Trust, an amount for a capital expense reserve, an amount for a working capital reserve, and an amount to make up for any deficit in the Common Expenses for any prior year. The Common Expenses may also include such amounts as may be required for the purchase or lease by the Trustee(s), on behalf of all Unit Owners, pursuant to the terms of this Declaration of Trust, of any Unit which is to be sold at foreclosure or other judicial sale, or otherwise. In the event an annual assessment is not made as above required, an assessment shall be presumed to have been made in the amount of the last prior assessment.

In the event that the Trustee(s) shall determine at any time during the fiscal year that the assessment so made is less than the Common Expenses actually incurred, or in the reasonable opinion of the Trustee(s), likely to be incurred, or in the event that the Trustee(s) shall determine that it is advisable to establish a larger reserve or other fund for projected capital expenses or working capital or other expenditures or otherwise, the Trustee(s) may make one (1) or more temporary fee increases to the Common Charges and/or supplemental assessments and render such statements as they may deem necessary therefor in the manner aforesaid, and the amount shown in such statement shall be payable and take effect as aforesaid.

- c. Payment and Collection of Common Expenses. The Trustee(s) shall, so far as reasonably possible, provide for payment of the annual assessment of Common Charges in advance in monthly substantially equal installments, which shall be due upon the first day of each month, or such other periodic payment as the Trustee(s) may determine. The amount of each such assessment, together with late charges as may be reasonably imposed by the Trustee(s), reasonable attorneys' fees, fines and interest on the assessment at the rate of one and one-half percent (1½%) per month, if that amount is not paid when due, shall constitute a lien on the Unit of the Unit Owner assessed and the personal obligation of the Unit Owner, all pursuant to provisions of the Act, Section 6. The Trustee(s) shall take prompt action to collect any Common Charges due from any Unit Owner which remain unpaid. The Trustee(s) may, also, prohibit the delinquent Unit Owner, or persons occupying his or her Unit, from using any of the Common Elements of the Condominium, if any, not necessary to the use of the Unit. To the extent a Unit Owner may be persistently delinquent in the timely payment of Common Charges due, as the Trustee(s) in their sole discretion may determine, the Trustee(s) may require such Unit Owner to pay the Common Expenses due in one (1) lump sum as opposed to periodically as herein provided for. All obligations and charges to a Unit Owner and such Unit Owner's Unit shall for the purposes hereof be deemed a Common Expense attributable to such Unit and payment thereof shall be enforceable as herein provided.
- d. Payment of Common Expenses Subsequent To Transfer. No Unit Owner shall be liable for the payment of any part of the Common Charges assessed against his Unit subsequent to a sale, transfer or other conveyance by him of such Unit. A purchaser of a Unit shall not be personally liable for the payment of Common Charges assessed and unpaid against such Unit prior to the acquisition by him of such Unit unless such purchaser has agreed to assume such obligation. This provision shall not, however, affect the statutory lien on such Unit for such unpaid Common Charges. Except as provided in the Act, Section 6, a purchaser of a Unit at a foreclosure sale of such Unit by a first mortgagee or any first mortgagee who comes into possession of the Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims and/or liens for unpaid assessments or charges against the mortgaged Unit which accrue prior to the time such holder comes into possession of the Unit.
- e. Default In Payment of Common Expenses. In the event of default by any Unit Owner in paying to the Trustee(s) the Common Expenses attributable to his Unit (the "Common

Charge”), such Unit Owner shall be obligated to pay all expenses, including attorneys’ fees, fines, late charges and interest incurred by the Trustee(s) in any proceeding brought to collect such unpaid Common Charges, irrespective of the amount so unpaid. The Trustee(s) shall have the right and duty to attempt to recover such unpaid Common Charges, irrespective of the amount so unpaid, together with late charges, interest thereon, fines and the expenses of the proceeding, including attorneys’ fees, in an action to recover the same brought against such Unit Owner, or by foreclosure of the lien on such Unit, or in any proceeding wherein the Unit Owner seeks to avoid payment of the Common Charges due, all such constituting a lien as provided in Section 6 of the Act. In furtherance hereof, a defaulting Unit Owner hereby waives any argument upon such a proceeding that the expenses thereof, including attorneys’ fees, are unreasonable and/or excessive when considered in the light of the amount so unpaid. A Unit Owner shall, upon any action brought by the Trustee(s) to collect unpaid Common Charges, have no right to make any claims or defense of off-set upon any basis.

After an action is commenced by the Trustee(s) to foreclose a lien on a Unit because of unpaid Common Charges, a Unit Owner remaining in his Unit for any period of time thereafter shall be required to pay a reasonable fee for the use and occupancy of his Unit and a receiver may be appointed to collect same. The Trustee(s) acting on behalf of all Unit Owners, shall have power to purchase a Unit at the lien foreclosure sale and to acquire, hold, lease, mortgage (but not to vote the votes appurtenant thereto), convey or otherwise deal with the same. A suit to recover a money judgment for unpaid Common Charges shall be maintainable without foreclosing or waiving the lien securing the same, and may be brought simultaneously with an action to so establish and foreclose upon said lien.

During such time that a Unit Owner remains in default of any payment due hereunder or the performance of any other obligations or covenant under this Declaration or the Master Deed, the Board may suspend or limit such Unit Owner’s right to vote at any meeting of the Unit Owners, in person or by proxy, or to use any part of the Common Elements.

- f. Application of Common Funds. The Trustee(s) shall expend common funds only for purposes permitted hereby and by the provisions of the Act.
- g. Notice of Default in Payment of Common Expenses. Pursuant to the applicable provisions of the Act, Section 6, and/or upon the written request of the holder of any mortgage upon a Unit, the Trustee(s) shall notify such holder of any default by a Unit Owner in the payment of his share of the Common Expenses.
- h. 6(d) Certificates. Upon request of a Unit Owner or his designee, the Trustee(s) shall, within ten (10) business days, provide a certificate in conformity with the Act, Section 6(d), specifying the amount, if any, of any unpaid Common Charges assessed to the Unit Owner and/or attributable to the Unit. The Trustee(s) may in their discretion impose a reasonable fee for the provision of such statement. Such Certificate need only be signed by any one (1) Trustee. A majority of the Trustees, by an instrument recorded at said Registry, may delegate the authority to sign 6(d) certificates to a third party including a managing agent or employees or principals of a managing agent.

- i. Notwithstanding the above provisions of this Section 5.5, until the completion of construction of all the Unit interiors and the Common Elements, so that Units can be occupied, no Common Charges or Reserve Funds, shall be assessed or due and payable on account of any Unit.

Section 5.6. Insurance. The Trustee(s) and the Unit Owners shall obtain and maintain the following insurance policies:

- a. Casualty Insurance. The Trustee(s) shall obtain and maintain, to the extent reasonably obtainable at costs deemed reasonable to the Trustees in their sole discretion and permitted by applicable law, so-called master policies of insurance providing fire-with-extended coverage and so-called "all risk" coverage insurance, insuring the Building including, without limitation, the Common Areas and Facilities, all of the Units with all fixtures, additions, alterations and improvements thereof, all heating and cooling equipment and other service machinery, apparatus, equipment and installations comprised in the Common Areas and Facilities, and also all such portions normally deemed to constitute part of the buildings and customarily covered by such insurance, but not including any furniture, furnishings, or household and personal property belonging to and owned by individual Unit Owners or tenants, in an amount equal to not less than one hundred percent (100%) of the full replacement value thereof (exclusive of foundations, land and other items normally excluded therefrom) without deduction or depreciation. Coverage may be subject to a reasonable deductible as the Trustee(s) may determine, from time to time, and shall include Agreed Amount, Inflation Guard (if reasonably obtainable), Ordinance or Law coverage including increased cost of construction and demolition (if applicable), Replacement Cost Endorsements and boiler and machinery insurance in such limits as the Trustee(s) may, from time to time, determine. In determining full replacement value, the Trustee(s) may reasonably rely upon the advice of the insurer or other commercially reasonable appraisal and such replacement value should be updated periodically but no less than every three (3) years. The name of the insured under such policy shall be stated in form, substance and effect similar to the following: "Trustee(s) of The Avery at Swampscott Condominium Trust for use and benefit of the Unit Owners of The Avery at Swampscott Condominium and their mortgagees as their interests may appear." Such insurance shall contain the standard mortgagee clause and shall name the Trustee(s) as Insurance Trustee(s) (as defined herein) for the use and benefit of all Unit Owners and their mortgagees as their interest may appear, with losses payable to and adjusted by the Trustee(s) as Insurance Trustee(s) in accordance with the provisions of these By-Laws. The Trustee(s) may insure against such other hazards or risks of casualty as the Trustee(s) from time to time in their discretion shall determine to be appropriate, including, but not limited to earthquake and flood insurance.
- b. Liability Insurance. The Trustee(s) shall obtain and maintain, to the extent obtainable and/or applicable, master policies of insurance with respect to the Common Areas and Facilities for the benefit and protection of the Trust and all Unit Owners for: (i) comprehensive general liability insurance in such limits as the Trustee(s) may, from time to time, determine but in no case less than \$1,000,000.00 per occurrence/\$2,000,000.00 in the general aggregate and (ii) an excess/umbrella liability policy with a limit of no less than \$2,000,000.00 per occurrence and general aggregate (to apply excess of general liability,

automobile liability and employers liability coverages), covering the Trust, the Trustee(s), the Property Manager (as defined herein), if any, and each Unit Owner with respect to liability arising out of ownership, maintenance or repair of the Common Areas and Facilities of the Condominium, such insurance containing a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Condominium Unit Owner because of negligent acts of the Trust, the Trustee(s), the Unit Owner or other Unit Owners, and other provisions commonly referred to as a "Special Condominium Endorsement" or its equivalent; (iii) workmen's compensation and employers liability insurance and non-owned automobile liability insurance with respects to employees of the Condominium, if any; and (v) such other liability insurance as the Trustee(s) may from time to time deem appropriate and desirable.

- c. Fidelity Coverage. The Trustee(s) shall obtain fidelity coverage against dishonest acts on the part of the Trustee(s), the Property Manager (as defined herein), if any, employees or volunteers responsible for handling funds belonging to the Trust or administered by the Trustee(s). This fidelity insurance shall name the Trustees of The Avery At Swampscott Condominium Trust as the named insured and shall be written in an amount equal to the maximum amount that will be in custody of the Trust at any one time, but in no event less than three (3) months Common Expenses plus all reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.
- d. Directors and Officers Liability Insurance. The Trustee(s) may obtain Directors' and Officers' Liability Insurance in such amounts and upon such terms as they deem appropriate.
- e. FHLMC and FANNIE MAE Insurance Requirements. The Trustees may rely upon the advice of its insurance agent in determining what coverages and in what amounts those coverages should be maintained by the Trust.
- f. Unit Owners' Insurance. Unit Owners shall carry insurance for their own benefit insuring their furniture, fixtures, furnishings, improvements and other personal property located within their respective Units or its appurtenances (including any storage area, bike room, garage, or patio or balcony areas), and for such as is not covered by the Condominium master policies – particularly any deductible; provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Trustee(s) shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner. Unit Owners shall in all events maintain liability insurance covering damage to the Property in such reasonable amounts as the Trustee(s) may determine and, upon request, provide evidence thereof to the Trustee(s). In addition, any Unit Owner who has been authorized to carry out any work on his or her Unit shall ensure that the Unit Owner and any approved contractor have adequate insurance as may be determined by the Board. Any Unit Owner who fails to carry insurance as required hereunder shall be subject to such fines and penalties as the Trustees may, from time to time, promulgate by Rule.

- g. Terms and Conditions of Policies. Policies for casualty insurance, and to the extent applicable, such other policies of insurance, shall provide: (i) that the insurance company waive any right of subrogation against the Trustee(s), their agents and employees, and the Unit Owners, their respective employees, agents, tenants and guests to the extent they are not specifically obligated hereunder; (ii) that the insurance shall not be prejudiced by any act or neglect of any Unit Owners or occupants or any other person or firm (including employees and agents of the Trustee(s)) when such act or neglect is not within the control of the Trustee(s) (or Unit Owners collectively) or by failure of the Trustee(s) or Unit Owners collectively to comply with any warranty or condition with regard to any portion of the premises over which the Trustee(s) (or Unit Owners collectively) have no control; (iii) that such policies may not be canceled without at least twenty (20) days' prior written notice to all Unit Owners and mortgagees of Units to whom certificates of insurance have been issued; (iv) that recovery thereunder shall not be affected on account of the availability of proceeds under any policies obtained by individual Unit Owners covering their Units; and (v) if obtainable, that the company shall waive any right it may have under the policy to repair or restore damage should the Unit Owners elect to terminate the Condominium because of such damage.

Such insurance policies may provide for a deductible for each coverage thereof as determined by the Trustee(s) in their absolute discretion. In the event of any loss which relates in part to insurable portions of a Unit, or Units, and/or in part to the Common Elements, the Trustee(s) shall apportion the deductible amount directly proportional to the amount of such loss related to such Unit or Units, and/or the amount of the loss related to the Common Areas and Facilities. Where such loss is solely to a Unit, the deductible amount shall be borne solely by the Unit Owner thereof. Where such loss is solely to the Common Elements, such shall be borne from the common funds, unless such loss is determined by the Board to have been caused by the negligence, recklessness or willful misconduct of a Unit Owner(s), in which case the Board may assess such amounts to such Unit Owner(s), together with any additional costs incurred as a result of such negligence, recklessness or willful misconduct (including, but not limited to, the costs of any premium increases and any deficiencies or other amounts).

- h. Insurance Appraisal. The Trustee(s) may obtain an appraisal of the full replacement value of the property to be insured in accordance with the foregoing provisions of this Section, without deduction for depreciation, for the purpose of determining the amount of insurance to be maintained pursuant to this Section. If the Trustee(s) in their discretion deem it necessary, they shall upon notification of improvements to be made to a Unit by a Unit Owner increase the insurance coverage afforded by said master policy.
- i. Trustee(s) As Insurance Trustee(s). The Trustee(s): (i) shall have exclusive authority to negotiate all losses as herein provided for, (ii) shall collect and receive all loss insurance proceeds, and (iii) shall hold, use, apply and disburse the same in accordance with the applicable provisions of these By-Laws for the benefit of the Unit Owners and their respective mortgagees. With respect to losses which affect portions or elements covered by such insurance or more than one Unit and/or the Common Elements to different extents,

the proceeds relating thereto shall be used, applied and disbursed by the Trustee(s) in their judgment in a fair and equitable manner, primarily based upon the relative losses.

- j. Authorized Insurance Representative. Notwithstanding any of the forgoing provisions and requirements to the contrary relating to physical damage or liability insurance, there may be named as an insured, on behalf of the Trustee(s), the Trustee(s)' authorized representative, including any Trustee, with whom such Trustee(s) may enter into any insurance trust agreement or any successor to such Trustee (each of whom shall be referred to herein as the "**Insurance Trustee**"), who shall have exclusive authority to negotiate losses under any policy providing such physical damage or public liability insurance. Each Unit Owner appoints the Trustee(s), or any Insurance Trustee or substitute Insurance Trustee designated by the Trustee(s), as his attorney-in-fact for the purpose of purchasing, maintaining and administering such insurance, including without limitation the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.
- k. Notification of Mortgagees. The Trustee(s), on behalf of the organization of Unit Owners, shall, when requested by mortgagees of Units, give written notice to such mortgagees of any such loss to the Common Areas and Facilities, or to the Unit mortgaged, as the mortgagee requests.
- l. Certificates of Insurance. Certificates of insurance with proper mortgage endorsements, when requested, shall be issued to Unit Owners or their designees. The Trustee(s) may charge a reasonable fee for obtaining and issuing such certificates.

Section 5.7. Rebuilding, Restoration and Condemnation. The following provisions shall apply in the case of casualty loss or condemnation:

- a. Casualty Loss. In the event of damage to or destruction of the Condominium as a result of fire or any other casualty, the Trustee(s) shall proceed as follows:
- b. Casualty Loss to Units. Where such damage or destruction is solely to a Unit, or Units, the Insurance Trustee designated herein shall promptly adjust and collect the loss and disburse the master policy insurance proceeds in appropriate progress payments with appropriate retainage to the Unit Owner(s) affected so as to facilitate and ensure the repair and restoration of the Unit or Units, so damaged or destroyed. In such case as an affected Unit Owner should fail to promptly take such action as the Trustee(s) deem appropriate to repair or restore his Unit, the Trustee(s) may, but shall not be obligated to, proceed thereto, in whole or in part, for his account and utilize the said insurance proceeds accordingly. The affected Unit Owner(s) shall bear any cost or expense for such repair and restoration in excess of the available insurance proceeds under the master policy, including any excess resultant from the application of any deductible thereon. Where more than one Unit is so damaged or destroyed, said proceeds and deductible shall be apportioned based upon the basis of the relative damage to each Unit; provided, however, that in such case as such damage or destruction is caused by the acts or omissions of a Unit Owner, his family, servants, agents, employees, invitees, licensees or lessees, any deficiency in the insurance

proceeds shall be borne solely by such Unit Owner. Similarly, should there be any deficiency in the insurance proceeds resultant from a Unit Owner's failure to promptly and accurately report any improvements to his Unit, such deficiency shall be borne by such Unit Owner. The extent to which the cost is in excess of the insurance proceeds is attributable to such Unit Owner's failure to report improvements or is due to the acts or omissions as aforesaid shall be determined by the Trustee(s) in their reasonable discretion.

- c. Casualty Loss to Unit and Common Elements or Common Elements Only. Where such damage or destruction is solely to the Common Elements, or to both the Common Elements and Units, the Trustee(s), in their reasonable discretion, shall forthwith determine whether or not the loss exceeds ten percent (10%) of the value of the entire condominium immediately prior to the casualty and thereupon shall notify all Unit Owners of such determination. In furtherance thereof the Trustee(s) may employ such persons, firms or entities as are, in their judgment, appropriate to assist in such determination.
- d. Loss Less Than Ten Percent. If the loss as so determined is less than, or equals, ten percent (10%) of the value of the entire Condominium immediately prior to the loss, the Trustee(s) shall proceed as provided above provided that the Common Elements shall be repaired and restored by the Trustee(s) and any deficiency thereto relating shall be borne from common funds.
- e. Loss In Excess of Ten Percent. If the loss to the Common Elements as so determined exceeds ten percent (10%) of the value of the entire Condominium immediately prior to the loss, the Trustee(s) shall seek the agreement of Unit Owners entitled to seventy-five (75%) of the Beneficial Interests by submitting to the Unit Owners a form of agreement (the "**Restoration Agreement**") whereby the Unit Owners authorize the Trustee(s) to proceed with the necessary repair and restoration. If such percentage of Unit Owners agree (by executing the Restoration Agreement) to proceed to the necessary repair and restoration, then the Trustee(s) shall proceed thereto as provided above; provided that the cost of such repair and restoration in excess of available insurance proceeds shall be a Common Expense payable from common funds or by special assessment, if necessary; and further provided, however, that any Unit Owners who did not so agree may apply to the Superior Court of the county in which the Condominium is located on such notice to the Trust as the Court shall direct, for an order directing the purchase of their Units by the Trust at the fair market value thereof as approved by the Court. The cost of any such purchase shall be a Common Expense. If such percentage of Unit Owners do not, within one hundred twenty (120) days of the occurrence of such loss, agree to proceed with the repair and restoration (by executing the Restoration Agreement and timely returning the same to the Trustee(s)), a Unit Owner's proportionate share of the insurance proceeds with respect to the Common Areas and Facilities, together with the portion of the insurance proceeds allocated to any Unit as a result of a loss to such Unit due to the casualty shall, to the extent permitted by law, be paid first to the holder of the first mortgage of such Unit, if any, up to, but not in excess of, the then principal balance secured thereby and any accrued interest and other charges then due the holder of the first mortgage, and thereafter to the Unit Owner, and if first mortgagees, of which the Trustee(s) have received notice, holding mortgages on Units having at least fifty-one percent (51%) of the Beneficial Interest

approve a suit for partition then the Condominium shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is recorded. The net proceeds of a partition sale together with common funds of the Trust (adjusted for insurance proceeds paid or payable to mortgagees as aforesaid) shall be divided all as provided by law and distributed, with respect to the amounts respectively secured thereby, to the secured parties and thereafter to the Unit Owners. Upon such sale, the Condominium shall be deemed removed from the provisions of the Act.

The Trustee(s) may perform emergency work essential to the preservation and safety of the Property or the safety of persons, or required to avoid the suspension of any essential service to the Condominium without having first adjusted the loss or obtained proceeds of insurance or otherwise having complied herewith.

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

Notwithstanding anything to the contrary contained in this Subsection, in the event that any Unit Owner shall dissent from any determination of the Trustee(s) with respect to the value of the Condominium or any other determination or action of the Trustee(s) under this Subsection by notice in writing to the Trustee(s) within ten (10) days after such determination or action, and such dispute shall not have been resolved within thirty (30) days after such notice, then either the Trustee(s) or the dissenting Unit Owner may submit the matter to arbitration, and such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

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

The foregoing provisions are intended to comply with Section 17 of the Act and to be, in addition, consonant with the requirements of FHLMC and FANNIE MAE. To the extent there is a conflict between the provisions hereof and the Act, the Act shall control.

- f. Eminent Domain. If more than ten percent (10%) of the entire Condominium is taken under any power of eminent domain, the taking shall be treated as a "casualty loss," and the provisions of Section 17 of the Act of Massachusetts General Laws shall apply. Where

one (1) or more Units have been substantially altered or rendered uninhabitable as a result of a partial taking, and the Unit Owners vote to restore and continue the Condominium pursuant to the provisions of Section 17 of said the Act, the Trustee(s) shall have the authority to acquire the remaining portions of such Units, for such price as the Trustee(s) shall determine, provided that any Unit Owner of such remaining portion who does not agree with such determination may apply to the Superior Court, on such notice to the Trustee(s) as the Court shall direct, for an order directing the purchase of such remaining portion at the fair market value thereof as approved by the Court. Where as a result of a partial taking any Unit is decreased in size or where the number of Units is decreased by a partial taking, then the Trustee(s) may make such provision for realignment of the undivided interests in the Common Areas and Facilities as shall be just and equitable.

In the event of a total or partial taking under the powers of eminent domain, the Unit Owners shall be represented by the Condominium acting through the Trustee(s). In the event of a partial taking the award shall be allocated among the affected Units according to their appurtenant Beneficial Interest, and paid first to the extent permitted by law, to the holder(s) of the first mortgage of such Unit(s), if any, up to, but not in excess of, the then principal balance secured thereby and any accrued interest and other charges then due the holder(s) of the first mortgage. In the case of a total taking of all Units and the Common Areas and Facilities, the entire award shall be payable to the Trustee(s) to be allocated among the Units according to their appurtenant Beneficial Interest, and paid first to the extent permitted by law, to the holder(s) of the first mortgages of such Unit(s), if any, up to, but not in excess of, the then principal balance secured thereby and any accrued interest and other charges then due the holder(s) of the first mortgage. As to any portion or portions of any award which are attributable to direct or consequential damages suffered by particular Units, they shall be payable to the owners of such particular Units and their mortgagees, as their interests may appear.

- g. Retention of Architect. Whenever the estimated cost, as determined by the Trustee(s), of repair or restoration exceeds as to any one (1) casualty or occurrence, ten percent (10%) of the value of the entire Condominium or twenty-five percent (25%) of the value with respect to any one (1) Unit, then the Trustee(s), unless waived by unanimous vote, shall retain a licensed architect or licensed engineer, who shall not be directly or indirectly a Unit Owner or an employee or agent of any Unit Owner or a Trustee or an employee or agent of any Trustee, to supervise the work of repair or restoration, and no sums shall be paid by the Trustee(s) on account of such repair or restoration except upon certification to them by such architect or engineer that the work for which payment is being made has been completed in a good and workmanlike manner in accordance with approved plans and specifications, and that the estimated total cost of completion of said repair or restoration, less amounts theretofore advanced, does not exceed the undisbursed proceeds of insurance as augmented by funds obtained by any assessment levied or chargeable to the Unit Owners as a Common Expense. The Unit Owner shall bear all costs relating to the architect and the Trustees shall have the right to direct said architect for purposes of ensuring the work or repair or restoration is adequately supervised.

Section 5.8. Improvements to the Units and Common Elements. The following provisions shall apply in the case of any improvement at the Condominium.

- a. Improvements to Common Areas and Facilities. If and whenever the Trustee(s) shall propose to make any improvement to the Common Areas and Facilities or shall be requested in writing by Unit Owners entitled to at least than fifty-one percent (51%) of the Beneficial Interests to make any such improvement, the Trustee(s) shall submit to all Unit Owners a form of agreement (which may be in several counterparts) (the “**Improvement Agreement**”) specifying the improvement or improvements proposed to be made and the estimated cost thereof, and authorizing the Trustee(s) to proceed to make the same. Upon the receipt by the Trustee(s) of such Improvement Agreement executed by Unit Owners entitled to seventy-five percent (75%) of the Beneficial Interests or the expiration of ninety (90) days after such agreement was first submitted to the Unit Owners, whichever of said events shall first occur, the Trustee(s) shall notify all the Unit Owners of the aggregate percentage of the Unit Owners who have then executed such Improvement Agreement. If such percentage is equal to or exceeds seventy-five percent (75%), the Trustee(s) shall proceed to make the improvement(s) specified in such agreement and, in accordance with Section 18 of the Act, shall charge the cost of such improvement(s) to all Unit Owners as a Common Expense in accordance with their Beneficial Interest. Provided, however, that if the Trustee(s) shall determine in their reasonable discretion that the cost of such improvement exceeds ten percent (10%) of the then value of the entire Condominium, any Unit Owner who did not so agree to proceed may apply to the Superior Court, on such notice to the Trustee(s) as the Superior Court shall direct, for an order directing the purchase of his Unit by the Trustee(s) at the fair market value thereof as approved by the Superior Court.
- b. Improvement at Unit Owner Expense. If and whenever any Unit Owner shall propose to make an improvement to or affecting the Common Areas and Facilities of the Condominium at such Unit Owner’s own expense, and the Trustee(s) determine in their reasonable discretion that such improvement would be consistent and compatible with the Condominium and the use and enjoyment thereof by its residents, the Trustee(s) may, but shall not be obligated to, authorize such improvement to be made at the sole expense of the Unit Owner proposing the same, without the consent or approval of other Unit Owners, subject to such contractual undertakings of the Unit Owner proposing such improvement as the Trustee(s) in their reasonable discretion deem to be necessary or desirable in the circumstances.
- c. Improvements to Units. No Unit Owner shall make any addition, alteration or improvement in or to his Unit or to any portion of the Common Areas and Facilities to which he has the exclusive use, which may affect the appearance or structure of the Condominium, or the integrity of its systems, or which is otherwise restricted by the Master Deed, without the prior written consent thereto of the Trustee(s). Said request shall include adequate plans, specifications and similar items, so as to enable the Trustee(s) to reasonably review such request.

As to any request for approval pursuant to this Subsection the Trustee(s) may engage, if they so choose, an architect or engineer or both, if necessary, to review the plans and specifications to be attached to said request, and such architect or engineer’s fees shall be paid by the requesting Unit Owner. If the said engineer and/or architect determines that

the plans and specifications are consistent with the structural integrity and/or design character, as relevant to the particular request, of the Condominium, the Trustee(s) may then, in their sole discretion, approve or disapprove said plans, or approve them subject to certain conditions including restrictions in the manner of performing such work and requirements thereto related and such other restrictions as may be contained in the Master Deed.

All additions, alterations or improvements to any Unit (whether or not affecting the structural or mechanical systems of the Condominium) shall be performed in compliance with all applicable laws, regulations and codes, and when required thereby, by licensed contractors and shall be completed in a good and workmanlike manner. Each Unit Owner, and his contractors, shall cooperate with the Trustee(s) and other Unit Owners so as not to unduly inconvenience or disturb the occupants of the Condominium. Notwithstanding any other provision of the By-Laws, the cost of repairing or restoring any damage to the Common Areas and Facilities or to any Unit which is caused by any work being performed by or for a Unit Owner shall be charged solely to such Unit Owner. The foregoing shall not be construed to interfere with a Unit Owner's right to decorate his Unit and/or affix fixtures normally associated with the permitted uses of the Unit.

- d. Permits. To the extent that any addition, alteration or improvement to a Unit by the Unit Owner requires a permit, license or similar item to be obtained in the name of the Condominium, Trust or Trustee(s), from a governmental authority, the application therefor shall be executed by the Trustee(s) without, however, incurring any liability on the part of the Trustee(s), or any of them, or the Trust to any contractor, subcontractor or materialman or any other person on account of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom, or, if permissible, to such governmental authority. The Unit Owner shall bear all costs associated herewith and shall be fully responsible therefor, and wholly liable thereunder; and shall pay to the Trustee(s) such fee therefor as the Trustee(s) may reasonably determine.

Section 5.9. Rules, Regulations, Restrictions and Requirements. The use of the Condominium and each Unit Owner's Unit shall be restricted to and shall be in accordance with the provisions of the Master Deed, this Trust (including the By-Laws and such administrative rules and regulations as the Trustee(s) may adopt pursuant to this Trust), and all applicable laws, zoning ordinances, rules, regulations and requirements of all governmental bodies having jurisdiction over the Condominium or the use and occupancy thereof.

The Trustee(s) shall have the right (which right shall not be delegated) at any time and from time to time to adopt, amend and rescind reasonable administrative rules and regulations governing the operation, appearance and use of the Units and Common Areas and Facilities including, without limitation, Common Areas and Facilities the exclusive use of which is for one or more Units, and otherwise providing for the administration of the Condominium as contemplated by the Master Deed and the Trust, and in interpretation thereof (the "**Rules and Regulations**"); provided, however, that any such Rules and Regulations shall not be promulgated and/or amended which will materially and adversely affect the holder of any first mortgage of which the Trustee(s) have received notice without the written consent of such holder. Any such Rules and Regulations shall

be consistent with provisions of the Master Deed, the Declaration of Trust and By-Laws and the Act. Copies of such Rules and Regulations and any amendments or changes thereto shall be furnished by the Trustee(s) to each Unit Owner and shall be recorded with the Registry of Deeds. The Rules and Regulations shall be considered By-Laws for all purposes and the initial Rules and Regulations are set forth herein as Exhibit "A."

The Master Deed, this Trust and the Rules and Regulations, as from time to time amended, shall be enforced by the Trustee(s). The Trustee(s) may eliminate any violation and the cost and expense, including, but not limited to, attorneys' fees and fines, of eliminating such shall be chargeable to the Unit Owner who himself or whose family, servants, employees, agents, visitors, lessees, licensees, or pets are responsible for such violation. The cost of so eliminating a violation caused by another than as specified shall be a Common Expense. The Trustee(s) may also levy reasonable fines against the Unit owner for such violations and such fine shall constitute a portion of such Unit Owner's Common Expenses which shall be payable by the Unit Owner of such Unit upon demand and enforceable as a Common Expense. For each day a violation continues after notice it shall be considered a separate violation. In the case of persistent violation, the Trustee(s) shall have the power to require the Unit Owner to post a bond, or other security as they may determine, to provide for adherence.

Section 5.10. Unit Owner Responsibility. Except as may be otherwise specifically provided herein, a Unit Owner shall be fully responsible for the acts and omissions, feausance, malfeasance and misfeasance, and all other conduct of his family members, servants, agents, employees, invitees, lessees, licensees, guests, pets or others upon the Property at the behest of the Unit Owner.

Section 5.11. Enforcement of Charges, Fines, Obligations. Any charge, fine, attorneys' fees or other financial obligation to, of or on any Unit Owner, and/or Unit herein provided for shall constitute a lien upon such Unit and be enforceable to the same manner and extent as for Common Expenses provided for in this Declaration of Trust and Section 6 of the Act.

Section 5.12. Attorneys' Fees and Costs. In such case as it is necessary for the Trustee(s) to engage the services of an attorney or attorneys for the purpose of enforcing against a Unit Owner, occupant, or other person bound thereby, any provision of the Master Deed, the Declaration of Trust and By-Laws, the Rules and Regulations, or obligations thereunder, and/or for the purpose of defending any action brought by such person(s), said Unit Owner, tenant, occupant or other such person shall be liable for, in addition to any other liability, the fees and costs of such attorneys in so proceeding thereto, including the fees of all experts engaged in connection therewith. As to Unit Owners, the amount of such fines, fees and costs and attorneys' fees shall constitute a lien upon the Unit enforceable to the same manner and extent as a lien for Common Expenses, and the Unit Owner shall be personally liable therefor.

Section 5.13. Inspection of Books. The books, accounts and records of the Trustee(s) and of the organization of Unit Owners shall be open to inspection to any one or more of the Trustee(s), to the Unit Owners and to first mortgagees. The Trustee(s) may, however, subject to and in accordance with the applicable provisions of the Act, adopt reasonable rules and impose reasonable restrictions upon such access, including, but not limited to hours and place of availability, fees for reproduction, access only for Condominium related purposes, and provision for the maintenance of confidentiality as to appropriate records.

Section 5.14. Financial Reports to Unit Owners. After the Transition Date, the Trustee(s) shall, as soon as reasonably possible, after the close of each fiscal year, or more often, if convenient to them, submit to the Unit Owners a report of the operation of the Trust for each year, which shall include financial statements in such summary form and in such detail as the Trustee(s) shall deem proper. Except in the case of fraud, committed by a Trustee, any person (other than a mortgagee or mortgage insurer or guarantor) who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustee(s), given by registered or certified mail within a period of sixty (60) days of the date of receipt by him, shall be deemed to have assented thereto. The holder, insurer or guarantor of any first mortgage shall be entitled, at its own expense, to have an audited statement prepared within one hundred twenty (120) days of the end of the Trust's fiscal year.

Section 5.15. Fiscal Year. The fiscal year of the Trust shall be each calendar year ending December 31st or such other date as may, from time to time, be determined by the Trustee(s).

Section 5.16. Checks, Notes, Drafts, and Other Instruments. Except as to reserve accounts, checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustee(s) or of the Trust may be signed by any Trustee, or by the Property Manager (as defined herein), if any, to whom such power may at any time or from time to time be delegated. Checks drawn on the Trust's reserve account(s) may only be signed by at least two (2) Trustee(s) or one (1) Trustee if there be only one. Any instrument signed by any one (1), or more, Trustee(s) which contains or is accompanied by a certification that said Trustee, or Trustee(s) are authorized to execute and deliver the same by appropriate vote of the Trustee(s) shall be conclusive evidence in favor of every person relying thereon or claiming thereunder. The Trustee(s) may sign any instrument under seal without being required to affix a formal, common or wafer seal.

Section 5.17. Notices to Unit Owners. Unless otherwise required by applicable law or order of court, every notice to any Unit Owner required under the provisions hereof, or which may be deemed by the Trustee(s) necessary or desirable in connection with the administration of the Condominium or which may be ordered in any judicial proceeding shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one or more of the Trustee(s) to such Unit Owner by leaving such notice, or mailing it postage prepaid and addressed to such Unit Owner, at his address at the Condominium, unless such Unit Owner has designated in writing to the Trustee(s) some other address for the receipt of notices. Such notice shall be given within such time period as herein, or by such court, required, and if there be no specified period then 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.

Section 5.18. Information to Be Provided By Unit Owners to Trustee(s). Each Unit Owner shall provide to the Trustee(s), at such times and in such manner and form as the Trustee(s) shall require, that information and data as the Trustee(s) may reasonably require in and for the efficacious performance of the Trustee(s)' duties as herein provided. Such information and data shall include, but shall not be limited to:

- a. The name and mailing address of the Unit Owner(s);
- b. The names of all occupants of the Unit, except guests of less than thirty (30) days duration; and,

- c. The name and address of all mortgagees, including the applicable loan numbers.

In the event, and at the time a Unit Owner should assign, lease, sell or otherwise transfer his interest in his Unit, such Unit Owner shall notify the Trustee(s) of the name and address of the person to whom he is so transferring the Unit and shall provide such person with copies of the Master Deed, this Trust and the Rules and Regulations promulgated thereunder, as they may then be amended.

Section 5.19. Voting, Consents and Action Thereon. In regard to such actions and things as to which the consent or vote of the Unit Owners is required, unless a shorter period or requirement is imposed hereunder or by applicable law, the Trustee(s) shall have a period of six (6) months in which to obtain such consent or vote. The Trustee(s) shall have an additional period of six (6) months to obtain any required mortgagee consent. No Unit Owner may, after giving his consent or vote, rescind, modify or revoke such during said six (6) month period. Should a Unit be sold during said period after the giving of such consent or vote, such consent or vote shall remain valid notwithstanding the change of ownership.

Section 5.20. Acquisition of Units by Trustee(s). Acquisition of Units by the Trustee(s) for the Trust may be made from the Working Capital Reserve Account and common funds in the hands of the Trustee(s), or if such funds are insufficient, the Trustee(s) may levy an assessment against each Unit Owner in proportion to his Beneficial Interest, as a Common Charge, or the Trustee(s), in their discretion, may borrow money to finance the acquisition of such Unit; provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the Unit, together with the Appurtenant Interest to be so acquired by the Trustee(s) and/or a pledge of the Common Charges.

Section 5.21. Property Manager. The Trustee(s) may hire or appoint a professional manager ("**Property Manager**") to assist in the administration of the Condominium who shall perform such duties in the administration, management and operation of the Condominium, including the incurring of expenses, the making of disbursements and the keeping of accounts as the Trustee(s) shall from time to time determine. The Property Manager so retained shall in all events fully comply with the applicable provisions of the Act. Notwithstanding the appointment of such a Property Manager, the Trustee(s) shall retain ultimate control over the administration, management and operation of the Condominium.

Any such agreement for professional management of the Condominium shall be terminable without cause and without incurring payment of a termination fee on ninety (90) days' written notice, or such lesser period as the Trustee(s) may agree upon in such agreement. Such agreement may, additionally, be terminated for cause upon ten (10) days' notice; provided, however, that the Property Manager may cure within such period. Notwithstanding this provision, there shall be no right of cure in regard to the misappropriation of the Condominium's funds upon which event termination may be had immediately upon notice.

Section 5.22. Arbitration. All claims, disputes and other matters in question arising out of or relating to the Declarant shall be decided by arbitration in accordance with the provisions set forth under the Master Deed.

ARTICLE VI

MORTGAGES

Section 6.1. Unit Mortgages. Any Unit Owner may, without the prior written approval of the Trustee(s), mortgage his Unit to any person, firm or entity.

- a. Notice to Trustee(s). A Unit Owner who mortgages his Unit shall notify the Trustee(s) of the name and address of his mortgagee and loan number, and the Trustee(s) shall maintain such information. Except as may be provided by applicable law, the failure of a Unit Owner to so notify the Trustee(s) shall not invalidate the mortgage or any other provisions or the rights of any holder of such mortgage.
- b. Notice of Unpaid Common Charges or Other Default; Material Amendment. In addition to the requirements of Section 6 of the Act, the Trustee(s), whenever so requested in writing by a mortgagee of a Unit, shall promptly report (i) any then unpaid Common Charges due from, or any other default by, the Unit Owner of the mortgaged Unit; (ii) any other default in the performance by the Unit Owner of the mortgaged Unit of any obligation under the Master Deed, this Trust or the Rules and Regulations which is not cured within sixty (60) days of notice to the Unit Owner; (iii) any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a mortgage held, insured, or guaranteed by a mortgage holder or insurer or guarantor, as applicable; (iv) any lapse, cancellation or material modification of any insurance policy or fidelity insurance maintained by the Trustee(s); (v) any proposed action which requires the consent of a specified percentage of eligible mortgage holders as specified in the Master Deed or this Declaration of Trust; and/or (vi) any proposed material amendment to this Trust which may affect such eligible mortgagee's interests or rights.
- c. Assignment of Unit Owner Rights. The right of any Unit Owner to vote, or grant or withhold any consent, and to exercise any other right or option herein granted to a Unit Owner may be assigned or transferred in writing to, or restricted in favor of, any mortgagee or a mortgage covering that Owner's Unit, and the Trustee(s) shall upon receipt of written notice thereof from such Unit Owner or mortgagee be bound by any such assignment or transfer which appears of record to be in full force and effect.

ARTICLE VII

RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUSTEE(S)

Section 7.1. Third Parties' Reliance. No purchaser, mortgagee, lender or other person dealing with the Trustee(s) as they then appear of record in the Registry of Deeds shall be bound to ascertain or inquire further as to the identity of said Trustee(s) or of any changes therein. The receipts of the Trustee(s), or any one of them, for moneys or things paid or delivered to them, or him, shall be effectual discharges therefrom to the persons paying or delivering the same and no person from whom the Trustee(s), 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 Trustee(s) 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 from which sale, mortgage, pledge or charge is herein authorized or directed, nor otherwise as to the purpose or regularity of any of the acts of the Trustee(s), or any one or more of them, purporting to be done in pursuance of any of the provisions or powers herein contained, nor as to the regularity of the resignation, election or appointment of any Trustee.

Section 7.2. Personal Liability Excluded. No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustee(s) or by any agent or employee of the Trustee(s), or by reason of anything done or omitted to be done by or on behalf of them, or any of them, against the Trustee(s) individually, or against any such agent or employee, or against any beneficiary, either directly or indirectly, by legal or equitable proceeding, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with or having any claim against the Trustee(s), shall look only to the Trust Property for payment under contract or claim, or for the payment of any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to them from the Trustee(s), so that neither the Trustee(s) nor the Unit Owners, present or future, shall be personally liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Unit Owners under provisions of the Act.

Section 7.3. All Instruments Subject To Terms Hereof. Every note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustee(s), or by any agent or employee of the Trustee(s), shall be deemed to have been entered into subject to the terms, conditions, provisions and restrictions hereof, whet or not express reference shall have been made to this instrument.

Section 7.4. Recording. This Declaration of Trust and any amendments hereto and any certificate herein required to be recorded and any other certificate or instrument (including without limitation a certificate pursuant to the Act, Section 6(d)) signed by any one (1) Trustee which may be deemed desirable to record shall be recorded with the Registry of Deeds and such recording shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustee(s), the Property and/or the Trust Property or any beneficiary hereunder shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustee(s), when the same shall be recorded with said Registry of Deeds. Any certificate signed by a majority of the Trustee(s) in office at the time (or one (1) Trustee if there be but one (1)) 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 Trustee(s) to do any act, when duly acknowledged and recorded with said Registry of Deeds shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustee(s), acting in reliance thereon. Any certificate executed by any Trustee hereunder, or by a majority of the Trustee(s) 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 trust of the statements made in such certificate and of the existence of the facts therein set forth.

Section 7.5. Certificates of Incumbency and Address. The Trustee(s) shall from time to time as required by the Act and/or this Declaration of Trust record with the Registry of Deeds appropriate

instruments reflecting the composition of the Board of Trustee(s) and the mailing address of this Trust.

ARTICLE VIII

AMENDMENT AND TERMINATION

Section 8.1. Amendments to Declaration of Trust. The Trustee(s) may, by written instrument signed and acknowledged by a majority of their number, at any time and from time to time amend, alter, add to or change this Declaration of Trust in any manner or to any extent, provided such amendment, alteration, addition, or change is consented to in writing by the Unit Owners entitled to at least seventy-five percent (75%) of the Beneficial Interests or if such amendment, alteration, addition or change affects a provision then requiring more than such percentage, then by such larger percentage; provided, always, however, that no such amendment, alteration, addition or change (a) made without the written consent of the Declarant prior to the Transition Date; or (b) made without the written consent of the Declarant, according to the purport of which, the Declarant's rights hereunder, or under the Master Deed, are changed in any way; or (c) according to the purport of which, the percentage of the Beneficial Interest hereunder of any Unit Owner would be altered, or in any manner or to any extent whatsoever modified or affected so as to be different than the percentage of the undivided interest of such Unit Owner in the Common Areas and Facilities as set forth in said Master Deed, except as may be provided for elsewhere hereunder or in the Master Deed, other than by consent of the Unit Owners specified in the Master Deed; or (d) which could render this Trust contrary to or inconsistent with any requirements or provisions of the Master Deed or the Act, shall be valid or effective.

- a. Consent of Mortgagees to Amendments. In addition, this Trust may not be materially amended without the approval of at least fifty-one percent (51%) of the first mortgagees who have requested, in writing, that the Trustee(s) notify them in such case as a material amendment is considered.
- b. Effective Date of Amendment. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this paragraph shall become effective upon the recording with said Registry of Deeds an instrument of amendment, alteration, addition or change, as the case may be, signed, sealed and acknowledged by a majority of the Trustee(s) then in office, setting forth in full the amendment, alteration, addition or change and reciting the consent of the Unit Owners and/or mortgagees herein required to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all prerequisites to the validity thereof, whether stated in such instrument or not, upon all questions as to title or affect the rights of third persons, and for all other purposes.
- c. No such amendment, addition or change shall be of any effect unless each instrument is so recorded within six (6) months of the date of the first consent thereto.
- d. Special Amendments. Notwithstanding the foregoing, this Trust may also be amended by special amendment as follows: The Declarant, without the consent of any Unit Owner or mortgagee may execute and record a special amendment as long as it owns any Units in

the Condominium or the right to add additional Phases or Sub-Phases thereto, in order to (i) correct any errors and/or omissions in this Trust or the By-Laws hereunder, provided no such correcting amendment shall materially adversely affect the rights of any Unit Owner; (ii) to make this Trust or the By-Laws hereunder comply with the provisions of Massachusetts General Laws Chapter 183A; (iii) to make the provisions of this Trust or the By-Laws hereunder comply with the guidelines or requirements of the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), and any regulations promulgated pursuant thereto by the Department of Housing and Urban Development ("HUD"), Massachusetts General Laws Chapter 151B, the Federal Housing Administration ("FHA"), Veterans Administration ("VA"), or any governmental agency, insurer or guarantor of Unit mortgages, including private mortgage insurers; (iv) to meet the requirements of any governmental or quasi-governmental body or agency including, but not limited to, the Town of Swampscott, or any of its boards, bodies or agencies; (v) to induce any such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering the ownership of a Unit; or (vi) to correct mathematical, clerical or scrivener's errors, or to cure any ambiguity, inconsistency or formal defect or omission in this Trust or the By-Laws hereunder, or any supplement or amendment thereto, including without limitation, the correction of measurements appearing on any plan recorded in connection with the Condominium; or (vii) to assist the Declarant in the sale, development and/or marketing of any Unit.

Section 8.2. Termination. The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of the Act in accordance with the procedure therefor set forth in Section 19 of Chapter 183 and the Master Deed.

Section 8.3. Actions upon Termination. Upon the termination of this Trust, the Trustee(s) may, subject to and in accordance with provisions of the Act, sell and convert into money the whole of the Trust Property or any part or parts thereof, and, after paying or satisfying all known liabilities and obligations of the Trust and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, all other property then held by them in trust hereunder, to the Unit Owners as tenants in common, according to their respective percentages of Beneficial Interest. In making any sale under this provision, the Trustee(s) shall have power to sell by public auction or private contract and to buy in or rescind or vary any contract of sale and to resell without being answerable for loss and, for said purposes, to do all things, including the execution and delivery of instruments, as may be 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 Trustee(s) shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distribution of Trust Property may have passed.

Notwithstanding anything to the contrary contained in this Section, in the event that any Unit Owner shall dissent from any determination of the Trustee(s) with respect to the value of the Condominium or any other determination or action of the Trustee(s) under this Section by notice in writing to the Trustee(s) within ten (10) days after such determination or action, and such dispute shall not have been resolved within thirty (30) days after such notice, then either the Trustee(s) or the dissenting Unit Owner may submit the matter to arbitration, and such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

ARTICLE IX

CONSTRUCTION, INTERPRETATION AND WAIVER

In the construction hereof, whether or not so expressed, words used in the singular or in the plural, respectively, include both the plural and the singular, words denoting males include females and words denoting persons include individuals, firms, associations, companies (joint stock or otherwise), trusts and corporations unless a contrary intention is to be inferred from them or required by the subject matter or context. The title headings of different parts hereof are inserted only for the convenience of reference and are not to be taken to be any part hereof nor to control or affect the meaning, construction, interpretation or affect 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 the Act shall have the same meaning herein and to the extent of any conflict between the terms hereof and the requirements of said the Act, the latter shall govern. The invalidity of any part of this Trust shall not impair or affect in any manner the validity, enforceability or effect of the balance of this Trust. No restriction, condition, obligation or provision contained in this Trust shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

ARTICLE X

LITIGATION

Section 10.1. Definitions. The following words shall have the following meanings unless the context requires otherwise:

- a. "Derivative proceeding," a civil suit brought by a Unit Owner to enforce a right of the Condominium Association.
- b. "Unit Owner," the person or entity owning a Unit at the Condominium, including the Declarant.

Section 10.2. Standing. A Unit Owner may not commence or maintain a derivative proceeding unless the Unit Owner:

- a. Was a Unit Owner at the Condominium at the time of the act or omission complained of or became a Unit Owner through transfer by operation of law from one who was a Unit Owner at the time; and
- b. Fairly and adequately represents the interests of the Condominium Association in enforcing the right of the Condominium Association.

Section 10.3. Demand. No Unit Owner may commence a derivative proceeding until:

- a. A written demand has been made upon the Condominium Board to take suitable action; and

- b. Either: (i) ninety (90) days have elapsed from the date the demand was made, if such demand was not duly submitted to a vote of the Unit Owners referred to in Section 10.5 within sixty (60) days of such demand; or (ii) one hundred twenty (120) days have elapsed from the date the demand was made, if such demand was duly submitted to a vote of the Unit Owners referred to in Section 10.5.
- c. Unit Owner need not wait for the expiration of the applicable ninety (90) or one hundred twenty (120) day waiting period if either: (i) the Unit Owner is notified in writing during the waiting period that the demand has been rejected; or (ii) the Unit Owner can demonstrate to a court that irreparable injury to the Association would result by waiting for the expiration of the applicable waiting period.

Section 10.4. Stay of Proceedings. If the Board or the Association commences an inquiry into the allegations made in the demand or complaint, the Court may, upon motion of the Board or the Association, stay any derivative proceeding for a period as the Court considers appropriate.

Section 10.5. Dismissal.

- a. A derivative proceeding commenced after rejection of a demand shall be dismissed by the court on motion by the Board or the Association if the court finds that either: (i) one of the groups specified below has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the Association; or (ii) Unit Owners have, by vote hereunder, determined that the maintenance of the derivative proceeding is not in the best interests of the Association.
- b. Unless a panel is appointed pursuant to the provisions hereof, the determination in Subsection (a) above shall be made by: (i) a majority vote of independent Board members present at a meeting of the Board if the independent Board members constitute a quorum; (ii) a majority vote of a committee consisting of two (2) or more independent Board members appointed by majority vote of independent Board members present at a meeting of the Board, whether or not the independent Board members constituted a quorum; or (iii) the vote of a majority of Unit Owners entitled to vote, not including Units and corresponding percentages owned by or voted under the control of a Unit Owner or related person who has a beneficial financial interest in the act or omission that is the subject of the derivative proceeding (excluding benefits that may or may not result from the derivative proceeding as a result of the Unit Owner's membership in the Condominium) and which would reasonably be expected to exert an influence on the Unit Owner's or related person's judgment if called upon to vote in the determination.
- c. None of the following shall by itself cause a Board member to be considered not independent for the purposes of this Section: (i) the nomination or election of the Board member by a person who is defendant in a derivative proceeding or against whom action is demanded; (ii) the naming of the Board member as a defendant in the derivative proceeding or as a person against whom action is demanded; or (iii) the approval by a

Board member of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the Trustee.

- d. If the Board or Association moves to dismiss the derivative suit, it shall make a written filing with the Court setting forth facts to show: (i) whether a majority of the Board members was independent at the time of the determination by the independent Trustees; and (ii) that the independent Board members made the determination in good faith after conducting a reasonable inquiry upon which their conclusions are based. Unless otherwise required hereunder, the court shall dismiss the suit unless the plaintiff has alleged with particularity facts rebutting the Board's or Association's filing in its complaint or an amended complaint or in a written filing with the court. All discovery proceedings shall be stayed upon the filing by the Board or Association of the motion to dismiss and the filing required hereunder until the notice of entry of the order ruling on the motion; but the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted.
- e. If a majority of the Board does not consist of independent members at the time the determination by independent members is made, the Board or Association shall have the burden of proving that the requirements of this Section have been met. If a majority of the Board consists of independent directors at the time the determination is made or if the determination is made by Unit Owners pursuant hereto, the plaintiff Unit Owner shall have the burden of proving that the requirements of this Section have not been met.
- f. The court may appoint a panel of one or more independent persons approved or certified by the Community Association Institute of New England Dispute Resolution Program upon motion by the Board or Association to make a determination whether the maintenance of the derivative proceeding is in the best interests of the Association. In such case, the plaintiff Unit Owner shall have the burden of proving that the requirements of this Section have not been met.

Section 10.6. Discontinuance or Settlement. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the Unit Owners or a class of Unit Owners, the court shall direct that notice be given to the Unit Owners affected.

Section 10.7. Payment of Expenses. Upon termination of the derivative proceeding the court may:

- a. Order the Association to pay the plaintiff Unit Owner's reasonable expenses, including counsel fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the Association; or
- b. Order the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose. Any expenses or fines

or counsel fees ordered to be paid by a Unit Owner pursuant to this Section shall be collectible as a common expense.

[Signature(s) Appear on the Following Page(s)]

IN WITNESS WHEREOF said Trustee has hereunto set its hand and seal on this 7th day of June, 2018.

TRUSTEE:
Swampscott Living, LLC



Print: Paul DiBiase



Its: Manager

Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

Essex, ss: June 7, 2018

On this 7th day of June, 2018, before me, the undersigned notary public, personally appeared Paul DiBiase, proved to me through satisfactory evidence of identification, which was drivers' license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as a duly authorized Manager of Swampscott Living, LLC, a Massachusetts limited liability company.


Official Signature and Seal of Notary
My Commission Expires:

RHONDA L. DUDDY
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires
November 18, 2022

THE AVERY AT SWAMPSCOTT CONDOMINIUM

DECLARATION OF TRUST AND BY-LAWS

EXHIBIT A

RULES AND REGULATIONS

INTRODUCTION

These Rules and Regulations of the Avery at Swampscott Condominium shall be provided in its entirety to each Unit Owner and are adopted for the benefit of the Unit Owners and other residents within the Condominium. They are intended to aid in preserving a clean and attractive environment, assuring the peaceful enjoyment of Avery at Swampscott Condominium, and protecting and enhancing the value of all property at the Condominium. All Unit Owners, residents, tenants, their visitors and guests and all other applicable persons are expected to abide by these rules which have been implemented pursuant to the Declaration of Trust and By-Laws of the Avery at Swampscott Condominium. The Rules and Regulations, as distinguished from the By-Laws and Master Deed, shall remain in effect until otherwise rescinded, modified, or amended by a majority of the Board of Trustees in accordance with the provisions of the Master Deed and Declaration of Trust.

The following Rules and Regulations were adopted by the Trustee on the date of recording the Avery at Swampscott Condominium Trust and are presented in no particular order of importance or priority:

1) RESIDENTIAL INFORMATION FORM

- 1.1 Each Unit Owner is required to submit a completed Avery at Swampscott Condominium Residential Information Form within fourteen (14) days of the closing date of their unit. Additionally, Unit Owners must update this information should it change.
- 1.2 Unit Owners are not permitted to knowingly give false or otherwise inaccurate information on the Residential Information Form and must answer every applicable question to the best of their ability.

2) TENANTS/VISITORS/GUESTS

- 2.1 Unit Owners will be held jointly and severally liable for the actions of their tenants/visitors/guests.
- 2.2 If any such person creates a nuisance to other Residents, the Board of Trustees shall have the right to request that those persons leave. Responsibility for such supervision shall rest with any Resident who is the host of such tenant/visitors/guests.

3) NOISE

- 3.1 No Unit Owner shall permit any noxious or offensive activity or disturbing noises inside a unit, exclusive-use area, or common area which will interfere with the rights, comfort,

or convenience of other residents. At no time are musical instruments, exercise equipment, televisions, stereos, radios, amplifiers, etc. to be so loud as to disturb others.

- 3.2 Unit Owners are responsible for controlling the noise level of their visitors/guests, tenants, and other residents in their unit.
- 3.3 Noise levels shall be reduced from 9pm to 7am Monday through Friday, and 11pm to 8am Saturday and Sunday so that neighbors are not disturbed. National holidays shall follow Saturday and Sunday noise restrictions.
- 3.4 No resident shall keep an animal which by frequent or habitual howling, yelping, barking or making other noises annoys or disturbs other residents.

4) SPEED LIMIT

- 4.1 The speed limit for all vehicles within Avery at Swampscott Condominium is ten (10) miles per hour at all times.

5) PARKING AND VEHICLES

5.1 GENERAL RULES FOR ALL VEHICLES:

- A) Parking on the street, sidewalks, grass, and other common areas is prohibited at all times except with the prior express written consent of the Trustees.
- B) Unregistered, uninsured, or inoperative vehicles are strictly prohibited.
- C) No motor and mini-bikes, all-terrain vehicles, snowmobiles, boats, utility trailers, boat trailers, motor homes, camping trailers of any description and/or other recreational vehicle shall be parked or stored in any outdoor parking space at any time except with the prior express written consent of the Trustees. If such approval is given, a recreational vehicle will be considered to be using one (1) exclusive use parking space or one (1) guest parking space per vehicle.
- D) No recreational vehicle of any kind may be parked or stored in an exclusive-use area except with the prior express written consent of the Trustees.
- E) No repairs of vehicles may be made in the exclusive-use area or common areas of the Condominium.
- F) Any vehicle leaking fluid should be immediately removed and repaired so as not to pose a danger or threat to persons and/or the Property.
- G) Any vehicles which cannot operate on their own power may not remain on the Premises.

5.2 RESIDENTIAL PARKING AND VEHICLES:

- A) Parking is restricted to such exclusive use parking spaces in either the garage or exterior parking area as set forth in the Master Deed and is limited to registered vehicles only.
- B) No resident may park in any guest parking space at any time except with the prior express written consent of the Trustees.
- C) No commercial vehicles, trade vehicles with ladder racks and/or lettering indicating a company and/or logo shall be allowed to be parked outside overnight except with the prior express written consent of the Trustees.

- D) All residential vehicles must display, at all times, a resident parking sticker provided by the Trustees to be placed in the lower left corner of the rear window of the vehicle. The sticker location may be changed under certain conditions as is warranted by the individual vehicle and approved by the Trustees. A replacement sticker may be purchased and the previously registered sticker will be voided.
- E) All Unit Owners must complete a Vehicle Registration Form within thirty (30) days of the closing date of their unit that includes information about each residential vehicle that will be parked on the Premises. Additionally, Unit Owners must contact the Trustees to update this information upon the purchase and/or sale of a previously registered vehicle.
- F) Resident vehicles that are in violation of the rules may be towed at the owner's expense.

5.3 VISITOR/GUEST PARKING AND VEHICLES:

- A) Visitors/guests may park in the guest parking spaces located on the Premises.
- B) Visitors/guests may also park in any of the exclusive parking spaces of the Unit Owner to whom they are visiting, provided that said parking space is not required by a resident of that unit.
- C) Visitors/guests may not park in another Unit Owner's exclusive use space without the express consent of that Unit Owner.
- D) Two (2) parking passes will be allotted to each unit for overnight visitors/guests.
- E) If only parking during the period between 7:00 a.m. and 10:00 p.m., visitors/guests are not required to display a parking pass.
- F) Any visitor/guest who intends to park on the property overnight (between 10:00 p.m. and 7:00 a.m.) must display a valid parking pass.
- G) If parking overnight, visitors/guests must clearly hang a parking pass on the rear view mirror of their vehicle while parked on the Premises. Visitors/guests are not allowed to stay parked overnight in guest parking for more than 2 weeks without advance written permission of the Trustees. A replacement parking pass may be purchased and the previously registered pass will be voided.
- H) Unit Owners are responsible for informing their visitors/guests of the parking rules and will be held accountable if any of their visitors/guests should violate these regulations.
- I) Visitor/guest vehicles that are in violation of the above rules may be towed at the owner's expense and a fine levied against the Unit Owner to whom they were visiting.

5.4 COMMERCIAL/SERVICE VEHICLE PARKING:

- A) Vehicles which are on the premises solely at the behest of a Unit Owner, including but not limited moving, delivery, installation, etc. may not park on the street and/or common area at any time except with the prior express written consent of the Trustees.
- B) Vehicles affiliated with the Declarant, any state and federal government vehicles, postal vehicles, any emergency vehicles and/or utility services, may be exempt from some or all of the above rules and regulations as is warranted by the situation or constituted by law.

6) PASS KEY

- 6.1 The Trustees may cause a master key system to be used.
- 6.2 The Association will retain a duplicate key, or electronic access card, fob, etc., referred to as a "pass key," for any door leading into a unit.
- 6.3 If consent is given to change a lock to any door leading into a unit, the Unit Owner must provide the Trustees or Management Company with a new duplicate pass key.
- 6.4 The Trustees shall have the right to enter or designate an appropriate agent to enter a unit under particular circumstances which may include:
 - A) The fact or threat of fire, flood, or any emergency or any other condition that may adversely affect the common area or other units, or the fact or threat of illness or danger to the resident.
 - B) Inspection of a unit, upon due cause shown, for the presence health hazards, and for the purpose of taking such measures as may be necessary to remove such hazards.
 - C) The Unit Owner gives consent to enter the unit for the purpose of installation, repair, or other service.
- 6.5 Entry may be at any reasonable hour of the day after notification (except in the case of an emergency, in which case entry may be immediate and without notice).
- 6.6 If a current pass key has not been furnished and if access to a unit is warranted as described above, the Trustees or appropriate agent shall have the right to remove and/or destroy the unit door and/or unit door lock(s) by any means necessary and the Unit Owner will be financially responsible for the repair and replacement of such door and/or door lock(s) and all costs associated.
- 6.7 The Trustees shall not be responsible for the damage to and/or removal of the unit door and/or door lock(s) or for any property within the unit which may be lost, stolen, or destroyed as a result of the damage to and/or removal of the unit door and/or door lock(s).
- 6.8 The Trustees may limit or suspend pass key privileges to common facilities in the event of Unit Owner violations of the Condominium documents.
- 6.9 The Trustees may require a deposit for common facility pass keys, or mailbox/parcel box keys.

7) PETS

- 7.1 Unit Owners may only keep in their Units pets in accordance with the provisions set forth in the Master Deed.
- 7.2 All pets shall comply with all leash laws set forth by the Town of Swampscott and be restrained on a leash in a controlled manner and supervised at all times when outside of the Unit.

- 7.3 Pet owners shall be required to immediately remove any pet waste from the Common Areas and Facilities and/or Exclusive-Use Area.
- 7.4 Pet owners shall complete and return to the Board of Trustees, at least annually, the pet registration form provided by the Board, along with such reasonable registration fees as the Board may determine from time to time.

8) DAMAGE TO PROPERTY

- 8.1 There shall be no use of the common area which injures or scars the common area or the landscaping or plantings thereon, increases the maintenance thereof, or causes unreasonable embarrassment, disturbance or annoyance of other residents in their enjoyment of the condominium.
- 8.2 Any damage to the exterior of a unit, exclusive-use area, and/or common area caused by a resident, the visitor/guest of a resident, or any tradesperson, mover, etc. hired by a resident is the responsibility of the resident and shall be paid for by the resident.

9) EXTERIOR DECORATIONS, MODIFICATIONS AND ADDITIONS TO EXTERIOR OF UNITS

- 9.1 Changes affecting the exterior appearance of any unit, exclusive-use area, and/or common area shall be made only with the prior express written consent of the Trustees.
- 9.2 Both the interior and exterior architectural integrity of the units shall be preserved without modification.
- 9.3 Unless otherwise stated, exterior decoration is prohibited – especially that which needs to be screwed, nailed, bolted, taped, wrapped, hooked, hung and/or otherwise affixed to the exterior of the unit, exclusive-use area, or common area except with the prior express written consent of the Trustees. This includes, but is not limited to: wreaths, plaques, name plates, banners, flags, hooks, hanging plants, signs, posters, awnings, sun shades, screens, wind chimes, weather vanes, thermometers etc. Additionally, no decoration may be exhibited through the window of a unit without the prior express written consent of the Trustees.
- 9.4 Animal feeders, animal houses, bird baths, and other features that could attract wildlife are prohibited.
- 9.5 Unit Owners may not paint the exterior of their unit, exclusive-use area, or common area without the prior express written consent of the Trustees.

10) WINDOW/DOOR SHADES & DRAPES

- 10.1 No shades, drapes, blinds or window coverings will be installed unless the side facing the exterior of the Unit is white. Under no circumstances are colored sheets allowed to be hung facing the exterior of a unit or as may be determined by the Board of Trustees.

11) OUTDOOR EQUIPMENT

11.1 RECREATIONAL EQUIPMENT:

- A) When not in use bicycles, scooters, skateboards, roller skates or similar, sporting goods, toys, games, and other personal articles and equipment shall be stored inside a unit or assigned appurtenance area. None of these items should be left outside overnight or inhibit the maintenance of the area.
- B) No pool of any type or size is allowed in either the common area or exclusive-use area except as may be installed by the Trustees as a common element.
- C) No playground equipment is allowed to be placed or attached to the exterior of a unit, exclusive-use area or common area except as may be installed by the Trustees as a common element.
- D) Outdoor activities that require such recreational equipment that needs to be erected, such as a volleyball net, croquet, horseshoes, bocce ball, waterslide, basketball hoop, trampoline, bounce house, etc. are not permitted except with the prior express written consent of the Trustees and under such stipulations as are deemed necessary.

11.2 MISC:

- A) Outdoor clothes lines or other outdoor clothes drying or airing facilities are not permitted. No clothes, linens, or other material shall be hung or shaken from windows, placed on window sills, hung or draped from a railing or otherwise left or placed in such a way as to be exposed to the public view.
- B) No Unit Owner shall place or cause to be placed in or on any balcony any furniture or other personal property except for neutral colored furnishings less than 36 inches in height.
- C) No exterior televisions or security cameras are permitted except as may be installed by the Trustees as a common element.
- D) Window air-conditioners are prohibited.
- E) Bug zappers, fly paper, or similar are prohibited.

12) OUTDOOR ACTIVITIES

- 12.1 When riding a bicycle, scooter, skateboard, roller blades or similar on the premises, children 16 years of age or younger must wear a helmet at all times. It is also preferred that children wear additional safety gear such as elbow and knee pads and the like in order to be better protected.
- 12.2 When riding a bicycle, scooter, skateboard, roller skates or similar on the premises, residents may not ride dangerously in the middle of the road and/or to excessive speed within the Development in order to avoid injury to themselves and/or other residents and/or disrupt the flow of traffic.
- 12.3 Bicycles, scooters, skateboards, roller skates or similar may be operated on the sidewalks, if present, but operators must yield the right of way to pedestrians. Operators are prohibited from riding on the grass and/or otherwise damaging the landscaping and plantings.

- 12.4 There shall be no organized sport activities, picnicking or fires, except in areas approved by the Trustees.
- 12.5 Organized events that include an invitation onto the premises to the general public, such as a garage sale, estate sale, fair, flea market, seminar, conference, etc. are prohibited except with the prior express written consent of the Trustees.

13) LANDSCAPING AND PLANTINGS

- 13.1 Unit Owners are not allowed to plant or display plantings in the common area without the prior express written consent of the Trustees.
- 13.2 Unit Owners are not allowed to install any additional landscaping features without the prior express written consent of the Trustees.
- 13.3 Unit Owners may not modify, remove, rearrange, or otherwise disturb, scar, or damage any plantings or landscaping features in the common area.
- 13.4 The Trustees will have the sole discretion in the placement of an outdoor sprinkler or irrigation system and shall have the sole discretion to set the operating days, hours and times for the sprinkler or irrigation system. It is possible that a sprinkler or irrigation system may only be placed in certain areas in the condominium or not at all, taking into consideration the budget and the landscaping needs of the condominium.

14) TRASH

- 14.1 All trash and recycling, if applicable, must be placed in appropriate waste containers.
- 14.2 If a Unit Owner has a piece of trash that is too large to fit in a waste container, the Unit Owner may contact the waste removal provider directly to arrange for the particular removal of the item or items. Such service may involve a possible fee that will be paid directly by the Unit Owner.
- 14.3 Trash and other discarded items may not be left on a balcony or patio.
- 14.4 Littering is prohibited. Paper, cans, bottles, cigarette butts, food, pet waste, and other trash are to be deposited only in appropriate trash containers. Under no circumstances are such items to be dropped or left in the common area. Trash from common space events in Essex Room or patio are to be removed to building disposal area immediately following event.

15) ADVERTISING

- 15.1 Soliciting, canvassing, leafleting, petitioning, endorsing and/or otherwise advertising by residents that can be seen through the window of a unit, or placed in the exclusive-use area or common area is strictly prohibited except with the prior express written consent of the Trustees.

- 15.2 Approved advertising or notices may be installed on designated community boards with the consent of the Board.

16) OFFENSIVE ACTIVITIES

- 16.1 No offensive activities shall be allowed in the Condominium nor shall anything be done or placed within the premises which may be a nuisance, create unpleasant odors, or cause unreasonable embarrassment, disturbance, or annoyance to other Residents or the public.

17) HARASSMENT

- 17.1 No Harassment of any kind by residents will be tolerated toward Association staff/agents, the Board of Trustees, and/or other residents. Examples of harassment include calling, mailing, emailing, or confronting staff members or other residents to an excessive degree and/or issuing verbal or physical threats and/or inhibiting staff members from doing their jobs or residents from enjoying the condominium.

18) UNIT DOORS

- 18.1 No Resident may alter any lock or install a new lock on any door leading into their unit without the prior express written consent of the Trustees and under such stipulations as are deemed necessary.
- 18.2 Passcode, wireless, and electronic locks are not permitted without the Board's prior written approval.
- 18.3 Residents must not paint, decorate, adorn or place signs upon the outside of the Unit, including the unit doors without the prior express written consent of the Trustees and under such stipulations as are deemed necessary.

19) UNIT USAGE

- 19.1 The use of any residential unit for a purpose other than as a residence is prohibited.
- 19.2 Residents are not to permit the regular or consistent entry of customers, vendors, or clients into the Unit for business purposes. These restrictions do not prohibit a resident from having a home office that does not generate foot traffic to/from the Condominium.
- 19.3 Use of the Units is restricted to activities that do not violate any applicable laws, statutes, codes, regulations, or ordinances governing the property.

20) SATELLITE DISHES

- 20.1 "Reception Antenna" means an antenna, satellite dish, or other structure used to receive video programming services intended for reception in the Unit. Examples of video programming services include direct broadcast satellite services, multipoint distribution services, and television broadcast signals. The mast supporting the Reception Antenna, cabling, supports, guide wires, conduits, wiring, fasteners, bolts or other accessories for the Reception Antenna or similar structure is part of the Reception Antenna. A

Reception Antenna that has limited transmission capability designed for the viewer to select or use video programming is a Reception Antenna provided that it meets Federal Communications Commission ("FCC") standards for radio frequency radiation. Structures similar to Reception Antennas are any structure, device, or equipment that is similar in size, weight and appearance to Reception Antennas.

- 20.2 "Transmission Antennas" mean any antenna, satellite dish, or structure used to transmit radio, television, cellular, or other signals other than reception antennas. Transmission antennas are prohibited except to the extent authorized by applicable law.
- 20.3 No resident shall install a Reception Antenna on any portion of the Common Areas and Facilities unless the area is an Exclusive Use Area pursuant to the provisions of the Master Deed creating the Condominium.
- 20.4 A Reception Antenna shall not encroach on the air space of another owner's Unit or onto the general Common Areas and Facilities. Rather, the Reception Antenna must be kept within the boundary of the Exclusive Use Areas.
- 20.5 For purposes of this rule, residents shall include owners, tenants, and/or lessees of Units in the Condominium Association.
- 20.6 If a Reception Antenna is installed in Exclusive Use Area as defined in the Master Deed, such installation shall be subject to the following:
- A) Reception Antenna shall be no larger than necessary for the reception of an acceptable quality signal; provided that under no circumstances shall Reception Antennas for direct broadcast satellite dishes be larger than one meter in diameter;
 - B) Reception Antennas must be placed in areas that are shielded from view from outside the project or from other Units to the extent possible; provided that nothing in this rule shall require a Reception Antenna to be placed where it precludes reception of an acceptable quality signal unless no acceptable reception is available in any Exclusive Use Area. In no event may antennas be installed on roofs, lawns or other Common Areas and Facilities. If a resident wishes to run wiring through Common Areas and Facilities such as an exterior wall, this must be in strict compliance with standards established by the Board to ensure the structural and watertight integrity of the Condominium. All wiring shall be run so as to be as inconspicuous as possible.
 - C) Reception Antennas and similar structures shall not be placed in areas where it blocks fire exits, walkways, ingress or egress from an area, including a Unit, fire lanes, fire hoses, fire extinguishers, safety equipment, electrical panels, or other areas necessary for the safe operation of the Condominium. The purpose of this rule is to permit evacuation of the units and project and to provide clear access for emergency personnel.
 - D) Reception Antennas and similar structures shall not be placed within two (2) feet of electric power lines and in no event shall they be placed within an area where it would interfere with or be subject to interference from the electric power lines. The

purpose of this rule is to prevent injury or damage resulting from contact with the power lines.

- E) Any resident installing, maintaining, or using a Reception Antenna shall do so in such a way that it does not materially damage the general Common Areas and Facilities or the Units, void any warranties of the Association or other owners, or impair the water tight integrity of the buildings.
- F) The residents who own or use the Reception Antenna are responsible for all costs associated with their Reception Antenna including, but not limited to, costs to (1) repair, maintain, remove and replace the Reception Antenna; (2) repair damages to the Common Areas and Facilities, the Unit, other Units, and other property caused by the installation, existence, or use of the Reception Antenna; (3) pay for medical expenses incurred by persons injured by installation, existence, or use of the Reception Antenna; and (4) reimburse residents of the Association for damages caused by the installation, existence, or use of the Reception Antenna. If the installation is made by a contractor, evidence of insurance of the installation in satisfactory kinds and amounts shall be provided to the Association prior to the commencement of work, naming the Association as an additional named insured, all as set forth in exhibit attached hereto and incorporated herewith.
- G) Due to safety concerns relating to the falling of structures, all Reception Antennas shall be securely attached to the applicable surface. Otherwise, Reception Antennas shall be attached to a pole which is mounted in a weighted base of sufficient weight to prevent falling under anticipatable conditions. If a resident desires to attach a Reception Antenna to a wall, railing, fence, partition or other element which is part of the Common Areas and Facilities and abuts/adjoins the Exclusive Use Area where the Reception Antenna is to be placed, they must first obtain permission from the Board upon terms which ensure the structural and watertight integrity of the Condominium or adhere to standards published by the Board of this purpose, if such has been established.

20.7 To the fullest extent permitted by the law, residents shall indemnify and hold harmless the Board, the Board's representatives, consultants, agents, attorneys and employees, unit owners, tenants, guests, and invitees, or any of them, from and against claims, damages, losses and expenses, including, but not limited to, reasonable attorney's fees arising out of or resulting from the installation of any Reception Antenna contemplated hereunder.

20.8 Notwithstanding any provision hereunder, the Board shall report, upon compliance by the resident of this rule, the installation of any Reception Antenna to the Master Insurance Policy. Said resident shall thereafter be responsible for any increases in the insurance premiums as a result of any installation contemplated hereunder, and agrees to remit to the Trustees any monies due and owing as a result thereof within thirty (30) days of being assessed the same. Further, notwithstanding the provisions of the Condominium documents, the cost in excess of available insurance proceeds of repairing or restoring any damage to the Common Areas and Facilities or to any Unit which is caused by any work contemplated hereunder by the resident shall be charged solely to the resident.

- 20.9 Residents shall not permit their Reception Antenna to fall into disrepair or to become a safety hazard.
- 20.10 In the event of a violation of these rules, the Association may bring an action for declaratory relief with the Federal Communications Commission ("FCC") or any court having jurisdiction over the matter. If, for any reason, the FCC or Court determines that there has been a violation, a fine equivalent to the maximum allowed under the Condominium documents shall be imposed. Notwithstanding the same, no attorney's fees shall be collected or assessed and no fines or other penalties shall accrue while a proceeding is pending to determine the validity of any restrictions. The resident shall have a period of twenty-one (21) days in which to comply with any adverse ruling by the FCC or court, and during such period, neither a fine nor penalty may be collected, unless the Trustees demonstrate in the above proceeding which resulted in an adverse ruling to the resident, that the resident's claim and the proceeding was frivolous.
- 20.11 Transmission antennas other than expressly authorized hereunder are prohibited.
- 20.12 The resident is responsible for the immediate removal of the Reception Antenna if it must be removed for the repair, painting or maintenance of the area where it is installed. The Board shall attempt to provide reasonable notice of the need for such removal. If a resident fails to timely remove their Reception Antenna, the Board may do so at the resident's expense.
- 20.13 The Board may prohibit the installation of individual antennas if the Association installs a central antenna which provides residents with the same service that individuals would request, as long as the signal quality received by the central antenna is at least as good as that received by an individual antenna, and that further, the cost of the central antenna to the individual resident, including the share of installation costs and subscriber's fees is not greater than the cost of the individual antenna installation, maintenance and use, and the requirement to use the central antenna does not unreasonably delay the reception of video programming. In the event that there are individual antennas installed prior to the installation of a central antenna system, the Board shall have the right to require the removal of said individual antenna, so long as the Board compensates the resident for the installation of the same. Notwithstanding the above, the resident shall be required to pay to the Board a cost determined by the Board to be said unit owner's and/or resident's share of the installation costs and subscribers fees, so long as the same are not greater than the cost of the individual antenna installation, maintenance, and use.

21) MAIL/PACKAGES

- 21.1 Each Unit is assigned one mailbox for the United States Postal Service (USPS) and two (2) copies of the mailbox key.
- 21.2 To ensure proper delivery of mail, residents should include their Unit number on all mail.

- 21.3 Any questions regarding postal service should be directed to the Postmaster at the local Post Office.
- 21.4 If a resident loses their mailbox key, the mailbox lock will require replacement and a new set of mailbox keys made. The cost of this will be \$100.00 paid directly by the Unit Owner.
- 21.5 Any package left outside of a unit must be brought inside the unit the same day as delivery and shall not be left outside overnight.

22) CONSENT REVOCABLE

- 22.1 Any consent or approval of the Trustees or its authorized Agent or Management Company given under the Rules shall be revocable at any time.
- 22.2 These Rules and Regulations may be amended from time to time as provided for in the Trust. The Board shall have authority to enforce these regulations through the use of fines, legal action, etc.

23) MOVING POLICY

- 23.1 A move is defined as a delivery or removal of large household items which would not fit in a standard passenger automobile. Further, the definition of "move" will include any such removal or delivery which requires the elevator to be shut off or blocked and/or the parking of vehicles as set forth hereunder.
- 23.2 Appointments must be made with the Board through the Management at least five (5) days in advance of any move-in or move-out.
- 23.3 Moving will be allowed Monday through Friday between the hours of 8:00 a.m. and 6:30 p.m. Saturday moves will be permitted between the hours of 8:00 a.m. and 5:00 p.m. Sunday moves are not permitted regardless of any circumstances.
- 23.4 Only one (1) move may be scheduled at one time. Said moves will be determined on a first come, first serve basis.
- 23.5 Each Unit Owner is required to provide the Trust with a One Hundred and 00/100 Dollar (\$100.00) non-refundable fee for each move-in and move-out. This amount is strictly an administrative fee and is not a security deposit for any damages regarding the move-in or move-out.
- 23.6 Each Unit Owner and tenant shall be jointly and severally liable for all damages that occur during the move-in and/or move-out, and shall ensure proper elevator and common hallway protection measures are ensured (and shall arrange for wall padding where necessary).
- 23.7 The administrative fee hereunder shall be delivered to the Board no later than forty-eight (48) hours in advance of the move-in or move-out.

- 23.8 The building shall be inspected by the Trust and/or the agent thereof prior to the move and a Statement of Conditions shall be signed by both representing the conditions of the common areas prior to the move. Further, after completion of the move, the building shall again be inspected by the Trust and/or the agent thereof regarding the post-move damages.
- 23.9 Prior to moving, the following items must be supplied to the Board and/or Management:
- A) Completed Unit information for emergency purposes;
 - B) Copies of the executed lease in the case of a rental. All such leases must comply with the provisions of the Condominium documents;
 - C) Administrative fee for move; and
 - D) Any other forms adopted by the Board pursuant to the Condominium documents, as amended.
- 23.10 All moving shall be through an entrance or door designated by the Board and/or Management on the application for the move-in and/or move-out, as determined by the Board, in its sole discretion.

AVERY AT SWAMPSCOTT CONDOMINIUM

PET REGISTRATION REQUEST FORM

All pets must be registered with the Management Company at all times. Each request to maintain a permitted pet shall be accompanied by a *non-refundable* fee of \$_____ payable to Avery at Swampscott Condominium Trust.

Date: _____ Unit #: _____

Unit Owner (s): _____

Home Telephone #: _____

Work Telephone #: _____

Cell Telephone #: _____

Please note: Tenants must provide a Lease and/or Occupancy Agreement demonstrating permission of the Unit Owner to maintain a permitted pet.

Tenant (s): _____

Home Telephone #: _____

Work Telephone #: _____

Cell Telephone #: _____

PET INFORMATION

Type of Pet: _____ Breed: _____ Color: _____

Name of Pet: _____ License/Registration number: _____

Weight: _____

Type of Pet: _____ Breed: _____ Color: _____

Name of Pet: _____ License/Registration number: _____

Weight: _____

Please return this Request Form with a photograph of your pet and the *non-refundable* Pet Registration Fee payable to: _____