



**DECLARATION OF TRUST AND BYLAWS**

**LIBERTY COMMONS CONDOMINIUM TRUST**

DECLARATION OF TRUST of LIBERTY COMMONS CONDOMINIUM TRUST, by AUTUMN PROPERTIES, LLC, a Massachusetts limited liability company, with a principal place of business at 181 Northampton, Hampshire County, Massachusetts, hereinafter referred to as the "Trustee" which term includes its successors in trust. The term "Trustee" or "Trustees" also means the Trustee or Trustees for the time being hereunder, whenever the context so permits.

**I. NAME OF TRUST**

The trust created hereby shall be known as LIBERTY COMMONS CONDOMINIUM TRUST and all activities carried on by the Trustees hereunder shall, insofar as legal, practical and convenient, be conducted under said name and style.

**II. PURPOSES**

A. All of the rights and powers in, to and with respect to the common areas and facilities of the LIBERTY COMMONS CONDOMINIUM TRUST established by Master Deed of even date and recorded herewith (hereinafter called the "Condominium"), which are by virtue of the provisions of Massachusetts General Laws, Chapter 183A, (hereinafter called "Chapter 183A") conferred upon or exercisable by the organization of unit owners of the Condominium and all property, real and personal, tangible and intangible, conveyed to the Trustees hereunder shall vest in the Trustees of this Trust, BUT IN TRUST NEVERTHELESS, to exercise, manage, administer and dispose of the same and to receive the income thereof for the benefit of the owners of record from time to time of the units of the Condominium (hereinafter called the "Unit Owners"), according to the schedule of beneficial interest referred to in Section IV hereof, and in accordance with the provisions of said Chapter 183A. This Trust is the organization of the Unit Owners established pursuant to the provisions of said Chapter 183A for the purposes therein set forth.

B. It is hereby expressly declared that a trust, and not a partnership, has been hereby created and that the Unit Owners are beneficiaries and not partners or associates or any other relation whatever among themselves with respect to the trust property, and hold no relation to the Trustee other than as such beneficiaries, with only such rights as are conferred upon them as such beneficiaries hereunder and under and pursuant to the provisions of said Chapter 183A.

2 Mechanic Street, Easthampton

### III. TRUSTEES

A. The Initial Board shall consist of the Trustee named in the first paragraph of this Declaration of Trust, to wit, AUTUMN PROPERTIES, LLC, hereinafter called the "Initial Board". The term of the Initial Board shall end upon the earliest to occur of the following events: (a) after all of the Residential Units have been conveyed to unit purchasers; or (b) five (5) years following the conveyance of the first Residential Unit. Notwithstanding any other term or provision of this Trust to the contrary: (a) the Unit Owners shall have no power or right to remove the Initial Board, nor to appoint any additional or successor trustees, until the term of said Initial Board shall have expired as set forth in the immediately preceding sentence, and (b) during the term of the Initial Board any vacancy in the office of a Trustee, however caused, shall be filled only by the designation of the Declarant of the Master Deed.

B. After the term of the Initial Board, there shall at all subsequent times be a Board of Trustees hereunder consisting of three members. The Trustees shall be elected as follows: One (1) shall be elected by the majority in beneficial interest of the Commercial Unit(s) for a term of one (1) year; one shall be elected by the majority in beneficial interest of the Residential Units for a term of one (1) year; and one (1) shall be elected by a majority in beneficial interest of whole Condominium for a term of one (1) year.

C. Each vacancy in the office of Trustee shall be filled at the next annual meeting if such be held within thirty (30) days, or by a written instrument setting forth: (a) the appointment of a natural person to act as such Trustee, signed (i) by unit owners entitled to not less than fifty-one (51%) percent of the beneficial interest of the appropriate category, i.e. commercial or residential, or (ii) if the Unit Owner(s) entitled to such percentage have not made such an appointment within thirty (30) days after the occurrence of such vacancy, by the remaining Trustees; and (b) the acceptance of such appointment, signed and acknowledged in proper form for recording by the person so appointed. Such appointment shall become effective upon the recording with the Hampshire County Registry of Deeds of a certificate of such appointment, signed and accepted as aforesaid. If for any reason any such vacancy in the office of Trustee shall continue for more than sixty (60) days and shall at the end of that time remain unfilled, a Trustee or Trustees to fill such vacancy or vacancies may be appointed by any court of competent jurisdiction upon the application of any Unit Owner and notice to the other Unit Owners and all Trustees and to such other parties in interest, if any, to whom the court may direct that notice be given, and such appointment shall become effective upon the recording with the Hampshire County Registry of Deeds of a certificate or order of such appointment. Notwithstanding anything to the contrary in this subsection (C) despite any vacancy in the office of Trustee, however caused and for whatever duration, the remaining or surviving Trustees, subject to the provisions of the immediately following subsection (D), shall continue to exercise and discharge all of the powers, discretion and duties hereby conferred or imposed upon the Trustees.

D. In all matters relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred, the Trustee shall act by majority vote. The Trustees may so act without a meeting by instrument signed by all Trustees.

E. Any Trustee may resign at any time by instrument in writing, signed and acknowledged in proper form for recording and such resignation shall take effect upon the recording of such document with the Hampshire County Registry of Deeds. After reasonable notice and opportunity to be heard before the Unit Owners, a Trustee (except a member of the Initial Board) may be removed from office with or without cause, by an instrument in writing signed by vote of unit owners entitled to not less than fifty-one (51 %) percent of the beneficial interest that was eligible to vote for the election of such Trustee, such instrument to take effect upon the recording thereof with said Hampshire County Registry of Deeds.

F. The Trustees shall obtain and maintain fidelity bonds as set forth in Section III of the By-Laws of this Trust.

G. No Trustee hereinbefore named, or appointed or designated as hereinbefore provided, shall under any circumstances or in any event be held liable or accountable out of his personal assets or estate or be deprived of compensation by reason of any action taken, suffered or omitted in good faith, or be so liable, accountable or deprived for more money or other property than he actually receives, or for allowing one or more of the other Trustee 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 the existence of any personal interest or gain or by reason of anything except his own personal and willful malfeasance, bad faith, or fraud.

H. No Trustee shall be disqualified by his office from contracting or dealing with the Trustees or with one or more Unit Owners (whether directly or indirectly because of his interest individually or the Trustee's interest or any Unit Owner's interest in any corporation, firm, trust or other organization connected with such contracting or dealing or because of any other reason), as vendor, purchaser or otherwise, nor shall any such dealing, contract or arrangement entered into in respect of this Trustee in which any Trustee shall be in any way interested, be avoided, nor shall any Trustee so dealing or contracting or being so interested, be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such Trustee's holding office or of the fiduciary relationship hereby established, provided the Trustee shall act in good faith and shall disclose to the other Trustee the nature of his interest before the dealing, contract, or arrangement is entered into. It is understood and permissible for the Initial Board hereunder and any other Trustee designated by the Initial Board or who are employed by or affiliated or associated with the Declarants, to contract with the Declarants and any corporation, firm, trust or other organization controlled by or affiliated or associated with the Declarants without fear of being charged with self-dealing.

I. The compensation of the Trustees, if any, shall be determined at each annual meeting of Unit Owners. With the prior written approval in each instance of the other Trustee, any Trustee may be engaged to render services to this Trust, legal, accounting, or otherwise, at such compensation as shall be fixed by the Trustees, and any fees or other compensation shall be a Common Expense of the Condominium.

J. The Trustees and each of them shall be entitled to indemnity both out of the trust property, and by the Unit Owners severally in proportion to their ownership in the common areas and facilities against any liability incurred by them or any of them in the execution hereof,

including, without limitation, liabilities in contract and in tort and liabilities for damages, penalties and fines. Each Unit Owner shall be personally liable for all sums lawfully assessed for his share of the Common Expenses of the Condominium and for his proportionate share of any claims involving the trust property in excess thereof.

#### **IV. BENEFICIARIES AND THEIR BENEFICIAL INTEREST**

A. The beneficiaries hereof shall be the Unit Owners of the Condominium, for the time being. The beneficial interest in the Trust hereunder shall be divided among the Unit Owners in the percentage of undivided beneficial interest appertaining to the Units of the Condominium, all as set forth on Exhibit B of the Master Deed, which is hereby incorporated herein by this reference and made a part hereof, with the same force and effect as though fully set forth in the body hereof.

B. The beneficial interest of each Unit of the Condominium shall be held and exercised as a unit and shall not be divided among several owners of any such Unit. To that end, whenever any of said Units is owned of record by more than one person, the several owners of such Unit shall: (i) determine and designate which one of such owners shall be authorized and entitled to cast votes, execute instruments, and otherwise exercise the rights appertaining to such Unit hereunder; and (ii) notify the Trustees of such designation by a notice in writing signed by all of the record owners of such Unit. Any such designation shall take effect upon receipt by the Trustees of such notice, 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 of such owners for such purposes.

#### **V. BY-LAWS**

The By-Laws of this Trust are attached hereto as Exhibit A which is hereby incorporated herein by this reference and made a part hereof with the same force and effect as though fully set forth in the body hereof.

#### **VI. RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUST**

A. Any instrument signed and acknowledged in proper form for recording, by a majority of the Trustees as they then appear of record in the Hampshire County Registry of Deeds, and recorded in the Hampshire County Registry of Deeds may be relied on as conclusively establishing that such instrument was the free act of this Trust and shall be binding upon this Trust when so recorded.

B. No purchaser, mortgagee, lender, or other person dealing with a majority of the Trustees, as they then appear of record in the Hampshire County Registry of Deeds shall be bound to ascertain or inquire further as to the persons who are then the Trustees hereunder or be affected with any notice, implied or actual, relative thereto, other than by a certificate thereof, so

recorded, and such recorded certificate shall be conclusive evidence of the personnel of said Trustees and of any changes therein. The receipts of a majority of the Trustees, for money paid or things delivered to them shall be effectual discharges therefrom to the persons paying or delivering the same, and no person from whom a majority of the Trustees 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 a majority of the Trustees, or with any real or personal property which then is or formerly was trust property shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, or otherwise as to the purpose or regularity of any of the acts of the Trustee(s) purporting to be done in pursuance of any of the provisions or powers herein contained, or as to the regularity of the resignation or appointment of any Trustee. Any instrument of appointment of a new Trustee or resignation or discharge of a Trustee purporting to be executed by the Trustee, Unit Owners or other persons herein required to execute the same, shall be conclusive evidence in favor of any such purchaser or other person dealing with the Trustee of the matters therein recited relating to such discharge, resignation or appointment or the occasion thereof.

C. Notwithstanding anything to the contrary herein, and notwithstanding any custom or usage to the contrary, no recourse shall at any time be had under or upon any note, bond, contract, order, debt, claim, instrument, certificate, undertaking, obligation, covenant, or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees, or by reason of anything done or omitted to be done by or on behalf of them or any of them, against the Trustees individually, or against any such agent or employee, or against any beneficiary, either directly or indirectly, by legal or equitable proceedings, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with, or having any claim against the Trustees, shall look only to the trust property for payment under such note, bond, contract, order, debt, claim, instrument, certificate, undertaking, obligation, covenant, or agreement, 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 Trustees, so that neither the Trustees nor the beneficiaries, present or future, shall ever be personally or individually liable therefor.; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of the Unit Owners under the provisions of said Chapter 183A.

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

E. This Declaration of Trust and amendments hereto and any Certificate herein required or which it may be deemed desirable to record, shall be recorded with the Hampshire County Registry of Deeds and such record when executed according to the requirements of this Declaration of Trust shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustees, the trust property, or any beneficiary hereunder, shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the

same shall be so recorded. Any certificate signed by a majority of the Trustees at the time as they then appear of record in the Hampshire County Registry of Deeds setting forth as facts any matters affecting the Trust, including statements as to who are the Trustees, as to what action has been taken by the Trustees or beneficiaries, and as to matters determining the authority of the Trustees to do any act, when duly acknowledged and recorded with said Hampshire County Registry of Deeds, shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees acting in reliance thereon. Any certificate executed by a majority of the Trustees as they then appear of record in the Hampshire County Registry of Deeds 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 Trustees shall, when duly acknowledged and recorded with said Hampshire County Registry of Deeds, as to all persons acting in good faith in reliance thereon, be conclusive evidence of the truth of the statement made in such certificate and of the existence of the facts therein set forth.

## **VII. AMENDMENTS; TERMINATION**

A. Notwithstanding anything to the contrary herein, so long as the Declarant owns any unit in the Condominium, the Declarant shall have the right, at any time and from time to time, to amend this Declaration of Trust (including but not limited to the By-Laws hereto and the Rules and Regulations hereto) without the consent of any Unit Owners, to meet the requirements of any governmental or quasi-governmental body or agency, or the requirements of any insurance company or insurance underwriting office or organization, or the requirements of Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the secondary mortgage market, or any lender, or to cure any ambiguity, inconsistency or formal defect or omission.

B. A majority of the Trustees, with the consent in writing of Unit Owners entitled to more than seventy five percent (75%) of the beneficial interest hereunder, may at any time and from time to time amend, alter, add to, or change this Declaration of Trust in any manner or to any extent, the Trustees first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided, however, that no such amendment, alteration, addition or change shall be made according to the purport of which, the percentage of the beneficial interest hereunder of any Unit Owner would be altered, or in any manner or to any extent whatsoever, modified or affected so as to be different than the percentage of the individual interest of such Unit Owner in the common areas and facilities as set forth in the Master Deed other than by consent of all of the Unit Owners whose percentage of the undivided interest is affected, or which would render this Trust contrary to or inconsistent with any requirements or provisions of said Chapter 183A. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this Section shall become effective upon the recording with the Hampshire County Registry of Deeds of an instrument of amendment, alteration, addition, or change, as the case may be, signed, sealed and acknowledged in proper form for recording, setting forth in full the amendment, alteration, addition, or change. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all prerequisites to the validity of such amendment, alteration, addition, or change, whether

stated in such instrument or not, upon all questions as to title or affecting the rights of third persons and for all other purposes.

C. The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of Chapter 183A in accordance with the procedure therefor set forth in said Chapter 183A. Upon the termination of this Trust, the Trustees may, subject to and in accordance with the provisions of said Chapter 183A, sell and convert into money the whole of the trust property, or any part or parts thereof, and, after paying or retiring all known liabilities and obligations of the Trustees and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, at valuations made by them which shall be conclusive if made in good faith, all other property then held by them in trust hereunder to the Unit Owners according to their respective percentages of beneficial interest hereunder. In making any sale under the provisions of this subsection (C) of this Section VII, the Trustees shall have the power to sell or vary any contract of sale and to resell without being answerable for loss, and, for said purposes, to do all things, including the execution and delivery of instruments, as may by their performance thereof be shown to be in their judgment necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustee 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.

### **VIII. CONSTRUCTION: INTERPRETATION**

A. In the construction hereof, whether or not so expressed, words used in the singular or in the plural, respectively, shall include both the plural and singular; words denoting males include females; and words denoting persons include individuals, firms, associations, companies (joint stock or otherwise), partnerships, entities and quasi-entities, trusts and corporations; unless a contrary intention is to be inferred from or is required by the subject matter or context. The marginal and sectional captions and headings are inserted only for convenience of reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation, or effect hereof.

B. All of the trusts, powers, and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts in general, and with respect to Massachusetts General Laws, Chapter 183A, in particular.

C. The invalidity of any provision or part of such provision hereof shall not impair or affect in any manner the remainder hereof, or the remainder of such provision or such part of such provision.

D. No restriction, condition, obligation or provision contained herein (including but not limited to the By-Laws hereof attached hereto as Exhibit A and incorporated herein by reference) shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number or frequency of violations or breaches thereof which may occur.

E. In the event of any conflict between the provisions hereof (including but not limited to the By-Laws hereof attached hereto as Exhibit A and incorporated herein by reference) and the provisions of Massachusetts General Laws, Chapter 183A, and the Master Deed, then the provisions of said Chapter 183A, or of the Master Deed, as the case may be, shall control. Words defined in said Chapter 183A shall have the same meaning herein as defined in said statute, unless the context clearly indicates otherwise.

Executed as a sealed instrument this 31<sup>st</sup> day of March, 2005

AUTUMN PROPERTIES, LLC, Trustee

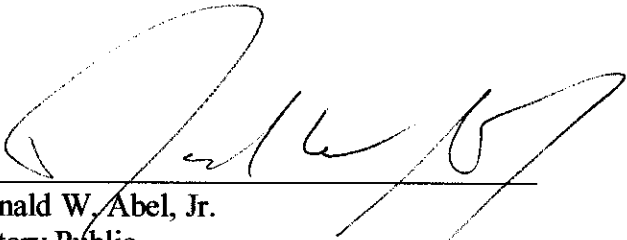
By:   
Thomas J. Boyle, Its Manager

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss

March 31, 2005

On this day, before me, the undersigned notary public, personally appeared the above named Thomas J. Boyle, Manager of Autumn Properties, LLC, proved to me through personal knowledge to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as Manager of Autumn Properties, LLC, and as Trustee of the Liberty Commons Condominium Trust.

  
Donald W. Abel, Jr.  
Notary Public  
My commission expires 1/29/2010



**EXHIBIT A**

Incorporated into and made a part of the Declaration of Trust of LIBERTY COMMONS CONDOMINIUM TRUST.

**BY-LAWS  
OF  
LIBERTY COMMONS CONDOMINIUM TRUST**

The provisions of this Exhibit A attached to LIBERTY COMMONS CONDOMINIUM TRUST shall constitute the By-Laws of said LIBERTY COMMONS CONDOMINIUM TRUST, the organization of Unit Owners established by said Trust.

**I. Powers and Duties of the Trustees**

The Board of Trustees shall have all powers necessary for the administration of the affairs of the Condominium as set forth in Massachusetts General Laws, Chapter 183A ("Condominiums"), hereinafter called "Chapter 183A", and they may do any and all acts necessary or desirable for the administration of the affairs of the Condominium except only for such acts as may not, under law, or under the provisions of the Master Deed, or this Trust, be delegated to the Trustees by the Unit Owners. Such powers and duties of the Trustees shall include, but shall not be limited to, the following:

- A. Operation, care, upkeep and maintenance of the common areas and facilities.
- B. Determination of the Common Expenses required for the affairs of the Condominium, including, but not limited to the operation and maintenance of the common areas and facilities, and the Limited Residential Common Areas and Facilities or Limited Residential Common Elements.
- C. Collection of the Common Expenses, from the Unit Owners.
- D. Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the common areas and facilities.
- E. Subject to the provisions of Section VII of these By-Laws, adoption, amendment, and administration (including waiver) of rules and regulations covering the details of the operation and use of the common areas and facilities.
- F. Opening of bank accounts on behalf of the Condominium, and, subject to the provisions hereof, designating the signatories required therefor.
- G. Leasing, managing and otherwise dealing with such facilities as may be provided for in the Master Deed as being common areas and facilities.

H. Owning, conveying, encumbering, leasing and otherwise dealing with units conveyed to the Trust or purchased by it as a result of enforcement of the lien for Common Expenses, or otherwise.

I. Obtaining of insurance for the Condominium, including the units, pursuant to the provisions hereof.

J. Making of repairs, additions and improvements to, or alterations or restoration of, the Condominium, in accordance with the other provisions of this Trust.

K. Enforcing obligations of the Unit Owners, allocating income and expenses, and to do anything and everything else necessary and proper for the sound management of the Condominium.

L. Purchasing of units at foreclosure or other judicial sales.

M. Organizing and maintaining corporations, trusts, or other entities to act as nominee of the Condominium in acquiring title to units on behalf of all Unit Owners under the provisions hereof.

N. 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.

O. Granting permits, licenses and easements over the common areas and facilities for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium project.

## **II. Common Expenses and Profits**

A. Commencing on the date of the recording of the Master Deed, each Unit Owner shall be liable for Common Expenses and shall be entitled to common profits of the Condominium in the same proportion as his beneficial interest in this Trust bears to the aggregate beneficial interest of all the other Unit Owners. Each Residential Unit Owner shall also be liable for its proportionate share of expense for the maintenance, repair, and replacement of the Limited Residential Common Areas and Facilities or Limited Residential Common Elements as set forth in the Master Deed according to the percentage interest as shown on Exhibit C to the Master Deed. Commencing with the date one year after the recording of the first Unit Deed, the Declarant, or its successor in interest shall be liable for common expenses and shall be entitled to common profits of the Condominium according to its percentage of beneficial interest in the common elements retained by it until such date as the retained units are conveyed by Unit Deed. Provided, however, that until that date, any expense actually incurred that would have been paid by the common charges of the units retained by the Declarant will be paid by the Declarant. The Trustees may at any time or times distribute common profits among the Unit Owners in such proportions. The Trustees shall at all times establish and maintain an

adequate reserve fund for the periodic maintenance, repairs and replacement of improvements to the common areas and facilities and those limited common areas which the Trust may be obligated to maintain, and such reserve fund shall be funded by regular monthly assessments from regular assessments for Common Expenses, and such fund shall not be deemed to be common profits available for distribution.

B. In addition to the foregoing, (and not in substitution thereof) to ensure that this Trust will have the funds to meet unforeseen expenditures or to purchase any additional equipment or services, there shall be a working capital fund at least equal to two (2) months' estimated common charges for each unit. Any amounts paid into this fund shall not be considered as advance payments of regular assessments. Each unit's share of the working capital fund shall be collected at the time the sale of the unit is closed or at the time control of this Trust is transferred to the Trustees elected by unit owners other than Autumn Properties, LLC, as set forth in Section III of this Trust, whichever occurs earlier. When control of this Trust is transferred as set forth in the immediately preceding sentence, the working capital fund shall be transferred to this Trust for deposit to a segregated fund. During the term of the Initial Board, the working capital fund which is the subject of this Subsection cannot be used to defray the expenses, reserve contributions, or construction costs which are the responsibility of Autumn Properties, LLC, in its role as developer of the Condominium or to make up budget deficits. Autumn Properties, LLC may reimburse itself for these payments from the funds collected at closing when the unsold units are sold.

C. In addition to the foregoing, (and not in substitution thereof), the Trustees may, to such extent as they deem advisable, set aside common funds of the Condominium as additional reserves and may use the funds so set aside for reduction of indebtedness or other lawful capital purposes, and, subject to the provisions of Section IV of these By-Laws, for repair, rebuilding or restoration of the Condominium, or for improvements thereto, and for replacement of the common areas and facilities, and other proper contingencies, and the funds so set aside shall not be deemed to be common profits available for distribution.

D. At least thirty (30) days prior to the commencement of each fiscal year of this Trust, the Trustees shall estimate the Common Expenses expected to be incurred during such fiscal year, together with reasonable provision for contingencies and reserves, and for the reserve funds mentioned in Subsection C of this Section II, and after taking into account any undistributed common profits from prior years, shall determine the assessment for Common Expenses to be made for such fiscal year. The Trustees shall promptly furnish copies of each budget on which such assessment is based to all Unit Owners, and, if requested, to their mortgagees. The Trustees shall promptly render statements to the Unit Owners for the respective shares of such assessment, and each Unit Owner thereafter shall pay one-twelfth of his share of the estimated Common Expenses monthly in advance on the first day of each month. The Trustees shall not be obligated to render monthly statements. In the event that at any time and from time to time the Trustees shall determine during any fiscal year that the assessment so made is less than the Common Expenses actually incurred, or to be incurred, including but not limited to provisions for proper reserve funds, the Trustees shall make a supplemental assessment or assessments and render statements therefor in the manner aforesaid, and such statements shall be payable and take effect as set forth in such statements. The Trustees may in their discretion

provide for payments of such supplemental assessment statements in monthly or other installments. The Trustees shall have the authority and the duty to levy and enforce the collection of general and special assessments for Common Expenses.

E. The amount of each such statement, for regular or supplemental assessments, together with interest thereon, if not paid when due, at a rate of eighteen (18%) percent together with all expenses, including attorneys' fees, incurred by the Trustees in any proceeding brought to collect such unpaid Common Expenses and assessments, shall constitute a lien on the unit of the Unit Owner assessed pursuant to the provisions of Section 6 of said Chapter 183A and Sections 5 and 5A of Chapter 254, as amended, and may be collected by the Trustees pursuant to said statutes. The Trustees shall take prompt action to collect any Common Expenses and assessments due from any Unit Owner which remains unpaid for more than thirty (30) days from the due date thereof, including but not limited to, action under the provisions of Massachusetts General Laws Chapters 183A and 254 as amended. In the event that the Trustees bring an action to foreclose a lien on any unit pursuant to said statute, the Unit Owner shall pay a reasonable sum for use and occupancy of his unit from the date of foreclosure until the Unit Owner vacates the unit (the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same) but nothing in this sentence shall be deemed to grant any Unit Owner the right to remain in possession of his unit after such foreclosure. The Trustees, acting on behalf of all Unit Owners, shall have power to purchase such unit at the foreclosure sale and to acquire, hold, lease, mortgage (but not vote the vote appurtenant to), convey or otherwise deal with the same. A suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same. In the event of any suit or foreclosure by the Trustees, the Trustees shall be entitled to interest at a rate of eighteen (18%) percent per annum, and all costs of collection, suit and foreclosure, including attorney's fees. In addition to the lien in favor of the Trustees for assessments for Common Expenses and assessments, such assessments shall also be the personal obligation of the owner of the unit at the time the assessment fell due.

F. The Trustees shall promptly provide any Unit Owner, or any Unit Buyer who has a duly executed Purchase and Sale Agreement for the acquisition of a unit, or any mortgagee, or the attorney of any such party, with a written statement of all unpaid Common Expenses due with respect to such unit, signed and acknowledged in proper form for recording, upon the written request of such Unit Owner or buyer or mortgagee or attorney. Recording of such statement in the Hampshire County Registry of Deeds shall operate to discharge the unit from any lien for any other sums unpaid not enumerated as of the date of such statement to the extent provided by said Chapter 183A.

G. The Trustees shall expend common funds only for common expenses and lawful purposes permitted hereby and by the provisions of said Chapter 183A.

H. Any first mortgagee who obtains title to a condominium unit, pursuant to the remedies provided in its mortgage, or foreclosure of its mortgage, will not be liable for such unit's unpaid dues, common charges, or assessments (including interest and costs of collection and legal fees relating to the collection thereof) which accrue prior to the acquisition of title to such unit by the Mortgagee, provided, however, that notwithstanding the foregoing, such first mortgagee shall be liable for such unit's unpaid common expenses, costs and attorneys' fees as

provided in subsection (c) of Section 6 of G.L. c. 183A as amended. The lien for common expense assessments shall not be affected by any sale or transfer of a unit, except that a sale or transfer pursuant to a foreclosure of a first mortgagee shall extinguish a subordinate lien for assessments which became payable prior to such sale or transfer, provided, however, that the lien for common expense assessments shall be affected by the sale or transfer of a unit to the extent set forth in subsection (c) of Section 6 of G.L. c. 183A as amended. Any such delinquent assessments which were extinguished pursuant to the immediately preceding sentence may be reallocated and assessed to all units as a common expense. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a unit for liability for, nor the unit from the lien of, any assessments made thereafter.

### **III. Insurance**

A. The Trustees shall be required to obtain and maintain, to the extent obtainable, the following insurance: (and to pay premiums thereon as a Common Expense):

1. Fire with extended coverage (covering other perils normally covered by the standard extended coverage endorsement) insuring all portions of the building, including the common areas and facilities of the Condominium, and all of the units and all of the fixtures installed therein; but not including: any business fixtures, equipment, stock, inventory, furniture, furnishings or other personal property of the Unit Owners whether within the Units or elsewhere. Such insurance covering the interest of the Condominium, the Trustee and all Unit Owners and their mortgagees, as their interests may appear, in an amount equal to 100% of current replacement cost of the building, common areas and facilities, and units, without deduction for depreciation, with loss payable to the Trustees, as Insurance Trustees for each unit owner and the holder of each unit's mortgage. The named insured shall be "the Trustees of The Liberty Commons Condominium Trust, for the use and benefit of the individual unit owners and unit mortgagees". Such insurance shall also cover all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available;
2. Worker's compensation insurance if the Trustees shall have an employee or employees;
3. Comprehensive general liability insurance covering all common areas and facilities, and any other areas under the supervision of the Trustees in such amounts and with such coverage as the Trustees shall from time to time determine, covering each member of the Trustees, the managing agent or the manager, if any, and each Unit Owner and with cross liability endorsement to cover liabilities of the Condominium to a Unit Owner, and a severability of interest provision precluding the insurer's denial of a unit owner's claim because of negligent acts by this Trust or other unit owners;

4. If the Trustees so vote, the Trustees shall attempt to obtain fidelity coverage against dishonest acts on the part of directors, managers (and officers, employees and agents of a manager) trustees, employees or volunteers, and all other persons responsible for handling funds belonging to or administered by the Condominium Trust. If obtained, the fidelity bond shall name the Condominium Trust as the named insured and shall be written in an amount not less than the estimated maximum of funds including reserve funds in the custody of the Trustees or manager, as the case may be, at any given time during the term of each bond, and sufficient to provide protection which is in no event less than the greater of three months aggregate assessments on all Units or one and one-half times the insured's estimated annual operating expenses and reserves. Fidelity bonds shall: (i) name the Trust as an obligee; (ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expression; and (iii) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Trust and to the Mortgagees which are listed as scheduled holders of first mortgages in the insurance policy.

5. Such other insurance as the Trustees may determine.

B. All such policies of physical damage insurance shall, insofar as practicable, contain waivers of subrogation as to any claim against the Trustees, their agents and employees, Unit Owners, their respective employees, agents and guests, and of any defense based on invalidity arising from the acts of the insured and shall provide that the insurance will not be prejudiced by any acts or omissions of individual unit owners that are not under the control of the owner's association, and shall provide that such policies may not be canceled or substantially modified without at least ten (10) days' prior written notice to all of the insureds, including all unit owners and mortgagees of units, and recovery thereunder shall not be affected on account of the availability of proceeds under any policies obtained by individual Unit Owners covering their own units and shall include a Special Condominium Endorsement (so called) or its equivalent. Agreed Amount, Inflation Guard and Construction Code endorsements shall be required if available. A certificate of insurance, showing the amount of insurance, shall be issued to the owners of each unit and the original or a certificate thereof shall, upon request, be delivered to the mortgagee of each unit. The Trustees shall periodically obtain an independent appraisal of the full replacement value of all portions of the building, including all of the units and all of the common areas and facilities, and additions, alterations and improvements, without deduction for depreciation, for the purposes of determining the amount of fire and extended coverage insurance to be effected pursuant to this Section, and the amount of such insurance shall in no event be less than the full replacement value so as determined.

C. The cost of all such insurance obtained and maintained by the Trustees pursuant to the provisions of this Section III shall be a Common Expense of the Condominium.

D. Any such insurance obtained and maintained by the Trustees pursuant to the provisions of this Section III may have a deductible amount to be determined from time to time by the Trustees, who shall simultaneously specify, in writing with notice to all Unit Owners, how and by whom the amount of the deductible shall be paid in the event of a loss.

E. Nothing shall be done or kept in any unit or in the common areas and facilities which will increase the rate of insurance on the buildings or the contents thereof without the prior written consent of the Trustees, unless the Unit Owner responsible for such increase shall agree to pay the amount of such increase.

#### **IV. Rebuilding and Restoration**

A. In the event of damage to or destruction of the common areas and facilities as a result of fire or other casualty or, in the event of damage to or destruction of any unit as a result of fire or other casualty, whether or not the common areas and facilities have been damaged or destroyed, the Trustees shall promptly adjust the loss, arrange for the prompt repair or restoration of the same, and disburse the proceeds of all insurance policies in payment of all costs and expenses actually incurred in connection with such repair or restoration in appropriate progress payments and with appropriate retainage. All insurance proceeds paid to the Trustees as Insurance Trustees, on account of any casualty shall be dedicated first to the repair or restoration of the loss, and any application of said proceeds by the Trustees on account thereof shall be prior to the application of such proceeds for any other purposes.

B. In the event the insurance proceeds are not sufficient to cover the cost of repairs to the common areas and facilities and the units, the Trustees shall determine the allocation of the proceeds for repairs. To the extent the proceeds allocated as aforesaid are insufficient to cover the cost of repairs to the common areas and facilities, the balance of the cost of such repairs will be assessed against all Unit Owners as a Common Expense.

C. The Trustees may perform emergency work essential to the preservation and safety of the Condominium, including all parts of the building and the common areas and facilities and the units, or the safety of persons, or required to avoid the suspension of any essential service to the Condominium, including all parts of the building and the common areas and facilities and the units, without having first engaged an architect or engineer, adjusted the loss or obtained proceeds of insurance.

E. Subject always to the prior rights of the Unit Mortgagees, if there shall have been a repair or restoration pursuant to the foregoing and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds, if any, shall be added to the Condominium's reserve fund, or, at the option of the Trustees, divided among all the Unit Owners in proportion to their respective interests in the common areas and facilities. Notwithstanding the foregoing, if, as a result of fire or other casualty, the loss exceeds twenty five (25%) percent of the value of the Condominium, including all parts of the building and the common areas and facilities and the units prior to the casualty, and: (a) if seventy five percent (75%) in interest of the Unit Owners give notice of their objection within one hundred

twenty (120) days after the date of the casualty to proceed with repair or restoration, the Condominium, including all units, shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. Subject always to the prior rights of the Unit Mortgagees, the net proceeds of the partition sale together with any common funds shall be divided in proportion to the Unit Owners' respective undivided ownership in the common areas and facilities. Upon such sale, the Condominium shall be deemed removed from the provisions of Chapter 183A of the Massachusetts General Laws; (b) if the Unit Owners agree to proceed with the necessary repair or restoration, the cost of the rebuilding of the Condominium, in excess of any available common funds including the proceeds of any insurance, shall be a common expense.

## **V. Condemnation**

If more than twenty five (25%) percent in value of the Condominium is taken under the power of Eminent Domain, then the taking shall be treated as a casualty loss and the provisions of Section IV of these By-Laws and the provisions of Massachusetts General Laws, Chapter 183A, Section 17 shall apply. Where one or more units have been substantially altered or rendered uninhabitable as a result of a partial taking, and the Unit Owners vote to restore and continue the Condominium pursuant to Section 17 of said Chapter 183A, the Trustees shall have the authority to acquire the remaining portions of such units for such price as the Trustees shall determine, provided that any Unit Owners of such remaining portion who does not agree with such determination may apply to the Superior Court of Hampshire County on such notice to the Trustees and the other Unit Owners as the Court shall direct, for an order directing the purchase of such remaining portion at the fair market value thereof as approved by the Court. Where as a result of a partial taking any unit is decreased in size or where the number of units is decreased by a partial taking, then the Trustees may make such provision for realignment of the percentage interest 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 Trustees. In the event of a partial taking, the award shall be allocated to the respective Unit Owners according to their undivided interest in the common areas and facilities, except as to such portion or portions of the award which are attributable to direct or consequential damages suffered by particular units as determined by the Court, which shall be payable to the Owners of such Units or their mortgagees, as their interests may appear. Subject always to the prior rights of the Unit Mortgagees, in the case of a total taking of all units and the common areas and facilities, the entire award shall be payable to the Trustees to be distributed to the Unit Owners and their mortgagees in accordance with their respective percentage interests in the common areas and facilities.

## **VI. Improvements**

A. If fifty (50%) percent or more but less than seventy-five (75%) percent of the Unit Owners agree to make an improvement to the common areas and facilities, the cost of such improvement shall be borne solely by the Owners so agreeing.



B. Seventy-five (75%) percent or more of the Unit Owners may agree to make an improvement to the common areas and facilities and assess the cost thereof to all Unit Owners as a Common Expense, but if such improvement shall cost in excess of ten (10%) percent of the then value of the Condominium, including the building and the common areas and facilities and the units, any Unit Owner not so agreeing may apply to the Superior Court of Hampshire County on such notice to the Trustees and Unit Owners as the Court shall direct, for an order directing the purchase of his unit by the Trustees at fair market value thereof as approved by the Court. The cost of any such purchase shall be a Common Expense.

## **VII. Rules and Regulations**

A. The Trustees have adopted the initial Rules and Regulations and Restrictions set forth on Exhibit B which is annexed hereto and is hereby incorporated herein by this reference and made a part hereof, governing the details of the operation and use of the common areas and facilities, and containing such restrictions on, and requirements respecting the use and maintenance of the units and the common areas and facilities as are consistent with the provisions of the Master Deed. The purpose of such Rules and Regulations and Restrictions is to prevent unreasonable interference with the use of the units and the common areas and facilities.

B. The Trustees shall administer such rules and regulations.

C. The Trustees may at any time and from time to time, amend, rescind and waive, any or all of such rules and regulations, provided, however, that no rule which impacts exclusively upon the Commercial Unit(s) shall be adopted or changed without the concurrence of the Trustee elected by the Commercial Unit(s), and provided that no rule which impacts exclusively upon the Residential Units shall be adopted or changed without the concurrence of the Trustee elected by the Residential Unit.

## **VIII. Meetings**

A. The Board of Trustees shall meet annually on the date of the Annual Meeting of the Unit Owners. Other meetings may be called by any Trustee, and in such other manner as the Trustees may establish, provided, however, that written notice of each meeting, shall be given at least five (5) days before such meeting to each member of the Board of Trustees. A majority of the Trustees shall constitute a quorum at all meetings. All meetings shall be conducted in accordance with such rules as the Board of Trustees may adopt.

B. There shall be an annual meeting of the Unit Owners on the first Monday of February in each year at 8:00 P.M. on the Condominium premises or at such other reasonable place and time (not more than twenty-one (21) days before or after said date) as may be designated by the Board of Trustees by written notice given to the Unit Owners at least fourteen (14) days prior to the date so designated. Special meetings of the Unit Owners may be called by them upon the written request of any three (3) Unit Owners. Written notice of any such meeting designating the place, day and hour thereof shall be given by the Board of Trustees to the Unit Owners at least fourteen (14) days prior to the date so designated. At the annual meeting of the

Unit Owners, the Board of Trustees shall submit reports of the management and finances of the Condominium. Whenever at any meeting the Board of Trustees proposes to submit to the Unit Owners any matter with respect to which approval of or action by the Unit Owners is necessary or appropriate, the notice of such meeting shall state and reasonably specify such matter. A quorum of Unit Owners shall consist of a majority in interest of Unit Owners.

C. Any Trustee or Unit Owner may, at any time, waive notice of any meeting in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Trustee or Unit Owner without objection to lack of notice at any meeting shall constitute a waiver of notice by such Trustee or Unit Owner of notice of such meeting. If all of the Trustees are present at any meeting of the Trustees, or if all of the Unit Owners are present at any meeting of the Unit Owners, respectively, no notice shall be required and any business may be transacted at such meeting of the Trustees, or Unit Owners, respectively.

#### **IX. Notices to Unit Owners**

Every notice to any Unit Owner required under the provisions hereof, or which may be deemed by the Trustees necessary or desirable in connection with the execution of the Trust created hereby or which may be ordered in any judicial proceeding, shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one or more of the Trustees to such Unit Owner by leaving such notice with him at his residence in the Condominium or by mailing it, postage prepaid, addressed to such Unit Owner at his address as it appears upon the records of the Trustees, at least five (5) days prior to the date fixed for the happening of the matter, thing or event of which such notice is given, unless a different period for the giving of such notice is specified in these By-Laws.

#### **X. Inspection of Books; Reports to Unit Owners**

The Trustees shall keep detailed records of the actions of the Trustees, minutes of the meetings of the Trustees, minutes of the meetings of the Unit Owners, and financial records and books of account of the Condominium, including a chronological listing of receipts and expenditures, as well as a separate account for each unit, which among other things, shall contain the amount of each assessment of Common Expenses against such unit, the date when due, the amounts paid thereon, and the balance remaining unpaid. Copies of the Master Deed, this Trust and these By-Laws, rules and regulations, and floor plans of the building, as the same may be amended from time to time, shall be maintained at the office of the Trustees. All of the foregoing records, accounts and documents shall be available for inspection by Unit Owners, their authorized agents, and lenders, mortgagees, holders, insurers and guarantors of any mortgage on any unit at all reasonable times. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances. The Trustees shall, as soon as reasonably possible, after the close of each fiscal year, or more often, if convenient to them, submit to the Unit Owners a report of the operation of the Trustees for such year, which shall include financial statements in such summary form and in such detail as the Trustees shall deem proper. Except in the case of fraud, committed by any 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 Trustees, 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 holders of fifty-one (51 %) percent or more of first mortgages shall be entitled to have an audited statement prepared at their expense within a reasonable time if one is not otherwise available.

#### **XI. Checks and Notes**

Checks, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust may be signed by any two (2) Trustees, or by any person or persons (who may be one of the Trustees) to whom such power may at any time or from time to time be designated by not less than a majority of the Trustees. All vouchers, if any, for the payment of any common expense shall be approved by not less than two (2) Trustees in each instance.

#### **XII. Seal**

The Trustees may, at any time or from time to time, at their discretion, adopt a seal circular in form bearing the name of this Trust and the year in which this instrument was recorded in the Registry of Deeds, or a common or wafer seal, which shall be valid for all purposes.

#### **XIII. Fiscal Year**

The fiscal year of the Trust shall be the calendar year, or such other date as may from time to time be determined by the Trustees.

#### **XIV. Management; Employees**

The Trustees, at their discretion, may, but need not, appoint real estate management firm, or manager, to manage the Condominium, at such compensation, and upon such terms and conditions as the Trustees see fit. If such management firm, or manager, is so appointed, the Trustees may delegate to such firm or manager such duties as are customarily and usually performed by Condominium property managers, or such duties as the Trustees may at any time and from time to time, expressly delegate.

#### **XV. Use of Units**

A. All Units shall be subject the use limitations set forth in Paragraph G of the Master Deed.

B. Each Unit Owner shall be obligated to maintain the interior of his or her own unit in good order and repair.

#### **XVI. Attorneys, Accountants, Appraisers**

The Trustees may, but need not, engage the services of attorneys, accountants, appraisers, architects, engineers, and other professionals in connection with their duties as such Trustees, upon the payment of such fees and upon such other terms and conditions as the Trustees shall decide, and such fees and other expenses in connection with such employment shall be common expenses of the Condominium. The Trustees, in the absence of fraud, shall be protected in reasonably relying upon the opinion of such attorneys, accountants, appraisers, architects, engineers, or other professionals engaged by the Trustees pursuant to their duties as such Trustees.

#### **XVII. Electricity, Other Utilities**

Electricity shall be supplied by the public utilities servicing the area in which the Condominium is located, directly to each unit through separate meters. Each Unit Owner shall be required to pay all bills and assessments for electricity, and other utilities (if any), consumed or used in his unit.

#### **XVIII. Violations by Unit Owners**

The violation of any rule or regulation adopted by the Trustees, or the breach of any of these By-Laws, or the breach of any provisions of the Master Deed or of this Trust or for the offending Unit Owner's Unit Deed, shall give the Trustees the right, in addition to any other rights set forth in these By-Laws, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity (or both) the continuance of any such breach. In addition to the foregoing, and not in substitution therefor, the Trustees shall have the power to levy fines against Unit Owners for such violations. No fine may be levied for more than five (\$5.00) dollars for any one violation but for each day a violation continues after notice it shall be considered a separate violation. Collection of fines may be enforced against the Unit Owner or Unit Owners involved as if the fines were Common Expenses owed by the particular Unit Owner or Unit Owners. In the case of persistent violations by a Unit Owner, the Trustees shall have the power, after notice and a hearing pursuant to Section XXX hereof, to require such Unit Owners to post a bond to secure adherence to said rules and regulations, By-Laws, Master Deed, this Trust, or said Unit Deed.

#### **XIX. Violation of Law**

No noxious or unlawful activity shall be carried on in any unit or in the common areas and facilities nor shall anything be done therein, either willfully or negligently, which may be or

become unreasonably annoying to the other Unit Owners or occupants No Unit Owner shall make or permit any disturbing noises by himself, his family, guests, agents, servants, employees, licensees, or tenants, nor do or permit anything by such persons that will unreasonably interfere with the rights, comforts or conveniences of other Unit Owners or occupants.

## **XX. Maintenance and Repairs**

A. All maintenance and replacement of and repairs to any unit, ordinary or extraordinary other than to the common areas and facilities contained therein not necessitated by the negligence, misuse or neglect of the owner of such unit and to the doors and windows, and to electrical, plumbing, and heating fixtures within the unit or belonging to the Unit Owner which are not a part of the common areas and facilities, shall be done by the Unit Owner at the Unit Owner's expense, excepting as otherwise specifically provided herein. Each Unit Owner shall be responsible for all damage to any and all other units and to the common areas and facilities that his failure so to do may engender.

B. All maintenance, and replacements of and repairs to the common areas and facilities as defined in the Master Deed, and all maintenance, and replacement of and repairs to the exterior walls of the building and to structural parts of the building and the painting and decorating of the exterior doors of the building and exterior window sash, shall be made by the Trustees and shall be charged to each of the Unit Owners as a common expense, excepting to the extent that the same are necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner.

## **XXI. Structural Integrity**

Nothing shall be done or maintained in any unit or in the common areas and facilities which will impair the structural integrity of any part of the building of the Condominium.

## **XXII. No Alterations**

Neither the exterior of any unit nor the common areas and facilities shall be altered, constructed, removed, decorated or painted in any manner except with the written consent of the Trustees.

## **XXIII. Combustible Materials**

No Unit Owner shall permit or suffer the keeping at any time of any flammable, combustible or explosive fluid or substance on the property of the Condominium or in his unit except only for such lighting and cleaning fluids as are customary for residential use.

**XXIV. Pets**

Unit Owners may keep in their Units one (1) customary household pet subject to the following conditions and such other reasonable conditions as the Trustee(s) may by rule and regulation impose:

- A. Such pet shall not interfere with the quiet enjoyment of the Condominium by its residents;
- B. Any permitted pet shall not be allowed upon the Common Elements unless restrained by a leash, transport box or cage; and in no event upon the land portion of the Property save for transit there across, except for areas designated therefor; and
- C. Each Unit Owner keeping such a pet who violates any of the above conditions or permits any damage to or soiling of any of the Common Elements or permits any nuisance or unreasonable disturbance or noise shall:
  - i. be assessed by the Trustee(s) for the cost of the repair of such damage or cleaning or elimination of such nuisance and/or
  - ii. be levied such fine as the Trustee(s) may reasonably determine and such legal fees and costs as the Trustees may incur; and/or
  - iii. be required by the Trustee(s) to permanently remove such pet from the Condominium upon five (5) days' written notice from the Trustee(s).

**XXV. Safety**

Each Unit Owner assumes complete responsibility for the safety of himself, his family, guests, agents, servants, employees, licensees and tenants while such persons are in his unit, or any other unit, or on the common areas and facilities of the Condominium.

**XXVI. Sale of Units**

A. **No Severance of Ownership.** No Unit Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his unit without including therein the Appurtenant Interests (as hereinafter defined); it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Appurtenant Interests of any unit may be sold, transferred, or otherwise disposed of, except as part of a sale, transfer, or other disposition of the unit to which such interests are appurtenant, or as part of a sale, transfer, or other disposition of such part of the Appurtenant Interest of all units. "Appurtenant Interests", as used herein, shall include (i) the undivided interest of a Unit Owner in the common areas and facilities; and (ii) the interest of such Unit Owner in any other assets of this Trust.

B. With the prior written approval of at least seventy-five (75%) percent of the beneficial interests hereunder (the vote of the Unit Owner of the unit which is the subject of such vote shall not be counted), the Trustees may acquire or lease units of the Condominium. Acquisition or lease costs of units by the Trustees may be made from any funds in the hands of the Trustees; or if such funds are insufficient, the Trustees may levy an assessment against each Unit Owner in proportion to his beneficial interest as a common Expense; or the Trustees, in their discretion, may borrow money to finance the acquisition of such units, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the specific unit or units with Appurtenant Interests so to be acquired by the Trustees. Nothing in this Subsection (B) of this Section shall have any effect, nor limit in any manner the rights and remedies of the Trustees under the provisions of Section 6 of Chapter 183A, or under the provisions of Subsections A and B of Section II hereof.

C. Payment of Assessments. No Unit Owner shall convey, mortgage, pledge, hypothecate, sell or lease his unit unless and until he shall have paid in full to the Trustees all unpaid Common Expenses, theretofore assessed by the Trustees against his unit and until he shall have satisfied all unpaid liens against such unit. This paragraph shall not apply to any first mortgagee of any unit.

## **XXVII. Signs**

Signs shall be allowed on the exterior of the first floor in association with use of the Commercial Unit(s), subject to compliance with the current zoning ordinance of the City of Easthampton.

## **XXVIII. Tenants**

A. Any Unit Owner may lease or rent his unit, provided that such lease conform to the following requirements:

1. be in writing;
2. for Residential Units, apply to the entire unit, and not merely a portion thereof;
3. be for a term of not less than twelve (12) months; and
4. expressly provide that the lease, or occupancy agreement shall be subject in every respect to the Master Deed of the Condominium, the Declaration of Trust of the Liberty Commons Condominium Trust, and the By-Laws and Rules and Regulations thereof, as the same have been amended most recently prior to the execution of the lease, or occupancy agreement;
5. for Residential Units, contain the following notice, in capital letters, double spaced:

### IMPORTANT CLAUSE

"THE CONDOMINIUM UNIT BEING LEASED (RENTED) UNDER THIS LEASE (OCCUPANCY AGREEMENT) IS LOCATED IN A CONDOMINIUM BUILDING NOT A RENTAL APARTMENT HOUSE. THE CONDOMINIUM BUILDING IS OCCUPIED BY THE INDIVIDUAL OWNERS OF UNIT (EXCEPT FOR CERTAIN CONDOMINIUM UNITS, SUCH AS THIS ONE, WHICH ARE BEING OCCUPIED BY TENANTS). THE TENANT UNDERSTANDS THAT HIS OR HER NEIGHBORS IN THE BUILDING ARE (EXCEPT AS AFORESAID) THE OWNERS OF THE UNITS WHICH THEY OCCUPY, AND NOT TENANTS LIVING IN A RENTAL APARTMENT HOUSE. THE TENANT, BY SIGNING THIS LEASE (OCCUPANCY AGREEMENT) ACKNOWLEDGES THAT HE OR SHE HAS BEEN FURNISHED WITH A COPY OF THE MASTER DEED OF THE CONDOMINIUM, THE DECLARATION OF TRUST OF THE LIBERTY COMMONS CONDOMINIUM TRUST AND THE BY-LAWS AND RULES AND REGULATIONS THERETO, AND THAT HE OR SHE HAS READ AND UNDERSTANDS THE SAME, AND THAT HE OR SHE WILL BE EXPECTED TO COMPLY IN ALL RESPECTS WITH THE SAME, AND THAT IN THE EVENT OF ANY NONCOMPLIANCE, THE TENANT MAY BE EVICTED BY THE TRUSTEES OF THE LIBERTY COMMONS CONDOMINIUM TRUST (WHO ARE ELECTED BY THE UNIT OWNERS) AND IN ADDITION, THE TENANT MAY HAVE TO PAY FINES, PENALTIES AND OTHER CHARGES, AND THAT THE PROVISIONS OF THIS CLAUSE TAKE PRECEDENCE OVER ANY OTHER PROVISION OF THIS LEASE (OCCUPANCY AGREEMENT);" and

5. Any failure by the tenant to comply in all respects with the provisions of the Master Deed of the Condominium, The Declaration of Trust of the Liberty Commons Condominium Trust and the By-Laws and Rules and Regulations thereto, shall constitute a material default in the lease (occupancy agreement), and in the event of such default, the Trustees of the Liberty Commons Condominium Trust shall have the following rights and remedies against both the Unit Owner and the tenant, in addition to all other rights and remedies which the Trustees and the Unit Owners (other than the owner of the affected unit) have or may in the future have, against both the owner of the affected unit and the tenant, all rights and remedies of the Trustees and the Unit Owners (other than the owner of the affected unit) being deemed at all times to be cumulative and not exclusive:

(a) The Trustees shall have the right to give written notice of the default to both the tenant and the Unit Owner. Said notice shall be deemed properly given if left in any part of the unit addressed to the tenant, and mailed, postage prepaid, registered or certified mail, return receipt requested, addressed to the owner of the unit as such address then appears on the records of Trustees, or by delivering said notice in hand, or by delivering said notice in any other manner permitted by law.

(b) If the default continues for five (5) days after the giving of said notice, then the Trustees shall have the right to: Levy fines against the owner of the affected unit in accordance with the provisions of Section XVIII of the By-Laws, and



terminate the tenancy by giving notice in writing to quit to the tenant in any manner permitted by law, in the name of the landlord (Unit Owner) or in the name of the Trustees, or both. In case of a tenancy at will, the time of such notice shall be sufficient if it is equal to the interval between the days of rent payment, or thirty (30) days, whichever is longer. In case of a lease, seven (7) days' notice shall be sufficient. In either event, a copy of such notice to quit shall be delivered or mailed to the landlord (Unit Owner) in the manner set forth hereinabove. Thereafter, the Trustees may initiate and prosecute a summary process action against the tenant under the provisions of General Laws, Chapter 239, in the name of the landlord, or in the name of the Trustees, or both.

(c) The Trustees shall be entitled to levy a fine, or fines, or give a notice, or notices to quit followed by a summary process action or actions, and the Trustee's election to pursue any of the foregoing remedies, either at the same time, or in the event of any further default.

(d) All of the expenses of the Trustees in giving notice, and notices to quit, and maintaining and pursuing summary process actions and any appeals therefrom, shall be entirely at the expense of the owner of the affected unit, and such costs and expenses may be enforced and collected against the Unit Owner and unit as if the same were Common Expenses owed by the unit or Unit Owner.

7. The Unit Owner shall make reasonable efforts, at his expense and upon his initiative to inform rental agents of the provision of this section, and shall, at his own expense, and upon his own initiative, furnish copies of the condominium documents to the tenant, and cause the lease or occupancy agreement to be prepared in conformity with the provisions of this section.

8. A true copy of the lease or occupancy agreement shall be delivered to the Trustees forthwith upon its execution.

9. The provisions of this section shall take precedence over any other section in the lease or occupancy agreement.

10. Notwithstanding anything to the contrary herein, and notwithstanding any custom, law, or usage to the contrary, it is expressly understood and agreed that neither the Trustees, nor the Unit Owners, shall ever bear any personal or individual responsibility with respect to said lease or occupancy agreement.

11. Every lease or occupancy agreement shall have attached thereto, and incorporated therein by reference, a copy of this section.

Notwithstanding anything to the contrary in this section, it is expressly understood and agreed that the provisions of this Section shall not apply to any first mortgagee in possession of a unit following default by the Unit Owner in his mortgage, or holding title

to a unit by virtue of a mortgage foreclosure proceeding, or deed or other agreement in lieu of foreclosure.

**XXIX. Protection of Mortgagees; Federal Home Loan Mortgage Corporation;  
Federal National Mortgage Association**

**A. Certain Definitions:**

1. The term "FHLMC" means Federal Home Mortgage Corporation.
2. The term "FNMA" means Federal National Mortgage Association.
3. The term "eligible Mortgage Holder" means a holder of a first mortgage on a unit who has requested notice of certain matters from this Trust as set forth in these By-Laws.
4. The term "constituent documents" means, collectively, the Master Deed, this Trust and the By-Laws and rules and regulations thereto and the Master Plans.

**B. Notwithstanding anything in the Constituent Documents to the contrary:**

1. In the event that the Unit Owners shall amend the Master Deed or the Declaration of Trust to include therein any right of first refusal in connection with the sale of a Unit, such right of first refusal shall not impair the rights of a first mortgagee to:
  - a. foreclose or take title to a Unit pursuant to the remedies provided in its mortgage; or
  - b. accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or
  - c. sell or lease a Unit acquired by the first mortgagee.
2. Any party who takes title to a Unit through foreclosure sale duly conducted by a first mortgagee shall be exempt from any such right of first refusal adopted by the Unit Owners and incorporated in this Master Deed or the Declaration of Trust;
3. Except as may be otherwise provided by applicable law, any first mortgagee who obtains title to a Unit by foreclosure or pursuant to any other remedies provided in its mortgage or by law shall not be liable for such Unit's unpaid Common Expenses which accrued prior to the acquisition of title to such Unit by such first mortgagee;
4. Except as provided by statute, and except as provided for in this Master Deed, in case of condemnation or substantial loss to the Units and/or Common Elements of the Condominium, unless sixty-seven percent (67%) of the eligible Mortgage Holders (based upon one vote for each eligible Mortgage Holder), have given their prior written approval, the Unit Owners and the Trustees of the Condominium Trust shall not be entitled to:

- a. by any act or omission, seek to abandon or terminate the Condominium; or
  - b. change the undivided interest or obligations of any individual Unit for the purpose of:
    - (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or
    - (ii) determining the pro rata share of ownership of each Unit in the Common Areas and Facilities; or
  - c. partition or subdivide any Residential Unit; or
  - d. by any act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas and Facilities of the Condominium, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas and Facilities shall not be deemed an action for which prior consent of the first mortgagees shall be required pursuant to this clause; or
  - e. use hazard insurance proceeds on account of losses to either the Units or the Common Areas and Facilities of the Condominium for other than the repair, replacement or reconstruction thereof.
5. Consistent with the provisions of Chapter 183A, all taxes, assessments and charges which may become liens prior to a first mortgage under the laws of the Commonwealth of Massachusetts shall relate only to the individual Units and not to the Condominium as a whole;
  6. Except as provided by applicable law, in no event shall any provision of this Master Deed or the Declaration of Trust give a Unit Owner or any other party priority over any rights of a first mortgagee pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or for a taking of such Unit and/or the Common Areas and Facilities;
  7. A first mortgagee upon prior written request made to the Trustees, shall be entitled to:
    - a. written notification from the Trustees of any default by its borrower who is an owner of a Unit with respect to any obligation of such borrower under this Master Deed or the provisions of the Declaration of Trust which is not cured within sixty (60) days;
    - b. inspect the books and records of the Trust at all reasonable times;
    - c. receive an annual financial statement of the Trust within one hundred twenty (120) days following the end of any fiscal year of the Trust;
    - d. receive timely written notification of all meetings of the Trust and be permitted to designate a representative to attend all such meetings;
    - e. receive timely written notification from the Trustees of any damage by fire or other casualty to the Unit upon which the first mortgagee holds a first mortgage or any proposed taking by condemnation or eminent domain of said Unit or the Common Areas and Facilities of the Condominium;
    - f. receive timely written notification of any lapse, cancellation or material modification of any insurance policy including fidelity insurance maintained by the Trust;

- g. receive timely notice of any proposed action which requires the consent of a specified percentage of eligible mortgage holders as specified in this Master Deed, the Declaration of Trust, and the Rules and Regulations promulgated pursuant thereto;
8. Any agreement for professional management of the Condominium shall provide for termination by either party without cause and without payment of a termination fee on no more than ninety (90) days' notice, or with cause on ten (10) days notice. Any agreement for professional management with the Declarant, or any entity affiliated with the Declarant, shall be terminable by the Trustees at any time subsequent to the transfer of control to the Unit Owners.
9. In addition to all other requirements of applicable law, this Master Deed or the Trust, the prior written consent of fifty-one percent (51%) of eligible Mortgage Holders, and of Unit Owners entitled to at least seventy five percent (75%) of the Undivided Interest herein shall be required for the following:
- a. the abandonment of the Condominium status or the Condominium except for abandonment provided by statute in case of substantial loss to the Units and Common Areas and Facilities;
  - b. the partition or subdivision of any Residential Unit or of the Common Areas and Facilities;
  - c. a change in the Undivided Interest of any individual Unit;
  - d. to add or amend any material provisions of the Master Deed or the Declaration of Trust which establish, provide for, govern or regulate any of the following:
    - (i) Voting;
    - (ii) Assessments, assessment liens or subordination of such liens;
    - (iii) Reserves for maintenance, repair and replacement of the common areas;
    - (iv) Insurance or Fidelity Bonds;
    - (v) Rights to use of the Common Areas and Facilities;
    - (vi) Responsibility for maintenance and repair of the several portions of the Property;
    - (vii) Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the property;
    - (viii) Boundaries of any Unit;
    - (ix) The interests in the Common Areas and Facilities;
    - (x) Convertibility of Units into Common Areas or of Common Areas into Units;
    - (xi) Leasing of Units;
    - (xii) Imposition of any right of first refusal or similar restriction on the right of a Unit estate owner to sell, transfer, or otherwise convey his/her/their Unit estate;
    - (xiii) Any provisions which are for the express benefit of mortgage holders, eligible mortgage holders or eligible insurers or guarantors of first mortgages on Units;

Any eligible Mortgage Holder that does not deliver or post to the Trustees a negative response within thirty (30) days of a written request by the Trustees for approval of any addition or amendment pursuant to this Paragraph shall be deemed to have consented to the addition or change set forth in such request. An affidavit by the Trustees making reference to

this Paragraph, when recorded at the Registry of Deeds, shall be conclusive as to the facts therein set forth as to all parties and may be relied upon pursuant to the provisions of Declaration of Trust.

### **XXX. Right to Notice and Hearing**

A. Whenever these By-Laws require that an action be taken after "Notice and Hearing", the following procedure shall be observed: All hearings shall be conducted by at least a majority of the Trustees. The Trustees shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing, or both, subject to reasonable rules of procedure established by the Trustees to assure a prompt and orderly resolution of the issues. The affected person shall have the right to question the Trustees and any witnesses with respect to the subject matter of the hearing. If the hearing involves an alleged breach, by the affected person, of any of the provisions of the Master Deed, the Liberty Commons Condominium Trust, or the By-Laws and Rules and Regulations thereto, or any unit deed, the affected person shall be informed, with specificity, of the exact nature of the violation, and of the provision which he or she has allegedly violated, and the affected person shall have the right to question any witness to such alleged violation. The Trustees need not comply with the strict legal rules of evidence observed by courts, but they shall consider only such evidence as reasonable people customarily consider in making important decisions. Nothing herein shall be deemed to limit the right of the Trustees, the affected person, or any unit owners or occupants affected to bring legal action with respect to the subject matter of any hearing, or any decision of the Trustees.

### **XXXI. Arbitration**

In the event that any Unit Owner or any Trustee is aggrieved by any decision or action or nonaction of another Unit Owner or the Trust, or in the event that any decision requiring a majority or unanimous vote does not receive a majority or unanimous vote, or it is decided contrary to the desires of any Unit Owner or Trustee, such Unit Owner or Trustee may, submit such action or vote to arbitration. Such arbitration shall be conducted by an arbitrator selected by the American Arbitration Association, (so long as such institution exists, or such similar organization as may then be in existence) who shall arbitrate such dispute according to rules promulgated by such association.

The findings and results of such arbitration shall be binding upon the parties and may thereafter be submitted to any Court of competent jurisdiction for enforcement. Such decision, subject to Chapter 251 of the General Laws of Massachusetts, as from time to time amended, shall be final and conclusive on all persons. The findings and results of such arbitration shall include an apportionment of the costs of said arbitration. Said apportionment shall be within the discretion of the arbitrator or the organization responsible for arbitration, except that such costs shall be apportioned against any Unit Owner, or Trustee who, in the opinion of the arbitrator or

organization responsible for the arbitration has acted in bad faith, regardless of whether he or she instituted the arbitration proceedings.

In the event that a court action is necessary to enforce a decision made according to this Section, said court shall have the authority to charge that Unit Owner or Trustee who has been recalcitrant in following the order of the arbitrator or the organization responsible for the arbitration, with the costs of said court action, which costs shall include, but are not limited to, attorneys fees and costs.

## EXHIBIT B

This Exhibit B is incorporated into and made a part of the By-Laws of LIBERTY COMMONS CONDOMINIUM TRUST

### RULES AND REGULATIONS OF LIBERTY COMMONS CONDOMINIUM TRUST

1. No Obstruction of Common Areas and Facilities.

No one shall unreasonably obstruct any part of the common areas and facilities, or hallways, without prior consent of the Trustees.

2. No Articles in Common Area.

No clothes, sheets, blankets, laundry or other articles shall be hung out of a unit or exposed on any part of the common areas and facilities.

3. Toys, Baby Carriages.

No baby carriages, toys, playpens, bicycles, velocipedes, benches, chairs or other articles shall be placed on any part of the common areas and facilities except when such articles are in actual use by a unit owner or his family or guests.

4. No Liability for Personal Property of Unit Owners.

All personal property of the unit owners, or any other occupant of a unit, whether in the units, or in the common areas and facilities, or in the Parking Spaces, or elsewhere on the Condominium property, shall be kept therein at the sole risk and responsibility of the respective unit owner or occupant, and the Trustees shall have no responsibility therefor.

5. Radios, Phonographs, Musical Instruments.

The volume of television sets, radios, phonographs, high fidelity sound reproduction devices and musical instruments and the like shall not be operated in any manner which would result in sounds emanating therefrom being heard in any other unit.

6. No Offensive Activity.

No noxious or offensive activity shall be carried on in the common areas and facilities, nor shall anything be done therein either willfully or negligently which may be or become an annoyance or nuisance to the other unit owners or occupants. No Unit owner shall do or permit anything to be done by his family, servants, employees, agents, or visitors that will interfere with the rights, comforts or conveniences of other unit owners or occupants. No public hall shall be decorated or furnished by any unit owner in any manner.

7. Trash.

All garbage and trash must be placed in the proper receptacles designed for refuse collection and no garbage or trash shall be placed elsewhere upon any of the common areas and facilities.

8. Exterior Apparatus.

Under no circumstances shall any air conditioning apparatus, television or radio antennas, clothes line, clothes rack or any other such device or other items (except those initially installed by the Developer) be installed on the exterior of any unit, or on the common areas and facilities, or be permitted to be hung out of a unit.

9. Damage.

Any damage to any building, equipment or common areas and facilities cause by a Unit Owner, or such Unit Owner's family, or visitor shall be repaired at the expense of the Unit Owner.

10. Doors.

Unit entry doors, shall be kept locked and secured at all times except when actually in use.