

**DRAFT SUBJECT TO APPROVAL BY THE CONSERVATION COMMISSION**

(SPACE ABOVE RESERVED FOR REGISTRY OF DEEDS)

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**DECLARATION OF TRUST  
FOR  
5 63<sup>rd</sup> STREET CONDOMINIUM**

This Declaration of Trust made this \_\_\_\_ day of May, 2020, by Seacoast Homes, LLC, a Massachusetts Limited Liability Company with its principal office at 11 Lunt Street, Byfield, Essex County, Massachusetts (the “Trustee”), which term and any pronoun referring thereto shall be deemed to include its successor(s) in trust hereunder and to mean the Trustee(s) for the time being hereunder, wherever the context so permits.

WITNESSETH

ARTICLE I  
Name of Trust

The Trust hereby created shall be known as the “**5 63RD STREET CONDOMINIUM**,” and under that name, so far as legal, convenient and practicable, shall all business carried on by the Trustees be conducted and shall all instruments in writing by the Trustees be executed. The mailing address of the Trust is 11 Lunt Street, Byfield, MA 01922.

ARTICLE II  
The Trust and Its Purpose

Section 1. All of the rights and powers in and with respect to the common areas and facilities (the “Common Elements”) of **5 63RD STREET CONDOMINIUM** (the “Condominium”), established by a Master Deed of even date and recorded herewith, which are by virtue of the provisions of Chapter 183A of the Massachusetts General Laws (“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 as joint tenants, with rights of survivorship, as Trustees of this Trust, in trust 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 units (the “Units”) of the Condominium (the “Unit Owners”), according to the schedule of beneficial interests set forth in the Master Deed, as provided in Article

IV, Section 1, hereof, and in accordance with the provisions of Chapter 183A, this Trust being the organization of Unit Owners established pursuant to the provisions of Chapter 183A for the purposes therein set forth.

Section 2. It is hereby expressly declared that a trust and not a partnership has been 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 Trustees other than as beneficiaries, with only such rights as are conferred upon them as such beneficiaries hereunder and under and pursuant to the provisions of Chapter 183A.

### ARTICLE III The Trustees

Section 1. Except as expressly provided in the second paragraph of this Section 1, there shall at all times be three (3) Trustees. Provided, however, that, notwithstanding anything to the contrary in this Trust contained, until the Turnover Event, as hereinafter defined, the number of Trustees shall be one (1) consisting of the original Trustee named herein or another person or entity designated by Seacoast Homes, LLC (the "Original Trustee"). The Turnover Event (the "Turnover Event") shall be no later than the earlier of the following events: (a) upon all of the Units in the Condominium having been conveyed of record; or (b) three (3) years from the date first above written. Upon the occurrence of the Turnover Event, the office of the Original Trustee (or the successor thereto) shall be deemed vacant so as to permit the vacancy to be filled by Unit Owners in the manner set forth in Section 3 below. Until such vacancy has been filled, the Original Trustee (or the successor thereto) may continue for the Trust, and shall retain responsibility for the installation, operation and maintenance of all common facilities until all Units are sold.

Notwithstanding anything to the contrary in this Trust contained, during the time the Original Trustee is entitled to designate the Trustee as aforesaid, any vacancy resulting from expiration of term, resignation, removal or death of a Trustee designated by the Original Trustee may be filled by an instrument executed by the Original Trustee and recorded with the Southern Essex District Registry of Deeds (the "Registry of Deeds") stating the new Trustee's name and address and that such Trustee is being so designated, and containing the Trustee's acceptance of designation duly acknowledged.

Section 2. From and after the Turnover Event, the terms of office of the Trustees shall, except as hereinafter provided, be three (3) years, and such terms shall be staggered so that insofar as possible the terms of one-third of the Trustees shall expire each year; provided that, in order to establish and maintain such staggering of terms, the terms of the persons first appointed as Trustees after the Turnover Event shall be one (1) year, two (2) years, and three (3) years, respectively, determined by lot, and thereafter upon any increase or decrease in the number of Trustees, the terms of any then newly-appointed Trustee or Trustees shall be one (1) year, two (2) years or three (3) years, determined insofar as necessary by lot, so as to maintain such staggering of terms insofar as possible.

Section 3. Subject to the rights of the Original Trustee recited in Section 1 concerning the filling of vacancies during the time the Original Trustee is entitled to designate the Trustee, if and whenever the number of Trustees shall become less than three (3) or less than the number of Trustees last determined as aforesaid, a vacancy or vacancies in said office of Trustee shall be

deemed to exist. Each such vacancy shall be filled by an instrument in writing setting forth: (a) the appointment of a natural person to act as such Trustee, by vote of the owners of at least fifty-one percent (51%) of the Units in the Condominium or, if the Unit Owners have not within thirty (30) days after the occurrence of any such vacancy made such appointment, by a majority of the then remaining Trustees, or by the sole remaining Trustee if only one (1); and (b) the acceptance of such appointment, signed and acknowledged by the person so appointed. Such appointment shall become effective upon the recording with the Registry of Deeds of such instrument of appointment or a certificate of such appointment signed by a majority of the then remaining Trustees or by the sole remaining Trustee if only one (1), together with such acceptance, and such person shall then be and become such Trustee and shall be vested with the title to the Trust property, jointly with the remaining or surviving Trustee or Trustees, without the necessity of any act of transfer or conveyance. If for any reason any 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 after notice to all Unit Owners and Trustees and to such other parties in interest, if any, to whom the court may direct that notice be given. The foregoing provisions of this Section 3 notwithstanding, despite any vacancy in the office of Trustee, however caused and for whatever duration, the remaining or surviving Trustees shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustees.

Section 4. In any matter relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred, the Trustees may act by a majority vote at any duly called meeting at which a quorum is present, as provided in Article V, Section 6, below; provided, however, that in no event shall a majority consist of less than two (2) Trustees hereunder, unless the number of Trustees hereunder shall become less than two (2), in which case the then remaining or surviving Trustee, if any, may act with respect to the administration of the Trust hereunder or exercise any of the powers hereby conferred. The Trustees may also act without a meeting by instrument signed by a majority of their number.

Section 5. Any Trustee may resign at any time by an instrument in writing signed and duly acknowledged by that Trustee. Resignations shall take effect upon the recording of such instrument with the Registry of Deeds. Subject to the rights of the Original Trustee recited in Section 1 to designate a Trustee of its own choice, any Trustee may be removed with or without cause by vote of the owners of at least fifty-one percent (51%) of the Units in the Condominium. The vacancy resulting from such removal shall be filled in the manner provided in Section 3 above. Any removal shall become effective upon the recording with the Registry of Deeds of a certificate of such removal signed by the owners of at least fifty-one percent (51%) of the Units in the CONDOMINIUM. By instrument recorded with the Registry of Deeds, the Original Trustee may remove, with or without cause, any Trustee which it is entitled to designate and may appoint a successor Trustee as provided in the second paragraph of Section 1, above.

Section 6. No Trustee named or appointed as hereinbefore provided, whether as Original Trustee or as successor to or as substitute for another, shall be obliged to give any bond or surety or other security for the performance of any of his duties hereunder.

Section 7. No Trustee shall receive remuneration for his or her services prior to the Turnover Event or thereafter unless so provided by a vote of a majority of Unit Owners, and any remuneration so provided shall be from time to time fixed by said Unit Owners and shall be a

common expense of the Condominium. With the approval of a majority of Trustees, each Trustee may receive such additional reasonable remuneration for extraordinary or unusual services, legal or otherwise, rendered by him or her in connection with the trust hereof, all as shall be from time to time fixed and determined by the Trustees, and such remuneration shall be a common expense of the Condominium. In all events, the Trustees shall be reimbursed for all out-of-pocket expenses incurred for the benefit of the Condominium, and such reimbursement of expenses shall be charged as a common expense of the Condominium.

Section 8. No Trustee named or appointed, as hereinbefore provided, shall under any circumstances or in any event be held liable or accountable out of his or her personal assets or be deprived of compensation by reason of any action taken, suffered or omitted in good faith, or be so liable or accountable for more money or other property than he or she actually receives or for allowing 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 anything except his or her own personal and willful malfeasance and defaults.

Section 9. No Trustee shall be disqualified by his or her office from contracting or dealing with the other Trustees or with the other Unit Owners (whether directly or indirectly because of his or her interest individually or the Trustees' 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 Trust 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, however, the Trustee shall act in good faith and shall disclose the nature of his or her interest before the dealing, contract or arrangement is entered into.

Section 10. The Trustees and each of them shall be entitled to indemnity both out of the Trust property and by the Unit Owners against any liability incurred by them or any of them in the execution hereof, including without limiting the generality of the foregoing, 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 or her share of the common expenses of the Condominium and for his or her proportionate share of any claims involving the Trust property in excess thereof, all as provided in Sections 6 and 13 of Chapter 183A. Nothing in this Section contained shall be deemed, however, to limit in any respect the powers granted to the Trustees in this instrument.

#### ARTICLE IV

##### Beneficiaries and the Beneficial Interest in the Trust

Section 1. The beneficiaries shall be the Unit Owners of the Condominium as they appear of record in the Registry of Deeds, from time to time. 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 in Exhibit B of the Master Deed, as it may be amended from time to time, incorporated herein by reference with the same force and effect as though fully set forth in the body of this instrument.

Section 2. The beneficial interest of each Unit of the Condominium shall be held and exercised

as a Unit and shall not be divided among the several owners of any such Unit. To that end, whenever either of said Units is owned of record by more than one (1) person, the several owners of such Unit shall: (a) determine and designate which one (1) of such owners shall be authorized and entitled to cast votes, execute instruments and otherwise exercise the rights appertaining to such Unit hereunder; and (b) notify the Trustees of such designation by a notice in writing signed 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, by majority vote, designate any one (1) of such owners for such purposes.

## ARTICLE V Bylaws

The provisions of this Article V shall constitute the Bylaws of this Trust and the organization of Unit Owners established hereby, and shall be applicable to the property of the Condominium and the use and occupancy thereof. The provisions of these Bylaws shall automatically become applicable to property which may be added to the Condominium upon recording of an amendment to the Master Deed submitting such additional property to the provisions of Chapter 183A.

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

### Section 1. Powers and Duties of Trustees.

The Trustees, collectively known as the Board of Trustees, shall have the powers and duties necessary for the administration of the affairs of the Condominium and may do all such acts and things except as by law, by the Master Deed or by this Trust may not be delegated to the Board of Trustees by the Unit Owners. Such powers and duties of the Board of Trustees shall include, but shall not be limited to, the following:

1. Operation, care, upkeep and maintenance of the Common Elements of the Condominium. This duty shall include, upon a reasonable determination by the Trustees that for safety and convenience snow needs to be shoveled, the removal of snow from the traveled common area(s) to allow the free and safe passage of the Unit Owners or assigns and NOT to place snow upon the public ways. Snow may be placed in the designated snow storage areas.
2. Determination of the common expenses required for the affairs of the Condominium, including, without limitation, the operation and maintenance of the Condominium and the preparation of the budget therefor.

3. Assessment and collection of common charges from the Unit Owners.
4. Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Elements of the Condominium.
5. Adoption and amendment of the Rules and Regulations covering the details of the operation and use of the Condominium.
6. Opening of bank accounts on behalf of the Condominium and designating the signatories required therefor.
7. Leasing, managing and otherwise dealing with such community facilities as may be provided for in the Master Deed as being common areas and facilities, a.k.a. the Common Elements.
8. Owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to it or purchased by it as the result of enforcement of a lien for common expenses, or otherwise.
9. Obtaining insurance for the Condominium, including the Units, pursuant to the provisions hereof.
10. Making of repairs, additions and improvements to, or alterations of, the Condominium, and repairs to and restoration of the Condominium in accordance with the other provisions of Chapter 183A, the Master Deed and/or this Trust.
11. Management of the finances of this Trust, including allocation of income and expenses.
12. Enforcing the obligations of the Unit Owners, enforcing the Rules and Regulations of the Condominium, assessing and levying reasonable fines and/or charges against the Unit Owners for violation of the duly-promulgated Rules and Regulations and doing anything and everything else necessary and proper for the sound management of the Condominium. Additionally, in case of persistent violation of the Rules and Regulations by a Unit Owner, requiring such Unit Owner to post a bond to secure adherence thereto.
13. Making of arrangements for the furnishing of utility services to the Condominium property, including the granting of licenses and/or easements required in connection therewith.
14. Entering into management contracts for the management of the Common Elements.
15. All such other powers, functions and duties as are reasonably required by or implicit in the foregoing.

Section 2. Common Expenses, Profits and Funds.

- A. Each Unit Owner shall be liable for common expenses and shall be entitled to common profits of the Condominium according to his or her respective percentage of undivided interest in the

Common Elements, as set forth in Exhibit B of the Master Deed which is incorporated herein by reference with the same force and effect as though fully set forth in the body of this instrument. The Trustees may at any time or times distribute common profits among the Unit Owners in such proportions. The Trustees may, to such extent as they deem advisable, set aside common funds of the Condominium as reserve or contingent funds and may use the funds so set aside for reduction of indebtedness or for other lawful capital purpose, or for repair, rebuilding or restoration of the Trust property, or for improvements thereto, and the funds so set aside shall not be deemed to be common profits available for distribution. There shall be an initial contribution of four months of common expenses to be paid into the Trust at the time each Unit is conveyed by the Declarant to fund the reserve account, the payment of which shall be the responsibility of the Grantee becoming the Unit Owner.

- B. At least thirty (30) days prior to the commencement of each fiscal year of this Trust, the Board of Trustees shall estimate the common expenses expected to be incurred during such fiscal year, together with a reasonable provision for contingencies and reserves, and, after taking into account any undistributed common profits from prior years, shall determine the assessment to be made for such fiscal year. The Trustees shall promptly render statements to the Unit Owners for their respective shares of such assessment, and each Unit Owner thereafter shall pay one-twelfth of his or her share of the estimated common expenses monthly in advance of the first day of each month. In the event that the Board of Trustees shall determine during any fiscal year that the assessment so made is less than the common expenses actually incurred, or, in the reasonable opinion of the Trustees, likely to be incurred, the Board of 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 aforesaid. The Board of Trustees may in its discretion provide for payments of statements in monthly or other installments. In order to create a reserve fund for future contingencies, the Board of Trustees may assess from time to time, in addition to the foregoing assessments, a sum or sums sufficient to provide the Trust with sufficient capital to meet emergencies and other contingencies. The amounts due hereunder, together with interest thereon, if not paid when due, at a rate equal to three percent (3%) above The Wall Street Journal prime rate then in effect, shall constitute a lien on the Unit of the Unit Owner assessed, pursuant to the provisions of Section 6 of Chapter 183A. The Trustees shall take prompt action to collect any common expenses due from any Unit Owner which remains unpaid for more than thirty (30) days from the due date for payment thereof. The Trustees shall have the right and duty to institute all proceedings deemed necessary or desirable by them to recover such unpaid common expenses. The Trustees shall have the right to accelerate the annual assessment of the Unit Owners, if necessary.

No Unit Owner shall be liable for the payment of any part of the common expenses assessed against his or her Unit subsequent to the time he or she transfers record title to the Unit. Each new owner, by taking title to a Unit, shall thereby assume and become personally liable for the payment of all unpaid common expenses incurred by previous owner(s) of such Unit prior to its acquisition by him or her, except that any purchaser at a foreclosure sale of the first mortgage or transferee by deed in lieu of such foreclosure, or any purchaser from the first mortgagee of a Unit should the first mortgagee purchase at the said foreclosure sale or acquire title by such deed in lieu of foreclosure, shall not be liable for the payment of assessments unpaid and due as of the time of acquisition, but shall be liable for assessments which become due thereafter, except as may otherwise be dictated by statute.

In the event of default by any Unit Owner in paying to the Trustees the common expenses charged against his or her Unit, such Unit Owner shall be obligated to pay all expenses, including attorney's fees, incurred in any proceeding brought to collect such unpaid common expenses, and such expenses shall constitute a lien on the Unit pursuant to the provisions of Section 6 of Chapter 183A.

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

Section 3. Insurance.

- A. The Trustees shall obtain and maintain, to the extent available, master policies of flood, casualty and physical damage insurance for the benefit and protection of the Trustees and each Unit Owners, naming as the insured, and with loss proceeds payable to, the Trustees hereunder, as "Insurance Trustees" for the Unit Owners and their respective mortgagees, as their interests may appear, such insurance to cover the Units, all other portions of the building and all other insurable improvements forming part of the Common Elements, but not including: (a) the furniture, furnishings or other personal property of the Unit Owners, whether within the Units or elsewhere; or (b) improvements within a Unit made by the Owner(s) thereof subsequent to the first sale of such Unit, as to which it shall be the separate responsibility of the Unit Owner to insure. Such insurance shall, unless the same is not obtainable, be maintained in an amount equal to not less than the replacement value, exclusive of foundations, of the insured property, as determined by the Trustees, and shall insure against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; and (b) such other hazards or risks as the Trustees from time to time in their discretion shall determine to be appropriate, including, but not limited to, vandalism, malicious mischief, windstorm and water damage, earthquake and boiler and machinery explosion or damage.
- B. All policies of casualty or physical damage insurance shall, unless the same is not obtainable, provide: (a) that such policies may not be cancelled, terminated or substantially modified without at least twenty (20) days' written notice to the insured; (b) that, notwithstanding any provisions thereof which give the insurer the right to elect to restore damage in lieu of making a cash settlement, such election may not be exercisable without the approval of the Trustees and may not be exercisable if in conflict with the terms of the Trust or these Bylaws; (c) for waiver of subrogation as to any claims against the Trust, the Trustees, the manager, agents and/or employees and the Unit Owners and their respective employees, agents and guests; (d) for waivers of any defense based upon the conduct of any insured; and (e) in substance and effect, that the insurer shall not be entitled to contribution as against any casualty insurance for which may be purchased separately by Unit Owners.
- C. The Trustees hereunder designated as Insurance Trustees as aforesaid shall collect and receive all casualty loss insurance proceeds and shall hold, use, apply and disburse the same in accordance with applicable provisions of the following Section 4 of this Article V. With respect to losses which affect portions or elements covered by such insurance of more than one (1) Unit to different extents, the proceeds relating thereto shall be used, applied and disbursed by the Trustees in their judgment, in a fair and equitable manner.



- D. The Trustees shall also so obtain and maintain, unless the same is not obtainable, master policies of insurance with respect to the Common Elements for the benefit and protection of the Trustees and the Unit Owners, for: (a) comprehensive public liability; (b) workmen's compensation and employees liability with respect to any manager, agent or employee of the Trust; and (c) such other risks as the Trustees in their discretion deem it appropriate to insure. All such insurance shall be in such amounts and form as the Trustees shall in their discretion deem appropriate, and shall, insofar as practicable, contain provisions as above set forth with respect to non-cancellation, waiver of subrogation, waiver of defense based on conduct of any insured and non-contribution. Such insurance shall not cover the liability of any Unit Owner as to claims arising out of incidents occurring within his or her own Unit, but it shall be the responsibility of each Unit Owner to maintain general liability insurance therefor. The Trustees may elect to include the managing agent of the Condominium as a party insured under policies of insurance described in this Paragraph D.
- E. The cost of all such insurance obtained and maintained by the Trustees pursuant to the provisions of this Section 3 shall be a common expense.

Section 4. Rebuilding and Restoration; Improvements.

- A. In the event of any casualty loss to the Trust property, the Trustees shall determine in their reasonable discretion whether or not such loss exceeds ten percent (10%) of the value of the Condominium immediately prior to the casualty, and shall notify all Unit Owners of such determination. If such loss as so determined does not exceed ten percent (10%) of such value, the Trustees shall proceed, without notice to the Unit Owners, with the necessary repairs, rebuilding or restoration. If said casualty loss exceeds ten percent (10%) of the value of the Condominium prior to the casualty, and:
1. if a majority of the Unit Owners do not agree within 120 days after the date of the casualty to proceed with repair or restoration, the Condominium, including all Units, shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of a partition sale, together with any common funds including the proceeds of any insurance, shall be divided in proportion to the Unit Owners' respective undivided ownership in the Common Elements. Upon such sale, the Condominium shall be deemed removed from the provisions of Chapter 183A; or
  2. if the majority of the Unit Owners agree to proceed with the necessary repair or restoration, the cost of rebuilding the Condominium, in excess of any available common funds including the proceeds of any insurance, shall be a common expense.
- B. If a Unit Owners elects to make an improvement to the Common Elements, the cost of such improvement shall be borne solely by said Unit Owner.
- C. A majority of Unit Owners may agree to make an improvement to the Common Elements and assess the cost thereof to themselves as a common expense.

Section 5. Rules and Regulations.

The Board of Trustees has adopted the Rules and Regulations, annexed hereto on Schedule A and made a part of this Trust, governing the details of the operation and use of the Common Elements and containing such restrictions on and requirements concerning the use and maintenance of the Units and the Common Elements as are consistent with the provisions of the Master Deed and designed to prevent unreasonable interference with use by the Unit Owners of their respective Units and of the Common Elements.

By vote of a majority of Trustees, the Board of Trustees may at any time, and from time to time, amend, modify or rescind the Rules and Regulations.

Section 6. Meetings.

- A. The Board of Trustees shall meet annually on the date of (and immediately following) the annual meeting of the Unit Owners, and at such meeting shall elect a Chairman and a Treasurer and Secretary. Other meetings may be called by either Trustee and in such other manner as the Trustees may establish, provided, however, that written notice of each meeting, stating the place, day and hour thereof, shall be given at least five (5) days before such meeting to each Trustee. A majority of Trustees shall constitute a quorum at all meetings, and such meetings shall be conducted in accordance with such rules as the Board of Trustees may adopt.
- B. Commencing with the calendar year 2020, there shall be an annual meeting of the Unit Owners on the last Thursday of May in each year, at 7:30 p.m., at the Condominium premises or at such other reasonable place and time 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 the Board of Trustees or by the Unit Owners upon the written request of either Unit Owner. 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 so state and reasonably specify such matter. A quorum of Unit Owners shall consist of a majority of Unit Owners.

Section 7. 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 is given by one (1) or more of the Trustees to such Unit Owner by leaving such notice with him or her at his or her residence in the Condominium or by mailing it, postage prepaid, addressed to such Unit Owner at his or her 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, or such longer period of time as may be

required by the specific terms of this instrument. A Unit Owner may waive notice by duly executing an appropriate waiver of notice.

Section 8. Inspection of Books; Reports to Unit Owners.

Books, accounts and records of the Trustees shall be open to inspection to any one (1) or more of the Trustees and the Unit Owners at all reasonable times. The Trustees shall, as soon as reasonably possible after the close of each fiscal year, or more often if convenient to them, submit to the Unit Owners a report of the operations of the Trustees for such year, which shall include financial statements in summary form and only in such detail as the Trustees shall deem proper. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees, given by registered or certified mail within a period of two (2) months of the date of receipt by him or her, shall be deemed to have assented thereto.

Section 9. Checks, Notes, Drafts and Other Instruments.

Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust may be signed by any two (2) Trustees, unless the number of Trustees hereunder shall become less than three (3), in which case the then remaining or surviving Trustee may sign the same, or by any person or persons (who may be one (1) of the Trustees) to whom such power may at any time or from time to time be designated by a majority of the Trustees.

Section 10. Seal.

The seal of the Trustees shall be circular in form, bearing the inscription "5 63rd STREET CONDOMINIUM," but such seal may be altered by the Trustees, and the Trustees may, at any time and from time to time, at their option, adopt a common or wafer seal which shall be valid for all purposes.

Section 11. Fiscal Year.

The fiscal year of the Trust shall be the calendar year.

Section 12. Maintenance of Units, Including Garage(s).

The Unit Owners shall be responsible for the proper maintenance and repair of the interior of their respective Units, including garage(s), whether ordinary or extraordinary, and for the ongoing maintenance of the Exclusive Use Areas appurtenant thereto, as defined in the Master Deed and shown on the Plans referenced therein.

ARTICLE VI  
Operation of the Property

Section 1. The Unit Owners shall be liable for common expenses and entitled to common profits of the Condominium in proportion to their respective percentages of beneficial interest as set forth in Article IV, Section 2, above.

Section 2. Where the Board of Trustees has determined that annual assessments may be paid monthly in twelve (12) equal installments, payment shall be due and payable in advance of the first of each month. A late charge shall be automatically assessed after fifteen (15) days in arrears, in an amount determined by the Board of Trustees on the sixteenth day of any month for which payment has not been rendered, or by such other policies as the Board of Trustees may from time to time determine.

Each Unit Owner, by acceptance of a Unit Deed, agrees to pay all costs and expenses, including reasonable attorney fees, incurred by the Trustees in collection of said assessments for common expenses, delinquent fees, charges, penalties and interest charged to a delinquent owner, and in the enforcement of said lien.

The right of a delinquent owner to vote or to serve on the Board of Trustees or any committee(s) established by the Board shall be suspended until such delinquent assessments have been paid or unless relief is granted by special resolution of the Trustees.

Section 3. The Trustees shall, upon the written request of any Unit Owner or any encumbrance or prospective encumbrance of a Unit, upon payment of a reasonable fee not to exceed the amount specified by law, issue to a person or entity so requesting a written statement, which shall be valid and effective if signed by two of the Trustees then in office or if signed by only one (1) Trustee if there be only one (1) then in office, setting forth the unpaid common expenses with respect to the Unit covered by the request, which shall be conclusive upon the remaining Unit Owner and upon the Trustees in favor of all persons who rely thereon in good faith.

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

Section 4. In the event of a default by either Unit Owner in the payment of his or her share of the common charges, the Trustees may seek to recover such common charges, interest and expenses by an action to recover the same brought against such Unit Owner, or by foreclosure of the lien on such Unit as provided in Section 6 of Chapter 183A, or in any other manner permitted by law.

In any action brought by the Trustees to foreclose a lien on a Unit because of unpaid common charges, the Unit Owner shall, to the extent permitted by law, be required to pay the costs and expenses of such proceedings and reasonable attorney fees and, further, to pay reasonable rent for the use of his or her Unit, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Trustees, acting on behalf of all Unit Owners, shall have power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage (but not to vote the votes appurtenant to), convey or otherwise deal with the same. A suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or

waiving the lien securing the same.

Section 5. The Board of Trustees shall expend common funds only for common expenses and for other lawful purposes permitted hereby and by the provisions of Chapter 183A.

Section 6. Acquisition of Units by the Trustees for the Trust may be made from the working capital and common charges in the hands of the Trustees, or, if such funds are insufficient, the Trustees may levy an assessment against each Unit Owner in proportion to his or her ownership in the Common Elements, as a common charge, or the Trustees, in their discretion, may borrow money to finance the acquisition of such Unit; provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the Unit, together with the appurtenant interests, so to be acquired by the Trustees.

ARTICLE VII

Rights and Obligations of Third Parties Dealing With the Trustees; Limitation of Liability

Section 1. No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record in the Registry of Deeds shall be bound to ascertain or inquire further as to the persons who are then Trustees hereunder or be affected with any notice, implied or actual, otherwise than by a certificate thereof, and such record or certificate shall be conclusive evidence of the personnel of said Trustees and of any changes therein. The receipts of the Trustees, or any one (1) or more of them, shall be effectual discharges therefrom to the persons paying or delivering the same and no person from whom the Trustees, or any one (1) or more of them, receive any money, property or other credit shall be required to see to the application thereof. No purchaser, mortgagee, lender or other person dealing with the Trustees or with any real or personal property which then is or formerly was the Trust property shall be bound to ascertain or inquire: (a) 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; (b) as to the purpose or regularity of any of the acts of the Trustees, or any one (1) or more of them, purporting to be done in pursuance of any of the provisions or powers herein contained; or (c) as to the regularity of the resignation or appointment of any Trustee. Any instrument of appointment of a new Trustee or discharge of a Trustee purporting to be executed by the Trustees, 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 Trustees of the matters therein recited relating to such discharge, resignation or appointment or the occasion thereof.

Section 2. No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees, or by reason of anything done or omitted to be done by or on behalf of them or any of them against the Trustees individually, or against any such agent or employee, or against any beneficiary, either directly or indirectly, by legal or equitable proceedings, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with or having any claim against the Trustees shall look only to the Trust property for payment under such 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 Trustees, so that neither the Trustees nor the beneficiaries, present or future, shall be personally liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of the Unit Owners under the provisions of Chapter 183A.

Section 3. Every note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees, or by any agent or employee of the Trustees, shall be deemed to have been entered into subject to the terms, conditions, provisions and restrictions hereof, whether or not express reference shall have been made to this instrument.

Section 4. This Declaration of Trust and any amendments hereto and any certificate herein required to be recorded, and any other certificate or paper signed by the Trustees or any of them which it may be deemed desirable to record, shall be recorded with the Registry of Deeds and such record 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 recorded with the Registry of Deeds. Any certificate signed by the Trustees in office at the time, setting forth as facts any matters affecting the Trust, including statements as to the identity of the beneficiaries, the action(s) taken by the beneficiaries and/or the authority of the Trustees to do any act, when duly acknowledged and recorded with the Registry of Deeds, shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees, acting in reliance thereon. Any certificate executed by any Trustee hereunder, or by a majority of the Trustees hereunder, setting forth the existence of any facts, the existence of which is necessary to authorize the execution of any instrument or the taking of any action by such Trustee or majority, as the case may be, shall, as to all persons acting in good faith in reliance thereon, be conclusive evidence of the truth of the statements made in such certificate and of the existence of the facts therein set forth.

## ARTICLE VIII Amendments and Termination

Section 1. The Trustees, with the consent in writing of a majority of Unit Owners, 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 always, however, that no such amendment, alteration, addition or change shall be valid or effective: (a) if made without the consent of the Original Trustee prior to the Turnover Event; (b) according to the purport of which the percentage of the beneficial interest hereunder of any Unit Owner would be altered, other than by consent of a majority of Unit Owners, 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 Elements as set forth in the Master Deed; or (c) which would render this Trust contrary or inconsistent with any requirements or provisions of Chapter 183A. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this Section 1 shall become effective upon the recording with the Registry of Deeds of an instrument of amendment, alteration, addition or change, as the case may be, signed, sealed and acknowledged in the manner required in the Commonwealth of Massachusetts for the acknowledgment of deeds, by the Trustees setting forth in full the amendment, alteration, addition or change and reciting the consent of the Unit Owners herein required to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all prerequisites to the validity 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.

Section 2. The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of Chapter 183A, with a vote of a majority of Unit Owners and the written consent of holders of all liens on the Units, and in accordance with the procedure therefor as set forth in Section 19 of Chapter 183A.

Section 3. Upon the termination of this Trust, the Trustees may, subject to and in accordance with the provisions of Chapter 183A, sell and convert into money the whole of the Trust property, or any part 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, the Trustees shall divide the proceeds thereof among, and distribute in kind at valuations made by them which shall be conclusive, all other property then held by them in trust hereunder to the Unit Owners according to their respective percentages of beneficial interest, as shown in Exhibit B of the Master Deed. In making any sale under the provisions of this Section 3, the Trustees shall have the power to sell or vary any contract of sale and resell without being answerable for loss, and, for said purposes, to do all things, including the execution and delivery of instruments, as may by their performance thereof be shown to be in their judgment necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distribution of Trust property may have passed.

## ARTICLE IX Sale of Units

Section 1. No Unit Owner shall execute any deed, mortgage or other instrument conveying or mortgaging title to his or her 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 Appurtenant Interests are appurtenant, or as part of a sale, transfer or other disposition of such part of the Appurtenant Interests of all Units.

Appurtenant Interests, as used herein, shall include: (i) the undivided interest of a Unit Owner in the Common Elements, said undivided interest being set forth in Exhibit B of the Master Deed; (ii) the interest of a Unit Owner in any Units thereto acquired by the Trustees, or their designee(s), on behalf of all Unit Owners, or the proceeds of the sale or lease thereof, if any; and (iii) the interest of a Unit Owner in any other assets of the Trust.

Section 2. With the prior approval of a majority of Unit Owners, the Trustees may acquire Units of the Condominium. Acquisition 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 or her beneficial interest, as a common charge; 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 Units with Appurtenant Interests so to be acquired by the Trustees.

Section 3. In the event that a Unit or Units are acquired by the Trustees, all Unit Owners shall be deemed to have waived all rights of partition with respect to such Unit or Units.

Section 4. No Unit Owner shall convey, mortgage, pledge, hypothecate, sell or lease his or her Unit unless and until he or she has paid in full to the Trustees all unpaid common charges therefor assessed by the Trustees against his or her Unit and until he or she has satisfied all unpaid liens against such Unit.

ARTICLE X  
Provisions for the Protection of Mortgagees

Section 1. A Unit Owner who mortgages his or her Unit shall notify the Trustees of the name and address of his or her mortgagee. The Trustees shall maintain such information in a book entitled "Mortgagees of Units."

Section 2. The Trustees, whenever so requested in writing by a mortgagee of a Unit, shall promptly report any then unpaid common charges due from, or any other default by, the owner of the mortgaged Unit.

Section 3. The Trustees, when giving notice to a Unit Owner of a default in paying common charges or other default, shall send a copy of such notice to each holder of a mortgage covering such Unit whose name and address has theretofore been furnished to the Trustees, if the mortgagee has requested the same.

Section 4. Each Unit Owner and each mortgagee of a Unit shall be permitted to examine the books of account of the Condominium at reasonable times, on business days.

Section 5. Notwithstanding anything to the contrary elsewhere in the Master Deed or in this Trust and the Bylaws herein contained, the following provisions shall apply for the protection of the holders of the first mortgages of record (the "First Mortgagees") with respect to the Units and shall govern and be applicable insofar as the same are required in order to qualify mortgages of Units in the Condominium for sale to the Federal Home Loan Mortgage Corporation (FHLMC) or Federal National Mortgage Association (FNMA), as applicable under the laws and regulations applicable thereto, to wit:

1. In the event that the Unit Owners shall amend the Master Deed or this 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 a foreclosure in the event of default by a mortgagor; or
  - c. sell or lease a Unit acquired by the First Mortgagee through the procedures described in Subparagraphs (a) and (b), above.



2. Any party who takes title to a Unit through a foreclosure sale duly conducted by a First Mortgagee shall be exempt from any such right of first refusal adopted by the Unit Owner and incorporated in this Master Deed or the Trust for that transaction, but shall not be exempt in the case of a nonforeclosure transfer of said Unit after so acquiring title.
3. 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 or dues which accrued prior to the acquisition of title to such Unit by such First Mortgagee, unless otherwise permitted by law.
4. Except as provided by statute in the event of condemnation or substantial loss or destruction to the Units or the Common Elements of the Condominium and except as provided in Article IX, Section 2, hereof, unless at least sixty-seven percent (67%) of the First Mortgagees, based upon one (1) vote for each first mortgage owned, and all of the Owners, other than the sponsor, developer or builder, of the individual Units have given their prior, written approval, the Trustees shall not be entitled to:
  - a. by any act or omission, seek to abandon or terminate the Condominium; or
  - b. change the pro-rata interest or obligation of any individual Unit for the purpose of:
    - i. levying assessments or changes 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 Elements; or
    - iii. partitioning or subdividing any Unit; or
    - iv. by any act or omission, seeking to abandon, partition, subdivide, encumber, sell or transfer the Common Elements, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause; or
    - v. using hazard insurance proceeds on account of losses to either of the Units or the Common Elements 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. In no event shall any provision of the Master Deed or this 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 distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of such Unit or the Common Elements.

7. A First Mortgagee, upon request made to the Trustees of this Trust, shall be entitled to:
  - a. written notification from the Trustees of the Trust of any default by its borrower who is an owner of a Unit with respect to any obligation of such borrower under the Master Deed or the provisions of this Trust which is not cured within sixty (60) days;
  - b. receive prompt, written notification from the Trustees of the Trust of any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which said mortgagee holds the first mortgage;
  - c. receive prompt, written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Trust;
  - d. receive prompt, written notice of any proposed action which would require the consent of a specified percentage of first mortgages as specified in this Article; and
  - e. receive written notice of all meetings of the Trust and be permitted to designate a representative to attend said meetings.
8. Any holder of a first mortgage on a Unit shall be entitled, upon written request, to a CPA prepared financial statement for the immediately preceding fiscal year, if available, and, if not available, it shall be made available upon request. Any financial statement so requested shall be furnished within a reasonable time following such request.
9. The Trustees shall be required to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of those portions of the Common Elements that the Trust is obligated to maintain. The fund shall be maintained out of regular assessments for common expenses. Additionally, an initial working capital fund shall be established equal to at least two (2) month's estimated common area charges for each Unit. Each Unit's share of the working capital fund must be collected and transferred to the Trust at the time of closing of the first sale of each Unit and maintained in a segregated account for the use and the benefit of the Trust. Amounts paid into the working capital fund shall not be considered as advance payment of regular assessments. The purpose of the working capital fund is to ensure that there will be cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Trustees.
10. Any agreement for professional management of the Condominium or any lease or any other contract providing for services of the developer, sponsor or builder may not exceed a term of three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.
11. Without the consent of Unit Owners to which at least sixty-seven percent (67%) of the votes in the Trust are allocated and without the consent of the holders of the first mortgages on Units that have at least fifty-one percent (51%) of the beneficial interest hereunder, no material provision of the Master Deed or the Trust shall be added or

amended which establishes, provides, governs or regulates any of the following:

- a. voting;
- b. assessments, assessment liens or subordination of such liens;
- c. reserves for maintenance, repair and/or replacement of the Common Elements;
- d. insurance or fidelity bonds;
- e. rights to use the Common Elements;
- f. responsibility for maintenance and repair of the several portions of the Condominium;
- g. expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- h. boundaries of any Unit;
- i. interests in the general or limited Common Elements;
- j. convertibility of Units into Common Elements or of Common Elements into Units;
- k. imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her Unit; or
- l. any provisions that are for the express benefit of first mortgage holders on Units.

Any first mortgage holder that does not deliver or post to the Trustees a negative response within sixty (60) days of a written request by the Trustees, sent by certified or registered mail with return receipt requested, 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 section, 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 this Trust.

It is intended that the provisions of this Article X shall comply with the requirements of the FHLMC and the FNMA with respect to condominium mortgage loans, and all questions with respect thereto shall be resolved consistent with that intention.

The provisions of this section may not be amended or rescinded without the written consent of all First Mortgagees, which consent shall appear on the instrument of amendment as such instrument is duly recorded with the Registry of Deeds.

ARTICLE XI  
Disputes

A Unit Owner aggrieved by any decision or action of the Trust in the administration of the Condominium may, within thirty (30) days of the decision or action of the Trust, appoint an arbitrator who shall be a member of the American Arbitration Association with not less than seven (7) years' experience as an arbitrator. Within ten (10) days after notice of such appointment, the non-aggrieved Unit Owner shall appoint another such arbitrator, and the two (2) so chosen arbitrators shall within ten (10) days thereafter choose a third such arbitrator. A majority of such arbitrators shall be entitled to decide any such matter, and their decision shall be rendered within thirty (30) days of the appointment of the third arbitrator. 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 final arbitrator shall be encouraged to allocate fees to one party or the other, or both, as in his or her judgment and discretion he deems fit, otherwise the arbitration fees shall be split between the parties.

ARTICLE XII  
Miscellaneous

Section 1. Construction and Interpretation. In the construction hereof, whether or not so expressed, words used in the singular or in the plural, respectively, include both the plural and singular, words denoting males include females and words denoting persons include individuals, firms, associations, companies (joint, stock or otherwise), trusts, limited partnerships, limited liability companies and corporations, unless a contrary intention is to be inferred from or required by the subject matter or context. The captions of Articles and Sections, where provided, 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.

Section 2. Waiver. No waiver of or failure to enforce any obligation, restriction, condition or other provision hereof in any particular instance shall be deemed to be or to constitute a waiver or abrogation, generally or in any other instance, of any such obligation, restriction, condition or other provision.

Section 3. Applicable Law. All the powers and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts.

Section 4. Conflicts. If any provision of this Trust shall be invalid or shall conflict with Chapter 183A, as amended, or if any provision of this Trust conflicts with any provision of the Master Deed, then the following rules of construction shall be used:

1. In the event of a conflict between the Trust and Chapter 183A, as amended, the provisions of Chapter 183A shall control.
2. The invalidity of any provision of the Trust shall not impair or affect the validity or enforceability of the remaining provisions of this Trust.
3. In the event of a conflict between any numerical voting requirements for action set forth in the Master Deed and any requirements set forth in Article X hereof and any such requirements set forth in any other provision of this Trust, the provisions requiring the greater percentage or fraction for action to be taken or avoided shall control.

4. In the event any conflict other than as set forth in Paragraph 3 of this Section, between the provisions of the Master Deed and any other provision hereof, the provisions of the Master Deed shall control.

Section 5. Definitions. All terms used herein shall have the same meaning as such terms do in Chapter 183A, unless the context otherwise requires.

Section 6. Consents. Wherever it is provided herein that the permission, approval or consent of any party is required, such permission, approval or consent shall not be unreasonably withheld or delayed. The Trustees have the power and authority to waive any provision of this Trust affecting or limiting the rights of a Unit Owner for any cause or reason determined to be reasonable by such Trustees in their discretion.

Section 7. Condemnation. In the event that any of the Units or the Common Elements of the Condominium is affected by eminent domain proceedings, the following shall apply:

- A. If a Unit, or part of a Unit, is acquired by eminent domain, leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Master Deed, the award shall compensate the Unit Owner for his or her Unit and its undivided percentage interest in the Common Elements whether or not any of the Common Elements have been acquired. Upon acquisition, unless the decree otherwise provides, the Unit's entire undivided interest in the Common Elements shall automatically be allocated to the remaining Unit;
- B. Except as provided in Subsection A, if part of a Unit is acquired by eminent domain, the award shall compensate the Unit Owner for the reduction in value of the Unit and its undivided percentage interest in the Common Elements. Upon acquisition, (i) that Unit's undivided interest in the Common Elements shall be reduced on the basis of the reduction of the fair market value of the remaining Unit in the Condominium as of such date, and (ii) the reduction of interest in the Common Elements of such Unit shall be divested from the Unit so acquired and shall automatically be reallocated to the remaining Unit; and
- C. If the Common Elements or any part thereof are acquired by eminent domain, the Trust shall be the party in interest to receive any such award and to pursue any additional awards due to such taking. Any such award or any action taken by the Trustees pursuant hereto shall be brought or paid to the Trustees named the "Trustees of 5 63rd STREET CONDOMINIUM for the benefit of 5 63RD STREET CONDOMINIUM, of the several Unit Owners and their respective mortgagees." The Trustees shall divide any portion of the award not used for restoration or repair of the remaining Common Elements among the Unit Owners in proportion to their respective undivided percentage interest before the taking, but any portion of the award attributable to the acquisition of a portion of the Common Elements which had been exclusively reserved to any Unit pursuant to the terms of the Unit Deed shall be paid to the Unit Owner of such Unit or his or her mortgagee. Each Unit Owner hereby appoints the Trustees hereof as his or her attorney-in-fact for the foregoing purposes.

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

WITNESS the execution hereof, under seal, on the date first above-written.

Seacoast Homes, LLC  
Trustee

By: \_\_\_\_\_  
By Christopher Horan, Its Manager duly-

authorized

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

May \_\_\_\_, 2020

Before me, the undersigned notary public, personally appeared Christopher Horan, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed and sealed it voluntarily and for its stated purpose, not individually but as Manager of Seacoast Homes, LLC..

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**SCHEDULE A**  
Rules and Regulations

1. Nothing shall be done or kept in, on or about the Common Elements which increases the rate of insurance of the Condominium or the contents thereof applicable to residential use, without the prior, written consent of the Trustees. No Unit Owner shall permit anything to be kept in, on or about in the Common Elements, or done therein, which may result in the cancellation of insurance on the Condominium or the contents thereof or which would be in violation of any law. No waste shall be committed in or of the Common Elements.
2. No offensive activity shall be carried on in, on or about the Units and/or the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owner or the occupant(s) of said other Unit. No Unit Owner shall make or permit any noise or other disturbance to be made by such Unit Owner or by such Unit Owner's family, servants, employees, agents, visitors, licensees or invitees, nor shall such Unit Owner do or permit activities by such person(s) that may interfere with the rights, comforts or convenience of the other Unit Owner.
3. No smoking shall be permitted at any time on or within each Unit's respective roof deck, or other exclusive use area adjacent thereto notwithstanding that said Exclusive Use Areas are Exclusive Use Areas appurtenant to the Units and no smoking shall be permitted in any Common Area.
4. The Common Elements shall be kept free and clear of all rubbish, debris and other unsightly materials. No unit owner shall allow rubbish or garbage (collectively "Trash") to accumulate either inside a Unit or in the Unit exclusive use area or other Common Area. All Trash shall be kept in the designated Trash storage area(s). All exterior Trash barrels must have an attached lid and shall be labeled for each unit.
5. There shall be no storage or leaving of bikes, toys or other personal effects in the Common Areas. All bikes, toys or other personal effects stored beneath the unit in Exclusive Use areas shall be kept in a neat and tidy condition and shall not lay or extend into the Common Areas. Any item stored beneath the unit (other than motor vehicles) shall be secured to the walls and/or ceilings.
6. Except in areas designated by the Trustees, there shall be no parking of unregistered motor vehicles or storage of mobile homes on or about any part of the Common Elements. Boats may be stored on exclusive use driveways only but not longer than six months at a time. This prohibition shall not apply to boats in use during the season.
7. Garbage cans shall not be stored in or about any part of the Common Elements which are visible from the other Units. Garbage and refuse from the Units shall be disposed of only at such times and in such manner as is prescribed by the Trustee(s) and/or by the City of Newburyport.
8. There shall be no placement or attachment of any satellite dish, weathervanes or any other attachment to the top, front or sides of any Unit. There shall be no signs placed in the windows of any unit. There shall be nothing hung from or attached to the exterior of any unit window or from any railing or deck.

9. Each Unit Owner assumes responsibility for such Unit Owner's own safety and that of such Unit Owner's family, agents, servants, employees, visitors, licensees and invitees.
10. No Unit Owner shall store, for any amount of time, any trash, garbage, recycling or any like matter or material on any deck and/or patio extending from his or her Unit. All trash and garbage shall be disposed of in a timely manner and shall not be left within the Units or about the Common Elements for extended periods of time.
11. A Unit Owner shall be permitted to keep normal, household pet(s), provided that said pet(s) shall be the sole responsibility of such Unit Owner and shall not be permitted to cause a nuisance. Notwithstanding the foregoing, no Unit Owner shall be permitted to have or keep any of the following breeds of dogs or mix of breeds of dogs as follows: Akita, Alaskan Malamute, American Pit Bull Terrier, American Staffordshire Terrier, Bull Mastiff, Chow, Dalmatian, Doberman Pinscher, Giant Schnauzer, German Shepherd, Pit Bulls, Presa Canario, Rottweiler, Siberian Husky, Staffordshire Bull Terrier, Thai Ridgeback, Wolf-Dog Hybrid. Further no Unit Owner shall be permitted to keep or maintain any so called "unusual pets or livestock" such as snakes or ferrets. A Unit Owner keeping any permitted pet(s) shall be responsible for prompt removal of all pet waste and repair and restoration of lawn, shrubbery, trees and other portions of the Common Elements damaged by routine use of the same by his or her pet(s). (Please refer to Section VIII-b of the Master Deed.
12. Any consent or approval provided hereunder may be modified, amended or repealed at any time by the Trustees.
13. Subject to Section XVI of the Master Deed, nothing herein shall prevent any Unit Owner from renting his/her Unit, provided that any lease or rental agreement shall be in writing, shall be for a term of no less than seven days and shall be specifically subject to this Master Deed, the provisions of the Declaration of Trust, the Bylaws and the Rules and Regulations. A copy of any such agreement shall promptly be furnished to the Trustee(s) of the Trust, who shall keep and maintain the same as part of the records of the Condominium and shall furnish copies of the same to the first mortgagees of record upon request.
14. This Condominium and the Property is subject to that certain Order of Conditions issued by the Newburyport Conservation Commission on September 5, 2019 and recorded in the Essex South Registry of Deeds Book 38010 Page 177. In addition to any requirements therein the following shall apply to the use of the Property:
  - a. The open space on the site shall not be used for parking of additional vehicles, boats, recreational equipment, trailers, etc.
  - b. No mowing of dune grass or other vegetation on site shall be allowed.
  - c. No mulch or other soils shall be used for landscaping. Only beach grade sand may be used for planting areas.
  - d. No fencing shall be installed or replaced on site without additional approval of the Conservation Commission.
  - e. The area below the skirting around the parking areas shall not be blocked in a manner that would inhibit the passage of wind-blown sand beneath the building.

The Trustees shall not omit or change this Rule in any way.



