

ARTICLES OF ASSOCIATION  
OF  
THE ELM SQUARE CONDOMINIUM ASSOCIATION

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ARTICLES OF ASSOCIATION  
OF  
THE ELM SQUARE CONDOMINIUM ASSOCIATION

The undersigned hereby associate themselves for the purpose of forming an association under Chapter 183A, Massachusetts General Laws, and certify as follows:

ARTICLE I.

The name of the association shall be THE ELM SQUARE CONDOMINIUM ASSOCIATION, hereinafter called the Association.

ARTICLE II.

The purpose for which the Association is organized is to provide an entity pursuant to Chapter 183A, Massachusetts General Laws, hereinafter called the Condominium Act, for the operation of The Elm Square Condominium, a Condominium located upon the following lands:

- (1) The land and buildings in Andover, Massachusetts situated on the Northerly side of Elm Street and being described in a Master Deed dated August 23, 1983, duly recorded at the Essex North District Registry of Deeds, Book 1721, Page 223, dedicating such premises to Condominium use.

ARTICLE III.

The powers of the Association shall include and be governed by the following provisions:

(1) The Association shall have all of the common law and statutory powers of an association which are not in conflict with the terms of these Articles.

(2) The Association shall have all of the powers and duties set forth in the Condominium Act, the By-Laws of the Association, the Master Deed, and all of the powers and duties reasonably necessary to operate the Condominium as set forth in these Articles and as it may be amended from time to time, including but not limited to the following:

(a) To make and collect assessments against members to defray the costs, expenses, and losses of the Condominium.

(b) To use the proceeds of assessments in the exercise of its powers and duties.

(c) To maintain, repair, replace, and operate the Condominium property.

(e) To reconstruct improvements after casualty and to further improve the property.

(f) To make and amend reasonable regulations respecting the use of the property in the Condominium; provided, however, that all such regulations and amendments thereto shall be approved by not less than 60% of the votes of the entire membership of the Association before such shall become effective.

(g) To enforce by legal means the provisions of the Condominium Act, the Master Deed, these Articles the By-Laws of the Association, and the regulations for the use of the Condominium property.

(h) To contract for the management of the Condominium and to delegate to such Manager all powers and duties of the Association except such as are specifically required to have approval of the Board of Managers or the membership of the Association.

(i) To contract for the management or operation of portions of the common elements susceptible to separate management or operation, and to lease such portions.

(j) To employ personnel to perform the services required for proper operation of the Condominium.

(3) The Association shall have the power to purchase a unit of the Condominium and shall have the right of first refusal at a value and in accordance with procedures set forth in the By-Laws.

(4) All funds and the titles of all properties acquired by the Association and the proceeds thereof shall be held in trust for the members in accordance with the provisions of these Articles and the By-Laws.

(5) The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the By-Laws.

ARTICLE IV.

(1) The members of the Association shall consist of all of the record owners of units, one membership per unit.

(2) Change of membership in the Association shall be established by the recording in the Essex North District Registry of Deeds, of a deed or other instrument establishing a record title to a unit in the Condominium and the delivery to the Association of a certified copy of such instrument, the owner designated by such instrument thereby becoming a member of the Association. The membership of the prior owner shall be thereby terminated.

(3) The share of a member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his Unit.

(4) The members of the Association shall be entitled to one vote for each Unit owned by them. The manner of exercising voting rights shall be determined by the By-Laws of the Association.

ARTICLE V.

(1) The affairs of the Association will be managed and administered by a Board consisting of the number of managers as shall be determined by the By-Laws, but not less than three managers, and in the absence of such determination shall consist of three managers.

(2) Managers of the Association shall be elected at the annual meeting of the members in the manner determined by the By-Laws. Managers may be removed and vacancies on the Board of Managers shall be filled in the manner provided by the By-Laws.

(3) The first election of managers shall be held in accordance with the By-Laws at the First Annual meeting of Unit Owners called within thirty (30) days after title to 80% of the Units has been conveyed. The managers herein

named shall serve until the first election of managers, and any vacancies in their number occurring before the first election shall be filled by agreement of the remaining managers.

(4) The names and addresses of the members of the first Board of Managers who shall hold office until their successors are elected and have qualified, or until removed, are as follows:

Stephen R. Duly	24 Gilman Lane No. Andover, MA 01845
Philip J. Coppola	234 Brentwood Circle No. Andover, MA 01845
Frederick C. Meyers	169 So. River Road Bedford, NH
Marcus L. Peterson	169 So. River Road Bedford, NH

ARTICLE VI.

Every manager of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Manager of the Association, or any settlement thereof, whether or not he is a manager or officer at the time such expenses are incurred, except in such cases wherein the manager or

officer at the time such expenses are incurred, except in such <sup>247</sup> cases wherein the manager or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification herein shall apply only when the Board of Managers approves such settlement and reimbursement as being for the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such manager or officer may be entitled.

ARTICLE VII.

The first By-Laws of the Association shall be adopted by the Board of Managers, and may be altered, amended, or rescinded in the manner provided by the By-Laws.

ARTICLE VIII.

Amendments to the Articles of Association shall be proposed and adopted in the following manner:

(1) Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

(2) A resolution approving a proposed amendment may be proposed by either the Board of Managers or by the members of the Association. Managers and members not present in person or by proxy at the meetings considering



the amendment may express their approval in writing, providing such approval is delivered to the secretary at or prior to the meeting.

(3) Approval of an amendment must be by

not less than 60% of the votes of the entire membership of the Association.

(4) No amendment shall make any changes in the qualifications for membership nor the voting rights of members, nor any change in Section 3 of Article III, without approval in writing by all members.

(5) A copy of each amendment shall be certified by the Secretary of State and recorded in the Essex North Registry of Deeds.

#### ARTICLE IX.

The term of the Association shall be the life of the Condominium, unless the Association is terminated sooner by unanimous action of its members. The Association shall be terminated by the termination of the Condominium in accordance with the provisions of the Master Deed and the By-Laws.

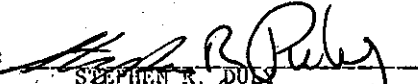
ARTICLE X.

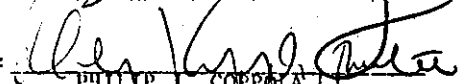
The name(s) and address(es) of the subscriber(s) of these Articles of Association are as follows:

Elm Square Realty Trust  
Two Elm Square  
Andover, Massachusetts 01810

IN WITNESS WHEREOF, the subscriber has hereto affixed its signature on August 23, 1983.

ELM SQUARE REALTY TRUST

BY:   
STEPHEN R. DULY

BY:   
PHILIP J. COPPOLA

BY:   
FREDERICK C. MEYERS

BY:   
MARCUS L. PETERSON

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THE ELM SQUARE CONDOMINIUM  
BY-LAWS  
OF  
THE ELM SQUARE CONDOMINIUM ASSOCIATION

ARTICLE I.

PLAN OF UNIT OWNERSHIP

Section 1. Unit Ownership. The property located in Andover, Essex County, Massachusetts (hereinafter called the "Property") is more particularly described in the Master Deed dated August 23, 1983 and recorded herewith and has been submitted to the provisions of Chapter 183A of Massachusetts General Laws by THE ELM SQUARE REALTY TRUST, the Elm Square Condominium (the "Condominium").

Section 2. Purpose of Association. The Association is an association comprised of the Unit Owners of the Condominium and used by them to manage and regulate the Condominium. Each Unit Owner, as defined in said Chapter 183A, shall have the same percentage interest in the Association as his respective interest in the common areas and facilities ("Common Elements") as provided in the Master Deed.

Section 3. Applicability of By-Laws. The provisions of these By-Laws are applicable to the Property of the Condominium and to the use and occupancy thereof. The term "Property" as used herein shall mean the land, the buildings and all other improvements thereon (including the units (Units) and Common Elements), and all other property, personal or mixed, intended for use in connection therewith, all of which are intended to be submitted to the provisions of said Chapter 183A of Massachusetts General Laws.

Section 4. Application. 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 these By-Laws, the Master Deed, the Rules and Regulations, all covenants, agreements, restrictions, easements and declarations of record ("title conditions"). The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that all of the above documents, restrictions and conditions, as they may be amended from time to time, are accepted, ratified, and will be complied with.

Section 5. Office. The office of the Condominium and of the Board of Managers shall be located at the Condominium or such other location in Andover as may be selected and written notice thereof given to Mortgagees, ~~and~~ OWNERS.



ARTICLE II.BOARD OF MANAGERS

Section 1. Number and Term. The number of Managers which shall constitute the whole Board shall be 4. Until succeeded by the Managers elected by the Unit Owners, Managers need not be Unit Owners. Upon the expiration of the terms of all of the first Board of Managers, all Managers thereafter elected shall be Unit Owners. Except as provided in Section 4 of this Article with respect to the first Board of Managers, Managers shall be elected for 3-year terms on a staggered basis. In any event, however, each Manager shall hold office until such time as his successor has been elected.

Section 2. Powers and Duties. The Board of Managers 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 or by the Master Deed or by these By-Laws may not be delegated to the Board of Managers by the Unit Owners. Such powers and duties of the Board of Managers shall include, but not be limited to the following:

(a) Provision for the operation, care, upkeep and maintenance of the Common Elements by the Association.

(b) Determination of the common expenses required for the affairs of the Condominium, as set forth in Section I of Article VI. hereof.

(c) Collection of the common charges from the Unit Owners including, but not limited to, the common expenses set forth in subparagraph (b) above.

(d) Opening of bank accounts on behalf of the Condominium and designating the signatories required therefor.

(e) Leasing, and otherwise dealing with such community facilities as may be provided for in the Master Deed as being Common Elements.

(f) Owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to it or purchased by it as the result of enforcement of the lien for common expenses, or otherwise.

(g) Obtaining of insurance for the Property, including the Units, pursuant to the provisions of Article VI., Section 6 hereof.

(h) Making of repairs, additions and improvements to, or alterations of, the Property and repairs to and restoration of the Property in accordance with the other provisions of these By-Laws.

(i) Enforcement of obligations of the Unit Owners.

(j) Adoption and amendment of rules and regulations governing the details of the operation and use of the common areas and facilities.

Section 3. Management. Responsibility for the management of the Condominium shall be in the Board of Managers. However, the Board may employ for the Condominium a managing agent or manager at a compensation established by the Board of Managers to perform such duties and services as the Board shall authorize.

Section 4. First Board of Managers. The first Board of Managers shall be designated by the Grantors and shall consist of four (4) Managers who shall serve until the First Annual Meeting of Unit Owners held pursuant to Article III Section 1 of the By-Laws. At each such Annual Meeting one or more Managers of said Board ("Managers"), as the case may be, shall be elected by the Unit Owners to fill the vacancies so created for such terms as will result in one vacancy each year thereafter.

Section 5. Removal. A Manager may be removed for cause, and his or her successor elected, by an affirmative vote of a majority of the Unit Owners.

Section 6. Vacancies. Vacancies in the Board of Managers caused by any reason other than the removal of a Manager thereof by a vote of the Unit Owners shall be filled by vote of a majority of the remaining Managers at a special meeting of the Board of Managers held for that purpose promptly after the occurrence of any such vacancy, even though the Managers present at such meeting

may constitute less than a quorum, and each person so elected shall be a Manager for the balance of the term of the Manager he is replacing.

Section 7. Organization Meeting. The first meeting of the Board of Managers following the first Annual Meeting of the Unit Owners shall be held within ten (10) days thereafter, at such time and place as shall be fixed by the Unit Owners at the meeting at which such Board of Managers shall have been elected, and no notice shall be necessary to the newly elected Managers in order legally to constitute such meeting, providing a majority of the Board of Managers shall be present thereat.

Section 8. Regular Meetings. Regular meetings of the Board of Managers may be held at such time and place as shall be determined from time to time by a majority of the Managers. Notice of regular meetings of the Board of Managers shall be given to each Manager, by mail or telegraph or delivery in hand, at least, three (3) business days prior to the day named for such meeting.

Section 9. Special Meetings. Special meetings of the Board of Managers may be called by the President on three (3) business days' notice to each Manager, given by mail, telegraph, or delivery in hand, which notice shall state the time, place

and purpose of the meeting. Special meetings of the Board of Managers shall be called by the President or Clerk in like manner and on like notice on the written request of at least one (1) Manager.

Section 10. Waiver of Notice. Any Manager may at any time waive notice of any meeting of the Board of Managers in writing and such waiver shall be deemed equivalent to the giving of such notice.

Section 11. Quorum of Board of Managers. At all meetings of the Board of Managers, a majority of the Managers thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the Managers present at a meeting at which a quorum is present shall constitute the decision of the Board of Managers. If at any meeting of the Board of Managers there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time.

Section 12. Compensation. No Manager shall receive any compensation from the Association for acting as such.

Section 13. Liability of the Board of Managers. The Managers shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners shall

indemnify and hold harmless each of the Managers against all contractual liability to others arising out of contracts made by the Board of Managers on behalf of the Condominium unless any such contract shall have been made in bad faith. It is intended that the Managers shall have no personal liability with respect to any contract made by them and on behalf of the Condominium. The original Board of Managers is specifically authorized to contract for goods or services with the Grantors, or employees or affiliates of the Grantors whether or not such persons are then Managers and no such contracting shall be deemed to involve a conflict of interest. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board of Managers or out of the aforesaid indemnity in favor of the Managers shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interests of all the Unit Owners in the Common Elements. Every agreement made by the Board of Managers or by the Manager on behalf of the Condominium shall provide that the Managers, or the Manager, as the case may be, are acting only as agent for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interest of all Unit Owners in the Common Elements.

Section 14. Action by Consent. Any action by the Board of Managers may be taken without a meeting if a written consent

thereto is signed by all the Managers and filed with the records of the meetings of the Board of Managers. Such consent shall be treated as a vote of the Board of Managers for all purposes.

ARTICLE III.

UNIT OWNERS

Section 1. Annual Meeting. Within thirty (30) days after title to 80% of the Units has been conveyed, the Board of Managers shall call the First Annual Meeting of Unit Owners. Thereafter, Annual Meetings shall be held on the last Tuesday in April of each year. At such meetings Managers shall be elected by ballot of the Unit Owners, in accordance with the requirements of Article II of these By-Laws. The Unit Owners may also transact such other business of the Condominium as may properly come before them.

Section 2. Place of Meetings. Meetings of the Unit Owners shall be held at the principal office of the Condominium, or at such other suitable place in Massachusetts, convenient to the Unit Owners as may be designated by the Board of Managers.

Section 3. Special Meetings. It shall be the duty of the President to call a special meeting of the Unit Owners as directed by the Board of Managers or upon a petition signed by at least one-third in number of the Unit owners and delivered to the Clerk.

Section 4. Notice of Meetings. It shall be the duty of the Clerk to mail or deliver a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Unit Owner of record, at least five (5) days prior to such meeting. The mailing or delivery of a notice in the manner provided in these By-Laws shall be considered notice served. Notice of a meeting need not be given to a Unit Owner if a written waiver thereof executed before or after the meeting by such Unit Owner or his duly authorized attorney, is filed with the records of the meeting.

Section 5. Adjournment of Meetings. If any meeting of Unit Owners cannot be held because a quorum has not attended, a majority in common interest of the Unit Owners who are present at such meeting, either in person or by proxy, shall adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 6. Voting. The Owner or Owners of each Unit, or some person designated by such Owner or Owners to act as proxy on his or their behalf who need not be an Owner, shall be entitled to cast the votes appurtenant to such Unit at any meeting of Unit Owners. The designation of any such proxy shall be made in writing to the Clerk, and shall be revocable at



any time by written notice to the Clerk by the Owner or Owners so designating. Any or all of such Owners may be present at any meeting of the Unit Owners and may vote or take any other action as a Unit Owner either in person or by proxy. Each Unit Owner (including the Grantors, if the Grantors shall then own one or more Units) shall be entitled to cast one vote at all meetings of the Unit Owners, which vote shall be weighted in the same proportion as the respective interest in the Common Elements of such Unit Owner as set forth in the Master Deed. The votes attributable to each Unit must be voted as an entirety and if owners of a Unit shall be unable to agree on the vote to be cast on any issue their right to vote on that issue shall be deemed to have been waived. Any Unit or Units owned by the Board of Managers or its designee shall not be entitled to a vote and shall be excluded from the total of common interests when computing the interest of all the other Unit Owners for voting purposes.

Section 7. Majority of Unit Owners. As used in these By-Laws the term "majority of Unit Owners" shall mean those Unit Owners having more than 50% of the total authorized votes of all Unit Owners present in person or by proxy and voting at any meeting of the Unit Owners, determined in accordance with the provisions of Section 6 of this Article III. The vote of the majority of Unit Owners present at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all

purposes except when in the Master Deed or these By-Laws, or by law, a higher percentage vote is required.

Section 8. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of a majority of Unit Owners shall constitute a quorum at all meetings of the Unit Owners.

Section 9. Action Without Meeting. Any action to be taken by Unit Owners may be taken without a meeting if all Unit Owners entitled to vote on the matter consent to the action by a writing filed with the records of the meetings of Unit Owners. Such consent shall be treated for all purposes as a vote at a meeting.

#### ARTICLE IV.

##### OFFICERS

Section 1. Designation. The principal officers of the Condominium shall be the President, the Clerk and the Treasurer. The Officers shall be elected by and from the Board of Managers. The Board of Managers may appoint an Assistant Treasurer, and Assistant Clerk, and such other officers as in its judgment may be necessary.

Section 2. Election of Officers. The officers of the Condominium shall be elected annually by the Board of Managers at its Organization Meeting and shall hold office at the pleasure of the Board of Managers and until their successors are elected.

Section 3. Removal of Officers. Upon the affirmative vote of a majority of the Board of Managers at a regular or special meeting thereof called for that purpose, any officer may be removed, either with or without cause, and his successor may be elected.

Section 4. President. The President shall be the chief executive officer of the Condominium. He shall preside at all meetings of the Unit Owners and of the Board of Managers. He shall have all of the general powers and duties which are incident to the office of President of a stock corporation organized under the Business Corporation Law of the Commonwealth of Massachusetts, including but not limited to, the power to appoint committees from among the Unit Owners from time to time as he may in his discretion decide are appropriate to assist in the conduct of the affairs of the Condominium.

Section 5. Clerk. The Clerk shall keep the minutes of all meetings of the Unit Owners and of the Board of Managers; shall have charge of such books and papers as the Board of Managers may direct; and shall in general, perform, all the duties incident to the office of Clerk of a stock corporation organized under the Business Corporation Law of the Commonwealth of Massachusetts.

Section 6. Treasurer. The Treasurer shall have the responsibility for Condominium funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. He shall be responsible for the deposit of all monies and other valuable effects in the name of the Board of Managers, or the managing agent, in such depositories as may from time to time be designated by the Board of Managers, and he shall, in general, perform all the duties incident to the office of Treasurer of a stock corporation organized under the Business Corporation Law of the Commonwealth of Massachusetts. No payment voucher shall be paid unless and until approved by a majority of the Board of Managers, unless said Board has otherwise authorized said Treasurer.

Section 7. Agreements, Contracts, Deeds, Checks, Etc. All agreements, contracts, deeds, leases, checks and other instruments of the Condominium shall be executed by such other person or persons as may be authorized by the Board of Managers.

Section 8. Compensation of Officers. No officer shall receive any compensation from the Condominium for acting as such.

ARTICLE V.

## NOTICES

Section 1. Definition. Whenever under the provisions of the Master Deed or of these By-Laws, notice is required to be given to the Board of Managers, any Manager or Unit Owner, it shall not be construed to mean personal notice; but such notice may be given in writing, either by delivery or by mailing, in a postpaid sealed wrapper, addressed to the Board of Managers, such Manager or Unit Owner, as the case may be, at such address as appears on the books of the Condominium. Notice shall be deemed given as of the date of mailing or of delivery to such person's said address.

Section 2. Service of Notice-Waiver. Whenever any notice is required to be given under the provisions of the Master Deed, of law, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

ARTICLE VI.

## OPERATION OF THE PROPERTY

Section 1. Determination of Common Expenses and Fixing of Common Charges. The Board of Managers shall from time to

time, and at least annually, prepare a budget for the Condominium, determine the amount of the Common Charges payable by the Unit Owners to meet the common expenses of the Condominium and allocate and assess such common charges among the Unit Owners according to their respective common interests. The Common expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Managers pursuant to the provisions of Section 6 of this Article VI. The common expenses may also include such amounts as the Board of Managers may deem proper for the operation and maintenance of the Property, including, without limitation, an amount for working capital of the Condominium, for a general operating reserve, for a reserve fund for replacements, and to make up any deficit in the common expenses of any prior year. The common expenses may also include such amounts as may be required for the purchase or lease by the Board of Managers, on behalf of all Unit Owners, of any Unit whose owner has elected to sell or lease such Unit or of any Unit which is to be sold at a foreclosure or other judicial sale.

The Board of Managers or its agent shall advise all Unit Owners promptly in writing of the amount of the Common Charges payable by each of them, respectively, as determined by the Board of Managers, as aforesaid and shall furnish copies of each budget on which such common charges are based to all

Unit Owners and to their mortgagees. The Grantors will be required to pay Common Charges in full on any Unit owned by them.

Section 2. Payment of Common Charges. All Unit Owners shall pay the Common Charges assessed by the Board of Managers pursuant to the provisions of Section 1 of this Article VI, monthly in advance or at such other time or times as the Board of Managers shall determine.

No Unit Owner shall be liable for the payment of any part of the Common Charges assessed against his Unit subsequent to a sale, transfer or other conveyance by him including conveyance to the Board of Managers (made in accordance with the provisions of Article VIII. of these By-Laws) of such Unit, together with the Appurtenant Interests, as defined in Section 1 of Article VIII. hereof. Subject to the provisions of Section 5 of this Article VI., a purchaser of a Unit shall be liable for the payment of Common Charges assessed and unpaid against such Unit prior to the acquisition by him of such Unit, except that a mortgagee or other purchaser of a Unit at a foreclosure sale of such Unit shall not be liable for, and such Unit shall not be subject to, a lien for the payment of Common Charges assessed prior to the foreclosure sale.

Section 3. Default in Payment of Common Charges.

In the event of default by any Unit Owner in the payment of the Common Charges, such Unit Owner shall be obligated to pay interest at the rate of 1.25% per month on such Common Charges from the due date thereof, together with all expenses, including attorney's fees, incurred by the Board of Managers in collecting the same. The Board of Managers 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 of Massachusetts General Laws.

Section 4. Foreclosure of Liens for Unpaid Common Charges.

In any action brought by the Board of Managers to foreclose a lien on a Unit because of unpaid Common Charges, the Unit Owner shall be required to pay a reasonable rental for the use of his Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board of Managers 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 vote appurtenant to), convey or otherwise deal with the same. A suit to recover a money judgment for unpaid Common Charges shall be maintained without foreclosing or waiving the lien securing the same.



Section 5. Statement of Common Charges. The Board of Managers shall promptly provide any Unit Owner so requesting the same in writing, with a written statement of all unpaid Common Charges due from such Unit Owner. Upon full payment of same, the Board of Managers or the Manager shall certify such payment in form suitable for recording and the same when recorded in the Essex North District Registry of Deeds shall operate to discharge the Unit from any lien for any Common Charges.

Section 6. Insurance. (A) The Board of Managers shall obtain and maintain, to the extent available, a master policy or policies of casualty and physical damage insurance for the benefit and protection of the Board of Managers and all of the Unit Owners, naming as the named insured, and with loss proceeds payable to the Board of Managers or one or more of its members designated by it as Insurance Trustee or Trustees for all of the Unit Owners collectively of the Condominium and their respective mortgagees, as their interests may appear, pursuant to such condominium form of insurance as may from time to time be customarily used in Massachusetts. Such master policy or policies shall cover the real estate constituting both the Common Elements and the Units, together with furnace, water heaters, air conditioners, improvements, betterments, and such other portions and elements of the Units and the Common Elements as are for insurance purposes normally deemed

to constitute part of a building and customarily covered by such insurance, including fixtures, installations or additions comprising a part of a building within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the individual condominium units initially installed or replacements thereof, in accordance with the original condominium plans and specifications or installed by or at the expense of the Unit Owners, but not including the furniture, furnishings, wall coverings, floor coverings, or other personal property of the Unit Owners. Such insurance shall insofar as practicable be maintained in an amount equal to not less than the full replacement value, as determined by the Board of Managers, of the insured property, 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 Board of Managers from time to time in their discretion shall determine to be appropriate, including, but not limited to, vandalism, malicious mischief, windstorm and water damage.

(B) All policies of casualty or physical damage insurance shall insofar as practicable provide (a) that such policies may not be cancelled, terminated or substantially modified without at least thirty (30) days' written notice to the insureds, (b) that, notwithstanding any provisions thereof which give the insurer the right to elect to repair damage

in lieu of making a cash settlement, such election may not be exercisable if in conflict with the terms of the Master Deed or these By-Laws, (c) for waiver of subrogation as to any claims against the Association, the Board of Managers, the manager, agents, employees, 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 which may be purchased separately by Unit Owners.

(C) The Board of Managers or member or members hereunder designated as Insurance Trustee or 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 7 of this Article VI. With respect to losses which affect portions or elements covered by such insurance of more than one Unit to different extents, the proceeds relating thereto shall be used, applied and disbursed by the Board of Managers in a fair and equitable manner.

(D) The Board of Managers shall also so obtain and maintain, to the extent available, master policies of insurance with respect to the Common Elements, for the benefit and protection of the Board of Managers and all of 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 Association, but excluding any independent agent or manager, and (c) such other risks as the Board of Managers in their discretion deem it appropriate to insure. All such insurance shall be in such amounts and forms as the Board of Managers 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.

(E) The cost of all such insurance obtained and maintained by the Board of Managers pursuant to provisions of this Section 6 shall be a common expense.

All policies of physical damage insurance shall contain waivers of subrogation and waivers of any reduction of pro-rata liability of the insurer as a result of any insurance carried by Unit Owners or of invalidity arising from any acts of the insured or any Unit Owners and shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Board of Managers or member or members hereunder designated as Insurance Trustee or Trustees as aforesaid.

Unit Owners should carry insurance for their own benefit insuring their furniture, furnishings, wall coverings, floor coverings and other personal property provided that all such

policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Board of Managers shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner. Unit Owners shall file a certificate of such insurance or a copy of such policy with the Board of Managers or Insurance Trustee or Trustees designated by the Board of Managers.

Section 7. Repair or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of a Building or Buildings containing a Unit or Units as a result of fire or other casualty, the Board of Managers shall arrange for the prompt repair, replacement, or restoration of the Building(s) and/or the Unit(s) damaged (but not including furniture, furnishings, or other personal property supplied to or installed by Unit Owners), and the Board of Managers shall disburse the proceeds of all insurance policies to the persons engaged in such repair and restoration in appropriate progress payments. Any cost of such repair, restoration, or replacement in excess of the insurance proceeds shall constitute a common expense and the Board of Managers may assess to all the Unit Owners as common charges such deficit and the premium for any bond which may be required in connection with said repair, replacement or restoration.

If there shall have been a repair, replacement or restoration pursuant to the first paragraph of this Section 7, and the amount of insurance proceeds shall have exceeded the cost of such repair, replacement, 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 Board of Managers, divided among all the Unit Owners in proportion to their respective common interests.

In the event of any casualty loss to the Condominium, the Board of Managers shall determine in their reasonable discretion whether or not such loss exceeds ten (10%) per cent of the value of the Condominium prior to the casualty, and shall notify all Unit Owners of such determination. If such loss as so determined does exceed ten (10%) per cent of such value, and

1. If seventy-five (75%) per cent of the Unit Owners do not agree within 120 days after the date of the casualty to proceed with repair, replacement, or restoration, the Condominium, including all Units, shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of the

partition sale together with any common funds shall be divided in proportion to the Unit Owner's respective undivided ownership in the Common Elements. Upon such sale the Condominium shall be deemed removed from the provisions of Chapter 183A of the Massachusetts General Laws.

2. If seventy-five (75%) per cent of the Unit Owners agree to proceed with the necessary repair, replacement, 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, provided, however, that if such excess cost exceeds ten (10%) per cent of the value of the Condominium prior to the casualty, any Unit Owner who did not so agree may apply to the Superior Court of Essex County on such notice to the Board of Managers as the Court shall direct, for an order directing the purchase of his Unit by the Board of Managers at the fair market value thereof as approved by the Court. The cost of any such purchase shall be a common expense.

Section 8. Maintenance and Repairs.

(a) All maintenance and replacement of and repairs to any Unit, whether structural or non-structural, ordinary

or extraordinary, and to Common Elements located within a Unit and exclusively serving such Unit, including, but not limited to, electrical, plumbing, heating and air conditioning fixtures, shall be done by the Unit Owner at the Unit Owner's expense, except as otherwise specifically provided herein; maintenance of, replacement of, and repairs to the exterior of any Unit, including, but not limited to, doors, windows, trim, clapboards and brickwork shall be done by the Association and included as a common expense of the Condominium.

(b) Except as hereinbefore provided, all maintenance, repairs and replacements to the Common Elements as defined in the Master Deed, and the painting and decorating of the exterior of the units whether the same be a part of the Unit or Common Elements, shall be done by the Association and shall be included as a common expense of the Condominium except 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.

**Section 9. Restrictions on Use of Units.**

(a) No nuisances, pets or other annoyances shall be allowed on the Property nor shall any use or



practice be allowed which is a source of annoyance to its occupants or which interferes with their peaceful enjoyment of the Property. No activity which would create noxious odors shall be allowed.

(b) No immoral, improper, offensive, or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

(c) No Unit or any portion thereof may be rented, leased, sublet, used or otherwise occupied, except by the owner, without the express written approval of the Board of Managers in each such instance; which approval will not be unreasonably withheld.

(d) No activity in or use of any Unit may be made which results in any extra or increased premium of insurance required to be maintained by the Board of Managers pursuant to these By-Laws without the prior written approval of the Board of Managers in each such instance.

(e) No articles, and/or refuse, are to be discarded in the corridors or other visible common areas.

Section 10. Architectural Review.

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(a) No improvements, additions, alterations or other work which in any way alters the exterior appearance or structure of any Unit from its natural or improved state existing on the date such Unit was first conveyed in fee by the Grantors, shall be made or done without the prior written approval of the Board of Managers of the Association.

(b) Any Unit Owner or Owners, except the Grantors and their designated agents, proposing to make any improvements which, under the preceding paragraph require the prior written approval of the Board, shall apply for approval by delivering to the Board a written application describing in detail the nature of the proposed improvement, together with such additional documents as the Board may reasonably require.

(c) The Board shall, after consideration of the items set forth above and such other matters as it deems necessary, grant the requested approval if the Board determines that:

(1) The proposed improvement is reasonably compatible with the standards of The Elm Square

Condominium as to quality of workmanship and materials, as to harmony of external design with existing structures and as to location with respect to topography and finished grade elevation; and

(2) The proposed improvement complies with all applicable building, health, sanitary, zoning, and other land use laws and municipal ordinances.

(3) The proposed improvement shall not result in any increased interests in the Common Element appurtenant to such Unit.

(d) All approvals given under the foregoing paragraph shall be in writing and shall be recorded with Essex North District Registry of Deeds, provided, however, that any such application for approval which has not been acted upon within thirty (30) days from the date of delivery thereof to the Board shall be deemed denied. One set of plans as finally approved shall be retained by the Board as a permanent record.

(e) Upon receipt of approval from the Board as provided in paragraph (d) of this Section, the Unit Owner shall, as soon as practicable, commence and diligently proceed with the construction, refinishing, alterations and excavations so approved.

(f) In the event that the construction, reconstruction, refurbishing, or alteration of any improvement is not completed within a reasonable time, or having been completed does not comply with the approval therefor given by the Board, the Board after a hearing may direct the Unit Owner to remedy the non-compliance or remove the improvement. If the Unit Owner does not comply with the order of the Board within the period set forth in the order, the Board may either remove the non-complying improvements or remedy the non-compliance and the Unit Owner shall reimburse the Association upon demand for all expenses incurred in connection therewith.

(g) Any and all window dressing visible to the outside shall meet the approval of the Board of Managers.  
Section 11. Improvements.

(a) If fifty per cent or more but less than seventy-five per cent of the Unit Owners agree to make an improvement to the Common Elements, the cost of such improvement shall be borne solely by the Unit Owners so agreeing.

(b) Seventy-five per cent or more of the Unit Owners may agree to make an improvement to the Common Elements and assess the cost thereof to all Unit Owners as a Common expense, but if such improvement shall cost in excess of ten per cent of the then value of the Condominium, any Unit Owner not so agreeing may apply to the Essex County Superior Court, on such notice to the Board of Managers as the Court shall direct, for an order directing the purchase of his Unit by the Board of Managers at fair market value thereof as approved by the court. The cost of any such purchase shall be a common expense.

(c) All improvements undertaken pursuant to this Section 11 shall be subject to the prior written approval of the Board as provided in Section 10 of the By-Laws.

Section 12. Right of Access. A Unit Owner shall grant a right of access to his Unit to the Manager and/or any other person authorized by the Board of Managers of the Manager for the purpose of correcting any conditions originating in his Unit and threatening another Unit or a Common Element, or for the purpose of performing installation, alterations or repairs to the mechanical or electrical services or other Common Elements in his Unit or elsewhere in the Building in which the Unit is located, provided that requests for entry are made in advance and

that any such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency such right of entry shall be immediate, whether the Unit Owner is present at the time or not. In the event of the exercise of the right of access provided in this Section 12, any costs for repairs shall be borne in accordance with the provisions of Section 8 of this Article.

Section 13. Rules of Conduct. The use of the Units and the Common Areas shall be subject to rules and regulations from time to time adopted by the Board of Managers, copies of which shall be furnished to each Unit Owner prior to their effective date.

Section 14. Water and Sewage Charges. Water supply and sewage removal shall be supplied to all of the Units and the Common Elements and the Board of Managers shall pay, as a common expense, all charges for water consumed on and sewage discharged from the Property, including the Units, unless separately metered as determined by the Board of Managers. In the event of a proposed sale of a Unit by the owner thereof, the Board of Managers, on request of the selling Unit Owner, shall execute and deliver to the purchaser of such Unit or to the purchaser's mortgagee or title insurance company, a letter agreeing to pay all charges for water and sewage

affecting the Property as of the date of closing of title to such Unit promptly after such charges shall have been billed.

Section 15. Electricity. Electricity shall be supplied by the public utility company serving the area directly to each Unit through a separate meter and each Unit Owner shall pay for electricity consumed or used in his Unit. The electricity serving the Common Elements shall be separately metered, and the Board of Managers shall pay for electricity consumed by the Common Elements as a common expense.

Section 16. Gas. Not applicable.

#### ARTICLE VII.

##### MORTGAGES

Section 1. Notice to Board of Managers. A Unit Owner who mortgages his Unit shall notify the Board of Managers of the name and address of his mortgages. The Board of Managers shall maintain such information in a book entitled "Mortgages of Units".

Section 2. Notice of Unpaid Common Charges. The Board of Managers, 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. 287

Section 3. Notice of Default. The Board of Managers, when giving notice to 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 Board of Managers.

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

#### ARTICLE VIII.

##### SALES, LEASES AND MORTGAGES OF UNITS

Section 1. 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. For the purpose of this Section 1, "Appurtenant Interests" shall be deemed to include (a) such Unit Owner's undivided interest in the Common Elements; (b) the exclusive right of such Unit Owner to use and/or maintain



the Common Elements enumerated in his Unit Deed as being exclusive to his Unit; (c) the interest of such Unit Owner in any Units theretofore acquired by the Association, or its nominee, on behalf of all Unit Owners, or the proceeds of the sale or lease thereof, if any; (d) the interest of such Unit Owner in any other assets of the Condominium Association. Any deed, mortgage or other instrument purporting to affect a Unit shall be deemed and taken to include the Appurtenant Interests whether or not such interests are specifically included 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 Interests of all Units.

Section 2. Purchase of Unit by Board of Managers.

Right of First Refusal. The Association, or its nominee, may purchase by and through the Board of Managers any Unit directly from the Unit Owner or at a foreclosure sale; provided, however, any Unit Owner including the heirs, assigns, executors or administrators of a deceased Unit Owner desiring to sell or transfer such Unit owned by him or them, shall first offer it to the Association through the Board of Managers, in the manner following:

(a) Any Unit Owner who receives a bona fide offer for the purchase of his Unit, hereinafter called an "outside offer", which he intends to accept, shall give notice to the Board of Managers of such offer and of such intention, the name and address of the proposed purchaser (outside offeror), the terms of the proposed transaction and such other information as the Board of Managers may from time to time reasonably require, and shall offer to sell such Unit to the Board of Managers or to any designee of the Board of Managers, on behalf of the Owners of all other units in the Condominium, on the same terms and conditions as contained in such outside offer. The giving of such notice shall constitute a warranty and representation by the Unit Owner to the Board of Managers on behalf of the other Unit Owners, that such Unit Owner believes the outside offer to be bona fide in all respects. Within thirty days after the receipt of such notice, the Board of Managers may elect (provided they shall first have obtained the written approval of at least 60% of the Unit Owners) by notice to such Unit Owner, to purchase such Unit (or to cause the same to be purchased by a designee of the Board of Managers), on behalf of all other Unit Owners, on the same terms and conditions as contained in the outside offer and as stated in the notice from

the Unit Owner. Nothing herein contained shall be construed as making it obligatory upon the Board of Managers to purchase such Unit.

(b) In the event that the Board of Managers or their designee shall fail to accept such offer within thirty days after receipt of such offer from the Unit Owner, the Unit Owner shall be free to contract to sell such Unit to the outside offeror within thirty days after the expiration of the period in which the Board of Managers or their designee might have accepted such offer, on the terms and conditions set forth in the notice of such outside offer from the Unit Owner to the Board of Managers. If the outside offeror, for any reason, shall fail to purchase or if the Unit Owner shall fail to accept such offer and make the sale herein contemplated within ninety days after the expiration of the period in which the Board of Managers or their designee might have accepted such offer, the right of first refusal as set forth above shall apply to any and all subsequent offers to purchase such Unit.

(c) Exceptions to Restrictions. Except as otherwise provided above, the restrictions contained in this Section shall not be applied to:

(1) Transfer of any Unit between the Owner thereof and the Trustees of a Trust revocable by such Owner alone;

(2) Transfer of any Unit between the Owner thereof and his guardian or conservator; or Co-owner,

(3) Transfer of and Unit of a deceased Owner thereof to his executors or administrators or to Trustees under his Will; and

(4) Transfers, either by will or deed, or by application of the laws of intestate succession, from a Unit Owner to any person related to the Unit Owner by blood or marriage;

(5) Mortgages given by an Owner as provided in these By-Laws and sale or other proceedings for the foreclosure thereof.

(e) Waiver, Disposition of Unit. From time to time the Association may waive its rights hereunder either generally or with respect of one or more specific transfers which have been proposed, attempted or made. All action to be taken by the Association hereunder shall be taken by vote of a majority of the Board of Managers then in office

(f) Discrimination. In no event shall the Board of Managers exercise any right under these By-Laws to restrict alienation, conveyances, sale, lease, purchase, ownership of occupancy of any Unit because of race, color, creed, national origin or sex.

(g) Statement of Compliance. Upon written request by the Owner of any Unit, the Board of Managers shall determine whether the Owner of such Unit shall have complied with the provisions of this Section 2, and, in the event of compliance, shall issue to said Owner within five days from the receipt of such request, a certificate suitable for filing indicating such compliance, which certificate shall be binding upon all parties.

Section 3. Financing of Purchase of Units by Board of Managers. Payment for Units acquired by the Board of Managers, on behalf of all Unit Owners, may be made from the working capital and/or other funds in the hands of the Board of Managers; if such funds are insufficient, the Board of Managers may levy an assessment as a Common Charge against the Unit Owners which assessment shall be enforceable in the same manner as provided in Sections 3 and 4 of Article VI; and the Board of Managers in its discretion may borrow money to finance, in part or in whole, acquisition of any such Unit, provided, 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 **293**  
the Board of Managers.

Section 4. Waiver of Right of Partition with Respect to such Units Acquired by the Board of Managers. In the event that a Unit shall be acquired by the Board of Managers, or its nominee, all Unit Owners shall be deemed to have waived all rights of partition with respect to such Unit.

ARTICLE IX.

CONDEMNATION

Section 1. Condemnation. If more than ten (10%) per cent of the Condominium is taken under the power of eminent domain, the taking shall be treated as a "casualty loss" and the provisions of Section 17 of said Chapter 183A of Massachusetts General Laws shall comply. 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 the provisions of Section 17 of said Chapter 183A, the Board of Managers shall have the authority to acquire the remaining portions of such Units, for such price as the Board of Managers shall determine, provided that any Unit Owner of such remaining portion who does not agree

with such determination may apply to the Superior Court of Essex County on such notice to the Board of Managers 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 Board of Managers may make such provisions for realignment of the percentage interests in the Common Elements 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 Board of Managers. 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 Elements, except as to such portion or portions of the award which are attributable to direct or consequential damages suffered by particular Units, which shall be payable to the owners of such Units or their mortgages, as their interests may appear. In the case of a total taking of all Units and the Common Elements, the entire award shall be payable to the Board of Managers to be distributed to the Unit Owners in accordance with their respective percentage interests in the Common Elements.

ARTICLE X.

## RECORDS

Section 1. Records and Audits. The Board of Managers or the Managing agent shall keep detailed records of the actions of the Board of Managers and the Manager, minutes of the meetings of the Board of Managers, minutes of the meetings of the Unit Owners, and financial records and books of account of the Condominium. Unless waived by vote of the Unit Owners, an annual report of the receipts and expenditures of the Condominium, certified by an independent certified public accountant, shall be rendered by the Board of Managers to all Unit Owners promptly after the end of each fiscal year. Copies of the Master Deed, these By-Laws and floor plans of the Buildings and Units, as the same may be amended from time to time, shall be maintained at the office of the Board of Managers and shall be available for inspection by Unit Owners and their authorized agents during reasonable business hours.

ARTICLE XI.

## MISCELLANEOUS

Section 1. Invalidity. The invalidity of any part of these By-Laws shall not impair or affect the balance of these By-Laws.



Section 2. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define limit or describe the scope of these By-Laws, or the intent of any provision thereof.

Section 3. Gender. The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

Section 4. Waiver. No restriction, condition, obligation, or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

#### ARTICLE XII.

##### AMENDMENTS TO BY-LAWS

Section 1. Amendments to By-Laws. These By-Laws may be modified or amended by the vote of 60% (or if such modification or amendment affects a provision then requiring a larger percentage, such larger percentage) in common interest of all Unit Owners at a meeting of Unit Owners duly held for such purpose.

#### ARTICLE XIII.

##### CONFLICTS

Section 1. Conflicts. These By-Laws are set forth to comply with the requirements of Chapter 183A of Massachusetts General Laws. In case any of these By-Laws conflict with the provisions of said statute or the Master Deed, as the case may be, shall control.

Recorded Sept.15,1983 at 1:21PM #15795