

Hampshire County - 20/20 Perfect Vision i2 Document Detail Report

Current datetime: 9/11/2011 7:31:15 PM

Doc#	Document Type	Town	Book/Page	File Date	Consideration
29518	DECLARATION OF TRUST		02859/301	12/02/1986	
Property-Street Address and/or Description					
NONE CLARK AVENUE					
Grantors					
TODRIN DONALD TR, CLARK AVENUE CONDOMINIUM TRUST, CLARK AVENUE CONDOMINIUM					
Grantees					
DECLARATION OF TRUST					
References-Book/Pg Description Recorded Year					
02860/1 TRUST 1986, 10628/226 6D 2011					
Registered Land Certificate(s)-Cert# Book/Pg					

CLARK AVENUE CONDOMINIUMS
CONDOMINIUM TRUST

BOOK 2859 0301
029518

Table of Contents

I. Declaration of Trust	
1. Name of Trust	Page 1
2. Purposes	Page 1
3. Beneficiaries and their Beneficial Interest	Page 15
4. Rights and Obligations of Third Parties Dealing	Page 16
5. Amendments; Termination	Page 22
8. Construction; Interpretation	Page 25
II. Exhibit A to Trust - By-Laws of Trust	Page 31
1. Common Expenses and Profits	Page 34
2. Insurance	Page 49
3. Rebuilding and Restoration	Page 55
4. Condemnation	Page 60
5. Improvements	Page 62
6. Rules and Regulations	Page 63
7. Meetings	Page 65
8. Notices to Unit Owners	Page 68
9. Inspection of Books; Reports to Unit Owners	Page 68
10. Checks and Notes	Page 70
11. Seal	Page 71
12. Fiscal Year	Page 71
13. Management; Employees	Page 71
14. Use of Units	Page 73
15. Attorneys, Accountants, Appraisers	Page 75
16. Electricity, Other Utilities	Page 75
17. Violations by Unit Owners	Page 76

BOOK 2859 0302

18. Violation of Law	Page 77
19. Maintenance and Repairs	Page 78
20. Right of Access - Pass Keys	Page 79
21. Structural Integrity	Page 80
22. No Alterations	Page 81
23. Combustible Materials	Page 82
24. Safety	Page 82
25. Sale of Units	Page 82
26. Tenants	Page 85
27. Non-Discrimination	Page 93
28. Percentage of Unit Owners	Page 94
29. Protection of Mortgagees	Page 94
30. Right of First Refusal	Page 106
III. Exhibit B to Trust - Rules and Regulations of Trust	Page 113
IV. Exhibit C to Trust - Beneficiaries and their Beneficial Interest	Page 115

1859 0303

CLARK AVENUE CONDOMINIUMS
CLARK AVENUE CONDOMINIUM TRUST

DECLARATION OF TRUST

DECLARATION OF TRUST of CLARK AVENUE CONDOMINIUM TRUST
made at Northampton, Hampshire County, Massachusetts
by Donald Todrin of 111 Pleasant Street, Northampton,
Massachusetts, hereinafter called the "Trustee", which
term includes successors in trust. The term "Trustee"
also means the Trustee or Trustees for the time being
hereunder, whenever the context so permits.

1. NAME OF TRUST

The trust created hereby shall be known as
the Clark Avenue Condominium Trust and all activities
carried on by the Trustee hereunder shall, insofar as
legal, practical, and convenient, to be conducted
under said name and style.

2. PURPOSES

(a) All of the rights and powers in, to and with

BOOK 2859 3304

respect to the common areas and facilities of the
Clark Avenue Condominiums established
by Master Deed of even date and recorded herewith
(hereinafter called the "Condominium"), which are
by virtue of the provisions of Massachusetts
General Laws, Chapter 183A, "Condominiums"
(hereinafter called "Chapter 183A") conferred
upon or exercisable by the organization of unit
owners of the Condominium and all property, real
and personal, tangible and intangible, conveyed to
the Trustees hereunder shall vest in the Trustees
as joint tenants, with right of survivorship, as
Trustees of this Trust, BUT IN TRUST
NEVERTHELESS, to exercise, manage, administer and
dispose of the same and to receive the income
thereof for the benefit of the owners of record
from time to time of the units of the Condominium
(hereinafter called the "Unit Owners"), according
to the schedule of beneficial interest referred
to in Section 4 hereof, and in accordance with
the provisions of said Chapter 183A. This Trust
is the organization of the Unit Owners established
pursuant to the provisions of said Chapter 183A for
the purposes therein set forth.

BOOK 2859 0305

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

3. TRUSTEES

(a) Appointment of Trustees

(1) Initial Board of Trustees

The initial Board of Trustees shall consist of the Trustees named in the first paragraph of this Declaration of Trust, to wit:
Donald Todrin,

hereinafter

called the "Initial Board". The term of the Initial Board of Trustees shall end upon the earliest to occur of the following events: (a) 120 days after sixty-seven (67%) percent of the units have been conveyed to unit purchasers; or (b) eighteen (18) months following the conveyance of the

BOOK 2850 27 2306

first unit. Notwithstanding any other term or provision of this Trust to the contrary:

(A) the Unit Owners shall have no power or right to remove the Initial Board of Trustees, namely, Donald Todrin,

or any member of the Initial Board of Trustees, nor to appoint any additional or successor trustees, until the expiration of the term of said Initial Board of Trustees shall have expired as set forth in the immediately preceding sentence, and (B) during the term of the Initial Board of Trustees any vacancy in the office of a Trustee, however caused, shall be filled only by the designation of the remaining members of the Initial Board of Trustees.

(2) Subsequent Boards of Trustees

After the term of the Initial Board of Trustees, there shall at all subsequent times be a Board of Trustees hereunder consisting of not less than three (3) nor more than five (5) individuals (in any event, an odd number), as shall be

BOOK 2852 E 3207

determined from time to time by vote of the Unit Owners entitled to at least fifty-one (51%) percent of the beneficial interest hereunder, provided, however, that notwithstanding the foregoing, at least one member of the Board of Trustees shall be a unit owner in Phase I and at least one member of the Board of Trustees shall be a unit owner from each subsequent phase of develop.

(b) Vacancies

After the expiration of the term of the Initial Board of Trustees, if and when the number of Trustees shall become less than three (3), a vacancy or vacancies in said office shall be deemed to exist. Each such vacancy shall be filled by written instrument setting forth the appointment of a natural person to act as such Trustee, signed and acknowledged in proper form for recording (1) by Unit Owners entitled to fifty-one (51%) percent of the beneficial interest hereunder, or (2) if the Unit Owners entitled to fifty-one (51%) percent of the beneficial interest hereunder have

BOOK 2850 0308

not made such an appointment within thirty (30) days after the occurrence of such vacancy, by a majority of the then remaining Trustees (or by the sole remaining trustee, if only one); and the acceptance of such appointment, signed and acknowledged in proper form for recording by the person so appointed. Such appointment shall become effective upon the recording with the Hampshire County Registry of Deeds of a certificate of such appointment, signed and accepted as aforesaid, 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 such vacancy in the office of Trustee shall continue for more than sixty (60) days and shall at the end of that time remain unfilled, a Trustee or Trustees to fill such vacancy or vacancies may be appointed by any court of competent jurisdiction upon the application of any Unit Owner and notice to all Unit Owners and all Trustees and to such

BOOK 2859 3309

other parties in interest, if any, to whom the court may direct that notice be given, and such appointment shall become effective upon the recording with the Hampshire County Registry of Deeds of a certificate or order of such appointment.

Notwithstanding anything to the contrary in this subsection (b) despite any vacancy in the office of Trustee, however caused and for whatever duration, the remaining or surviving Trustees, subject to the provisions of the immediately following subsection (c), shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustee.

c) Majority Vote

In any matters 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 the By-Laws hereof, provided, however, in no event shall a

BOOK 2859 0310

majority consist of less than two (2) Trustees hereunder, and if and whenever the number of Trustees hereunder shall become less than two (2), the then remaining or surviving Trustee, if any, shall have no power or authority whatsoever to act with respect to the administration of the Trust hereunder or to exercise any of the powers conferred hereby, except only as provided in clause (2) of subsection (b) ("Vacancies") of this Section 3. The Trustees may also act without a meeting by instrument signed by a majority (but not less than two (2) of their number.

(d) Resignation of Trustees

Any Trustee may resign at any time by instrument in writing, signed, and acknowledged in proper form for recording and such resignation shall take effect upon the recording of such resignation shall take effect upon the recording of such document with said Hampshire County Registry of Deeds. After reasonable notice and opportunity to be heard before the Unit Owners called pursuant to Section 8 of the

BOOK 2859 3311

By-Laws hereof, a Trustee (except any member of the Initial Board of Trustees) may be removed from office, with or without cause, by an instrument in writing signed by Unit Owners entitled to at least fifty-one (51%) percent of the beneficial interest hereunder, such instrument to take effect upon the recording hereof with said Hampshire County Registry of Deeds.

(a) Bonds Not Required

No Trustee named, appointed or designated as hereinbefore provided, whether as original Trustee or as successor to or as substitute for another shall be obligated to give any bond or surety or other security for the performance of any of his duties hereunder, provided, however, that Unit Owners entitled to at least fifty-one (51%) percent of the beneficial interest hereunder may at any time, by instrument in writing signed by them and delivered to the Trustee or Trustees affected, require that any one or more of the Trustees (except the Initial Board of Trustees) shall give a bond in such

BOOK 2859 3312

amount and with such sureties as shall be specified in such instrument. All expenses incident to any such bond and sureties shall be charged as a Common Expense of the Condominium.

(f) Good Faith

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

BOOK 2859 E 3313

(g) Conflict of Interest

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

BOOK 2859 0314

contract, or arrangement is entered into.

It is understood and permissible for the Initial Board of Trustees hereunder and any other Trustees designated by the Initial Board of Trustees or who are employed by or affiliated or associated with the Sponsor, to contract with the Sponsor and any corporation, firm, trust or other organization controlled by or affiliated or associated with the Sponsor without fear of being charged with self-dealing.

(h) Compensation

The Trustees shall receive no compensation for their services as such Trustees, but with the prior written approval in each instance of a majority of the Trustees, and upon presentation of proper vouchers, each Trustee may be reimbursed for actual out-of-pocket expenses paid or incurred by him pursuant to his duties as such Trustee, and such reimbursement shall be a Common Expense of the Condominium. With the prior written approval in each instance of a majority of the Trustees, each Trustee may receive reasonable compensation for any

extraordinary or unusual services rendered by him in connection with this Trust, and such compensation shall be a Common Expense of the Condominium.

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

Notwithstanding anything to the contrary in this subsection (h) of this Section 3, no compensation, reimbursement, or fees shall be paid to the Initial Board of Trustees pursuant to the provisions of subsection (a) of this Section 3. A Trustee shall abstain from voting upon any question regarding reimbursement, compensation, or fees proposed to be paid to him pursuant to the provisions of this subsection (h) of this Section 3, or upon any question regarding the engagement of himself, or any firm,

BOOK 2859 3316

association, corporation or partnership of which he is a member, to render services, legal, accounting or otherwise to this trust.

(I) Indemnity

The Trustees and each of them shall be entitled to indemnity both out of the trust property, and by the Unit Owners severally in proportion to their ownership in the common areas and facilities against any liability incurred by them or any of them in the execution hereof, including, without limitation, liabilities in contract and in tort and liabilities for damages, penalties and fines. Each Unit Owner shall be personally liable for all sums assessed for his share of the Common Expenses of the Condominium and for his proportionate share of any claims involving the trust property in excess thereof.

(J) Officers

The Trustees subsequent to the Initial Board of Trustee may elect from their number, at the annual meeting of the Trustees, a Chairman, Treasurer, and Secretary, who

BOOK 2859 0317

shall have such duties as are determined by the Trustees.

4. BENEFICIARIES AND THEIR BENEFICIAL INTEREST

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

(b) The beneficial interest of each Unit of the Condominium shall be held and exercised as a unit and shall not be divided among several owners of any such Unit. To that end, whenever any of said Units is owned of record by more than one person, the several owners of such Unit shall: (1) determine and designate which one of such owners shall be authorized and entitled to cast votes, execute instruments, and otherwise exercise the rights appertaining to such Unit hereunder; and

BOOK 2859 3318

(2) notify the Trustees of such designation by 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 of such owners for such purposes.

5. BY-LAWS

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

6. RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUST

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

BOOK 2859 3319

recorded.

Whenever there shall be only one (1) Trustee hereunder, such Trustee shall have no power or authority to execute any instruments or do or perform any act on behalf of the Trust, except only as provided in clause (2) of subsection (b) ("Vacancies") of Section 3 hereof.

(b) No purchaser, mortgagee, lender, or other person dealing with a majority of the Trustees as they then appear of record in the Hampshire County Registry of Deeds shall be bound to ascertain or inquire further as to the persons who are then the Trustees hereunder or be affected with any notice, implied or actual, relative thereto, other than by a certificate thereof, so recorded, and such recorded certificate shall be conclusive evidence of the personnel of said Trustees and of any changes therein. The receipts of a majority of the Trustees for money paid or things delivered to them shall be effectual discharges therefrom to the persons paying or delivering the same, and no person from whom a majority of the Trustees shall receive any money, property or other credit, shall be required to see to the application

BOOK 2859 0320

thereof. No purchaser, mortgagee, lender or other person dealing with a majority of the Trustees or with any real or personal property which then is or formerly was trust property shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, or otherwise as to the purpose of regularity of any of the acts of a majority of the Trustees purporting to be done in pursuance of any of the provisions or powers herein contained, or as to the regularity of the resignation or appointment of any Trustee. Any instrument of appointment of a new Trustee or resignation or discharge of a Trustee purporting to be executed by the 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.

(c) Notwithstanding anything to the contrary herein, and notwithstanding any custom or usage

BOOK 2859 0321

to the contrary, no recourse shall at any time be had under or upon any note, bond, contract, order, debt, claim, instrument, certificate, undertaking, obligation, covenant, or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees, or by reason of anything done or omitted to be done by or behalf of them or any of the, against the Trustees individually, or against any such agent or employee, or against any beneficiary, whether directly or indirectly, by legal or equitable proceedings, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with, or having any claim against the Trustees, shall look only to the trust property for payment under such note, bond, contract, order, debt, claim, instrument, certificate, undertaking, obligation, covenant, or agreement, or for the payment of any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to them from the Trustees; so that neither the Trustees nor the beneficiaries, present or future, shall ever be personally or individually liable therefor; provided, however, that nothing herein

BOOK 2859 3322

contained shall be deemed to limit or impair the liability of the Unit Owners under the provisions of said Chapter 183A.

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

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

BOOK 2859 0323

amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be so recorded. Any certificate signed by a majority of the Trustees in office at the time as they then appear of record in the Hampshire County Registry of Deeds setting forth as facts any matters affecting the trust, including statements as to who are the Trustees, as to what action has been taken by the Trustees or beneficiaries, and as to matter determining the authority of the Trustees to do any act, when duly acknowledged and recorded with said Hampshire County Registry of Deeds, shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees acting in reliance thereon. Any certificate executed by a majority of the Trustees hereunder as they then appear of record in the Hampshire County Registry of Deeds setting forth the existence of any facts, the existence of which is necessary to authorize the execution of any instrument or the taking of any action by such Trustees or majority, as the case may be, shall, when duly acknowledged and recorded with said Hampshire County Registry of

BOOK 2859 20 1324

Deeds, as to all persons acting in good faith in reliance thereon, be conclusive evidence of the truth of the statement made in such certificate and of the existence of the facts therein set forth.

7. AMENDMENTS: TERMINATION

Subject, however, to the provisions of Section 33 of the By-Laws hereto:

- (a) A majority of the Trustees, with the consent in writing of Unit Owners entitled to at least fifty-one (51%) percent of the beneficial interest hereunder, may at any time and from time to time amend, alter, add to, or change this Declaration of Trust in any manner or to any extent, the Trustees first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided, however, that no such amendment, alteration, addition or change shall be made:
- (1) without the prior written consent of the Sponsor obtained in each instance, for so long as the Sponsor remains the owner of any Unit or Parking Space in the Condominium; or (2) according to the purport of which, the percentage

BOOK 2859 0325

of the beneficial interest hereunder of any Unit Owner would be altered, or in any manner or to any extent whatsoever, modified or affected so as to be different than the percentage of the individual interest of such Unit Owner in the common areas and facilities as set forth in the Master Deed other than by consent of all of the Unit Owners and all of the mortgagees, or (3) which would render this Trust contrary to or inconsistent with any requirements or provisions of said Chapter 183A. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this section shall become effective upon the recording with the Hampshire County Registry of Deeds of an instrument of amendment, alteration, addition, or change, as the case may be, signed, sealed and acknowledged in proper form for recording, by a majority of the Trustees and by Unit Owners entitled to not less than fifty-one (51%) percent of the beneficial interest hereunder, setting forth in full the amendment, alteration, addition, or change. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all prerequisites to

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

(b) The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of Chapter 183A in accordance with the procedure therefor set forth in said Chapter 183A.

(c) Upon the termination of this Trust, the Trustees may, subject to and in accordance with the provisions of said Chapter 183A, sell and convert into money the whole of the trust property, or any part or parts thereof, and, after paying or retiring all known liabilities and obligations of the Trustees and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, at valuations made by them which shall be conclusive if made good faith, all other property then held by them in trust hereunder to the Unit Owners according to their respective percentages

of beneficial interest hereunder. In making any sale under the provisions of this subsection (c) of this Section 7, the Trustees shall have the power to sell or vary any contract of sale and to resell without being answerable for loss, and, for said purposes, to do all things, including the execution and delivery of instruments, as may by their performance thereof be shown to be in their judgment necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the 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.

The provisions of Section 33 of the By-Laws hereto shall at all times take precedence over the provisions of this Section 7.

8. CONSTRUCTION: INTERPRETATION

(a) In the construction hereof, whether or not so expressed, words used in the singular or in the plural, respectively, shall include both the plural and singular; words denoting males include females; and words denoting persons include individuals, firms, associations, companies

(joint stock or otherwise), partnerships, entities and quasi-entities, trusts and corporations; unless a contrary intention is to be inferred from or is required by the subject matter or context. The marginal and sectional captions and headings are inserted only for convenience of reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation, or effect hereof.

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

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

(d) No restriction, condition, obligation or provision contained herein (including but not limited to the By-Laws hereof attached hereto as

BOOK 2850 21 3329

Exhibit A and incorporated herein by reference) shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number or frequency of violations or breaches thereof which may occur.

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

EXECUTED as an instrument under seal at Northampton Hampshire County, Massachusetts, this 27th day of December, 1986.

Signed in the presence of:

Robert
Witness

Donald Todrin
Donald Todrin
Trustee as Aforesaid

BOOK 2859 3330

THIS PAGE IS INTENTIONALLY BLANK.

BOOK 2859 0331

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss.

Then personally appeared the above-named Donald Todrin, Trustee
as aforesaid, and acknowledges the foregoing instrument to be his
free act and deed, before me,

Ronald L. Bell

Notary Public

My commission expires: November 5, 1993

BOOK 2859 0332

THIS PAGE IS INTENTIONALLY BLANK.

BOOK 2859 0333

EXHIBIT A

Incorporated into and made a part of the Declaration of Trust of Clark Avenue Condominium Trust under Declaration of Trust dated _____, and to be recorded in the Hampshire County Registry of Deeds.

BY-LAWS

CLARK AVENUE CONDOMINIUM TRUST

The provisions of this Exhibit A to the Clark Avenue Condominium Trust shall constitute the By-Laws of the Clark Avenue Condominium Trust, the organization of Unit Owners established by said Trust.

1. Powers and Duties of the Trustees

The Board of Trustees shall have all power necessary for the administration of the affairs of the condominium as set forth in Massachusetts General Laws, Chapter 183A ("Condominiums"), hereinafter called "Chapter 183A", and they may do any and all acts necessary or desirable for the administration of the affairs of the Condominium except only for such acts as may not, under law, or under the provisions of the Master Deed, or this Trust,

BOOK 2859 3334

be delegated to the Trustees by the Unit Owners. Such powers and duties of the Trustees shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep, and maintenance of the common areas and facilities.
- (b) Determination of the Common Expenses required for the affairs of the Condominium, including, but not limited to the operation and maintenance of the common areas and facilities.
- (c) Collection of the Common Expenses,
from the Unit Owners.
- (d) Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the common areas and facilities.
- (e) Subject to the provisions of Section 7 of these By-Laws, adoption, amendment, and administration (including waiver) of rules and regulations covering the details of the operation and use of the common areas and facilities.
- (f) Opening of bank accounts on behalf of the Condominium, and, subject to the provisions hereof, designating the signatories required therefor.
- (g) Leasing, managing and otherwise dealing with such

BOOK 2859 0335

facilities as may be provided for in the Master Deed as being common areas and facilities.

- (h) Owning, conveying, encumbering, leasing and otherwise dealing with units conveyed to the Trust or purchased by it as a result of enforcement of the lien for Common Expenses
- (i) Obtaining of insurance for the Condominium, including the units, pursuant to the provisions hereof.
- (j) Making of repairs, additions and improvements to, or alterations or restoration of, the Condominium, in accordance with the other provisions of this Trust.
- (k) Enforcing obligations of the Unit Owners, allocating income and expenses, and to do anything and everything else necessary and proper for the sound management of the Condominium.
- (l) Subject to the provisions of Subsection (B) of Section 29 of these By-Laws, purchasing or leasing a Unit.
- (m) Purchasing of units at foreclosure or other judicial sales.
- (n) Organizing and maintaining corporations, trusts,

or other entities to act as nominee of the Condominium in acquiring title to units on behalf of all Unit Owners under the provision hereof.

- (o) Conducting litigation as to any course of action involving the common areas and facilities or arising out of the enforcement of the By-Laws, rules and regulations, and Master Deed, and this Trust.
- (p) Granting permits, licenses and easements over the common areas and facilities for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium project.

2. COMMON EXPENSES AND PROFITS; PHASE I-COMMON EXPENSES;
PHASE II-COMMON EXPENSES

- I. A. Commencing on the date of the recording of the Master Deed, each Unit Owner shall be liable for Common Expenses and shall be entitled to common profits of the Condominium in the same proportion as his beneficial interest in this Trust bears to the aggregate beneficial interest of all the other Unit Owners. The Trustees may at any time or times distribute common profits among the Unit Owners in such proportions. The Trustees shall at all times establish and maintain an adequate

BOOK 2857 PAGE 337

reserve fund for the periodic maintenance, repairs and replacement of improvements to the common areas and facilities and those limited common areas which the Trust may be obligated to maintain, and such reserve fund shall be funded by regular monthly assessments from regular assessments for Common Expenses, and such fund shall not be deemed to be common profits available for distribution. In addition thereto (and not in substitution thereof) if the Federal National Mortgage Association ("FNMA") shall hold a mortgage, or mortgages, on a unit or units in the Condominium, a working capital fund shall be established for the initial months of the Condominium equal to at least two (2) months' estimated Common Expenses for each unit, in accordance with applicable FNMA regulations. In addition thereto (and not in substitution thereof), the Trustees may, to such extent as they deem advisable, set aside common funds of the Condominium as additional reserves and may use the funds so set aside for reduction of indebtedness or other lawful capital purposes, and, subject to the provisions of Sections 4, 5, 6, and 9 of these By-Laws, for repair, rebuilding or restoration of

BOOK 2859 3338

the Condominium, or for improvements thereto, and for replacement of the common areas and facilities, and other proper contingencies, and the funds so set aside shall not be deemed to be common profits available for distribution.

B. At least thirty (30) days prior to the commencement of each fiscal year of this Trust, the Trustees shall estimate the Common Expenses expected to be incurred during such fiscal year, together with reasonable provision for contingencies and reserves, and for the reserve funds mentioned in Subsection A of this Section 2, and after taking into account any undistributed common profits from prior years, shall determine the assessment for Common Expenses to be made for such fiscal year. The Trustees shall promptly furnish copies of each budget on which such assessment is based to all Unit Owners, and, if requested, to their mortgagees. The Trustees shall promptly render statements to the Unit Owners for the respective shares of such assessment, and each Unit Owner thereafter shall pay one-twelfth of his share of the estimated Common Expenses monthly in advance on the first

BOOK 2859 0339

day of each month. . The Trustees shall have the authority and the duty to levy and enforce the collection of general and special assessments for Common Expenses. In the event that at any time and from time to time the Trustees shall determine during any fiscal year that the assessment so made is less than the Common Expenses actually incurred, or to be incurred, including but not limited to provisions for proper reserve funds, the Trustees shall make a supplemental assessment or assessments and render statements therefor in the manner aforesaid, and such statements shall be payable and take effect as set forth in such statements. The Trustees may in their discretion provide for payments of such supplemental assessment statements in monthly or other installments. The amount of each such statement, for regular or supplemental assessments, together with interest thereon, if not paid when due, at a rate equal to six (6%) percent above the Bank of New England prime rate then in effect (but not more than nineteen (19%) percent per annum) together with all expenses, including attorneys fees, incurred by the Trustees in any proceeding brought to collect such unpaid Common Expenses and

BOOK 2859 0340

assessments, shall constitute a lien on the unit of the Unit Owner assessed pursuant to the provisions of Section 6 of said Chapter 183A, and may be collected by the Trustees pursuant to said Section. The Trustees shall take prompt action to collect any Common Expenses and assessments due from any Unit owner which remains unpaid for more than thirty (30) days from the due date thereof. In the event that the Trustees bring an action to foreclose a lien on any unit pursuant to said statute, the Unit Owner shall pay a reasonable sum for use and occupancy of his unit from the date of foreclosure until the Unit Owner vacates the unit (the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same) but nothing in this sentence shall be deemed to grant and Unit Owner the right to remain in possession of his unit after such foreclosure. The Trustees, acting on behalf of all Unit Owners, shall have power to purchase such unit at the foreclosure sale and to acquire, hold, lease, mortgage (but not vote the vote appurtenant to), convey or otherwise deal with the same. A suit to recover a money judgment for unpaid Common

BOOK 2859 3341

Expenses shall be maintained without foreclosing or waiving the lien securing the same. In the event of any suit or foreclosure by the Trustees, the Trustees shall be entitled to interest at a rate equal to six (6%) percent above the Bank of New England prime rate then in effect (but not more than nineteen (19%) percent per annum), and all costs of collection, suit, and foreclosure, including attorney's fees. In addition to the lien in favor of the Trustees for assessments for Common Expenses and assessments, such assessments shall also be the personal obligation of the owner of the unit at the time the assessment fell due.

C. The Trustees shall promptly provide any Unit Owner, or any Unit Buyer who has a duly executed Purchase and Sale Agreement for the acquisition of a unit, or any mortgagee, or the attorney of any such party, with a written statement of all unpaid Common Expenses due with respect to such unit, signed and acknowledged by a majority of the Trustees in proper form for recording, upon the written request of such Unit Owner or buyer or mortgagee or attorney. Recording of such statement in the Hampshire County Registry of Deeds shall operate to discharge the unit from any

BOOK 2859 3342

lien for any other sums unpaid not enumerated as of the date of such statement to the extent provided by said Chapter 183A.

- D. The Trustee shall expend common funds only for common expenses and lawful purposes permitted hereby and by the provisions of said Chapter 183A.
- E. Notwithstanding anything to the contrary herein, any first mortgagee who obtains title to a condominium unit, pursuant to the remedies provided in its mortgage, or foreclosure of its mortgage, will not be liable for such unit's unpaid dues, common charges, or assessments (including interest and costs of collection and legal fees relating to the collection thereof) which accrue prior to the acquisition of title to such unit by the Mortgagee. The lien for common expense assessments shall not be effected by any sale or transfer of a unit, except that a sale or transfer pursuant to a foreclosure of a first mortgagee shall extinguish a subordinate lien for assessments which became payable prior to such sale or transfer. Any such delinquent assessments which were extinguished pursuant to the immediately preceding sentence may be re-allocated

BOOK 2859 0313

and assessed to all units as a common expense. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a unit for liability for, not the unit from the lien of, any assessments made thereafter.

II. A. As set forth on Exhibit B to the Master Deed of the Condominium, the Condominium contains two (2) Phases, one of which, hereinafter called "Phase I", contains one (1) condominium unit and is of older vintage, while the second Phase contains twelve (12) units and is newly rehabed. It is expected that as the result of the configuration of the condominium, Phase I and Phase II will have different estimated budgetary requirements. In order to provide for these different budgetary requirements, the Trustees shall be entitled to levy assessments, in addition to the Common Expenses set forth in Subsection I of this Section 2, and not in substitution therefor, against the owner of condominium units in Phase I for the operation, repair

BOOK 2859 0344

maintenance, replacement, and improvement of the common areas and facilities of Phase I hereinafter Phase I-Common Expenses; and against the owners of condominium units in Phase II for the operation, repair, maintenance, replacement and improvement of the common areas and facilities of Phase II, hereinafter called Phase II-Common Expenses. The same process will apply to future projected phased development.

- B. At least thirty (30) days prior to the commencement of each fiscal year of this Trust, the Trustees shall estimate the Phase I-Common Expenses and the Phase II-Common Expenses expected to be incurred during such fiscal year, together with reasonable provision for contingencies and reserves and shall determine the assessment for Phase I-Common Expenses and Phase II-Common Expenses to be made for such fiscal year. Phase I-Common Expenses shall be assessed against owners of condominium units in Phase I in the proportions set forth on Exhibit C-1 of the Master Deed, and Phase II-Common Expenses shall be assessed against owners of condominium units in Phase II in the proportions set forth on Exhibit C-1 of the Master Deed. The Trustees shall promptly furnish copies of each budget on which such assessment is based to all

BOOK 2859 0345

unit owners (in both Phases) even though the assessments relate to Phase I-Common Expenses and Phase II-Common Expenses, and each owner of a condominium unit in Phase I thereafter shall pay one-twelfth (1/12) of his share (as set forth on Exhibit C-1 of the Master Deed) of the estimated Phase I-Common Expenses monthly in advance on the first day of each month, and each owner of a condominium unit in Phase II thereafter shall pay one-twelfth (1/12) of his share (as set forth on Exhibit C-1 of the Master Deed) of the estimated Phase II-Common Expenses monthly in advance on the first day of each month. The Trustees shall have the authority and duty to levy and enforce the collection of general and special assessments for Phase I-Common Expenses with respect to owners of units in Phase I and general and special assessments for Phase II-Common Expenses with respect to owners of units in Phase II. In the event that at any time and from time to time the Trustees shall determine during any fiscal year that the assessment so made is less than the Phase I-Common Expenses (with respect to Phase I) or the Phase II-Common Expenses (with respect to Phase II) actually incurred, or to be

incurred, including but not limited to provisions for reserves, the Trustees shall make a supplemental assessment or assessments with respect to Phase I-Common Expenses or Phase II-Common Expenses (or both) and render statements therefor in the manner aforesaid, and such statements shall be payable and take effect as set forth in such statements. The Trustees may in their discretion provide for payments of such supplemental assessment statements in monthly or other installments. The amount of each statement, for regular or supplemental Phase I-Common Expenses and Phase II-Common Expenses together with interest thereon, if not paid when due, at a rate equal to six (6%) percent per annum above the Bank of New England prime rate then in effect (but not more than nineteen (19%) percent per annum) together with all expenses, including attorney's fees, incurred by the Trustees in any proceeding brought to collect such unpaid Phase I-Common Expenses or Phase II-Common Expenses, and supplemental assessments, shall constitute a lien on the unit of the unit owner assessed pursuant to the provisions of clause C of this Subsection II of this Section 2, and may be collected by the Trustees

pursuant to said clause.

BOOK 2859 3317

Each Unit Owner, by acceptance of a unit deed therefor (whether or not it is so expressed in such deed) shall be deemed to covenant and agree with this Trust, and all of the other owners of units in the condominium, as a personal obligation, to pay all of units in the condominium, as a personal obligation, to pay all Phase I-Common Expenses and Special Assessments if his unit is located in Phase I and all Phase II-Common Expenses and Special Assessments if his unit is located in Phase II coming due with respect to such unit while he is the owner thereof, together with interest at a rate equal to six (6%) percent per annum above the Bank of New England prime rate then in effect (but not more than nineteen (19%) percent per annum), and all costs of collection, suit and foreclosure, including attorney's fee. The unit owner at the time when a Phase I-Common Expense or Special Assessment or Phase II-Common Expense or Special Assessment falls due shall continue to be personally liable therefor notwithstanding any conveyance of his unit and the successors-in-title to such unit shall

BOOK 2859 3348

not be personally liable therefor unless they expressly assume such liability. In addition to the foregoing, and not in substitution therefor, all Phase I-Common Expenses and Special Assessments with respect to any unit in Phase I and all Phase II-Common Expenses and Special Assessments with respect to any unit in Phase II together with interest thereon and costs of collection thereof, shall be a charge and a continuing lien on such unit in favor of the other unit owners enforceable by this Trust on behalf of said other unit owners which shall bind such unit in the hands of the owner, his heirs, devisees, executives, administrators, personal representatives, successors-in-title and assigns. If any Phase I-Common Expense or Special Assessment or Phase II-Common Expense or Special Assessment is not paid on the date when it falls due, the assessment shall bear interest from the date on which it fell due at the rate set forth hereinabove in this clause, and the Trustees shall have the right and obligation to bring an action at law against the unit owner personally obligated to pay the same, or to foreclose the lien against the unit, or both remedies, and there shall be

BOOK 2859 03-19

added to the amount of such assessment the cost of preparing and filing the Complaint in such action, conducting litigation in connection therewith, including but not limited to appeals, together with costs, disbursements and attorney's fees. The lien of the assessments provided for in this clause shall be subordinate to the lien of any institutional first mortgage hereafter placed upon any unit subject to assessment; provided, however, that said subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such unit pursuant to foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such unit from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments, nor shall it relieve the owner of a unit from personal liability for payment of any assessments which became due and payable while such unit owner owned the unit. The phrase "institutional" as used in this clause shall mean a lending institution both chartered and supervised by the United States or any state thereof, a life insurance company both

BOOK 2859 0350

chartered and regulated by any state in the United States, or a pension fund which as assets at the time the loan was made of at least Twenty-Five Million (\$25,000,000.00) Dollars, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation. The Trustees shall promptly provide any unit owner, or any unit buyer who has a duly executed Purchase and Sale Agreement for the acquisition of a unit, or any mortgagee, or the attorney of any such party, with a written statement of all unpaid Phase I-Common Expenses and Special Assessments and Phase II-Common Expenses and Special Assessments, as the case may be, due from such unit owner signed and acknowledged by a majority of the Trustees in proper form for recording, upon the written request of such unit owner or buyer or mortgagee or attorney. Recording of such statement in the Hampshire County Registry of Deeds shall operate to discharge the unit from any lien for any Phase I-Common Expense or Special Assessments, Phase II-Common Expenses or Special Assessments, as the case may be unpaid and not enumerated on such statement as of the date of such statement.

The Trustees shall expend Phase I-Common Expenses and