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KIMBALL TOWERS RESIDENTIAL CONDOMINIUM
Springfield, Massachusetts

BY-LAWS OF KIMBALL TOWERS HOMEOWNERS ASSOCIATION

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KIMBALL TOWERS RESIDENTIAL CONDOMINIUM
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BY-LAWS OF KIMBALL TOWERS HOMEOWNERS ASSOCIATION

ARTICLE I

Section 1. The Condominium. Neil Zais and Steven J. Watchmaker, as Trustees of Kimball Towers Realty Trust, under Declaration of Trust dated July 2, 1984, and recorded in Hampden County Registry of Deeds in Book 5645, Page 308 and not individually (the "Sponsor"), by a Master Deed (the "Master Deed") recorded herewith in said Hampden Deeds have caused the property described in said Master Deed situate in Springfield, Hampden County (the "County"), Massachusetts to be submitted to the provisions of Chapter 183A of the Massachusetts General Laws (the "Condominium Law") and have thereby created a condominium known as Kimball Towers Residential Condominium (herein the "Condominium"). The term "Registry of Deeds" as used herein shall refer to the Hampden Registry of Deeds.

Section 2. The Condominium Association. The Kimball Towers Homeowners Association (the "Condominium Association") is the organization of unit owners (as defined under the Condominium Law) organized for the managing and regulation of the Condominium. Each owner of a "Unit" (as described in the Master Deed) in the Condominium has the same percentage interest in the Condominium Association as such owner's (herein the "Unit Owner") respective interest in the common areas and facilities (the "Common Elements") of the Condominium all as set forth in the Master Deed. These "By-Laws" are the By-Laws of the Condominium Association and the undersigned, the first Board of Managers (hereinafter described) of the Condominium Association, hereby execute and record the By-Laws to establish the Condominium Association.

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" is used herein with the same meaning as in the Master Deed, and shall include the land of the Condominium addressed as 140 Bridge Street and 415 Chestnut Street in said Springfield, Hampden County, Massachusetts and the building thereon (the "Building", as herein and in the Master Deed described) and all other improvements thereon, including the Units and the Common Elements, owned in fee simple absolute, and all easements, rights and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith, except that a portion of the Building is being used, occupied and enjoyed by the Kimball Towers Commercial Condominium established by Master Deed of the Kimball Towers Commercial Condominium recorded herewith, pursuant to easements, privileges, grants and other rights provided in the Master Deed of this Kimball Towers Residential Condominium, these By-Laws, and the Master Deed and by-laws establishing the Kimball Towers Commercial Condominium.

All present and future owners, mortgagees, lessees and occupants of Units and their employees, and any other persons who may use the Units and Common Elements in any manner are subject to these By-Laws, the Master Deed, and the Rules and Regulations promulgated by the Condominium Association and the "Shared Element Cost Sharing Agreement" hereafter referred to (collectively referred to herein as the "Condominium Documents") and all covenants, agreements, restrictions, easements and declarations of record ("title conditions") pertaining to the Condominium. The acceptance of a deed of conveyance or the entering into a lease or the act of occupancy of a Unit shall constitute an agreement by a Unit Owner or lessee, and their respective family members, visitors, and servants that the Condominium Documents and the title conditions are accepted, ratified, and will be complied with.

Section 4. Office. Prior to the "First Election Meeting" (as hereinafter defined), the office of the Condominium and of the Board of Managers of the Condominium Association shall be located at such location as the Board of Managers may from time to time determine and of which the Unit Owners shall be given prior or immediate written notice. After the First Election Meeting the office of the Condominium shall be at the Condominium.

ARTICLE II

BOARD OF MANAGERS

Section 1. Number of Managers. The Board of Managers ("Board") of the Condominium Association shall manage the business and affairs of the Association as provided herein and in the Condominium Law.

Section 2. Powers and Duties. The Board 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 by the Unit Owners. Such powers and duties of the Board shall include, but shall not be limited to, the following:

(a) Operation, care, upkeep and maintenance of the Common Elements, including the performance of all obligations with respect to the maintenance, repair and upkeep of the "Shared Elements" described in the Master Deed and other facilities which the Board is obligated to maintain, preserve and repair under said Master Deed;

(b) Determination of the "Common Expenses" (as herein described) required for the affairs of the Condominium, including without limitation, the operation and maintenance of the Property which "Common Expenses" shall include the "Kimball Combined Expenses" (including all "Additional Expenses") as those terms are defined and described in a certain "Shared Element Cost Sharing Agreement" of even date herewith, between the Condominium Association and the Kimball Towers Commercial Condominium

Association, the organization of unit owners of the Kimball Towers Commercial Condominium established within a portion of the Building as more particularly and fully described in the Master Deed, and the master deed and condominium by-laws of the Kimball Towers Commercial Condominium, recorded herewith.

(c) Levying of and collection of assessments (including special assessments) from Unit Owners and enforcement of all obligations of the Unit Owners as Unit Owners under the Condominium Documents, and the enforcement of all remedies available in the event of non-payment.

(d) Levying assessments and charges of the Kimball Combined Expenses to the Kimball Towers Commercial Condominium, and enforcement of collection of the same, the performance of all remedies in the event of non-payment, and performance of all of the obligations of the Condominium Association under the Shared Element Cost Sharing Agreement.

(e) Employment and dismissal of personnel necessary or advisable for the maintenance and operation of the Common Elements, including engaging of a manager or managing agent (for a contract term not to exceed five (5) years) and/or superintendent for the Condominium and such other personnel as the Board may deem necessary, convenient or desirable for conducting the business of the Condominium Association, including the right to engage counsel, engineers, accountants or other persons or parties to advise the Board or to perform any of its duties hereunder. The Board has on this date entered into a binding one (1) year management agreement with Gerald S. Zais and Richard S. Fox, d/b/a Great Northern Realty, as managing agent for the operation and management of the Condominium.

(f) Opening of bank accounts on behalf of the Condominium and designating the signatories required therefor and to make deposits, withdrawals and draw checks on such accounts.

(g) Leasing, managing and otherwise dealing with the Common Elements including the power to contract, and the right to grant easements or licenses or other permissions over, across, through and under the Common Elements to provide service or maintain utility services to the Property or to the Building which the Board deems to be necessary or desirable, provided, however, no such easements or licenses or permissions will be granted underneath existing improvements unless the Board is guaranteed in writing that the existing improvements will not be disturbed or shall be returned to their prior condition by the grantee of the easement.

(h) Owning, conveying, mortgaging (pursuant to Article VIII, Section 3 hereof) , encumbering, leasing, voting the votes appurtenant thereto (if and when permitted under these By-Laws) and otherwise dealing with Units conveyed to it or acquired by it (or its nominee) as the result of enforcement of the lien arising from Common Expenses, or otherwise.

(i) Purchasing of Units as authorized under the Condominium Documents or required by law.

(j) Purchasing or otherwise acquiring title to any equipment, tools and items of personal property deemed desirable by the Board including such as may constitute Shared Elements under the Master Deed.

(k) Organizing corporations or trusts to act as nominees of the Condominium in acquiring title to or leasing of Units on behalf of all Unit Owners.

(l) Obtaining of insurances for the Property, including the Units, and insurances on the Building as required under the Shared Element Cost Sharing Agreement.

(m) Making of repairs, additions and improvements to, or alterations of, the Building and Property (including the Shared Elements), and repairs to and restoration of the Building and Property (including the Shared Elements) in accordance with the other provisions of these By-Laws or of the Master Deed, including maintenance and treatment of the exterior portions of the Building.

(n) Adoption of the Rules and Regulations promulgated by the Board and attached to these By-Laws as Exhibit A hereto and the subsequent adopting, promulgating and amending rules and regulations covering details of the operation and use of the Common Elements provided, however, all amendments to rules and regulations affecting the Common Elements as to which the Kimball Towers Commercial Condominium or its unit owner or members of the managing board have use or easement rights shall be of general applicability to all users thereof, and shall not discriminate against said Kimball Towers Commercial Condominium users or unreasonably burden their said easements or use rights.

(o) Investing and reinvesting monies held by the Condominium Association from time to time as the Board shall see fit, including the power to invest in all types of securities and other property of whatsoever nature and however denominated, all to such extent as to them shall seem proper and without liability for loss even though such property or such investments shall be of a character or in an amount not customarily considered proper for investment of such funds (which for these purposes shall be considered "trust funds") or which does or may not produce income.

(o) Incurring such liabilities, obligations and expenses, and paying from the funds held by or to be collected by the Condominium Association, such sums as they shall deem necessary or proper for the furtherance of the purposes of the Condominium Association including monies payable by the Board under the Shared Element Cost Sharing Agreement.

(p) Conducting litigation at all trial and appellate levels on behalf of the Condominium Association in the exercise of its powers, including, without limitation, litigation brought to enforce the provisions of the Condominium Law, the Shared Element Cost Sharing Agreement, the Master Deed, these By-Laws and the Rules and Regulations hereinafter described, including the power to settle suits brought by or against the Condominium Association and the defense of suits brought against the Condominium Association involving the Common Elements or any other matters and pursuing all remedies available to the Condominium Association hereunder or at law, or both.

(r) Adjusting casualty losses payable as a result of such insurances obtained by the Board and performing all of the responsibilities of the Board described in Section 13 and 14 of Article VI and Article IX hereof (with respect to eminent domain proceedings).

(s) Obtaining accountant certifications of the annual budget of the Condominium Association as provided in the Shared Element Cost Sharing Agreement and furnishing to the managing board of the Kimball Towers Commercial Condominium Association and the unit owners of the Kimball Towers Commercial Condominium such financial information as required thereunder;

(t) Paying all costs, charges, expenses and all other items of the Kimball Combined Expenses assessed or charged to it under said Shared Element Cost Sharing Agreement.

(u) The power to do everything necessary, suitable or proper for the accomplishment of any of the purposes, the attainment of any of the objects, or the furtherance of any of the powers of the Condominium Association either alone or in conjunction with the Sponsor or the managing board of the Kimball Towers Commercial Condominium, and any Unit Owners and owners of units of the Kimball Towers Commercial Condominium or others set forth in the Master Deed or these By-Laws, including the right to delegate to any management agent any or all of the duties of the Board hereunder for the term of such agreement.

Section 3. First Board of Managers. The First Board of Managers (the "First Board") shall be designated by the Sponsor and shall consist of two (2) Managers who shall serve until the First Election Meeting, or otherwise as hereafter described. At the First Election Meeting, and thereafter, the Board shall consist of five

(5) Managers. Neil Zais and Steven J. Watchmaker, both of whom have a business address at 183 State Street, Boston, Massachusetts are hereby appointed as the two Managers of the First Board.

The Managers of the First Board shall be subject to removal in the manner set forth in Section 5 of this Article and to replacement, in the event of resignation or death, in the manner set forth in Section 6 of this Article.

Section 4. Subsequent Boards of Managers. The First Board shall hold office until the first election meeting of the Unit Owners ("First Election Meeting") which shall be held as a special meeting of Unit Owners, within 30 days after the first to occur of the following: (a) the date on which title to one hundred and fifteen (115) of the Units have been conveyed by Sponsor to purchasers unaffiliated with Sponsor or (b) twenty-four (24) months after the date of recording of the Master Deed. Notwithstanding the foregoing, in the event an Annual Meeting of Unit Owners is to be held within 50 days after the occurrence of either (a) or (b) above, such Annual Meeting shall serve as the First Election Meeting. At the First Election Meeting the Managers on the First Board shall resign and the Unit Owners shall elect five (5) Managers, each for a term of one year in accordance with the procedure described in the immediately following paragraph, provided, however, if, at the time of the First Election Meeting, Sponsor owns one or more Units, the Sponsor shall elect and designate one Manager having a two-year term, which Manager shall resign immediately upon the conveyance of all of the Units in the Condominium to purchasers by Sponsor, during said two-year term or at the end of the two-year term, whichever occurs first. In the event the First Election Meeting takes place prior to the first Annual Meeting of Unit Owners, the terms of the Managers elected at the First Election Meeting shall be extended so as to expire on the date of the second Annual Meeting.

Each Manager shall hold office until such time as his successor has been duly chosen and qualified.

Section 5. Removal. At any regular or special meeting of Unit Owners, any one or more of the Managers may be removed with or without cause by a majority in interest of the Unit Owners and a successor may then and there or thereafter be elected by vote of a majority in interest of the Unit Owners to fill the vacancy thus created for the remainder of the term, provided, however, that any Manager on the First Board or subsequent Board of Managers designated by the Sponsor may be removed only by the Sponsor and in the Sponsor's sole discretion and without the need for a meeting of vote. Sponsor shall have the unqualified right to designate a successor for any such Manager removed by Sponsor. Any member of the Board elected by Unit Owners and whose removal has been proposed by the Unit Owners shall be given timely notice of the meeting at which his removal shall be considered and an opportunity to be heard at the meeting.

Section 6. Vacancies. Vacancies in the Board of Managers caused by any reason other than the removal of a member thereof by vote of the Unit Owners may be filled by the unanimous consent or vote of the remaining Managers at a regular or special meeting of the Board (held not more than 30 days after any such vacancy arises), and each Manager so elected shall be a member of the Board until the next Annual Meeting, at which time the Unit Owners shall elect a Manager to fill the remainder of the term, if any. Notwithstanding the foregoing, in the event of the death or resignation of any Manager appointed by Sponsor (including, without limitation, any Manager on the First Board), Sponsor shall appoint a Manager to fill such vacancy, and such Manager shall serve for the unexpired term of the deceased or resigning Manager.

If, as a result of vacancies occurring after the First Election Meeting there are no Managers on the Board, a special meeting of Unit Owners shall be called for the purpose of electing a Manager by circulating to all Unit Owners a notice signed by the owners of at least ten (10) Units and otherwise conforming to the requirements of Section 4 of Article III hereof and Section 1 of Article V hereof.

Section 7. Organization Meeting. The first meeting of the Board following the Annual Meeting or the First Election Meeting (if other than an Annual Meeting) shall be held within 30 days thereafter at such time and place as shall be fixed thereat for such meeting.

Section 8. Regular Meetings. Regular Meetings of the Board shall be held at the principal office of the Condominium or at such other suitable place convenient to members of the Board and the Unit Owners and at times as shall be determined from time to time by the Board. At least one such meeting, which may be the organizational meeting, shall be held during each fiscal year. Notice of regular meetings of the Board shall be given by the Clerk of the Condominium Association to each Manager by mail or telegraph at least three (3) business days prior to the day named for such meeting.

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

Section 10. Waiver of Notice. Any Manager may at any time waive notice of any meeting of the Board in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Manager at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the Managers are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 11. Quorum of the Board of Managers. At all meetings of the Board, three (3) Managers shall constitute a quorum for the transaction of business. 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. If at any meeting of the Board there shall be less than a quorum present, the meeting shall automatically be adjourned to the same time and place one week after the adjourned meeting unless otherwise scheduled by the Board. At any adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called, may be transacted without further notice.

Section 12. Compensation; Fidelity Bonds. No Manager shall receive any compensation for acting as such, unless such compensation is fixed by the Unit Owners at an Annual or Special Meeting of Unit Owners.

The Board, may in its sole discretion, obtain and maintain fidelity liability bonds or bond coverages protecting the Condominium Association for the loss of fidelity of all Managers and officers and employees of the Condominium Association handling or responsible for Condominium funds, in such amounts on the Board deems reasonably necessary, and the premium on such bonds shall constitute a Common Expense; provided, however, that the Board shall obtain such bonds if required by regulations of any "Secondary Mortgage Market Entities", as defined in the Master Deed in order to comply with their requirements for the granting of mortgages covering Units in the Condominium. All such fidelity bonds and coverages shall name the Condominium Association as the insured and, if possible, shall require the insurer or issuer (a) to give not less than thirty (30) days prior written notice to the Board of any cancellation of such coverages and (b) to deem the Board of Managers to be covered as employees in interpretation of policy coverages.

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 on behalf of the Condominium unless any such contract shall have been made in bad faith or contrary to the provisions of the Master Deed, these By-Laws or any other Condominium Document. It is intended that the Managers shall have no personal liability with respect to any contract made by them on behalf of the Condominium. The First Board, members of which may be affiliated with the Sponsor, shall be able to contract with the Sponsor and affiliated corporations in good faith and upon reasonable terms without being charged with self-dealing, provided, however, any such contract (except management contracts) relating to the repair, upkeep or maintenance of the Shared Elements paying the Manager for services fairly

allocable to the Shared Elements in excess of Fifty Thousand (\$50,000.00) Dollars per year, shall first be ratified by the managing board of the Kimball Towers Commercial Condominium. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the Manager shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interest of all the Unit Owners in the Common Elements. Every agreement made by the Board shall provide that the Managers or the Condominium Association, as the case may be, are acting only as agent for the Unit Owners (including the Sponsor) and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportions 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. Certification re: Status of Board. The Clerk of the Condominium Association shall record a Certificate of Incumbency, with the Registry of Deeds within fifteen (15) days after the election or removal of members of the Board and promptly after any vacancy in the Board continues for more than forty-five (45) days. Any instrument signed by a majority of the Board at any time as they appear of record and duly attested as the act of the Condominium Association may be relied upon by all Unit Owners, mortgagees and other parties as conclusively establishing that such instrument was the free act of the Condominium Association and shall be binding upon the Condominium Association. No purchaser, mortgagee, lender or other person dealing with the Board, or the managing board of the Kimball Towers Commercial Condominium, or the unit owners of said Kimball Towers Commercial Condominium, or their mortgagees as they appear of record, shall be bound to ascertain or inquire further as to the persons who are then members of the Board nor be affected by any notice, implied or actual, relative thereto, other than a recorded certificate thereof, and such recorded certificate shall be conclusive evidence of the members of the Board and of any changes therein.

Section 15. Action of Board Without a Meeting. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if all Managers consent to the action in writing and the written consents are filed with the records of the Board. Such consents shall be treated for all purposes as a vote at a meeting.

ARTICLE III

UNIT OWNERS

Section 1. Annual Meetings. The first annual meeting of the Condominium Association shall be called at a time during the month of March, 1986, to be designated by Sponsor. Subsequent to the first

Annual Meeting, Annual Meetings shall be held within 30 days of the anniversary of such date each succeeding year or on such other date as may be set at the next preceding Annual Meeting.

At any Annual Meeting which is the First Election Meeting or which occurs subsequent to the First Election Meeting, members of the Board of Managers shall be elected as provided in Section 4 of Article II. At any Annual Meeting, Unit Owners may also transact such other business of the Condominium as may properly come before them. Any Managers elected at the Annual Meeting shall take office immediately upon the close of the Meeting.

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 convenient to the Unit Owners as may be designated by the Board. The Board shall establish the time for any meeting of Unit Owners.

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 or upon receipt of a petition signed by the owners of at least seven (7) of the Units in the Condominium. Notice to Unit Owners of all special meetings shall be given in the manner provided in Article V, Section I hereof and in Section 4 below.

Section 4. Notice of Meetings. 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, shall be served upon each Unit Owner shown on the records of the Condominium at least seven (7) but not more than twenty-one (21) days prior to such meeting. The Clerk shall send, or cause to be sent, notices of all annual or special meetings. 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 in person or by proxy, a majority in interest of Unit Owners who are present at such meeting, shall adjourn the meeting to a time not less than 48 hours from the time the original meeting was called. Notice of the time and place of the adjourned meeting shall be posted or caused to be posted by the Clerk in a conspicuous place in the Condominium as notification to Unit Owners.

Section 6. Order of Business. The order of business at all meetings of the Unit Owners shall be as determined by the presiding officer.

Section 7. Voting and Other Action by Unit Owners. The owner or owners of each Unit (including the Sponsor for Units owned by Sponsor except as otherwise provided herein and in the Master Deed)

either personally or through some person designated by such owner or owners to act as proxy (which person need not be a Unit Owner) shall be entitled to vote the interest appurtenant to such Unit at all meetings of Unit Owners. Such interest must be voted in full and may not be partially voted. 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 Unit Owner so designating. If a Unit is owned by two or more persons, any one of such persons may act for all unless one of such owners objects, in which case the vote attributed to such Unit shall not be counted for any purpose. A fiduciary shall be the voting member with respect to any Unit owned in a fiduciary capacity. Any Unit or Units owned by the Board or its nominee shall not be entitled to a vote and shall be excluded from the total common interests when computing the interest of all other Unit Owners for voting purposes.

The Unit Owners shall transact such business of the Condominium as they may be entitled hereunder or under the Condominium Law, at a duly called meeting, except that any action to be taken by the 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 records of meetings of Unit Owners and with the Clerk of the Condominium Association. Such consent shall be treated for all purposes as a vote at a meeting.

Section 8. Majority of Unit Owners. As used in these By-Laws the terms "majority of Unit Owners" or "majority in interest of Unit Owners" shall mean those Unit Owners (including the Sponsor if the Sponsor owns any Units) 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 7 of this Article III. As used in these By-Laws any stated percentage of Unit Owners shall mean the percentage in the aggregate of the individual ownership of the Common Elements.

Section 9. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of a majority in interest of Unit Owners shall constitute a quorum at all meetings of the Unit Owners.

Section 10. Majority Vote. The vote of a majority in interest 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 where in the Master Deed or these By-Laws, or by law, a higher percentage vote is required.

ARTICLE IV

OFFICERS

Section 1. Designation. The principal officers of the Condominium Association shall be the President, Treasurer and Clerk, all of whom shall be elected by the Board. The Board may also appoint such other officers as in its judgment may be necessary. The

President shall be member of the Board, but no other officer need be. The President and Treasurer may be the same person. In the absence or disability of the President, the Clerk, if the Clerk is other than the President, shall exercise the powers and perform the duties of the President.

Section 2. Election of Officers. The officers shall be elected annually by the Board (or as necessary to fill vacancies) at the organizational meeting of each new Board and shall hold office at the pleasure of the Board and until their successors are elected. The first officers are as follows:

President: Steven J. Watchmaker
Treasurer: Gerald S. Zais
Clerk: Richard S. Fox

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

Section 4. President. The President shall be the chief executive officer of the Condominium Association. He shall preside at all meetings of the Unit Owners and of the Board. He shall have all of the general powers and duties which are incident to the office of the 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 voluntary committees from among the Unit Owners from time to time to assist in the conduct of the affairs of the Condominium.

Section 5. 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 moneys and other valuable effects in the name of the Board, or the managing agent, in such depositories as may from time to time be designated by the Board, 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.

Section 6. Clerk. The Clerk shall keep the minutes of all meetings of the Unit Owners and of the Board; and shall in general, perform all duties incident to the office of Clerk of a stock corporation organized under the Business Corporation Law of the Commonwealth of Massachusetts.

Section 7. Agreements, Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks and other instruments of the Condominium Association shall be executed by the President and payment vouchers shall be approved by the Treasurer, or any managing agent engaged by the Board for such purpose.

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

ARTICLE V

NOTICES

Section 1. Service of Notice. Whenever under the provisions of the Master Deed or of these By-Laws notice is required to be given to the Board, any Manager or Unit Owner, such notice shall be deemed sufficient and binding upon the service of a written or printed copy thereof to the party entitled thereto by in hand delivery or by mailing the notice in a postage pre-paid envelope to such party at his address as it appears on the records of the Condominium Association, and, if no address appears, to the Unit owned by such party.

Section 2. Waiver. Whenever any notice is required to be given under the provisions of the Master Deed, the Condominium Law, or 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. Common Expenses of the Condominium. The fiscal year of the Condominium shall be the calendar year. The Board shall, from time to time, not less than annually, prepare a budget for the Condominium and determine the amount of the common expenses (the "Common Expenses") payable by the Unit Owners to defray the costs of operating, maintaining, managing, and administering the Condominium (including all costs and expenses incurred in performing its responsibilities with respect to the Shared Elements, and all costs and expenses and charges arising under and pursuant to the Shared Element Cost Sharing Agreement) and allocate and assess such Common Expenses among the Unit Owners as "Common Charges" according to their respective percentage interests in the Common Elements. The Common Expenses of the Condominium shall include amounts deemed

appropriate by the Board for the operation, maintenance, upkeep and repair of the Property and for the activities of the Condominium Association, including, but not limited to, the following: the cost of common water supply and sewer charges; the cost of electricity used in the Common Elements including common lighting costs; cost of repairs, replacements and additions to the Property including the exteriors of the Building; landscaping and common walkway maintenance and snow clearance and maintenance, upkeep and cleaning of Building lobbies, landings and common stairwells; all management fees, costs, expenses and reimbursements paid or payable to any managing agent with whom the Board has contracted; cost of repair of the common heating and hot water supply equipment and system in the Building and all gas and electric and other utility charges arising therefrom; the cost of service contracts approved by the Board for the supply of services to be performed by the Board; insurance premiums on all policies of insurance required to be or which have been obtained by the Board; salaries, wages and fringe benefits paid to any superintendent or employees of the Condominium; bookkeeping, secretarial, legal and audit expenses of the Condominium Association; all costs associated with the financing of Units acquired by the Condominium Association, if any, and all real estate taxes and costs of maintenance, upkeep and repair of such Units; all costs for labor, equipment, material, management or supervision arising in connection with the operation and maintenance of the Property and the work and activities of the Condominium Association; all costs, expenses and charges incurred in the performance by the Condominium Association of its maintenance, repair, replacement, upkeep, management and other obligations and duties with respect to the Shared Elements as required under the Master Deed, and in order to effectuate the access, support, use and other easements granted to or for the benefit of the Kimball Towers Commercial Condominium and its units, and the Kimball Towers Commercial Condominium Association under the Master Deed; all Kimball Combined Expenses and Additional Expenses (as defined under the Shared Element Cost Sharing Agreement) assessed or charged to the Condominium Association during such terms and periods as the same, or any portion thereof, are being paid by the organization of unit owners of the Kimball Towers Commercial Condominium; and all other items of cost or expenditure which shall be included or specified as part of Common Expenses under the Master Deed or these By-Laws or under the Shared Element Cost Sharing Agreement. The Common Expenses, at the election of the Board, may also include, without limitation, sums necessary to provide working capital for the Condominium, a general operating reserve, or a reserve fund for replacement, and any amounts necessary to make up deficits in the Condominium budget for Common Expenses for prior years provided, however, that no such items shall be included in the budget of the Condominium during the term of the First Board, except as may be required pursuant to Article IX and Section 14 of this Article VI. Common Expenses may also arise from purchase or leasing by the Board, on behalf of all Unit Owners pursuant to the Condominium Documents or the acquisition by the Board of a Unit which is to be sold at a foreclosure or other

judicial sale. The Board 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, as aforesaid and shall furnish copies of each budget on which such Common Charges are based, to all Unit Owners, and, if required, to their "Listed Mortgagee" (as hereinafter defined).

During such periods as the Units of the Condominium are not separately assessed for real estate taxes by governmental authorities having jurisdiction thereof, the Board may assess all or any portion of the real estate taxes applicable to the Condominium as part of the Common Expenses of the Condominium. The Board may defer the collection of Common Charges applicable to any Unit arising for real estate tax payments as aforesaid whenever and to the extent the taxes applicable to the Unit are being collected by a bank or other institutional first mortgagee of said Unit, and may consider such Common Charges satisfied and paid upon payment by the mortgagee of amounts so collected to the taxing governmental authority. Each Unit Owner hereby authorizes its respective mortgagee to pay all such real estate taxes collected to the Board to be used in payment of such taxes, and authorizes the mortgagee to release to the Board information concerning the payment and collection of the tax amounts.

Section 2. Payment of Common Charges. All Unit Owners shall be obligated to pay the Common Charges determined pursuant to Section I of this Article VI on the first day of each calendar month in installments equal to 1/12 of the annual Common Charges determined from the budget, or at such other time or times as determined by the Board.

No Unit Owner shall be liable for the payment of any part of the Common Charges assessed against his Unit subsequent to the date of a sale or transfer by him of such Unit. In addition, any Unit Owner may, subject to the terms and conditions specified in these By-Laws, provided that his Unit is free and clear of liens and encumbrances other than the statutory lien for unpaid Common Charges and current real estate taxes, convey his Unit, together with the Appurtenant Interests (as defined in Article VIII hereof) to the Board and in such event be exempt from Common Charges thereafter assessed. 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.

Section 3. Collection of Assessments. The Board shall assess against the Unit Owners, Common Charges determined pursuant to Section 1. of this Article VI, including all special assessments thereof, and shall take prompt action to collect any Common Charges due from any Unit Owner in default. No Unit Owner shall be deemed in default of the obligation to pay Common Charges unless the same remain unpaid for more than fifteen (15) days from the due date for payment thereof.

Section 4. Default in Payment of Common Charges. In the event of default by any Unit Owner in paying the Common Charges assessed by the Board, such Unit Owner shall be obligated to pay interest at twelve (12%) percent per annum on such Common Charges from the due date thereof until paid, together with all expenses, including attorneys' fees, incurred by the Board in any proceeding brought to collect such unpaid Common Charges. The Board shall have the right and duty to attempt to recover such Common Charges, together with interest thereon, and the expenses of the proceeding including reasonable attorneys' fees (whether or not suit is commenced) if recovery is sought against such Unit Owner, or arising from any proceedings seeking foreclosure of a lien on such Unit as provided in Section 6 of the Condominium Law. Not less than five (5) days prior to the commencement of any legal action for foreclosure of the lien referred to in the immediately preceding sentence by the Board, the Board shall give notice (in the manner provided in Article V, Section I hereof) to the owners of the Unit subject to the lien to be foreclosed of its intention to commence foreclosure proceedings.

Section 5. Foreclosure of Liens for Unpaid Common Charges. In any action brought by or on behalf of the Board to foreclose a lien on a Unit because of unpaid assessments of Common Charges, the Unit Owner shall, after entry of judgment of foreclosure, be required to pay a reasonable rental for the use of his Unit and the plaintiff shall be entitled to appointment of a receiver to collect the same. The Board, acting on behalf of all Unit Owners, if authorized pursuant to the Condominium Documents, shall have power to purchase such Unit at the foreclosure sale and to acquire, own, hold, lease, mortgage (but not to vote the votes appurtenant to), convey or otherwise deal with the same. A suit to recover a money judgment for unpaid assessments of Common Charges shall be maintainable against the defaulting Unit Owner without foreclosing or waiving the lien securing the same and any judgment obtained as a result of such action will remain secured by said lien.

Section 6. Statement of Common Charges. The Board shall promptly provide any Unit Owner who shall request the same in writing, with a written statement of all unpaid assessments of common charges due from such Unit Owner in form suitable for recording.

The recording of such statement with the Registry of Deeds shall operate to discharge the Unit from any lien for any Common Charges or other sums due to the Condominium Association as of the date of such statement except those set forth in such statement.

Section 7. Abatement and Enjoinment of Violations by Unit Owners. The violation of any rule or regulation adopted by the Board or the breach of any of these By-Laws, or the breach of any provisions of the Master Deed shall give the Board the right, in addition to any other rights set forth in these By-Laws, to enjoin,

abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and the costs of such legal proceedings shall be borne by the Owners of the offending Unit if the Board shall prevail in such proceedings.

Section 8. Maintenance and Repairs.

(a) All maintenance, repairs and replacements to any Unit, whether such maintenance and repairs are structural (except with respect to the Shared Elements) or non-structural, ordinary or extraordinary (other than maintenance, repairs and replacements to the Common Elements contained within the Unit boundaries not necessitated by the negligence, misuse or neglect of the owner of such Unit), including maintenance, repairs, and replacements to all electrical, plumbing, air conditioning and heating fixtures and equipment serving solely the Unit, shall be performed and undertaken at the Unit Owner's sole cost and expense, excepting as otherwise specifically provided herein. The Unit Owners of the units shall be solely responsible for repair of all broken windows or glass in their Unit. The owners of Units P-1 and P-2, respectively, having as appurtenances to their respective Units "Reserved Roof Area P-1" and "Reserved Roof Area P-2", as described in the Master Deed, shall be responsible for all maintenance, upkeep and structural and nonstructural repair of said Reserved Roof Areas appurtenant to said respective unit, and any and all damages to or repairs required for the "Roof", as defined in the Master Deed, or any other portions of the Condominium, as a result of the use, occupancy, or construction performed in or with respect to said reserved roof areas shall be performed by the Condominium Association with the costs thereof being borne by the owner of the Unit causing such damage to the extent the same is not covered by the insurances obtained by the Board of Managers. The owners of Units as to which roof decks are constructed on the appurtenant reserved roof areas, shall bear, in a manner determined by the Board to be just and reasonable, additional expenses incurred by the Condominium Association in repairing or maintaining the Roof arising from the presence of the roof decks (including, without limitation, any cost incurred in lifting the roof decks in connection with repair or maintenance of the Roof).

(b) Except as set forth in subparagraph (a) of this Section 8, all maintenance, repairs and replacements to the Common Elements, including all Shared Elements, including, without limitation, common electrical, plumbing, heating, hot water supply and utility fixtures serving two or more Units of the Condominium in common, periodic painting or other treatment of the exteriors of the Buildings and other Common Elements, and all repair and upkeep of all walkways, Building stairs, entrances, lobbies, landings, stairwells, elevators, access ways, entries and public areas, and all lawn care and landscaping work shall be performed by the Board and shall be charged to all the Unit Owners as a Common Expense, excepting to the extent that the same are necessitated by the

negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner. The Condominium Association shall also install light bulbs in the lighting sockets in the Common Elements, both inside and outside the Building.

Section 9. Restrictions and Rules and Regulations. In order to provide for congenial use and occupancy of the Property and for the protection of the values of the Units, the use of the Units shall be restricted as set forth in the Master Deed, inclusive of any restrictions contained herein which are incorporated in the Master Deed and in the Rules and Regulations attached hereto as Exhibit A which are incorporated by reference in the Master Deed, and the use of the Common Elements shall be restricted as set forth in the Master Deed, these By-Laws and the Rules and Regulations, as the same may hereafter be amended or modified from time to time, provided, however, all amendments to rules and regulations affecting the Common Elements as to which the Kimball Towers Commercial Condominium or its unit owners or members of the managing board have use or easement rights shall be of general applicability to all users thereof, and shall not discriminate against said Kimball Towers Commercial Condominium users or unreasonably burden their said easements or use rights.

The initial Rules and Regulations promulgated by the Board, which are annexed hereto as Exhibit A and made a part hereof, may be modified or amended only as provided in Article XII hereof. The Board shall have the power to levy reasonable fines against the Unit Owners for violations of rules and regulations established to govern the conduct of the Unit Owners. In the case of persistent violation of the rules and regulations by a Unit Owner, the Board shall have the power to require such Unit Owner to post a bond or cash deposit to secure adherence to the Rules and Regulations.

Section 10. Improvements to Common Elements. The following provisions shall govern improvements to the Common Elements:

(a) If 50% or more in interest but less than 75% in interest of the Unit Owners agree to make an improvement to the Common Elements, the cost of such improvements shall be borne solely by the Unit Owners so agreeing.

(b) Seventy-five percent or more in interest 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 improvements shall cost in excess of ten percent of the then value of the Condominium, any Unit Owner not so agreeing may apply to the Superior Court of the County, on such notice to the Board as the Court shall direct, for an order directing the purchase of the his Unit by the Board at fair market value thereof as approved by the Court. The cost of any such purchase shall be a Common Expense of the Condominium.

Section 11. Right of Access. Each Unit Owner grants a right of access into his Unit to the Board and any person authorized by the Board, (and to the managing board of the organization of unit owners of Kimball Towers Commercial Condominium if the Board is not duly performing its obligations with respect to the Shared Elements, with respect to the maintenance, replacement or repair of the Shared Elements only) for the purpose of making inspections or for the purpose of correcting any conditions originating in his Unit or threatening another Unit or any portions of the Common Elements for the purpose of making repairs, replacements and improvements to the Common Elements, or portions thereof, which are unsightly, a nuisance or pose any danger to persons or property, provided that requests for such entries are made not less than twenty-four (24) hours in advance and that any such entry is at a time reasonably convenient to the Unit Owner and scheduled to take place, if possible, in the presence of the Unit Owner. In case of any 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 11, all costs for repairs (including repairs of damage caused by such entry) shall be borne in accordance with the provisions of Section 8 of this Article VI.

Section 12. Water and Electricity. Electricity will be supplied directly to the Units through separate meters and each Unit Owner shall be required to pay the bills for such metered utilities consumed or used in his Unit directly to the utility suppliers or company. Utility charges for heating and for the common hot water supply, and all water and sewer used in or charged to the Condominium (and all sewer charges), are supplied to the Condominium under separate metering systems, and the cost of all such utilities are included in the Common Expenses.

Section 13. Insurance. The Board shall obtain and maintain to the extent reasonably obtainable policies of insurance providing coverage for property owned by the Unit Owners in common, for liability exposures of the Condominium Association and the Unit Owners in common, and for fidelity losses of the Condominium Association (as described in Section 12 of Article II of these By-Laws), all from insurance companies licensed to do business in the Commonwealth of Massachusetts. The insurance policy or policies shall be as follows: (a) Property Insurances: The Board shall purchase and maintain an insurance policy or policies covering all real and personal property owned by the Condominium Association and the Unit Owners in common, insuring the Property, including the Common Elements, the Building and all of the Units (including, without limitation, interior partitions, Unit boundary walls and the like) and all of the fixtures installed therein as of the date of recording of the Master Deed, but not including drapes, trade fixtures, and trade equipment, furniture, furnishings and personal property of or contained in the Unit.

Conditions of Coverage shall be as follows:

- (i) The named insured shall include the Condominium Association, the Board, the Unit Owners, the Managers, and the managing agent, as their respective interest may appear;
- (ii) The perils covered shall be fire and extended coverage;
- (iii) "All Risk or Risks of Physical Loss", or its equivalent, type coverage when available at a reasonable cost;
- (iv) Earthquake coverage, if the Board determines it advisable;
- (v) Flood coverage, if the Condominium or any part is located in a federally designated flood hazard zone or if the Board determines it advisable;
- (vi) Boiler and machinery coverages, if the Board determines it advisable;
- (vii) The amount of coverage shall be adequate to provide for replacement cost for property insured;
- (viii) Replacement Cost coverage;
- (ix) An Agreed Amount Clause, or its equivalent;
- (x) That this coverage will be primary in the settlement of all losses covered;
- (xi) Waiver of subrogation by and between insureds, and their respective agents, servants, employees, and guests, and invitees and customers;
- (xii) A minimum of 30-day cancellation provision to the named insureds and named mortgagees, if any;
- (xiii) That the coverage and conditions, including Replacement Cost, shall not be jeopardized by the insured's compliance with the Condominium Law with respect to obtaining consent from Unit Owners and/or mortgagees to repair or restore property damaged;
- (xiv) Loss shall be adjusted by, and payable to, the Board as trustee for all insureds and their mortgagees, and in accordance with the Condominium Law and these By-Laws;
- (xv) Mortgagees shall be given evidence, upon written request, that their interest is recorded on such insurance policies, consistent with these By-Laws;

- (xvi) That Unit Owners are permitted to purchase insurance for their own Unit(s), including, but not limited to, drapes, improvements and betterments, trade fixtures and equipment, furniture, personal property contained in their Units which insurance policies shall acknowledge, that the Condominium Association's policies are to be considered as Primary Coverage in the adjustment of an insured loss;
- (xvii) Such other conditions as the Board from time to time shall deem to be to the benefit of the Condominium Association.

(b) Liability Insurance: The Board shall purchase and maintain Liability Insurance Coverage, which will protect the Condominium Association, and its Board, officers, and the managing agent, from claims which may arise out of, or result from, the use and occupancy of the Common Elements, and the land, structures and improvements comprising the Common Elements, by any person or as a result of the acts or failures of any employee, officer or manager of the Condominium Association, or any managing agent, or any party for whose conduct the Condominium Association may be responsible, wherever such conduct shall occur. Insurance coverage shall include, unless otherwise noted, but not be limited to, protection from the following:

- (i) Claims under worker's compensation, disability benefit, and other similar employee benefit acts;
- (ii) Claims for damages because of bodily injury, occupational sickness or disease, or death of the Condominium Association's employees;
- (iii) Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Condominium Association's employees;
- (iv) Claims for damages insured by the usual personal injury liability coverages which are sustained by,
 - (x) any person as a result of an offense directly or indirectly related to the employment of such person by the Condominium Association, or by,
 - (y) any other person;
- (v) Claims for damages because of injury to, or destruction of, tangible property, including loss of use resulting therefrom;
- (vi) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle;

- (vii) Claims for breach of fiduciary duty of a member of the Board may be purchased by the Board.

Conditions of Coverage for all liability policies, except those specifically protecting the Condominium Association and its Board for breach of fiduciary duty, shall be as follows:

- (1) Named Insureds shall include the Condominium Association, its Board, its Managers, officers and managing agent;
- (2) Additional Insureds shall be the Unit Owners;
- (3) Limits of liability shall be determined from time to time by the Board (but not less than \$500,000.00);
- (4) All insurance policies shall be placed with a company or companies acceptable to the Board;
- (5) Insurer shall not have rights of subrogation against any Named Insured and/or Additional Insured;
- (6) Said policies shall contain an endorsement specifically requiring the insurance company to notify the Condominium Association in writing, not less than thirty (30) days prior to cancellation of any or all coverages;
- (7) That the Condominium Association shall receive certificates of insurance, to be delivered, if requested, to any member of the Board and any Unit Owner or named mortgagee indicating all coverages contained in policies purchased, and continuing evidence of such coverage annually, also if requested;
- (8) That additional conditions may be added from time to time, as the Board deems it advisable.

Conditions of Coverage for policies, specifically protecting the Condominium Association and its Board for breach of fiduciary duty, shall be as follows:

- (1) The Named Insured shall be the Condominium Association and its Board and officers.
- (2) If the policy contains a recourse provision, then the insurer shall waive such provision at the request of the Board, or shall make available to the Board, coverage protecting the Board members from such recourse.
- (3) That additional conditions may be included, as determined by the Board from time to time.

The Condominium Association, its agents, servants, employees, and invitees and the Unit Owners, and their agents, servants, employees, and guests and invitees, to the extent permitted by law, hereby, waive their rights of subrogation, each as against the other, to the extent such property loss, or liability claim, is covered by insurances purchased by the Condominium Association, or by the Unit Owners.

Subject to the provisions of Section 14 of this Article VI, insurance proceeds received by the Board shall be held in trust in an identified and segregated fund for the benefit of the Unit Owners and named mortgagees. If the cost of restoring the Common Elements is estimated by the Board to exceed the sum of Thirty Thousand Dollars (\$30,000.00), then the Board shall give written notice of such loss to all "Listed Mortgagees" (as defined in Article VII below), and, in addition, if the cost of restoration of any Unit is estimated by the Board to exceed Eight Thousand Dollars (\$8,000.00), then the Board shall give written notice of such loss to the Listed Mortgagee holding the mortgage on the Unit.

All losses covered by any insurances carried by the Board shall be adjusted by the Board in cooperation with the managing board of the organization of unit owners of the Kimball Towers Commercial Condominium, in good faith, and shall be payable to the Board to be held in trust and disbursed as provided herein and in Section 14 of this Article VI, or as provided under the Condominium Law.

Unit Owners may carry contents insurance and any other insurance covering perils and matters not covered by the insurances acquired by the Board provided that all such policies shall contain waivers of subrogation and further provided that such policies shall specifically acknowledge that the insurances obtained by the Board are to be considered as "primary coverage" in the adjustment of an insured loss and that the liability of the carriers issuing insurance obtained on behalf of the Board shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner.

Section 14. Repair or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of the Common Elements as a result of fire or other casualty (unless the casualty exceeds 10% of the value of the Condominium prior to the casualty and if at least 75% of the Unit Owners do not agree to proceed with the repair or restoration as provided in subparagraph (a) below of this Section) or in the event of damage to or destruction of any Unit as a result of fire or other casualty, whether or not the Common Elements have been damaged or destroyed, unless subparagraph (a) below of this Section is applicable, the Board shall collect in trust the insurance proceeds payable on account such damage or destruction, shall promptly adjust for the loss, contract for the prompt repair or restoration of the same, and disburse the proceeds of all insurance policies in payment of all costs and expenses actually incurred in connection with such repair or restoration in

appropriate progress payments and with appropriate retainage. All insurance proceeds paid to the Board as trustees on account of any casualty shall be dedicated solely to the repair or restoration of the loss, and any application of said proceeds by the Board on account thereof shall be prior to the application of such proceeds for any other purposes.

In the event that the total cost of repair or restoration as estimated on the basis of an independent appraisal, or as determined during the course of repair or restoration, then the Board shall assess, levy or charge all Unit Owners, as a Common Expense, for the amount estimated to repair or restore in excess of the insurance available thereof.

Whenever the estimated cost of repair or restoration exceeds as to any one casualty or occurrence, on the basis of an independent appraisal, the sum of Thirty Thousand Dollars (\$30,000.00) with respect to the Common Elements and Eight Thousand Dollars (\$8,000.00) with respect to any one Unit, the Board shall retain a registered architect or registered engineer, who shall not be directly or indirectly a Unit Owner or an employee or agent of any member of the Board or the Condominium, to supervise the work of repair or restoration and no sums shall be paid by the Board on account of such repair or restoration except upon certification to it by such architect or engineer that the work for which payment is being made has been completed in a good and workmanlike manner in accordance with approved plans and specifications and that the estimated total cost of completion of said repair or restoration, less amounts theretofore advanced, does not exceed the undisbursed proceeds of insurance as augmented by funds obtained by any assessment or assessments levied or chargeable to the Unit Owners as a Common Expense or to the owners of Units damaged or destroyed.

Notwithstanding the foregoing, the Board may perform emergency work essential to the preservation and safety of the Property or the safety of person, or required to avoid the suspension of any essential service to the Property, without having first engaged an architect or engineer, adjusted the loss or obtained proceeds of insurance.

If there shall have been a repair or restoration pursuant to the foregoing and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then such excess of insurance proceeds, if any, shall be added to the Condominium's reserve fund, if any, or, at the option of the Board, divided among and paid to all the Unit Owners (and their mortgagees as their interests may appear) in proportion to their respective interest in the Common Elements.

Notwithstanding the foregoing, if as a result of fire or other casualty exceeds 10% of the value of the Condominium prior to the casualty, and:

(a) If at least 75% in interest of the Unit Owners do not agree within 120 days after the date of the casualty to proceed with repair or restoration, the Condominium, including all Units, shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of the partition sale together with any common funds shall be divided in proportion to the Unit Owners' respective undivided ownership in the Common Elements and paid to such Unit Owners and their mortgages, as their respective interests may appear. Upon such sale of the Condominium shall be deemed removed from the provisions of the Condominium Law.

(b) If at least 75% in interest of the Unit Owners agree to proceed with the necessary repair or restoration, the cost of the rebuilding of the Condominium, in excess of any available common funds including the proceeds of any insurance, shall be a Common Expense, provided, however, that if such excess cost exceeds ten (10%) percent 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 the County on such notice to the Board as the Court shall direct, for an order directing the purchase of his Unit by the Board at the fair market value thereof as approved by the Court. The cost of such purchase shall be a Common Expense of the Condominium.

Section 15. Additions, Alterations or Improvements by Unit Owners. No structural addition, alteration or improvements shall be made in or to a Unit or in or to the Building which would or might jeopardize or impair the safety or soundness of the Building or any Unit without obtaining the prior written consent of the Board and, pursuant to Section 5(g) of the Condominium Law, and the unanimous consent of all Unit Owners and the written consent of the managing board of the Kimball Towers Commercial Condominium and all of the unit owners of the Kimball Towers Commercial Condominium. No alteration, addition, improvement, painting or staining or change may be made by any Unit Owner affecting the exterior architectural design, appearance, material, color, or condition of the Building or the Common Elements without the prior written consent of the Board, except as otherwise permitted in Paragraph 21 of the Master Deed.

The Board shall answer any written request by a Unit Owner for required approvals hereunder within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make such addition, alteration or improvement may, if the Board so elects, be executed by the Board only without, however, incurring any liability on the part of the Board or any of them to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim for injury to persons or damage to property

arising therefrom. Except for the first sentence of this Section 15, the provision of this Section 15 shall not apply to Units owned by the Sponsor until such Units shall have been initially conveyed by the Sponsor to third party purchasers and shall not apply to the construction work rights reserved by Sponsor in Paragraph 21 of the Master Deed.

Except as otherwise provided herein or permitted by the Board, a Unit Owner performing any work, construction or improvements in the Unit, or in the Building or any other work which affects or involves the Common Elements or the exterior appearance or features of the Building shall: (a) secure all appropriate licenses and permits necessary for such work at Unit Owner's sole cost and expense; (b) provide appropriate insurances insuring the said Unit Owner, the Board of Managers and other occupants of the Units and the Condominium against personal injury and property damage arising out of or in connection with said work; (c) perform all construction work in a good and workmanlike manner and in compliance with all applicable laws and ordinances, regulations and order of governmental authorities having jurisdiction thereof and the insurers of the Condominium; and (e) diligently prosecute all such work to completion.

Section 16. Examination of Books. Each Unit Owner and each mortgagee of a Unit shall be permitted to examine the books of account of the Condominium and the records of the Condominium described in Article X hereof at reasonable times, on business days, or upon appointment made by any Unit Owner or Listed Mortgagee on 48 hours' written notice to the President.

ARTICLE VII

MORTGAGES

Section 1. Notice to Board. A Unit Owner, who mortgages his Unit, shall notify the Board of the name and address of his mortgagee and shall file a conformed copy of the mortgage with the Board. The Board shall cause such information to be maintained in a book entitled "Mortgages of Units."

Section 2. Notice to Unpaid Common Charges. The Board, whenever so requested in writing by a mortgagee of a Unit, shall promptly report or cause to be reported any then unpaid assessments of Common Charges due from, or any other default by, the owner of the mortgaged Unit.

Section 3. Notice of Default. When a Unit Owner is given notice of a default in paying any assessments of Common Charges, or other default, the Board shall send, or cause to be sent, a copy of such notice to the Listed Mortgagees of such Unit.

Section 4. Listed Mortgagee. As used in these By-Laws, "Listed Mortgagee" shall mean a mortgagee holding a mortgage of record on a Unit of which the Unit Owner affected or such mortgagee has given the Board written notice, specifying the address to which notices are to be sent in all instances to a Listed Mortgagee by the Board. Such mortgagee shall remain a Listed Mortgagee until the Board receives written notice from the mortgagee of withdrawal of the listing or the mortgage is discharged of record. Any mortgagee of Sponsor who shall have subordinated its mortgage to the Condominium Documents is automatically a Listed Mortgagee.

Section 5. Assignment by Unit Owner of Rights and Options. The right of any Unit Owner to vote to grant or withhold any consent, and to exercise any other right or option herein granted to a Unit Owner, may be assigned or transferred in writing to or restricted in favor of any Listed Mortgagee, and the Board shall be bound by any such assignment or transfer upon notice in writing to the Board by a Listed Mortgagee setting forth the terms of such assignment.

ARTICLE VIII

NO SEVERANCE OF OWNERSHIP; SUBDIVISION OF UNITS; FINANCING OF UNITS PURCHASED BY BOARD

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" (defined in the next following sentence), it being the intention hereof to prevent any severance of such combined ownership. The (a) undivided interest in the Common Elements appurtenant to the respective Unit; (b) the interest of the Unit Owners of such Unit in any Unit acquired by the Board, or its designee, on behalf of all Unit Owners, or the proceeds of the sale or lease thereof, if any; (c) the interest of such Unit Owners in any other assets of the Condominium; (d) membership of the Unit Owners of the Unit in the Condominium Association, and (e) all easements of exclusive use of the common areas and facilities of the Condominium appurtenant to said Unit are collectively herein referred to as the "Appurtenant Interests". Any such deed, mortgage or other instrument purporting to affect the Unit or one or more of the Appurtenant Interests, without including the Unit and all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Appurtenant Interests of any Unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Unit to which such interests are appurtenant, or as part of a sale, transfer or other disposition of such part of the Appurtenant Interests of all Units.

Section 2. Subdivision of Units. No Unit may be subdivided into two or more Units and the percentage interest appurtenant to any Unit shall not be adjusted to accomplish such subdivision unless pursuant to an amendment of the Master Deed consented to by all of the Unit Owners of the Condominium and their respective mortgagee, if any.

Section 3. Financing of Purchase of Units by Board. Acquisition of Units by the Board may be made from the working capital in the hands of the Board, or if such funds are insufficient and the Unit Owners owning one-hundred (100%) percent in interest in the Common Elements consent thereto, the Board may levy a special assessment against each Unit Owner in proportion to his ownership in the Common Elements, as a Common Expense, which assessment shall be enforceable as provided in Article VI. The Board may borrow money to finance acquisition of a Unit without the consent of the Unit Owners when such acquisition is required under the Condominium Law, however, in all other cases in which the Board acquires a Unit, it may not borrow money for such purposes unless so authorized by Unit Owners owning not less than one-hundred (100%) percent in common interest. No such Unit financings by the Board may be secured by an encumbrance or hypothecation of any property other than the Unit, together with the Appurtenant Interests, so to be acquired by the Board. All costs of obtaining financing for the acquisition of the Unit and for the repayment of monies borrowed for such purposes, including, principal and interest shall be Common Expenses of the Condominium and payable by Unit Owners by assessments of Common Charges.

ARTICLE IX

CONDEMNATION

Section 1. Condemnation. If more than ten percent in value 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 the Condominium Law and Section 14 of Article VI of these By-Laws shall apply. Where one or more Units have been substantially altered or rendered uninhabitable as a result of a partial taking, and the Unit Owners vote to restore and continue the Condominium pursuant to Section 17 of the Condominium Law, the Board shall have the authority to acquire the remaining portions of such Units for such price as the Board shall determine, provided that any Unit Owner (including the Sponsor as to Units owned by the Sponsor) of such remaining portion who does not agree with such determination may apply to the Superior Court of the County on such notice to the Board 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 may make such provisions for

realignment of the percentage interest in the Common Elements as shall be just and equitable and shall be consented to in writing by the Unit Owners owning 100% in interest in the Condominium and shall record an amendment to the Master Deed after notice to the Unit Owners and Listed Mortgagees reflecting the new percentage interest, whereupon such newly specified percentage interests shall become appurtenant to the Units stipulated and shall for all purposes and in all respects replace the prior appurtenant percentage interests.

In the event of any taking under the power of eminent domain, the Unit Owners shall be represented by the Condominium Association acting through the Board, and the Board shall have the power in cooperation with the managing board of the organization of unit owners of the Kimball Towers Commercial Condominium to apply for, prosecute, settle and otherwise pursue, obtain and collect any damage awards payable as a result of said taking. In the event of a partial taking, the award payable with respect to the Condominium shall be allocated to the respective Unit Owners or their mortgagees, as their respective interest may appear, in accordance with their respective percentage 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 as determined by the Court, which shall be payable to the owners of such Units or their mortgagees, as their respective 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 to be distributed to the Unit Owners or their mortgagees, as their respective interests may appear, in, accordance with their respective percentage interest in the Common Elements.

ARTICLE X

RECORDS

Section 1. Records and Audits. The Board shall keep detailed records of the actions of the Board, minutes of the meetings of the Board, and minutes of the meetings of the Unit Owners. The Board shall keep and maintain, or cause to be kept and maintained, the financial records and books of account of the Condominium, including a chronological listing of receipts and expenditures, as well as a separate account for each Unit, which among other things, shall contain the amount of each assessment of Common Expenses against such Unit, the date when due, the amounts paid thereon, and the balance remaining unpaid. An annual report of the receipts and expenditures of the Condominium, certified by an independent certified public accountant, shall be rendered or caused to be rendered by the Board to all Unit Owners and to the managing board of the Kimball Towers Commercial Condominium and the unit owners of the Kimball Towers Commercial Condominium promptly after the end of each fiscal year. Copies of the Condominium Documents, site plan and floor plans recorded with the Master Deed, as the same may be amended from time to time, shall be maintained at the office of the

Board and shall be available for inspection by Unit Owners, their authorized agents and Listed Mortgagees during reasonable business hours or upon appointment by any Unit Owner or Listed Mortgagee on 48 hours written notice to the President.

ARTICLE XI

MISCELLANEOUS

Section 1. Invalidity. The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability or effect of 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 provisions 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.

Section 5. Chapter 183A. All references in these By-Laws to Chapter 183A of the General Laws of the Commonwealth of the Condominium Law shall be to said Chapter 183A as amended to the date of recording of the Master Deed creating the Condominium.

ARTICLE XII

AMENDMENTS TO BY-LAWS

Section 1. Amendments to By-Laws. These By-Laws may be modified or amended at any time, and from time to time, by: (a) the written approval of Unit Owners owning 66.66% or more (or if such modification or amendment affects a provision then requiring a larger percentage, such larger percentage) in common interest to such modification or amendment or (b) the vote of 66.66% percent or more (or if such modification or amendment affects a provision then requiring a larger percentage, such larger percentage) in common interest at a meeting of Unit Owners duly held for such purpose, provided that no such amendment shall be effective unless and until approved by the Board in writing (which may be indemnified to their reasonable satisfaction against outstanding obligations or

liabilities which will, can or may result from said amendment) and recorded with the Registry of Deeds; provided, however, that no such amendment or modification shall: (a) render these By-Laws to be contrary to or inconsistent with any provisions of the Condominium Law, or the Master Deed, or any other provisions of these By-Laws; or (b) eliminate, change, impair, or otherwise adversely affect any rights of "first mortgagees" as defined and described in Section 22 of the Master Deed, without the prior written consent of all then existing first mortgagees; or (c) eliminate, change, impair, or otherwise adversely affect any special rights of Sponsor (i.e., those not appertaining generally to all Unit Owners) contained in the Master Deed and herein, unless first consented to in writing by Sponsor or (d) be effective with respect to any matters as to which amendment is restricted or prohibited under Section 3 of this Article XII below, unless the provisions applicable thereto are first complied with. 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 or modification, whether stated in such instrument or not, upon all questions as to title or affecting the right of third persons and for all other purposes. One or more "Special Amendments" to these By-Laws may be enacted and recorded with the Registry of Deeds by Sponsor as described in Section 22 of the Master Deed.

Section 2. Amendment of Rules and Regulations. The Rules and Regulations may be modified and amended by the Board, provided that the same are adopted or ratified by the Unit Owners in the same manner as provided for amendment of these By-Laws.

Section 3. Prohibitions on Amendment.

- (a) For as long as the Sponsor remains the owner of any Unit in the Condominium these By-Laws may not be amended so as to limit or modify Sponsor's rights with respect to the appointment of members of the First Board and the terms of their service set forth in Sections 3 through 6, inclusive, of Article II hereof and the rights of Sponsor contained in Section 15 of Article VI hereof, without Sponsor's written consent; and
- (b) None of the rights, privileges, easements or benefits granted to the Kimball Towers Commercial Condominium or the unit owners thereof or its organization of unit owners in the Master Deed or herein, nor any of the obligations, covenants, duties and responsibilities of the Condominium Association with respect to the operation, management, maintenance and repair of the Shared Elements or with respect to the Shared Element Expenses contained in the Master Deed or herein shall be amended, modified, changed or altered without in each instance, obtaining all of the following: (a) the written consent of the managing board of the organization of unit owners established for the

Kimball Towers Commercial Condominium and (b) the written approval of the owners of not less than one hundred (100%) percent in common interest of the units of the Kimball Towers Commercial Condominium, and (c) the written consent of the holders of 100% of the first mortgages covering each the units of the Kimball Towers Commercial Condominium, and (d) the written consent of the Board.

ARTICLE XIII

REMOVAL

Section 1. Removal of Condominium From Condominium Law. The Condominium shall not be removed from the provisions of the Condominium Law except in compliance with the procedure therefor established in Section 19 of the Condominium Law, but the instrument removing the Condominium from the Condominium Law must be consented to by the Unit Owners of one hundred percent of the common areas and facilities of the Condominium, and their respective mortgagees and the unit owners owning one hundred (100%) percent of the common areas and facilities of the Kimball Towers Commercial Condominium, and their respective mortgagees, and the unanimous written approval of the managing board of the Kimball Towers Commercial Condominium.

ARTICLE XIV

CONFLICTS

Section 1. Conflicts. These By-Laws are set forth to comply with the requirements of the Condominium Law and the Master Deed recorded in the Registry of Deeds, as it may be amended. In case any of these By-Laws conflict with the provisions of said statute or the Master Deed, the provisions of said statute, or the Master Deed, as the case may be, shall control.

EXECUTED under seal this 31st day of October , 1985, by the undersigned First Board of Managers of the Kimball Towers Homeowners Association.


Neil Zais


Steven J. Watchmaker

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

October 31, 1985

Then personally appeared the above-named, Neil Zias and Steven J. Watchmaker, the members of First Board of Managers of Kimball Towers Homeowners Association, and acknowledged the foregoing instrument to be their free act and deed, as Managers, before me.

Jonathan B. Green

, Notary Public

My commission expires:

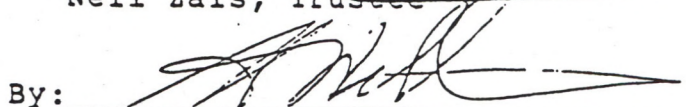
JONATHAN B. GREEN, Notary Public
My Commission Expires August 3, 1990



Neil Zais and Steven J. Watchmaker, as Trustees of Kimball Towers Realty Trust under Declaration of Trust dated July 2, 1985, recorded with the Hampden Registry of Deeds in Book 5645, Page 308 and in the Master Deed referred to as the "Sponsor", by the execution below hereby consents to and joins in the within By-Laws for the purpose of establishing the Kimball Towers Homeowners Association, but for no other purpose.

KIMBALL TOWNERS REALTY TRUST

By: 
Neil Zais, Trustee

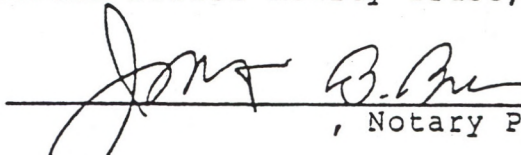

By: 
Steven J. Watchmaker, Trustee

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

October 31, 1985

Then personally appeared the above-named, Steven J. Watchmaker, Trustee of Kimball Towers Realty Trust, and acknowledged the foregoing instrument to be his free act and deed, as Trustee and the free act and deed of Kimball Towers Realty Trust, before me.


_____, Notary Public


My commission expires:

0578C
10/3/85

DONATHAN B. BREEN, Notary Public
My Commission Expires August 3, 1990

KIMBALL TOWERS HOMEOWNERS ASSOCIATION

RULES AND REGULATIONS

KIMBALL TOWERS RESIDENTIAL CONDOMINIUM (the "Condominium") in Springfield, Massachusetts, has been created with the objective of providing congenial office and commercial condominium use for the owners of the condominium Units therein (and the condominium units which are part of the Kimball Towers Commercial Condominium, with respect to the "Shared Elements" as defined in the Master Deed). In order to accomplish this objective, the Board of Managers of the Kimball Towers Homeowners Association (the "Condominium Association") responsible for the administration, operation and maintenance of the Condominium and the Common Elements pursuant to the By-Laws of the Condominium Association, including the Shared Elements pursuant to the "Shared Element Cost Sharing Agreement" referred to in the Master Deed, have adopted the Rules and Regulations set forth below.

In order for the Unit Owners to better understand the Rules and Regulations, the defined terms used in the Master Deed of the Condominium and the By-Laws are used herein with the same meanings as used in said documents, except that, whenever these Rules and Regulations impose a duty or obligation upon a Unit Owner or a rule which a Unit Owner is to observe, obey and comply with, the term "Unit Owner" shall mean the term Unit Owner as defined in the Master Deed and also all owners of

Units in the Kimball Towers Commercial Condominium, and, in addition, when the concept permits, shall include all of their respective guests, contractors, customers, employees, and invitees, and all tenants, users and occupants of Units in the Condominium.

The Rules and Regulations may not please everyone, as it is impossible to satisfy each and every individual. The Board of Managers (the "Board"), however, feels that the Rules and Regulations will not only satisfy the majority of the occupants of the Condominium and the Building, but will enhance the experience of all Unit Owners and all persons using the Condominium, the Building and the Units.

The Rules and Regulations are as follows:

1. There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements without the prior consent of the Board. Each Unit Owner shall be obligated to maintain and keep in good order and repair his own Unit in accordance with the provision of the Master Deed and By-Laws.

2. All of the furnishings, items of personal property, effects and other items of Unit Owner and of persons claiming by, through or under said owner which are kept or stored in any Unit are at the sole risk and hazard of said owner, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leaking or bursting of water pipes, steam pipes or other pipes, by theft or from any other cause, no part of said loss or damage in excess of the

amounts, if any, covered by its insurance policies, is to be charged to or be borne by the Condominium Association except that the Condominium Association shall in no event be exonerated or held harmless from liability caused by its negligence.

3. Nothing shall be altered or constructed in or removed from the Common Elements, except as provided in the By-Laws. No portion of the Common Elements inside the Building, including lobbies, landings, stairwells and walls, shall be decorated or furnished by any Unit Owner in any manner, without the prior written approval of the Board, except as permitted by the provisions of the Master Deed and By-Laws.

4. Each Unit Owner shall keep his Unit in a good state of preservation and cleanliness.

5. All radio, television or other electrical equipment of any kind or nature installed by Unit Owners or used in each Unit shall fully comply with all rules, regulations, requirements or recommendations of the Board of Fire Underwriters, or similar board, and the public authorities having jurisdiction.

6. The agents of the Board or the managing agent, and any contractor or workman authorized by the Board or the managing agent, may enter any room or Unit at any reasonable hour of the day after notification (except in the case of emergency) for the purpose of inspecting such Unit for the presence of any vermin, insects or other pests and for the purpose of taking

such measures as may be necessary to control or exterminate any such vermin, insects or other pests.

7. No Unit Owner or any of his agents, servants, employees, licensees or visitors shall, at any time, bring into or keep in his Unit or any portion of the Common Elements or any of the Building any gasoline, kerosene, or other flammable, combustible lighting, cleaning and other fluids, materials, chemical and substances except as are customarily incidental to such uses as are permitted in the Kimball Towers Residential Condominium with respect to its units, and the Kimball Towers Commercial Condominium, with respect to its units.

8. Except for the signs permitted to be placed, installed and maintained pursuant to Paragraph 21 of the Master Deed, and Sponsor's rights immediately hereinafter set forth no "For Sale", "For Rent", "For Lease" or similar signs window displays or advertising may be placed or maintained on the portions of any Unit being used exclusively for residential purposes. Sponsor shall have the right to place "For Sale", "For Rent" or "For Lease" or similar signs on any unsold or unoccupied Units, and the right is hereby given to any mortgagee, who may become the owner of any Unit, to place such signs on any Unit owned by such mortgagee. The foregoing provisions shall not preclude the posting of notice in or upon the Condominium property by the Clerk of the Condominium Association required or permitted under the By-Laws and, notwithstanding anything to the contrary contained in these By-Laws, may not be amended so as to prevent or impair the right of owners of any Units being used for other

than exclusively residential uses to place, install, or maintain legally permissible signs on or in their Units, including the glass thereof without first obtaining the prior written consent of the owners of all said non-residential Units, and the holders of all mortgages covering said non-residential Units.

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