

EXHIBIT 1

AMENDED AND RESTATED MASTER DEED

OF

OBSERVATORY COMMONS CONDOMINIUM

Dated as of August 28, 1989, Amended August 28, 1989

Amended and Restated as of September 7, 1989

[Recording references herein are to Middlesex County South District Registry of Deeds.]

Amended and Restated Master Deed made as of this 12th day of September, 1989, by Sally Zeckhauser, Kristin S. Demong and Sheldon G. Tandler, Trustees (the "Trustees") of OBSERVATORY COMMONS GROUND LESSEE NOMINEE TRUST, a Massachusetts nominee trust under a Declaration of Trust dated as of August 9, 1989 and recorded August 29, 1989 as Instrument No. 741, having an office c/o Harvard Real Estate, Inc., Holyoke Center, Suite 1017, Cambridge, Mass 02138-3826, being the owners of Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 17, 19 and 21, with an aggregate Proportionate Interest of 69.2% in Observatory Commons Condominium, created by Master Deed dated as of August 28, 1989 and recorded on August 29, 1989 as Instrument No. 739, as amended by Amendment to Master Deed dated as of August 28, 1989 and recorded on August 29, 1989 as Instrument No. 746 (the "Master Deed").

MARGINAL REQUESTED  
INST # 745 of August 24, 1989

Recitals:

1. President and Fellows of Harvard College, a Massachusetts charitable corporation with an address c/o Harvard Real Estate, Inc., Holyoke Center, Suite 1017, 1350 Massachusetts Avenue, Cambridge, Massachusetts 02138-3826 ("Sponsor"), being the sole owner of the land located at 243-245 Concord Avenue, Cambridge, Middlesex County, Massachusetts, described in Paragraph 1 and Exhibit A of the Master Deed (the "Land"), by duly executing and recording the Master Deed, did SUBMIT said land, together with the buildings and improvements erected thereon, and together with all easements, rights, and appurtenances belonging thereto (collectively, the "Property") to the provisions of Chapter 183A of the General Laws of the Commonwealth of Massachusetts ("Chapter 183A"), and did state that it proposed to create, and did CREATE, with respect to the Property, a CONDOMINIUM to be governed by and subject to the provisions of Chapter 183A. The Condominium is known as OBSERVATORY COMMONS CONDOMINIUM. The units (the "Units") in the Condominium will be managed and regulated by the owners of the Units (the "Unit Owners") through an association of Unit Owners managed by a board of managers (the "Board of Managers") in accordance with a set of by-laws (the "By-Laws") as provided for in Chapter 183A.
2. The Trustees, as then holders of one hundred percent of the beneficial interest under the Master Deed, pursuant to Section 19 of Chapter 183A of the Massachusetts General Laws ("Chapter 183A"), have removed the Land from the Condominium by a certificate of removal dated August 28, 1989, and recorded on August 29, 1989 as Instrument 743 (the "Certificate of Removal").
3. The Trustees have conveyed the Land to President and Fellows of Harvard College ("Harvard") which is also referred to as the "Sponsor", by deed of dated August 28, 1989, recorded on August 29, 1989 as Instrument 744 (the "Land Deed").
4. The Trustees, as lessee, have entered into a ground lease of the Land (as amended, the "Ground Lease") dated August 28, 1989 amended by First Amendment to Ground Lease dated as of the date hereof with Harvard, as lessor ("Lessor"), notice of which was recorded on August 29, 1989 as Instrument 745.
5. The Trustees confirm that Harvard continues to hold and exercise all rights as Sponsor under the Master Deed as amended, the By-Laws, and other related Condominium Documents recorded with the Master Deed.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and in order to clarify the relationship between the Master Deed and the Amendment to Master Deed and to correct certain minor drafting errors, the undersigned hereby amend and restate in its entirety the Master Deed and the Amendment to Master Deed in the manner hereinafter set forth.

1. Description of Land. A parcel of land situated at 243-245 Concord Avenue, Cambridge, Middlesex County, Massachusetts, as shown on a plan entitled "Site Plan Observatory Commons Condominium, Cambridge, Mass.", prepared by Selwyn & Kirwin Assoc., dated June 24, 1988, last revised November 4, 1988 (the "Site Plan") recorded herewith. The parcel is more particularly bounded and described as set forth in Exhibit A attached hereto (the "Legal Description").

The Property was dedicated to condominium subject to all other easements, restrictions, encumbrances, agreements, and other matters of record including those listed in the Legal Description.

There was further granted, excepted, retained, and reserved, and the Property is dedicated to condominium use subject to and with the benefit of, rights and easements of Sponsor and its affiliates, successors, and assigns, hereby expressly reserved, excepted, and retained, (i) to develop and improve the Property (excluding Units completed and conveyed to

Unit purchasers) and to add Units to the Condominium and/or amend the property description by Amended Master Deed as contemplated hereby; (ii) to engage in all activities necessary or appropriate thereto, including without limitation construction and sale of additional Units and appurtenances, maintenance of model units and a sales office in places designated by Sponsor which do not unreasonably interfere with Unit Owners' use and enjoyment of their respective units and rights appurtenant thereto; and (iii) all necessary or appropriate easements for the construction and maintenance of utility lines, operating systems, and services to the Property.

2. Description of Buildings and Units. The Condominium includes five buildings (the "Buildings") each with a ground floor and two upper stories containing a total of 23 Units. The Units include the residential units numbered 1 through 22 and one unit, Unit 23, which may, but need not, be used for non-residential purposes, including but not limited to use as a public library. The Buildings are twenty-nine feet in height (average) at the cornice line and thirty-five feet six inches (average) in height (at their highest point), as shown on the Floor Plans recorded with the Master Deed. Within the Buildings, adjoining Units are vertically separated by the center of the four layers of gypsum board separating the Units, as shown on the Floor Plans recorded with the Master Deed. The Buildings are constructed primarily of wood frame on concrete

foundations located as shown on the Site Plan recorded with the Master Deed, as the same may be amended. Roofing is EDPM membrane and exteriors are primarily wood siding. The walls are insulated with 6 inches of fiberglass batten insulation with a vapor barrier, rated R-19. The ceiling above the garage portions of Units has 9 inches of fiberglass insulation with a vapor barrier and is rated R-30. Ceilings under roofs have 9 inches of batt fiberglass insulation plus tapered rigid insulation under single ply membrane for a rating of R-34.25 (average). All Units (except Unit 23) have decks and/or balconies. Unit 16 has a yard with a lawn but no bricked area. Units 1, 2, 3, 4, 5, 6, 7, 8, 15, 17, 19, and 21 have small bricked yards. Units 9, 10 and 11 have bricked yards. Units 12, 13, and 14 have yards a portion of which is bricked and a portion of which is lawn. Unit 23 has no yard of any kind. All of the yards, whether lawn or brick, are referred to as "Unit Yards" and each of them (except Unit 16's Unit Yard) are subject to the exclusive use of the immediately abutting Unit (except as set forth below), and accordingly Unit Yards are Limited Access Common Areas, and the cost of maintenance, repair, and replacement thereof is a Common Expense. Listed below are Units which are subject to the rights of others to use their Unit Yards or decks as listed below for passage by foot as a secondary emergency egress:

Owner(s) of Unit 3 may cross Unit 1's Yard.  
Owner(s) of Unit 5 may cross Unit 7's Yard.  
Owner(s) of Unit 5 & 7 may cross Unit 9's Yard.  
Owner(s) of Unit 5 & 7 & 9 may cross Unit 10's Yard.  
Owner(s) of Unit 5 & 7 & 9 & 10 may cross Unit 11's Yard.  
Owner(s) of Unit 5 & 7 & 9 & 10 & 11 may cross Unit 12's  
Yard.  
Owner(s) of Unit 18 & 20 & 22 may cross Unit 16's Yard and  
deck.  
Owner(s) of Unit 20 & 22 may cross Unit 18's deck.  
Owner(s) of Unit 22 may cross Unit 20's deck.

The gates for the above Unit Yards and decks may not have additional or substitute locks placed on them without the prior written consent of the Board of Managers in each case and an unobstructed clear route for passage by foot must be maintained by each respective Unit Owner across each Unit Yard so as to permit unobstructed egress by Unit Owners in case of an emergency. Also, an unobstructed clear route for passage by foot must be maintained by each respective Unit Owner across each roof deck so as to permit unobstructed egress by Unit Owners of 16, 18, 20, and 22 in case of an emergency. Appurtenant to each Unit will be a proportionate, undivided interest in the Common Elements, as defined hereafter (the "Proportionate Interest"). The designation of each of the Units, a statement of its location, approximate area, number of rooms, and its proportionate interest in the Common Elements are as set forth in Exhibit B attached hereto and made a part hereof.

Each Unit, upon execution and delivery by the Sponsor of a Unit deed thereto, will be owned in fee simple, subject only to the Title Conditions and other encumbrances voluntarily suffered by the Unit Owner, and shall be an interest in real estate as described in Section 3 of Chapter 183A. Unit Owners shall have the right to enter into unit mortgages ("Unit Mortgages") with lending institutions (including without limitation, Sponsor) (collectively, "Unit Mortgagees") as permitted in the By-Laws and this Amended and Restated Master Deed, as they may be amended from time to time.

3. Designation of Common Areas and Facilities. The common areas and facilities of the Condominium ("Common Elements") include all of the Property, excluding the Land and the Units, and include without limitation the following:

(a) All foundations, roofs to the interior surface of the exterior roof sheathing, exterior walls to the interior surface of the exterior wooden sheathing, and floors below the lower surface of the subflooring of the basement floor. Basement space and garage space to the interior surface of the exterior sheathing shall be part of the Unit above and not Common Elements. Doors and windows, structural elements, and structural members shall, in their entirety, be part of such Unit and not Common Elements but may not be modified without the prior written consent of the Board of Managers, which consent may include such reasonable conditions and requirements

as the Board of Managers deems appropriate. Unit 23 has located above it portions of Unit 16, Unit 18, Unit 20, and Unit 22. The upper surface of the ceiling joists of Unit 23 shall be the upper boundary of Unit 23 and the upper surface of the subflooring or the interior surface of the exterior roof sheathing, as the case may be, lying atop the ceiling joists of Unit 23 shall be the lower boundary of those portions of Units 16, 18, 20, and 22 located above Unit 23, so that there are no Common Elements (other than pipes, wires, conduit, ducts, and the like) located above Unit 23, except for the roof sheathing, roof treatment, and decks.

(b) All paths, roads, driveways, exterior parking areas, and other improved areas not within the Units; provided, however, that each Unit Owner shall have a permanent, exclusive right to the use of one or more parking spaces if such right is expressly set forth in the deed for such Unit (the "Unit Deed"), but the parking space located within the garage of a Unit shall not be a Common Element but shall be part of the Unit in which it is located and the Unit Owner shall have the right to use the space for the parking of an operable, duly registered automobile owned (or leased) by the occupant of the Unit whether or not the space is referenced in the Unit Deed.

(c) All conduits, ducts, pipes, plumbing, wiring, flues, cables, utility lines, sewer and drainage pipes and other facilities for the furnishing of utility services or



waste removal located in and serving a Unit or located without and solely serving a Unit are part of the Unit and are not Common Elements, but wherever located, if such facilities serve parts of the Condominium other than the Unit which contains them or other than a specific Unit, the facilities shall be Common Elements.

(d) All balconies, decks, and Unit Yards and exterior covered entrance areas ("Entrances"); provided, however, that each Unit Owner having direct access to a balcony, deck, Unit Yard, or an Entrance from the interior of their Unit shall have a permanent, exclusive right to use such balcony, deck, Unit Yard, and Entrance (except as provided in Section 2), and accordingly, such balconies, decks, Unit Yards, and Entrances shall be "Limited Access Common Areas". The repair, maintenance, and care of the balconies, decks, Entrances, Unit Yards, grass, bricks, shrubs, trees, flowers, and terra cotta planters, except as provided below, shall be a Common Expense and shall be performed by or at the direction of the Board of Managers. Unit Owners shall maintain any shrubs and flowers within their Unit Yards, except for shrubs in Unit Yards of Units 12, 13, 14, and 16 whose maintenance shall be performed at the direction of the Board of Managers as a Common Expense. Without limiting the previous sentence, the planting beds in

the Unit Yards of Units 1, 3, 9, 10, 11, and 12 shall be maintained by the respective Unit Owners, each at their own expense.

(e) All other apparatus and installations existing in the Buildings or on the Property for common use or necessary or appropriate to the existence, maintenance, use, or safety of the Condominium, other than apparatus contained entirely within any Unit and designed for the exclusive use of such Unit.

(f) All other items listed as such in Chapter 183A and located on the Property.

(g) All clapboards, exterior paint and exterior treatments, and common sewerage.

(h) Exterior fences and walls that separate balconies, Unit Yards, or decks; provided, however, that exterior railings, fences, and walls cannot be modified without the prior written consent of the Board of Managers and Sponsor, which consent may include such reasonable conditions and requirements as the Board of Managers deems appropriate.

The Land is not part of the Condominium. Lessor has entered into the Ground Lease of the Land to Sally Zeckhauser, Kristin S. Demong, and Sheldon G. Tandler, Trustees of Observatory Commons Ground Lessee Nominee Trust (the "Lessee"), as initial owners of all of the Units. Every purchaser of a Unit shall, by virtue of acceptance of a unit deed, accept a

partial assignment of the Ground Lease equal to the Proportionate Interest. Lessor has agreed to accept performance of Lessee's obligations under the Ground Lease through the proportionate discharge of such obligations by individual Unit Owners.

Sponsor reserves the right to construct and add to the Condominium additional land, buildings, and Units. Therefore, Sponsor reserves the right to change and alter the Proportionate Interest of each Unit in the Common Elements of the Condominium as set forth in Exhibit B by further amending this Amended and Restated Master Deed, provided that the Proportionate Interests of all Units in the common areas and facilities shall be calculated in accordance with the provisions of Chapter 183A, and further provided that the Proportionate Interests of all Units in the common areas and facilities shall not be altered without the consent of all Unit Owners whose Proportionate Interests in the common areas and facilities are affected. Each Unit Owner, their successor, assigns, and Unit Mortgagees shall, by the acceptance and recording of their Unit Deed or Unit Mortgage, irrevocably appoint the Sponsor, its successors and assigns as their attorney to execute, acknowledge, and deliver any and all instruments necessary to accomplish the provisions of this paragraph.

4. Ownership Restricted. The purpose of the Condominium is to provide housing for members of the faculty of Harvard University. The Unit Owner (and the Unit Owner's spouse, if any) must (both) occupy the Unit as their primary residence. No person, other than Sponsor or an Affiliate of Sponsor (as hereinafter defined), or the Board of Managers shall at any time directly or indirectly, own any Unit (other than Unit 23), unless such person is a Faculty Member (as hereinafter defined); provided, however, that in the case of the death of a Faculty Member, such Faculty Member's spouse may own such Unit but may sell such Unit only to another Faculty Member or to the Sponsor. The term "Faculty Member" shall mean a person holding an appointment as a full-time professor, full-time associate professor, or full-time assistant professor of Harvard University who receives their salary from Harvard University and is tenured or on a so-called "tenure track" or "ladder track". If there is a dispute over whether a person is a Faculty Member, the ultimate determination shall be made by the Appointments Office of the Harvard University faculty of which the person is or claims to be a member and a certificate of such determination signed by the dean of that faculty and any two persons authorized to execute deeds conveying real estate owned by Sponsor, when recorded in the Registry of Deeds, can be relied upon by all persons. An "Affiliate of Sponsor" is a

corporation, partnership, trust, or other entity of which at least 80% of the interest thereof is owned or controlled by Sponsor, and includes a so-called nominee trust if Sponsor owns at least 80% of the beneficial interest therein. A purported sale of a Unit (by anyone other than Sponsor) to any person or entity, other than Sponsor, an Affiliate of Sponsor, or the Board of Managers shall be voidable at Sponsor's option at any time within five years after Sponsor has actual notice of same, unless the sale complied with this Amended and Restated Master Deed. No person, other than Sponsor or an Affiliate of Sponsor or the Board of Managers shall at any time, directly or indirectly, own an interest in more than one Unit. Unit Mortgagees shall be deemed to hold Units in constructive trust for the Sponsor and the Board of Managers; and Unit Mortgagees may own Units only temporarily and are subject to the requirements of Section 7 hereof. The foregoing provisions of this Section 4 shall not apply to Unit 23.

5. Occupancy and Use Restricted. A Unit (other than Unit 23) may be occupied only by the Unit Owner, the Unit Owner's immediate family, and not more than one unrelated person. No Unit Owner, other than the Sponsor, may rent, sublease, or license their unit to another person or entity nor permit anyone to occupy all or any part of a Unit (other than Unit 23), without the prior, express, written consent of Sponsor in each instance, which consent may be arbitrarily

withheld by Sponsor in Sponsor's sole discretion. In any event, Units owned by persons other than Sponsor may be rented only to persons who are employees, students, so-called "visiting scholars", so-called "fellows", or so-called "visiting faculty", as the terms "visiting scholars", "fellows", and "visiting faculty" are defined by the relevant Harvard University faculty. Units owned by Sponsor may be rented by Sponsor to anyone. The Units may be used for residential use and for no other use without Sponsor's prior written consent, which consent Sponsor may arbitrarily withhold in Sponsor's sole discretion. A Unit Owner may not give or transfer a Unit to their spouse in connection with a divorce and a Unit may not be transferred to any person who is not a Faculty Member, the Sponsor, or the Board of Managers. The foregoing limitations on Unit use and ownership shall not apply to Sponsor or any Affiliate of Sponsor.

There are no limitations on the occupancy or use of Unit 23. Sponsor may lease Unit 23 to one or more persons or entities. Sponsor may subdivide Unit 23 to create multiple Units therefrom. Transferees and lessees of Unit 23 and those claiming through transferees or lessees of Unit 23 shall have the same rights to use the Property to gain access to and egress from and maintain Unit 23 as does any other Unit Owner with respect to their Unit.

6. Right of First Offer to Purchase Unit. Sponsor has created this Condominium to provide and to continue to provide affordable housing to Faculty Members and not so as to economically benefit those Faculty Members who are Unit Owners. Therefore, a Unit Owner, including the Board of Managers and a Unit Mortgagee, shall not:

- (a) offer to sell, transfer, convey, or dispose of;
- (b) accept an offer to sell, transfer, convey, or dispose of; or
- (c) sell, transfer, convey, or dispose of

a Unit for a purchase price which is greater than one hundred ten percent nor less than ninety percent of the Adjusted Fair Market Value (as hereinafter defined) of the Unit, and Sponsor shall have the right by notice to the Unit Owner to assert that the proposed purchase price is not within such limits, and if the Unit Owner contests Sponsor's assertion, the Adjusted Fair Market Value of the Unit shall be determined after an appraisal under Section 8 hereof. The adjusted fair market value of a Unit (the "Adjusted Fair Market Value") shall be (a) the fair market value of a Unit determined as if the fee interest in the Land was a Common Element of the condominium and otherwise in accordance with Section 8 hereof (the "Fair Market Value of a Unit"), minus (b) the percentage amount specified for each Unit, as set forth on Exhibit E attached hereto and

incorporated herein (the "Land Percentage") multiplied by the Fair Market Value of a Unit. Periodically, but no more frequently than every four years, Lessor has the right to change the Land Percentage (the "New Land Percentage") by amending the Ground Lease based on such appraisals obtained by Lessor as Lessor deems appropriate and recording at the Registry notice of such change. The New Land Percentage shall become effective for all subsequent sales of Units by Sponsor, after the purchase of a Unit by Sponsor pursuant to this Section 6 or Section 7 hereof.

No Unit Owner shall execute a purchase and sale agreement, option to purchase, deed, or similar agreement conveying or otherwise affecting Unit Owner's interest in a Unit, nor shall the same be otherwise alienated, transferred, or conveyed, except by purchase by the Board of Managers or foreclosure by a Unit Mortgagee or sale at a foreclosure sale, unless (a) the Unit Owner, expressly including the Board of Managers or a Unit Mortgagee, has given Sponsor thirty days prior written notice of the identity of the proposed purchaser, if any, and the exact terms and conditions upon which Unit Owner intends to offer the Unit for sale, transfer, or conveyance, and (b) the Unit Owner, expressly including the Board of Managers or a Unit Mortgagee, submits to Sponsor a prior offer, which shall be set forth in an agreement suitable for execution by Sponsor, to



sell the Unit for a price equal to its Adjusted Fair Market Value, which offer must remain open for a minimum period of thirty days. If Sponsor refuses such offer in writing by notice to the the Unit Owner, the Unit Owner shall have the right to enter into such agreement containing the exact same terms and provisions with the proposed purchaser, if any, identified to Sponsor, and if none, to a Faculty Member on the exact same terms and provisions specified to Sponsor in the Unit Owner's notice to Sponsor. A certificate, executed, and acknowledged by Sponsor, stating that the provisions of this Section 6 have been met by a Unit Owner and that the rights of Sponsor hereunder have been waived or terminated, shall be conclusive upon Sponsor and such Unit Owner in favor of all persons who rely thereon in good faith. Such certificate shall be furnished within fifteen days of a written request by a Unit Owner, provided such Unit Owner has in fact complied with the provisions of this Section, or such provisions have in fact been waived by Sponsor. The rights of Sponsor hereunder shall apply to each and every sale, transfer, or conveyance (and every attempted sale, transfer, or conveyance) of a Unit other than the first conveyance of a Unit (not including the conveyance of all of the Units to the Trustees) after the recording of the Master Deed.

Agreements between Sponsor and Unit Owner for purchase at Adjusted Fair Market Value shall be subject to the following terms and conditions:

(a) Payment of the Purchase Price. Sponsor shall pay the purchase price at the closing in cash, certified, or bank cashier's check payable to Unit Owner, subject to the adjustments described in subparagraphs (e), (f), and (i) of this Section 6.

(b) Title Deed. Unit Owner shall convey the Unit by a good and sufficient quitclaim deed naming Sponsor (or any nominee designated by Sponsor by written notice given to Unit Owner at least seven days before the Closing), as grantee. The deed shall be sufficient to convey a good and clear record and marketable title to the Unit, free from encumbrances, except

- (i) legal requirements;
- (ii) Such Taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (iii) Any liens for municipal betterments assessed after the date of the delivery of such deed; and
- (iv) Other permitted exceptions.

(c) Closing. The closing shall be held within sixty days of Sponsor's acceptance of the offer, at the Office of the General Counsel of Harvard University, Holyoke Center, Suite 980, Cambridge, Massachusetts, or such other place in Cambridge or Boston as may be specified by Sponsor to the Unit Owner (or

purchaser) at least five days before the closing, unless otherwise agreed upon in writing. Time is of the essence of Sections 6, 7, and 8 of this Master Deed.

(d) Extension to Perfect Title or Make Unit Conform. If the Unit Owner is unable to convey the Unit in accordance with the terms hereof, then the Unit Owner shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or otherwise to make the said Unit conform to the provisions hereof, in which event the closing date shall be extended for a period of sixty days.

(e) Sponsor's Election to Accept Title. At the closing, possession of the Unit will be free of all occupants and in its present condition or in such better condition as it may hereafter be put, reasonable wear and tear excepted; provided, however, that if the Unit shall have been damaged by fire or casualty insured against, then the Unit Owner shall at Sponsor's option, unless the Unit Owner has previously restored the Unit to its former condition, either

(i) pay over or assign to Sponsor, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by Unit Owner for any partial restoration, or

(ii) if a Unit Mortgagee shall not permit the insurance proceeds or a part thereof to be used to restore the Unit to its former condition or to be paid over or

assigned, give to Sponsor a credit against the purchase price, upon delivery of the deed, equal to such amount so recovered or recoverable and retained by the Unit Mortgagee less any amounts reasonably expended by the Unit Owner for any partial restoration.

(f) Failure to Perfect Title or Make Premises Conform, Etc. If at the expiration of the extended closing date, the Unit Owner shall have failed so to remove any defects in title, deliver possession, or make the Unit conform, as the case may be, (collectively, "Unit Title Defects") then, at Sponsor's option, all obligations of Sponsor and the Unit Owner with respect to the exercise of this right of first offer shall cease and be void without recourse to either Sponsor or the Unit Owner; unless Sponsor elects to purchase subject to the Unit Title Defects, in which case Sponsor shall deduct as an adjustment to the purchase price the cost of remedying the Unit Title Defects or the diminution in the Unit's Adjusted Fair Market Value caused by such Unit Title Defects, as the case may be.

(g) Sponsor's Election to Accept Title. Sponsor may, at either the original or extended closing date, accept such title as the Unit Owner can then deliver to the Unit and to pay therefor the purchase price without deduction except for (i) adjustments contemplated in this Section 6, (ii) the unpaid balance of any Unit Mortgage which may be assumed and which

Sponsor opts to assume and agrees to pay, (iii) the amount of any unpaid taxes, special general assessments, water rents, rates and charges, sewer rents, and other imposition imposed by any governmental authority, and charges of every kind and nature whatsoever charged, levied, assessed or imposed upon or with respect to the Unit, appurtenances, or equipment owned by the Unit Owner, (collectively, the "Taxes") together with all interest and penalties thereon, and any income or profits tax or tax of any other nature intended to be in lieu of the taxes hereinbefore described, then due or overdue, (iv) the amount of any rent due under the Ground Lease, and (v) amounts necessary to discharge any lien which is liquidated in amount.

(h) Use of Purchase Money to Clear Title. The Unit Owner may, at time of the closing, use the proceeds of sale or any portion thereof (i) to clear the title, provided that all instruments so procured are recorded or provided for simultaneously with the delivery of the deed, or (ii) to pay rent due under the Ground Lease.

(i) Adjustments. Water and sewer use charges, Common Expenses, Taxes for the then current year, shall be apportioned as of the closing date and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price. If the amount of Taxes is not known at the closing date, they shall be apportioned on the basis of the Taxes assessed for the preceding year, with a reapportionment as soon

as the new tax rate and valuation can be ascertained; and, if the Taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable costs of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise provided.

(j) Specific Performance. Sponsor shall be entitled to specific enforcement of its rights and options under this Section 6 and shall be entitled to damages for its breach.

(k) Right to Make First Offer to Sponsor. In lieu of obtaining a bona fide offer to purchase their Unit, a Unit Owner may offer to sell the Unit to Sponsor, and Sponsor shall have thirty days to accept such offer by written notice to the Unit Owner, in which case the price to be paid therefor (unless mutually agreed by the Unit Owner and Sponsor within thirty days after Sponsor accepts the offer) shall be its Adjusted Fair Market Value determined after appraisal following the procedures in Section 8 hereof.

7. Situations Requiring Unit Sale. Upon the voluntary or involuntary termination of the Unit Owner's status as a Faculty Member, whether by Sponsor, Unit Owner or otherwise, and upon a Unit Mortgagee's or Board of Managers' becoming a Unit Owner by acquiring a Unit, such Unit Owner, Unit Mortgagee or Board of

Managers (collectively, an "Unqualified Unit Owner") shall, within the time periods set forth below, take one of the following steps:

- (a) Within ninety days following such termination of status or such acquisition, convey the Unit owned by such Unqualified Unit Owner to Sponsor or to a Faculty Member for a price equal to the Adjusted Fair Market Value thereof as agreed upon by such Unqualified Unit Owner and Sponsor (or if such Unqualified Unit Owner and Sponsor cannot agree, as established after following the procedures set forth in Section 8 below), and, upon such conveyance, deliver full possession of the Unit conveyed thereby to the Sponsor or a Faculty Member, free and clear of any occupancy rights of such conveying Unqualified Unit Owner; or
- (b) If such Unqualified Unit Owner opts to convey to a Faculty Member but, having used all due diligence, is unable to secure a purchaser for the Unit who is a Faculty Member within the time period specified above, such Unqualified Unit Owner shall, within thirty days thereafter, as that period may be extended to comply with Section 8 below, convey the Unit to Sponsor for a price equal to the Adjusted Fair Market Value thereof, as agreed upon by such Unqualified Unit Owner and Sponsor (or if such Unqualified Unit Owner and Sponsor cannot agree, as established after following

the procedures set forth in Section 8 below), such conveyance to be made free and clear of all occupancy rights of such Unqualified Unit Owner or any party claiming through such Unqualified Unit Owner.

Any conveyance made hereunder, other than a sale by a Unit Mortgagee, shall be made subject to the rights of any Unit Mortgagee of such Unit and without financial detriment to such Unit Mortgagee.

For purposes of this Section 7 and Section 4 of the Master Deed, "termination of the Unit Owner's status as a Faculty Member" shall not include

(i) disability of the Unit Owner within the meaning of Harvard's then existing disability benefits plan,

(ii) the bona fide retirement of Unit Owner from Harvard University,

(iii) a leave of absence from Harvard University taken from time to time by the Unit Owner for a period of time not to exceed three years, subject to the following conditions:

(A) that Unit Owner gives written notice to Sponsor of Unit Owner's intention to take such leave and includes in Unit Owner's notice an intention to return to employment with Harvard University as a Faculty Member on or before a specified date, which date



shall in no event exceed three years from the date of such notice;

(B) that such leave of absence is duly approved by Harvard University; and

(C) that Unit Owner so returns to said employment on or before such specified date, or

(iv) death of a married Faculty Member so long as (1) the Unit continues to be occupied as a principal residence by the person that is the Faculty Member's spouse at the time of the Faculty Member's death ("Spouse"), (2) Spouse remains unmarried, and (3) Spouse before July 1 of each year gives Sponsor a true photocopy of Spouse's signed federal tax return (with the financial data masked at Spouse's option) as evidence of Spouse's marital status.

8. Method for Establishing Fair Market Value. If Sponsor and the Unit Owner, expressly including an Unqualified Unit Owner, are unable to agree upon the Fair Market Value of a Unit (for purposes of calculating Adjusted Fair Market Value), in connection with a conveyance to be made in accordance with the foregoing Sections 6 or 7, then such Fair Market Value shall be determined finally by appraiser in accordance with the following provisions of this Section:

(a) Sponsor and the Unit Owner shall each appoint an appraiser within thirty days after notice by either party requesting determination of fair market value by appraisal. If either Sponsor or the Unit Owner shall

have failed to appoint an appraiser within such period of time, then such appraiser shall be appointed by the President of the Boston Chapter of the American Institute of Real Estate Appraisers, or its successor, upon request of either Sponsor or the Unit Owner, as the case may be.

- (b) The two appraisers appointed as aforesaid shall convene forthwith and render their decision as promptly as practicable, but in any event within thirty days after such appointment. If the two appraisers' opinions as to the fair market value differ by a factor of no more than ten percent, then the decision of the appraisers shall be the average of the two opinions and shall be deemed the decision of both binding upon Sponsor and the Unit Owner whether or not judgment shall be entered thereon in any court. Duplicate original counterparts of such decision shall be sent by the appraisers to both Sponsor and the Unit Owner.
- (c) If the two appraisers' opinions differ by a factor greater than ten percent, the two appraisers appointed as aforesaid shall select a third appraiser, and if they fail to do so within thirty days after the date they rendered their opinions under Section 8(b) above, such third appraiser shall be appointed by the President of the Boston Chapter of the American Institute of Real Estate Appraisers, or its successor.

- (d) The three appraisers selected pursuant to Section 8(c) above, if required, shall convene forthwith and render their decision as promptly as practicable after the appointment of the third, but in any event within forty-five days after such appointment. The decision of such appraisers shall be in writing and the vote of the majority of them (or if there be no majority decision, then the average of the remaining appraisers' opinions, after eliminating any opinion which differs from the average of all three appraisers' opinions by more than ten percent) shall be the decision of all binding upon Sponsor and the Unit Owner, whether or not judgment shall be entered in any court. Duplicate original counterparts of such decision shall be sent by the appraisers to both Sponsor and the Unit Owner.
- (e) The appraisers, in arriving at their decision, shall be entitled to consider all testimony and documentary evidence which may be presented at any hearing as well as facts and data outside of such hearings. The appraisers shall be bound by the provisions of this Master Deed and shall not add to, subtract from or otherwise modify such provisions. The cost and expenses of such appraisal shall be borne equally by Sponsor and the Unit Owner except that each party shall pay its own counsel fees and expenses. All of such appraisers shall be real estate appraisers or

brokers having at least five years of experience in such field in the City of Cambridge and hold a M.A.I. (Member, Appraisal Institute) or equivalent designation.

9. Common Expenses. (a) Common expenses of administration, maintenance, and operation of the Condominium as determined by the Board of Managers pursuant to the By-Laws ("Common Expenses") shall be charged by the Board of Managers to the Unit Owners according to their respective Proportionate Interests in the Common Elements. Any common profits of the Condominium, after offsetting Common Expenses and making due allowance for the working capital fund (as hereinafter provided) shall be distributed among (or placed in a reserve account for the benefit of) the Unit Owners as the Board of Managers sees fit.

(b) The Unit's proportionate share (equal to the Proportionate Interest) of all sums assessed against the Units as Common Expenses, together with late charges and interest, as they may be established from time to time by the Board of Managers pursuant to the By-Laws, shall be the personal obligation of the respective Unit Owner and shall constitute a lien upon the Unit prior to all other liens except municipal liens and first mortgages of record. The lien for unpaid Common Expenses may be foreclosed as provided by Chapter 183A.

(c) No Unit Owner may exempt themselves from liability for payment of their proportionate share of Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit or by claiming that the quantity or quality of the services are not worthy of such payment or are not as contemplated by the Unit Owner at the time of purchase of the Unit or otherwise.

10. Easements to Certain Common Elements. Each Unit Owner shall have an easement in common with all other Unit Owners to use all conduits, ducts, pipes, plumbing, wiring, flues, cables, utility lines, sewer and drainage pipes and all other Common Elements located in any of the other Units or serving any of such other Units and located in such Unit. The Board of Managers shall have a right of access to each Unit to inspect the same, to eliminate violations of this Master Deed, the By-Laws, the rules and regulations (if any), and any other application laws or regulations, and to maintain, repair, or replace the Common Elements contained therein or serviced therefrom.

11. Floor Plans. There is recorded herewith, a set of floor plans ("Floor Plans") for the Units which have been completed as of the date hereof, showing the layout, Unit numbers, and dimensions of such Units, stating the description of each Unit, and bearing the verified statement of a registered architect that the plans fully and accurately depict the layout, Unit numbers, and dimensions of the Units, as built.

12. Association of Unit Owners. An unincorporated association of Unit Owners (the "Association") through which the Unit Owners will manage and regulate the Condominium has been formed and has enacted by-laws (the "By-Laws") pursuant to said Chapter 183A. The name of the Association is Observatory Commons Condominium Association. The names of the initial members of the Board of Managers of such Association and their respective terms of office are:

Sally Zeckhauser	1 year
David Zewinski	2 years
Kristin S. Demong	3 years
Sheldon G. Tandler	3 years
Linda Whitlock	2 years

The address of the above members of the Board of Managers is c/o Holyoke Center, Suite 1017, Cambridge, Massachusetts 02138-3826. The Board of Managers may, but need not, promulgate and amend from time to time rules and regulations to manage the Condominium (the "Rules and Regulations").

13. Encroachments. If any portion of the Common Elements now encroaches on any Unit, or if any Unit now encroaches on any other Unit or on any portion of the Common Elements, or if any such encroachment shall occur hereafter as a result of (a) settling or shifting of a building, or (b) alteration or repair to the Common Elements made by or with the consent of the Board of Managers, or (c) as a result of repair or restoration of a Unit after damage by fire or other casualty, or (d) as a result

of condemnation or eminent domain proceedings, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the buildings shall stand.

14. Acquisition of Units by Board of Managers. If (a) any Unit Owner shall surrender their Unit, together with: (i) the undivided interest in the Common Elements appurtenant thereto; (ii) the exclusive right or easement of such Unit Owner to use any parking space, Unit Yard, balcony, or deck; (iii) the interest of such Unit Owner in any other Units acquired by the Board of Managers or its designee on behalf of all Unit Owners or the proceeds of the sale or lease thereof, if any; (iv) the interest of such Unit Owner in any other assets of the Condominium; and (v) any other rights or interests which such Unit Owner may have as a result of their ownership of a Unit and/or membership in the Association of Unit Owners (hereinafter collectively called the "Appurtenant Interests"); (b) the Board of Managers shall purchase from any Unit Owner, who has elected to sell the same, a Unit, together with the Appurtenant Interests, pursuant to the By-Laws; or (c) the Board of Managers shall purchase, at a foreclosure or other judicial sale, a Unit, together with the Appurtenant Interests, then in any of such events title to any Unit, together with the Appurtenant Interests, shall be acquired and held by the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, subject to the provisions of Section 7 hereof.

15. Units Subject to Master Deed, Unit Deed, By-Laws and Rules and Regulations. All present and future owners, tenants, visitors, servants, and occupants of Units shall be subject to, and shall comply with, the provisions of this Master Deed, the Unit Deed, the By-Laws and the Rules and Regulations, as they may be amended from time to time, and the items affecting the title to the Property as set forth in Section 1 above. The acceptance of a deed or conveyance or the entering into occupancy of any Unit shall constitute an agreement that (a) the provisions of this Master Deed, the Unit Deed, the By-Laws, and the Rules and Regulations, as they may be amended from time to time, and the said items affecting title to the Property are accepted and ratified by such owner, tenant, visitor, servant, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof, and (b) a violation of the provisions of this Amended and Restated Master Deed, the Unit Deed, By-Laws, or Rules and Regulations by and such person shall be deemed a substantial violation of the duties of the Unit Owner.

16. Amendments. Except as otherwise provided herein, this Master Deed, the By-Laws, or Rules and Regulations (collectively, the "Condominium Constituent Documents") may be amended by an instrument in writing signed by at least 66-2/3%



in common interest of all Unit Owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws, evidenced in either case by recording a certificate to such effect, signed by a majority of the Board of Managers, with Middlesex County South District Registry of Deeds; provided, however, that, without the consent of the Board of Managers, any Unit Owner or any mortgagee, the Sponsor, Affiliates of Sponsor, or Sponsor's assigns or its successor in title to all or any portion of the Condominium may, at any time within seven years from the date of recording this Master Deed, unilaterally amend this Amended and Restated Master Deed so as to (i) submit to the provisions of Massachusetts General Laws Chapter 183A all or any combination of Units created by any subdivision of Unit 23; or (ii) amend the boundaries and description of the Land and/or create or reserve easements with respect thereto and/or otherwise amend the description of the Property to correspond to the development needs of Sponsor and Affiliates of Sponsor, provided only that the use and enjoyment of the Units are not materially and adversely affected thereby. Any such amendment shall contain with respect to any such additions, all of the particulars required by said Chapter 183A including floor plans showing the layout, location, Unit numbers and dimensions of such additional buildings or Units, as built. All Unit Owners, mortgagees, and their heirs, administrators, successors, assigns and legal representatives, by their acceptance of a

Unit Deed or mortgage subject to the provisions hereof, do hereby assent to such amendments and grant to Sponsor and its successors and assigns an irrevocable power of attorney, coupled with an interest, to execute, seal, deliver, and record on their behalf any and all such amendments.

In no event shall (a) the total number of residential Units in Observatory Commons Condominium exceed twenty-seven or (b) the Unit Owners, without the express, prior, written consent of Sponsor, amend this Amended and Restated Master Deed in any fashion which would:

(i) interfere with Sponsor's or any Affiliate of Sponsor's right to complete the development of the Condominium, or to add Units or amend the Property description as aforesaid;

(ii) change the restrictions on unit ownership, permitted use or occupancy; or

(iii) limit or restrict Sponsor's rights or the use of Unit 23.

Without limitation, Sections 4, 5, 6, 7, 8, or this Section 16 hereof may not be amended by Unit Owners without the prior, express, written consent of Sponsor, which consent may be arbitrarily withheld by Sponsor.

17. Intentionally omitted.

18. No Severability. No Unit Owner may or shall execute or make any deed, mortgage or other conveyance of their Unit without including in such conveyance the Appurtenant Interests,

it being the intention hereof that there be no severance of Unit Ownership from Appurtenant Interests.

19. Invalidity. The invalidity of any provision of this Master Deed shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Master Deed and, in such event, all of the other provisions of this Master Deed shall continue in full force and effect as if such invalid provision had never been included herein. The Unit Owners hereby agree for themselves, their heirs, successors and assigns that if in the event a court of final resort determines that any of the provisions of the Master Deed, the Certificate of Removal, the Amendment to Master Deed, and the Amendment to By-Laws, all dated as of August 28, 1989, and this Amended and Restated Master Deed (collectively, the "Condominium Documents") are invalid or unenforceable under Chapter 183A or that the Condominium is not a statutory condominium under Chapter 183A or if for any other reason the Condominium ceases to be a statutory condominium by operation of law or by removal by a vote of all the Unit Owners or otherwise, the Unit Owners shall be bound by all of the terms and provisions of the Condominium Documents. The parties shall in such event have all the rights and obligations contained in the Condominium Documents to the full extent that the parties may by law so agree and each Unit Owner and their heirs, successors and assigns hereby agrees to execute, acknowledge, deliver and record all documents and to take or

cause to be taken all such other actions within its control necessary to (i) effectuate the purposes, objectives and intent of the Condominium Documents, and (ii) to the greatest extent practicable, give each Unit Owner the same rights and obligations as such Unit Owner is granted under the Condominium Documents.

The Unit Owners further agree that if (a) a court of competent jurisdiction abolishes, modifies, precludes, hinders, or alters in any respect Sponsor's rights to have a Unit conveyed to Sponsor, (b) a Unit Owner conveys, transfers, sells, or otherwise disposes of their Unit to an Unqualified Unit Owner without Sponsor's consent, which consent may be arbitrarily withheld by Sponsor, or (c) a Unit Owner conveys, transfers, sells, or otherwise disposes of their Unit in violation of any provisions of this Master Deed, then with respect to (a) through (c), Sponsor shall be entitled to receive an amount equal to (i) the Fair Market Value of a Unit, determined at the time when (a) through (c) occur, minus (ii) the Adjusted Fair Market Value of a Unit, determined at the time when the relevant Unit Owner took title to their Unit.

20. Waiver. No provision contained in this Amended and Restated Master Deed 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 which may occur.

21. 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 this Amended and Restated Master Deed nor the intent of any provision hereof.

22. Conflicts. This Amended and Restated Master Deed is set forth to comply with the requirements of Chapter 183A.

23. Number and Gender. The pronouns "they", "them", and "their" are used with a singular antecedent that is indefinite or that does not specify gender, in lieu of the masculine singular and feminine singular pronouns "he", "she", "him", "her", "his", and "her", and accordingly "they", "them", and "their" may be singular or plural depending on their antecedents and the context.

24. Sponsor's Rights Retained. Notwithstanding any conveyance by the Sponsor named in the preamble of this Amended and Restated Master Deed, of any Unit or of any interest in the Condominium, President and Fellows of Harvard College ("Harvard") shall continue to retain and have the right to exercise any and all rights that can be exercised by the Sponsor as set forth or referred to in this Amended and Restated Master Deed, the By-Laws, Rules and Regulations, if any, or any other instrument creating, amending, or governing the Condominium or any aspect thereof; provided, however, that Harvard may transfer, alienate, or encumber its rights as Sponsor to a successor and assign by an instrument entitled "Assignment of Sponsor's Rights" that expressly states and

effectuates such assignment, transfer, alienation, or encumbering, and which is executed by at least three persons authorized by Harvard to execute real estate documents, acknowledged by the three of them, sealed with the corporate seal, and recorded. Wherever in this Amended and Restated Master Deed, the By-Laws, or the Ground Lease, or any document related to the Observatory Commons Condominium documents there is a requirement or right of or in Harvard as Sponsor to own a Unit, the Trustees of the Observatory Commons Ground Lessee Nominee Trust (so long as Harvard is the sole beneficiary thereof) shall be deemed to fulfill the requirement or have the right as the case may be.

25. Intentionally omitted.

26. Typographical Error Correction Provision. If Sponsor determines that a typographical or misnomer error has been made in the within document or any amendment thereto, Sponsor hereby reserves the right exercisable by Sponsor acting alone to correct such error by an instrument executed by Sponsor making reference to this Section 26, and upon such instrument being recorded, such error shall be deemed to have been corrected as fully and with the same force and effect as if such error were not ever made. No such amendment, however, shall affect any substantive rights or interest of any Unit Owner in their Unit, or the Common Elements.

27. FHLMC Provisions. Notwithstanding any other provisions of the Master Deed or the By-Laws, the following

provisions shall apply and govern to facilitate and qualify mortgages of Units for sale to the Federal Home Loan Mortgage Corporation ("FHLMC").

27.1 Any first mortgagee of a Unit who obtains title to the Unit pursuant to the remedies provided in the mortgage, or through foreclosure of the mortgage, or through deed (or assignment) in lieu of foreclosure, shall not be liable for more than six months of the Unit's unpaid proportionate share of Common Expenses and assessments and charges against such Unit which accrue prior to the acquisition of title to such Unit by the mortgagee.

27.2 In case of condemnation or substantial loss to the Units and/or Common Elements, unless at least two-thirds (or a greater percentage, if applicable, as required in this Master Deed) of the first mortgagees (based upon one vote for each first mortgage owned) or Unit Owners (other than Sponsor) have given their prior approval, neither the Unit Owners nor the Board of Managers shall:

- (a) By act or omission seek to abandon or terminate the Condominium;
- (b) Change the Proportionate Interest or obligations of any Unit for purposes of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit in the Common Elements;

- (c) Partition or subdivide any Unit;
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Unit Owners shall not be deemed a transfer within the meaning of this Subsection 27.2;
- (e) Use hazard insurance proceeds for losses to any Condominium property (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such Condominium property, except as provided by statute in case of substantial loss to the Units and/or Common Elements; or
- (f) In the event that the Board of Managers engages a professional management firm, effectuate any decision by the Board of Managers of the Condominium to terminate professional management, and assume self-management of the Condominium; provided, however, that any amendment of this Master Deed by Sponsor pursuant to Section 16 or Section 26 hereof shall be deemed not to violate this Subsection 27.2.



27.3 Intentionally omitted.

27.4 This Amended and Restated Master Deed shall be construed so that taxes, (state and municipal) assessments, and Common Expenses, which under applicable state or municipal law may become liens prior to the first mortgage of a Unit relate only to such individual Unit and not to the Condominium as a whole.

27.5 No provision of this Amended and Restated Master Deed or the By-Laws shall be deemed or construed to give a Unit Owner, or any other party, priority over any rights of the first mortgagee of the Unit pursuant to its mortgage in the case of a distribution to Unit Owners of insurance proceeds, condemnation awards, or settlements for losses to or a taking of Units and/or Common Elements, provided, however, that the foregoing shall not prohibit a division of such proceeds, awards, or settlements between a first mortgagee and Lessor under the Ground Lease as provided in Sections 15 and 16 of the Ground Lease.

27.6 The Common Elements, together with the Units, constitute the whole of the Condominium so that a mortgage of a Unit will cover all amenities (such as recreation facilities and service areas) to the same extent (i.e., the same percentage interest) as such mortgage covers the Common Elements. The mortgage will also cover the related parking

space, if any. The Common Elements are fully installed, completed, and in operation for use by the relevant Unit Owners.

27.7 An adequate reserve fund for maintenance, repairs, and replacement of those portions of the Common Elements which must be replaced on a periodic basis shall be established and shall be funded by regular installments rather than by special assessments.

27.8 A first mortgagee of a Unit shall, at the request of such mortgagee, be entitled to written notification from the Board of Managers of any default by the mortgagor of such Unit in the performance of such mortgagor's obligations under this Amended and Restated Master Deed or under the By-Laws which is not cured within sixty days.

27.9 The term of any agreement for professional management of the Condominium, or any other contract providing for services of Sponsor may not exceed three years. Any such agreement or contract must provide for termination on ninety days (or less) written notice by either party without cause and without payment of penalty, premium, or termination fee.

27.10 Any first mortgagee of a Unit in the Condominium will, upon request, be entitled to: (a) inspect the books and records of the Association during normal business hours; (b) receive an annual audited financial statement of the Association within ninety days following the end of any fiscal

year of the Association; and (c) receive written notice of all meetings of Unit Owners and be permitted to designate a representative to attend all such meetings.

27.11 All lease, sublease, rental, license, or occupancy agreements under Section 5 hereof shall be required to provide that the terms of the agreement shall be subject in all respects to the provisions of the Amended and Restated Master Deed, By-Laws, and Rules and Regulations, and that any failure by the lessee, renter, sublessee, licensee, or occupant to comply with the terms of such documents shall be a default under such agreement. All such agreements shall be required to be in writing and a copy thereof filed with the Board of Managers.

27.12 The purpose of this Section 27 is to conform the Condominium to the requirements of FHLMC. In connection therewith, Sponsor reserves and shall have the absolute right to amend this Master Deed from time to time to facilitate the financing of the purchase of a Unit, as requested by FHLMC or any first mortgagee, but only so far as necessary to conform the Condominium or the provisions of the Amended and Restated Master Deed or the By-Laws to the FHLMC rules, regulations, and guidelines, such amendment to become effective when signed and acknowledged by Sponsor and recorded. Sponsor reserves and shall have the same right to amend with regard to rules,

regulations, and guidelines of the Federal National Mortgage Association ("FNMA"), the Federal Housing Administration ("FHA"), and of the Veterans Administration. Sponsor's above right to amend shall expire after Sponsor owns no Units of record. Thereafter, a majority of the Board of Managers may exercise such right.

28. Sponsor's Ownership. Wherever in the Amended and Restated Master Deed, By-Laws, or related documents there is a reference to ownership, sale, or purchase by Sponsor of a Unit or Units, Sponsor shall be deemed to own a Unit if Sponsor legally owns the Unit according to the records of the Registry or if Sponsor is the beneficial owner of a Unit, whether or not such beneficial ownership is reflected in the records of the Registry, and references to Sponsor shall also include trusts and legal entities (including so-called "nominee trusts") of which President and Fellows of Harvard College is the sole owner or sole beneficiary.

29. Reversion of Condominium Units to Ground Lessor. Except as provided in Section 21.03 of the Ground Lease, upon the expiration of the term of the Ground Lease, or upon the earlier termination or cancellation of the Ground Lease with respect to one or more Units pursuant to Article 20 thereof, the affected Unit(s) and, if all of the Units in the Condominium are affected, any and all improvements upon the

Land, shall immediately revert to and become the sole property of the owner of the Land and all rights of the affected Unit Owners and their Unit Mortgagees in their respective Units, in the Common Elements and in the Condominium shall thereupon terminate and the affected Unit Owners shall quit and surrender the Units and the Land in good condition, reasonable wear and tear excepted, and free and clear of all occupants, liens and encumbrances whatsoever except Permitted Exceptions, as defined in the Ground Lease. Unit Owners shall have no right to remove any improvements so affixed to the Buildings or Land as to become part of the realty upon the expiration or earlier termination of the Ground Lease. Within thirty days of such reversion and surrender, the owner of the land shall pay to the affected Unit Owners, after Unit Mortgagees have been satisfied, an amount equal to the then Adjusted Fair Market Value of a Unit, except that, if the Ground Lease is terminated because of a partition or removal under Section 15.04 thereof, a total taking under Section 16.01 thereof or a partial taking under Section 16.03 thereof, then the Unit Owners shall receive the balance, if any, of any insurance proceeds or condemnation award, after Unit Mortgagees have been satisfied, in accordance with Sections 15 and 16 of the Ground Lease, and the owner of the Land shall not be obligated to pay any amount to affected Unit Owners.

Upon the reversion of all of the Units to the owner of the Land, the Condominium shall be deemed removed from the provisions of Chapter 183A without any further action by the Unit Owners.

The reversion rights created in Section 29 of the Ground Lease shall be superior in all respects to the right and interest of the holder of any interest of any nature whatsoever in any Unit including any mortgagee or holder of a lien upon a Unit, and any lessee, or occupant of a Unit. Upon the reversion of the Units to the owner of the Land, the rights and interests of any and all such holders including any mortgagees, holders of liens, lessees, and occupants in the Units, the Common Elements and the Condominium, shall immediately and automatically terminate.

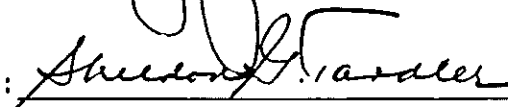
The acceptance of a deed to any Unit by any party shall constitute an agreement by that party, for themselves, their heirs, successors and assigns, to the foregoing covenants. Notwithstanding the foregoing, it shall be a customary practice, although not in any way a requirement or condition, that a purchaser of a Unit execute at the time of purchase of the Unit an acknowledgment of reversion in the form attached hereto as Exhibit D.

Notwithstanding anything to the contrary contained in this Amended and Restated Master Deed, any amendment of this Section shall be of no force or effect unless signed by Lessor under the Ground Lease.

IN WITNESS WHEREOF, the Sponsor has caused this Amended and Restated Master Deed to be executed by its duly authorized officer under seal as of the date first above written.

PRESIDENT AND FELLOWS OF  
HARVARD COLLEGE

By: 

By: 

The Trustees, by recording this Amended and Restated Master Deed, hereby agree that their ownership of Units in the Condominium is subject to the amendments contained herein.


Executed as an instrument under seal of the date first above written.

OBSERVATORY COMMONS GROUND  
LESSEE NOMINEE TRUST

By: 

Sally Zeckhauser, Trustee  
of Observatory Commons  
Ground Lessee Nominee  
Trust as aforesaid, and  
not individually

By: Kristin S. Demong, Trustee  
of Observatory Commons  
Ground Lessee Nominee Trust  
as aforesaid, and not  
individually

By:   
Sheldon G. Tandler, Trustee  
of Observatory Commons  
Ground Lessee Nominee Trust  
as aforesaid, and not  
individually

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

SEPTEMBER 12, 1989

Then personally appeared the above-named Sheldon G. Taudler, and acknowledged the foregoing to be the free act and deed of said President and Fellows of Harvard College, before me,

Nancy J. Armstrong  
Notary Public

My Commission Expires 6/23/96

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

September 12, 1989

Then personally appeared the above-named Sally Zeckhauser, Trustee of Observatory Commons Ground Lessee Nominee Trust, and acknowledged the foregoing to be her free act and deed as aforesaid, before me,

Carol M. Ruffalo  
Notary Public

My Commission Expires: MARCH 30, 1995

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

September \_\_, 1989

Then personally appeared the above-named Kristin S. Demong, Trustee of Observatory Commons Ground Lessee Nominee Trust, and acknowledged the foregoing to be her free act and deed as aforesaid, before me,

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

September 12, 1989

Then personally appeared the above-named Sheldon G. Tandler, Trustee of Observatory Commons Ground Lessee Nominee Trust, and acknowledged the foregoing to be his free act and deed as aforesaid, before me,

Carol M. Ruffalo  
Notary Public

My Commission Expires: MARCH 30, 1995

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

September 12, 1989

Then personally appeared the above-named SALLY  
ZECKHAUSER, and acknowledged the foregoing to be the free act and deed of said President and Fellows of Harvard College, before me,

Carol M. Ruffalo  
Notary Public

My Commission Expires MARCH 30, 1995

DP-2503/q

EXHIBIT A

Legal Description

PREMISES: Two parcels of land with the buildings and improvements thereon, situate in Cambridge, Middlesex County, Massachusetts, being known as and now numbered 243-245 Concord Avenue (previously numbered 239-243 and 251-255 Concord Avenue), being bounded and described as follows:

FIRST PARCEL: The first parcel is the parcel shown as a lot containing 30,156 square feet of land on a plan entitled "Plan of Premises in Cambridge, Mass.," drawn by W.A. Mason & Son Co., dated May 19, 1925, recorded in Plan Book 356 as Plan 22, bounded and described according to said plan as follows:

SOUTHWESTERLY: By Concord Avenue, 150 feet;

NORTHWESTERLY: In part by land of owners unknown and in part by the SECOND PARCEL described below, 201.05 feet;

NORTHEASTERLY: By Tuttle Street, 150 feet; and

SOUTHEASTERLY: By land of owners unknown 201.02 feet.

SECOND PARCEL: The second parcel is shown as Lot B on a plan entitled "Sub-division of Land in Cambridge belonging to Annie Kenneally," drawn by Donald J. Reardon, dated August 8, 1944, recorded in Book 6798, page 268, bounded and described according to said plan as follows:

SOUTHWESTERLY: By Concord Avenue, 85.25 feet;

NORTHWESTERLY: By Donnell Street, 100 feet;

NORTHEASTERLY: By Lot A, 85.25 feet; and

SOUTHEASTERLY: By the FIRST PARCEL described above, 100 feet.

Containing 8,525 square feet of land according to said plan.

TITLE REFERENCE: The title reference may be taken to a deed dated July 9, 1986, recorded in Book 17184, page 151.

The premises are subject to the following recorded instruments:

1. Easement dated September 22, 1988, given by Harvard to Cambridge Electric Light Company for the location of electric transformer vault and related appurtenances thereto, recorded in Book 19596, page 123.
2. Easement dated as of August 1, 1989, given by Harvard to Sam R. Moy for the continued 3 inch (approximate) encroachment of the building located at 233 Concord Avenue, recorded on August 29, 1989 as Instrument No. 738.
3. Notice of Decision of the City of Cambridge Planning Board dated June 16, 1987, granting a Townhouse Special Permit, recorded in Book 18870, page 153.

EXHIBIT B

OBSERVATORY COMMONS CONDOMINIUM  
DESCRIPTION OF UNITS AND PERCENT INTEREST  
IN THE COMMON ELEMENTS

Units 1-14 are located at 243 Concord Avenue  
Units 15-23 are located at 245 Concord Avenue

Unit	Percent Interest	Rooms			
		Basement	>< 1st Floor	>< 2nd Floor	><Roof
1	3.7	BP, Bs,G,Bt,	M><LR&DR,K,db	><2BR, Bt, db,Ly><Rd	
2	3.7	BP, Bs,G,Bt,	M><LR&DR,K,db	><2BR, Bt, db,Ly><Rd	
3	4.0	BP, Bs,G,Bt,Ly,	M><LR&DR,K,db,S	><2BR, Bt, db ><Rd	
4	4.0	BP, Bs,G,Bt,Ly,	M><LR&DR,K,db,S	><2BR, Bt, db ><Rd	
5	4.0	BP, Bs,G,Bt,Ly,	M><LR&DR,K,db,S	><2BR, Bt, db ><Rd	
6	4.0	BP, Bs,G,Bt,Ly,	M><LR&DR,K,db,S	><2BR, Bt, db ><Rd	
7	4.0	BP, Bs,G,Bt,	M><LR&DR,K,db	><2BR, Bt, db,Ly><Rd	
8	4.2	BP, Bs,G,Bt,	M><LR&DR,K,db	><2BR, Bt, db,Ly><Rd	
9	4.9	BY,2Bs,G,Bt,Ly,	M><LR,DR,K,db,S	><2BR,2Bt,2db ><	
10	4.9	BY,2Bs,G,Bt,Ly,	M><LR,DR,K,db,S	><2BR,2Bt,2db ><	
11	4.9	BY,2Bs,G,Bt,Ly,	M><LR,DR,K,db,S	><2BR,2Bt,2db ><	
12	5.6	Y+B,2Bs,G,Bt,Ly,	M><LR&DR,K,db,S	><2BR,2Bt,2db ><	
13	5.6	Y+B,2Bs,G,Bt,Ly,	M><LR&DR,K,db,S	><2BR,2Bt,2db ><	
14	5.6	Y+B,2Bs,G,Bt,Ly,	M><LR&DR,K,db,S	><2BR,2Bt,2db ><	
15	4.2	BP, Bs,G,Bt,	M><LR&DR,K,db	><2BR, Bt, db,Ly><Rd	
16	4.2	Y, G,Bt	><LR&DR,K,db	><2BR, Bt, db,Ly><Rd,M,S	
17	4.0	BP, Bs,G,Bt,Ly,	M><LR&DR,K,db,S	><2BR, Bt, db ><Rd	
18	3.4	G, Ly	><LR&DR,K,db,1/2Bt>	><2BR, Bt, db ><Rd,M,S	
19	4.0	BP, Bs,G,Bt,Ly,	M><LR&DR,K,db,S	><2BR, Bt, db ><Rd	
20	3.4	G, Ly	><LR&DR,K,db,1/2Bt>	><2BR, Bt, db ><Rd,M,S	
21	3.7	BP, Bs,G,Bt,	M><LR&DR,K,db	><2BR, Bt, db,Ly><Rd	
22	3.4	G,Bt	><LR&DR,K,db	><2BR, Bt, db,Ly><Rd,M,S	
23	6.6	OB, Bs, 2Bt,	M		
Total	100.0				

Note: If there is an inconsistency between the denomination of the rooms listed above and the rooms as shown on the Floor Plans, the Floor Plans shall control.

Bs = Basement Space	LR&DR = Combination Living & Dining Room
G = Garage	LR = Separate Living Room
Ly = Laundry	DR = Separate Dining Room
M = Mechanical Room	BP = Bricked Patio <sup>2</sup>
K = Kitchen	BY = Bricked Yard (No Lawn) <sup>2</sup>
	Y+B = Unit Yard with Bricked Patio <sup>2</sup>

S = Study	Y = Unit Yard (No Bricks) <sup>2</sup>
BR = Bedroom	db = Deck or Balcony <sup>2</sup>
Bt = Bath	Rd = Roof Deck <sup>2</sup>
	DB = Open Bay (Used for Library at Present)

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<sup>1</sup> These symbols "><" separate levels of Unit  
<sup>2</sup> Limited Access Common Areas