

Exhibit C

OBSERVATORY COMMONS CONDOMINIUM

CAMBRIDGE, MASSACHUSETTS

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GROUND LEASE

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TABLE OF CONTENTS

|   | <u>Page</u> |
|---|-------------|
| ARTICLE 1. Definitions . . . . .  | 1           |
| 1.01. General Provisions . . . . .  | 1           |
| 1.02. Terms Defined . . . . .   | 1           |
| ARTICLE 2. Premises . . . . .   | 7           |
| 2.01. Premises . . . . .  | 7           |
| ARTICLE 3. Term . . . . .   | 7           |
| 3.01. Term . . . . .  | 7           |
| 3.02. Rent Commencement . . . . .   | 8           |
| ARTICLE 4. Rent . . . . .   | 8           |
| 4.01. Basic Rent . . . . .  | 8           |
| 4.02. Late Charge . . . . .   | 8           |
| 4.03. Net Lease . . . . .   | 8           |
| ARTICLE 5. Use of Premises . . . . .                                      | 8           |
| 5.01. Ownership, Occupancy and Use<br>Restricted . . . . .                | 8           |
| ARTICLE 6. Common Expenses; Taxes and Utility<br>Expenses . . . . .       | 8           |
| 6.01. Taxes; Utility Expenses . . . . .                                   | 8           |
| 6.02. Installment Payment . . . . .                                       | 9           |
| 6.03. Compliance . . . . .  | 9           |
| 6.04. Taxation . . . . .  | 9           |
| 6.05. Contests . . . . .  | 9           |
| 6.06. Refunds and Rebates . . . . .                                       | 10          |
| 6.07. Other Taxes . . . . .   | 10          |
| 6.08. Cure Right . . . . .  | 10          |
| ARTICLE 7. Repairs, Additions, Replacements<br>and Improvements . . . . . | 10          |
| 7.01. Maintenance . . . . .   | 10          |
| 7.02. Signs . . . . .   | 11          |
| 7.03. Lessor Design Approval . . . . .                                    | 11          |

TABLE OF CONTENTS

|   | <u>Page</u> |
|---|-------------|
| ARTICLE 8. Requirements of Public Authority . . . . . | 11          |
| 8.01. Legal Requirements . . . . .                    | 11          |
| 8.02. Contests . . . . .                              | 11          |
| 8.03. Lessor's Assistance . . . . .                   | 11          |
| ARTICLE 9. Covenants Against Liens . . . . .          | 11          |
| 9.01. Mechanics Liens . . . . .                       | 11          |
| 9.02. Right to Discharge . . . . .                    | 12          |
| ARTICLE 10. Access to Premises . . . . .              | 12          |
| 10.01. Access . . . . .                               | 12          |
| ARTICLE 11. Conveyance,<br>and Assignment . . . . .   | 12          |
| 11.01. Conveyance . . . . .                           | 12          |
| 11.02. Compliance with Master Deed . . . . .          | 13          |
| 11.03. Assignment by Lessor . . . . .                 | 13          |
| ARTICLE 12. Indemnity . . . . .                       | 13          |
| 12.01. Lessee's Indemnity . . . . .                   | 13          |
| 12.02. Lessor's Indemnity . . . . .                   | 13          |
| 12.03. Employee . . . . .                             | 13          |
| ARTICLE 13. Insurance . . . . .                       | 14          |
| 13.01. Liability Insurance . . . . .                  | 14          |
| 13.02. Casualty Insurance . . . . .                   | 14          |
| ARTICLE 14. Waiver of Subrogation . . . . .           | 15          |
| 14.01. Waiver of Subrogation . . . . .                | 15          |
| 14.02. Waiver of Rights . . . . .                     | 15          |
| ARTICLE 15. Damage or Destruction . . . . .           | 16          |
| 15.01. Casualty Damage . . . . .                      | 16          |
| 15.02. Significant Damage . . . . .                   | 16          |
| 15.03. Repair . . . . .                               | 16          |
| 15.04. Removal . . . . .                              | 18          |
| 15.05. Lessor Design Approval . . . . .               | 18          |

TABLE OF CONTENTS

|  | <u>Page</u> |
|--|-------------|
| ARTICLE 16. Eminent Domain . . . . .                         | 19          |
| 16.01. Total Takings . . . . .                               | 19          |
| 16.02. Distribution of Awards . . . . .                      | 19          |
| 16.03. Partial Takings . . . . .                             | 19          |
| 16.04. Distribution of Awards . . . . .                      | 20          |
| ARTICLE 17. Mortgages . . . . .                              | 20          |
| 17.01. Unit Mortgages . . . . .                              | 20          |
| 17.02. Rights of Unit Mortgagees . . . . .                   | 20          |
| 17.03. Amendment . . . . .                                   | 23          |
| ARTICLE 18. Performance by<br>Board of Managers . . . . .    | 23          |
| 18.01. Acceptance of Performance . . . . .                   | 23          |
| ARTICLE 19. Quiet Enjoyment . . . . .                        | 23          |
| 19.01. Lessor's Covenant . . . . .                           | 23          |
| ARTICLE 20. Defaults; Events of Default . . . . .            | 24          |
| 20.01. Defaults . . . . .                                    | 24          |
| 20.02. Lessor's Remedies . . . . .                           | 25          |
| 20.03. Lessee's Best Efforts . . . . .                       | 25          |
| 20.04. Elimination of Default . . . . .                      | 26          |
| 20.05. Further Remedies . . . . .                            | 26          |
| ARTICLE 21. Damages on Default . . . . .                     | 26          |
| 21.01. Surrender . . . . .                                   | 26          |
| 21.02. Right to Relet . . . . .                              | 26          |
| 21.03. Survival of Covenants . . . . .                       | 26          |
| 21.04. Right to Equitable Relief . . . . .                   | 27          |
| ARTICLE 22. Reversion . . . . .                              | 27          |
| 22.01. Reversion upon Expiration<br>or Termination . . . . . | 27          |
| 22.02. Acknowledgment of Reversion . . . . .                 | 28          |
| ARTICLE 23. Waivers . . . . .                                | 28          |
| 23.01. No Waivers . . . . .                                  | 28          |

TABLE OF CONTENTS

|   | <u>Page</u> |
|---|-------------|
| ARTICLE 24. General Provisions . . . . .                    | 28          |
| 24.01. Force Majeure . . . . .                              | 28          |
| 24.02. Notices and Communications . . . . .                 | 29          |
| 24.03. Certificates . . . . .                               | 29          |
| 24.04. Governing Law . . . . .                              | 29          |
| 24.05. Partial Invalidity . . . . .                         | 30          |
| 24.06. Notice of Lease . . . . .                            | 30          |
| 24.07. Interpretation . . . . .                             | 30          |
| 24.08. Entire Agreement . . . . .                           | 30          |
| 24.09. Parties . . . . .                                    | 30          |
| 24.10. Absence of Fee Interest . . . . .                    | 30          |
| 24.11. Non-merger of Fee and<br>Leasehold Estates . . . . . | 30          |
| !@!<br>EXHIBIT A Legal Description                          |             |
| EXHIBIT B Form of Acknowledgment Re: Reversion              |             |
| EXHIBIT C Schedule of Land Percentage                       |             |

GROUND LEASE

THIS GROUND LEASE ("Lease"), signed and effective as of the 28th day of August, 1989 by and between PRESIDENT AND FELLOWS OF HARVARD COLLEGE, a Massachusetts charitable corporation having an office at Holyoke Center, Suite 1017, Cambridge, Massachusetts 02138-3826 ("Lessor"), and Sally Zeckhauser, Kristin S. Demong, and Sheldon G. Tandler, Trustees of OBSERVATORY COMMONS GROUND LESSEE NOMINEE TRUST, a Massachusetts nominee trust, having an address c/o Harvard Real Estate, Inc., Holyoke Center, Suite 1017, Cambridge, Massachusetts 02138-3826 ("Lessee").

W I T N E S S E T H:

ARTICLE 1  
Definitions

1.01. General Provisions. For all purposes of this net Lease unless otherwise expressed and provided herein or unless the context otherwise requires, 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 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; terms used herein without definition which are defined in or by reference in the Condominium Documents (as hereinafter defined) or the Condominium Statute (as hereinafter defined) have the meanings assigned to them therein; each definition stated in Section 1.02 of this Lease applies equally to the singular and the plural forms of the term defined; and any reference to a document or exhibit defined in or by reference in Section 1.02 of this Lease is to such document as originally executed, or, if modified, amended or supplemented in accordance with the provisions of the Condominium Documents, to such document as so modified, amended or supplemented and in effect at the relevant time of reference thereto.

1.02. Terms Defined. Each term set forth below in this Section 1.02 has the meaning stated immediately after it.

Additional Rent. All sums and other charges (other than Basic Rent) due from Lessee to Lessor including but not limited to all insurance premiums, all real estate taxes and betterment assessments, all other sums provided in this Lease to be paid by Lessee to Lessor, all other expenses and obligations of every kind and nature whatsoever relating to the Land or any part thereof which may arise or become due prior to or during the Term of this Lease, and all sums, other charges and expenses incurred by Lessor as the result of a Default.

Adjusted Fair Market Value of a Unit. An amount equal to (a) the Fair Market Value of a Unit, minus (b) the Land Percentage multiplied by the Fair Market Value of a Unit.

Affiliate of Sponsor. 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.

Authorizations. Any license, permit, or other consent issued by any Governmental Authority pursuant to any Legal Requirement which is or may be required for the ownership, use or occupancy of a Unit.

Basic Rent. The basic rent shall be one hundred dollars per year.

Buildings. The buildings located on the Land containing the Units.

By-Laws. The provisions of the by-laws of the Board of Managers governing the organization and operation of the Board of Managers, as amended from time to time.

Common Elements. The common areas and facilities of the Condominium described in Section 3 of the Master Deed and which include the Buildings (except for the Units) and the Improvements but which, by virtue of the filing of a certificate of removal, do not include the Land.

Common Expenses. The expenses of administration, maintenance, repair, or replacement of the Common Elements and expenses declared to be a Common Expense by (i) the Condominium Statute, (ii) the By-Laws or (iii) the Board of Managers acting pursuant to the By-Laws.

Condominium. The Buildings and the Improvements and all easements, rights, and appurtenances belonging to any of the foregoing, created upon the recording of the Master Deed with the Registry.

Condominium Documents. The Master Deed, the By-Laws, the Rules and Regulations, and this Lease, and any amendments thereto.

Condominium Statute. Chapter 183A of the General Laws of The Commonwealth of Massachusetts, as amended to the date of the recording of the Master Deed.

Default. Any event or condition specified in Article 20 hereof so long as any applicable requirement for the giving of notice or lapse of time or both have not been fulfilled.

Event of Default. Any event or condition specified in Article 20 hereof if all applicable periods for the giving of notice or lapse of time or both have been fulfilled.

Faculty Member. A full-time tenured professor, a 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.

Fair Market Value of a Unit. The value of a Unit determined as if the fee interest in the Land were a common element of the Condominium, and otherwise in accordance with Section 8 of the Master Deed.

Force Majeure. Acts of God, strikes, restrictive Legal Requirements, riots and insurrections, acts of the public enemy, wars, natural disasters, fires, explosions, any act, failure to act or Default of the other party to this Lease or any other reason beyond the control of any party to this Lease; provided, however, lack of money shall not be deemed such a cause.

Governmental Authority. The United States of America, The Commonwealth of Massachusetts, the City of Cambridge, the County of Middlesex, and any political subdivision thereof and any agency, department, commission, board, court, bureau, or instrumentality of any of them.

Improvements. All improvements and structures (other than the Buildings) now or at any time upon the Land.

Insurance Requirements. All terms of any policy of insurance maintained by the Board of Managers and applicable to the Condominium or any Unit therein, or any part or parts of either and all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting any condition, operation, use or occupancy of the Condominium, any Unit therein or any part or parts of either.

Land. The parcel of land (including the land under the Buildings and Improvements, but not including the Buildings,



the Improvements, or any oil, gas, or mineral rights) which is described in Exhibit A hereto and all easements, rights, and appurtenances belonging thereto.

Land Percentage. The percentage amount specified for each respective Unit, as set forth on Exhibit C attached hereto and incorporated herein. Periodically, but not more frequently than every four years, Lessor shall have the right to change such percentage amounts by unilaterally amending this Ground Lease based on such appraisals obtained by Lessor as Lessor deems appropriate and recording at the Registry notice thereof.

Late Charge. An amount equal to eighteen percent of the amount of any payment due and payable hereunder which is not paid promptly when due.

Leasehold Estate. The Lessee's interest in the Land created pursuant to this Lease.

Unit 23. The unit designated as "Unit 23" on Schedule A hereto, whose use is not restricted to, but may include, residential use and which may, but need not, be used for a public library.

Lease Termination Event. Any of the following events:

- (1) The partition of the Condominium.
- (2) The removal of the Condominium from the provisions of the Condominium Statute.
- (3) A Total Taking.

Lease Year. The period from July 1 through June 30 of each year during the term of this Lease.

Legal Requirements. All statutes, codes, ordinances (and all rules and regulations thereunder), all executive orders and other administrative orders, judgments, decrees, injunctions, and other judicial orders of or by any Governmental Authority which may at any time be applicable to parts or appurtenances of the Condominium.

Lessee. Sally Zeckhauser, Kristin S. Demong, and Sheldon G. Tandler, Trustees of The Observatory Commons Ground Lessee Nominee Trust, its successors and any Unit Owner to whom an undivided interest in the Premises has been automatically assigned in connection with the purchase of a Unit.

Lessee's Property. Equipment, fixtures, furniture, furnishings, and other personal property supplied or installed

by Lessee insofar as any of the same are not, as a matter of law, part of the Unit.

Lessee's Share. That percentage which is equal to the Proportionate Interest.

Lessor. As defined in the preamble hereof.

Master Deed. The Master Deed dated as of August 28, 1989 executed by Sponsor and recorded with the Registry on August \_\_, 1989 as Instrument No. \_\_\_\_\_.

Master Deed Recording Date. August \_\_, 1989, the date on which the Master Deed was recorded with the Registry.

Partial Taking. With respect to either the Unit or the Condominium or the Premises or the Land, any Taking which is not a Total Taking.

Permitted Exceptions. Any liens or encumbrances on the Premises of the following character:

- (a) Liens for taxes, assessments and other governmental charges assessed but not yet due and payable.
- (b) Easements, reservations, restrictions and rights of way encumbering or affecting the Land or the Premises on the date of this Lease.
- (c) The rights of Lessor and any other Lessees from Lessor to exercise in common with respect to the Premises, the rights granted to Lessee hereunder.
- (d) The Easements.
- (e) The Title Conditions.
- (f) The terms and provisions of the Condominium Documents.

Plan. A plan of land prepared by Selwyn & Kirwin Assoc., dated June 24, 1988, last revised November 4, 1988, entitled "Site Plan Observatory Commons Condominium, Cambridge, Mass." and recorded with the Registry.

Premises. An undivided leasehold interest in the Land equal to the Proportionate Interest.

Proportionate Interest. The Proportionate Interest shall equal, with respect to each Unit, the percentage of interest in the undivided ownership of the Common Elements which is

appurtenant thereto, as set forth in Exhibit B to the Master Deed.

Registry. Middlesex County South District Registry of Deeds.

Rent. Basic Rent and all Additional Rent.

Rent Commencement Date. The date on which Lessee acquires title to the Unit.

Rules and Regulations. Rules and regulations with regard to the maintenance and use of the Units and Common Elements as adopted from time to time by the Board of Managers.

Sponsor. President and Fellows of Harvard College, a Massachusetts charitable corporation.

Stated Expiration Date. Sixty-five years from the date hereof.

Taking. The taking or condemnation of title to all or any part of the Land, Improvements or Common Elements or the possession or use of any Unit by a Governmental Authority for any public use or purpose or any proceeding or negotiations which might result in such a taking or any sale or lease in lieu of or in anticipation of such a taking.

Taxes. All taxes, special general assessments, water rents, rates and charges, sewer rents and other impositions imposed by any Governmental Authority and charges of every kind and nature whatsoever, which shall or may during the term of this Lease be charged, levied, laid, assessed, imposed, become due and payable or become liens upon or with respect to the Premises or the Land or any part thereof and the Unit, appurtenances or equipment owned by Lessee thereon or therein or any part thereof or on this Lease, 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.

Title Conditions. All covenants, agreements, restrictions, easements, and declarations of record on the date of the recording of the Master Deed so far as the same may be from time to time in force and applicable and as described in Exhibit A to the Master Deed.

Total Taking. (i) a Taking of: (a) the fee interest in all or substantially all of the Unit or (b) such title to or easement in, over, under or such rights to occupy and use any part or parts of the Unit to the exclusion of Lessee as shall

have the effect, in the good faith judgment of the Board of Managers, of rendering the portion of the Unit remaining after such Taking (even if restoration were made) unsuitable for the continued use and occupancy of the Unit for the use intended, (ii) a Taking of the Condominium (as described in the By-Laws) as the result of which the Condominium is partitioned and removed from the provisions of the Condominium Statute or (iii) a Taking of the fee interest in all or substantially all of the Land or such title to or easement in or over the Land to the exclusion of Lessee which in the good faith judgment of the Board of Managers prohibits access to the Unit or the exercise of any rights under the Lease necessary to the safety and management of the Condominium or the Unit.

Unit. A unit of the Condominium which is owned by Lessee.

Unit Mortgage. A mortgage granted by the Unit Owner in his Unit and Leasehold Estate to a lending institution pursuant to Section 8.6 of the By-Laws.

Unit Mortgagee. The holder of a Unit Mortgage as to whom or which the notice to Lessor provided for in Article 18 has been given and received.

Unit Owner. The person(s) holding legal title to a Unit as shown by the records of the Registry.

Utility Expenses. Amounts paid or incurred for electricity, water, gas, and other utilities supplied or made available to the Unit which are not part of Common Expenses.

## ARTICLE 2 Premises

2.01. Premises. Lessor hereby leases and lets to Lessee, and Lessee hereby takes and hires from Lessor, upon and subject to terms, conditions, covenants, reservations, and provisions hereof, the Premises, subject only to Permitted Exceptions. Lessor hereby agrees to accept performance of Lessee's obligations hereunder through the proportionate discharge of these obligations by individual Unit Owners who accept a partial assignment of this Lease equal to the Proportionate Interest by acceptance of a deed to a Unit.

## ARTICLE 3 Term

3.01 Term. The term of this Lease shall commence on the date hereof and shall continue until the Stated Expiration Date, unless earlier terminated pursuant hereto.

3.02. Rent Commencement. The obligation of Lessee to pay Basic Rent and Additional Rent, if any, with respect to each Unit shall commence on the Rent Commencement Date, although Basic Rent shall accrue and be payable upon the sale of the Unit by Lessee.

ARTICLE 4  
Rent

4.01. Basic Rent. On or before the end of each Lease Year, each Lessee shall pay Lessor for the then current Lease Year for the Premises Lessee's Share of the Basic Rent, without offset or deduction and without previous demand therefor.

4.02. Late Charge. Lessee shall pay Lessor the Late Charge, without offset or deduction and without demand therefor, which shall be due and payable as a result of Lessee's failure to pay Lessor Basic Rent when due.

4.03. Net Lease. This Lease is a net lease and Lessee's obligation to pay all Basic Rent and Additional Rent payable hereunder shall be absolute and unconditional, shall be paid without notice, demand, counterclaim, set-off, deduction, defense, abatement, suspension, deferment, diminution, or reduction, and shall not be affected by any circumstance whatsoever.

ARTICLE 5  
Use of Premises

5.01 Ownership, Occupancy and Use Restricted. The Premises may be used to gain access to, leave and maintain the Units and to maintain the Buildings and Improvements and for no other purposes. The Unit Owners shall have the right to use Unit Yards as set forth in the Master Deed. The Units may be owned, occupied and used only in accordance with Sections 4 and 5 of the Master Deed, which Sections may not be amended without the express, written consent of Lessor and may specifically be enforced by Lessor through this Ground Lease.

ARTICLE 6  
Common Expenses;  
Taxes and Utility Expenses

6.01. Taxes; Utility Expenses. Subject to the provisions of Section 6.02, Lessee shall, during the term of this Lease pay and discharge punctually, as and when the same shall become due and payable, (i) all Common Expenses assessed to Lessee in respect of a Unit, (ii) 100% of all Taxes and Utility Expenses charged, assessed or apportioned directly to Lessee or a Unit

or the Premises not included in Common Expenses, and (iii) Lessee's Share of any Taxes, charges, liens, and other amounts assessed or charged to the Land.

6.02. Installment Payment. If permitted by law and if the Board of Managers is also doing so, Lessee shall have the right to apply for the conversion of any assessment for local improvements assessed during the term of this Lease to enable the same to be payable in annual installments, and upon such conversion Lessee shall pay and discharge punctually said installments as they shall become due and payable during the term of this Lease. Lessor agrees to permit the application for the foregoing conversion to be filed in Lessor's name, if necessary, and shall execute any and all documents requested by Lessee to accomplish the foregoing result. Lessee shall indemnify and hold harmless Lessor from any cost, loss, damage, or liability in connection therewith.

6.03. Compliance. Lessee shall be deemed to have complied with the covenants of Section 6.01 hereof if Taxes are paid either within any period allowed by law or by the Governmental Authority imposing the same during which payment is permitted without penalty or interest or before the same shall become a lien upon the Land or the Premises, and Lessee shall produce and deliver to Lessor satisfactory evidence of such payment.

6.04. Taxation. All Taxes, including assessments which have been converted into installments as provided in Section 6.03, which shall become payable during each of the calendar or fiscal tax years, as the case may be, in which the term of this Lease commences or terminates, shall be apportioned pro rata between Lessor and Lessee in accordance with the respective portions of such year during which such term shall be in effect.

6.05. Contests. Subject to Lessor's approval which shall not be unreasonably withheld, Lessee or its designees shall have the right to contest or review all Taxes by legal proceedings (which if instituted, Lessee or its designees shall conduct promptly at its own expense, and free of any expense to Lessor, and, if necessary, in the name of and with the cooperation of Lessor, and Lessor shall execute all documents necessary to accomplish the foregoing). Lessee shall indemnify and hold harmless Lessor from any cost, loss, damage or liability in connection therewith and, at Lessor's request, if not otherwise required by law, shall deposit with Lessor or the taxing authority (or post bonds) equal to the amount of the contested taxes if reasonably necessary to protect Lessor's interests. Notwithstanding the foregoing, Lessee shall promptly pay all Taxes if at any time a Unit, the Land or the Premises or any part thereof shall be subject to forfeiture, or

if Lessor shall be subject to any criminal liability, arising out of the non-payment thereof. In the event of any reduction, cancellation or discharge, Lessee shall pay the amount finally levied or assessed against the Premises or adjudicated to be due and payable on any such contested Taxes.

6.06. Refunds and Rebates. Except as otherwise provided herein, if there shall be any refunds or rebates on account of the Taxes paid by Lessee under this Lease, such refund or rebate (or Lessee's Share thereof) shall belong to Lessee. Any refunds received by Lessor shall be deemed trust funds and as such are to be received by Lessor in trust and paid to Lessee forthwith. Lessor will, upon the request of Lessee, sign any receipts which may be necessary to secure the payment of any such refund or rebate.

6.07. Other Taxes. This Lease shall require and be construed to require Lessee to pay any and all other taxes that are, or may be, imposed upon (i) the Land, (ii) the Lessor's interest in this Lease, and (iii) Lessor, its successors or assigns, to the extent such are in lieu of or in substitution for Taxes imposed on the Unit, the Land, the Premises or this Lease.

6.08. Cure Right. Lessor shall at all times have the right, but not the obligation, to pay any of the taxes or other amounts required to be paid under this Lease, and such payment shall be additional rent and shall be due from Lessee on demand.

#### ARTICLE 7

#### Repairs, Additions, Replacements and Improvements

7.01. Maintenance. Lessee shall, at all times during the term of this Lease, at its own expense, individually and through the exercise all of its rights as a Unit Owner, keep and maintain or cause to be kept and maintained the Unit in repair and good condition and shall cause the Board of Managers to keep and maintain the Buildings and the Improvements, in repair and good condition, loss by fire or other casualty (unless and to the extent that insurance is required to be carried), and reasonable wear and tear excepted. Lessee shall make all necessary repairs, ordinary or extraordinary, foreseeable or unforeseeable, which are necessary to maintain such order or required by law and shall use all reasonable precaution to prevent waste, damage or injury. Lessor shall not be required to furnish any services or to make any improvements, repairs, or alterations in or to the Buildings, Improvements, Premises, or the Unit during the term of this Lease. Lessee shall cause the Board of Managers to make any and all repairs, alterations, additions, and replacements to

the Buildings or Improvements consistent with the terms of the By-Laws.

7.02. Signs. Lessee (or the Board of Managers) will not erect or suffer the placement of any exterior signs which have not been first approved in writing by Lessor.

7.03. Lessor Design Approval. No alteration or additions to the Buildings or the Improvements, including repair or replacement after a casualty, shall be made unless Lessor has consented in advance in writing to the plans and specifications therefor; provided, however, that any non-structural alterations or interior changes may be made without first obtaining Lessor's consent if the same do not substantially alter the character, exterior appearance or structural integrity of the Buildings or the Improvements.

#### ARTICLE 8 Requirements of Public Authority

8.01. Legal Requirements. During the term of this Lease, Lessee shall, at its own expense, promptly comply with all Legal Requirements, and Lessee shall pay all expenses, liabilities, damages, fines and claims, that may arise out of or be imposed because of the failure of Lessee to comply with the covenants of this Article 8.

8.02. Contests. With Lessor's approval in each instance, Lessee shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of the Lessee, or Lessor (if legally required), or both (if legally required), without cost, liability or damage to Lessor, the validity or application of any Legal Requirement and, if compliance therewith may legally be delayed pending the prosecution of any such proceeding, Lessee may delay such compliance therewith until the final determination of such proceeding.

8.03. Lessor's Assistance. Lessor shall execute and deliver any appropriate papers or other instruments which may be necessary to permit Lessee so to contest the validity or application of any such Legal Requirement and to cooperate fully with Lessee in such contest.

#### ARTICLE 9 Covenant Against Liens

9.01. Mechanics' Liens. Lessor's right, title, and interest in the Land and the Premises shall not be subject to liens of mechanics and materialmen for work done by or on



behalf of Lessee in connection with improvements to any part of the Condominium. Notwithstanding such restriction, if because of any act or omission of Lessee, any mechanic's lien or other lien, for payment of money shall be filed against any portion of the Premises, Lessee shall, at its own expense, cause the same to be discharged of record or bonded within sixty days after the filing thereof.

9.02 Right to Discharge. Without otherwise limiting any other remedy of Lessor for default hereunder, if Lessee shall fail to cause such liens to be discharged of record or bonded within the aforesaid thirty day period or to satisfy such liens within thirty days after any judgment in favor of such lien holders from which no further appeal might be taken then Lessor shall have the right to cause the same to be discharged. All amounts paid by Lessor to cause such liens to be discharged shall constitute Additional Rent and shall be due on demand.

#### ARTICLE 10 Access to Premises

10.01. Access. Lessor, its agents and designees shall have the right, but not the obligation, to enter upon the Premises and the Units at all reasonable times to examine the same and to exhibit the Premises to prospective purchasers, tenants, mortgagees, insurance personnel, and persons who need to inspect the Premises for purposes consistent with this Lease and the Master Deed.

#### ARTICLE 11 Conveyance and Assignment

11.01. Conveyance. Conveyance of all or any part of the fee interest in a Unit shall constitute an assignment or partial assignment of all or the appropriate part of the Leasehold Estate under this Lease even if no instrument of assignment is executed. Acceptance of a deed to all or any part of the fee interest in a Unit shall constitute acceptance of such assignment. Lessee shall not otherwise assign its Leasehold Estate under this Lease. The Unit and the undivided leasehold interest in the Premises attributable to such Unit shall always be in common ownership, each with the other, and shall be assigned and conveyed as a unit. Upon the conveyance of a Unit and its associated leasehold undivided interest in the Premises, Lessee shall be released from liability hereunder, but only to the extent of such conveyance, and the purchaser of such Unit shall assume liability hereunder as Lessee, but only with respect to such Unit and only to the extent of the Land Percentage.

11.02 Compliance with Master Deed. Lessee may not convey the Unit except in compliance with the provisions of the Master Deed, specifically including Sections 6, 7, and 8 thereof.

11.03. Assignment by Lessor. Lessor may assign or sell (or both) this Lease, or sell or otherwise transfer its interest in the Premises and the same shall not be a basis or grounds for a default under any Unit Mortgage. Lessor agrees to furnish to Lessee written notice of Lessee's assignment, sale, or transfer of this Lease within thirty days thereafter, together with the name and address of the assignee, purchaser, or transferee. Any assignee, purchaser, or transferee shall assume, by written, recordable instrument, the due performance of all of Lessor's obligations under this Lease, including any accrued obligations at the time of assignment, sale, or transfer.

## ARTICLE 12 Indemnity

12.01. Lessee's Indemnity. To the fullest extent permitted by law, Lessee shall indemnify and save harmless Lessor from and against any and all liability, damage, penalties, or judgments and from and against any claims, actions, proceedings and expenses in connection therewith, including reasonable counsel fees arising from injury to person or property sustained by anyone on the Land, the Premises, the Unit or the Condominium (other than any act(s) or omissions(s) of Lessor or its officers, agents, servants, employees, contractors, sublessees, or invitees of any nature). Lessee shall, at its own expense, defend any and all suits or actions (just or unjust) which may be brought against Lessor or in which Lessor may be impleaded with others upon any such above-mentioned matter, claim or claims, except as may result from the acts as set forth in Section 12.02. Lessor agrees to cooperate with Lessee in defense of any such suit or action.

12.02. Lessor's Indemnity. Except for its intentional acts or negligence or the intentional acts or negligence of its agents, employees, or contractors, Lessor shall not be responsible or liable for any damage or injury to any property, fixtures, buildings or other improvements, or to any person or persons, at any time on the Land or the Premises, including any damage or injury to Lessee or to any of Lessee's agents, employees, contractors or invitees.

12.03. Employees. For purposes of this Lease, references to Lessor and Lessor's officers, employees, servants, agents, contractors, and invitees excludes any person who owns a Unit or is a tenant or has rights to occupy a Unit.

ARTICLE 13  
Insurance

13.01. Liability Insurance. Lessee shall provide or cause to be provided at its expense, and keep in force during the term of this Lease, a policy of comprehensive general liability insurance issued by a good and solvent insurance company licensed to do business in The Commonwealth of Massachusetts, rated A or better by Best's, selected by Lessee, and reasonably satisfactory to the Lessor and in an amount reasonably required by Lessor but in any event not less than One Million Dollars (\$1,000,000) with respect to injury or death to any one person and Two Million Dollars (\$2,000,000) with respect to injury or death to more than one person in any one accident or other occurrence and Five Hundred Thousand Dollars (\$500,000) with respect to damage to property. Such policy shall include Lessor as an insured. Lessee agrees to deliver certificates of such insurance to Lessor as of the date hereof and thereafter not less than ten days prior to the expiration of any such policy. Such insurance shall not be cancellable without ten days' prior written notice to Lessor. This insurance shall be in addition to the comprehensive general liability insurance maintained by the Board of Managers as described in Section 6.7 of the By-Laws; provided, however, the insurance maintained by the Board of Managers shall satisfy Lessee's requirement herein if Lessor is named as a named insured on the Board of Managers's policy and the above dollar limits are satisfied.

13.02. Casualty Insurance. During the term of this Lease, Lessee shall insure or cause the Unit to be insured for the benefit of Lessor and Lessee as their respective interests may appear, against loss or damage by fire and customary extended coverage in an amount equal to the greater of (i) the replacement value of the Buildings (above foundation walls) multiplied by the Proportionate Interest, if insurance in such amount is available or (ii) the amount necessary to avoid the effect of co-insurance provisions of the applicable policy by a good and solvent insurance company licensed to do business in The Commonwealth of Massachusetts rated A VIII or better by Best's. The policy or a certificate thereof, shall be held by any Unit Mortgagee(s) and by Lessor. Lessee agrees to deliver certificates of such insurance to Lessor as of the date hereof and thereafter not less than ten days prior to the expiration of any such policy. Such insurance shall not be cancellable without ten days' prior written notice to Lessor. All proceeds payable at any time and from time to time by any insurance company under such a policy shall be payable to the Board of Managers or Insurance Trustee, if so required by the By-Laws, and to such Unit Mortgagee, if any, or, if payment is not required to be made to the Board of Managers, the Insurance

Trustee or the Unit Mortgagee, then to Lessee, if permitted by the By-Laws. If any such proceeds are paid to such Unit Mortgagee, Lessee shall be entitled to receive up to the full amount thereof which shall be a condition of such Mortgage, if any, and, subject to the provisions of Article 15 hereof, Lessor shall not be entitled to, and shall have no interest in such proceeds or any part thereof. Lessee shall pay the proceeds thereof to the Board of Managers as required by the By-Laws to be used to repair or replace the damaged structure to its condition prior to the casualty or, in the alternative, remove any damaged structure as provided in Article 15 of this Lease. Lessor shall, at Lessee's cost and expense, cooperate fully with Lessee and execute any and all consents and other instruments and take all other actions necessary to obtain the largest possible recovery and to cause such proceeds to be paid as hereinbefore provided. Lessor shall not carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by Lessee hereunder if the effect of such separate insurance would be to reduce the protection or the payment to be made under Lessee's insurance. The insurance maintained by the Board of Managers as described in Section 6.7 of the By-Laws satisfies the provisions of this Section 13.02.

ARTICLE 14  
Waiver of Subrogation

14.01. Waiver of Subrogation. All insurance policies carried by either party or on behalf of either party covering the Premises or the Unit, including but not limited to contents, fire and casualty insurance, shall expressly waive any right of subrogation on the part of the insurer against the other party or the entity carrying the insurance.

14.02. Waiver of Rights. All claims, causes of action and rights of recovery for any damage to or destruction of persons, property or business which shall occur on or about the Premises or the Unit, which result from any of the perils insured under any and all policies of insurance maintained by Lessor and Lessee or on behalf of either, are waived by each party as against the other party and its partners, agents, officers, and employees, regardless of cause, including the negligence and intentional wrongdoing of the other party and its respective agents, officers and employees, but only to the extent of recovery, if any, under such policy or policies of insurance; provided, however, that this waiver shall be null and void to the extent that any such insurance shall be invalidated by reason of this waiver.

ARTICLE 15  
Damage or Destruction

15.01. Casualty Damage. In the event that, during the term of this Lease, the Condominium shall be destroyed or damaged in whole or in part by fire or other cause and the cost of repairing the casualty loss does not exceed ten percent of the amount determined to be the most recent annual replacement value of the Condominium made pursuant to Section 6.7 of the By-Laws, then Lessee shall vote its Proportionate Interest, if a vote of the Unit Owners is required under the By-Laws, so as to cause the same to be repaired, replaced or rebuilt within a reasonable period of time.

15.02. Significant Damage. In the event that (i) the Condominium is damaged or destroyed, and (ii) the cost of repairing the casualty loss associated therewith exceeds ten percent of the amount determined to be the most recent annual replacement value of the Condominium made pursuant to Section 6.7 of the By-Laws, then the Unit Owners shall decide by vote within one hundred twenty days of the date of the casualty whether to cause the same to be repaired, replaced, or rebuilt within a reasonable period of time. If seventy-five percent of the Unit Owners vote within one hundred twenty days of the date of the casualty not to repair and restore the Condominium, and, as a result thereof, an order is entered in a court of competent jurisdiction partitioning the Condominium, the term of this Lease shall expire and come to an end on the day on which removal of all structures and regrading of the Land, if required by Lessor, is complete, or otherwise on the day Lessor waives in writing its right to have such structures removed and the Land regraded, with the same force and effect as if said day had been originally fixed herein as the Stated Expiration Date, and neither party shall have any further rights or liabilities thereafter arising or accruing under this Lease. If the Unit Owners fail to vote within one hundred twenty days of the date of the casualty, this Lease shall expire and come to an end on the one hundred twenty-first day following the date of the casualty.

15.03. Repair. Subject to the rights of Unit Owners pursuant to the provisions of Section 17 of the Condominium Statute as the same may be amended from time to time, if pursuant to the provisions of Section 15.02, a vote is required and the vote taken is to repair and restore the Condominium, then after any such damage or destruction to the Condominium, following which the Board of Managers, the Unit Owners or the Board of Managers proceed to restore and rebuild the same in the manner provided in the By-Laws, this Lease shall continue in full force and effect. Subject to the prior rights of any

Unit Mortgagee, plans and specifications used to repair, replace or rebuild the Condominium shall be and become the sole and absolute property of Lessor in the event that for any reason this Lease shall terminate. Lessee shall also assign to Lessor, Lessee's Share of any contract with regard to the performance of such repairs, replacements or rebuilding by a general contractor or builder, said assignment by its terms to be effective upon any termination of this Lease or upon Lessor's re-entry upon the Premises following a Default by Lessee and notice is herein provided. Such assignment shall also include the benefit of all payments made on account of the contract prior to the effective date of such assignment. Lessee shall cause such repairs, replacements or rebuilding to be performed substantially in accordance with the plans and specifications and any applicable Legal Requirements. During the course of such repairing, replacing and rebuilding, Lessee shall cause the Board of Managers to carry for the protection of Lessor such liability insurance in such amounts which may from time to time be reasonably required by Lessor.

In the case of damage or destruction involving a cost of repair of less than \$50,000 (as adjusted to reflect any increase in the CPI), the insurance proceeds shall be paid to the Board of Managers and shall be applied by the Board of Managers to the cost of the work. In the case of damage or destruction involving a cost of repair of more than \$50,000 (as adjusted to reflect any increase in the CPI), the insurance proceeds shall be paid to a national bank or commercial bank or the holder of a Mortgage on the Premises which is agreeable to acting as Insurance Trustee hereunder (the "Insurance Trustee") and shall be applied by the Insurance Trustee directly to the payment of bills submitted in connection therewith upon receipt by Lessor and the Insurance Trustee of:

(1) Evidence satisfactory to the Insurance Trustee that the insurance proceeds remaining to be disbursed are sufficient to pay all anticipated costs of the work. (The Board of Managers pursuant to the provisions of the By-Laws, shall pay the deficiency before requesting the disbursement of insurance proceeds from the Insurance Trustee);

(2) Bills from contractors and subcontractors for work and materials in place, describing in reasonable detail such work and materials and bills for the reasonable fees of any architect or engineer for services relating to the work;

(3) A certificate signed by the Board of Managers stating that the amount of each such bill does not exceed the cost of such work, materials, or services, and that no part of such

cost has previously been made the basis of the withdrawal of insurance proceeds; and

(4) A certificate of the architect or engineer in charge of the work, or of a third party not in the regular employ of any of the parties hereto, which architect, engineer or third party is reasonably satisfactory to Lessor and the Insurance Trustee, stating (i) that the work, materials or services described in the bills were necessary or appropriate and are in place or have been performed, (ii) that the amount specified in the bills does not exceed the reasonable cost of such work, materials, or services (iii) that the work or material described in each bill, to the best knowledge of such architect, engineer or third party, has been supplied by the contractor or subcontractor submitting such bill or by a person who has supplied materials to such contractor or subcontractor, and (iv) to the best knowledge of such architect, engineer or third party, the additional amount, if any, required to complete the work.

15.04. Removal. If as the result of any such damage or destruction of the Condominium, (i) the Condominium is partitioned and removed from the provisions of the Condominium Statute or (ii) Lessee, without being in Default hereunder, petitions an appropriate court for and obtains an order (pursuant to Section 17 of the Condominium Statute) directing the Board of Managers to purchase the Unit:

(1) All proceeds shall first be paid to any Unit Mortgagee(s) of the Unit to the extent required by and to the extent of the then unpaid principal amount of any Mortgage(s) and then to the holders of any recorded liens on the Unit.

(2) The balance of such proceeds, if any, remaining after such payment to the Unit Mortgagee(s) shall then be paid to Lessee.

(3) Lessee shall, if the Condominium is partitioned, at Lessor's option, vote to cause the Board of Managers to remove totally from the Premises all buildings and structures then existing and shall fill and grade the Premises where necessary as a result of such removal.

15.05. Lessor Design Approval. In the event that the Condominium is destroyed or damaged in whole or in part by fire or other cause and the Board of Managers, or Unit Owners decide to restore, repair or rebuild the same in accordance with the provisions of this Article 15, such restoration, repair or reconstruction shall not proceed until Lessor has consented in advance and in writing to the plans and specifications for said

restoration, repair or reconstruction, which consent shall not be unreasonably withheld.

ARTICLE 16  
Eminent Domain

16.01. Total Takings. If there shall occur a Total Taking then this Lease shall automatically terminate as of the earlier of (i) the date that possession has been taken of the Unit or Land or (ii) the date on which the Condominium is partitioned. In the event the Lease shall terminate or shall be terminated, neither party shall have any further rights or liabilities hereunder.

16.02. Distribution of Awards. In the event of a Total Taking, the parties hereto agree to cooperate in applying for and in prosecuting any claim for such Taking and further agree, that the aggregate net Proceeds, after deducting all expenses and costs, therewith, shall be payable to Lessee (or if required, to any Unit Mortgagee) shall be distributed as follows:

(1) So much of such net award as is available for distribution shall first be paid to the Unit Mortgagee(s), if any, to the extent of the then unpaid balance of such Mortgage(s) and to the holders of any recorded liens on the Unit.

(2) Then, the balance of the Proceeds if any, remaining after such payment to the Unit Mortgagee(s) shall be paid to Lessee.

16.03. Partial Takings. In the event of a Partial Taking of either of the Premises or the Land, or both, this Lease shall terminate as to the part of the Premises so taken and all awards with respect thereto shall be paid to Lessee. In the event of a Partial Taking of either of the Condominium or the Land, or both, and the portion remaining will, after restoration permit the Premises to continue to be used for a Permitted Use, Lessee shall vote its Proportionate Interest to cause the Board of Managers to make all repairs to the Buildings, Improvements, Common Elements and the Unit (but not Lessee's Property) affected by such Taking of the Unit to the extent necessary to restore the same to a complete architectural whole (to the extent permitted, however, taking into consideration the amount of Land remaining after any such Taking); provided, however, that Lessee shall not be obligated to expend an amount in excess of the Proceeds available to Lessee for such purposes, as hereinafter provided, but shall vote, if required to do so by the By-Laws, to treat such excess



amount as a Common Expense. All Proceeds available or paid to Lessee upon such a Taking, shall first be paid to the Unit Mortgagee, if any, if the Unit Mortgagee requires such payments to be made to it and the balance of such Proceeds shall then be paid to the Board of Managers or the Insurance Trustee, as the case may be, for the purpose of paying towards the cost of such restoration, or, in the event that the parties hereto agree to so restore, then only such portion as is agreed upon shall be paid to the Board of Managers or the Insurance Trustee, as the case may be, for such purpose and the balance shall be distributed pursuant to Section 16.04. All such restoration or rebuilding shall proceed in the manner provided in Section 15.03 hereof.

16.04. Distribution of Awards. All Proceeds available or paid to Lessee upon such Partial Taking in excess of the amount thereof needed by Lessee (i) to repair and restore the Unit or (ii) to contribute to the Board of Managers for the repair and restoration of the Condominium shall be distributed in the same manner as is provided in subparagraphs (1) and (2) of Section 16.02.

## ARTICLE 17 Mortgages

17.01. Unit Mortgages. Lessee and every subsequent owner of a Unit shall have the right to enter into Unit Mortgages on one or more occasions, from time to time, without the consent of Lessor. In no event and under no circumstances, however, shall Lessor be obligated to join in, or to subordinate Lessor's fee title to the Land and Premises or Lessor's right to receive rentals hereunder to, any Mortgage. No foreclosure of any Unit Mortgage shall affect this Ground Lease. In the event any Unit Mortgagee deems a default to exist under its Unit Mortgage, it shall give Lessor notice thereof, and if a Unit Mortgagee deems it desirable to commence foreclosure proceedings with regard to its Unit Mortgage, it shall give notice thereof to Lessor, and Lessor shall forthwith accept an assignment of the Unit Mortgage and pay the Unit Mortgagee an amount equal to the unpaid principal, interest, and other charges with respect to the Unit Mortgage, and Lessor shall thereupon be subrogated to the rights of the Unit Mortgagee.

17.02. Rights of Unit Mortgagee. Lessor, upon providing to Lessee any notice of: (i) default under this Lease, (ii) a termination of the Lease or (iii) a matter on which Lessor may predicate or claim a default under this Lease shall at the same time provide a copy of such notice to every Unit Mortgagee who has provided its name and address to Lessor at Lessor's address as herein specified or such other address as Lessor may from

time to time specify in a recorded notice. No such notice by Lessor to Lessee shall be deemed to have been duly given unless and until a copy thereof has been so provided to every Unit Mortgagee. From and after such notice has been given to a Unit Mortgagee, such Unit Mortgagee shall have the same period, after the giving of such notice to it, within which to remedy any default or acts or omissions which are the subject matter of such notice or to cause the same to be remedied, as is given Lessee after the giving of such notice to Lessee, plus in each instance, the additional periods of time specified in the next two succeeding paragraphs of this Article 17 to remedy, commence remedying, or cause to be remedied the defaults or acts or omissions which are the subject matter of such notice specified in any such notice. Lessor shall accept such performance by or at the instigation of such Unit Mortgagee as if the same had been done by Lessee.

Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles Lessor to terminate this Lease, Lessor shall have no such right unless, following the expiration of the period of time given Lessee to cure such default or the act or omission which gave rise to such default, Lessor shall notify every Unit Mortgagee of Lessor's intent to so terminate at least thirty days in advance of the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least sixty days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money. The provisions of the next succeeding paragraph of this Section 17.02 shall apply if, during such thirty or sixty day period, any Unit Mortgagee shall:

(1) notify Lessor of such Unit Mortgagee's desire to nullify such notice, and

(2) pay or cause to be paid all Rent, including Additional Rent, and other payments then due and in arrears as specified in the termination notice to such Unit Mortgagee and which may become due during such thirty or sixty day period, and

(3) comply or in good faith, with reasonable diligence and continuity, commence to comply with all non-monetary requirements of this Lease then in default and reasonably susceptible of being complied with by such Unit Mortgagee.

Any notice to be given by Lessor to a Unit Mortgagee pursuant to any provisions of this Article 17 shall be deemed properly addressed if sent to the Unit Mortgagee at the address specified in such Unit Mortgagee's most recent notice to Lessor.

If Lessor shall elect to terminate this Lease by reason of any default of Lessee, and a Unit Mortgagee shall have proceeded in the manner provided for in the immediately preceding paragraph of this Section 17.02, the specified date for the termination of this Lease as fixed by Lessor in its termination notice shall be extended for a period of ninety days, provided that such Unit Mortgagee shall, during such ninety day period:

(1) Pay or cause to be paid the monetary obligations of Lessee under this Lease as the same become due, and continue in its good faith efforts to comply with Lessee's non-monetary obligations, including those then in default, if the same are reasonably susceptible of being complied with by such Unit Mortgagee; and

(2) If not enjoined or stayed, take steps to acquire or sell the Leasehold Estate by foreclosure of the Unit Mortgage or other appropriate means and prosecute the same to completion with due diligence.

If at the end of such ninety day period such Unit Mortgagee is complying with this paragraph, this Lease shall not then terminate, and the time for completion by such Unit Mortgagee of its proceedings shall continue so long as such Unit Mortgagee is enjoined or stayed and thereafter so long as such Unit Mortgagee proceeds to complete steps to acquire or sell the Leasehold Estate by foreclosure of the Unit Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this paragraph, however, shall be construed to extend this Lease beyond the expiration of the term of this Lease. If a Unit Mortgagee is complying with this paragraph upon the acquisition of the Leasehold Estate by such Unit Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise this Lease shall continue in full force and effect as if Lessee had not defaulted under this Lease. The making of a Unit Mortgage shall not be deemed to constitute an assignment or transfer of the Leasehold Estate nor shall any Unit Mortgagee, as such, be deemed to be an assignee or transferee of the Leasehold Estate so as to require such Unit Mortgagee, as such, to assume or otherwise be obligated to perform any of the terms, covenants or conditions on the part of Lessee to be performed hereunder, but the purchaser at any sale of the Leasehold Estate in any proceedings for the foreclosure of any Unit Mortgage, or the assignee or transferee of the Leasehold Estate under any instrument of assignment or transfer in lieu of the foreclosure of any Unit Mortgage shall be deemed to be an assignee or transferee of the Lease and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part

of the Lessee to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of this Lease and the Leasehold Estate. Any Unit Mortgagee or other acquirer of the Leasehold Estate pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring the Leasehold Estate, without further consent of Lessor, sell and assign the Leasehold Estate on such terms and to such persons and organizations as are acceptable to such Unit Mortgagee or acquirer and, notwithstanding the provisions of the immediately preceding sentence, thereafter be relieved of all obligations under this Lease.

Nothing contained herein shall require any Unit Mortgagee or its assignee as a condition to its exercise of any rights hereunder to cure or comply with any default of Lessee not reasonably susceptible of being cured or complied with by such Unit Mortgagee or its assignee in order to comply with the provisions of the two immediately preceding paragraphs of this Section 17.01

17.03. Amendment. This Lease shall not be modified or surrendered to Lessor or cancelled by Lessee, nor shall Lessor accept a surrender of this Lease without the prior written consent of any Unit Mortgagee nor shall any merger result from the acquisition by, or devolution upon, any one entity of the fee and leasehold estates in the Leased Premises.

ARTICLE 18  
Performance by Board of Managers

18.01. Acceptance of Performance. Any act required to be performed by Lessee pursuant to the terms of this Lease may be performed by the Board of Managers and shall be acceptable as Lessee's act by Lessor.

ARTICLE 19  
Quiet Enjoyment

19.01. Lessor's Covenant. Lessee, upon paying the Rent and observing and keeping all covenants, warranties, agreements and conditions of this Lease on its part to be kept, shall, subject to the Master Deed, By-Laws, Rules and Regulations, and terms of this Ground Lease, all as amended from time to time, the Legal Requirements, and the Permitted Exceptions, quietly have and enjoy the Premises during the term of this Lease, without

hindrance or molestation from any person, firm or corporation lawfully claiming by, through or under Lessor.

ARTICLE 20  
Defaults; Events of Default

20.01. Defaults. The following shall, if any requirement for notice or lapse of time or both has not been met, constitute Defaults, and, if such conditions have been met, constitute Events of Default hereunder:

- (1) The failure of Lessee to pay Basic Rent when due and payable;
- (2) The failure of Lessee to pay Additional Rent when the same shall be due and payable and the continuance of such failure for a period of thirty days after receipt by Lessee of notice in writing from Lessor specifying such failure;
- (3) The failure of Lessee to make such timely payment or performance under any provision of any Unit Mortgage so as to create a terminable default thereunder;
- (4) The failure of Lessee to keep, observe or perform any covenant made by it in Sections 4.01, 5.01, 13.01, 13.02, or 15.01 hereof;
- (5) Any attempt to amend Sections 4, 5, 6, 7, or 8 of the Master Deed without Lessor's express, prior, written consent;
- (6) The purported amendment of the Master Deed by the Unit Owners, without the express, prior, written consent of Lessor, in any manner which would:
  - (a) interfere with Sponsor's or any Affiliate's rights to complete development of the Condominium or to add units or amend the property description as aforesaid;
  - (b) change the restrictions on unit ownership, permitted use, occupancy;
  - (c) limit or restrict Sponsor's rights or the use of the Library Unit; or
  - (d) modify in any way Sections 4, 5, 6, 7, or 8 of the Master Deed.

(7) The failure of Lessee to perform any of the covenants, conditions and agreements contained herein or in the Condominium Documents on Lessee's part to be kept, observed or performed and the continuance of such failure without the curing of same for a period of thirty days after receipt from Lessor of notice in writing specifying in reasonable detail the nature of such failure, and provided Lessee shall not have cured said failure as provided in Section 20.03; and

(8) The lapse or other termination, voluntary or involuntary, of Unit Owner's status as a Faculty Member.

20.02. Lessor's Remedies. If any Event of Default shall occur and be continuing, Lessor may, at its option, give to Lessee a notice terminating this Lease upon a date specified in such notice, which date shall be not less than thirty days after the date of receipt by Lessee of such notice from Lessor and upon the date specified in said notice, the term and estate hereby vested in Lessee shall cease and any and all other right, title and interest of Lessee hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire term of this Lease had elapsed, but Lessee shall continue to be liable to Lessor as hereinafter provided. Notwithstanding the foregoing, Lessor agrees to terminate this Lease only with respect to the Unit Owner or Unit Owners responsible for such Event of Default. Only an Event of Default under Section 20.01 (6) shall give Lessor the right to terminate this Lease with respect to all Unit Owners. Lessor shall simultaneously send a copy of any such notice to any Unit Mortgagee, the Board of Managers, and any additional persons or parties having an interest in the Premises or the Unit that Lessee may select, in writing, from time to time. The curing of any Default(s) within the above time limits by any of the aforesaid parties shall constitute a curing of any such Default(s) as if Lessee had cured the same hereunder.

20.03. Lessee's Best Efforts. In the event that Lessor gives notice of a Default of such a nature that it cannot be cured within such thirty day period then such Default shall not be deemed to continue so long as Lessee, after receiving such notice, proceeds to cure the Default in good faith as soon as reasonably possible and continues to take all steps necessary to complete the same within a reasonable period of time. No Default shall be deemed to continue if and so long as Lessee shall be delayed in or prevented from curing the same by reason of Force Majeure.

20.04. Elimination of Default. Notwithstanding anything to the contrary contained in this Article 20, in the event that any Default(s) of Lessee shall be cured in any manner hereinabove provided, such Default(s) shall be deemed never to have occurred and Lessee's rights hereunder shall continue unaffected by such default(s).

20.05. Further Remedies. Upon any termination of this Lease pursuant to Section 20.02, Lessor may, in addition and without prejudice to any other rights and remedies Lessor shall have at law or in equity, re-enter the Premises and the Unit, recover possession thereof and dispossess any or all occupants of the Premises and the Unit in the manner prescribed by the statute relating to summary proceedings, or similar statutes; but Lessee in such case shall remain liable to Lessor as hereinafter provided.

#### ARTICLE 21 Damages on Default

21.01. Surrender. Upon any termination of this Lease as the result of a Default, Lessee shall quit and peacefully surrender the Premises and the Unit to Lessor, and Lessor, upon or at any time after any such expiration or termination, may without further notice, enter upon and reenter the Premises and the Unit and repossess itself thereof, by force, summary proceedings, ejection or otherwise, and may dispossess Lessee and remove Lessee and all other Persons and property from the Premises and the Unit and may have, hold and enjoy the Premises and the Unit and the right to receive all rental income of and from the same.

21.02. Right to Relet. At any time or from time to time after any such expiration or termination, Lessor may relet the Premises, the Unit or any part thereof, in the name of Lessor or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such conditions (which may include concessions or free rent) as Lessor, in its reasonable discretion, may determine and may collect and receive the rents therefor. Lessor shall in no way be responsible or liable for any failure to relet the Premises or the Unit or any part thereof, or for any failure to collect any rent due upon any such reletting.

21.03. Survival of Covenants. No such expiration or termination of this Lease shall relieve Lessee of its liability and obligations under this Lease and such liability and obligations shall survive any such expiration or termination.

In the event of any such expiration or termination, whether or not the Premises or the Unit or any part thereof shall have been relet, Lessee shall pay to the Lessor the Rent up to the time of such expiration or termination of this Lease. Upon any termination of this Lease pursuant to Subsections (4), (5), or (6) of Section 20.01, Lessee shall forthwith pay Lessor an amount equal to (i) the Fair Market Value of a Unit, determined at the time of termination of this Lease, minus (ii) the Adjusted Fair Market Value of a Unit, determined at the time when the relevant Unit Owner took title to their Unit.

21.04. Right to Equitable Relief. In the event of any breach or threatened breach by Lessee of any of the covenants, agreements, terms or conditions contained in this Lease, Lessor shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

*Except as provided in section 21.03,* ARTICLE 22  
Reversion

22.01. Reversion Upon Expiration or Earlier Termination. 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 Section 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 Lessee shall quit and surrender the Premises and the Unit in good condition, reasonable wear and tear excepted, and free and clear of all occupants, liens and encumbrances whatsoever except Permitted Exceptions. 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 this 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 Lease is terminated because of a partition or removal under Section 15.04 hereof, a total taking under Section 16.01 hereof or a partial taking under Section 16.03 hereof, 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 hereof, and Lessor shall not be obligated to pay any amount to Lessee.

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 this Section 22 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.

22.02. Acknowledgment of Reversion. The acceptance of a deed to any Unit by any party shall constitute an agreement by that party, for himself, his 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 Unit purchaser execute at the time of purchase of the Unit an acknowledgment of the fact that title to the Unit shall revert upon expiration or earlier termination of this Ground Lease, in the form attached hereto as Exhibit B.

#### ARTICLE 23 Waivers

23.01. No Waivers. No failure of Lessor or Lessee to complain of any act or omission on the part of the other party shall be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Lessor or Lessee at any time, expressed or implied, of any provision of this Lease shall be deemed a waiver of a breach. No acceptance by Lessor of any partial payment shall constitute an accord or satisfaction but shall only be deemed a partial payment on account.

#### ARTICLE 24 General Provisions

24.01. Force Majeure. In the event that Lessor or Lessee shall be delayed, or prevented from the performance of any act required hereunder by reason of Force Majeure, then performance of such act shall be excused for the period of the delay and

the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

24.02. Notices and Communications. All notices, demands, requests and other communications provided for or permitted under this Lease shall be in writing, either delivered by hand or sent by first-class mail, postage prepaid, to the following addresses:

(a) if to Lessor c/o Harvard Real Estate, Inc., 1350 Massachusetts Avenue, Cambridge, Massachusetts 02138-3826, or at such other address as the Lessor shall have designated in writing to the Lessee, with a copy to such Persons as Lessor shall have designated in writing to Lessee, or

(b) if to Lessee at Holyoke Center, Suite 1017, Cambridge, Massachusetts 02138-3826, or at such other address as the Lessee shall have designated in writing to the Lessor.

Any notice provided for herein shall become effective only upon and at the time of receipt by the person to whom it is given, unless such notice is mailed by first-class registered mail, in which case it shall be deemed to be received on (i) the third Business Day following the mailing thereof or (ii) the day of its receipt, if a Business Day, or the next succeeding Business Day, whichever of (i) or (ii) be the earlier.

24.03. Certificates. Either Lessor or Lessee shall, without charge, at any time and from time to time hereafter, within ten (10) days after written request of the other, certify by written instrument duly executed and acknowledged (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease, in accordance with its tenor as then constituted; (c) as to the existence of any Default or Event of Default; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party; (e) as to the commencement and expiration dates of the term of this Lease; and (f) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by the party requesting it and any other person, firm, or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing the same.

24.04. Governing Law. This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of The Commonwealth of Massachusetts.

24.05. Partial Invalidity. If any provision of this Lease or the application thereof shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

24.06. Notice of Lease. Lessor and Lessee will at any time, at the request of either one, promptly execute duplicate originals of an instrument, in recordable form, which will constitute a Notice of Lease, setting forth a description of the Premises, the term of this Lease and any other portions thereof, excepting the rental provisions, as either party may request.

24.07. Interpretation. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The term "Lessor" whenever used herein, shall mean only the owner at the time of Lessor's interest herein, and upon any sale or assignment of the interest of Lessor.

24.08. Entire Agreement. Lessor and Lessee acknowledge that prior written and oral agreements between them and all prior representations made by either party to the other have been incorporated in this Lease or otherwise satisfied prior to the execution hereof. This Lease may be amended only by instruments in writing executed by Lessor and Lessee.

24.09. Parties. Nothing herein shall be construed as creating any relationship between Lessor and Lessee other than the relationship of landlord and tenant.

24.10. Absence of Fee Interest. If for any reason the Condominium is removed from the provisions of the Condominium Statute, in no event shall Lessee obtain a fee interest in the Land, and the Lease shall remain in full force and effect during its term, unless otherwise terminated in accordance with the provisions contained in the Lease.

24.11. Non-merger of Fee and Leasehold Estates. If under any circumstances both Lessor's and Lessee's estates in the Premises become vested in the same owner, this Lease nevertheless shall not be extinguished by application of the doctrine of merger except at the express written election of

the Lessor recorded with the Registry and with the express written consent of all the Unit Owners as Lessees.

IN WITNESS WHEREOF, Lessor and Lessee hereto have caused this instrument to be executed in duplicate under seal as of the date first above written.

LESSOR:

PRESIDENT AND FELLOWS OF  
HARVARD COLLEGE

By: Sally Zedkhauser  
Name:  
Title:

By: Sheldon G. Tandler  
Name:  
Title:

LESSEE:

By: Sally Zedkhauser  
Sally Zedkhauser, Trustee  
of Observatory Commons  
Ground Lessee Nominee Trust  
as aforesaid, and not  
individually

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

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

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

August \_\_, 1989

Then personally appeared the above-named \_\_\_\_\_  
\_\_\_\_\_ and acknowledged the foregoing instrument to  
be the free act and deed of President and Fellows of Harvard  
College, before me,

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

My commission expires:

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

~~August~~ <sup>SEPTEMBER</sup> 12, 1989

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

*Carol M. Rayfuse*  
\_\_\_\_\_  
Notary Public

My commission expires: 3/30/95

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

August \_\_, 1989

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

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

My commission expires:

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

~~August~~ <sup>SEPTEMBER</sup> 12, 1989

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

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

My commission expires: 3/30/95

EXHIBIT A

Legal Description

PREMISES: Two parcels of land 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

Form of Acknowledgment  
Re: Reversion

1. As used herein, the following terms have the following meanings:

Seller:

\_\_\_\_\_  
Observatory Commons Condominium  
243-245 Concord Avenue  
Cambridge, Massachusetts

Purchaser:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Unit:

\_\_\_\_\_

Ground Lease:

The ground lease dated as of August 28, 1989, by and between President and Fellows of Harvard College, a Massachusetts charitable corporation, having an office at Holyoke Center, Suite 1017, Cambridge, Massachusetts 02138-3826 ("Lessor") and Sally Zeckhauser, Kristin S. Demong, and Sheldon G. Tandler, Trustees of Observatory Commons Ground Lessee Nominee Trust, having an address c/o Harvard Real Estate, Inc., Holyoke Center, Suite 1017, Cambridge, Massachusetts 02138-3826 ("Lessee").

2. The undersigned hereby acknowledges that the undersigned has actual knowledge of the fact that upon the expiration of the Term of the Ground Lease or earlier termination or cancellation of the Ground Lease with respect to one or more condominium units, the affected Unit(s), and if all of the Units in the Condominium are affected, any and all improvements upon the Land shall revert to and become the sole property of the then owner of the Land and all rights of affected Unit Owners and mortgagees of their respective Units shall terminate and Lessee shall quit and surrender the Premises. The land owner shall pay to an affected Unit Owner the then Adjusted Fair Market Value of a Unit. Pursuant to Article 22 of the Ground Lease, the reversion rights are superior to the rights of any holder of any right or interest of any nature in any Unit, including any mortgagees, holders of liens, and occupants.

All capitalized terms used herein shall have the same meanings herein as in the Ground Lease unless expressly otherwise defined herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

PURCHASER:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name:

EXHIBIT C TO GROUND LEASE  
OBSERVATORY COMMONS CONDOMINIUM  
Schedule of Land Percentage

| <u>Unit<br/>No.</u> | <u>Land Percentage</u> |
|---------------------|------------------------|
| 1                   | 38.5%                  |
| 2                   | 39.1%                  |
| 3                   | 35.8%                  |
| 4                   | 35.8%                  |
| 5                   | 35.8%                  |
| 6                   | 35.8%                  |
| 7                   | 35.4%                  |
| 8                   | 31.5%                  |
| 9                   | 33.2%                  |
| 10                  | 33.2%                  |
| 11                  | 33.2%                  |
| 12                  | 26.7%                  |
| 13                  | 26.7%                  |
| 14                  | 26.7%                  |
| 15                  | 31.5%                  |
| 16                  | 32.8%                  |
| 17                  | 35.8%                  |
| 18                  | 39.8%                  |
| 19                  | 35.8%                  |
| 20                  | 39.8%                  |
| 21                  | 39.1%                  |
| 22                  | 39.8%                  |
| 23                  | 40.0%                  |

DP-2207/q  
CR.003

Amendment to Ground Lease

Reference is made to a certain ground lease (the "Ground Lease"), signed and effective as of the 28th day of August, 1989 by and between PRESIDENT AND FELLOWS OF HARVARD COLLEGE, a Massachusetts charitable corporation having an office at Holyoke Center, Suite 1017, Cambridge, Massachusetts 02138-3826 ("Lessor"), and Sally Zeckhauser, Kristin S. Demong, and Sheldon G. Tandler, Trustees of OBSERVATORY COMMONS GROUND LESSEE NOMINEE TRUST, an Estate, Inc., Holyoke Center, Suite 1017, Cambridge, Massachusetts 02138-3826 ("Lessee").

The Lessor and the following owners of units at the condominium known as Observatory Commons Condominium, who are, collectively, the Lessee under the Ground Lease, hereby agree, in order to clarify the relationship between Sections 21.03 and 22.01 of the Ground Lease, to amend the Ground Lease as provided below:

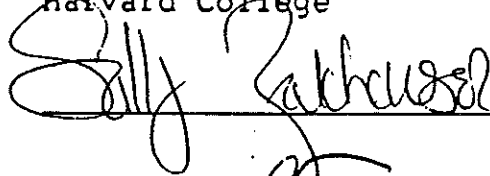
The phrase "Except as provided in Section 21.03," is hereby inserted at the beginning of the first sentence of Section 22.01.

This instrument is executed under seal as of the 12th day of September, 1989.

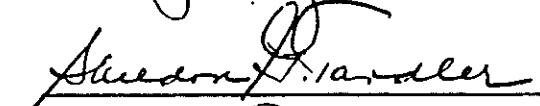
LESSOR

President and Fellows of  
Harvard College

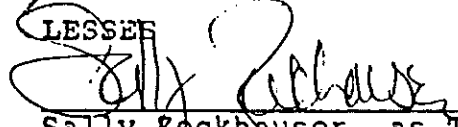
By:



By:

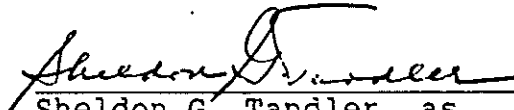


LESSEE



Sally Zeckhauser, as Trustee  
aforesaid (Owner of Units 1,  
2, 3, 4, 5, 6, 7, 8, 9, 10,  
11, 12, 14, 17, 19, 21)

Kristin S. Demong, as Trustee  
aforesaid (Owner of Units 1,  
2, 3, 4, 5, 6, 7, 8, 9, 10,  
11, 12, 14, 17, 19, 21)

  
Sheldon G. Tandler, as  
Trustee aforesaid (Owner of  
Units 1, 2, 3, 4, 5, 6, 7, 8,  
9, 10, 11, 12, 14, 17, 19, 21)

President and Fellow of  
Harvard College (Owner of  
Unit 23)

Amarnath V. Bhide (Owner of  
Unit 15)

Kathleen Buckley (Owner of  
Unit 16)

Connie Holm (Owner of Unit 18)

Lawrence S. Goldstein (Owner  
of Unit 18)

Ernest Peralta (Owner of Unit  
20)

Michael O. Rabin (Owner of  
Unit 13)

David Gordon Mitten (Owner of  
Unit 22)

EXHIBIT D

Form of acknowledgment

Re: Reversion

1. As used herein, the following terms have the following meanings:

Seller:

\_\_\_\_\_  
Observatory Commons Condominium  
243-245 Concord Avenue  
Cambridge, Massachusetts

Purchaser:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Unit:

\_\_\_\_\_

Ground Lease:

The ground lease dated as of August 28, 1989, by and between President and Fellows of Harvard College, a Massachusetts charitable corporation, having an office at Holyoke Center, Suite 1017, Cambridge, Massachusetts 02138-3826 ("Lessor") and Sally Zeckhauser, Kristin S. Demong, and Sheldon G. Tandler, Trustees of Observatory Commons Ground Lessee Nominee Trust, having an address c/o Harvard Real Estate, Inc., Holyoke Center, Suite 1017, Cambridge, Massachusetts 02138-3826 ("Lessee").

2. The undersigned hereby acknowledges that the undersigned has actual knowledge of the fact that upon the expiration of the Term of the Ground Lease or earlier termination or cancellation of the Ground Lease with respect to one or more condominium units, the affected Unit(s), and if all of the Units in the Condominium are affected, any and all improvements upon the Land shall revert to and become the sole property of the then owner of the Land and all rights of affected Unit Owners and mortgagees of their respective Units shall terminate and Lessee shall quit and surrender the Premises. The land owner shall pay to an affected Unit Owner the then Adjusted Fair Market Value of a Unit. Pursuant to Article 22 of the Ground Lease, the reversion rights are superior to the rights of any holder of any right or interest of any nature in any Unit, including any mortgagees, holders of liens, and occupants.

All capitalized terms used herein shall have the same meanings herein as in the Ground Lease unless expressly otherwise defined herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

PURCHASER:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name:

EXHIBIT E

Observatory Commons Condominium  
Schedule of Land Percentage

| <u>Unit<br/>No.</u> | <u>Land Percentage</u> |
|---------------------|------------------------|
| 1                   | 38.5%                  |
| 2                   | 39.1%                  |
| 3                   | 35.8%                  |
| 4                   | 35.8%                  |
| 5                   | 35.8%                  |
| 6                   | 35.8%                  |
| 7                   | 35.4%                  |
| 8                   | 31.5%                  |
| 9                   | 33.2%                  |
| 10                  | 33.2%                  |
| 11                  | 33.2%                  |
| 12                  | 26.7%                  |
| 13                  | 26.7%                  |
| 14                  | 26.7%                  |
| 15                  | 31.5%                  |
| 16                  | 32.8%                  |
| 17                  | 35.8%                  |
| 18                  | 39.8%                  |
| 19                  | 35.8%                  |
| 20                  | 39.8%                  |
| 21                  | 39.1%                  |
| 22                  | 39.8%                  |
| 23                  | 40.0%                  |