

CRANE'S LANDING CONDOMINIUM TRUST  
*Declaration of Trust*  
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CRANE'S LANDING CONDOMINIUM TRUST

THIS DECLARATION OF TRUST made this 12 day of November, 1986, by Frederick O'Neill of Duxbury, Plymouth County, Massachusetts and Dennis J. Morgan, of Boston, Suffolk County, Massachusetts, (hereinafter called the "Trustee or Trustees", which term and any pronoun referring thereto shall be deemed to include their successors in trust hereunder and to mean the trustee or the trustees for the time being hereunder, wherever the context so permits).

ARTICLE I - Name of Trust

The trust created hereby shall be known as: CRANE'S LANDING CONDOMINIUM TRUST.

ARTICLE II - The Trust and Its Purposes

2.1 General Purposes. This Trust is created as the organization of unit owners (hereinafter the "Owners" or "Unit Owners") as required by the provisions of Chapter 183A, as amended, of the Massachusetts General Laws (hereinafter "Chapter 183A") for the purpose of managing and regulating Crane's Landing Condominium (hereinafter the "Condominium"), established by a Master Deed (hereinafter the "Master Deed") executed by Frederick O'Neill and Dennis J. Morgan, Trustees of CD Morgan Realty Trust (hereinafter the "Declarant", which term shall also include all persons or entities which may succeed to the Declarant's position as developer of the Condominium in accordance with the definition of Declarant contained in paragraph 18 of the Master Deed, dated the same date as the date of this Trust and recorded herewith).

2.2 Definitions. Unless the context otherwise requires, the words defined in the Master Deed and the definitions contained in Section 1 of Chapter 183A shall be applicable to this Trust.

2.3 Trust and Not Partnership. It is hereby expressly declared that a trust and not a partnership or corporation is hereby created, and that the Unit Owners are beneficiaries and not partners or associates between and among themselves with respect to the trust property, and hold no relation to the Trustees other than as beneficiaries hereunder.

2.4 Property Held in Trust. All property, real and personal, tangible and intangible, conveyed to or held hereunder by the Trustees shall vest in the Trustees, in trust, to manage, administer and dispose of the same and to receive and/or distri-

bute the income and/or principal thereof for the benefit of the Owners from time to time of the Units in the Condominium. The beneficial interest of each Unit Owner is set forth in Exhibit C to the Master Deed and made a part hereof (See Section 4.1 hereof), which interest is equal to the percentage undivided ownership interest of each Owner's Unit in the Common Areas and Facilities of the Condominium as said percentage individual ownership interest may be amended from time to time.

### ARTICLE III - The Trustees

#### 3.1 Number of Trustees; Term of Office; Qualifications.

- (a) Except as hereinafter provided, after all of the original Trustees named herein shall cease to serve, there shall be at all times not less than two (2) nor more than seven (7) Trustees, such number to be determined from time to time by vote of Unit Owners holding more than fifty (50%) percent of the total voting power of the Unit Owners hereunder, which voting power shall be exercised at any annual or special meeting of the Unit Owners. Provided, however, that for seven (7) years from the date of the recording of the Master Deed there shall be two Trustees and the original Trustees shall continue to serve for this period and until their successors have been elected and qualified. If either or both of the original Trustees shall die, resign, become incapacitated or be unable or unwilling to serve as Trustee during this initial seven year period, then the Declarant or such person or entity as may succeed to the Declarant's position as developer of the Condominium (the Declarant and all such successors being hereinafter called the "Sponsor") shall appoint his or their successor(s) as the case may be to fill the remainder of such term. Upon the expiration of such seven year term, the office of the original Trustee or his or their successor(s) as designated by the Sponsor shall be deemed vacant so as to permit such vacancy to be filled in the manner provided in Section 3.3 below. Until such vacancy has been filled, however, the original Trustee or his successor as designated by the Sponsor may continue to act. The term of office of Trustees succeeding the original Trustees shall be for a period of two years and until their successors have been elected and qualified. The Trustees need not be Unit Owners.

- (b) Notwithstanding anything to the contrary in this Trust contained, those Trustees appointed or selected by the Declarant as aforesaid shall resign no later than the earlier of the following events;
- (i) 120 days after 75% of all the Units permitted by the Master Deed to be constructed as future phases of the Condominium have been conveyed to Unit purchasers; or
  - (ii) seven years following conveyance of the first Unit.

The purpose of the foregoing provision is to comply with the requirement imposed by the Federal National Mortgage Association ("FNMA"), necessitating the transfer of control of the Condominium to the Unit Owners as above provided. For this purpose "control" means the right of the Declarant to control the Unit Owners' Association or its Trustees, in any manner except through votes allocated to Units owned by the Declarant on the same basis as votes pertaining to sold units.

3.2 Election of Trustees. The Trustees shall be elected by a vote of Unit Owners holding more than fifty (50%) percent of the total voting power hereunder, which vote shall be cast at any annual or special meeting of the Unit Owners. Each person elected to serve as Trustee who wishes to so serve shall promptly file with the Secretary of the Trust his written acceptance of election, and upon receipt of such acceptance, the Secretary shall sign and record with the Bristol County Northern District Registry of Deeds a certificate of election setting forth the names of the new Trustees and reciting that they have been duly elected by the requisite vote of the Unit Owners and have filed their written acceptances of election with the Secretary.

3.3 Vacancies. If and whenever the number of Trustees shall become less than two or less than the number of Trustees last determined by the Unit Owners as provided in Section 3.1 hereof, a vacancy or vacancies in the office or Trustee shall be deemed to exist. Each such vacancy shall be filled by the appointment of a successor who shall be designated by a vote of Unit Owners holding more than fifty (50%) percent of the total voting power hereunder, which vote shall be cast at any annual meeting or at any special meeting of the Unit Owners called for the purpose of filling the vacancy. Each Trustee appointed to fill a vacancy shall promptly file with the Secretary of the Trust his written acceptance of appointment. Each such appointment to fill a vacancy shall be evidenced by recording with the Bristol County Northern District Registry of Deeds (the "Registry") of a certificate of appointment signed by the Secretary setting forth the name of

the new Trustee appointed to fill the vacancy and reciting that said Trustee has been duly appointed by vote of the Unit Owners, and that he has filed his written acceptance of appointment with the Secretary. If for any reason any successor shall not be so designated within sixty days after the vacancy in office occurs, an interim Trustee or Trustees to fill such vacancy or vacancies may be appointed by majority vote of all remaining Trustees or, in the alternative, by any court of competent jurisdiction upon the application of any Unit Owner or Trustee after notice to all Unit Owners and Trustees and to such others as the court may direct. Any appointment of an interim Trustee by such vote of the remaining Trustees shall become effective upon recording with said Registry of Deeds of a certificate of appointment signed by the Secretary setting forth the name of the interim Trustee appointed to fill the vacancy and reciting that said Trustee has been duly appointed by a vote of the Trustees, and that he has filed his written acceptance of appointment with the Secretary. Any appointment of an interim Trustee by such court proceeding shall become effective upon recording with said Registry of Deeds of a certified copy of the court decree and of the acceptance of such appointment by the Trustee so appointed. Any Trustee appointed by the Unit Owners to fill a vacancy shall serve for the remainder of the term of the Trustee whose vacancy he filled. Any interim Trustee appointed by the Trustees or by a court after the failure by the Unit Owners to fill the vacancy shall serve only until such time as the Unit Owners at any annual or special meeting elect a new Trustee (who may be the same person as the interim Trustee) to permanently fill the vacancy involved, provided that if the Unit Owners do not so elect a new Trustee to replace the interim Trustee, the interim Trustee shall serve for the remainder of the term of the Trustee whose vacancy he filled. Notwithstanding the foregoing provisions of this Section 3.3, the remaining Trustees shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred upon the Trustees. Any person appointed as a successor Trustee as hereinbefore provided shall be vested with the title to the trust property jointly with the remaining Trustees without the necessity of any act of transfer or conveyance.

3.4 Quorum and Action by Majority. The Trustees may act by a majority vote at any duly called meeting at which a quorum is present. A quorum shall consist of a majority of the Trustees, but in no event less than two Trustees.

3.5. Action by Consent of Trustees. The Trustees may transact without a meeting any business which they are authorized to transact at a meeting, provided that the Trustees unanimously assent in writing to the decisions of the Trustees concerning such business by signing the official record of said decisions to be filed with the records of the Trustees. Any action so taken shall have the same force and effect as though taken at a duly called and held meeting of the Trustees.

3.6 Resignation and Removal of Trustee. Any Trustee may resign by notice in writing given to the Secretary of the Trust, who shall in turn transmit written notice of such resignation to each of the other Trustees. Such written resignation shall be recorded by the Secretary of the Trust at the said Registry of Deeds. With the exception of the original Trustees described in Section 3.1 hereof, a Trustee may be removed from office without cause by a vote of Unit Owners holding more than fifty (50%) percent of the total voting power hereunder, which vote shall be cast at any annual or special meeting of the Unit Owners the notice of which shall specify that the removal shall be voted upon thereat. Any such removal shall be evidenced by the recording at the said Registry of Deeds of a certificate of removal signed by the Secretary of the Trust naming the Trustee so removed and reciting that the requisite votes of the Unit Owners were cast for the removal.

3.7 Votes to be Cast for Trustees. As provided in Section 4.3 hereof, each Unit Owner shall have voting power equal to his Unit's percentage of undivided beneficial interest hereunder as set forth in Exhibit C to the Master Deed as the same may be amended. The Declarant shall have voting power as a Unit Owner for all unsold Units. The provisions setting forth the voting power of the Unit Owners, including the Declarant, are contained in greater detail in said Section 4.3 hereof.

3.8 No Bond By Trustees. No Trustee elected or appointed, as hereinbefore provided, whether as original or successor Trustee, shall be obligated to give any bond or surety or other security for the performance of his duties hereunder; provided, however, that Unit Owners holding more than fifty (50%) percent of the beneficial interest hereunder may at any time, by notice in writing signed by them and delivered to the Trustee or Trustees affected thereby, require that any one or more of the Trustees shall give bond in such amount and with such sureties as shall be specified in such notice; and provided further that any Trustee who is vested with authority or responsibility for handling funds belonging to or administered by the Trust shall be covered by a fidelity bond conforming to the requirements of Section 5.5.1(d) hereof. All expenses incident to any such bond shall be charged as a common expense of the Condominium.

3.9 Compensation of Trustees. No Trustee shall receive compensation for his services, except that by a vote of a majority of the other Trustees a Trustee (excluding the Trustee(s) appointed by Declarant) may be reimbursed for his out-of-pocket expenditures associated with Trust business.

3.10 No Liability If In Good Faith. No Trustee shall be personally liable or accountable out of his personal assets by reason of any action taken, suffered or omitted in good faith, or for allowing one or more of the other Trustees to have possession

of the Trust books or property, or by reason of honest errors of judgment, mistakes of fact or law, the existence of any personal or adverse interest, or by reason of anything except his own wilful malfeasance and default.

3.11 Dealing with Trust Not Prohibited. No Trustee or Unit Owner shall be disqualified by his office from contracting or dealing directly or indirectly with the Trustees or with one or more Unit Owners, nor shall any such dealing, contract or arrangement entered into in respect of this Trust in which any Trustee or Unit Owner shall be in any way interested be avoided, nor shall any Trustee or Unit Owner so dealing or contracting or being so interested be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such Trustee's holding office or of the fiduciary relation hereby established, or by reason of such Unit Owner's status, provided the Trustee or Unit Owner shall act in good faith and shall disclose the nature of his interest before the dealing, contract or arrangement is entered into.

3.12 Indemnity. The Trustees and each of them shall be entitled to indemnity both out of the trust property and by the Unit Owners against any liability incurred by them or any of them in good faith in the execution hereof, including without limiting the generality of the foregoing, liabilities in contract and in tort and liabilities for damages, penalties and fines.

#### ARTICLE IV - Beneficiaries; Beneficial Interests and Voting Power

4.1 Percentage Interests. The beneficiaries shall be the Unit Owners of the Condominium from time to time. The beneficial interest in the Trust shall be divided among the Unit Owners in the percentage of undivided beneficial interest appertaining to the Units of the Condominium, which shall be identical to the Unit's percentage interest in the Common Areas and Facilities of the Condominium as set forth in Exhibit C to the Master Deed, as said Exhibit C may be hereafter amended as additional phase(s) are added to the Condominium pursuant to the provisions of paragraph 16 of the Master Deed.

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



notice in writing signed by all of the record Owners of such Unit. Any such designation shall take effect upon receipt by the Trustees and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Trustees may, by majority vote, designate any one such Owner or other person for such purposes.

4.3 Voting Power of the Unit Owners. Each Unit Owner (including the Declarant as to Units included in the Condominium but not yet conveyed to purchasers), shall have voting power in the affairs of the Condominium equal to the percentage of undivided beneficial interest appertaining to his Unit as set forth in Exhibit C to the Master Deed, as said Exhibit C may be hereafter amended as additional phase(s) are added to the Condominium pursuant to the provisions of paragraph 16 of its Master Deed.

#### ARTICLE V - By-Laws

The provisions of this ARTICLE V shall constitute the By-Laws (the "By-Laws") of this Trust and the organization of Unit Owners established hereby.

5.1 Powers and Duties of the Trustees. The Trustees shall have the powers and duties specifically conferred upon them by Chapter 183A, the Master Deed and these By-Laws, and all other powers and duties necessary for the administration of the affairs of the Condominium (except as otherwise provided by law, the Master Deed or these By-Laws), including, without limiting the generality of the foregoing, the following powers and duties.

5.1.1 To appoint and remove at pleasure all officers, agents and employees of the Trust, prescribe their duties, fix their compensation, and require of them such security or fidelity bond(s) as they may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any Unit Owner or Trustee in any capacity whatsoever.

5.1.2 To establish, levy and assess, and collect the assessments for common expenses referred to in Section 5.4 hereof.

5.1.3 To do all things necessary to operate, maintain, repair, improve, replace, alter and otherwise administer and care for the Common Areas and Facilities and, to the extent provided in the Master Deed and these By-Laws, maintain, repair and care for the Units.

5.1.4 To obtain all policies of insurance required by these By-Laws and such other insurance as may be required by law or as the Trustees may from time determine.

5.1.5 To obtain any legal, architectural, accounting, administrative and other services deemed advisable by the Trustees, including the services of a manager and any other personnel, to whom the Trustees, except to the extent limited by Chapter 183A, the Master Deed, or these By-Laws (including this Section 5.1), may delegate certain of its powers and duties. The Trustees shall be entitled to rely upon the advice and counsel of attorneys, architects, accountants and other advisors hired by them and shall be protected in so doing.

5.1.6 To adopt, amend, modify and rescind from time to time and enforce rules and regulations (the "Condominium Rules") governing the use of the Condominium and the personal conduct of the Unit Owners and their families, tenants and guests thereon.

5.1.7 To cause to be kept a complete record of all its acts and the affairs of the Trust and to present a statement thereof to the Unit Owners at the annual meeting of the Unit Owners.

5.1.8 To purchase, or otherwise acquire title to or an interest in, sell, lease, mortgage and otherwise maintain, manage, hold, use, encumber and dispose of any property, real or personal, tangible or intangible, in the course of their administration and management of the Condominium; provided that except in the event of condemnation or substantial loss to the Units and/or the Common Areas and Facilities subject to the provisions of Sections 5.6.5 and/or 5.6.1 (b) hereof the Trustees may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any part or all of the Common Areas and Facilities, other than by the granting of utility rights and easements and/or rights and easements for other public purposes consistent with the intended use of the Common Areas and Facilities, or Exclusive Use Areas without the prior authorization of Unit Owners holding at least 75% of the total voting power of the Unit Owners hereunder and of at least two-thirds (based on one vote for each first mortgage owned) of all first mortgagees of record of Units in the Condominium.

5.1.9 To open and maintain bank accounts, and to authorize the drawing of checks and other financial instruments, and to keep a full and complete record of all financial transactions, which record shall be available for inspection by the Unit Owners and mortgagees of the Units and to prepare periodic financial reports and accountings as may be reasonably required by the Unit Owners.

5.1.10 To purchase in its own name or the name of a nominee one or more Units in the Condominium at any public or private sale upon such terms and conditions as the Trustees may deem desirable, provided that the Trustees obtain the prior authorization of the Unit Owners for any such purchase pursuant to Section 5.25 hereof; and to sell, lease, mortgage and otherwise maintain,

manage, hold, encumber and dispose of such Units, upon such terms and conditions as the Trustees shall deem appropriate.

5.1.11 To borrow or in any other manner raise such sum or sums of money or other property as it shall deem advisable in any manner and on any terms, and to evidence the same by notes, bonds, securities or other evidence of indebtedness, which may mature at a time or times, and subject to any limitations imposed by law, the Master Deed or these By-Laws, to execute and deliver any mortgage, pledge, or other instrument to secure any such borrowing; provided, however, that the Trustees shall have no authority to bind the Unit Owners personally.

5.1.12 To establish committees from among the Unit Owners, define their powers and duties and appoint and remove their members.

5.1.13 To grant easements and rights with respect to utilities to be installed in, upon, under and over the Common Areas and Facilities and to enter into such agreements and undertakings as shall be necessary therefor.

5.1.14 To approve the location and relocation of easements and rights for utilities which have been installed in, upon, under or over the Common Areas and Facilities and to execute, acknowledge and record such instruments and plans identifying such easements as the Trustee deem necessary or desirable.

5.1.15 To review and approve (a) certain modifications to the Building(s) as referred to in subparagraph 9(b) of the Master Deed; (b) the modification, removal and installation by a Unit Owner of certain interior walls within his Unit pursuant to subparagraph 9(c) of the Master Deed; or (c) any other construction, modification or decoration activities with respect to a Unit which involve or impact the Common Areas and Facilities or Exclusive Use Areas and/or over which the Trustees may specifically have review and approval authority under the provisions of the Master Deed and this Condominium Trust.

5.1.16 To sign, seal, acknowledge, deliver and record in any one or more public offices or places of recording all such instruments and documents as the Trustees shall deem necessary or desirable in the exercise of their powers and the discharge of their duties.

Notwithstanding any provisions of this Trust and By-Laws to the contrary, the Trustees may not delegate to any manager or managing agent for the Condominium any of the following powers and duties:

- (a) The power to appoint the officers of the Trust.

- (b) The power to establish, levy and assess the assessments or charges for common expenses.
- (c) The power to adopt, revise, modify and rescind the Condominium rules and regulations.
- (d) The powers and duties described in Sections 5.1.8, 5.1.9, 5.1.10, 5.1.11, 5.1.12, 5.1.13, 5.1.14, 5.1.15 and 5.1.16 above.

5.2 Maintenance and Repair of Units and Limited Common Areas and Facilities.

5.2.1 Each Unit Owner shall be responsible for the proper maintenance, repair and replacement of his Unit and those utility fixtures and installations including heating, hot water and air conditioning equipment and systems serving his Unit which are not part of the Common Areas and Facilities. Unless otherwise modified by written agreement of a Unit Owner with the Trustees or by general policy adopted by the Trustees, each Unit Owner shall also be responsible for the proper maintenance, repair and replacement of (a) any improvement made by Unit Owner in or to his Exclusive Use Area (i.e. that area designated as part of the Exclusive Use Areas appurtenant to his Unit); (b) any other Exclusive Use Area appurtenant to his Unit which may be specifically designated by the Declarant as the responsibility of the Unit Owner to maintain and repair in any amendment to the Master Deed adding future phase(s) to the Condominium pursuant to the provisions of paragraph 16 of the Master Deed. Each Unit Owner shall be responsible for all damage to other Units and/or the Common Areas and Facilities caused by his failure to satisfy his maintenance, repair and/or replacement obligations hereunder.

5.2.2 If the Trustees shall, at any time in their reasonable judgment, determine that a Unit and/or the Exclusive Use Areas appurtenant thereto are in such need of maintenance or repair that the market value of one or more other Units is being adversely affected or that the condition of a Unit and/or the Exclusive Use Areas appurtenant thereto or any fixtures, furnishing, facility or equipment therein are hazardous to any Unit or the occupants thereof or to the Common Areas and Facilities, the Trustees shall in writing request the Unit Owner to perform the needed maintenance, repair or replacement or to correct the hazardous condition, and in case such work shall not have been commenced within fifteen days (or such reasonable shorter period in case of emergency or serious inconvenience as the Trustees shall determine) of such request and thereafter diligently brought to completion, the Trustees shall be entitled to have the work performed for the account of such Unit Owner whose Unit is in need of work and to enter upon and have access to such Unit and its Exclusive Use Areas for such purpose; and the cost of such work shall be added to the common expenses chargeable to such Unit

owner and shall be payable by such Unit owner to the Trustees on demand. The Trustees shall also have the aforesaid rights to perform needed maintenance, repair or replacement work for the account of a Unit Owner in the manner herein provided if any part of the Exclusive Use Areas which the Unit Owner is responsible for maintaining and repairing is, in the reasonable judgment of the Trustees, in such need of maintenance or repair that it is unsightly or in such condition as adversely affects the use and enjoyment by other Unit Owners of their Units or any part of the Common Areas and Facilities.

5.3 Maintenance, Repair and Replacement of Common Areas and Facilities and Assessments of Common Expenses. The Trustees shall be responsible for the proper maintenance, repair and replacement of the Common Areas and Facilities of the Condominium, subject to the provisions of Section 5.2 hereof with respect to certain Exclusive Use Areas and also subject to the provisions of Section 5.6 hereof with respect to repairs and replacements necessitated because of casualty loss or a taking under the powers of eminent domain. A majority of the Trustees or the Manager, or any others who may be designated by the Trustees, may approve payment of vouchers for such work. The expenses of such maintenance, repair and replacement shall be assessed to the Unit Owners as common expenses of the Condominium at such times and in such amounts as provided in Section 5.4 hereof; provided, however, that if the maintenance, repair or replacement of the Common Areas and Facilities is necessitated by the negligence or misuse of a Unit Owner, either directly or by virtue of his failure to properly maintain, repair or replace his Unit and/or the Exclusive Use Areas appurtenant thereto which he is responsible to maintain and repair, the expenses of such maintenance, repair and replacement may be charged to the particular Unit Owner and treated in the same manner as a common expense by the Trustees and it shall be payable to the Trustees on demand.

5.3.1 The Trustees shall have the obligation and duty to treat each of the Buildings which have been included in the Condominium with equal consideration with respect to repairs, replacement, and maintenance of the Common Areas and Facilities of the Condominium, so that each Building shall be equally well maintained.

5.4 Common Expenses, Profits and Funds; Working Capital. The Unit Owners shall be liable for common expenses and entitled to common profits of the Condominium in proportion to their respective percentages of beneficial interest as set forth in Exhibit C to the Master Deed as said Exhibit C may be hereinafter amended as additional phase(s) are added to the Condominium, provided, however, that each Unit Owner shall be solely responsible to the respective utility companies for the cost of utility services billed or assessed in connection with the furnishing of utilities to his Unit which are separately metered. The Trustees may

at any time or times distribute common profits among the Unit Owners in such proportions.

5.4.1 Condominium common expenses shall include an adequate reserve fund for maintenance, repair and replacement of those portions of the Common Areas and Facilities that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments. In addition, a working capital fund shall be established equal to at least a two (2) months' estimated common area charge for each Unit and shall be maintained in a segregated account. The purpose of the working capital fund is to insure that there will be cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Trustees. Amounts paid into the fund are not to be considered as advance payment of regular assessments, and the funds shall not be deemed to be common profits available for distribution. Declarant shall fund the working capital fund for each unsold unit in each phase within sixty (60) days after the sale of the first unit in such phase.

5.4.2 At least thirty days prior to the commencement of each fiscal year of this Trust (and within thirty days after the recording hereof with respect to the portion of a fiscal year then remaining), the Trustees shall estimate the common expenses expected to be incurred during such fiscal year together with a reasonable provision for contingencies and reserves, and for working capital, and after taking into account any undistributed common profits or losses from prior years, shall determine the assessment to be made for such fiscal year. The Trustees shall promptly render statements to the Unit Owners for their respective shares of such assessment, according to their respective percentages of the undivided interest in the Common Areas and Facilities (as set forth in Schedule C to the Master Deed, as the same may be amended), and such statements shall be due and payable in equal monthly installments, unless otherwise provided by the Trustees. In the event that the Trustees shall determine during any fiscal year that the assessment so made is less than the common expenses actually incurred, or in the reasonable opinion of the Trustees likely to be incurred, they shall make a supplemental assessment or assessments and render statements for such assessments in the same manner as is done for annual assessments. The amount of each such payment, together with interest thereon, if not paid when due, at the rate of eighteen percent (18%) per annum or such lesser rate of interest as shall then be the maximum rate permitted by law, shall constitute a lien on the Unit of the Unit Owner assessed, pursuant to the provisions of Section 6 of Chapter 183A.

5.4.3 Each Unit Owner shall be personally liable for those common expenses assessed against his Unit which are due and payable during his period of ownership. No Unit Owner shall be liable for the payment of any part of the common expenses assessed against his Unit which become due and payable subsequent to a sale, transfer or other conveyance by him of such Unit. Any Unit Owner may, subject to the terms and conditions specified in these

By-Laws, provided that his Unit is free and clear of liens and encumbrances other than the statutory lien for unpaid common expenses, convey his Unit together with its Appurtenant Interests (as defined in paragraph 5.24 hereof) to the Trustees and in such event be exempt from common expenses thereafter becoming due. Any lien in favor of the Trust for common expenses or other charges becoming due and payable on or after the date of recording of a first mortgage upon a Unit shall be subordinate to the lien of such mortgage. All fees, late charges, fines or interest which may be levied by the Trustees in connection with unpaid assessments shall be subordinate to any such mortgage to the extent permitted by law. A purchaser of a Unit at a foreclosure sale or any first mortgagee who comes into possession of a Unit pursuant to the remedies provided in the mortgage or by virtue of foreclosing the mortgage or taking a deed (or assignment) in lieu of foreclosure, shall take the property free of any claims for unpaid common expense assessments against the Unit which accrue prior to the time such purchaser or mortgagee comes into possession or takes title to the Unit.

5.4.4 In the event of default by any Unit Owner in paying to the Trustees his common expenses, such Unit Owner shall be obligated to pay all expenses, including attorneys' fees and court costs, incurred by the Trustees in any proceeding brought to collect such unpaid common expenses. The Trustees shall have the right and duty to attempt to recover such common expenses, together with interest thereon, and the expenses of the proceeding, including attorneys' fees, in an action brought against such Unit Owner, or by foreclosure of the lien on such Unit as provided in Section 6 of Chapter 183A.

5.4.5 After a successful action brought by the Trustees to foreclose a lien on a Unit because of unpaid common expenses, a Unit Owner allowed by the Trustees to remain in his Unit for a period of time may, at the option of the Trustees, be required to pay rental for the use of his Unit. Subject to the provisions of Section 5.25 hereof, the Trustees acting on behalf of all Unit Owners, shall have power to purchase such Unit, together with its Appurtenant Interests (as defined in paragraph 5.24 hereof) at the foreclosure sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same (but not to vote the votes appurtenant thereto). A suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

5.4.6 The Trustees shall expend common funds only for common expenses and lawful purposes permitted hereby and by the provisions of Chapter 183A.

5.4.7 Within ten (10) calendar days after receiving an appropriate written request from a Unit Owner, a purchaser of a Unit under a contract of sale or a Unit mortgagee, addressed to the Trustees and payment of a reasonable fee, not to exceed Ten Dollars (\$10.00), the Trustees shall supply a certificate in recordable form stating the amount of any unpaid assessments (in-

cluding interest due thereon and costs of collection associated therewith) for common expenses against the Unit. Upon the recording at the Bristol Northern District Registry of Deeds of such a certificate signed either by the Secretary of the Trust or by a majority of the Trustees who then appear to be serving according to the records of said Registry of Deeds, the Unit involved shall be discharged from any lien for unpaid common expenses which do not appear in said certificate.

## 5.5 Insurance.

5.5.1 Insurance Coverages to be Obtained. The Trustees shall obtain and maintain, to the extent obtainable, the following insurance:

- (a) Fire insurance with extended coverage and vandalism and malicious mischief endorsements insuring all of the buildings and structures in the Condominium, including without limitation all such portions of the interior of such buildings as are for insurance purposes normally deemed to constitute part of the building and are customarily covered by such insurance whether such are part of the Common Areas and Facilities or are part of the Units, such as heating, hot water, air conditioning and other service machinery, interior walls, all finished wall surfaces, bathroom and kitchen cabinets and plumbing and lighting fixtures, except for improvements made by individual Owners which exceed a total value of One Thousand Dollars (\$1,000) and are not reported to the Trustees. Such insurance shall be in an amount at least equal to 100% of the replacement value of the property so covered, shall include coverage for costs of debris removal and demolition and shall be payable to the Trustees as Insurance Trustees for the Unit Owners and their mortgagees, as their respective interests may appear. Also, if sprinkler systems are located in any of the buildings and structures, sprinkler leakage coverage shall be obtained and if steam boilers are in operation in the Condominium, broad form boiler and machinery insurance in limits of at least \$100,000 per accident per location shall be obtained.
- (b) Public liability insurance in such amounts as the Trustees may from time to time determine, but in no event shall the limits of liability under such insurance be less than One Million Dollars (\$1,000,000) for bodily injury (both on a per person and per occurrence basis) and/or property damage, insuring the Trustees, the manager (if any), all persons acting or who may come to act as agents or employees of the Trustees or the manager, and all Unit Owners and other persons entitled to occu-



py any Unit or other portion of the Condominium, and with cross liability coverage with respect to liability claims of any one insured thereunder against any other insured thereunder. This insurance, however, shall not insure against the individual liability of a Unit Owner for negligence occurring within his own Unit.

- (c) Workmen's compensation insurance as required by law.
- (d) A fidelity bond or bonds insuring against the dishonest acts of any Trustee, manager, or agent or employee of the Trust who may be responsible for handling the funds of the Trust. Such bond or bonds shall name the Trust as the insured and shall be in an amount at least equal to (i) the sum in the reserve fund account plus (ii) three (3) months of the current common expense budget of the Condominium, including that portion of the budget allocable to reserve accounts.
- (e) Such other insurance as the Trustees may from time to time determine.

#### 5.5.2 General Insurance Provisions.

- (a) The Trustees shall deal with the insurer or insurance agent in connection with the adjusting of all claims covered by insurance policies provided for under Section 5.5.1 above and shall review with the insurer or insurance agent, at least annually, the coverage under said policies, and shall make any necessary changes in the policies provided for under Section 5.5.1 above in order to meet the coverage requirements thereof.
- (b) The Trustees shall be required to make every effort to see that all policies of insurance shall (1) contain waivers of subrogation by the insurer as to claims against the Trustees, the manager (if any), all Unit Owners and other persons entitled to occupy any Unit or other portion of the Condominium and each of their respective agents and employees, except in case of arson or fraud; (2) contain a waiver of defense of invalidity on account of any act or neglect by any of the Unit Owners or other persons over which the Trustees have "no control" or by failure of the Trustees to comply with any warranty on any portion of the Condominium over which the Trustees have "no control"; (3) in the case of fire and other hazard

insurance, contain a standard "mortgagee clause" commonly acceptable to institutional lenders, (4) provide that such policies may not be cancelled or substantially modified without at least thirty (30) days' advance written notice to all of the insureds thereunder, all mortgagees of Units in the Condominium and any other named insureds; (5) provide that in no event shall the insurance under said policies be brought into contribution with insurance purchased individually by the Unit Owners or their mortgagees; (6) exclude policies obtained by individual Unit Owners from consideration under any "no other insurance" clause; and (7) in the case of fire and other hazard insurance, provide that, where the provisions of the policy give the insurance company the option of restoring the damage in lieu of making a cash settlement, said option may not be exercised without the approval of the Trustees and/or the servicer(s) for the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association or like entity which may have loans with respect to the Condominium, nor may such option be exercised where it would conflict with any applicable requirement of law.

- (c) Each Unit Owner may obtain additional insurance for his own benefit and at his own expense. No such policy shall be written so as to decrease the coverage under any of the policies obtained by the Trustees, and each Unit Owner hereby assigns to the Trustees the proceeds of any such policy to the extent that any such policy does in fact result in a decrease in such coverage, said proceeds to be applied pursuant to the terms hereof as if produced by such coverage. Copies of all such policies (except policies covering only personal property owned or supplied by individual Unit Owners) shall be filed with the Trustees.
- (d) Each Unit Owner shall obtain insurance for his own benefit and at his own expense insuring all personal property presently or hereafter located in his Unit and all improvements to his Unit which exceed a total value of One Thousand Dollars (\$1,000) and which are not reported in writing to the Trustees. Each such policy of insurance obtained by a Unit Owner must contain waivers of subrogation by the insurer as to claims against the Trustees, the manager (if any), all Unit Owners and other persons entitled to occupy any Unit or other portion of the Condominium and each of their respective agents and employees.

- (e) Each Unit Owner, at the time of the commencement of construction of improvements to his Unit which exceed a total value of One Thousand Dollars (\$1,000), shall notify the Trustees of such construction, and upon receipt of such notice, the Trustees shall notify the insurer under any policy obtained pursuant to Section 5.5.1 hereof, of any such improvements, and shall increase the coverage under such policies accordingly. Unless otherwise determined by the Trustees, the cost of such additional coverage on account of a Unit Owner's improvements shall constitute a common expense attributable to the Unit involved and shall be payable to the Trustees on demand at such intervals as the Trustees shall establish, so that they shall have the money available to pay to the insurance company(ies).

5.5.3 The Trustees, as Insurance Trustees, shall collect and receive all casualty loss insurance proceeds and shall hold, use, apply and disburse the same in accordance with applicable provisions of Section 5.6 hereof. With respect to losses covered by such insurance which affect portions or elements of a Unit, or of more than one Unit to substantially the same or to different extents, the proceeds relating thereto shall be used, applied and disbursed by the Trustees in a fair and equitable manner.

5.5.4 The cost of all such insurance obtained and maintained by the Trustees pursuant to provisions of this Section 5.5 shall be a common expense.

5.5.5 Certificates of insurance with proper mortgagee endorsements, when requested, shall be issued to each Unit Owner and his mortgagee(s).

5.5.6 Notwithstanding anything in this Trust and By-Laws to the contrary, if a Unit Owner by virtue of any activities he conducts in his Unit causes an increase in the premiums for any insurance obtained by the Trustees, he shall pay the amount of all such increases to the Trustees on demand as an additional common expense attributable to his Unit.

5.5.7 Each Unit Owner hereby waives, discharges and releases all claims and rights of recovery against the Trustees, the manager (if any), all Unit Owners and other persons entitled to occupy any Unit or other portion of the Condominium and each of their respective agents and employees on account of any loss or damage, whether to person or property, insured against under the policies of insurance obtained by such Unit Owner for his own benefit. This waiver shall constitute a waiver of subrogation for purposes of such policies.

5.6 Rebuilding, Restoration and Condemnation.

5.6.1 In the event of any casualty loss to the Common Areas and Facilities, the Trustees shall determine in their reasonable discretion whether or not such loss exceeds ten (10%) percent of the value of the Condominium immediately prior to the casualty, and shall notify all Unit Owners of such determination.

- (a) If such loss as so determined does not exceed ten (10%) percent of such value, the Trustees, acting as Insurance Trustees, shall promptly adjust and collect the loss, arrange for the prompt repair or restoration of the damaged areas, and disburse the proceeds of all insurance policies in payment of all costs and expenses incurred in connection with such repair or restoration in appropriate progress payments and with appropriate retainage.
- (b) If such loss as so determined exceeds ten percent (10%) of such value and if within one hundred twenty (120) days after the date of such loss, seventy-five percent (75%) or more of the Unit Owners do not agree to proceed with repair or restoration, each Unit Owner's proportionate share of the insurance proceeds with respect to the Common Areas and Facilities based upon his Unit's respective undivided ownership interest in said Common Areas and Facilities, together with the portion of the insurance proceeds allocated to any Unit as a result of a loss to such Unit and/or its appurtenant Exclusive Use Areas due to the casualty, shall, to the extent permitted by law, be divided among the Unit Owners and shall be paid first to the holders of the first mortgages on their Units, if any, up to, but not in excess of, the amounts secured thereby, and thereafter to the Unit Owners, and the Condominium shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of a partition sale together with any common funds of the Trust (adjusted for insurance proceeds paid or payable as aforesaid) shall be divided among the Unit Owners in proportion to their Units' undivided interests in the Common Areas and Facilities and shall be paid first to the holders of the first mortgages on their Units, if any, to the extent of the amounts secured thereby, and thereafter to the Unit Owners. If, on the other hand, seventy-five percent (75%) or more of the Unit Owners agree to proceed with the necessary repair or restoration,

the Trustees shall arrange for the repair and restoration of the damaged areas, and disburse the proceeds of all insurance policies in payment of all costs and expenses incurred in connection therewith in appropriate progress payments and with appropriate retainage.

5.6.2 In the event that the total cost of repair or restoration as estimated on the basis of an independent appraisal, or as determined during the course of repair or restoration, exceeds the total sum of available insurance proceeds, then the Trustees shall assess all the Unit Owners, as a common expense, the amount in excess of available insurance proceeds necessary to cover the cost of the repair and restoration; provided, however, that the cost of repairing or restoring improvements to a Unit, which improvements exceeded a value of \$1,000 when they were made (said value to be determined by the reasonable judgment of the Trustees) and were not reported to the Trustees as required by Section 5.5.2(e) hereof, shall be borne exclusively by the Owner of the Unit involved; and provided further that if the casualty loss exceeds ten percent (10%) of the value of the Condominium as described in Section 5.6.1(b) hereof and if such excess cost of repairs over available insurance proceeds exceeds ten percent (10%) of the value of the Condominium prior to the casualty, any Unit Owner not agreeing as provided in said Section 5.6.1(b) to proceed with the repair and restoration may apply to the Bristol County Superior Court, on such notice to the Trustees as the Court shall direct, for an order directing the purchase of his Unit by the Trustees at the fair market value thereof as approved by the Court. The cost of any such purchase shall be a common expense.

5.6.3 The Trustees may perform emergency work essential to the preservation and safety of the Condominium or the safety of persons, or required to avoid the suspension of any essential service to the Condominium, without having first adjusted the loss or obtained the proceeds of insurance.

5.6.4 If there shall have been repair or restoration pursuant to the foregoing and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds, if any, shall be divided into separate shares for the Trust and the Unit Owners of the damaged Units, in proportion to the respective costs of repair or restoration of the damaged portions of the Common Areas and Facilities and of each damaged Unit, and shall then be paid over to the Trustees and/or each such Unit Owner entitled to a share.

5.6.5 In the event of a taking of all or part of the Condominium under the powers of eminent domain, the provisions of Sections 5.6.1 through 5.6.4 hereof shall apply as if the taking were a casualty loss, with the proceeds of the taking award being

treated in the same manner as would the proceeds of an insurance settlement. Provided, however, if the taking award specifically allocates certain damages as being attributable to the Common Areas and Facilities and/or particular Units or their appurtenant Exclusive Use Areas, such allocations shall be used in allocating the proceeds pursuant to the provisions of said Sections 5.6.1 through 5.6.4.

#### 5.7 Improvements To Common Areas and Facilities.

5.7.1 If and whenever the Trustees shall propose to make any improvement to the Common Areas and Facilities of the Condominium, or shall be requested in writing by twenty-five percent or more of the Unit Owners to make any such improvement, the Trustees shall submit to all Unit Owners (a) a form of agreement (which may be in several counterparts) specifying the improvement or improvements proposed to be made and the estimated cost thereof, and authorizing the Trustees to proceed to make the same; and (b) a copy of the provisions of Section 18 of Chapter 183A. Notwithstanding the foregoing, so long as the Declarant has any beneficial interest hereunder, the Trustees shall not be required to submit the aforementioned documents to the Unit Owners unless the request for improvements is also joined in by the Declarant. Upon whichever of the following shall first occur, namely, (a) the receipt by the Trustees of such agreement signed by fifty-one percent of the Unit Owners, or (b) the expiration of six (6) months after such agreement was first submitted to the Unit Owners, the Trustees shall notify all Unit Owners of the aggregate percentage of Unit Owners who have then signed such agreement. If the percentage of agreeing Unit Owners equals or exceeds seventy-five percent, then the Trustees shall proceed to make the improvement or improvements specified in such agreement and shall charge the costs thereof as a common expense, provided, however, that if such improvement costs in excess of ten percent of the then value of the Condominium, any Unit Owner not agreeing to the improvement may apply to the Bristol County Superior Court, on such notice to the Trustees as the Court shall direct, for an order directing the purchase of his Unit by the Trustees at the fair market value thereof as approved by the court. The cost of any such purchase shall be a common expense. If the percentage of agreeing Unit Owners equals or exceeds fifty percent, but is less than seventy-five percent, the Trustees may, with the agreement of those Unit Owners who wish the improvement to be made, proceed to make the improvement and charge the cost thereof as a common expense to such agreeing Owners only.

5.7.2 If and whenever any Unit Owner shall propose to make an improvement to or affecting the Common Areas and Facilities of the Condominium at such Unit Owner's own expense, and the Trustees determine in their reasonable discretion that such improvement would be consistent and compatible with the provisions and intent of the Master Deed, the Trustees may, but shall not be obligated

to, authorize such improvement to be made at the sole expense of the Unit Owner proposing the same, without the consent or approval of other Unit Owners, subject to such contractual undertakings of the Unit Owner proposing such improvement as the Trustees in their reasonable discretion deem to be necessary or desirable in the circumstances.

5.8 Determination of Trustees Subject to Arbitration. Notwithstanding anything in Section 5.6 or Section 5.7 contained, (a) in the event that any Unit Owner or Owners shall by notice in writing to the Trustees dissent from any determination of the Trustees with respect to the value of the Condominium or of any Unit or Units or any other determination or action of the Trustees under Section 5.6 or Section 5.7, and such dispute shall not be resolved within thirty (30) days after such notice, then either the Trustees or the dissenting Unit Owner or Owners may submit the matter to arbitration, and for that purpose, one arbitrator shall be designated by the Trustees, one by the dissenting Unit Owner or Owners, and a third by the two arbitrators so designated and such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association then obtaining; and (b) the Trustees shall not in any event be obligated to proceed with any repair, rebuilding or restoration, or any improvement, unless and until they have received funds in an amount equal to the estimate of the Trustees of all costs associated therewith.

5.9 Design Review and Procedures.

5.9.1 No Unit Owner shall make any addition, alteration or improvement in or to his Unit which could affect the structural integrity of the Building(s) or cause any dislocation or impairment of or interruption to the Common Areas and Facilities, unless the same shall have been approved by the Trustees in accordance with the provisions of this Section 5.9 and shall conform to the conditions set forth in this Section 5.9. Also, no Unit Owner shall undertake any work or activity described in subparagraphs 9(b) and 9(c) of the Master Deed or in Section 5.7.2 of this Trust and Bylaws, unless the same shall have been approved by the Trustees in accordance with the provisions of this Section 5.9 and shall conform to the conditions set forth in this Section 5.9.

5.9.2 The following procedures and conditions shall apply with respect to all additions, alterations, improvements, structures, installations or other work or activities (hereinafter individually and collectively referred to as the "Proposed Work") which are subject to the approval procedures and conditions of this Section 5.9:

(a) Prior to the commencement of the Proposed Work:

(i) The Unit Owner shall have submitted plans and specifications for the Proposed Work

to the Trustees for their approval pursuant to the provisions of this Section 5.9. Such plans and specifications shall be in such detail as the Trustees may reasonably request, and shall be prepared and signed by a Registered Architect, Registered Professional Engineer and/or Registered Land Surveyor satisfactory to the Trustees, if so requested by Trustees;

- (ii) The Unit Owner shall have submitted to the Trustees such supplemental information, in addition to the said plans and specifications, as the Trustees shall reasonably request in order to fully evaluate the proposed work;
- (iii) The Trustees shall have given their written approval of the Proposed Work;
- (iv) The Unit Owner involved and/or his contractor(s) shall have obtained and delivered to the Trustees such policies of casualty, public liability, workman's compensation and other insurance insuring the Trustees, the Unit Owners and such other persons as the Trustees may designate against such risks of loss and in such amounts of coverage as the Trustees shall reasonably determine to be appropriate under the circumstances. Such policies of insurance may include a "Builder's All-Risk" policy, so-called; and
- (v) The Unit Owner involved shall have obtained and delivered to the Trustees such security running to the benefit of the Trust, as the Trustees may reasonably require, so as to assure that the Proposed Work is duly, satisfactorily and expeditiously completed. Such security may take one or more of the following forms, as approved by the Trustees, who shall determine whether the amount, form and substance thereof is satisfactory:
  - a. Deposits of cash or negotiable securities.
  - b. Letters of Credit.
  - c. Performance bonds and/or guarantees.



- d. Such other types of security as the Trustees shall determine to be adequate and appropriate for the purpose.
- (b) The Proposed Work shall be performed expeditiously in a good and workmanlike manner in full compliance with all applicable Federal, State and local laws, ordinances, codes, bylaws and rules and regulations, including those relating to zoning, building, health, safety and sanitation; and all necessary permits required for the work, including a building permit (if required by law), shall be duly obtained and complied with.
- (c) The Proposed Work shall also be performed in full compliance with all conditions and requirements imposed by the approval(s) therefor granted by the Trustees.
- (d) No materials, supplies, equipment, tools or other items associated with the Proposed Work shall be stored or left overnight in or upon any of the Common Areas and Facilities without the prior written authorization of the Trustees.

5.9.4 By reviewing and approving a Unit Owner's Proposed Work, the Trustees are not undertaking nor shall they thereby assume any liability or responsibility for the structural or other soundness of the Proposed Work; and each Unit Owner for himself, his family and all others claiming by, through or under him, including all guests, lessees, tenants, licensees and other occupants of his Unit, hereby irrevocably releases each of the Trustees from any and all liability on account of any errors or defects in or failures or omissions with respect to the plans and specifications for and/or construction implementation of the Proposed Work. In addition, each Unit Owner who performs the Proposed Work or has the Proposed Work performed for him agrees to indemnify, defend and hold harmless, jointly and severally, the Trustees and all other Unit Owners from and against all loss, liability, damage and expense, including court costs and attorneys' fees, resulting from or arising in connection with any loss or damage to property or injury to person, actual or claimed, on account of the Proposed Work.

5.10 Pets. Dogs, cats, birds or other animals may not be kept in any Unit without the prior written consent of the Trustees, and if permitted, are subject to provisions of the Condominium Rules referenced below.

5.11 Rules, Regulations, Restrictions and Requirements. The Trustees shall have the right (which right shall not be delegated)

at any time and from time to time to adopt, amend and rescind administrative rules and regulations governing the details of the operation and use of the Units and the Common Areas and Facilities (the "Condominium Rules"). The restrictions on and requirements respecting the use and maintenance of the Units and the use of the Common Areas and Facilities are to be consistent with provisions of the Master Deed and this Trust and By-Laws, and are designed to prevent unreasonable interference with the use by the Unit Owners of their Units and of the Common Areas and Facilities. The Rules and Regulations as of the date hereof are attached hereto as Exhibit A and are incorporated herein by this reference. The Trustees shall have the power to enforce the Master Deed, these By-Laws and the rules and regulations adopted pursuant hereto, and shall have the power to levy fines against the Unit Owners for violations thereof. No fine may exceed \$20 for any one violation, but each day a violation continues after notice shall be considered a separate violation. Fines may be enforced against the Unit Owner or Unit Owners involved as common expenses owed by the particular Unit Owner or Unit Owners. In the case persistent violation of the rules and regulations by a Unit Owner, the Trustees shall have the power to require such Unit Owner to post a bond to secure adherence to the rules and regulations and shall have the right to bring an action against such Unit owner to enjoin him from such course of conduct. The Unit owner shall be responsible for all reasonable costs and expenses incurred by the parties in connection with any action so taken.

5.12 Manager. The Trustees may hire or appoint a manager or managing agent to perform such duties in the administration, management and operation of the Condominium, including the incurring of expenses, the making of disbursements and keeping of accounts, as the Trustees shall from time to time determine. However, notwithstanding the appointment of such a manager, the Trustees shall retain ultimate control over the administration, management and operation of the Condominium, and they may not delegate to such manager those powers and duties specified under Section 5.1 hereof not to be delegable. Any agreement whereby the Declarant or a related entity is manager of the Condominium shall be terminable without cause and without incurring payment of a termination fee on ninety (90) days (or less) written notice. The term of such an agreement shall not exceed three (3) years.

### 5.13 Meetings.

5.13.1 The Trustees shall meet annually on the date of the annual meeting of the Unit Owners and at such meeting shall elect the Chairman, Treasurer and Secretary. Other meetings of the Trustees may be called by the Chairman and shall be called upon the written request of a majority of the Trustees, provided, however, that written notice of each meeting stating the place, day and hour thereof shall be given at least three days before such meeting to each of the Trustees.

5.13.2 There shall be an annual meeting of the Unit Owners on the last Wednesday in March of each year, commencing with the year 1987, at 7:30 p.m. at the Condominium or at such other reasonable place and time as may be designated by the Trustees by written notice given to the Unit Owners at least seven days prior to the date so designated. Special meetings of the Unit Owners may be called at any time by the Trustees, and special meetings of the Unit Owners shall be called by the Trustees upon the written request of Unit Owners holding at least 33 1/3 percent of the beneficial interest. Written notice of any such special meeting designating the place, day and hour thereof shall be given by the Trustees to the Unit Owners at least fourteen days prior to the date so designated. At the annual meeting of the Unit Owners, the Trustees shall submit reports of the management and finances of the Condominium. Whenever at any meeting the Trustees propose to submit to the Unit Owners any matter with respect to which approval of or action by the Unit Owners is necessary, the notice of such meeting shall so state and reasonably specify such matter. The presence in person or by proxy of the holders of more than fifty (50%) percent of the total voting power of the Unit Owners hereunder shall be necessary to constitute a quorum at all meetings of the Unit Owners for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the Unit Owners, the Unit Owners present in person or represented by proxy shall have the power to adjourn the meeting from time to time, without notice, other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which could have been transacted at the meeting as originally noticed. Notwithstanding the foregoing, no such subsequent meeting shall be held more than sixty (60) days following the date of the originally called meeting. Unless a greater vote of the Unit Owners shall be required by the provisions of Chapter 183A, the Master Deed or this Trust, a vote of more than fifty percent (50%) of the voting power present in person or by proxy at any meeting of the Unit Owners at which a quorum is present shall be sufficient to transact the business of the Unit Owners, provided always that the Unit Owners may not act to rescind, reverse, modify or amend any decision of or action taken by the Trustees pursuant to their authority under this Trust, nor may the Unit Owners undertake to exercise in any manner the powers or functions of the Trustees hereunder, unless such action by the Unit Owners is authorized by the affirmative vote of at least two-thirds of the total voting power of the Unit Owners.

5.14 Notices to Unit Owners. Every notice to any Unit Owner required or permitted under the provisions hereof or which may be ordered in any judicial proceeding shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one or more of the Trustees to such Unit Owner by leaving such notice with him at his Unit in the Condominium or by mailing it,

postage prepaid, and addressed to such Unit Owner at such address as may appear upon the records of the Trustees.

5.15 Record Date. The Trustees may, for a period not in excess of thirty (30) days prior to a date of any meeting of the Unit Owners, fix in advance a time as a record date for determining the Unit Owners having a right to notice of and to vote at such meeting, and in such case only Unit Owners of record on such record date shall have such rights, notwithstanding any transfer by a Unit Owner of his interest in his Unit after the record date. If no record date is fixed, the record date for the aforementioned purposes shall be 5:00 p.m. on the day next preceding the day on which notice of a meeting of the Unit Owners is given.

5.16 Order of Business. The order of business at all meetings of Unit Owners shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Report of the Trustees.
- (f) Reports of committees.
- (g) Election of inspectors of election (when so required).
- (h) Election of Trustees (when required).
- (i) Unfinished business.
- (j) New business.

5.17 Voting at Meetings. At all meetings of Unit Owners, each Owner may vote in person or by proxy. All proxies shall be (a) in writing signed by or on behalf of all the Owners of the Unit involved, (b) dated and (c) filed with the Secretary of the Trust. No proxy shall be valid beyond the date of the final adjournment of the first meeting of Owners, whether annual or special, held on or after the date thereof, and every proxy shall automatically terminate upon sale by the Owner of his Unit. A proxy may be revoked by notice given by any Owner of the Unit involved to the person presiding at the meeting at which it is to be cast. Any proxy which purports to be revocable without such notice shall be void.

5.18 Officers.

5.18.1 Designation. The officers of the Trust shall be a Chairman, a Treasurer, a Secretary and such other officers as the Trustees from time to time may determine. If the number of Trustees shall be less than three, any one Trustee may hold more than one office.

5.18.2 Election and Qualification. The officers shall be selected by vote of a majority of the Trustees at their regular meeting, or if such regular meeting is not held or in the event of resignation, removal or decease of an officer, at any special meeting of the Trustees. All officers shall be Trustees.

5.18.3 Term of Office. All officers shall hold office for a term of one year and until their successors are elected and qualified.

5.18.4 Resignation and Removal. Any officer may resign at any time by written notice to the Chairman or the Secretary which notice shall take effect on the date of receipt of such notice or at any later date specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any officer may be removed at any time, with or without cause, by a vote of a majority of the Trustees.

5.18.5 Vacancies. A vacancy in any office may be filled in the manner prescribed in Section 5.18.2 hereof. The officer selected to fill such a vacancy shall serve for the remainder of the term of the officer he replaces.

5.18.6 Chairman. The Chairman shall preside at all meetings of the Trustees and of the Unit Owners, and shall have such other powers and perform such other duties as are provided in the Master Deed or in this Trust and By-Laws or as may be designated by the Trustees or the Unit Owners from time to time or as are ordinarily exercised by the presiding officer of a corporation.

5.18.7 Secretary. The Secretary shall record the votes and keep the minutes of all meetings of the Trustees and of the Unit Owners in a book or books to be kept for the purpose. He shall keep the records and documents of the Trustees and of the Unit Owners. He shall record in a book kept for that purpose the names of all Unit Owners, together with their addresses as registered by such Unit Owners and shall have such other powers and duties as may be delegated to him by the Trustees or the Unit Owners from time to time.

5.18.8 Treasurer. The Treasurer shall be responsible for the funds of the Trust and shall be responsible for keeping or having kept full and accurate financial records and books of

account showing all receipts and disbursements of the Trust and any other financial data required by the Trustees or by the Unit Owners. He shall be responsible for the deposit of all funds in the name of the Trustees in such depositaries as may be designated by the Trustees from time to time and shall have such other powers and duties as may be delegated to him by the Trustees or the Unit Owners from time to time. The Trustees may delegate such of the Treasurer's powers and duties to the manager or managing agent as they deem to be advisable.

5.19 Inspection of Books, Report to Unit Owners. Books, accounts and records of the Trustees shall be open to inspection to any one or more of the Trustees and the Unit Owners and first mortgage holders of the Units at all reasonable times. The Trustees shall, as soon as reasonably possible after the close of each fiscal year, or more often if convenient to them, submit to the Unit Owners a report of the operations of the Trustees for such year which shall include financial statements in such form and in such detail as required by FNMA and FHLMC, and as the Trustees shall deem proper.

5.20 Checks, Notes, Drafts and Other Instruments. Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust may be signed by any two Trustees, or by any person or persons to whom such power may at any time or from time to time be delegated by not less than a majority of the Trustees.

5.21 Seal. The Trustees may adopt a seal circular in form bearing an inscription of the name of this Trust as set forth in ARTICLE I, but such seal may be altered by the Trustees at their pleasure, and the Trustees may, at any time or from time to time, at their option, adopt a common or wafer seal which shall be valid for all purposes.

5.22 Fiscal Year. The fiscal year of the Trust shall be the year ending with the last day of December or such other date as may from time to time be determined by the Trustees.

5.23 Removal from Condominium Law. Until such time as the Declarant has no beneficial interest hereunder, Unit Owners holding one hundred percent (100%) of the total voting power of the Unit Owners, together with consent in writing of the holders of all liens on the Units, shall be required to approve the removal of the Condominium described herein from the provisions of Chapter 183A, and thereafter the provisions of Section 19 of said Chapter 183A shall apply; provided, however, if during such time the Declarant holds a portion of the beneficial interest hereunder, the Declarant approves of such removal, the approval of Unit Owners holding at least seventy-five percent (75%) of the total voting power of the Unit Owners hereunder, together with consent in writing of the holders of all liens on the Units, shall also be required for such removal, all as provided in said Section 19 of Chapter 183A.

5.24 Sale or Lease of Units. Subject to such restrictions as may otherwise be set forth in the Master Deed or in this Trust and Bylaws, a Unit Owner may assign, lease, sell or otherwise transfer all of his interest in his Unit(s), together with the undivided interest in the Common Areas and Facilities appurtenant thereto.

5.25 Acquisition of Units by the Trustees. With the approval of Unit Owners holding at least seventy-five percent of the total voting power of the Unit Owners under this Trust, the Trustees may acquire a Unit using common funds, or if such funds are insufficient, the Trustees may levy an assessment against each Unit Owner in proportion to his percentage of beneficial interest as set forth in Exhibit C to the Master Deed, as amended, as a common expense, or the Trustees, in their discretion, may borrow money to finance the acquisition of such Unit, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the Unit, together with the Appurtenant Interests, so to be acquired by the Trustees.

5.26 Water and Sewer Use Charges. Water charges for water supplied to a Unit through a separate meter for that Unit shall be paid directly by the Unit Owner to the billing authority. Water charges for water supplied to Units in a given Building through a common building meter shall be shared equally by each Unit in the Building, and shall be paid to the Trustees by the Unit Owners in such building as a common expense, upon the Trustee's rendering a bill to said Unit Owners therefor; provided, however, that if the Trustees determine, in the exercise of reasonable discretion after investigating the situation, that one or more Units in a commonly metered building are using disproportionate amounts of water, the Trustees may allocate the water charges for such building on a basis which more fairly reflects such disproportionality of use. A Unit Owner may, at his own expense, install a separate water meter and withdraw from such common metering. Water charges for water supplied to the Common Areas and Facilities, other than to the Buildings housing Units, shall be paid by the Trustees as a common expense of the Condominium. Sewer use charges which are based upon water usage shall be assessed and paid for in the same manner as herein provided for water charges.

#### ARTICLE VI - Rights and Obligations of Third Parties Dealing with the Trustees

6.1 Dealing with Trustees. No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record in the Bristol Northern District Registry of Deeds need inquire further as to the persons who are then Trustees hereunder. The receipts of the Trustees or any one or more of them for monies or things paid or delivered to them or him shall be effectual

discharges therefrom to the persons paying or delivering the same, and no person from whom the Trustees or any one or more of them shall receive any money, property or other credit shall be required to see to the application thereof. No purchaser, mortgagee, lender or other person dealing with the Trustee or with any real or personal property which then is or formerly was trust property shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, or otherwise as to the purpose or regularity of any of the acts of the Trustees or any one or more of them purporting to be done in pursuance of any of the provisions or powers herein contained.

6.2 Recourse Against Trustees. No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees or by reason of anything done or omitted to be done by or on behalf of them or any of them against the Trustees individually, or against any such agent or employee or against any beneficiary either directly or indirectly, by legal or equitable proceeding, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with or having any claim against the Trustees, shall look only to the trust property for payment under such contract or claim or for the payment of any debt, damage, judgment or decree or of any money that may otherwise become due or payable to them from the Trustees so that neither the Trustees nor the beneficiaries, present or future, shall be personally liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Unit Owners under the provisions of Chapter 183A.

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

6.4 Certifications by Trustees for Recording. All persons dealing in any manner whatsoever with the Trustees, the trust property or any beneficiary hereunder shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be recorded with the Bristol Northern District Registry of Deeds. Any certificate executed by the Secretary of this Trust setting forth the names of the Trustees hereunder, when recorded with said Registry of Deeds, shall be conclusive evidence of the identity of those persons who are serving as Trustees in favor of all third persons, including the Trustees, acting in reliance thereon. Any certificate signed by a majority of the Trustees in office at the time,



setting forth as facts any matters affecting the Trust, including statements as to who are the beneficiaries, as to what action has been taken by the beneficiaries, and as to matters determining the authority of the Trustees to do any act, when duly acknowledged and recorded with said Registry of Deeds shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees, acting in reliance thereon.

## ARTICLE VII - Amendments and Termination

7.1 Amendment of Trust. The Trustees, with the consent in writing of Owners of Units holding at least seventy-five percent of the total voting power of the Unit Owners, may at any time and from time to time, amend, alter, add to or change this Declaration of Trust in any manner or to any extent, the Trustees first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided always, however, that no such amendment, alteration, addition or change shall be valid or effective if:

7.1.1 It would alter, or in any manner or to any extent whatsoever, modify or affect the percentage of beneficial interest of any Unit Owner hereunder so as to be different than the percentage of the undivided ownership interest in the Common Areas and Facilities which is appurtenant to such Owner's Unit as set forth in the Master Deed, as said Master Deed may be hereafter amended to add new phase(s) to the Condominium pursuant to the provisions of paragraph 16 of the Master Deed; or

7.1.2 It would render this Trust contrary to or inconsistent with the Master Deed or any requirements or provisions of Chapter 183A.

7.1.3 It would cause provisions of this Trust to fail to comply with the requirements of the Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC") with respect to condominium mortgage loans.

7.2 Necessity for Recording Amendments, Alterations, Additions or Changes. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this ARTICLE VII shall become effective upon the recording with the Bristol Northern District Registry of Deeds of an instrument of amendment, alteration, addition or change, as the case may be, signed, sealed and acknowledged in the manner required for the acknowledgment of deeds by a majority of the Trustees, setting forth in full the amendment, alteration, addition or change and reciting the consent of the Unit Owners herein required to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with the prerequi-

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

7.3 Termination. The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of Chapter 183A in accordance with the procedure therefor set forth in Section 19 of said law, as said Section 19 may be modified by Section 5.23 of this Trust.

7.4 Disposition of Property on Termination. Upon the termination of this Trust, the Trustees may, subject to and in accordance with provisions of Chapter 183A, sell and convert into money the whole of the trust property, or any part or parts thereof, and, after paying or retiring all known liabilities and obligations of the Trust and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind (at valuations made by them which shall be conclusive) all other property then held by them in trust hereunder to the Unit Owners as tenants in common, according to their respective percentages of beneficial interest hereunder. In making any sale under this provision, the Trustees shall have power to sell or vary any contract of sale and to do all things, including the execution and delivery of instruments, as may by their performance thereof be shown to be in their judgment necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their possession or ownership, even though all times herein fixed for distribution of trust property may have passed.

#### ARTICLE VIII - Construction and Interpretation; Waiver

8.1 Terms. In the construction hereof, whether or not so expressed, words used in the singular or in the plural respectively include both the plural and singular, words denoting males include females and words denoting persons include individuals, firms, associations, companies (joint stock or otherwise), trust and corporations unless a contrary intention is to be inferred from or required by the subject matter or context. The cover, title, index, headings of different parts hereof and the marginal notes, if any, are inserted only for the convenience of reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation or effect hereof. All the trusts, powers and provisions herein contained shall take effect and be construed according to the law of the Commonwealth of Massachusetts.

8.2 Waiver. No restriction, condition, obligation or provision contained in this Trust or By-Laws shall be deemed to have

been abrogated or waived by reason of any failure to enforce the same.

8.3 Conflicts. If any provision of this Trust shall be invalid or shall conflict with Chapter 183A, as amended, of the General Laws of Massachusetts, or if any provision of this Trust conflicts with any provision of the Master Deed, then the following rules of construction shall be used:

8.3.1 In the event of a conflict between the Trust and said Chapter 183A, as amended, the provisions of Chapter 183A shall control;

8.3.2 In the event of a conflict between any numerical voting requirements for action set forth in the Master Deed and any such requirements set forth herein, the provisions requiring the greater percentage or fraction for action to be taken or avoided shall control;

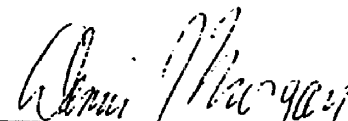
8.3.3 In the event of any conflict other than as set forth in Paragraph 8.3.2 of this Section between the provisions of the Master Deed and any other provision hereof, the provisions of the Master Deed shall control.

8.3.4 In the event of any conflict between the requirements set forth in the Master Deed or this Trust and the requirements of Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA"), the more stringent of the requirements of FHLMC or FNMA shall control, to the extent that such requirements do not otherwise conflict with applicable law.

8.4 Severability. In the event that any provision of this Trust shall be determined to be invalid or unenforceable in any respect, it shall be interpreted and construed to be enforceable to the extent and in such situations as may be permitted by applicable law, and in any event, the partial or total unenforceability of such provision shall not affect in any manner the validity, enforceability or effect of the remainder of this Trust; and, in such event, all of the other provisions of this Trust shall continue in full force and effect as if such invalid provision had never been included herein.

IN WITNESS WHEREOF, Frederick O'Neill and Dennis J. Morgan have hereunto set their hands and seals the day and year first above written.

  
 \_\_\_\_\_  
 Frederick O'Neill

  
 \_\_\_\_\_  
 Dennis J. Morgan

COMMONWEALTH OF MASSACHUSETTS

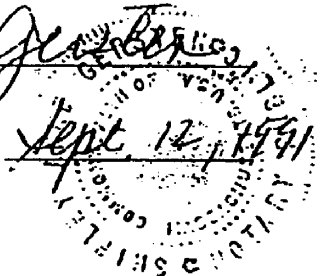
SUFFOLK, ss.

November 12 1986

Then personally appeared the above-named Frederick O'Neill and Dennis J. Morgan and acknowledged the foregoing instrument to be their free act and deed before me,

*Suzley Anne G...*  
 Notary Public

My commission expires: *Sept. 12, 1991*



\*\*\* Electronic Recording \*\*\*  
Doc# 00060063  
Bk: 27488 Pg: 46 Page: 1 of 9  
Recorded: 11/02/2021 02:13 PM  
ATTEST: Barry J. Amaral, Register  
Bristol County North Registry of Deeds

## **CRANE'S LANDING CONDOMINIUM**

### **Amendment to the Rules and Regulations**

#### **Anti-Litigation Resolution**

The undersigned, being a majority of the Board of Trustees of the Crane's Landing Condominium Trust ("the "Board") under Declaration of Trust dated November 12, 1986, and recorded with the Bristol County Northern District Registry of Deeds in Book 3213, Page 262, which Trust is the organization of unit owners of the Crane's Landing Condominium (the "Condominium"), do hereby adopt the following administrative resolution as an amendment to the Association's rules and regulations pursuant to Article V, Section 5.11 of the Declaration of Trust, which Rules and Regulations are recorded with said Registry in Book 6532, Page 84:

WHEREAS, the Board is empowered to oversee the administration and operation of the Condominium in accordance with the terms and provisions of its constituent documents, which operation includes the authority to sue and be sued;

WHEREAS, the Board is duly elected by the unit owners to oversee and govern the condominium;

WHEREAS, the Massachusetts Supreme Judicial Court in Cigal v. Leader Dev. Corp., 408 Mass. 212 (1990) and the Massachusetts Appeals Court in Cote v. Levine 52 Mass.App.Ct. 435 (2001) have analogized condominiums to corporations and have held that certain wrongs complained of by condominium unit owners, to wit, where the management of an association of condominium unit owners has failed or refused to redress a wrong committed against that association, as opposed to the members of the association, may only be advanced in the form of derivative shareholder lawsuits pursuant to Mass. R. Civ. P. 23.1.;

WHEREAS, shareholder derivative lawsuits are often frivolous and improperly commenced and can be especially divisive in the condominium setting (as opposed to the corporation setting);

WHEREAS, shareholder derivative lawsuits in the condominium setting are typically

expensive to defend and often have adverse impacts on condominium insurance, both in terms of coverage and defense obligations, as well as increased premiums and cancelled or non-renewed policies;

WHEREAS, the Massachusetts Legislature has recently enacted significant amendments to the Massachusetts Business Corporations Statute, M.G.L. c.156D;

WHEREAS, the Massachusetts Business Corporations Statute as amended contains newly added provisions, namely M.G.L. c. 156D sections 7.40 through 7.46 which provide corporations and corporate boards of directors with significant protections aimed at preventing and deterring frivolous shareholder derivative lawsuits and providing and establishing a set of rules and procedures for maintaining and proceeding with shareholder derivative lawsuits in addition to that which is otherwise provided or required by Mass. R. Civ. P. 23.1;

WHEREAS, the Massachusetts Business Corporations Statute and the protections relative to shareholder derivative lawsuits applies strictly to corporations and corporate boards and not to condominiums or condominium boards;

WHEREAS, where the Massachusetts Supreme Judicial and Appeals Courts have held that condominiums and condominium boards are analogous to corporations and corporate boards in this respect, condominiums and condominium boards should be afforded the same legal protections and defenses from frivolous derivative shareholder suits that are afforded to and given to Massachusetts business corporations;

WHEREAS, the Board seeks to ensure that the Condominium is afforded the same protections relative to defending frivolous shareholder derivative lawsuits that are afforded to Massachusetts Business Corporations; and

WHEREAS, the Board hereby resolves to adopt the protections afforded to corporations and corporate boards set forth at M.G.L. c. 156D sections 7.40 through 7.46, with certain modifications made to apply the language of the same to condominiums, as set forth below;

NOW, THEREFORE, BE IT RESOLVED, that the following rules, regulations and procedures shall be applicable:

1. **DEFINITIONS.** The following words shall have the following meanings unless the context requires otherwise:
  - a. "Derivative proceeding", a civil suit brought by a unit owner to enforce a right of the condominium association.
  - b. "Unit Owner", the person or entity owning a unit at the condominium, including the declarant.
2. **STANDING.** A unit owner may not commence or maintain a derivative proceeding unless the unit owner:

- a. was a unit owner at the condominium at the time of the act or omission complained of or became a unit owner through transfer by operation of law from one who was a unit owner at the time; and
  - b. fairly and adequately represents the interests of the condominium association in enforcing the right of the condominium association.
3. **DEMAND.** No unit owner may commence a derivative proceeding until:
  - a. a written demand has been made upon the condominium board to take suitable action; and
  - b. 90 days have elapsed from the date the demand was made, or
  - c. 120 days have elapsed from the date the demand was made, provided that the decision of whether to reject such demand has been duly submitted to a vote of the unit owners, not including unit owners referred to in section 5(b)(3), within 60 days from the date when demand was made
  - d. a unit owner need not wait for the expiration of the 90 or 120 day waiting period, whichever is applicable, if the unit owner is notified in writing during the waiting period that that the demand has been rejected or the unit owner can demonstrate to a Court that irreparable injury to the association would result by waiting for the expiration of such 90-day or 120-day period.
4. **STAY OF PROCEEDINGS.** If the condominium board or association commences an inquiry into the allegations made in the demand or complaint, the court may upon motion of the condominium board or association stay any derivative proceeding for a period as the court considers appropriate.
5. **DISMISSAL.**
  - a. A derivative proceeding commenced after rejection of a demand shall be dismissed by the court on motion by the condominium board or association if the court finds that either:
    - (1) one of the groups specified in subsections (b)(1), (b)(2) or (f) below, has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the condominium association; or
    - (2) unit owners specified in subsection (b)(3) have determined that the maintenance of the derivative proceeding is not in the best interests

of the condominium association.

b. Unless a panel is appointed pursuant to subsection (f), the determination in subsection (a) shall be made by:

- (1) a majority vote of independent board members present at a meeting of the condominium board if the independent board members constitute a quorum;
- (2) a majority vote of a committee consisting of 2 or more independent condominium board members appointed by majority vote of independent condominium board members present at a meeting of the condominium board, whether or not the independent board constituted a quorum; or
- (3) the vote of fifty one per cent of unit owners entitled to vote, not including units and corresponding percentages owned by or voted under the control of a unit owner or related person who has a beneficial financial interest in the act or omission that is the subject of the derivative proceeding (excluding benefits that may or may not result from the derivative proceeding as a result of the unit owner's membership in the Condominium) and which would reasonably be expected to exert an influence on that unit owner's or related person's judgment if called upon to vote in the determination.

c. None of the following shall by itself cause a board member to be considered not independent for the purposes of this section:

- (1) the nomination or election of the board member by a person who is a defendant in the derivative proceeding or against whom action is demanded;
- (2) the naming of the board member as a defendant in the derivative proceeding or as a person against whom action is demanded; or
- (3) the approval by a board member of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

d. If the condominium board or association moves to dismiss the derivative suit, it shall make a written filing with the court setting forth facts to show:

- (1) whether a majority of the board members was independent at the time of the determination by the independent directors, and



(2) that the independent board members made the determination in good faith after conducting a reasonable inquiry upon which their conclusions are based. Unless otherwise required by subsection (a), the court shall dismiss the suit unless the plaintiff has alleged with particularity facts rebutting the condominium board or association's filing in its complaint or an amended complaint or in a written filing with the court. All discovery proceedings shall be stayed upon the filing by the condominium board or association of the motion to dismiss and the filing required by this subsection until the notice of entry of the order ruling on the motion; but the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted.

- e. If a majority of the condominium board does not consist of independent members at the time the determination by independent members is made, the condominium board or association shall have the burden of proving that the requirements of subsection (a) have been met. If a majority of the condominium board consists of independent directors at the time the determination is made or if the determination is made by unit owners pursuant to clause (3) of subsection (b) or is made pursuant to subsection (f), the plaintiff unit owner shall have the burden of proving that the requirements of subsection (a) have not been met.
- f. The court may appoint a panel of one or more independent persons approved or certified by the Community Association Institute of New England Dispute Resolution Program upon motion by the condominium board or association to make a determination whether the maintenance of the derivative proceeding is in the best interests of the condominium. In such case, the plaintiff unit owner shall have the burden of proving that the requirements of subsection 5(a) have not been met.

6. DISCONTINUANCE OR SETTLEMENT.

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the unit owners or a class of unit owners, the court shall direct that notice be given to the unit owners affected.

7. PAYMENT OF EXPENSES.

Upon termination of the derivative proceeding the court may:

- a. Order the condominium association to pay the plaintiff unit owner's reasonable expenses, including counsel fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the

condominium association; or

- b. Order the Plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose. Any expenses or fines or counsel fees ordered to be paid by a unit owner pursuant to this Resolution shall be collectible as a common expense.

SO RESOLVED.

EXECUTED as a sealed instrument this 12 day of October, 2021.

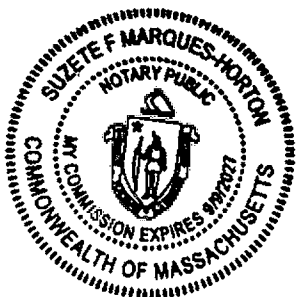
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AS A MAJORITY OF THE TRUSTEES OF THE CRANE'S LANDING CONDOMINIUM TRUST AND NOT INDIVIDUALLY

COMMONWEALTH OF MASSACHUSETTS

Bristol County, ss.

On this 12 day of October, 2021, before me, the undersigned notary public, personally appeared JUDITH GUNTHER, and \_\_\_\_\_, proved to me through satisfactory evidence of identification, being (check whichever applies):  driver's license, or other state or federal governmental document bearing a photographic image,  oath or affirmation of a credible witness known to me who knows the above signatory, or  my own personal knowledge of the identity of the signatory, to be the persons whose names are signed above, and acknowledged the foregoing to be signed by them voluntarily for its stated purpose, as Trustees of said Crane's Landing Condominium Trust.



[Signature]  
 \_\_\_\_\_  
 Notary Public

My Commission Expires: 9/9/2027  
 Print Notary Public's Name: SUZETE MARQUES-HORTON  
 Qualified in the Commonwealth of Massachusetts

condominium association; or

- b. Order the Plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose. Any expenses or fines or counsel fees ordered to be paid by a unit owner pursuant to this Resolution shall be collectible as a common expense.

SO RESOLVED.

EXECUTED as a sealed instrument this 30 day of October, 2021.

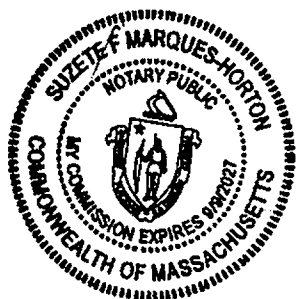
Jacqueline Tavares )  
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AS A MAJORITY OF THE TRUSTEES OF THE CRANE'S LANDING CONDOMINIUM TRUST AND NOT INDIVIDUALLY

COMMONWEALTH OF MASSACHUSETTS

Bristol County, ss.

On this 30 day of October, 2021, before me, the undersigned notary public, personally appeared Jacqueline Tavares, and \_\_\_\_\_, proved to me through satisfactory evidence of identification, being (check whichever applies):  driver's license, or other state or federal governmental document bearing a photographic image,  oath or affirmation of a credible witness known to me who knows the above signatory, or  my own personal knowledge of the identity of the signatory, to be the persons whose names are signed above, and acknowledged the foregoing to be signed by them voluntarily for its stated purpose, as Trustees of said Crane's Landing Condominium Trust.



[Signature]  
 Notary Public  
 My Commission Expires: 9/9/2027  
 Print Notary Public's Name: SUZETTE F. MARQUES-HORTON  
 Qualified in the Commonwealth of Massachusetts

condominium association; or

- b. Order the Plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose. Any expenses or fines or counsel fees ordered to be paid by a unit owner pursuant to this Resolution shall be collectible as a common expense.

SO RESOLVED.

EXECUTED as a sealed instrument this 30 day of October, 2021.

Wanda Rose  
 \_\_\_\_\_ )  
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AS A MAJORITY OF THE TRUSTEES OF THE CRANE'S LANDING CONDOMINIUM TRUST AND NOT INDIVIDUALLY

COMMONWEALTH OF MASSACHUSETTS

Bristol County, ss.

On this 30 day of October, 2021, before me, the undersigned notary public, personally appeared Wanda Rose Frankiewicz, and \_\_\_\_\_, proved to me through satisfactory evidence of identification, being (check whichever applies):  driver's license, or other state or federal governmental document bearing a photographic image,  oath or affirmation of a credible witness known to me who knows the above signatory, or  my own personal knowledge of the identity of the signatory, to be the persons whose names are signed above, and acknowledged the foregoing to be signed by them voluntarily for its stated purpose, as Trustees of said Crane's Landing Condominium Trust.



[Signature]  
 \_\_\_\_\_  
 Notary Public

My Commission Expires: 9/9/2027  
 Print Notary Public's Name: Suzete MARQUES HORTON  
 Qualified in the Commonwealth of Massachusetts

condominium association; or

- b. Order the Plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose. Any expenses or fines or counsel fees ordered to be paid by a unit owner pursuant to this Resolution shall be collectible as a common expense.

SO RESOLVED.

EXECUTED as a sealed instrument this 30 day of October, 2021.

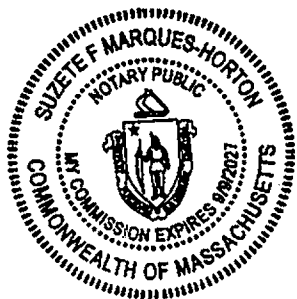
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AS A MAJORITY OF THE TRUSTEES OF THE CRANE'S LANDING CONDOMINIUM TRUST AND NOT INDIVIDUALLY

COMMONWEALTH OF MASSACHUSETTS

Bristol County, ss.

On this 30 day of October, 2021, before me, the undersigned notary public, personally appeared William Humphrey, and \_\_\_\_\_, proved to me through satisfactory evidence of identification, being (check whichever applies):  driver's license, or other state or federal governmental document bearing a photographic image,  oath or affirmation of a credible witness known to me who knows the above signatory, or  my own personal knowledge of the identity of the signatory, to be the persons whose names are signed above, and acknowledged the foregoing to be signed by them voluntarily for its stated purpose, as Trustees of said Crane's Landing Condominium Trust.



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Notary Public

My Commission Expires: 9/9/2027

Print Notary Public's Name: Suzette Marques-Horton

Qualified in the Commonwealth of Massachusetts