

## **DECLARATION OF TRUST**

### **THE ELBRIDGE CONDOMINIUM TRUST**

**THIS DECLARATION OF TRUST** made this \_\_\_\_ day of \_\_\_\_\_, 2023, by Gerrymander LLC, (hereinafter called the “Trustee”), referring thereto shall be deemed to include its successors in trust hereunder and to mean the Trustee or Trustees for the time being hereunder, whenever the context so refers.

#### **WITNESSETH:**

#### **ARTICLE I**

#### **NAME OF TRUST**

The Trust hereby created shall be known as “The Elbridge Condominium Trust” (hereinafter referred to as “Trust” or Condominium Trust”), and under that name, so far as legal, convenient and practicable, shall all business carried on by the Trustees be conducted and shall all instruments in writing by the Trustees be executed.

#### **ARTICLE II**

#### **THE TRUST AND ITS PURPOSE**

**SECTION 1** - All of the rights and powers in and with respect to the common areas and facilities (hereinafter called the “Common Elements”) of The Elbridge Condominium (hereinafter called the “Condominium”), established by a Master Deed (the “Master Deed”) of even date and recorded herewith which are by virtue of the provisions of Chapter 183A of the Massachusetts General Laws conferred upon or exercisable by the organization of Unit Owners of the Condominium and all property, real and personal, tangible or intangible, conveyed to the Trustees hereunder shall vest in the Trustees as joint tenants, with right of survivorship, as Trustees of this Trust, IN TRUST to exercise, manage, administer and dispose of the same and to receive the income thereof for the benefit of the owners of record from time to time of units of the Condominium (hereinafter called the “Unit Owners”), according to the schedule of beneficial interest set forth in the Master Deed, as provided in Article IV, Section 1 hereof, and in accordance with the provisions of said Chapter 183A, this Trust being the organization of the Unit Owners established pursuant to the provisions of said Chapter 183A for the purposes therein set forth.

It is intended that the provisions of this Trust and the Master Deed comply with the requirements of the Federal National Mortgage Association (sometimes called “FNMA”) and of the Federal Home Loan Mortgage Corporation (sometimes called “FHLMC”) with respect to

condominium mortgage loans, and all questions with respect thereto shall be resolved consistent with that intention.

**SECTION 2** - It is hereby expressly declared that a Trust and not a partnership has been created and that the Unit Owners are beneficiaries and not partners or associates nor in any other relation whatsoever between themselves with respect to the Trust property and hold no relation to the Trustees other than as beneficiaries, with only such rights as are conferred upon them as such beneficiaries hereunder and under and pursuant to provisions of said Chapter 183A of the General Laws.

**ARTICLE III**  
**THE TRUSTEES**

**SECTION 1** - The Initial Board shall consist of the Trustees named in the first paragraph of this Declaration of Trust, to wit: Gerrymander LLC (hereinafter called the "Initial Board"). The term of the Initial Board shall end upon the earliest to occur of the following events: (a) upon the conveyance of all of the Units to Unit purchasers; or (b) two (2) years following the conveyance of the first Unit. Notwithstanding any other term or provision of this Trust to the contrary; (A) the Unit Owners shall have no power or right to remove the Initial Board, namely, Gerrymander LLC nor to appoint any additional or successor Trustees, until the expiration of the term of said Initial Board shall have expired as set forth in the immediately preceding sentence; and (B) during the term of the Initial Board, any vacancy in the office of a Trustee, however caused, shall be filled only by the designation of the Declarant of the Master Deed.

After the term of the Initial Board, there shall at all subsequent times be a Board of Trustees hereunder consisting of not less than three (3) natural persons, as shall be determined by vote of Unit Owners entitled to not less than fifty-one percent (51%) of the beneficial interest hereunder.

After the expiration of the term of the Initial Board, if and when the number of Trustees shall become less than three (3), a vacancy or vacancies in said office shall be deemed to exist. Each such vacancy shall be filled by written instrument setting forth (a) the appointment of a natural person to act as such Trustee, signed (i) by Unit Owners entitled to not less than fifty-one percent (51%) of the beneficial interest hereunder or (ii) if the Unit Owner(s) entitled to such percentage have not made such an appointment within thirty (30) days after the occurrence of such vacancy, by the remaining Trustees and acknowledged by one of the signatories; and (b) the acceptance of such appointment, signed and acknowledged in proper form for recording by the person so appointed. Such appointment shall become effective upon the recording with the Essex South District Registry of Deeds of a certificate of such appointment, signed and accepted as aforesaid, and such person shall then be and become such Trustee and shall be vested with the title to the Trust property, jointly with the remaining or surviving Trustee or Trustees, without the necessity of any act of transfer or conveyance. If, for any reason, any such vacancy in the office of Trustee shall continue for more than sixty (60) days and shall at the end of that time remain unfilled, a Trustee or Trustees to fill such vacancy or vacancies may be appointed by any court of competent jurisdiction upon the application of any Unit Owner and notice to the other Unit Owners and all Trustees and to such other parties in interest, if any, to whom the court

may direct that notice be given. Such appointment shall become effective upon the recording with the Essex South District Registry of Deeds of a certificate or order of such appointment. Notwithstanding anything to the contrary in this subsection (b), despite any vacancy in the office of Trustee, however caused and for whatever duration, the remaining or surviving Trustees, subject to the provisions of the immediately following subsection (c), shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustees.

**SECTION 2** - In any matters relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred, the Trustees may act by a unanimous vote at any duly called meeting at which a quorum is present as provided in Paragraph A of Section 6 of Article V. The Trustees may also act without a meeting by an instrument signed by all of the Trustees.

**SECTION 3** - Any Trustee may resign at any time by instrument in writing, signed and acknowledged in the manner required in Massachusetts for the acknowledgment of deeds, and such resignation shall take effect upon the recording of such instrument with said Registry of Deeds. A Unit Owner may remove any Trustee appointed to represent that Unit. In addition, the Trustee designated by the Owner(s) of a Unit shall be automatically removed as Trustee upon the conveyance by such Unit Owner(s) of title to their Unit to another party and a Trustee for the new Unit Owner shall be appointed in the manner provided by Section 1 above. In such instances where the Trustee is a Unit Owner who is selling a Unit, said Trustee shall be deemed to have resigned upon the recording of the Unit Deed, and no further recorded document shall be necessary to confirm said resignation.

**SECTION 4** - The Trustees may have, but shall not be required to have, Fidelity coverage against dishonest acts on the part of directors, managers, Trustees, employees or volunteers responsible for handling funds belonging to or administered by the condominium association of owners. Any fidelity bond or insurance shall name the Trustees of this Trust as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. All cost of Fidelity bonds and insurance, if any, shall be a Common Expense.

**SECTION 5** - No Trustee hereinbefore named or appointed as hereinbefore provided shall under any circumstances or in any event be held liable or accountable out of his or her personal assets or be deprived of compensation by reason of any action taken, suffered or omitted in good faith or be so liable, accountable or deprived by reason of honest errors of judgment or mistakes of fact or law or by reason of the existence of any personal interest or gain or by reason of anything except his or her own personal and willful malfeasance and default.

**SECTION 6** - No Trustee shall be disqualified by his or her office from contracting or dealing with the Trustees or with one or more Unit Owners (whether directly or indirectly because of his or her interest individually or the Trustee's interest or any Unit Owner's interest in any

corporation, firm, trust or other organization connected with such contracting or dealing or because of any other reason), as vendor, purchaser or otherwise, nor shall any such dealing, contract or arrangement entered into in respect of this Trust in which any Trustee so dealing or contracting or being so interested be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such Trustee's holding office or of the fiduciary relationship hereby established, provided the Trustee shall disclose to the other Trustees the nature of his or her interest before the dealing, contract, or arrangement is entered into.

**SECTION 7** - The Trustees 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 the execution hereof, including, without limitation, liabilities in contract and in tort liabilities for damages, penalties, and fines except for instances of willful and deliberate wrongdoing or gross negligence. Each Unit Owner shall be personally liable for all sums lawfully assessed for his or her share of the Common Expenses of the Condominium and for his proportionate share of any claims involving the Trust property in excess thereof.

**SECTION 8** - The Trustees may elect from their number, at the annual meeting of the Trustees, a Chairman, Treasurer, and Secretary, who shall have such duties as are determined by the Trustees.

**SECTION 9** - The Trustees shall not be entitled to compensation for their services but shall, upon presentation of proper vouchers to the other Trustees, be reimbursed for all out-of-pocket expenses incurred for the benefit of the Trust property, provided that such expenses were previously approved by the Trustees, which expenses shall constitute Common Expenses of the Condominium. With the prior written approval in each instance of all of the Trustees, any Trustee may be engaged to render services to this Trust, legal, accounting, or otherwise, at such compensation as shall be fixed by the Trustees, and any fees or other compensation shall be a Common Expense of the Condominium.

With the prior written approval in each instance of the other Trustees, a Trustee may receive reasonable compensation for any extraordinary or unusual services rendered by him or her in connection with this Trust, and such compensation shall be a Common Expense of the Condominium.

#### ARTICLE IV

##### **BENEFICIARIES AND THE BENEFICIAL INTEREST IN TRUST**

**SECTION 1** - The beneficiaries of this Trust shall be the Unit Owners of the Condominium. The beneficial interest of the Trust hereunder shall be divided among the Unit Owners in the percentage of undivided beneficial interest appertaining to the Units of the Condominium, all as set forth in the Master Deed, incorporated herein by reference with the same force and effect as though fully set forth in the body of this instrument.

**SECTION 2** - The beneficial interest of each Unit of the Condominium shall be held and exercised as a Unit and shall not be divided among several owners of any such Unit. To that end, whenever any of said Units is owned of record by more than one person, the several owners of such Unit shall:

(a) determine and designate which one of such owners shall be authorized and entitled to cast votes, execute instruments, and otherwise exercise the rights appertaining to such Unit hereunder; and

(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 of such notice and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Board of Trustees may, by majority vote, designate any one of such owners for such purposes.

**SECTION 3** - A Unit Owner may vote in person or by a written proxy dated no earlier than six (6) months prior to the date of the meeting at which such vote is taken. A proxy purporting to be executed by or on behalf of a Unit Owner shall be deemed valid unless challenged at or prior to its exercise. A proxy with respect to a Unit held in the name of two or more persons shall be valid if executed by one of them, unless at or prior to the exercise of the proxy, the Trustees receive specific notice to the contrary from any one of said persons.

## ARTICLE V

### **BY-LAWS**

The provisions of this Article V shall constitute the By-Laws of this Trust and the organization of Unit Owners established hereby, to wit:

### **SECTION 1 - POWERS AND DUTIES OF TRUSTEES**

The Board of Trustees shall have the powers and duties necessary for the administrations of the affairs of the Condominium and may do all such acts and things except as by law or by the Master Deed or by this Trust may not be delegated to the Board of Trustees by the Unit Owners. Such powers and duties of the Board of Trustees shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of the Common Elements.
- (b) Determination of the Common Expenses required for the affairs of the Condominium, including, without limitation, the operation and maintenance of the Condominium.
- (c) Collection of the common charges from the Unit Owners.
- (d) Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Elements
- (e) Adoption and amendment of Rules and Regulations covering the details of the operation and use of the Condominium.
- (f) Opening of bank accounts on behalf of the Condominium and designating the signatories required therefore
- (g) Leasing, managing and otherwise dealing with such community facilities as may be provided for in the Master Deed as being common areas and facilities (“Common Elements”).

(h) Owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to it or purchased by it as the result of enforcement of the lien for Common Expenses, or otherwise.

(i) Obtaining of insurance for the Condominium, including the Units, pursuant to the provisions hereof.

(j) Making of repairs, additions and improvements to, or alterations of, the Condominium, and repairs to and restoration of the Condominium in accordance with the other provisions of this Trust.

(k) The Board of Trustees shall have the power to enforce obligations of Unit Owners; to enforce the Rules and Regulations of the Condominium; to allocate income and expenses; and to do anything and everything else necessary and proper for the sound management of the Condominium. In case of persistent violation of the Rules and Regulations by a Unit Owner, the Board of Trustees shall have the power to require such Unit Owner to post a bond to secure adherence to the Rules and Regulations.

(l) Grant or relocate permits, easements and licenses on, over and under the Common Elements.

(m) Enter into management contracts for the management of the Common Elements or execute any agreement or arrangement which the Trustees in their discretion deem necessary and convenient for the management of the Common Elements pursuant to which agreements the Trustees may delegate their powers and duties.

(n) To employ, appoint and remove such agents, managers, officers, brokers, engineers, architects, employees, servants, assistants and counsel (which counsel may be a firm of which one or more of the Trustees are members) as they shall deem proper for the purchase, sale or management of the Trust property, or any part or parts thereof, or for conducting the business of the Trust, and may define their respective duties and fix and pay their compensation, and the Trustees shall not be answerable for the acts and defaults of any such person.

(o) To purchase units at foreclosure or other judicial sales.

(p) To organize and maintain corporations, trusts, or other entities to act as nominee of the Condominium in acquiring title to units on behalf of all Unit Owners under the provisions hereof.

(q) To conduct litigation as to any course of action involving the common areas and facilities or arising out of the enforcement of the Bylaws, Rules and Regulations, and Master Deed, and this Trust; but, notwithstanding any provision of the Master Deed, or the Declaration of Trust of the Condominium Trust, or of these Bylaws or the Rules and Regulations to the contrary, neither the Trustees acting in their capacity as such Trustees or acting as representatives of the Unit Owners, nor any class of Unit Owners shall bring any litigation whatsoever, except for litigation by the Trustees against a Unit Owner to enforce a Unit Owner's obligations under, or breach of, the Bylaws, Rules and Regulations, and Master Deed, and this Trust, unless a copy of the proposed complaint in such litigation has been delivered to all of the Unit Owners, and one hundred (100) percent of all Unit Owners consent in writing to the bringing of such litigation within sixty (60) days after a copy of such complaint has been delivered to the Unit Owners and specifying as part of the written consent a specific monetary limitation to be paid as legal fees and costs and expenses to be incurred in connection therewith, which amount shall be separately assessed as a special assessment effective forthwith at the time of said affirmative consent. Notwithstanding any provisions of the Master Deed, or of the Declaration of Trust of the Condominium Trust (including, but not limited to, the provisions of Section VII of the Declaration of Trust of the Condominium Trust) or these Bylaws or the Rules and Regulations, the provisions of this Paragraph shall not be amended except by vote of one

hundred (100) percent of Unit Owners. The provisions of this paragraph shall not apply to litigation by the Condominium Trust against Unit Owners with respect to the recovery of overdue Common Expenses or Special Assessments or to foreclose the lien provided by Chapter 183A, Section 6, and Chapter 254, Sections 5 and 5A, as amended by 1987 Mass. Acts Chapter 338 and 1989 Mass. Acts Chapter 341, or to enforce any of the provisions of the Master Deed, or the Declaration of Trust of the Condominium Trust, or these Bylaws or Rules and Regulations thereto, or the Unit Deed, against Unit Owners.

(r) To borrow or in any manner raise such sum or sums of money or other property as they shall deem advisable in any manner and on any terms, evidence the same by notes, bonds, securities or other evidences of indebtedness, which may mature at a time or times, and deliver any mortgage, pledge or other instrument to secure any such borrowing.

(s) To invest and reinvest the Trust property, or any part or parts thereof, and from time to time, as often as they shall see fit, change investments, including investment in all types of securities and other property, of whatsoever nature and however denominated, all to such extent as to them shall seem proper, and without liability for loss even though such property or such investments shall be of a character or in an amount not customarily considered proper for the investment of Trust funds or which does or may not produce income.

(t) To incur such liabilities, obligations and expenses and pay from the principal or the income of the Trust property in their hands all such sums as they shall deem necessary or proper for the furtherance of the purposes of this Trust.

(u) Generally, in all matters not herein otherwise specified, to control and do each and everything necessary, suitable, convenient, or proper for the accomplishment of any of the purposes of the Trust or incidental to the powers herein or in said Chapter 183A, manage and dispose of the Trust property as if the Trustees were the absolute owners thereof and to do any and all acts, including the execution of any instruments, which by their performance shall be shown to be in their judgment for the best interest of their Unit Owners.

## **SECTION 2 - COMMON EXPENSES, PROFITS AND FUNDS**

A. Commencing with the date of recording of this Master Deed, each Unit Owner, including the Declarant, shall be liable for Common Expenses and shall be entitled to common profits of the Condominium according to his or her respective percentage of undivided interest in the Common Elements as set forth in the Master Deed which is incorporated herein by reference with the same force and effect as though fully set forth in the body of this instrument. The Trustees may at any time or times distribute common profits among the Unit Owners in such proportions. The Trustees shall set aside common funds of the Condominium as reserve or contingent funds maintained out of regular assessments for Common Expenses, and may use the funds so set aside for reduction of indebtedness or other lawful capital purpose, or subject to the provisions of the following Section 3, and 11 for periodic maintenance, repair, replacement, rebuilding or restoration of the Common Elements, or for improvements thereto, and the funds so set aside shall not be deemed to be common profits available for distribution.

In addition to the foregoing, (and not in substitution thereof) to ensure that this Trust will have the funds to meet unforeseen expenditures or to purchase any additional equipment or services, there shall be a working capital fund equal to two (2) months' estimated common charges for each unit. Any amounts paid into this fund shall not be considered as advance payments of regular assessments. Each unit's share of the working capital fund shall be collected at the time the initial sale of the Unit is closed or at the time control of this Trust is transferred to

the Trustees elected by Unit Owners other than the Declarant, as set forth in Section III of this Trust, whichever occurs earlier. When control of this Trust is transferred as set forth in the immediately preceding sentence, the working capital fund shall be transferred to this Trust for deposit to a segregated fund. During the term of the Initial Board, the working capital fund which is the subject of this Subsection cannot be used to defray the expenses, reserve contributions, or construction costs which are the responsibility of the Declarant in its role as developer of the Condominium or to make up budget deficits. The Declarant may reimburse itself for these payments from the funds collected at closing when the unsold units are sold.

In addition to the foregoing, (and not in substitution thereof), the Trustees may, to such extent as they deem advisable, set aside common funds of the Condominium as additional reserves and may use the funds so set aside for reduction of indebtedness or other lawful capital purposes, and, subject to the provisions of Section 4 of these By-Laws, for repair, rebuilding or restoration of the Condominium, or for improvements thereto, and for replacement of the Common Elements, and other proper contingencies, and the funds so set aside shall not be deemed to be common profits available for distribution.

B. At least thirty (30) days prior to the commencement of each fiscal year of this Trust, the Board of Trustees shall estimate the Common Expenses expected to be incurred during such fiscal year, together with a reasonable provision for contingencies and reserves, and after taking into account any undistributed common profits 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, and each Unit Owner thereafter shall pay one-twelfth (1/12) of his or her share of the estimated Common Expenses monthly in advance on the first day of each month. In the event that the Board of 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, the Board of Trustees shall make a supplemental assessment or assessments and render statements therefore in the manner aforesaid, and such statements shall be payable in monthly or other installments. In order to create a reserve fund for future contingencies, the Board of Trustees shall assess from time to time, in addition to the foregoing assessments, each Unit Owner for a sum or sums sufficient to provide the Condominium Trust with sufficient capital to meet emergencies and other contingencies. The Board of Trustees may assess a late charge of \$10.00 per month if the amount due is not paid by the 10<sup>th</sup> day of each month for each month that the amount due remains unpaid. The amounts due hereunder, together with the late charges shall constitute a lien on the Unit of the Unit Owner assessed, pursuant to the provisions of Section 6 of the said Chapter 183A.

C. The Board of Trustees shall expend common funds only for Common Expenses and lawful purposes permitted hereby and by the provisions of said Chapter 183A.

D. In the event of default by any Unit Owner in paying to the Condominium Trust the common charges as determined by the Board of Trustees, such Unit Owner shall be obligated to pay the above-described late charges, together with all expenses, including attorney's fees, incurred by the Board of Trustees in any proceeding brought to collect such unpaid common charges. All such unpaid common charges shall constitute a lien upon the Unit to the extent provided by law. The Board of Trustees shall have the right and duty to attempt to recover such common charges, together with late charges, and the expenses of the proceedings, including



attorneys' fees, in an action to recover the same brought against such Unit Owner, or by the foreclosure of the lien on such Unit as provided by law. Any action taken pursuant to this Section 2D may be initiated by any one Trustee.

E. The Trustees shall promptly provide any Unit Owner, or any Unit Buyer who has a duly executed Purchase and Sale Agreement for the acquisition of a unit, or any mortgagee, or the attorney of any such party, with a written statement of all unpaid Common Expenses due with respect to such unit, signed and acknowledged in proper form for recording, upon the written request of such Unit Owner or buyer or mortgagee or attorney. Any such statement shall be signed by any one Trustee other than the Trustee representing the Unit to which such certificate pertains. Recording of such statement in the Essex South District Registry of Deeds shall operate to discharge the Unit from any lien for any unpaid common charges and assessments not enumerated as of the date of such statement to the extent provided by said Chapter 183A.

### **SECTION 2A - SPECIAL ALLOCATIONS**

To the extent permitted by law, the Board of Trustees may charge Common Expenses to Unit Owners in proportions other than according to their respective percentages of undivided interest in the Common Elements in order to achieve an equitable allocation of expenses based on use by respective Unit Owners.

### **SECTION 2B - INVALIDITY**

The invalidity of any provision of this Trust shall not be deemed to impair or affect the validity of the remainder of this Trust, and in such event, all other provisions of this Trust shall continue in full force and effect as if such invalid provision had never been included herein.

### **SECTION 3 - INSURANCE**

The Trustees shall obtain and maintain, to the extent available, master policies of casualty and physical damage insurance for the benefit and protection of the Trustees and all of the Unit Owners, naming them as the named insureds, and with loss proceeds payable to the Trustees hereunder, or one or more of the Trustees hereunder designated by them, as Insurance Trustees for all of the Unit Owners collectively of the Condominium and their respective mortgagees, as their interests may appear, pursuant to such condominium form of insurance as may from time to time be customarily used in Massachusetts, such insurance to cover the building and all other insurable improvements forming part of the common areas and facilities, including the heating equipment and other service machinery, apparatus, equipment and installations in the common areas and facilities, and including also all such portions and elements of the Units as the Unit Owners are responsible for hereunder, but not including (1) the furniture, furnishings or other personal property of the Unit Owners; or (2) improvements within a Unit made by the Owners subsequent to the first sale of such a Unit by the Declarant, unless such improvement has been made with the written consent of the Trustees pursuant to which such Unit Owner agrees to pay any additional insurance premiums resulting therefrom. If such agreement is not made, insuring such improvement shall be the separate responsibility of the Unit Owner. Such insurance shall, insofar as practicable, be maintained in an amount of at least One Hundred (100%) percent of the replacement cost of the Building and Common Elements including the interior of units (so

called “walls in” coverage) as determined from time to time by the Trust and shall deliver to the Unit Owners and to any Unit mortgagee a certificate of such insurance.

Such insurance shall insure against (1) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (2) all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard “all risk” endorsement; and (3) such other hazards or risks as the Trustees from time to time in their discretion shall determine to be appropriate, including, but not limited to, vandalism, malicious mischief, windstorm and water damage, and boiler and machinery explosion or damage. Such insurance may have a deductible amount to be determined from time to time by the Trustees, and all such policies shall have an agreed amount endorsement or its equivalent, if applicable, or an inflation guard endorsement.

Such insurance shall provide (1) that the same may not be cancelled, terminated or substantially modified as to amount of coverage or risks covered without at least ten (10) days written notice to all insureds and mortgagees (2) for waiver of subrogation as to any claims (except claims involving arson or fraud) against the Trust, the Trustees, the manager, agents, employees, the Unit Owners and their respective employees, agents and guests; (3) for waivers of any defense based upon the conduct of any insured; and (4) in substance and effect that the insurer shall not be entitled to contribution as against any casualty or property insurance which may be purchased separately by Unit Owners, a so-called “Special Condominium Endorsement”. In connection with any loss insured in accordance with this Article, the insurer shall have no right of subrogation to any claims an Owner may have against the Trust, the Trustees, any Managing Agent, the other Unit Owners, or their lessees, their respective agents, servants, or invitees. Such policies shall be made payable to any mortgagee of a Unit, to the Trust and Unit Owners as their interest may appear and shall be deposited with the Trust. In the event a Unit Owner shall undertake to repair or reconstruct his Unit as required herein, the proceeds of such policies shall be disbursed to said Unit Owner upon presentation of suitable invoices for payment in connection with the same, and/or in accordance with such other reasonable conditions and procedures prescribed by the Trustees and any mortgagee having an interest in such proceeds.

The Trustees shall maintain at all times a minimum of \$1,000,000.00 public liability, bodily injury and property damage insurance as to claims arising out of incidents occurring anywhere in the condominium common areas for the protection of the Trust, the Trustees, and the Unit Owners. The Trustees shall purchase such other insurance as they shall determine.

Subject to the provisions of Section 4 of these By-Laws, insurance proceeds received by the Trustees shall be held in trust in an identified and segregated fund for the benefit of the Unit Owners and all mortgagees of all units. If the cost of restoring the Common Elements, or any unit, is estimated by the Trustees to exceed the sum of One Thousand (\$1,000.00) Dollars, then the Trustees shall give written notice of such loss to all eligible Mortgage Holders and all eligible Insurers and Guarantors, as herein defined.

The cost of all such insurance obtained and maintained by the Trustees pursuant to the provisions of this Section 3 shall be a Common Expense of the Condominium.

Any such insurance obtained and maintained by the Trustees pursuant to the provisions of this Section 3 may have a deductible amount to be determined from time to time by the

Trustees, (but in no event shall such deductible amount be greater than the lesser of \$5,000.00 or 1 % of the policy face amount), who shall simultaneously specify, in writing with notice to all Unit Owners, how and by whom the amount of the deductible shall be paid in the event of a loss.

All insurance obtained and maintained by the Trustees shall conform to applicable requirements of the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal National Mortgage Association ("FNMA") so long as FHLMC or FNMA hold one or more mortgages on units in the Condominium or any interest therein.

Each Unit Owner may carry insurance at his or her own expense for his or her own benefit insuring, inter alia, his or her carpeting, drapes, fixtures, furniture, furnishings and other personal property, and personal liability, deductible coverage and loss assessment coverage, provided that all such policies shall contain waivers of subrogation, and further provided, that the liability of the carriers issuing insurance obtained by the Trustees shall not be affected or diminished by reason of any such additional insurance carried by a Unit Owner. Each Unit Owner shall promptly notify the Trustees of all improvements made by him or her to his or her Unit the insurable replacement cost of which exceeds one thousand (\$1,000.00) dollars, and such Unit Owner shall pay to the Trustees as an addition to his or her share of the Common Expenses of the Condominium otherwise payable by such owner any increase in insurance premium incurred by this Trust which results from such improvement. Failure to carry this aforementioned insurance by any Unit Owner shall not constitute a valid claim for loss against the Trust, the Trustees or their agents or the Trust's aforementioned insurer.

Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the buildings or the contents thereof without the prior written consent of the Trustees, unless the Unit Owner responsible for such increase shall agree to pay the amount of such increase.

**SECTION 4 - REBUILDING AND RESTORATION; IMPROVEMENTS; CONDEMNATION; IMPROVEMENTS**

A. In the event of damage to or destruction of the Common Elements as a result of fire or other casualty (unless Subsection F of this Section is applicable), or, in the event of damage to or destruction of any Unit as a result of fire or other casualty, whether or not the Common Elements have been damaged or destroyed (unless Subsection F of this Section is applicable), the Trustees shall promptly adjust the loss, arrange for the prompt repair or restoration of the same, and disburse the proceeds of all insurance policies in payment of all costs and expenses actually incurred in connection with such repair or restoration in appropriate progress payments and with appropriate retainage. All insurance proceeds paid to the Trustees as insurance trustees, on account of any casualty, shall be dedicated first to the repair or restoration of the loss, and any application of said proceeds by the Trustees on account thereof shall be prior to the application of such proceeds for any other purposes.

B. In the event the insurance proceeds are not sufficient to cover the cost of repairs to the Common Elements and the Units, the proceeds will be first allocated to the cost of repairs to the Common Elements and the balance, if any, to the cost of repairs to the Units in proportion to the cost of all repairs to the respective Units as determined by the insurer or by independent appraisal. To the extent the proceeds allocated as aforesaid are insufficient to cover the cost of

repairs to the Common Elements, the balance of the cost of such repairs will be assessed against all Unit Owners as a Common Expense. To the extent the proceeds allocated as aforesaid are insufficient to cover the cost of repairs to the Units, the balance of the cost of such repairs to each Unit will be assessed against all Unit Owners as a Common Expense.

C. Whenever the estimated cost of repair or restoration exceeds, as to any one casualty or occurrence, on the basis of an independent appraisal, the sum of twenty-five thousand (\$25,000.00) dollars, then the Trustees shall retain a registered architect or registered engineer, who shall not be directly or indirectly, a Unit Owner or an employee or agent of any Unit Owner, or a Trustee or an employee or agent of any of the Trustees, or the manager, if any, or any employee or agent of such manager, to supervise the work of repair or restoration and no sums shall be paid by the Trustees on account of such repair or restoration except upon certification to them by such architect or engineer that the work for which payment is being made has been completed in a good and workmanlike manner in accordance with approved plans and specifications and that the estimated total cost of completion of said repair or restoration, less amounts theretofore advanced, does not exceed the undisbursed proceeds of insurance as augmented by funds obtained by any assessment or assessments levied or chargeable to the Unit Owners as a Common Expense.

D. The Trustees may perform emergency work essential to the preservation and safety of the Condominium, including all parts of the Building and the Common Elements and the Units, or the safety of persons, or required to avoid the suspension of any essential service to the Condominium, including all parts of the building and the Common Elements and the units, without having first engaged an architect or engineer, adjusted the loss or obtained proceeds of insurance.

E. Subject always to the prior rights of the Unit mortgagees, if there shall have been a repair or restoration pursuant to the foregoing and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds, if any, shall be added to the Condominium's reserve fund, or, at the option of the Trustees, divided among all the Unit Owners in proportion to their respective interests in the Common Elements.

F. In the event of any casualty loss to the Trust property, the Trustees shall determine in their reasonable discretion whether or not such loss exceeds ten percent (10%) of the value of the Condominium immediately prior to the casualty and shall notify all Unit Owners of such determination. If such loss as so determined does not exceed ten percent (10%) of such value, the Trustees shall proceed with the necessary repairs, rebuilding or restoration in the manner provided in paragraph (a) of Section 17 of Chapter 183A. If such loss as so determined exceeds ten percent (10%) of such value, the Trustees shall forthwith submit to all Unit Owners (a) a form of Agreement (which may be in several counterparts) among the Unit Owners authorizing the Trustees to proceed with the necessary repair, rebuilding or restoration, and (b) a copy of the provisions of said Section 17; and the Trustees shall thereafter proceed in accordance with, and take such further action as they may in their discretion deem advisable in order to implement the provisions of paragraph (b) of said Section 17.

If 100% of the Unit Owners do not agree within one hundred twenty (120) days after the date of the casualty to proceed with repair or restoration, the Condominium, including all units, shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any

time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. Subject always to the prior rights of the Unit mortgagees, the net proceeds of the partition sale together with any common funds shall be divided in proportion to the Unit Owners' respective undivided ownership in the Common Elements. Upon such sale, the Condominium shall be deemed removed from the provisions of Chapter 183A of the Massachusetts General Laws; (b) if 100% percent of the Unit Owners agree to proceed with the necessary repair or restoration, the cost of the rebuilding of the Condominium, in excess of any available common funds including the proceeds of any insurance, shall be a Common Expense, provided, however, that if such excess cost exceeds ten (10%) percent of the value of the Condominium including all parts of the building and the Common Elements and the units, prior to the casualty, any Unit Owner who did not so agree may apply to the Superior Court of Essex County on such notice to the Trustees and Unit Owners as the Court shall direct, for an order directing the purchase of his or her 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.

G. If a Unit is acquired by eminent domain, or if a part of a Unit is acquired by eminent domain, leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Master Deed, the award shall compensate the Unit Owner for their Unit and its undivided percentage interest in the Common Elements whether or not any of the Common Elements have been acquired. Upon acquisition, unless the decree otherwise provides, that Unit's entire undivided interest in the Common Elements and the beneficial interest under the Trust shall be automatically allocated to the remaining Units of the Condominium in proportion to the respective undivided interest of the remaining Units in the Common Elements prior to the taking, and the Trustees shall promptly prepare, execute and record an amendment to the Master Deed and the Trust reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection shall thereafter be a part of the Common Elements.

H. Except as provided in subsection (G), if part of a Unit is acquired by eminent domain, the award shall compensate the Unit Owner for the reduction in value of the Unit and its undivided percentage interest in the Common Elements. Upon acquisition, (1) that Unit's undivided interest in the Common Elements shall be reduced on the basis of the reduction of the fair value of the Unit as of the date of such taking bears to the fair value of the remaining Units in the condominium as of such date, and (2) the reduction to interest in the Common Elements of such Unit shall be divested from the Unit so acquired and shall automatically be reallocated to the remaining Units in proportion to the respective undivided interest of the remaining Units in the Common Elements prior to the date of such taking.

I. If the Common Elements or any part thereof are acquired by eminent domain, subject always to the prior rights of Unit mortgagees, the Trustees shall be the party in interest to receive any such award and to pursue any additional awards due to such taking. Any such award or any action taken by the Trustees hereunder shall be brought or paid to the Trustees naming the "Trustees of Condominium Trust as Condemnation Trustees for the benefit of the Condominium, of the Unit Owners, and their respective mortgagees". The Trustees shall divide any portion of the award not used for restoration or repair of the remaining Common Elements among the Unit Owners in proportion to their respective undivided percentage interest before the taking, but any portion of the award attributable to the acquisition of a portion of the Common Elements which had been exclusively reserved to any Unit pursuant to the terms of the Master Deed shall be paid

to the Owner of such Unit or his mortgagee. Each Unit Owner hereby appoints the Trustees hereof as his or her attorney-in-fact for the foregoing purposes.

J. If one of the Unit Owners requests that the Trustees make an improvement to the Common Elements and not all of the Trustees agree to the improvement, the Trustees may, but shall not be obligated to, make the improvement and the cost of such improvement shall be borne solely by the Unit Owner requesting the improvement.

K. Unit Owners may make additions, alterations or improvements to their Units, at their sole cost and expense, provided that all such additions, alterations or improvements shall be performed in compliance with all applicable laws, regulations and codes and when required thereby, by licensed contractors and shall be completed in a good and workmanlike manner. It shall be the responsibility of the Unit Owner making the additions, alterations or improvements to obtain all permits, if necessary, from the Town of Marblehead, prior to commencing work on any additions, alterations or improvements. For any improvement requiring architectural or engineering plans or specifications, the Unit Owner making the addition, alteration or improvement, except for the Declarant for whom this provision shall not apply, shall obtain the approval of the Trustees, which approval shall not be unreasonably withheld, prior to commencing work on the addition, alteration or improvement. Each Unit Owner and his or her contractors shall cooperate with the Trustees and other Unit Owners so as not to unduly inconvenience or disturb the occupants of the condominium.

#### **SECTION 5 - RESTRICTIONS ON USE OF THE BUILDING AND UNITS; RULES AND REGULATIONS**

The Trust shall keep a complete copy of Rules and Regulations, including any amendments thereto, governing the details of the operation and use of the Common Elements, and containing such restrictions on the requirements respecting the use and maintenance of the Common Elements as are consistent with the provisions of the Master Deed, and designed to prevent unreasonable interference with the use by the Unit Owners of their Units and of the Common Elements. By vote of 100% of the Board of Trustees, the Board of Trustees may at any time and from time to time amend, modify and rescind the Rules and Regulations.

#### **SECTION 6 - MEETINGS**

A. The Board of Trustees shall meet annually on the date of (and immediately following) the annual meeting of the Unit Owners, and at such meeting may elect a Chairman, Treasurer and Secretary as hereinbefore provided. Other meetings may be called by any one Trustee and in such other manner as the Trustees may establish, provided, however, that written notice of each meeting, stating the place, day and hour thereof, shall be given at least four (4) days before such meeting to each member of the Board of Trustees. A majority of the Trustees shall constitute a quorum at all meetings and such meetings shall be conducted in accordance with such rules as the Board of Trustees may adopt. The Trust shall keep a complete copy of minutes of the meetings of Unit Owners and Trustees, a record of each Unit Owner and the dates between which such Unit Owner is a Unit Owner, and such other records as may be required by law.

B. Commencing with the calendar year 2023, there shall be an annual meeting of the Unit Owners on the second Tuesday of November in each year, at 6:00 PM at the Condominium premises or at such other reasonable place and time as may be designated by the Board of

Trustees by written notice given to the Unit Owners at least fourteen (14) days prior to the date so designated. Special meetings of the Unit Owners may be called by the Board of Trustees or by the Unit Owners upon written request of any Unit Owner. Written notice of any such meeting designating the place, day and hour thereof shall be given by the Board of Trustees to the Unit Owners at least fourteen (14) days prior to the date so designated. At the annual meeting of the Unit Owners, the Board of Trustees shall submit reports of the management and finances of the Condominium. Whenever at any meeting the Board of Trustees proposes to submit to the Unit Owners any matter with respect to which approval of or action by the Unit Owners is necessary or appropriate, the notice of such meeting shall so state and reasonably specify such matter. A quorum of Unit Owners shall consist of the holders of at least 75% of the beneficial interest hereunder.

#### **SECTION 7 - NOTICES TO UNIT OWNERS**

Every Notice to any Unit Owner required under the provisions hereof, or which may be deemed by the Trustees necessary or desirable in connection with the execution of the Trust created hereby 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 or her at his or her residence in the Condominium or by mailing it, postage prepaid, addressed to such Unit Owner at his or her address as it appears upon the records of the Trustees, at least five (5) days prior to the date fixed for the happening of the matter, thing or event of which such notice is given, or such longer period of time as may be required by the specific terms of this instrument. The foregoing notwithstanding, notice shall be deemed effective on the date it is personally delivered to the Unit Owner. Unit Owners may waive notice by duly executing an appropriate waiver of notice.

#### **SECTION 8 - INSPECTION OF BOOKS; REPORTS TO UNIT OWNERS**

Current copies of this Trust, By-Laws and Rules and Regulations for the Condominium shall be made available and all books, accounts, records and financial statements of the Trustees shall be open to inspection to any one or more of the Trustees and the Unit Owners, lenders and holders, insurers or guarantors of any first mortgage at all reasonable times during normal business hours or under other reasonable circumstances. 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 summary form and only in such detail as the Trustees shall deem proper. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees, given by registered or certified mail, within a period of thirty (30) days of the date of receipt by him or her, shall be deemed to have assented thereto. Any holder, insurer or guarantor of a first mortgage shall be entitled, at their expense, upon written request to an audited financial statement for the immediately preceding fiscal year furnished within a reasonable time following such request.

#### **SECTION 9 - 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 must be signed by both of the Trustees, unless the

Trustees unanimously vote to delegate such power to such other person (who may be one of the Trustees).

**SECTION 10 - FISCAL YEAR**

The fiscal year of the Trust shall be the calendar year.

**SECTION 11 - MAINTENANCE AND REPAIRS**

A. All maintenance and replacement of and repairs to any unit, ordinary or extraordinary other than to the Common Elements contained therein not necessitated by the negligence, misuse or neglect of the owner of such Unit and to the doors and windows, and to electrical, plumbing, and heating fixtures within the Unit or belonging to the Unit Owner which are not a part of the Common Elements, and the washing of exterior glass of his or her unit shall be done by the Unit Owner at the Unit Owner's expense, excepting as otherwise specifically provided herein. Each Unit Owner shall be responsible for all damage to any and all other units and to the Common Elements that his or her failure so to do may engender.

B. All maintenance, and replacements of and repairs to the Common Elements as defined in the Master Deed, and all maintenance, and replacement of and repairs to the exterior walls of the building and to structural parts of the building, shall be made by the Trustees and shall be charged to each of the Unit Owners as a Common Expense, excepting to the extent that the same are necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner. All of the Common Elements of the Condominium which are subject to exclusive easement and rights of use appurtenant to the Units as such may be designated on the Plans hereto and designated in the Master Deed and Declaration of Trust, except for the parking spaces which shall be maintained, repaired and replaced by the Trustees with the cost thereof being a Common Expense, shall be maintained in good repair and, if necessary, replaced by, and at the sole expense of the Unit Owner or Owners benefitting from such exclusive easement and right of use, unless otherwise provided in the Master Deed (who shall also reimburse the Trust for the cost of any repairs or damage thereto caused or permitted by such Unit Owner's negligence, misuse or neglect).

**SECTION 12 – VIOLATION OF LAW**

No noxious or unlawful activity shall be carried on in any Unit or in the Common Areas and Facilities nor shall anything be done therein, either willfully or negligently, which may be or become unreasonably annoying to the other Unit Owners or occupants. No Unit Owner shall make or permit any disturbing noises by himself, his family, guests, agents, servants, employees, licensees, or tenants, nor do or permit anything by such persons that will unreasonably interfere with the rights, comforts or conveniences of other Unit Owners or occupants.

**SECTION 13 – RIGHT OF ACCESS- PASS KEYS**

Subject to the provisions of said Chapter 183A, Section 4, Clause (2), the Trustees hereunder shall have (i) the right of access to all units in the condominium, at any time in case of emergency and at other times during reasonable hours by prior appointment with each Unit Owner, for the purpose of making repairs to either the Unit to which such person seeks access, to



another unit, or to common areas accessible from the unit; and (ii) the right of access to any part of an exclusive use area at any time in case of emergency and at all other times during reasonable hours by prior appointment with each Unit Owner, for the purpose of making inspections or repairs. In the event that the Trustee(s) access a Unit or exclusive use area without notice in the case of an emergency, the Trustee(s) shall notify the Unit Owner of such entry as soon as reasonably possible thereafter. Each Unit shall ensure that the Trustees have a key to his or her Unit.

#### **SECTION 14 – COMBUSTIBLE MATERIAL**

No Unit Owner shall permit or suffer to be kept at any time any flammable, combustible or explosive fluid or substance on the property of the Condominium or in his or her Unit or exclusive use areas except for such lighting and cleaning fluids as are customary for residential use.

### **ARTICLE VI**

#### **RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUSTEES; LIMITATIONS OF LIABILITY**

**SECTION 1** - No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record in said Registry of Deeds shall be bound to ascertain or inquire further as to the persons who are then Trustees hereunder or be affected with any notice, implied or actual, otherwise than by a certificate thereof, and such record or certificate shall be conclusive evidence of the personnel of said Trustees and of any changes therein. The receipts of the Trustees, or any one or more of them, 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 the application thereof. No purchaser, mortgagee, lender or other person dealing with the Trustees or with any real or personal property which then is or formerly was the Trust property shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, or otherwise as to the purpose of 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, or as to the regularity of the resignation or appointment of any Trustee, and any instrument of appointment of a new Trustee or discharge of a Trustee purporting to be executed by the Trustees, Unit Owners or other persons herein required to execute the same, shall be conclusive evidence in favor of any such purchaser or other person dealing with the Trustees of the matters therein recited relating to such resignation or appointment or the occasion thereof.

**SECTION 2** - 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 proceedings, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with, or having any claim against the

Trustees shall look only to the Trust property for payment under such 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 therefore; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of the Unit Owners under the provisions of Section 7 of Article III hereof or under the provisions of said Chapter 183A.

**SECTION 3** - Every note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees, or by any agent or employee of the Trustees, shall be deemed to have been entered into subject to the terms, conditions, provisions and restrictions hereof, whether or not express reference shall have been made to this instrument.

**SECTION 4** - This Declaration of Trust and any amendments thereto and any certificate herein required to be recorded, and any other certificate or paper signed by said Trustees or any of them which it may be deemed desirable to file, shall be recorded with said Registry of Deeds and such filing shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustees, the Trust property, or any beneficiary hereunder, shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be recorded with said Registry of Deeds. Any certificate signed by the Trustees in office at the time, setting forth as facts any matters affecting the Trust, including statements as to who are the beneficiaries, and as to matters determining the authority of the Trustees, acting in reliance thereon. Any certificate executed by any Trustee hereunder, setting forth the existence of any facts, the existence of which is necessary to authorize the execution of any instrument or the taking of any action by such Trustee or majority, as the case may be, shall, as to all persons acting in good faith in reliance thereon, be conclusive evidence of the truth of the statements made in such certificate and of the existence of the facts therein set forth.

## ARTICLE VII

### **PROTECTION OF MORTGAGEES/AMENDMENTS/TERMINATION**

#### **SECTION 1**

(A) Definitions

- (i) The term "FHLMC" means Federal Home Loan Mortgage Corporation.
- (ii) The term "FNMA" means Federal National Mortgage Association.
- (iii) The term "eligible Mortgage Holder" means a holder of a first mortgage on a Unit who has requested notice of certain matters from this Trust as set forth herein.

(iv) The term "eligible Insurer or Guarantor" means an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters as set forth in this Trust.

(v) The term "Constituent Documents" means, collectively, the Master Deed, this Trust and the Bylaws and Rules and Regulations thereto and the Master Plans.

(B) Prohibitions

Notwithstanding anything to the contrary in the Constituent Documents:

(i) There shall be no restriction upon any Unit Owner's right of ingress or egress to his or her Unit, which right shall be perpetual and appurtenant to the ownership of the Unit.

(ii) There shall be no restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her Unit. There shall be no "right of first refusal" so-called or any similar restriction.

(iii) There shall be no restriction on the right of any Unit Owner to mortgage or otherwise encumber his or her Unit.

(iv) The Condominium shall not be subject to "expansion" or "phases," so-called.

(v) Prior to the passage of control of this Trust to Unit purchasers, no contract or lease (including management contracts) shall be entered into unless this Trust is provided with a right of termination of any such contract or lease with or without cause, exercisable without penalty at any time after transfer of control, upon not more than 90 days' notice to the other party thereto.

(vi) The Constituent Documents shall not be amended or modified if the result of any such amendment or modification would:

- (1) add a "right of first refusal" so-called; or
- (2) permit an addition or expansion to the Condominium project in which sections or phases are established.

(C) Rights of Eligible Mortgage Holders and Eligible Insurers or Guarantors

Notice of Action: Upon written request to this Trust identifying the name and address of the mortgage holder, insurer or guarantor and the Unit number or address, any first mortgagee and any such eligible Mortgage Holder or eligible Insurer or Guarantor will be entitled to timely written notice of:

(i) any condemnation loss or any casualty loss that affects either a material portion of the project or any Unit on which there is a first mortgage held, insured,

or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(ii) any delinquency in the payment of assessments or charges owed, or default in the performance by the borrower of any obligation under the Condominium Constituent Documents, by an owner of a Unit subject to a first mortgage held, insured or guaranteed by such first Mortgage Holder or eligible holder or eligible Insurer or Guarantor, which remains uncured for a period of 60 days:

(iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Trust; and

(iv) any proposed action that would require the consent of a specified percentage of eligible Mortgage Holders.

(D) Amendment to Documents

(i) Where Unit Owners are considering termination of the legal status of the project for reasons other than substantial destruction or condemnation of the property, the consent of owners of units to which one hundred percent (100%) of the votes in this Trust are allocated and the approval of eligible Mortgage Holders representing one hundred percent (100%) of the votes of the mortgaged units shall be required to terminate the legal status of the project as a Condominium.

(ii) The consent of the owners of units to which one hundred percent (100%) of the votes in this Trust are allocated, and the approval of at least fifty-one percent (51%) of the eligible Mortgage Holders (based on one vote for each Unit subject to a mortgage held by an eligible Mortgage Holder), shall be required to add or amend any material provisions of the constituent documents of the project, which establish, provide for, govern or regulate any of the following:

- (1) voting rights;
- (2) assessments, assessment liens or subordination of such liens;
- (3) reserves for maintenance, repair and replacement of the common areas;
- (4) insurance or fidelity bond requirements;
- (5) rights to use the common areas;
- (6) responsibility for maintenance and repairs;
- (7) expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;
- (8) definitions of Unit boundaries;

- (9) interests in the general or limited common areas;
- (10) convertibility of units into common areas or of common areas into Units;
- (11) leasing Units;
- (12) reallocation of interest in the general or limited common areas or rights to their use;
- (13) a decision by the Trust to establish self-management when professional management had been required previously by an eligible Mortgage Holder;
- (14) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (15) restoration or repair of the project (after hazard damage or partial condemnation) in a manner other than that specified in the Constituent Documents;
- (16) any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or
- (17) any provisions that are for the express benefit of Mortgage Holders, eligible Mortgage Holders or eligible Insurers or Guarantors of mortgages on Units

(iii) An addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. An eligible Mortgage Holder who receives a written request to approve additions or amendments that are not material who does not submit a response to the requesting party within sixty (60) days after the request is made shall be deemed to have approved such request. Additionally, if specifically provided by any applicable FNMA regulation, implied approval of any addition or amendment may be assumed when an eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within sixty (60) days after the proper notice of the proposal is received, provided the notice has been delivered to the Mortgage Holder by certified or registered mail, return receipt requested. This clause (3) shall not apply to FHLMC.

#### (E) Right of Action

This Trust and any aggrieved Unit Owner shall have a right of action against Unit Owners for failure to comply with the provisions of this Trust and the By-laws and Rules and Regulations thereto, the Master Deed, the Master Plans and each Unit Deed and Unit Plan, and with decisions

of the Trustees of this Trust. Each Unit Owner shall have a similar right of action against this Trust. Any such action may be brought in any court of competent jurisdiction.

(F) First Mortgagee Obtaining Title

Except as otherwise provided in Chapter 183A, any first mortgagee who obtains title to a Condominium Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such unit's unpaid dues or charges plus the costs of collecting such unpaid dues that accrue prior to the acquisition of title to such Unit by the mortgagee, except as provided by statute.

(G) Additional Prohibitions

Except as provided by statute in case of condemnation or substantial loss to the units and/or Common Elements of the Condominium project, units and/or Common Elements of the Condominium project, unless at least two-thirds of the first mortgages (based upon one vote for each first mortgage owned) and all of the owners (other than the Declarant) of the individual Condominium units have given their prior written approval, this Trust shall not be entitled to:

- (i) By act or omission, seek to abandon or terminate the Condominium project;
- (ii) Change the pro rata interest or obligations of any individual Condominium Unit for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or (ii) determining the pro rata share of ownership of each Condominium Unit in the Common Elements;
- (iii) Partition or subdivide any Condominium Unit;
- (iv) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (Granting easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium project shall not be deemed a transfer within the meaning of this clause);
- (v) Use hazard insurance proceeds for losses to any Condominium property (whether to units or to Common Elements) for other than the repair, replacement or reconstruction of such Condominium property;
- (vi) No provisions of the Constituent Documents shall give any Unit Owner or Owners or any other party or parties priority over any rights of first mortgages of Condominium Units pursuant to their mortgages in the case of a payment to Condominium Unit Owners of insurance proceeds or condemnation awards for losses to or taking of Condominium Units and/or Common Elements.

(H) Vote or Consent

The right of any Unit Owner to vote or grant or withhold any consent or exercise any rights pursuant to the provisions of this Trust or the Master Deed may be assigned to or restricted in

favor of any mortgagee. The Trustees shall be bound by such assignment or restriction, provided, however, that such assignment or restriction does not conflict with the provisions of said Chapter 183A and that the mortgagee has notified the Trustees of such assignment or restriction in writing.

(I) Information

The Trust shall promptly deliver the following information, in writing, to any mortgagee, mortgage holder, mortgage servicer, FHLMA or FNMA, requesting same, without expense to the requesting party:

- (i) notification of any default in the performance by the individual Unit borrower of any obligation under the Condominium Constituent Documents that is not cured within sixty (60) days;
- (ii) a written certification as to whether the owner of any Unit encumbered by a mortgage held or serviced, in whole or in part, by the requesting party, is more than one (1) month delinquent in the payment of Condominium common area charges or assessments;
- (iii) written certification as to the percentage of Unit Owners who are more than one (1) month delinquent in paying Condominium common area charges or assessments; and
- (iv) a statement to the best of the Trust's knowledge as to the percentage of Units that have been sold and conveyed to bona fide purchasers (who have closed or who are legally obligated to close) and the percentage of Units that are occupied by individual Unit Owners as their primary year-round residence.

(J) FHLMC; FNMA

The provisions of this Article VII are set forth so that the Condominium will comply with the requirements of FHLMC and FNMA, and the provisions of this Section shall be construed and interpreted in accordance with that intention. Notwithstanding anything to the contrary in the Constituent Documents, the provisions of this Article VII shall at all times take precedence over all other provisions in the Constituent Documents, and this Article VII shall not be amended or modified without the express prior written consent of FHLMC and FNMA, except as expressly provided in the immediately following sentence. In the event that, at any time and from time to time, applicable Rules and Regulations of FHLMC or FNMA are changed or modified, then and in any such event or events, the prohibition contained in the immediately forgoing sentence shall be deemed to be changed and modified so as to permit the amendment and modification of the Constituent Documents so that the Constituent Documents shall comply with such changed or modified Rules and Regulations of FHLMC or FNMA, or both.

**SECTION 2** – (a) Notwithstanding anything to the contrary herein, so long as the Declarant owns any Unit in the Condominium, the Declarant shall have the right, at any time and from time to time, to amend this Declaration of Trust (including, but not limited to, the Bylaws hereto and the Rules and Regulations hereto) without the consent of any Unit Owners or any of the Trustees of this Trust, to meet the requirements of any governmental or quasi-governmental body or agency

or the requirements of any insurance company or insurance underwriting office or organization or the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the secondary mortgage market or any lender, or to cure any ambiguity, inconsistency or formal defect or omission.

(b) Subject, however, to the provisions of Section 1 above of this Article VII, which at all times shall take precedence over this Section 2, a majority of the Trustees, with the consent in writing of seventy-five percent (75%) in interest of 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. However, the Trustees must first be duly indemnified to their responsible satisfaction against outstanding obligations and liabilities; provided, however, that no such amendment, alteration, addition or change shall be made: (a) without the prior written consent of the Declarant obtained in each instance, for so long as the Declarant remains the owner of any Unit in the Condominium; or (b) according to the purport of which, the percent of the beneficial interest hereunder of any Unit Owner would be altered, or in any manner or to any extent whatsoever, modified or affected so as to be different than the percentage of the individual interest of such Unit Owner in the Common Elements as set forth in the Master Deed other than by (pursuant to the provisions of 1987 Mass. Acts Chapter 87) consent of all of the Unit Owners whose percentage of the undivided interest is affected; or (c) that would render this Trust contrary to or inconsistent with any requirements or provisions of said Chapter 183A. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this Section shall become effective upon the recording with the Essex South District Registry of Deeds of an instrument of amendment, alteration, addition, or change, as the case may be, signed by a majority of the Trustees hereof, setting forth in full the amendment, alteration, addition, or change, provided that no such amendment shall be valid unless signed by the Declarant as long as the Declarant remains the owner of any Unit. Such instrument so executed and recorded shall be conclusive evidence of the existence of all acts and of compliance with all prerequisites to the validity of such amendment, alteration of addition, 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.

**SECTION 3** - The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of Chapter 183A in accordance with the procedure therefore set forth in Section 19 of said Chapter.

**SECTION 4** - Upon the termination of this Trust, the Trustees may, subject to and in accordance with the provisions of said Chapter 183A, sell and convert into money the whole of the Trust property, or any part or parts thereof, and after paying or retiring all known liabilities and obligations of the Trustees and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, at valuations made by them which shall be conclusive, all other property then held by them in trust hereunder to the Unit Owners according to their respective percentages of beneficial interest, as shown in the Master Deed. In making any sale under the provisions of this Section 4, the Trustees shall have the power to sell or vary any contract of sale to resell without being answerable for loss, and for said purposes, to do all things, including the execution and delivery of instruments, as may by their performance thereof be shown to be in their judgment necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distribution of Trust property may have passed.



## **ARTICLE VIII**

### **SALE OF UNITS**

#### **SECTION 1 - NO SEVERANCE OF OWNERSHIP**

No Unit Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his or her Unit without including therein the Appurtenant Interests (as hereinafter defined); it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Appurtenant Interests of any Unit may be sold, transferred, or otherwise disposed of, except as part of a sale, transfer, or other disposition of the Unit to which such interest are appurtenant, or as part of a sale, transfer, or other disposition of such part of the Appurtenant Interest of all Units.

“Appurtenant Interests”, as used herein, shall include:

- (i) the undivided interest of a Unit Owner in the Common Elements;
- (ii) the interest of such Unit Owner in any Units theretofore acquired by the Trustees, or their designees, on behalf of all Unit Owners, or the proceeds of the sale or lease thereof, if any;
- (iii) the interest of such Unit Owner in any other assets of the Trust and
- (iv) exclusive rights of Unit Owners as provided in the Master Deed, to certain areas including, but not limited to, porches, storage areas, stairways, and the parking areas.

#### **SECTION 2 - FINANCING OF PURCHASE OF UNITS BY TRUSTEES**

With the prior approval of all Unit Owners, the Trustees may acquire Units of the Condominium. Acquisition of Units by the Trustees may be made from any funds in the hand of the Trustees; or if such funds are insufficient, the Trustees may levy an assessment against each Unit Owner in proportion to his beneficial interest, as a common charge; or the Trustees, in their discretion, may borrow money to finance the acquisition of such Units, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the Units with Appurtenant Interests so to be acquired by the Trustees.

#### **SECTION 3 - WAIVER OF RIGHT OF PARTITION**

In the event that a Unit shall be acquired by the Trustees, all Unit Owners shall be deemed to have waived all rights of partition with respect to such Unit or Units as are acquired by the Trustees.

**ARTICLE IX**  
**RESOLUTION OF DISPUTES**

**SECTION 1 - RIGHT TO ARBITRATION**

In the event of any dispute between the Trustees or between the Unit Owners or between the Unit Owners and the Trustees as to any matter involving this Trust, the Master Deed or the Condominium generally, or in the event that any Unit Owner(s), by written notice to the Trustee(s) shall dissent from any determination of the Trustee(s) with respect to the value of the Condominium or any other determination of action of the Trustees under this Trust Agreement, and/or any dispute between the Owners, and where such dispute shall not be resolved within fourteen (14) days after notice thereof, then either the Trustee(s) or the dissenting Unit Owner(s) shall submit the matter to arbitration.

**SECTION 2 - SELECTION OF ARBITRATION**

The party desiring arbitration shall notify the other party of his or her intention in writing and name one (1) arbitrator and if the responding party agrees with the arbitrator selected by the party desiring arbitration, the responding party shall so notify the party desiring arbitration within fourteen (14) days and the issue(s) submitted to arbitration shall be resolved by the agreed upon arbitrator. If the responding party does not agree with the arbitrator selected by the party desiring arbitration, the other party shall respond in writing within fourteen (14) days with the name of a second arbitrator. The two arbitrators shall then select a third arbitrator and the arbitration shall proceed in accordance with Section 3, below.

**SECTION 3 - ARBITRATION PROCEDURE**

It shall be the duty of the three arbitrators selected as above to settle the dispute brought before them. If any arbitrator refuses to appear at any meeting appointed by the arbitrators, a majority of two may act without the absent arbitrator. The decision of the arbitrator(s) shall be binding and acted upon without unreasonable delay. Any arbitration conducted under the provisions of this Article IX shall follow the rules and procedures of the American Arbitration Association. The cost of such arbitration shall be shared equally by both parties, unless otherwise ordered by the arbitrator(s).

**ARTICLE X**

**CONSTRUCTION AND INTERPRETATION**

In the construction hereof, whether or not so expressed, words used in the singular or in the plural, respectively, include the plural singular; words denoting males include females; and words denoting persons include individuals, firms, associates, companies (joint, stock or otherwise), trusts and corporations; unless a contrary intention is to be inferred from or required by the subject matter or context. The captions of Articles and Sections are inserted only for convenience of reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation, or effect hereof.

All of the Trusts powers, and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts.

## ARTICLE XI

### MISCELLANEOUS

A. The Trustees will, upon written request of a mortgagee of any Unit, notify in writing said mortgagee of any default in the performance by the Unit Owner of any obligations under the Condominium documents which is not cured within sixty (60) days.

Upon written request to the Trustees as agents of the Association, identifying the name and address of the holder, insurer or guarantor and the Unit number or address, any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a first mortgage, held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(b) Any delinquency in the payment of assessments or charges owed by an owner of a Unit subject to a first mortgage held, insured or guaranteed by such eligible insurer or guarantor, which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the association;

(d) Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as provided in this Trust.

B. Any Unit Owner may lease or rent his unit, provided that any lease, or occupancy agreement, shall:

(i) be in writing and apply to the entire unit, and not merely a portion thereof; and

(ii) be for a term of not less than six months or more than one year; and

(iii) expressly provide that the lease, or occupancy agreement shall be subject in every respect to the Master Deed of the Condominium, the Declaration of Trust of the Condominium Trust, and the By-Laws and Rules and Regulations thereof, as the same have been amended most recently prior to the execution of the lease, or occupancy agreement.

**IN WITNESS WHEREOF**, the said Trustee has hereunto set his hand and seal as of the day and year first above written.

Gerrymander LLC

By: \_\_\_\_\_  
William E. Luster, Manager

By: \_\_\_\_\_  
Kemith K. Luster, Manager

**COMMONWEALTH OF MASSACHUSETTS**

Essex, ss

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared William E. Luster and Kemith K. Luster, proved to me through satisfactory evidence of identification, which was their Massachusetts Driver's License to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as Managers of Gerrymander LLC.

\_\_\_\_\_  
Scott M. Grover, Notary Public  
My Commission Expires: February 10, 2028