

REPLACE 5.5 + 5.6 OF  
DECL. OF TRUST

Insurance



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**AMENDMENT TO THE DECLARATION OF TRUST AND BY-LAWS  
OF THE CANAL PLACE CONDOMINIUM ASSOCIATION**

This Amendment to the Declaration of Trust and By-Laws of the Canal Place Condominium Association, is entered into this 19 day of AUGUST, 2008, by the duly authorized Board of Trustees and not less than seventy-five percent (75%) of the Beneficial Interest of all Unit Owners thereto for said Association, created under Master Deed, Declaration of Trust and By-Laws recorded at Book 4283, Page 158 and Book 4283, Page 196, respectively.

The Declaration of Trust and By-Laws are hereby amended as follows:

- I. Articles V, §5.5 and §5.6 of the Declaration of Trust are hereby amended by deleting the same in its entirety and placing the following in its stead:

5.5 Insurance.

A. The Trustees shall be required to obtain and maintain, to the extent obtainable, the following insurance (and to pay premiums thereon as a Common Expense): (1) such insurance shall cover all perils which are covered by the so-called standard "all-risk" endorsement, with Agreed Value Replacement Cost, insuring all portions of the buildings, including the Common Areas and Facilities of the Condominium, and all of the Units but not including drapes, furniture, furnishings or other personal property supplied to or installed by Unit Owners, covering the interest of the Condominium, the Trustees and all Unit Owners and their mortgagees, as their interests may appear, in an amount equal to one hundred percent (100%) of the current replacement costs of the Buildings, Common Areas and Facilities, and Units, without deduction for depreciation, with loss payable to the Trustees, as Insurance Trustees for each Unit Owner and the holder of each Unit's mortgage. If appropriate, Inflation Guard and Construction Code coverage should be written. The named insured shall be "the Trustees of the Canal Place Condominium Trust, for the use and benefit of the individual Unit Owners and Unit mortgagees"; (2) worker's compensation insurance; (3) Commercial General Liability insurance covering all Common Areas and Facilities, and any other areas under the supervision of the Trustees in such amounts and with such coverage as the Trustees shall from time to time determine, with a combined single limit for both Bodily I, Personal Injury and Property Damage, of not less than One Million Dollars (\$1,000,000.00), but at least covering each member of the Trustees, the managing agent or the manager, if any, and each Unit Owner and with cross liability endorsement to cover liabilities of the Condominium to a Unit Owner, and a severability of interest

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provision precluding the insurer's denial of a Unit Owner's claim because of negligent acts by this Trust or other Unit Owners; (4) Fidelity Insurance in blanket form for all officers, directors, Trustees, employees and volunteers of the Trust whether or not they receive compensation for their services. Independent Property Managers shall be added to the Association's fidelity bond as "designated agents" and the Association shall thereby be covered for the Manager's activities. The total amount of fidelity bond coverage shall not be less than three (3) months' aggregate assessments plus reserve funds; and (5) such other insurance as the Trustees may determine. All such policies shall provide that adjustment of loss shall be made by the Trustees and that the net proceeds thereof shall be payable to the Trustees as Insurance Trustee for each Unit Owner and the holder of each Unit's mortgage. Each Unit Owner, accepting delivery of his Unit deed, appoints the Trustees as Insurance Trustees (or any Insurance Trustee or Substitute Insurance Trustee designated by the Trustees) as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Trustees shall periodically reevaluate the amount of liability insurance to be carried by Section 3 to the end that the limits of such insurance shall not be less than the amounts specified in said Section (3), or, not less than limits of such liability insurance as are carried by other Condominium Unit Owners' Associations in comparable Condominiums in Lowell, Massachusetts, whichever is higher.

B. All such policies of physical damage insurance shall, insofar as practicable, contain waivers of subrogation as to any claim against the Trustees, their agents and employees, Unit Owners, their respective employees, agents and guests, and of any defense based on invalidity arising from the acts of the insured and shall provide that the insurance will not be prejudiced by any acts or omissions of individual Unit Owners that are not under the control of the Owners' Association, and shall provide that such policies may not be canceled or substantially modified without at least ten (10) days' prior written notice to all of the insureds, including all Unit Owners and mortgagees of Units, and recovery thereafter shall not be affected on account of the availability of proceeds under any policies obtained by individual Unit Owners covering their own Units and shall include a Special Condominium Endorsement (so-called) or its equivalent. Agreed Amount, Inflation Guard and Construction Code Endorsements shall be required if available. A steam boiler and machinery coverage endorsement shall also be required, which provides that the insurer's minimum liability per accident at least equals the lesser of \$2,000,000.00 or the insurance value of the Buildings housing the boiler or machinery. A certificate of insurance, showing the amount of insurance, shall be issued to the Owners of each Unit and the original or a certificate thereof, shall, upon request, be delivered to the mortgagee of each Unit. The Trustees should periodically obtain an independent appraisal or insurance company appraisal of the full replacement value of all portions of the Buildings, including all of the Units and all of the Common Areas and Facilities, and additions, alterations and improvements, without deduction for depreciation, for the purpose of determining the property amount of property insurance to be effected pursuant to this Section, and the amount of such insurance shall in no event be less than the full replacement value so as determined.

C. (1) 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.

C. (2) Property claims can only be made through the Trustees or if so designated, their Property Manager.

D. The cost of all such insurance obtained and maintained by the Trustees pursuant to the provisions of this Article V, §5.5 shall be a Common Expense of the Condominium.

E. (1) Any such insurance obtained and maintained by the Trustees pursuant to the provisions this Article V, §5.5 may have a deductible amount to be determined from time to time by the Trustees, 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.

E. (2) Notwithstanding any provision in the Master Deed, Declaration of Trust and/or By-Laws, the Trustees shall have the right to assess the deductible to the Unit Owners as the Trustees may, in their sole discretion, determine including, but not limited to, assessing the deductible to the Unit Owners who sustain property damage to their Unit.

In the event of property damage to a Unit or Units, the Trust shall not be responsible for the payment of the deductible but rather said Unit Owner or Unit Owners shall be responsible for the same.

If a Unit Owner sustains property damage in amounts less than the Condominium Trust's deductible, the Unit Owner shall be solely responsible for the cost to repair the damage, and the Unit Owner should notify his or her insurance agent. The Trust will not be responsible for property damage to a Unit in an amount less than the deductible, and no Unit Owner shall file a claim with the Master Insurance agent or carrier.

F. Each Unit Owner shall carry insurance at their own expense and for their own benefit insuring, inter alia, his furniture, furnishings and other personal property located within their respective units or its appurtenances, loss assessment coverage, insurance in an amount sufficient to cover the Unit Owner's responsibility for the Master Policy's deductible established by the Board of Trustees and for such amount that is not covered by the Trust's Master Policies, 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 to his Unit, the insurance replacement cost of which exceeds One Thousand Dollars (\$1,000.00), and such Unit Owner shall pay to the Trustees, in the Trustees' discretion, as an addition to his 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.

G. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities 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 insurance.

5.6. Rebuilding and Restoration.

A. In the event of damage to or destruction of the Common Areas and Facilities 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 Areas and Facilities 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 Areas and Facilities and the Units, the proceeds will be first allocated to the cost of repairs to the Common Areas and Facilities 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 Areas and Facilities the balance of the cost of such repairs will be assessed against all Unit Owners as a Common Expense. Notwithstanding this provision, the Board of Trustees reserves the right to assess all costs associated with all insufficient proceeds, whether to Common Areas or to Units, to the Unit Owner of the affected Unit and not as a Common Expense.

Notwithstanding this provision, the Board of Trustees reserves the right to assess the deductible to the Unit Owner pursuant to Sections 3 E(1) and 3 E(2) of these By-Laws.

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 Fifty Thousand Dollars (\$50,000.00), then the Trustees may 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 Buildings and the Common Areas and Facilities 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 Buildings and Common Areas and Facilities 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 Areas and Facilities.

F. Notwithstanding the foregoing, if, as a result of fire or other casualty, the loss exceeds ten percent (10%) of the value of the Condominium, including all parts of the Buildings and the Common Areas and Facilities and the Units prior to the casualty and: (a) if seventy-five percent (75%) 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 Areas and Facilities. Upon such sale, the Condominium shall be deemed removed from the provisions of Chapter 183A of the Massachusetts General laws; or (b) if seventy-five percent (75%) 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 percent (10%) of the value of the Condominium including all parts of the Buildings and the Common Areas and Facilities and the Units, prior to the casualty, any Unit Owner who did not so agree may apply to the Superior Court of Middlesex County on such notice to the Trustees and Unit Owners 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.

G. Notwithstanding any provision in the Master Deed, Declaration of Trust and/or By-Laws, the costs in excess of available insurance proceeds for restoring or repairing any damages to any Unit or the Common Areas and Facilities, which is caused by the failure of the Unit Owner to so maintain his Unit as set forth hereunder and/or the Unit Owner's negligence, shall be assessed solely to the said Unit Owner. Further, in the event the Unit Owner's claim does not exceed the Condominium Trust's deductible on its insurance policy, said Unit Owner shall be required to submit said claim of loss under the Unit Owner's policy before making any claim against any other Unit Owner or the Trust based on negligence or any other theory of liability.

#### 5.6.1. Condemnation.

If more than ten percent (10%) in value of the Condominium is taken under the power of Eminent Domain, then the taking shall be treated as a casualty loss and the provisions of Section 4 of these By-Laws and the provisions of Massachusetts General Laws, Chapter 183A, Section 17 shall apply. Where one or more Units have been substantially altered or rendered uninhabitable as a result

of a partial taking, and the unit Owners vote to restore and continue the Condominium pursuant to Section 17 of said Chapter 183A, the Trustees shall have the authority to acquire the remaining portions of such Units for such price as the Trustees shall determine, provided that any Unit Owners of such remaining portion who do not agree with such determination may apply to the Superior Court of Middlesex County on such notice to the Trustees and the other Unit Owners as the Court shall direct, for an order directing the purchase of such remaining portion at the fair market value thereof as approved by the Court. Where as a result of a partial taking, any Unit is decreased in size or where the number of Units is decreased by a partial taking, then the Trustees may make such provision for realignment of the percentage interest in the Common Areas and Facilities as shall be just and equitable.

In the event of a total or partial taking under the powers of Eminent Domain, the Unit Owners shall be represented by the Trustees in any related proceedings, negotiations, settlements or agreements, and each Unit Owner shall be deemed to have appointed the Trustees as attorney-in-fact for this purpose. In the event of a partial taking, the award shall be allocated to the respective Unit Owners according to their undivided interest in the Common Areas and Facilities, except as to such portion or portions of the award which are attributable to direct or consequential damages suffered by particular Units as determined by the Court, which shall be payable to the Owners of such Units or their mortgagees, as their interests may appear. Subject always to the prior rights of the Unit mortgagees, in the case of a total taking of all Units and the Common Areas and Facilities, the entire award shall be payable to the Trustees to be distributed to the Unit Owners and their mortgagees in accordance with their respective percentage interests in the Common Areas and Facilities.

#### 5.6.2. Improvements.

A. If fifty percent (50%) or more but less than seventy-five percent (75%) of the Unit Owners agree to make an improvement to the Common Areas and Facilities, the cost of such improvement shall be borne solely by the Owners so agreeing.

B. Seventy-five percent (75%) or more of the Unit Owners may agree to make an improvement to the Common Areas and Facilities and assess the cost thereof to all Unit Owners as a Common Expense, but if such improvement shall cost in excess of ten percent (10%) of the then value of the Condominium, including Buildings and the Common Areas and Facilities and the Units, any Unit Owner not so agreeing may apply to the Superior Court of Middlesex County on such notice to the Trustees and Unit Owners as the Court shall direct, for an order directing the purchase of his Unit by the Trustees at fair market value thereof as approved by the Court. The cost of any such purchase shall be a Common Expense.

In all other respects, the By-Laws of the Canal Place Condominium Association are hereby ratified and affirmed.

EXECUTED under seal on the date and year first above written.

BOARD OF TRUSTEES  
CANAL PLACE CONDOMINIUM ASSOCIATION

[Signature]  
Ira Solomon  
[Signature]  
Michael Barbo  
[Signature]  
James Stubblefield

[Signature]  
Renee Caraviello  
[Signature]  
Craig Himmelberger

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

AUGUST 19, 2008

On this 19 day of AUGUST, 2008, before me, the undersigned notary public, personally appeared JAMES STUBBLEFIELD, MICHAEL BARBO, IRA SOLOMON, CRAIG HIMMELBERGER, RENEE CARAVIELLO, and \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was DRIVER'S LIC., 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 the duly authorized Board of Trustees of the Canal Place Condominium Association.

[Signature]  
Official signature and seal of notary  
Catherine DeLoge

My Commission Expires: 8/29/09