



2006 00241804

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QUAIL RUN CONDOMINIUM TRUST

AMENDMENT TO THE RULES AND REGULATIONS

ANTI-LITIGATION RESOLUTION

The undersigned, being a majority of the Board of Trustees of the Quail Run Condominium Trust ("the "Board") under Master Deed and Declaration of Trust dated January 28, 1987 and recorded with the Middlesex South District Registry of Deeds in Book 17820, Page 242, and Book 17820, Page 266, respectively, as amended, the organization of unit owners of the Quail Run Condominium (the "Condominium"), do hereby adopt the following administrative resolution as an amendment to the Association's rules and regulations pursuant to Article VI, Section 11 of the Declaration of Trust:

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

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

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

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

WHEREAS, shareholder derivative lawsuits in the condominium setting are typically expensive to defend and often have adverse impacts on condominium insurance, both in terms of coverage and defense obligations, as well as increased premiums and cancelled or non-renewed policies;

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

WHEREAS, the Massachusetts Business Corporations Statute as amended contains newly added provisions, namely M.G.L. c. 156D sections 7.40 through 7.46 which provide corporations and corporate boards of directors with significant protections aimed at preventing and deterring frivolous shareholder derivative lawsuits and providing and establishing a set of rules and procedures for maintaining and proceeding with shareholder derivative lawsuits in

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addition to that which is otherwise provided or required by Mass. R. Civ. P. 23.1;

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

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

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

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

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

1. DEFINITIONS. The following words shall have the following meanings unless the context requires otherwise:
 - a. "Derivative proceeding", a civil suit brought by a unit owner to enforce a right of the condominium association.
 - b. "Unit Owner", the person or entity owning a unit at the condominium, including the declarant.
2. STANDING. A unit owner may not commence or maintain a derivative proceeding unless the unit owner:
 - a. was a unit owner at the condominium at the time of the act or omission complained of or became a unit owner through transfer by operation of law from one who was a unit owner at the time; and
 - b. fairly and adequately represents the interests of the condominium association in enforcing the right of the condominium association.
3. DEMAND. No unit owner may commence a derivative proceeding until:
 - a. a written demand has been made upon the condominium board to take suitable action; and

- b. either;
 - (i) 90 days have elapsed from the date the demand was made, if such demand was not duly submitted to a vote of the unit owners referred to in Section 5(b)(3) within 60 days of such demand; or
 - (ii) 120 days have elapsed from the date the demand was made, if such demand was duly submitted to a vote of the unit owners referred to in Section 5(b)(3);
- c. a unit owner need not wait for the expiration of the applicable 90 or 120 day waiting period if either,
 - (i) the unit owner is notified in writing during the waiting period that the demand has been rejected; or
 - (ii) the unit owner can demonstrate to a Court that irreparable injury to the association would result by waiting for the expiration of the applicable waiting period.

4. STAY OF PROCEEDINGS. If the condominium board or association commences an inquiry into the allegations made in the demand or complaint, the court may upon motion of the condominium board or association stay any derivative proceeding for a period as the court considers appropriate.

5. DISMISSAL.

- a. A derivative proceeding commenced after rejection of a demand shall be dismissed by the court on motion by the condominium board or association if the court finds that either:
 - (1) one of the groups specified in subsections (b)(1), (b)(2) or (f) below, has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the condominium association; or
 - (2) unit owners specified in subsection (b)(3) have determined that the maintenance of the derivative proceeding is not in the best interests of the condominium association.
- b. Unless a panel is appointed pursuant to subsection (f), the determination in subsection (a) shall be made by:
 - (1) a majority vote of independent board members present at a meeting of the condominium board if the independent board members constitute a quorum;

- (2) a majority vote of a committee consisting of 2 or more independent condominium board members appointed by majority vote of independent condominium board members present at a meeting of the condominium board, whether or not the independent board constituted a quorum; or
 - (3) the vote of fifty one per cent of unit owners entitled to vote, not including units and corresponding percentages owned by or voted under the control of a unit owner or related person who has a beneficial financial interest in the act or omission that is the subject of the derivative proceeding (excluding benefits that may or may not result from the derivative proceeding as a result of the unit owner's membership in the Condominium) and which would reasonably be expected to exert an influence on that unit owner's or related person's judgment if called upon to vote in the determination.
- c. None of the following shall by itself cause a board member to be considered not independent for the purposes of this section:
- (1) the nomination or election of the board member by a person who is a defendant in the derivative proceeding or against whom action is demanded;
 - (2) the naming of the board member as a defendant in the derivative proceeding or as a person against whom action is demanded; or
 - (3) the approval by a board member of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.
- d. If the condominium board or association moves to dismiss the derivative suit, it shall make a written filing with the court setting forth facts to show:
- (1) whether a majority of the board members was independent at the time of the determination by the independent directors, and
 - (2) that the independent board members made the determination in good faith after conducting a reasonable inquiry upon which their conclusions are based. Unless otherwise required by subsection (a), the court shall dismiss the suit unless the plaintiff has alleged with particularity facts rebutting the condominium board or association's filing in its complaint or an amended complaint or in a written filing with the court. All discovery proceedings shall be stayed upon the filing by the condominium board or association of the

motion to dismiss and the filing required by this subsection until the notice of entry of the order ruling on the motion; but the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted.

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

6. DISCONTINUANCE OR SETTLEMENT.

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

7. PAYMENT OF EXPENSES.

Upon termination of the derivative proceeding the court may:

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

SO RESOLVED.

EXECUTED as a sealed instrument this 6th day of December, 2006.

Joel M. Lawrence)
Neil Clark)
Joseph F. [unclear])
Joel [unclear])
John W. Pease)

AS TRUSTEES OF THE QUAIL RUN
CONDOMINIUM TRUST AND NOT
INDIVIDUALLY

COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

On this 6th day of December, 2006, before me, the undersigned notary public, personally appeared Toel Seidman, Jack Dean, Joel Alperst, Richard Clarke, Joseph Fitzmaurice, proved to me through satisfactory evidence of identification, being (check whichever applies): ___ driver's license, or other state or federal governmental document bearing a photographic image, ___ oath or affirmation of a credible witness known to me who knows the above signatory, or my own personal knowledge of the identity of the signatory, to be the persons whose names are signed above, and acknowledged the foregoing to be signed by them voluntarily for its stated purpose, as Trustees of said Quail Run Condominium Trust.

James E Boyle

Notary Public

My Commission Expires: February 13, 2009

Print Notary Public's Name: JAMES E BOYLE

Qualified in the Commonwealth of Massachusetts

REGISTRY OF DEEDS
SOUTHERN DISTRICT
ATTEST:
Eugene C. Byrne
REGISTER