

## SETTLEMENT AGREEMENT

This Settlement Agreement is made as of the 29<sup>th</sup> day of March, 2024 (the "Effective Date"), by and among Holly N. Rader and James F. Rader (together, the "Raders"); Holly N. Rader, as Trustee of the 5 Merrill Realty Trust (the "Trust"); and Hingham Yacht Club ("HYC") (collectively, the "Parties").

WHEREAS, HYC is the record owner of the property at 208 Downer Avenue and 211 Downer Avenue in Hingham, Massachusetts (together referred to hereafter as the "HYC Land"); and

WHEREAS, the Trust is the record owner of the property at 5 Merrill Street, Hingham, Massachusetts (the "Trust Land"); and

WHEREAS, in August 2021, HYC submitted an application to the Town of Hingham's Zoning Board of Appeals ("ZBA") seeking an amendment to a prior special permit in order to replace an existing boat storage barn on the 208 Downer Avenue parcel of the HYC Land and relocate and construct a new storage barn on that parcel; and

WHEREAS, through a written decision dated December 17, 2021 (the "Decision"), the ZBA granted a special permit in HYC's favor to construct a new storage barn on the 208 Downer Avenue portion of the HYC Land; and

WHEREAS, in October 2021, the Trust filed a lawsuit against HYC in the Massachusetts Land Court, captioned *Holly N. Rader, in her capacity as Trustee of 5 Merrill Realty Trust v. Hingham Yacht Club*, Docket No. 21 MISC 000504 (the "Land Court Action"), in which the Trust asserted claims of adverse possession concerning certain so-called "Possessed Areas" both inside and outside of a stockade fence as more specifically depicted in a plan dated November 14, 2023 and entitled "Possessed Areas," attached hereto as Exhibit A; and

WHEREAS, HYC denied The Trust's claims in the Land Court Action and counterclaimed seeking to quiet title through adverse possession to a portion of the Trust Land identified in HYC's counterclaim as the Storage Area (hereafter, the "Storage Area"), as more specifically depicted in Exhibit A in the area described as "Area of Adverse Possession claimed by HYC" and for damages for trespass and willful trespass to trees; and

WHEREAS, the Trust denied HYC's counterclaims in the Land Court Action and the Land Court Action claims and counterclaims are still pending; and

WHEREAS, in January 2022, the Raders filed a lawsuit in the Massachusetts Superior Court against HYC and the ZBA, captioned *Holly N. Rader, Trustee of 5 Merrill Realty Trust, et al. v. Robyn S. Maguire, et al.*, Plymouth County, Civil Action No. 2283CV00003 (the "Zoning Appeal"), seeking a judgment annulling and vacating the Decision; and

WHEREAS, HYC and the ZBA denied the Raders' and the Trust's claims in the Zoning Appeal and the Zoning Appeal is still pending; and

WHEREAS, the Parties desire to compromise and settle all matters among them including those pertaining to all pending litigation between them as of the Effective Date.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Conveyance by HYC to the Trust of the "Inside of Fence" Portion of the Claimed Possessed Areas. HYC shall deliver to the Trust or its nominee, an executed deed, in the form attached hereto as Exhibit B, to the portion of the Possessed Areas inside (on the Trust's side of) the fence, as identified in the plan attached thereto. The Trust shall pay any fees and expenses incurred in connection with the recording of the deed, including without limitation the preparation, by the Trust's registered professional engineer and/or land surveyor, of a recordable plan

establishing the exact property description of the deeded area, and all deed stamps and recording fees. The Trust or the Raders may, at their sole cost, maintain, repair or replace the fence which will be installed on the new boundary line between the Trust Land and the HYC Land (i.e., in the same location as the currently installed fence), and HYC shall permit the Trust and the Raders temporary access to the HYC Land from time to time for such purpose, upon one (1) day advance notice, provided, however that the Trust and the Raders shall indemnify and save harmless the HYC of and from any loss to person or property resulting from such temporary access. For the avoidance of doubt, the Trust shall own the entire fence and HYC shall have no right or obligation to maintain, repair or replace the fence or any portion thereof.

2. No Further Conveyance by HYC of any Other Portion of the Claimed Possessed Areas or HYC Land. HYC shall remain the owner of the "outside the fence" portion of the Possessed Areas identified in Exhibit A (on HYC's side of the fence) and there shall be no conveyance to the Trust or to the Raders of HYC's record title to the outside the fence portion of HYC's Land. Nor shall there be any conveyance to the Trust or to the Raders of any right, title or interest in, of or on any portion of HYC's Land except as expressly set forth herein. The Trust and the Raders are hereby estopped from asserting any claim of adverse possession or prescriptive easement to any portion of HYC's Land on or after the Effective Date.

3. View Easement. HYC shall grant a View Easement for the Trust's benefit solely over the "outside the fence" area of the 208 Downer Avenue portion of the HYC Land, as more specifically identified in the form of View Easement attached hereto as Exhibit C. The Trust shall pay any fees and expenses incurred in connection with the recording of the easement, including without limitation the preparation, by the Trust's registered professional engineer, of a recordable plan delineating the easement area and all recording fees. Other than the View Easement or as

otherwise set forth in paragraphs 1 and 4 of this Agreement, HYC does not hereby grant any easement, license, right of use or access, for any purpose, over any portion of the HYC Land.

4. The Trust's and Raders' Permitted Pruning on HYC Land. HYC agrees to allow, and the Trust and the Raders shall be entitled to engage in, pruning at the Trust or the Raders' expense in the area specifically delineated in Exhibit D hereto, to maintain and/or improve the Trust or the Raders' view; provided, however, that such pruning shall, in all events, be subject to applicable governmental restrictions, including but not limited to Town of Hingham conservation or other restrictions, and further provided, that the initial pruning shall take place after a meeting of a representative of the Raders and HYC for the Raders and/or the Trust to identify the nature and extent of the initial pruning project (the "Initial Pruning"), which meeting shall take place within ninety (90) days of execution of this Agreement. Any pruning conducted after the Initial Pruning shall be limited to maintenance of the Initial Pruning that provides the enhanced view established by the Initial Pruning. The Trust and the Raders shall indemnify and save harmless HYC of and from any loss to person or property resulting from such temporary access. The rights set forth in this paragraph run with the Trust Land and shall inure to the benefit of the Trust's or the Raders' heirs, successors and assigns. Nothing in this paragraph shall prevent, restrict or otherwise affect in any way HYC's right, in its sole discretion, to prune, maintain or remove any natural growth on the HYC Land.

5. HYC's Permitted Use of the Storage Area. The Trust shall remain the owner of the "Storage Area" as identified in Exhibit A hereto and there shall be no conveyance of the Trust's record title to that portion of the Trust Land. Notwithstanding the foregoing, HYC is permitted to use the stone parking area of the Storage Area, as more specifically depicted in Exhibit A hereto, for storage of boats, trailers or boat moving equipment, and related access in connection with

HYC's operations, provided, further that (a) HYC will not store any hazardous materials on the Storage Area, (b) will keep the Storage Area free of trash and debris, and, (c) HYC shall indemnify and save harmless the Trust and the Raders of and from any loss to person or property resulting from such use. HYC's permitted use of the Storage Area, as described herein, shall continue on an uninterrupted basis until the earlier of (a) delivery to HYC of written notice by the Trust, by hand or electronic mail, that the Trust is about to commence duly permitted construction of a pier or dock on the Trust Land, or (b) the date of the closing of a sale of the Trust Land by the Trust or the Raders to an unrelated or unaffiliated third-party purchaser, or (c) the death of both Holly N. Rader and James Rader, whereupon HYC shall restore the Storage Area to a naturally vegetated state or as otherwise agreed in writing, including removal of gravel if requested by the Trust or the Raders, all within thirty (30) days of the notice. HYC is hereby estopped from asserting any claim of adverse possession or prescriptive easement to any portion of the Trust Land on or after the Effective Date.

6. Dismissal of Land Court Action. Within three (3) business days after the recording of the deed and easement identified in Paragraphs 1 and 3 above, the Parties shall file in the Land Court Action a stipulation of dismissal with prejudice and without costs, with each party bearing its own attorneys' fees and waiving all rights of appeal. The stipulation of dismissal shall be in the form attached hereto as Exhibit E. HYC's attorneys shall be authorized to sign the Stipulation of Dismissal on all Parties' behalf and file it with the Court without the need for further authority from or notice to the Parties.

7. Dismissal of Zoning Appeal. Within three (3) business days after the recording of the deed and easement identified in Paragraphs 1 and 3 above, the Parties shall file in the Zoning Appeal a stipulation of dismissal with prejudice and without costs, with each party bearing its own

attorneys' fees and waiving all rights of appeal. The stipulation of dismissal shall be in the form attached hereto as Exhibit F. HYC's attorneys shall be authorized to sign the Stipulation of Dismissal on all Parties' behalf and file it with the Court without the need for further authority from or notice to the Parties. The Parties shall cooperate to the extent necessary to obtain the ZBA's assent to the Stipulation of Dismissal referenced in this paragraph.

8. The Raders' and the Trust's Release of HYC. Except for any rights, obligations or duties arising out of this Agreement or the instruments identified herein as Exhibits B and C hereto, and in consideration of the terms of this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Raders, both in their individual and representative capacities, and the Trust, on behalf of themselves and their respective employees, agents, representatives, attorneys, successors, and assigns, hereby unconditionally and irrevocably release, acquit and forever discharge HYC and its employees, agents, representatives, attorneys, successors, and assigns of and from any and all claims, demands, rights, actions, causes of actions, grievances, appeals, requests for governmental enforcement actions, charges, complaints, suits, proceedings, debts, controversies, agreements, judgments, demands, liabilities, obligations, promises, property transfers, easements, licenses or uses, claims of adverse possession and/or prescriptive easement, and losses of any type or nature whatsoever, in law or in equity, known or unknown, which the Raders or the Trust ever had, now have, or shall have as of the Effective Date, specifically including but not limited to any and all claims and defenses that were or could have been asserted in the Land Court Action and in the Zoning Appeal.

9. HYC's Release of the Raders and the Trust. Except for any rights, obligations or duties arising out of this Agreement or the instruments identified herein as Exhibits B and C hereto, and in consideration of the terms of this Agreement, the receipt and sufficiency of which are hereby

acknowledged, HYC hereby unconditionally and irrevocably releases, acquits and forever discharges the Raders, both in their individual and representative capacities, and the Trust and their respective employees, agents, representatives, attorneys, successors, and assigns of and from any and all claims, demands, rights, actions, causes of actions, grievances, appeals, requests for governmental enforcement actions, charges, complaints, suits, proceedings, debts, controversies, agreements, judgments, demands, liabilities, obligations, promises, property transfers, easements, licenses or uses, claims of adverse possession and/or prescriptive easement, and losses of any type or nature whatsoever, in law or in equity, known or unknown, which HYC ever had, now has, or shall have as of the Effective Date, specifically including but not limited to any and all claims and defenses that were or could have been asserted in the Land Court Action and in the Zoning Appeal.

10. HYC Construction of Storage Barn Pursuant to the Decision. Without limiting the generality of the releases set forth in Paragraphs 8 and 9 above, the Trust and the Raders specifically agree not to object, in any manner or in any forum, to HYC's relocation and construction of the new storage barn, and related work, pursuant to the terms and conditions of the Decision. To the extent that this Agreement or HYC's grant of the View Easement identified in Paragraph 3 above require that HYC make any changes to, or seek additional approval from the ZBA or any other permitting authority concerning, that certain "'Proposed Landscape Plan, Hingham Yacht Club,' prepared by Environmental Consulting & Restoration, LLC, dated October 5, 2021 (1 Sheet)," (the "Landscape Plan") as identified in the Decision, HYC shall pay, in advance, all expenses, including but not limited to all costs of consultants and other professionals, incurred by HYC in connection with any further submissions or proceedings before the ZBA or any other permitting authority concerning the Landscape Plan. HYC will use reasonable efforts to obtain any approvals in any further proceedings reasonably necessitated by this Agreement

concerning the Landscape Plan, but no adverse action by the ZBA or any other permitting authority in any such proceedings shall affect in any way the Parties' rights and obligations hereunder, except as specifically modified by any ZBA decision regarding the type, size, location or number of plantings allowed or required within the Easement Area. Notwithstanding the foregoing, the Trust and the Raders shall and do hereby retain the right to seek the Town's enforcement of the terms of the Decision and any approvals, approved plans, issued permits and the bylaws, rules and regulations of the Town relating to the new storage barn.

To the extent that any lighting is owned or controlled by HYC, and subject to any requirement or permit from the Town, HYC shall not install or maintain any light or spotlight either on a pole or on top of the new storage barn that is oriented to shine directly onto the Trust Land.

11. Non-Opposition to Future Construction and Permitting Requests. Without limiting the generality of the releases set forth in Paragraphs 8 and 9 above, the Parties agree to not object to, take other actions in opposition to, or assist or encourage any other person in objecting to or opposing, any lawful use or activities consistent with the operation of HYC's property as a yacht club and the Trust's property as a single family home or construction ongoing on any Party's Land as of the Effective Date or any future permitting or other approvals sought by any Party from any governmental body in connection with the ownership, use or disposition of either the Trust Land or the HYC Land, including specifically but not limited to: (a) the Trust's application to build a pier or dock on the Trust Land or any future project planned by the Trust in connection with the ownership and use of Trust Land, and (b) any pending or future project planned by HYC in connection with HYC's operations; provided, however, that any Party may seek enforcement by any issuing authority of (i) any approvals or permits previously issued, (ii) any approvals or

permits issued in connection with any use or activity inconsistent with the operation of HYC's property as a yacht club and the Trust's property as a single family home, (iii) any approvals or permits for a project covered by this paragraph, or (iv) any applicable law, bylaw, rule or regulation. From and after the Effective Date, HYC will continue to undertake reasonable efforts to encourage its members to comply with local traffic and parking restrictions and/or regulations, including without limitation the posted no parking zones on Marion Street and Merrill Street; provided, however, that no claim by the Trust or the Raders of any person's violation of local traffic or parking restrictions and/or regulations shall constitute grounds for any claim of an Event of Default or breach of this Agreement by HYC.

12. Event of Default and Indemnification. A Party's failure to perform any of its obligations hereunder which failure continues for more than fifteen (15) business days after written notice of default, or such additional time as may be reasonably necessary to cure the default provided that the defaulting party has commenced efforts to cure the default within fifteen (15) business days after written notice from the other Party, shall constitute an Event of Default under this Agreement.

(a) 'The Raders' and the Trust's Indemnification. The Raders and the Trust agree to defend, indemnify and hold HYC, and its employees, agents, representatives, attorneys, successors, and assigns, harmless from and against any and all claims, demands, actions, suits and proceedings (whether civil, criminal or administrative) and any and all liability, loss, expense (including attorneys' fees, consultant or expert fees), costs or damages, resulting from, arising out of, or relating to any Event of Default by the Raders or the Trust.

(b) HYC's Indemnification. HYC agrees to defend, indemnify and hold the Raders and the Trust, and their employees, agents, representatives, attorneys, successors, and assigns, harmless from and against any and all claims, demands, actions, suits and proceedings (whether civil, criminal or administrative) and any and all liability, loss, expense (including attorneys' fees, consultant or expert fees), costs or damages, resulting from, arising out of, or relating to any Event of Default by HYC.

13. Termination of View Easement Upon the Trust's or the Raders' Event of Default.

Notwithstanding anything to the contrary herein, upon an Event of Default by the Trust or the Raders, the View Easement referenced in Paragraph 3 above and Exhibit C hereto shall terminate upon a final determination of an Event of Default pursuant to the arbitration process set forth in paragraph 15 below, in which event HYC shall be entitled to record a Termination of Easement with the Plymouth County Registry of Deeds without the need for further authority from or notice to the Parties.

14. Termination of HYC's Use of Storage Area Upon HYC's Event of Default.

Notwithstanding anything to the contrary herein, upon an Event of Default by HYC, the permitted use of the Storage Area referenced in Paragraph 5 above shall terminate upon a final determination of an Event of Default pursuant to the arbitration process set forth in paragraph 15 below, in which event HYC shall immediately cease all use of the Storage Area without the need for further demand from or notice to the Parties.

15. Arbitration. Except for an enforcement action pursuant to paragraph 11, any controversy or claim arising out of or relating to this Agreement, or any breach thereof or default thereunder, shall be settled by arbitration before a single arbitrator and arbitration process agreeable to both parties, and, in the absence of agreement of the parties as to the arbitrator or

arbitration process, a single arbitrator selected and administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, with the arbitration to take place in Boston, Massachusetts. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

16. Attorneys' Fees. Nothing in this Agreement shall limit any remedy, in law or equity, otherwise available to any Party to remedy an Event of Default by, or to enforce any obligation of, any other Party to this Agreement. In any arbitration or litigation arising out of or to enforce the provisions of this Agreement, the prevailing Party shall be entitled to recover his, her or its reasonable attorneys' fees, consultant or expert fees, and costs from the non-prevailing Party, including those amounts incurred at appellate levels and in post-judgment proceedings.

17. Cooperation. Each of the Parties agrees to cooperate and to execute any documents necessary to implement fully the terms of this Agreement.

18. No Admissions. Nothing in this Agreement shall constitute or be construed as an admission of liability, wrongdoing or fault or an admission of any fact by any Party for any purpose. This Agreement, and the settlement provided for herein, shall not be admissible in any lawsuit, administrative action, or any judicial or administrative proceeding if offered to show, demonstrate, evidence or support a contention that any of the Parties acted improperly, or in breach of law, contract or any other duty. However, in any action alleging breach of the Agreement itself, this Agreement will be admissible for the purpose of enforcing its terms.

19. Notice. All notices or other communications required, permitted, or given with respect to this Agreement shall be effective upon transmission and may be transmitted only by e-mail, personal delivery, overnight delivery or certified mail, return receipt requested, as follows:

If to the Trust or to the Raders, to:

If to HYC, to:

Attn: Holly N. Rader, Trustee  
5 Merrill Realty Trust  
5 Merrill Street  
Hingham, MA 02043  
Email:

Attn: Commodore  
Hingham Yacht Club  
P.O. Box 165  
Hingham, MA 02043  
Email: commodore@hinghamyachtclub.com

and

and

James F. Rader  
Holly N. Rader  
5 Merrill Street  
Hingham, MA 02043  
Email: jrader@raderproperties.net

Attn: Secretary  
Hingham Yacht Club  
P.O. Box 165  
Hingham, MA 02043  
Email: secretary@hinghamyachtclub.com

With a copy (which shall not constitute notice) to:

With a copy (which shall not constitute notice) to:

Kevin M. Burke, Esq.  
Burke, Whittum & Leahy, LLC  
738 Main Street  
Hingham, MA 02043  
Email: kburke@burkleahy.com

Thomas S. Vangel, Esq.  
Michael P. Connolly, Esq.  
Murtha Cullina LLP  
33 Arch Street  
Boston, MA 02110  
Email: tvangel@murthalaw.com  
mconnolly@murthalaw.com

Any Party may at any time change the addresses for notices to such Party by providing a notice in the manner set forth above in this paragraph.

20. General Provisions:

- a. This Agreement shall be governed by and construed according to the laws of the Commonwealth of Massachusetts.
- b. This Agreement shall be binding on and will inure to the benefit of the Parties hereto and their respective heirs, successors and assigns.
- c. The Parties have each participated in drafting this Agreement and any uncertainty that may exist in any of its language shall not be presumed attributable to any of the parties or be construed against either of them.
- d. A determination that any provision or provisions of this Agreement is invalid, illegal or otherwise unenforceable in any respect in any instance shall not affect the validity, legality or enforceability of any other provision or provisions of this Agreement.

- e. The Parties agree that this Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and that there are no other agreements, understandings, representations or warranties made or given, except as expressly set forth herein. All prior agreements, understandings, letters and/or communications relating to the subject matter of this Agreement shall be null and void and shall be superseded by this Agreement, except as expressly set forth herein. This Agreement may not be changed orally, but only by an agreement in writing, duly executed by or on behalf of the Party or Parties against which enforcement of any waiver, change, modification, consent, or discharge is sought.
- f. The Parties acknowledge that they have executed this Agreement voluntarily and of their own free will and that each has had the opportunity to seek the advice of legal counsel in connection with the negotiation, preparation and review of this Agreement and that they fully understand the scope and effect of each provision contained herein.
- g. This Agreement may be executed in identical counterparts, each of which shall be deemed an original, and each of which shall constitute one and the same instrument. Except where a wet signature is required for recording, a facsimile or electronic copy of a signature is valid as an original.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

Signed as a sealed instrument as of the date and year written above.

  
Holly N. Rader, Individually

  
James L. Rader, Individually

  
5 Merrill Realty Trust  
By: Holly N. Rader  
Its: Trustee  
Duly Authorized

  
Hingham Yacht Club  
By: Conrad V. Langenhagen  
Its: President and Commodore  
Duly Authorized