

**Form 3**

**Condominium Property Act  
Section 26**

**Notice of Change of By-laws**

**Condominium Corporation No. 0513297** hereby certifies that by a special resolution passed effective September 26, 2005, the By-laws of the Corporation were added to, amended or repealed as follows:

The Form of By-laws attached as Schedule "A" hereto are hereby adopted as the By-laws of the Corporation in substitution and replacement of the existing By-laws.

The seal of **Condominium Corporation No. 0513297** was affixed as of September 26, 2005, in the presence of

  
\_\_\_\_\_  
NAUM SHTEINBAH,  
President

(corporate seal)

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**General By-Law of the Condominium Corporation**

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**3111 Varsity**  
Calgary, Alberta

**Streetside Development Corporation**  
Calgary, Alberta

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GENERAL BY-LAW  
OF  
CONDOMINIUM CORPORATION NO. 0513297

**Be it and it is hereby enacted** as By-law No. 1 of Condominium Corporation No. 0513297 for the purposes of repealing, replacing, and substituting those By-laws presently governing the affairs of Condominium Corporation No. 0513297, the following By-law:

**Article 1**  
**Interpretation**

**1.1 Definitions - Specific**

For the purposes of this By-law, and unless the context wherein used shall otherwise require, the following words, terms, phrases and expressions shall be ascribed the meanings and definitions as are hereinafter set forth:

**“Act”** means the *Condominium Property Act*, R.S.A., 2000, c. C-22, as amended and replaced from time to time;

**“Annual General Meeting”** means a General Meeting of the Corporation as defined and described in Article 5 of this By-law;

**“Appropriate Authority”** means such authority having jurisdiction over matters in respect of the Parcel and all relevant parts and activities thereon (including without limitation development) as the context requires and includes without limitation to the generality of the foregoing municipal, provincial and federal government as applicable, utility companies, insurers, and similar entities as the case may be;

**“Article”, “Part”, “Provision”, “Section”** and/or **“paragraph”** means that provision or part of this By-law as identified by number;

**“Auditor’s Report”** includes the current audited financial statements, if and as same are available;

**“Board”** means the board of directors of the Corporation;

**“Board Member”** or **“Member”** means a duly appointed, nominated or elected member of the Board;

**“Budget”** means a financial statement or plan for the coordination of resources and expenditures of the Corporation for the periods of time described in this By-law;

**“Building”** means the building(s) constituting the Project;

**"By-laws", "Rules", "Regulations" and "Resolutions"** means, respectively, the By-laws, rules, regulations and resolutions of the Corporation, as the case may be, now existing or in the future enacted or promulgated by the Corporation from time to time;

**"Common Expenses"** means the expense of performance of the objects and duties of the Corporation and any expenses specified as common expenses in the By-laws of the Corporation;

**"Condominium Fees"** means contributions to Common Expenses as assessed to Owners, as provided in the Act and these By-laws;

**"Common Mortgagee"** means the holder of a Mortgage or Mortgages registered against title to all of the Units, who has notified the Corporation of his interest, as Mortgagee, pursuant to section 26 of the Act;

**"Common Owner"** means the legal and registered Owner of all of the Units and the Common Property;

**"Common Property" or "Common Area"** those portions of the Condominium Plan, if any, which are not designated as a Unit and such additional portions of the Parcel as shall from time to time be designated Common Property and any Common Property Unit;

**"Common Property Unit(s)"** are those Unit(s), if any, in the Project which contain(s) facilities designated for the common use and enjoyment of the Owners and Occupants;

**"Condominium Plan"** means Condominium Plan No. 0513297 registered in the South Alberta Land Registration District Offices in Calgary, Alberta;

**"Condominium Property"** means those portions of the Condominium Plan, if any, which are not designated as a Unit and such additional portions of the Parcel as shall from time to time be designated Common Property and any Unit acquired for common use of the Owners and Occupants of the Project as herein provided for;

**"Condominium Status"** means the legal status of the parcel, the lands and buildings as a condominium under and pursuant to the Act;

**"Corporation"** means Condominium Corporation No. 0513297;

**"Developer"** means that person or corporation owning all or substantially all of the units and from time to time offering the units for sale to the public;

**"Emergency Situation"** means a situation normally and reasonably perceived as one which would endanger either or both person or property if not immediately remedied or rectified;



**"Estoppel Certificate"** means a certificate of the Corporation, issued by the Corporation, under and pursuant to section 39(6) of the Act and includes all Certificates made or given by the Corporation pursuant to section 11.2 of this By-law;

**"Exclusive Use Areas"** or **"Privacy Areas"** means those areas of the common property designated pursuant to Article 8 hereof to the owners of units;

**"Extraordinary General Meeting"** means a general meeting of the Corporation which is not an Annual General Meeting;

**"General Meeting"** means any duly and properly convened general meeting of the Corporation held in accordance with this By-law;

**"Insurance Trustee"** means such person, corporation or party who may be designated hereunder from time to time to receive, hold and disburse proceeds of policies of insurance pursuant to this By-law and the Act;

**"Interest Rate"** means 18% per annum calculated and compounded monthly;

**"Managed Property"** means the Common Property and those parts of the Units as herein more particularly described, which, by this By-law, the Corporation shall administer, control, manage, maintain and repair;

**"Manager"** means a duly qualified professional property manager employed or appointed by the Corporation from time to time to manage the day to day affairs of the Corporation;

**"Mortgagee"** means the holder of any mortgage registered against title to any one or more Units and who has, pursuant to section 26 of the Act, notified the Corporation of his interest as Mortgagee, and "Mortgage" shall refer to the mortgage held by such Mortgagee;

**"Occupier" or "Occupant" or "Tenant"** means the rightful and lawful occupant or lessee of a Unit whether or not said occupant is the Owner, and includes all family members, invitees, licensees, such persons, servants, guests and customers of such occupant or tenant;

**"Ordinary Resolution"** means a Resolution passed by a simple majority of persons entitled to vote or similar resolution made in writing and signed by a majority of persons who would have been entitled to vote on such resolution at a General Meeting;

**"Owner"** means the registered owner of a Unit and member of the Condominium Corporation;

**"Parcel"** means the lands comprising the Project;

**"Parking Unit(s)"** are Units numbered 151 through 342 inclusive, together with such other Unit(s), excepting Common Property Units, which on any redivision of any Unit is, on the Condominium Plan, restricted in use to the parking of motor vehicles;

**"Project"** means all of the real and personal property and fixtures comprising the parcel, land and buildings which constitute the Units and the Common Property;

**"Recreational Facilities"** means that Unit or Units and those parts of the Common Property, if any as the case may be, that is administered by the Corporation for the use, benefit and enjoyment of the Owners, Occupants, and their respective guests, from time to time, and at any time, including without limitation amenity rooms and similar facilities;

**"Rental Project"** means the project as operated for rental purposes wherein all or substantially all Units are not Owner occupied;

**"Residence Unit(s)"** are Units numbered 1 through 150 inclusive, together with such other Unit(s), excepting Common Property Units, which on redivision of any Unit is not restricted in use to either or both the parking of motor vehicles or the storage of household goods;

**"Restrictive Covenant(s)"** are those Restrictive Covenants registered against title to one or more of the Units, governing the either the use or development of such Unit(s) and includes any restrictions shown on the Condominium Plan;

**"Special Resolution"** means a resolution, either:

- (a) passed at a General Meeting by a majority constituted of not less than 75% of all persons entitled to vote thereon, who represent no less than 75% of the total Unit Factors of all Units; or,
- (b) signed by not less than 75% of all persons who, at a General Meeting, would be entitled to vote thereon, and, who represent no less than 75% of the total Unit Factors of all Units;

**"Storage Unit(s)"** are Units numbered 343 through 461 inclusive, together with such other Unit(s), excepting Common Property Units, which on redivision of any Unit is, on the Condominium Plan, restricted in use to the storage of normal and usual household goods and items;

**"Substantial Damage"** means loss, damage or destruction to all or such significant part of the Project to the extent of 25% or more of the replacement value, as determined immediately prior to the occurrence, of all Units and Common Property constituting the Project; and,

**"Unanimous Resolution"** means a resolution, either:

- (a) passed unanimously at a General Meeting by all persons or parties entitled to exercise the power to vote therein, who represent all of the total unit factors for all of the Units; or,
- (b) signed by all persons, who would be entitled to vote thereon at a General Meeting, who represent all of the total unit factors for all of the Units.

**“Unit” or “Units”** means, as the context may reasonably require, the Unit as described on the Condominium Plan and all Buildings and improvements either placed or erected thereon.

## **1.2 Definitions - General**

Words, terms, phrases, and expressions, undefined in this By-law and which require definition, shall have such meaning as ascribed thereto under the Act, or, where so undefined, under such relevant statutes of the Province of Alberta.

## **1.3 Number and Gender**

Whenever words, terms, phrases, and expressions, defined or otherwise employed in this By-law shall import number, gender, or entity, same shall import, without further mention, all numbers, genders, and entities as the context wherein used shall require and as the case may be, subject to specific expression to the contrary.

## **1.4 Headings**

Headings used in this By-law have been inserted for the purposes of reference only, and are not to be considered or taken into account in construing the terms and provisions of this By-law.

## **1.5 Conflict with Act**

Unless expressed herein to the contrary, if and whenever there is a conflict between this By-law, or any part thereof, and the Act, the Act shall prevail.

## **1.6 Severability**

The provisions of this By-law shall be deemed independent and severable, and the invalidity in whole or in part of any article, section, part, or provision herein, shall not affect the validity of the whole or remaining articles, parts, sections or provisions herein contained, which shall continue in full force and effect as if the invalid portion had never been included herein

## **1.7 Extended Meanings**

If and whenever reference hereunder is made to **“repair”**, it is hereby implied and extended to include in its meaning the making of improvements or betterments or the enhancement or replacement with a better thing of or for any thing to which such repair could be made. If and

whenever these By-laws require any distinction between “maintenance” and “repair”, the following shall apply:

- (a) “maintenance” shall mean protective conduct and activities, including, without limitation, cleaning and testing; and
- (b) “repair” shall mean restoration, including, without limitation, repair or replacement due to ordinary and usual wear and tear.

### **1.8 References to “Unit”**

Whenever reference is made to “Unit” or “Units” in this By-law, and in any Article, Section or paragraph in this By-law such reference shall mean a Unit or Units in the Project as defined under the Act, and includes Residence Units, Parking Units, Storage Units, and Common Property Units (if any), as the case may be. Accordingly, when such Article, Section or paragraph shall be reasonably interpreted to give meaning and application of the provision to the type Unit in question, as the context shall require. When applied to any Parking Unit, Storage Unit or any Common Property Unit (if any), such Article, Section or paragraph shall be interpreted to give reasonable meaning and application of the provision to such Unit in question as the context shall require and the provisions of these By-laws shall be construed and interpreted as may be reasonably necessary in application thereof to such Parking Unit, or Storage Units or Common Property Units (if any), as the case may be, and particularly any restricted use thereof and the physical makeup thereof.

### **1.9 Restrictions on Parking Units, Storage Units, and Common Property Units**

The following restrictions shall apply:

- (a) Parking Units shall be used only for the parking of motor vehicles, and for no other purposes. Nothing may be installed in or constructed on any Parking Unit which may inhibit the maintenance and cleaning of any Parking Unit by the Corporation. To the extent enforceable by law, no Parking Unit shall be used by anyone except an Occupant;
- (b) Storage Units shall be limited to the common, normal and usual household goods and for no other purposes. No toxic, hazardous, dangerous, environmentally hazardous, perishable, or offensive (in the reasonable opinion of the Board) goods, chattels or substances may be stored or places in any Storage Unit. No development shall be permitted in any Storage Unit without the prior consent of the Board, and to the extent enforceable by law, no Storage Unit shall be used by anyone except an Occupant;
- (c) Common Property Units shall be limited to the use that has been designated thereto by the Developer, unless approved by the Board; and
- (d) The restrictions on Use set forth in clauses 1.9(a) and 1.9(b) above do not apply to the Developer as owner of any Parking Unit or Storage Unit.

## 1.10 Construction of Project

During such periods of construction and sale of the Project by the Developer, the provisions of this Article shall apply notwithstanding anything to the contrary expressed or implied in these By-laws, as follows:

- (a) the Developer shall have continuous unrestricted access to all unfinished and incomplete parts of the Project, at times convenient to the Developer and the Developer's trades and suppliers, to complete development and construction of the Project and any and all deficiencies and adjustments thereto;
- (b) the Developer shall be responsible for all costs of maintenance, upkeep and security of the unfinished and incomplete parts of the Project in lieu of any and all Condominium Fees assessable to the Developer in respect to such unfinished or incomplete parts of the Project, and, after the First Annual General Meeting of the Corporation, Condominium Fees at no more than 50% of the amounts determined pursuant to the proposed budget shall be assessed to the Developer on any and all of such unfinished and incomplete parts of the Project (including without limitation any Unit(s) therein), until the Unit(s) comprising such unfinished and incomplete parts of the Project are occupied by residents, as the Developer will not share in the services provided in the Project, nor shall the Developer contribute to capital replacement reserves; provided that the Developer may elect to operate, administer, and manage the Project, as wholly incomplete, until the First Annual General Meeting of the Corporation during which time Occupants of the Project shall contribute to the Developers costs of operation, administration and management of the Project;
- (c) the Developer shall be at liberty to show Units to the public at times and in the manner that the Developer in its discretion determines appropriate for the purpose of rental or sale with the right to place and maintain all signage and paraphernalia on the Project (at the Developer's cost) for such purposes;
- (d) the Corporation and the Owners may be required to consent to certain easements, encroachments, and other matters affecting the Parcel and the titles to the Units and each Owner agrees to execute and deliver to the Corporation and the Developer all such consents as may be required to effect such amendments and registrations necessary to complete the unfinished and incomplete parts of the Project;
- (e) the Developer and the Corporation may enter into further agreements for the purposes of clarifying and expanding upon the provisions of this section 1.10; and
- (f) each Owner appoints the Corporation its attorney to enter into such agreements and to authorize such registrations including, without limitation, registrations against their respective Unit titles as may be required to give effect to this Section 1.10.

### **1.11 Common Property Units**

If the Project contains Common Property Unit(s) and the Developer will convey title to these Common Property Unit(s) to the Corporation on terms satisfactory to the Developer pursuant to an agreement to be entered into between the Corporation and the Developer. The Corporation and the Developer may enter into such agreements to give effect to, expand upon or clarify this section 1.11. Upon obtaining title to such Common Property Units, the Corporation will assume all responsibility for such Common Property Units, inclusive of all obligations of maintenance, repair and replacement as imposed upon a Unit Owner herein and under the Act, with full authority to the Corporation to control and manage such Common Property Unit as if the Corporation were an owner of the Unit.

### **1.12 Restrictive Covenant(s)**

No Unit shall have any improvements or structures constructed thereon nor shall any Unit be modified unless in strict compliance with the Restrictive Covenant(s) and any and all development restrictions imposed upon the Unit by the Appropriate Authority; provided that the Developer's development of the Project, and all parts thereof including redivided units and phases shall not be considered a violation of this section and any Restrictive Covenant. The Corporation is hereby empowered, and the Board is authorized on behalf of the Corporation, to take whatever procedures are reasonably necessary, in the Board's opinion, to ensure compliance with this section 1.12 and enforce the Restrictive Covenant (enforcement to be limited to the extent it is limited by law).

### **1.13 Extended Meaning of Developer**

For the purposes of this Article 1, Developer includes the Developer and its employees, agents, sales personnel, and designations of the Developer authorized to enter the Project for the purposes described in Section 1.10.

### **1.14 Managed Property**

The Corporation shall be responsible for the maintenance, upkeep, repair and control over the Managed Property. Managed Property shall be constituted by all the vehicular parking facilities in the Project, and Common Property Units and those portions of any Unit(s) constituted by lawns, walkways, driveways and patios and balconies together with the exterior of any and all Buildings in the Project (including party walls (between Units and between Units and Common Property) exterior doors and windows and the hardware, glass, sash and sills and doors and frames thereto), including roofs, foundations and structural elements built in accordance and compliance with the Restrictive Covenant. Without restricting the generality of the foregoing, Managed Property shall be all parts of the Unit to the outside of the interior finishing of the exterior walls in the Building.

### **1.15 Duties and Restrictions on Owners Regarding Managed Property**

Each Owner shall, in respect to the Managed Property on or in his Unit shall:

- (a) permit the Corporation (and anyone who is agent for or authorized or directed by the Corporation) to enter his Unit for any and all purposes of inspection, maintenance, repair, upkeep, cleaning and control (generally) of the Managed Property as if same were Common Property;
- (b) adhere to, comply with and strictly observe this By-law and all Rules, Regulations, By-laws, Resolutions and other requirements of the Corporation and its insurers as same relate to the Managed Property; provided that in the absence of anything expressly to the contrary, the Rules, Regulations, By-laws, Resolutions and other requirements as shall apply to the Common Property shall apply to the Managed Property;
- (c) not, in any manner whatsoever, interfere with, prohibit or hinder the Corporation in carrying out its duties, powers, obligations and responsibilities arising hereunder or in connection with any of the Corporation's inspection, maintenance, repair, upkeep, cleaning or control of the Managed Property; and,
- (d) not in any manner whatsoever without first obtaining the consent of the Board, change, improve, alter, adjust, remove, disfigure or otherwise disturb the Managed Property or any part or component thereof.

**1.16 Powers, Duties and Restrictions of the Corporation in respect of Managed Property**

The Corporation shall:

- (a) in addition to and without limiting its powers relating to the management and control of Common Property, be empowered to:
  - (i) enact rules and regulations relating to the management and control of the Managed Property;
  - (ii) employ and contract for services for repair, maintenance, replacement, cleaning and other similar services necessary to properly maintain the Managed Property;
  - (iii) as part of and in accordance with its general power of levying assessments, assess and collect from the Owners for their respective shares in the costs of the Corporation carrying out of its duties hereunder with full power of recovery, PROVIDED THAT where the services rendered by the Corporation do not include all Units, in that the services by their nature do not effect all Units, the cost of such services shall be shared only among the Units effected proportionately on the basis of unit factor to total unit factors of Units effected; and,
  - (iv) generally manage, operate and control the Managed Property in accordance with such election as if and to same extent as if the Managed Property was Common Property.

- (b) in addition to and without limiting its obligations generally relating to the maintenance, management, repair and control of Common Property, control, manage, maintain, repair and administer the Managed Property as directed by Special Resolution of the Corporation, provided that such duties and obligations may, from time to time, be amended and adjusted (including, without limitation, by increasing or reducing same) by Special Resolution of the Corporation; and

to the extent that the Board shall determine practicable, insure the Managed Property (or such part or parts thereof as the Board determines is reasonable, feasible and economic) as the Board is otherwise required by this By-law.

### **1.17 Unit Modifications**

No Unit shall have any improvements or structures constructed in nor shall any Unit be modified unless in strict compliance with these By-laws, the Restrictive Covenant and any and all development restrictions imposed upon the Unit by the Board and Appropriate Authority; provided that the Developer's development of the Project, and all parts thereof including redivided units shall not be considered a violation of this section and the Restrictive Covenant. The Corporation is hereby empowered, and the Board is authorized on behalf of the Corporation, to take whatever procedures are reasonably necessary, in the Board's opinion, to ensure compliance with this section 1.17 and enforce any Restrictive Covenant (enforcement to be limited to the extent it is limited by law).

## **Article 2 Owners' Duties and Obligations**

### **2.1 Specific Obligations**

Each Owner:

- (a) shall permit and allow the Corporation (and anyone who is agent for or authorized or directed by the Corporation), upon written notice, to enter his Unit for any of the following purposes:
  - (i) to inspect the Unit;
  - (ii) to clean, maintain, repair, replace, restore, renew, operate, or to ensure the operation of the Common Property and any other property, machinery, equipment, fixtures or chattels which the Corporation is obliged to maintain, repair, replace, restore, renew, or operate;
  - (iii) to carry out work and other obligations, which the Owner has neglected, failed, or refused to carry out; or,
  - (iv) to remedy, stop, rectify, repair, and prevent, any loss arising or which could reasonably arise in an Emergency Situation;



provided that:

- (v) where an Emergency Situation exists, as perceived by the Corporation or any of its agents or employees, such entry is permissible, without notice to the Owner, at any time reasonable in light of the nature and extent of the Emergency Situation; and,
  - (vi) in the absence of an Emergency Situation, such entry is permissible only at reasonable times after reasonable notice (depending upon the nature and extent of such entry) to either the Owner or the Occupant;
- (b) shall pay promptly when due, and in accordance with the prescribed terms of payments:
- (i) to the Corporation, all and every assessment for Common Expenses of the Corporation, as are levied or assessed by the Corporation against his Unit from time to time;
  - (ii) to the Corporation, all and every assessment, demand, and levy for contribution to, reimbursement of, and payment for, expenses and costs incurred by the Corporation, which are wholly or partly directly attributable to his Unit, which are levied, assessed or demanded against his Unit from time to time or which are the subject of indemnification as prescribed in this By-law or at law or by contract;
  - (iii) to the Corporation, all interest on such accounts, assessments, levies and sums demanded in arrears as prescribed in such accounts, assessments, levies, and demands and in this By-law permitted; and,
  - (iv) to the Appropriate Authority, all and every account, statement, bill, rate, charge, tax, outgoing, and assessment that may be payable in respect of his Unit from time to time;
- (c) shall duly and properly maintain and keep his Unit in a good state of cleanliness and repair, and in so doing, each Owner shall:
- (i) forthwith and promptly carry out and complete any work that may, from time to time and at any time, be ordered by any Appropriate Authority in respect of his Unit;
  - (ii) repair, maintain, and keep clean all elements and parts of such Owner's Unit and Common Property that is required to be so maintained by the Owner as detailed in Article 2.2 hereof;
  - (iii) repair, maintain and keep in good working condition and operation all heating, ventilating, air conditioning, plumbing, mechanical, communication and electrical (or natural gas, if applicable) systems and

services to, servicing, and within the Unit (inclusive of all lines, above on or below the ground) serving such systems and services;

- (iv) maintain in a reasonable manner and keep clear and free of debris any Exclusive Use Area to which the Owner has been granted;
- (v) not make repairs, additions, or alterations to the Building(s), the exterior of his Unit, the Common Property, any interior or exterior load bearing walls (including floors and floor coverings) forming part of his Unit, or any part of the plumbing, heating, mechanical or electrical systems within his Unit (including without limitation to the foregoing, anything which is the Corporation's responsibility under Section 2.2 hereof) without complying with Section 2.1(f) and 2.2 hereof, and without first obtaining the written consent of the Corporation which shall, neither, be unreasonably withheld or delayed;
- (vi) not make repairs, additions, or alterations to the Unit, the Common Property, the Managed Property, or any plumbing, mechanical, heating and ventilation, or electrical systems within or the Unit or improvements therein without first obtaining the written consent of the Corporation which shall either be unreasonably withheld or delayed;
- (vii) not do any act or permit any act to be done, or alter or permit to be altered, his Unit, in any manner whatsoever, which will alter either of the exterior appearance or the structure of his Unit or any other Units or any portion of the Building, unless in strict compliance with Sections 2.1(f) and 2.2 hereof;
- (viii) not do or permit anything to be done that may cause damage to or will alter the appearance of any of the Managed Property, or the Common Property, including such Exclusive Use Area(s) to which the Owner has been granted, without complying with Sections 2.1(f) and 2.2 hereof and without first obtaining the written consent of the Corporation;
- (ix) not do or permit anything to be done in his Unit upon the Common Property, or in the Project (including the failure to do anything) which will or would tend to increase the risk of hazard or the rate of insurance premiums with respect thereof or which would render invalid any insurance maintained by the Corporation;
- (x) comply with all Rules, Regulations, By-laws, and Resolutions, in respect of the use, maintenance, repair, and cleanliness of any of the Managed Property, the Units, the Common Property the Building or the Project; and,
- (xi) not, in the course of any repair, maintenance, cleaning, renovation or alteration of his Unit or the Common Property, permit or cause to be permitted or to be registered against the Common Property and any

interest in the Common Property of any other Owner any claim, lien, charge or encumbrance;

- (d) shall adhere to, comply with, and strictly observe this By-law and each and every part thereof and all Rules, Regulations, By-laws, and Resolutions, in respect of the use of, either or both, his Unit and the Common Property, and in so doing, each Owner shall:
- (i) use and enjoy the Common Property in such a manner as to not unreasonably interfere with the use and enjoyment thereof of others entitled and authorized to do so, including without limitation, the good, safe, orderly and scheduled (if scheduling is prudent in the opinion of the Board) and prudent use of the Common Areas and any machinery or equipment therein in accordance with any Rules and Regulations enacted by the Board in such regard from time to time;
  - (ii) not use his Unit or permit or cause the Unit to be permitted, to be used in any manner for any purpose which is or may be illegal, injurious, or that may cause nuisance or hazard to any other Owner or an Occupier of any other Unit;
  - (iii) promptly notify the Corporation forthwith upon any change in possession, or of ownership or of any mortgage or other dealing in connection with his Unit;
  - (iv) not use the Owner's Unit or permit it to be used, in whole or in part, for any commercial or professional purposes or for any other purposes which are prohibited by Appropriate Authority or which may be injurious to the reputation of the Project or involve the attendance of the general public to the Unit in connection therewith, provided however an Owner may conduct on the Unit an approved "home occupation", as defined in the relevant Appropriate Authority by-laws, as long as such home occupation does not require public visits to the Unit;
  - (v) subject to 2.1(d)(iv), not use his Unit or permit the use of his Unit for any purpose other than that as permitted by law in respect of his Unit;
  - (vi) not permit his Residence Unit to be occupied other than as a place of residence for no more than 5 people at any time;
  - (vii) not (with the exception of the Builder pursuant to clause 1.10 hereof) erect, place, allow, keep or display signs (including without limitation "for sale" signs and signs indicating "open house" for display), billboards, advertising matter or other notices or displays of any kind on the Common Property or in or about any Unit in any manner which may make the same visible from the outside of the Unit without both the prior approval of the Corporation and the approval of the Appropriate Authority in respect thereto;

- (viii) shall not make or permit noise, including without limitation pet noise, in or about any Unit or the Common Property or the Project which in the opinion of the Corporation is a nuisance or unreasonably interferes with the use and enjoyment of any other Owner or Occupant as to that Owner's Unit or the Common Property and no instrument or other device shall be used within a Unit which in the opinion of the Corporation causes excessive noise, a disturbance or interferes with the comfort of other Owners or Occupants;
- (ix) not permit laundry to be hung anywhere on or in the Project;
- (x) not erect or place any building, structure, tent, or trailer (either with or without living, sleeping or eating accommodation) on or in any Unit or on the Common Property or on any Exclusive Use Area assigned to the Owner;
- (xi) not, without first obtaining in writing approval thereof by the Board, permit, erect or hang over or cause to be erected or to remain on any other part of a Unit or the Managed Property or on the Common Property or on any part of the Project, clothes lines, garbage disposal equipment, recreational or athletic equipment (including, without limitation, a hot tub), fences, hedges, barriers, partitions, awnings, shades or screens or any other matter or thing without both compliance with the Restrictive Covenant and the consent in writing of the Corporation first had and obtained; and no satellite dish (in excess of 18" in diameter), television or mobile telephone or radio antenna, tower or similar structure or appurtenances thereto shall be erected on or fastened to any Unit or Building or placed anywhere on the Project except as authorized by the Board and then only in accordance with the Regulations which may be established by the Corporation in such regard;
- (xii) not store any combustible, inflammable, or offensive goods, provisions, or materials (including without limitation, propane) in, either, his Unit or anywhere on the Common Property unless such goods, provisions, or materials are stored in such areas and in such manner that the safety of the Unit, and all Units, and Common Property is insured and provided that such storage will not, either, void any insurance policies held by the Corporation or cause increase in the premiums payable for such insurance, and the Owner notifies the Corporation (with particulars of such storage, including description of what is being stored) of such storage in writing;
- (xiii) not do anything or permit anything to be done in his Unit, or on the Common Property that is contrary to any statute, ordinance, by-law or regulation of any Appropriate Authority;
- (xiv) not do or permit anything to be done that may cause damage to trees, plants, bushes, flowers or lawns and shall not place chairs, tables,

children's play things, devices or toys or other objects on the lawns and grounds in either the Common Property or the Managed Property of the Project so as to damage them or to prevent growth, or to interfere with the cutting of the lawns or with the maintenance of the grounds to the Project generally;

- (xv) not deposit refuse and garbage in or outside his Unit other than in proper garbage containers or chutes supplied and designated by the Board;
- (xvi) not permit any Occupants, guests, invitees, licensees, agents, or visitors to trespass on any part of the parcel or in the Project to which another Owner is entitled to, whether a Unit or an Exclusive Area;
- (xvii) not use any part of the Common Property other than such portion of the Common Property designated as Exclusive Use Areas designated to the Owner for specified purposes for any use other than as specified and permitted by the Corporation unless with permission in writing from the Board;
- (xviii) not either wash or repair motor vehicles in such a manner as will not cause nuisance or annoyance to other Owners and in such place and at such times as the Corporation may from time to time by regulation set forth or direct and no repairs or adjustments to automobiles shall be carried out on the Project, nor shall any vehicles other than private passenger automobiles be brought onto the Project without the written consent of the Corporation or its manager, save in the course of delivery to or removal from the respective premises;
- (xix) not bring or permit to be brought onto the Project, without first obtaining the written approval of the Board or the Corporation's manager, any vehicles or machinery other than automobiles and delivery vehicles, save in the course of deliveries to and removals from the Project, which shall be subject to any Rules and Regulations promulgated for such conduct;
- (xx) not allow recreational vehicles, trailers, campers, boats, snowmobiles, trail bikes, all terrain vehicles or any other equipment to be stored anywhere on or in the Project except as approved and provided for by the Corporation;
- (xxi) not keep on the Common Property any private passenger automobile or machinery whatsoever which is not in operating condition;
- (xxii) not obstruct or permit any entry, walkways, passage, driveway or parking areas to be obstructed by any Occupant, invitee, guest or visitor;
- (xxiii) not allow his Unit or any Exclusive Use Area designated or assigned to him to become unsanitary or unsightly in appearance and without limiting the generality of the foregoing, shall not place either floor coverings or window coverings on the balconies, terraces or patios appurtenant to the

Unit unless such coverings are approved by the Corporation and shall not place any bicycles, equipment, boxes, appliances (excepting a barbecue), machinery, plants, trees, or shrubs in such areas, excepting only flowers in containers on the floor of the balconies, terraces or patios, as the case may be;

- (xxiv) not use a toilet, sink, tub, drain or other plumbing fixture for a purpose other than that for which it is constructed;
- (xxv) not allow any Common Area around his Unit to become untidy;
- (xxvi) not allow or cause any business or personal effects or articles belonging to him to be kept anywhere except inside his Unit or in the storage facilities comprising the Project;
- (xxvii) not, without the consent in writing of the Board, have any right of access to those portions of the Common Property used from time to time for mechanical systems, utilities areas, building maintenance, storage areas not specifically assigned to him under Article 8 hereof, including operating machinery or any other parts of the Common Property used for the care, maintenance or operation of the Project generally;
- (xxviii) not, without the written consent of the Corporation, have access to or interfere with any Common Property, any Managed Property or any personal or real property of the Corporation;
- (xxix) not keep, harbor, house, or in any manner whatsoever, allow anywhere in, either, the Unit or the Project any pets or livestock, without first obtaining Board approval, and in strict compliance with the Rules and Regulations of the Corporation; provided that:
  - (A) Owners may keep fish (in an aquarium up to 100 U.S. gallons), or birds in a cage all of the time (only 1 if large), or up to 2 domestic cats, or 2 dogs;
  - (B) the Owner shall enter into any agreements requested by the Board and provide security as may be required by the Board providing for the conditions for keeping such pet and the Owner's responsibility for any damage caused by the pet;
  - (C) the Owner shall at all times, while his pet is on Common Property, keep the pet either in its cage or aquarium or on a leash under reasonable and adequate control; and
  - (D) the Owner shall be responsible for any and all repair and maintenance for damage and for any cleaning caused by the presence of the pet on the Project;

- (xxx) exercise reasonable care and caution in permitting access to either the Unit or the Common Property by other persons to ensure the safety, security, peace and quiet of other Owners and Occupiers in the Project, including, without limitation to the foregoing, no Owner shall permit a lock box or similar entry system to be employed in connection with the sale of that Owner's Unit; and,
  - (xxxi) ensure that the Owner and any and all Occupants of his Unit comply with those requirements that the Owner must comply with under this By-law, and all other By-laws, Restrictive Covenant(s), Rules, Regulations and Resolutions.
- (e) indemnify and save harmless the Corporation from and against all claims, demands, liabilities, actions and prosecutions which may be asserted, made or brought against the Corporation; and all losses, damages, costs and expenses which may be suffered, incurred or sustained by the Corporation, directly or indirectly arising out of or as a result of:
- (i) the failure of either or both of the Owner and any Occupant of the Unit to adhere to, comply with, and strictly observe this By-law, and all By-laws, Resolutions, Rules, and Regulations;
  - (ii) the failure of the Owner to repair, maintain, and keep clean his Unit and any improvements or additions thereto or the Common Property in accordance with this By-law, and all By-laws, Resolutions, Rules and Regulations;
  - (iii) the replacement, repair, maintenance, and cleaning of his Unit (including any Buildings relating thereto) or the Common Property, whenever on the failure of the Owner to do same, after reasonable notice, the Corporation has elected to do so;
  - (iv) all and every breach, default, and contravention of this By-law, and all By-laws, Resolutions, Rules, and Regulations, by the Owner and any Occupant; and,
  - (v) all and any repair, maintenance, replacement, and cleaning to his Unit or the Common Property required to be done by the Corporation or resulting from any act or omission of the Owner or any Occupant; and
- (f) maintain improvements on and comprising the Unit consistently with and in total integrity with the balance of the Project, and in so doing, each Owner shall:
- (i) observe, comply and adhere to all architectural restrictions, guidelines, Rules, Regulations, Restrictive Covenant(s), and By-laws existing or in the future promulgated in respect to the Project to maintain architectural integrity of design and appearance (including without limitation matters relating to maintaining fuel efficiency and sound attenuation) of the

Project as a whole including, without limitation to the foregoing each Owner shall not without the approval (and subject to observance and adherence to any rules or conditions annexed to such approval) of the Board, change floor coverings and floor finishings in any Unit;

- (ii) insure the Unit and all improvements in and comprising the Unit in accordance with these By-laws; and,
- (iii) permit the Corporation, its representatives, and persons authorized by the Corporation to enter the Unit to carry out maintenance and repair work required to be performed in maintenance and betterment of the Project generally.

## **2.2 Repair and Maintenance**

For the purposes of clarification of the repair and maintenance responsibilities of the Corporation and each Owner, as prescribed by the Act and this By-law:

- (a) Subject to sections 1.9, 1.14, 1.15, and 1.16 of these By-laws:
  - (i) an Owner shall be responsible, in respect of his Unit, for interior surfaces of all walls, ceilings (including all drywall comprising the ceiling, and all electrical boxes and ducts that service the Unit and which penetrate the drywall), floors and floor coverings (and all heating elements and equipment within the subfloor, as applicable), windows (including the inside glass surface of balcony railings), doors within the Unit, the exterior of all outside windows (which are accessible from the Unit), hardware and paraphernalia affecting the appearance, usability, value or safety of the Unit, plumbing fixtures, light fixtures (including pots or recessed fixtures), air conditioning units and heating and ventilating systems (serving only the Unit), interior doors in each Unit (including the door and frame), hood fans and ducts, bathroom fans and ducts, and dryer ducts, and to the painting of the interior side of exterior doors and the cleaning of all vented windows (interior and exterior), and reasonably accessible exterior balcony and/or patio doors; and,
  - (ii) an Owner shall not be responsible, in respect of his Unit, for the structural elements above the drywall ceiling, the subfloors, the party walls (per section 1.14) and doors which provide ingress to and egress from a Unit, hardware and paraphernalia affecting the appearance, usability, value or safety of the Unit, on the outer boundaries, exterior walls, outside surfaces, roofs, and eavestroughs of or to the Unit, and, such damage as is insured against by the Corporation;
- (b) the Corporation shall be responsible for the repair, maintenance and replacement, as and when reasonably necessary, of the Common Property, the Managed Property, and the property of the Corporation, the Recreational Facilities, property



insured by the Corporation to the extent of the proceeds of insurance paid to the Corporation, access doors to the Units, ventilating, plumbing and electrical systems generally serving the Project (subject to the Owner's responsibility in Article 2.2(a)(i) above), all vehicular parking areas including driveways, ramps and all Parking Units, and all structural elements of the Project within the Unit (including subfloors and the structural elements above all ceilings), all items in Section 2.2(a)(ii) above, and all Exclusive Use Areas;

- (c) in the event of any insured loss, the deductible under any claim shall be the responsibility of the party charged with the responsibility for repair, maintenance and replacement as if the loss was not insured;
- (d) notwithstanding anything to the contrary expressed or implied above, repair, maintenance or replacement necessitated by the act or omission of an Owner (or someone for who such Owner is legally responsible), although the responsibility of the Corporation, shall be effected at the expense and cost of such Owner; and,
- (e) for the purposes hereof, "replacement" shall include improvement, enhancement, redecoration and betterment, as the case may be;
- (f) to the extent that there are high speed communication cables and/or facilities serving a Unit, notwithstanding anything to the contrary, expressed or implied herein or elsewhere, the Corporation shall not be liable for the operation of such cables and/or facilities, including without limitation any loss, cost or damage arising from any malfunction or disrepair thereof.

### **2.3 Lease and Rental of Unit by Owner**

An Owner shall be entitled to lease or rent his Unit; provided that:

- (a) any lease or tenancy of a Unit shall be subject to the provisions of s. 53, 54, 55 and 56 of the Act and these By-laws;
- (b) the Owner shall cause any lessee or tenant to acknowledge in writing to the Corporation that he has received a copy of the By-laws, Rules and Regulations of the Corporation and agrees to observe the same as if he were an Owner;
- (c) no act or omission or waiver by the Corporation of any breach or default by an Owner pursuant to this provision, shall operate as a waiver of any other or subsequent breach or default but shall apply to the breach or default so waived, and shall not be deemed to be a release of any of an Owner's duties and obligations under the By-laws, Rules and Regulations; and
- (d) if the Project is operated as a Rental Project, pursuant to Article 9 hereof, the provisions as are hereinbefore contained shall not be applicable.

## **2.4 General Obligations**

The duties and obligations of each Owner under this By-law are in addition to the duties and obligations imposed upon an Owner under the Act.

## **Article 3 The Corporation**

### **3.1 Non Profit Organization**

The Corporation is not organized for profit. Accordingly, no Owner, Board Member, or person from whom the Corporation may receive property or funds shall receive or be lawfully entitled to legally receive any pecuniary profit from the operations of the Corporation; provided that the foregoing shall not either prohibit, prevent, or restrict payment by the Corporation and receipt by Owners or Board Members of compensation, reimbursement, or remuneration as are hereinafter expressly provided or prohibit any such person or party from contracting with the Corporation in the normal course of such person's or party's business irrespective of any project to such person or party thereunder.

### **3.2 Duties of Corporation**

In addition to the duties imposed upon the Corporation under the Act, the Corporation shall:

- (a) control, manage, maintain, repair and administer the Common Property (except as expressly required to be done by an Owner pursuant to this By-law) and all real property, chattels, personal property or other property owned by the Corporation for the benefit of all of the Owners and for the benefit of the entire Project;
- (b) do all things required of it by the Act, this By-law and any other By-laws, Rules and Regulations, and Resolutions in force from time to time;
- (c) maintain and repair (including renewal where reasonably necessary) any and all elevators (including shafts and pits) automatic garage doors, comprehensive surveillance and security systems, heating and air conditioning systems, pipes, wires, cables, ducts, conduits, plumbing systems, sewers and other facilities for the furnishing of utilities existing in the Parcel and servicing the Project and capable of being used in connection with the enjoyment of one or more Unit or Common Property, all as prescribed in and subject to Article 2.2 hereof;
- (d) obtain and maintain in force all such insurance as is required by the Act, if any, and by the provisions of this By-law and enter into insurance trust agreements from time to time as required by the Insurance Trustee and approved by the Board and, on the written request of any Owner or Mortgagee of a Unit, or the duly authorized agent of such Owner or Mortgagee, a certified copy of the policy or policies of insurance effected by the Corporation or a certificate or memorandum thereof and the receipt or receipts for the last premium or premiums in respect thereof;

- (e) except as otherwise specifically provided in this By-law, maintain and repair the exterior or outside surfaces of the Building comprising the Units (including common property windows and doors and all other outside paraphernalia affecting the appearance, usability, value or safety of the Project) and the Common Property, including any lawn, which is located on any part of the Common Property and all fencing and posts;
- (f) subject to Article 7 and Article 9 hereof, collect and receive all contributions towards the Common Expenses and deposit same in a separate account with a chartered bank, trust company, credit union or any Alberta Treasury Branch;
- (g) pay all sums of money properly required to be paid on account of all services, supplies and assessments pertaining to or for the benefit of the Project, the Corporation and the Owners as, to the Board, may deem justifiable in the management or administration of the Project;
- (h) remove ice, snow, slush, and debris from and keep and maintain in good order and condition all areas of the Common Property designated for vehicular or pedestrian traffic or outside parking and keep and maintain in good order and condition (to the extent the Owners or any of them are not responsible to maintain same), as applicable, the ground floor entrances, security control areas, lobbies, vestibules, foyers, waiting rooms, telephone rooms, water and sump rooms, storage and janitorial equipment spaces, trash compactor and garbage storage areas, mail rooms, generator rooms, mechanical, furnace and electrical rooms, gas meter rooms, diesel fuel storage rooms, central alarm and control rooms, cooling towers, hallways, stairs and stairwells and all grassed or landscaped areas of the Common Property; provided that the maintenance of any Exclusive Use Area designated under Article 8 hereof shall be the prime responsibility of the Owner to whom such Exclusive Use Area has been assigned;
- (i) provide adequate garbage chutes and garbage receptacles or containers on the Common Property for use by all the Owners and provide for regular collection therefrom;
- (j) at all times keep and maintain for the benefit of the Corporation and all owners, copies of all warranties, guarantees, drawings and specifications, plans, written agreements, certificates and approvals provided to the Corporation pursuant to section 46 of the Act;
- (k) maintain and keep current registers pertaining to Exclusive Use Areas and leases of Common Property in respect to the Project; and
- (l) observe, carry out and complete any reserve fund study, and impose a reserve fund plan, from time to time, as required by the Act and provide and maintain out of the assessments to be levied by the Corporation towards the common expenses, or otherwise, such amount as determined from time to time to be fair and prudent

and as prescribed by the Act, for a replacement reserve fund and such replacement reserve fund shall be an asset of the Corporation.

### **3.3 Powers of Corporation**

In addition to the powers and rights conferred upon the Corporation under the Act, the Corporation may, and is hereby authorized to:

- (a) hire personnel, and/or purchase, hire or otherwise acquire personal property for use by Owners in connection with the maintenance, repair, replacement or enjoyment of the real and personal property of the Corporation, the Recreational Facilities, or the Common Property, including, without limiting the generality of the foregoing, to contract with suppliers of any and all services that the Board considers prudent;
- (b) purchase, acquire, own and operate real property (provided such real property is a Unit) for the general use or benefit of the Owners, and acquire and grant (as the case may be) rights to joint access or mutual use (including entering into and observing and performing any agreement for joint or mutual administration and management thereof) to shared services or facilities (including recreational facilities) with neighbors of the Project;
- (c) enter into, carry out, perform, observe and adhere to the contractual arrangements contemplated in Article 1, Article 2 and Article 3 hereof and to manage and otherwise deal with Managed Property;
- (d) borrow monies required by it in the performance of its duties or in the exercise of its powers provided that each such borrowing or combination of borrowings in excess of 15% of the current year's Budget for Common Expenses shall be approved or ratified by Special Resolution;
- (e) secure the repayment of monies borrowed by it, and the payment of interest thereon, by negotiable instrument, or mortgage of unpaid contributions (whether levied or not), or mortgage of any property vested in it, or by combination of those means;
- (f) invest as it may determine any contributions towards the Common Expenses subject to the restrictions set forth in the Act;
- (g) make an agreement with the Owner or Occupant of any Unit for the provision of amenities or services either by the Corporation to the Unit or to the Owner or Occupant thereof or by the Owner or Occupant to the Unit or the Project;
- (h) grant to any Owner or Occupant the right (be it exclusive, or not) to use and enjoy any part of the Common Property (be it otherwise designated for exclusive use, or not), by lease or otherwise, upon such terms and conditions as may be determined or approved of by the Board from time to time, where, in the Board's reasonable opinion, such grant will regulate and control the use of such Common Property

for the general benefit and betterment of the Project and shall not otherwise cause material prejudice to the interests of any specific Owner or Owners;

- (i) make such Rules and Regulations and enact such Resolutions, as it may deem necessary or desirable from time to time in relation to the maintenance, safety, repair, use and enjoyment of the Project, the Units, the Parking Units, the Recreational Facilities, and Common Property, and for the control, management and administration of the Project generally, and do all things reasonably necessary for the enforcement of the By-laws, rules, regulations and resolutions, including without limiting the generality of the foregoing, the commencement of and taking action under the Act, and all subsequent proceedings relating thereto;
- (j) make such Rules and Regulations and enact such Resolutions (either through the Board or by the Owners generally) for the purposes of either regulating or prohibiting (from time to time) the keeping of animals, pets or livestock in the Project (whether within any unit or on Common Property or on Managed Property or in the Recreational Facilities or in any structure on the Project), with specific authority to impose or require terms for keeping such animals, pets or livestock and requiring damage deposits (and enter into agreements with specific Owners in respect thereto) in connection therewith;
- (k) determine from time to time the amounts to be raised and collected for the purposes hereinbefore mentioned;
- (l) raise amounts so determined by levying assessments on the Owners in accordance with Article 7 hereof, or as otherwise herein provided;
- (m) charge interest at the Interest Rate on any contribution or common expenses owing to it by an Owner at the Interest Rate;
- (n) pay an annual honorarium or stipend to Members of the Board in the manner and in the amounts as may be from time to time determined by ordinary resolution at a General Meeting;
- (o) in the event of any infraction or violation of, or default under these By-laws or any rules, regulations or resolutions of the Corporation on the part of an Owner, an Occupant, or any of their servants, agents, licensees, or invitees, correct, remedy, or cure, and any costs or expenses incurred or expended by the Corporation in correcting, remedying or curing such infraction, violation or default may be charged to such Owner and shall be added to and become part of the assessment of such Owner for the month next following the date when such costs or expenses are expended or incurred (but not necessarily paid) by the Corporation and shall become due and payable on the date of payment of such monthly assessment and shall bear interest at the Interest Rate until paid;
- (p) recover from an Owner by an action for debt in any court of competent jurisdiction any sum of money which the Corporation is required to expend as a result of any act or omission by the Owner, his servants, agents, licensees,

invitees, or tenants, which violates the By-laws or any rules, regulations or resolutions established by the Corporation and there shall be added to any judgment, all costs of such action including costs as between solicitor and his or her client and nothing herein shall be deemed to limit any right of any Owner to bring an action or proceeding for the enforcement and protection of his rights and the exercise of his remedies;

- (q) exercise the powers provided for in section 36 of the Act;
- (r) appoint an Insurance Trustee if determined appropriate, prudent or necessary in accordance with Article 6.15;
- (s) if at any time it appears that the annual assessments or contributions towards the Common Expenses will be insufficient to meet the Common Expenses, assess and collect a special contribution or contributions against each Unit in an amount sufficient to cover the additional anticipated Common Expenses, provided that the Corporation shall give notice of such further assessment to all Owners which shall include a written statement setting out the reasons for the assessment and each assessment shall be due and payable by each Owner in the manner and on the date or dates specified in the notice;
- (t) whenever and if the allocation of expenses, costs or charges hereunder are inequitably under the system employed by these By-laws, weigh, allocate and assess against the Owners and their respective Units such expenses, costs and charges in such equitable manner as the Board shall from time to time and at any time resolve, provided that such manner of weighing, allocation and assessment will be notified to Owners on assessment and without limiting the generality of the foregoing, allocation and assessment of the whole of an expense, cost or charge to a single Owner or Unit shall be permitted;
- (u) charge a reasonable fee in respect of either the issuance of any Estoppel Certificate or any information which the Corporation is required or may produce to an Owner, Mortgagee or other party hereunder or pursuant to the Act;
- (v) in the event of any lease of a Unit in breach of these By-laws and in addition to such powers arising on breach or default of these By-laws:
  - (i) impose and collect deposits under the Act;
  - (ii) give notices to give up possession of Units under the Act; and,
  - (iii) make applications to the Court under the Act;
- (w) do all things which are, either or both, incidental to or conducive to the exercise of its powers granted, both, under the Act and the By-laws; and,
- (x) subject to any limitations and prohibitions expressed or imposed by the Act, do all things and have such rights, powers and privileges available to any corporation

under the *Business Corporations Act* of Alberta (as amended and replaced from time to time).

### 3.4 Additional Power of Corporation

- (a) In addition to any and all powers, rights, privileges, authority and remedy given to the Corporation, either to enforce its By-laws or to censure Occupants or Owners for breach or default thereof, the Corporation may, subject to any limitations imposed by the Act:
  - (i) fine, levy a fine or impose a fine to a maximum of \$10,000, as the case may be, upon any Owner or Occupant in default or breach of the By-laws, such fine to be determined by the Board, and shall be commensurate with the nature and breach or default occasioned, consider whether the Owner or Occupant has previously committed any breach or default of the By-laws (and the nature of such prior breach or default), consider the actions taken by the Owner or Occupant to remedy such breach or default, and take into account any other circumstance or factor that the Board reasonably determines or considers cogent to the situation; provided that any such fine may be imposed on, either, a one time basis or a continuing basis (i.e. assessed upon a day-by-day basis during continuing breach or default); and,
  - (ii) to the extent that the Board determines that it may reasonably cure or effect a remedy of the situation or circumstances of breach or default of the By-laws, on behalf of any such Owner or Occupant, the Board may implement and carry out such cure or remedy, as the case may be, and impose the cost of such cure or remedy, including all actual solicitor's costs and a reasonable supervisory and administration fee (at no less than 20% of the actual costs incurred by the Corporation), as a fine upon such Owner or Occupant.
- (b) The remedies available to the Corporation, as set forth in paragraph (a) above, shall be cumulative, and may be exercised in any manner or priority without prejudice to any other remedy, right or privilege of the Corporation, and shall be exercised as the Board shall determine appropriate from time to time and at any time.
- (c) To the extent that, pursuant to this Article, any Owner is or becomes indebted to the Corporation, by fine or otherwise, such indebtedness shall be and is hereby deemed to be an unpaid contribution to administrative expense on the part of such Owner, and subject to and recoverable under those provisions of the Act providing for the recovery of contributions to administrative expenses, generally.

### **3.5 General Powers of Corporation**

The powers, rights, duties, and obligations given to and imposed upon the Corporation under this By-law and all parts thereof are in addition to all and any powers, rights, duties, and obligations given to and imposed upon the Corporation under the Act, and at law.

### **3.6 Expenditure Under Reserve Fund**

The Corporation shall hereby be authorized from time to time and at any time to withdraw and expend funds from its capital replacement reserve fund for capital improvements, provided such funds are being withdrawn and expended reasonably in accordance with the Corporation's then most current reserve fund plan, both as to the timing of such expenditure and the amount of such expenditure and is in compliance with the requirements of the Act, as so verified, approved and resolved by the Board.

### **3.7 Resolutions in Writing by Owners**

Subject to section 3.8 and Article 9 hereof, the Corporation shall carry on its business and exercise and perform its powers and duties pursuant to duly enacted resolutions made from time to time at General Meetings of the Corporation; provided that any resolution of the Owners, made in writing and signed by each Owner (or the person so required and authorized to sign same), shall have the same effect as a resolution duly enacted at a duly convened general meeting of the Corporation.

### **3.8 General Business of Corporation**

Subject to such restrictions as are hereinafter set forth or imposed by resolution of the Owners enacted from time to time at General Meetings of the Corporation or by resolution in writing pursuant to section 3.7 hereof, the powers and duties of the Corporation, including the day-to-day general business of the Corporation, shall be exercised, performed, and carried out by the Board.

### **3.9 Corporate Seal**

The Corporation shall have a common seal, which will be in such form and device as may be adopted by the Board, by resolution, and the Board may from time to time make such provisions or regulations as the Board sees fit with respect to affixing the said common seal and the appointment of Board Members or Officers or other persons to attest by their signature that such said common seal is duly affixed; provided that in the absence of such said provisions or regulations, the said common seal shall be affixed only in the presence of and as attested by 2 Board Members, except where the Board is constituted by only 1 Board Member, in which case that Board Member's signature, alone, shall suffice.



## **Article 4 The Board**

### **4.1 Duties of the Board**

The Board shall:

- (a) subject to any limitations specifically imposed by the Corporation, perform and carry out the directions, duties, and responsibilities of the Corporation, and particularly, those directions of the Corporation imposed on the Board from time to time pursuant to section 3.8 hereof;
- (b) perform and carry out the duties and responsibilities of the Board as are imposed by the By-laws of the Corporation;
- (c) keep minutes of its proceedings, and, upon written request, provide copies thereof to Mortgagees;
- (d) cause minutes to be kept of general meetings of the owners, and, upon written request, provide copies thereof to Mortgagees;
- (e) cause proper books of account to be kept in respect of all sums of money received and expended by it and all the matters in respect of which receipt and expenditure shall take place;
- (f) prepare or cause to be prepared proper accounts relating to all monies of the Corporation, and the income and expenditure thereof, for each Annual General Meeting;
- (g) maintain financial records of all assets, liabilities and equity of the Corporation;
- (h) on written application of an Owner or Mortgagee, or any person authorized in writing by him, make the books of account available for inspection at all reasonable times;
- (i) cause to be prepared and distributed to each Owner and to each Mortgagee a copy of the audited Financial Statement, a copy of the receipts of contributions of all Owners towards the Common Expenses and disbursements made by the Corporation and a copy of the Auditor's Report within 120 days after the end of the fiscal year of the Corporation;
- (j) within 15 days of a person becoming or ceasing to be a Member of the Board, file or cause to be filed at the Land Titles Office a notice in the prescribed form stating the name and address of that person and the day that the person became or ceased to be, as the case may be, a Member of the Board; and,
- (k) file or cause to be filed at the Land Titles Office a notice in the prescribed form of any change in the address for service of the Corporation.

## 4.2 Powers of the Board

The Board may:

- (a) subject to Article 9 hereof and any restrictions imposed or direction given by the Owners, carry on the day-to-day business and affairs of the Corporation, with all of the due and proper authority of the Corporation, and without limiting the generality of the foregoing, enact either Resolutions or Rules and Regulations on behalf of the Corporation as permitted under these By-laws;
- (b) meet together for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit, and it shall meet when any Member of the Board gives to the other Members of the Board not less than 3 days' notice of a meeting proposed by him, specifying the reason for calling the meeting provided that the Board shall meet at the call of the President on such notice as he may specify without the necessity of the President giving reasons for the calling of the meeting;
- (c) appoint or employ for and on behalf of the Corporation such agents or servants as it thinks fit in connection with the control, management and administration of the Common Property and the exercise and performance of the powers and duties of the Corporation;
- (d) subject to any restriction imposed or direction given by the Owners, delegate to one or more Members of the Board such of its powers and duties as it thinks fit, and at any time revoke such delegation;
- (e) on behalf of the Corporation, enter into contracts with Owners or any other persons or parties for the purposes of carrying out the repair, maintenance, renovation, cleaning and to generally control, to the extent the Board shall consider it reasonable, the Units, the Common Property (or portions thereof) and/or the services thereto (including plumbing, heating and ventilating); and,
- (f) obtain and retain by contract the services of a Manager or agent for the purposes of managing the Project (including but not so as to limit the generality of the foregoing the supervision, management and performance of any or all of the duties of the Corporation) and upon such terms as the Board may from time to time decide, subject always to the control and direction of the Corporation and the Board, such Manager to be reasonably fit and suited to perform such duties. The Manager employed by the Board need not devote its full time to the performance of duties of the Corporation so long as those duties are performed in a good and sufficient fashion. Any such contract shall provide for the obtaining and maintaining of a fidelity bond in respect of the Manager and its employers and agents for the benefit of and naming the Corporation and such bond shall be in an amount as determined by the Board from time to time.

#### **4.3 Number of Board Members**

The Board shall consist of 7 Owners or delegates of Owners, provided that:

- (a) the Corporation may at a General Meeting resolve by Ordinary Resolution to reduce the number of Members of the Board to 3 or 5 Owners or delegates of Owners;
- (b) subject to Article 4.7 hereof, Members of the Board shall be elected at each Annual General Meeting of the Corporation to hold office, subject to Articles 4.6 and 4.15, until the next following Annual General Meeting of the Corporation;
- (c) no Board Member shall be under the age of 21 years;
- (d) where a Unit has more than 1 registered owner, only 1 owner in respect of such Unit may sit on the Board at any one time; and,
- (e) the Board as constituted pursuant to Article 9 hereof shall be exempt of and shall not be subject to this Article.

#### **4.4 Annual Retirement of the Board**

At each Annual General Meeting of the Corporation all the Members of the Board shall retire from office and the Corporation shall elect a new Board.

#### **4.5 Eligibility of Retiring Member**

A retiring Member of the Board shall be eligible for re-election.

#### **4.6 Removal of Member by Special Resolution**

Except where the Board consists of all of the Owners, the Corporation may, by Special Resolution remove any member of the Board before the expiration of his term of office and appoint another Owner in his place, to hold office until the next Annual General Meeting.

#### **4.7 Vacancy on Board**

Where a vacancy occurs on the Board hereunder, the remaining Members of the Board may appoint a person to fill that office for the remainder of the former Member's term provided such person qualifies for membership pursuant to this By-law.

#### **4.8 Quorum of Board**

Until the First Annual General Meeting the Board may consist of 1 Member who, alone, will constitute a quorum. Unless, thereafter, all Units are owned by one Owner (in which case the Board may consist of 1 Member, who, alone, will constitute a quorum), a quorum of the Board shall be 5 Members unless the Board is reduced pursuant to section 4.3 hereof whereupon a quorum will be 2 members.

#### 4.9 Election of Board/Officers

Subject to Section 4.3 hereof, at the first meeting of the Board and at the first meeting of the Board after each Annual General Meeting of the Corporation (and at such other times as the Board shall consider it prudent), the Board shall elect from among its members, officers, including a President, one or more Vice-Presidents, a Treasurer and/or a Secretary. These officers shall hold office until either disqualified or replaced (whichever shall occur first), it being provided that:

- (a) the President shall serve as the chief executive officer of the Corporation and shall serve as Chairman of all meetings of the Corporation and all meetings of the Board; the President shall have general and active management of the affairs of the Corporation (subject to any direction and limitation imposed by the Corporation and the Board) and shall have general superintendence and direction of all other officers of the Corporation;
- (b) the Vice-President shall serve as President in the absence or disability of the President and shall have such other duties, authority and power as may be designated to the Vice-President by, either, the President or the Board from time to time;
- (c) the Secretary shall attend all meetings of the Board and all meetings of the Corporation and shall cause records and minutes thereof to be recorded and maintained; the Secretary shall, as and when required, cause notices to be issued and filings and registrations to be made; all books, records, papers, documents, and instruments of the Corporation and the corporate seal of the Corporation shall be in the care and custody of the Secretary;
- (d) the Treasurer shall cause to be kept proper and diligent accounting records for the Corporation; the Treasurer shall cause the proper and safe deposit and safekeeping of monies and securities of the Corporation and shall effect the disbursement of Corporation funds as and when required; the Treasurer shall render the Corporation accounts to the Board as required;
- (e) the same person may hold the position of Secretary and Treasurer, if the Board shall consider it prudent;
- (f) the Chairman at any meeting of the Board or at any meeting of the Corporation shall have a casting vote in addition to his original vote; and,
- (g) a person shall cease to be an officer of the Corporation if and when such person shall cease to be a member of the Board; and where a person ceases to be an officer of the Corporation, the Board shall designate from its members a replacement for the remainder of the term of office.

#### **4.10 Absence of President or Vice-President**

Where the President is absent from any meeting of the Board or vacates the chair during the course of any meeting, the Vice-President shall act as the Chairman and shall have all the duties and powers of the Chairman while so acting. In the absence of both the President and the Vice-President the Members present shall from among themselves appoint a chairman for the meeting who shall have all the duties and powers of the Chairman while so acting.

#### **4.11 Additional Duties**

The other duties of the officers of the Board shall be as determined by the Board from time to time.

#### **4.12 Meetings of the Board**

The Board shall meet as, when and where it shall see fit, or as the President shall from time to time designate. Unless otherwise determined by the Board, Board meetings shall be restricted to Board members and invitees.

#### **4.13 Majority Vote and Resolutions in Writing**

At meetings of the Board all matters shall be determined by simple majority vote. A resolution of the Board in writing signed by all of the members shall have the same effect as a resolution passed at a meeting of the Board duly convened and held.

#### **4.14 Validity**

All acts done in good faith by the Board are, notwithstanding it be afterwards discovered that there was some defect in the appointment or continuance in office of any Member of the Board, is valid as if the Member had been duly appointed or had duly continued in office.

#### **4.15 Resignation or Removal of Member**

The office of a Board Member shall be vacated if the Member:

- (a) by notice in writing to the Corporation resigns his office; or,
- (b) is in arrears more than 60 days of any contribution, levy or assessment required to be made by him as an Owner or becomes bankrupt; or,
- (c) is found lunatic or becomes of unsound mind, or is the subject of a Certificate of Incapacity issued under *The Mental Health Act*; or,
- (d) is convicted of an offence involving moral turpitude; or,
- (e) is absent from meetings of the Board for a continuous period of 4 months or 4 consecutive meetings without the consent of the remaining Members of the

Board and a majority of the remaining Members of the Board resolve at 2 meetings of the Board held at least 7 days apart that his office be vacated; or,

- (f) he ceases to qualify for membership pursuant to this By-law; or,
- (g) in the case of a company or corporation which is a Member of the Board, if the company shall become bankrupt or make an assignment for the benefit of creditors or if proceedings are commenced to wind up the company, otherwise than for the purpose of amalgamation or reconstruction; or,
- (h) in the case of a member delegated by an Owner (whether such Owner is a company or corporation or otherwise), if such Owner is in arrears more than 60 days of any contribution, levy or assessment required to be made by him as an Owner or if such Owner becomes bankrupt.

#### **4.16 Corporate Members**

No corporate or body corporate shall be a member of the Board, but should a corporation run for, be elected as, or be appointed as a Member of the Board, its membership shall be held by and served through such Corporation's delegate who shall be the Member of the Board for all purposes notwithstanding that the delegate shall not occupy the Unit or any part of the Project.

#### **4.17 Signing Officers (without seal)**

The Board shall determine, by resolution from time to time, the manner and which officer or officers shall sign cheques, drafts, notes and other instruments and documents, including banking forms and authorities not required to be under corporate seal.

#### **4.18 Corporate Members**

No corporation or body corporate shall be a member of the Board, but should a corporation run for, be elected as, or be appointed as a Member of the Board, its membership shall be held by and served through such corporation's delegate or delegates who shall be the Member of the Board for all purposes notwithstanding that the delegate shall not occupy the Unit or any part of the Project. Any corporation owning more than 1 unit, can hold a number of memberships on the Board equal to the number of units owned by such corporation, and may appoint representatives for each such Board membership, as hereinbefore provided.

#### **4.19 Requirement to be an Owner/Mortgagee**

In accordance with the Act, members of the Board shall not be restricted to the Owners, Mortgagees or their delegates in any manner or number.

## **Article 5**

### **Meetings of the Corporation**

#### **5.1 First Annual General Meeting**

The first Annual General Meeting shall be convened by the Board within the earlier of:

- (a) 90 days from the date that 50% per cent of the Units are sold, or
- (b) 180 days from the date that the first Unit is sold.

Subsequent Annual General Meetings shall be held once in each calendar year, and not more than 15 months shall elapse between the date of one Annual General Meeting and that of the next.

#### **5.2 Extraordinary General Meetings**

All General Meetings other than Annual General Meetings shall be called Extraordinary General Meetings.

#### **5.3 Requirements to calling Meetings**

The Board may whenever it thinks fit and shall upon a requisition in writing by owners representing not less than 40% per cent of the total Unit Factors for all the Units or upon the request in writing from Mortgagees against Units in respect of which corresponding Unit Factors represent not less than 40% per cent of the total unit factors or a combination of such Owners or Mortgagees entitled to vote with respect to 40% per cent of the total Unit Factors convene an Extraordinary General Meeting.

#### **5.4 Notice of Meetings**

7 days' notice of every General Meeting specifying the place, the date and the hour of meeting, and in the case of special business the general nature of such business, shall be given to all owners and Mortgagees. Notice shall be given to the Owner and to the Mortgagees in the manner prescribed in this By-law, but the accidental omission to give notice to an Owner or Mortgagee or non-receipt by an Owner or Mortgagee does not invalidate the meeting or any proceedings thereat. In computing the number of the days notice of a General Meeting required under this By-law, the day on which the notice is deemed to have been received and the day of the meeting shall be counted.

#### **5.5 Special Business**

All business that is transacted at an Annual General Meeting, with the exception of the consideration of accounts and election of members to the Board, or at any Extraordinary General Meeting, shall be deemed special.

## **5.6 Requirement for Quorum**

Save as in this By-law otherwise provided, no business shall be transacted at any General Meeting unless a quorum of persons entitled to vote is present at the time when the meeting proceeds to business and 1/4 of the persons entitled to vote present in person or by proxy shall constitute a quorum.

## **5.7 Determination of Quorum**

If within one-half hour from the time appointed for a General Meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time and notice of such adjournment and rescheduling of such General Meeting shall be immediately thereafter forwarded to all persons and parties entitled to vote hereunder. If at the adjourned meeting a quorum is not present within one-half hour from the time appointed for the meeting, the persons entitled to vote who are present shall be a quorum.

## **5.8 Chairing the Meeting**

The President of the Board shall be the Chairman of all General Meetings or in his absence from the meeting or in case he shall vacate the chair, the Vice-President of the Board shall act as Chairman provided always that if the President and Vice-President be absent or shall vacate the chair or refuse to act, the meeting shall elect a Chairman; provided that at the First Annual General Meeting of the Corporation, the President may appoint another person (including a person who is not an Owner) to serve as Chairman.

## **5.9 Order of Business**

The Order of Business at General Meetings, as far as is appropriate, and at all Extraordinary General Meetings, the extent that it is appropriate shall be:

- (a) if the President or Vice-President of the Board shall be absent or elects to vacate the chair or refuses to act, the election of the Chairman of the meeting;
- (b) calling of the roll and certifying the proxies;
- (c) proof of notice of meeting or waiver of notice;
- (d) reading and disposal of any unapproved minutes;
- (e) reports of officers;
- (f) reports of committees;
- (g) financial report;
- (h) appointment of auditors;
- (i) election of Board;



- (j) new business;
- (k) adjournment.

#### **5.10 Voting of Meetings**

At any General Meeting a resolution by the vote of the meeting shall be decided on a show of hands, unless a poll is demanded by any Owner or Mortgagee present in person or by proxy. Unless a poll be so demanded, a declaration by the Chairman that a resolution has, on the show of hands, been carried is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour or against the resolution. Except for matters requiring a Special Resolution or Unanimous Resolution, all matters shall be determined by majority. Notwithstanding the foregoing, any vote held in connection with the election of Members of the Board shall, if the meeting Chairman so determines as appropriate in the circumstances be by secret ballot, on the basis of 1 vote for each available director's position for each Residence Unit, excluding all Units other than Residence Units.

#### **5.11 Poll**

A poll, if demanded, shall be taken in whatever manner the Chairman thinks fit, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. In the case of equality in the votes, whether on a show of hands or on a poll, the chairman of the meeting is entitled to a casting vote in addition to his original vote. A demand for a poll may be withdrawn.

#### **5.12 Voting by Show of Hands**

On a show of hands, each person entitled to vote for any Unit shall have one vote for that Unit. On a poll, the votes of persons entitled to vote shall correspond with the Unit Factors for the respective Units owned or mortgaged to them.

#### **5.13 Vote Personally or by Proxy**

On a show of hands or on a poll, votes may be given either personally or by proxy.

#### **5.14 Proxy in Writing**

An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be either general or for a particular meeting. A proxy need not be an Owner, but shall be subject, however, to exclusion as herein provided.

#### **5.15 Restriction on Voting**

Except in cases where by or under the Act or whenever a Unanimous Resolution or a Special Resolution is required under these By-laws, no Owner nor any delegate or proxy of that Owner is entitled to vote unless all assessments payable in respect of his Unit have been duly paid to the date 30 days prior to the date of such meeting but the presence of any such defaulting Owner shall be included in the count for quorum constitution purposes pursuant to By-law 5.6 hereof.

#### **5.16 Voting by Co-owners and Corporations**

- (a) Co-owners may vote by proxy but only if the proxy is jointly appointed by them or by one of the co-owners appointed by the other or all others, as the case may be, and in the absence of such proxy, co-owners are not entitled to vote separately on a show of hands except when a unanimous resolution is required by the Act, but any one co-owner may demand a poll.
- (b) On any poll, each co-owner is entitled to such part of the vote applicable to a Unit as is proportionate to his interest in the Unit. The joint proxy (if any) on a poll shall have a vote proportionate to the interests in the unit of the joint owners as do not vote personally or by individual proxy.
- (c) A Corporate Owner shall vote through its delegate, provided, firstly, that only 1 delegate shall be appointed by his or her principal Corporation, and, secondly, the delegate shall, on request of the chairman of the meeting, produce written authority of delegation by the Corporate Owner before being able to vote for and on behalf of such Corporate Owner.

#### **5.17 Successive Interests**

Where Owners are entitled to successive interest in a Unit, the Owner entitled to the first interest (or if his interest is mortgaged by first Mortgage, the Mortgagee under such mortgage) is alone entitled to vote, whether on a show of hands or a poll.

#### **5.18 Trustee Owners**

The Corporation, the Board and the Chairman are not bound to recognize any trust but may rely on the title to any Unit as same appears registered under the *Land Titles Act* of Alberta, that the registered owner of any Unit is both the legal and beneficial owner thereof, and so entitled to vote.

#### **5.19 Power of Mortgagee to Vote**

Notwithstanding the provisions of this By-law with respect to appointment of a proxy, where the Owner's interest is subject to a Mortgage and where the Mortgage or this By-law or any statute provides that the power of vote conferred on an Owner may or shall be exercised by the Mortgagee, no instrument or proxy shall be necessary to give the Mortgagee the said power to vote; provided that:

- (a) the Mortgagee's right to vote shall be subject to the Mortgagee having notified the Corporation of its interest pursuant to section 26(3) of the Act; and,
- (b) the Corporation, the Board and the chairman of any General Meeting shall not be obliged to examine the instrument of appointment when conferring the right to vote and shall be entitled to rely upon the Corporation's records only.

## **Article 6**

### **Insurance Coverage by Corporation**

#### **6.1 Insurance Coverage by Corporation**

The Corporation shall, in obtaining and maintaining insurance pursuant to section 3.2 hereof, obtain and maintain, at all times, to the extent obtainable, the following insurance coverage;

- (a) Such property and liability insurance against the perils described in the Act and the regulations to the Act, in amounts and subject to the levels of deductible, as are from time to time and at any time, required to be obtained and maintained by the Corporation, subject to any exclusions and relief thereof due to same not being available as so prescribed;
- (b) Fire insurance with extended coverage insuring all of the insurable common property and all insurable property, both real and personal, of any nature whatsoever of the Corporation, and all of the units, inclusive of all improvements and betterments (including bathroom fixtures) of which it has written notice, but not including furnishings, appliances, chattels, carpeting, wall coverings, window coverings, drapes, blinds and other personal property of the Owners, for the full replacement cost thereof, without deduction for depreciation;
- (c) Boiler and machinery insurance as applicable to the Project;
- (d) Public liability insurance, insuring the Board, its Manager (if any), and all Owners from and against any liability to the public or to the Owners and their respective invitees, licensees, occupants or tenants, incident to the ownership or use of the Project, with limits of liability under such insurance to be not less than \$1,000,000.00 inclusive for bodily injury or property damage per occurrence; and,
- (e) such other insurance and coverage for such other risks or causes as the Board may determine or as may be determined by special resolution of the Corporation.

#### **6.2 Requirements in Policies of Insurance**

All policies of insurance obtained and maintained by the Corporation pursuant to section 6.1 hereof shall provide:

- (a) that, either, named as insureds or insured under such policies as their respective interests may appear as permitted by law, will be:
  - (i) all Owners as constituted from time to time;
  - (ii) all Mortgagees; and,
  - (iii) the Corporation;

- (b) that, if appointed by the Corporation pursuant to section 3.3, the proceeds on loss are to be paid to the Insurance Trustee, or if none is appointed, then to the Corporation;
- (c) for, a waiver by the insurer of its rights of subrogation against the Corporation, its manager, agents, employees, and servants, and the Owners and any occupant of a Unit, except in the case of arson or fraud;
- (d) for a waiver by the insurer of any defense based on coinsurance or of invalidity arising from the conduct of or any omission or act or breach of statutory condition by the insured;
- (e) for a waiver by the insurer of the insurer's option to repair, rebuild, or replace in the event that after damage the Project's Condominium Status is terminated;
- (f) that the policies may not be cancelled or substantially modified without at least 30 days' prior written notice to all insureds, including all parties referred to in section 6.2(a) hereof; and,
- (g) for a cross liability endorsement wherein the rights of any named insured under the policy or policies shall not be prejudiced as respects its, his, her, or their action against another named insured.

### **6.3 Appraisal**

When considered appropriate or prudent, the Corporation shall obtain an appraisal from a qualified appraiser for the full replacement value of all of the property to be insured pursuant to Section 6.1(b) hereof, which appraisal shall be made available, on request, to all Mortgagees; and, thereafter the policies of insurance shall be adjusted forthwith in accordance with such appraisal, provided that all insurance policies may be reviewed at any time and coverage varied as may be determined to be necessary or prudent by the Board.

### **6.4 Powers of Board**

The Board shall:

- (a) have exclusive authority to adjust losses and settle proceeds under all policies hereinafter in force, which authority may be delegated to the Board's authorized representative and the Insurance Trustee;
- (b) issue or cause to be issued a certificate or memorandum of all insurance policies and endorsements thereto upon written request therefor by all persons and parties entitled thereto under the Act;
- (c) hold at the Corporation's offices the master policies of insurance and make the same available for inspection to all persons and parties entitled to review same under the Act, upon reasonable notice; and

- (d) in the event that the Board reasonably determines that any insured loss or claim arises out of the conduct of any Owner or Occupant, as the case may be, the Board may, and is hereby empowered to, either, deny the insurance coverage of the Corporation to the loss or claim; or, assess or charge the deductible amount under the Corporation's insurance coverage entirely to the Owner, or the Owner of the Unit in which the Occupant resides, who the Board determines was responsible for the loss or claim, as the case may be.

## **6.5 Owner's Insurance**

Notwithstanding anything to the contrary contained herein, any Owner may, and upon written request of any Mortgagee shall, obtain and maintain insurance with respect to that Owner's Unit as permitted by the Act provided that the Corporation's insurance as hereinbefore required shall not be affected or diminished by reason of such additional insurance coverage obtained and maintained by such Owner, and, in particular, without restricting the generality of the foregoing, such and any Owner's insurance shall not have the effect of bringing the Corporation's insurance into contribution with the Owner's insurance as aforesaid, it being always the case that the Corporation's insurance shall be deemed to be primary insurance.

## **6.6 Requirements in Owners Policies of Insurance**

The Owner's policies of insurance obtained and maintained in respect of any Unit shall provide:

- (a) that, included as a named insured under such policies as their respective interests may appear as permitted by law, will be the Corporation;
- (b) for, a waiver by the insurer of its rights of subrogation against the Corporation, its manager, agents, employees, and servants, and the Owners and any occupant of a Unit, except in the case of arson or fraud;
- (c) for a waiver by the insurer of any defense based on coinsurance or of invalidity arising from the conduct of or any omission or act or breach of statutory condition by the insured;
- (d) for a waiver by the insurer of the insurer's option to repair, rebuild, or replace in the event that after damage the Project's Condominium Status is terminated;
- (e) that the policies may not be cancelled or substantially modified without at least 30 days' prior written notice to all insureds; and,
- (f) for a cross liability endorsement wherein the rights of any named insured under the policy or policies shall not be prejudiced as respects its, his, her, or their action against another named insured.

Provided that should any of the foregoing requirements not be available to an Owner, the Owner shall, until same is available, be relieved from the obligation to obtain such unavailable coverage.

## **6.7 Determination or Loss**

In the event of loss, damage, or destruction of all or any part of the Project, the Board shall within 30 days of the occurrence determine whether such loss, damage, or destruction has constituted Substantial Damage to the Project, such determination to be made upon the written opinion of an independent qualified insurance appraiser.

## **6.8 Non-substantial Loss**

If any loss, damage or destruction is not determined to be Substantial Damage, or, if it is determined by the Corporation to repair and replace the property so lost, damaged, or destroyed pursuant to section 6.10 hereof, The Board shall arrange for and cause prompt and expeditious repair and restoration of the property so lost, damaged or destroyed. The Board shall use all proceeds of insurance for that purpose and shall disburse such proceeds to contractors engaged for such purpose in the appropriate manner, complying with all legislation in such regard; provided that such responsibility may be delegated to an Insurance Trustee, if so appointed, or an authorized representative of the Board.

## **6.9 Substantial Loss**

If any loss, damage or destruction is determined to be Substantial Damage, the Board shall, within 100 days of the occurrence of the loss, damage or destruction, cause to be held a General Meeting of the Corporation for the purpose of determining by Special Resolution whether the Condominium Status of the Project shall be terminated or the property so lost, damaged or destroyed shall be repaired and restored.

## **6.10 Determination of Course of Conduct**

If as a result of the said general meeting:

- (a) the Corporation has by special resolution resolved to repair and restore the property so lost, damaged or destroyed, section 6.8 hereof shall apply for such purposes;
- (b) The Corporation has by special resolution, resolved to terminate the Condominium Status of the Corporation, section 6.11 shall apply for such purposes; or,
- (c) no special resolution has been enacted, the Corporation, through the Board shall repair and restore the property so lost, damaged or destroyed, and section 6.8 hereof shall apply for such purposes.

## **6.11 Termination of Status**

If the Corporation shall, pursuant to sections 6.9 and 6.10 hereof, resolve to terminate the Condominium Status of the Project, the Board shall, on behalf of the Corporation, and the Owners, make application to terminate the condominium status of the Building, the Project and

the Parcel in accordance with the Act; and otherwise Article 14 shall govern the management and operation of the Project.

#### **6.12 Distribution of Proceeds on Termination**

In the making application for termination of condominium status as referred to in section 6.11 hereof and upon such termination:

- (a) any liens, charges, and registrations affecting the Units, and any of the Units, shall be transferred to title to the Parcel, in accordance with and respecting the then existing priorities therebetween, and with respect to the interests of the respective Owners interest in the Parcel;
- (b) all proceeds of insurance shall be paid to the Insurance Trustee, or, if none is appointed, to either the Corporation or an independent party (who would be willing to accept same as trustee for distribution in accordance with this section) and thereafter distributed to the Corporation, the Owners, and such other parties having lawful claim thereagainst, as and in respect of their interests in the Parcel, in proportion to such interests; and,
- (c) no Owner shall be entitled to claim any compensation from the Corporation for any loss or damage incurred to property or person arising from any defect or want of repair of the Common Property, or any part thereof, unless such loss or damage is covered by insurance held or required to be held by the Corporation hereunder.

#### **6.13 Assessment on Repairs**

In the event of the Corporation repairing and restoring property lost, damaged or destroyed; then:

- (a) in the event the proceeds of insurance are inadequate to fully pay for the cost of repair and restoration to Common Property, such deficiency shall form and constitute a common expense of the Corporation; and,
- (b) whenever the Corporation is required to enter a Unit for the purpose of maintaining, repairing, restoring or replacing pipes, wires, cables, ducts, and like fixtures and service items, notwithstanding that such work is necessary for the enjoyment of the Common Property or another Unit and not the Unit to be entered, the Corporation and anyone authorized by the Corporation may enter the Unit and carry out any work or repairs so necessary in a proper and workmanlike manner and shall make good any damage to the Unit occasioned by such work and restore the Unit to its former condition, clean and free of debris occasioned by the entry and the work and repair.

#### **6.14 Indemnity**

In accordance with the indemnity given under Article 2.1(e), each Owner shall indemnify the Corporation and save the Corporation harmless from the cost of any and all repairs and replacements necessary to be made to Common Property in consequence of the conduct of the

Owner and anyone for whom the Owner is legally responsible, but limited to the extent that such costs exceed any insurance proceeds actually received by the Corporation in respect to such repairs or replacements.

#### **6.15 Insurance Trustee**

Should the Board consider it prudent and reasonable, it may on behalf of the Corporation appoint and retain an Insurance Trustee pursuant to the Act; and the terms of such appointment and retainer, including any fees paid to the Insurance Trustee shall be at the Board's discretion.

### **Article 7 The Budget and Common Expenses**

#### **7.1 Preparation of Annual Budget**

Annually and in any event prior to the expiry of each fiscal year of the Corporation, the Board shall prepare and formulate, or cause to be prepared and formulated, and shall adopt for and on behalf of the Corporation a Budget, estimating the Common Expenses of the Corporation for the ensuing fiscal year, which Budget shall be prepared and formulated upon good and generally accepted accounting principles.

#### **7.2 Publication of Budget**

Once adopted by the Board, a copy of the Budget, together with a statement or notice setting forth each Owner's assessment, on a Unit-by-Unit basis, with respect thereto shall be delivered or mailed by the Board to each Owner.

#### **7.3 Allocation of Assessments**

For the purposes of assessment for contribution to Common Expenses by the Owners, the Common Expenses of the Corporation shall subject to sections 3.3(t) and 7.3 hereof be assessed by the Corporation in proportion to and on the basis of the Unit Factors for each respective Unit; provided that:

- (a) if and whenever the Board is of the opinion, acting reasonably, that assessment upon another basis is better reflective of an equitable allocation of contribution to Common Expenses, the Board may employ such alternative method of assessment, provided that, in so doing, the Board shall, advise the Owners, in writing, advise Owners of the change to and method of such alternative allocation;
- (b) should the Board, from time to time and at any time, determine, acting reasonably, that a single Owner or less than all Owners are responsible for certain items of Common Expense to the exclusion of any other Owner(s), the Board may assess the Owner(s) so determined responsible for such Common Expense alone and to the exclusion of the other Owner(s), provided that, in so doing, the Board



shall advise the Owners, in writing, advise the Owners of such limited assessment; and

- (c) if and whenever these By-laws provide either that the Developer shall not contribute to Common Expenses or that the Corporation shall enter into an agreement or arrangement for the reduction or elimination of any such contribution, the Board will assess the Owner(s) accordingly and in compliance with such provisions and agreements or arrangements, as the case may be.

#### **7.4 Liability for Contribution to Common Expenses**

Upon receipt of the notice or statement referred to in section 7.2 and 7.3 hereof, each Owner shall become liable for his respective contribution to the Common Expenses of the Corporation in accordance with the assessment, which sum shall be payable to the Corporation, or as directed by the Corporation from time to time in 12 equal consecutive monthly installments, payable in advance, on the first day in each and every calendar month of the subject fiscal year, commencing on the first day of the first month of such fiscal year; provided that the Board may from time to time, on notice to each Owner, in writing, change the manner and time of payment hereinbefore set forth.

#### **7.5 Interest on Arrears**

All payments of whatsoever nature required to be made by an Owner, or any Owner, and not paid when due shall bear and accrue interest at the Interest Rate from the due date until paid in full, with all payments on account to be applied first to interest and then to the payment first due.

#### **7.6 Failure to Assess**

Any omission or delay of the Corporation to fix the assessments for contribution to common expenses hereunder for a next ensuing fiscal year, or other period, shall not be a waiver or modification of this By-law, or any part thereof, or a release of any Owner or Owners to make payment of the assessments, or any installments thereof, and in such event the assessments as fixed in the last notice prior to such omission shall continue until such new assessments are fixed.

#### **7.7 No Exemption**

Subject to Section 7.3 hereof, no Owner can exempt himself from liability for his contributions toward his assessments for contributions to common expenses by waiver of the use and enjoyment of any of the Common Property or by vacating or abandoning his Unit, or in any manner whatsoever.

#### **7.8 Special Assessment**

If at any time it appears that the annual assessments or contributions towards the Common Expenses will be insufficient to meet the Common Expenses, the Corporation may assess and collect a special contribution or contributions against each Unit (subject to section 7.3 hereof) in an amount sufficient to cover the additional anticipated Common Expenses. The Corporation

shall give notice of such further assessment to all Owners which shall include a written statement setting out the reasons for the assessment and each assessment shall be due and payable by each Owner in the manner and on the date or dates specified in the notice. Subject to section 7.3 hereof, each such special contribution shall be determined and assessed against the Owners in proportion to their Unit Factors. All such special contributions shall be payable within 10 days of the due date for payments as specified in the notice and if not paid shall bear interest at the Interest Rate from the due date until paid.

## **7.9 Unpaid Assessments**

The Corporation shall have all right, power and authority as provided by the Act, and at law, to recover unpaid contributions assessed and to secure payment thereof, and without restricting the generality of the foregoing, the following shall apply with respect thereto:

- (a) The Corporation shall and does hereby have a lien on and charge against the estate or interest of any Owner for any unpaid contribution including such accelerated amounts pursuant to Article 7.9(e) hereof, assessment, installment or payment due to the Corporation, which lien shall be a lien against such estate or interest subject only to the rights of any Mortgagee and any municipal or local authority in respect of any unpaid realty taxes, assessments or charges of any kind against the unit title or interest of such Owner. The Corporation shall have the right to file a caveat or encumbrance against the Unit title or interest of such Owner in respect of the lien or charge for the amount of such unpaid contribution, assessment, installment or payment as hereinbefore mentioned, and for so long as such unpaid contribution, assessment, installment or payment remains unpaid, provided that each such caveat or encumbrance shall not be registered until after the expiration of 30 days following the due date for the first payment in arrears. As further and better security, each Owner responsible for any such unpaid contribution, assessment, installment or payment which is arrears for more than 30 days, shall give to the Corporation a mortgage or encumbrance for the full amount thereof and all contributions, assessments, installments, and/or payments, and interest thereon at the Interest Rate from the due date or dates for payment of the same, and the Corporation shall be entitled to enforce its lien, charge and security and pursue such remedies as may be available to it at law or in equity, from time to time concurrently or separately;
- (b) Any other owner or person, firm, or corporation whatsoever may pay any unpaid contribution, assessment, installment or payment after the expiration of 30 days following the due date for payment by the Owner in default, with respect to a Unit, and upon such payment, such party, person, firm or corporation shall have a lien, subject to the estates or interests hereinbefore mentioned and shall be entitled to file a caveat or encumbrance in respect of the amount so paid on behalf of the Owner in default, and shall be entitled to enforce his lien, thereby created, in accordance with the other terms and conditions of this provision;
- (c) Notwithstanding and in addition to any other term, condition or provision herein contained or implied, each unpaid contribution, assessment, installment or

payment shall be deemed a separate, distinct and personal debt and obligation of the Owner against whom the same is assessed and collectible as such. Any action, suit or proceeding to recover such debt or to realize on any judgment therefore shall be maintainable as a separate action, suit or proceeding without foreclosing or waiving the lien, charge or security, securing the same;

- (d) In the event of any assessment against, or installment, or payment due from an owner remaining due and unpaid for a period of 60 days, the Board shall give notice of such default to all Mortgagees of such Owner's unit;
- (e) In the event of any assessment against or installment or payment due from an Owner remaining due and unpaid for a period of 30 days, the Board, at its election, may accelerate the remaining monthly contributions, assessments, installments and payments for the fiscal year then current upon notice to the Owner in arrears, and thereupon all such unpaid and accelerated monthly contributions, assessments, installments and payments shall become payable on and as of the date of the said notice, provided that no such acceleration shall affect the interests of or be binding upon any Mortgagee; and,
- (f) All reasonable costs of the Manager and legal costs (on a solicitor and his own client basis) and disbursements incurred by the Corporation in registering and discharging a Caveat or in any way securing its interests hereunder shall constitute a payment due the Corporation.

#### **7.10 Capital Replacement Reserve Fund**

In respect to the assessments for and expenditures from the replacement reserve fund, as required pursuant to Section 3.2 hereof:

- (a) The Corporation shall periodically when determined prudent, appropriate or reasonable by the Board, and in any event when required by law, commission a reserve study and reserve report.
- (b) On the adoption of the study, report and reserve plan by the Corporation, the Board shall implement the reserve plan as adopted into the budget of the Corporation and assess contributions to Common Expenses in accordance with Section 7.3 hereof in compliance with all applicable laws and regulations.
- (c) Expenditures from the replacement reserve fund shall be limited to capital replacements.

#### **7.11 Ownership of Funds**

All monies collected and held by the Corporation to be applied to Common Expenses, including replacement reserves, currently or in the future shall be the sole property of the Corporation and no Owner shall have any interest therein.

## **Article 8**

### **Exclusive Use Common Property and Recreational Facilities**

#### **8.1 Designation Areas**

The Owner of any Unit, his heirs, successors, executors, administrators, assigns, Occupants, and all persons who are successors in title to his Unit shall have the right of exclusive use of such areas of Common Property, designated on the Condominium Plan as areas leasable to Owners pursuant to s. 50 of the Act, appurtenant to his Unit (as confirmed by Resolution of the Board).

#### **8.2 Use of Areas**

All Exclusive Use Areas shall only be used in accordance with and subject to such By-laws, rules, regulations and resolutions enacted by the Corporation from time to time.

#### **8.3 Amendment to Areas**

The Exclusive Use Areas, as established in section 8.1 hereof, may, by special resolution of the Corporation, be changed, adjusted and amended from time to time; provided that the Corporation cannot directly or indirectly expropriate, confiscate or otherwise take away exclusive use areas designed to any unit or leased to any Owner without Unanimous Resolution.

#### **8.4 Leases of Areas**

In addition to the Exclusive Use Areas designated for the use of any Owner or Owners generally, the Board may, from time to time, if and when it sees fit and deems it reasonable to do so, grant, on behalf of the Corporation to any one or more Owners, on terms and conditions acceptable to the Board, a right of use of portions of the Common Property for the exclusive or joint use of any Owner or Owners; provided that such lease(s) shall not, in the opinion of the Board, firstly, be specifically prejudicial to the interests of Owners of Units immediately adjacent to such leased Common Property, and, secondly, be prejudicial generally to the interests of Owners of all of the Units.

#### **8.5 Storage Facilities**

Notwithstanding anything to the contrary hereinbefore contained the Board shall be at liberty to generally regulate the usage and maintenance of storage facilities in the Project, whether same are part of a Parking/Storage Unit or are common property, to enable safe and orderly use of such storage facilities and the facilities in the Project in immediate proximity thereto.

#### **8.6 Recreational Facilities**

The Corporation may from time to time enact Rules and Regulations for the regulation of the use of any Recreational Facilities, including, without limiting the generality of the foregoing, any of, the implementation of a system of registration to permit use, sanctions against persons for misuse, user fees, and requirements in precondition of use.

## **8.7            Parking Facilities**

Notwithstanding anything to the contrary hereinbefore contained the Board shall be at liberty to generally regulate the usage and maintenance of motor vehicle parking facilities in the Project, whether same are or comprised of Parking Units, form part of Residence Units, or are common property, to enable safe and orderly use of such motor vehicle parking facilities and the facilities in the Project in immediate proximity thereto.

## **Article 9 Start Up and Rental Project**

### **9.1            Start Up**

Notwithstanding anything to the contrary contained in this By-law, and during such time that the Project is owned by the Developer (subject to Section 9.2 expiring on the sale of the Developer's last Unit in the Project) the following shall apply:

- (a) the Developer shall be entitled to operate a show suite in any one or more Units in the Project, and shall be entitled to public access to such show suite(s) during the business hours of the Developer (as reasonably determined by the Developer from time to time) notwithstanding anything herein to the contrary;
- (b) the Developer shall be at liberty to market the Project and all unsold Units in the Project, and, notwithstanding anything herein to the contrary, in so doing shall be at liberty to place "for sale" and "open house" signs on the Project and show Units as and when the Developer shall reasonably determine to be prudent or expedient;
- (c) during the construction of the Project and until completion of all phases, the Developer shall be responsible for the operation and management of the incomplete phase(s); including care, cleaning, repair, maintenance and control thereof. In this regard, it is agreed that:
  - (i) the costs of operating and managing the incomplete phase(s) shall be the responsibility of the Developer, who may collect contributions thereto from owners/occupiers in such incomplete phase(s), as contracted;
  - (ii) the costs of operating and managing the incomplete phase(s) will not be billed or charged to the Corporation; and,
  - (iii) as no contributions to these costs shall be made by the Corporation, no contributions toward Corporation expenses will be charged or assessed by the Corporation against, either, the Developer or any owners/occupiers in such incomplete phase(s).the Developer, on behalf of the Corporation, shall be at liberty to enter into agreements for the assessment of common expenses whereunder the Developer may be exempted from sharing in certain expenditures on a reasonable basis;

- (d) Upon completion of each phase, as signified by and upon Notice by the Developer to the Corporation, the Corporation shall assume responsibility for the operation and management (as hereinbefore described) of the completed phase(s), whereupon the unit(s) comprising the completed phase(s) may be assessed for contributions to operation and management costs of the Corporation and, it is further agreed:
  - (i) the Developer may elect to operate and manage the Project (outside of the Corporation) until the First Annual General Meeting of the Corporation, during which period all units and phases will be considered as incomplete and operated under clause 9.1(c) hereof; and the Developer shall not be required to account for its expenditures and receipts during such period, provided that the Developer shall bear and contribute sufficient funds to satisfy any operational shortfalls (excluding contributions to capital replacement accounts) to the date of the First Annual General Meeting; and,
  - (ii) in the event the Developer may be assessed for any contributions to operating expenses of the Corporation for any time during the subsistence of this Agreement, the Developer shall be liable for assessments up to a maximum of 50% of such assessments, as originally budgeted by the Developer and disclosed in the Developer's sales material;
- (e) Until completion of any Unit in the Project, the Developer, as owner of Units in such incomplete Unit, shall be relieved and shall not be liable for any condominium fees or assessments whatsoever as resolved or assessed by the Corporation in respect of the completed Unit or Units (as the case may be) of the Project, except to the extent of contribution to those costs which the Developer will share in pursuant to Section 9.1(c); and
- (f) Should, for any reason whatsoever, the foregoing is found unenforceable, unreasonable or inappropriate the Developer shall be entitled to charge all costs of the Developer relating to the undeveloped Units to the Corporation (including administrative expenses as determined by the Developer for the resources expended by the Developer within its organization), and offset any condominium fees owing or assessed to the Developer by the Corporation in the amount of such costs incurred by the Developer;
- (g) the provisions of Sections 9.2 and 9.3 as adopted by the Developer shall apply;
- (h) the restrictions contained in Article 1 and Article 2, shall not apply to such Units owned by the Developer; and
- (i) no fee shall be levied against or payable by the Developer in respect of the issuance of Estoppel Certificates for any of the Developer's Units.

## **9.2 Application**

If, and for such time that the Project is operated under this Article, ending at the latest of:

- (a) the discharge of a Mortgage, granted by the Owners in respect of the Condominium Project as a Rental Project; and,
- (b) the transfer of ownership of at least 51% of the Units to Owners other than the Common Owner; and,
- (c) the Annual General Meeting of the Owners when the Board is constituted by members other than the Developer's representatives;

the provisions of this Article 9 shall apply in the place and stead of any Article or section of this By-law inconsistent with this Article.

## **9.3 Delegation of Duties, Rights and Powers**

For such period of time that the Project is in start-up or operated as a Rental Project pursuant to Articles 9.1 and 9.2 hereof, and provided that the Corporation has made delegation of its duties, rights and powers pursuant to Article 9.4 hereof, the Corporation may, but shall not be obligated to, perform its duties and obligations or exercise its rights and powers as are required or permitted to be performed or exercised under this By-law or the Act, provided that:

- (a) the Corporation remains obligated to insure the Project pursuant to this By-law and the Act; and,
- (b) notwithstanding anything to the contrary herein contained the Corporation shall remain liable for the performance of its duties or obligations under this By-law and the Act in the event of any, every and all failure of its delegate (as appointed pursuant to Article 9.4 hereof) to so perform same.

## **9.4 Operation of Corporation**

In the event that, during such period of time the Project is in start-up or operated as a Rental Project, as set forth in sections 9.1 and 9.2 hereof, but subject to section 9.5 hereof:

- (a) the Corporation may, by resolution in writing and signed by the Common Owner, delegate and give to the Common Owner, Manager, or an agent, full right, power, and authority to perform, exercise and enjoy the Corporation's duties, rights, and powers conferred under this By-law and the Act, subject to section 9.3 hereof, and, on so doing, the Common Owner, manager or agent, as so authorized shall be responsible to carry out and duly perform the obligations and duties of the Corporation;
- (b) the Board shall consist of 1 member, being the nominee of the Common Owner from time to time and serving at the Common Owner's pleasure, who shall, for such time, serve as the President and sole officer of the Corporation with full

power and authority to enter into and execute such agreements, certificates, and documents as shall be required to be entered into and signed on behalf of the Corporation;

- (c) any resolution of the Board or the Corporation shall be adequately and sufficiently passed and enacted if same is made in writing and signed by the Common Owner and the then serving Board Member; and
- (d) the Corporation may enter into agreements with the Common Owner or Developer, under which the Common Owner or Developer shall be, either, responsible only for expenses of the Project and payable to the Condominium Corporation which are not related to any of maintenance, amenity usage or for replacement reserves but shall be responsible for the Common Owners or Developers own Units to the exclusion of the Corporation, or entitled to assess its costs for maintenance and repair to the Project (and any part of the Project) to the Corporation.

## 9.5 Rights of Mortgagee

If, during such period of time the Project is in start-up or operated as a Rental Project, as set forth in sections 9.1 or 9.2 hereof, all Units and the Common Property are subject to a mortgage (or mortgages) granted to a Common Mortgagee, then, during such time, or until such Mortgage (or Mortgages) is (are) fully discharged:

- (a) any delegation made by the Corporation pursuant to section 9.4(a) hereof, shall be subject to the prior written approval and consent of the Common Mortgagee;
- (b) any resolution of either the Board or the Corporation which would affect an approved delegation made by the Corporation pursuant to section 9.4(a) hereof (including a resolution which would remove or replace a delegate) shall be subject to the prior written approval and consent of such Common Mortgagee; and,
- (c) notwithstanding an approved delegation by the Corporation, such Common Mortgagee shall have the full right, power and authority, to be exercised from time to time and at any time; to:
  - (i) be appointed and act as, or designate the Insurance Trustee;
  - (ii) be appointed and act as, or designate and nominate a Member of the Board, to act as Chairman of the Board, in addition to the nominee of the Common Owner under section 9.4(b) hereof;
  - (iii) require the Corporation to dismiss the party or person delegated by the Corporation pursuant to Article 9.4 hereof, and, in so doing, revoke all authority of such delegate to act for and on behalf of the Corporation hereunder;



- (iv) require the delegation by the Corporation of its duties, rights and powers, pursuant to section 9.4(a) hereof, to the Common Owner; and,
- (v) require the dismissal of or dismiss the then acting Manager, and, in writing, approve any new Manager to be appointed by the Corporation, regardless of whether such change in managers has been made necessary by the Common Mortgagee or not.

#### **9.6 Successive Interests**

Should there be more than 1 Common Mortgagee, the Common Mortgagee, first in priority of registration, shall have the authority, rights, and powers conferred under section 9.5 hereof, unless otherwise agreed by such Common Mortgagees.

#### **9.7 Additional Powers**

The rights, powers, and authority herein conferred upon a Common Mortgagee shall be in addition to, and not in substitution of, those rights, powers and authority granted to Mortgagees under this By-law and the Act, and shall be exercised only by notice in writing to the Corporation.

#### **9.8 Successive Interests**

Should there be more than 1 Common Mortgagee, the Common Mortgagee, first in priority of registration, shall have the authority, rights, and powers conferred under Section [10.5] hereof, unless otherwise agreed by such Common Mortgagees.

#### **9.9 Additional Powers**

The rights, powers, and authority herein conferred upon a Common Mortgagee shall be in addition to, and not in substitution of, those rights, powers and authority granted to Mortgagees under this By-law and the Act, and shall be exercised only by notice in writing to the Corporation.

#### **9.10 Modification of By-law**

This By-law shall not be repealed, amended, replaced or modified without the Unanimous Resolution of the Corporation and the written consent of the Common Mortgagees thereto, while the Project is operated as a Rental Project.

## **Article 10 Mortgages**

### **10.1 Applications**

Any and all Mortgagees:

- (a) shall have the powers and rights available to them under the Act; and,
- (b) shall be entitled to receive all notices to Owners required to be given hereunder, and under the Act, including notices of default of an Owner's obligation;

### **10.2 Successive Interests**

Where and whenever any Unit is subject to more than 1 Mortgage, the Mortgagee, first in priority of registration, shall have priority in exercising its rights and powers hereunder and under the Act.

### **10.3 Extension of Rights**

Any and all rights, powers, privileges and authority conferred upon a Mortgagee hereunder shall be in addition to those rights powers, privileges and authority conferred to Mortgagees under the Act.

### **10.4 Notice of Mortgage**

The Corporation shall have no obligations to any mortgagees who have failed to notify the Corporation, in writing, of their respective interests, except where otherwise expressly provided for in this By-law.

## **Article 11 General**

### **11.1 Notices**

Unless otherwise expressly provided in this By-law, service of any notice required to be given under the Act or under this By-law shall be well and sufficiently given if sent by prepaid registered mail to the Owner at the address of his Unit or if left with him or some adult person at the said address or to the Corporation at its address for service shown on the Condominium Plan, or to a Mortgagee at its address supplied to the Corporation. Any notice given by post shall be deemed to have been sent and received 48 hours after it is posted or upon delivery, if delivered. An Owner or a Mortgagee may at any time in writing advise the Corporation of any change of address at which notices shall be served or given and thereafter the address specified therein shall be deemed to be the address of such Owner or Mortgagee, as the case may be, for the giving of notices. The word "notice" shall include any request, statement or other writing required or permitted to be given hereunder or pursuant to the Act or this By-law.

## **11.2 Estoppel Certificates**

Any certificate as to an Owner's position with regard to contributions, expense assessments or otherwise, issued by an officer of the Corporation or the Manager shall be deemed an Estoppel Certificate and the Corporation and all of the Owners shall be estopped from denying the accuracy of such certificate against any Mortgagee, purchaser or other person dealing with the Unit Owner but this shall not prevent the enforcement against the Unit Owner incurring the said expense of all obligations of the said Unit Owner whether improperly stated in such estoppel certificate or not.

## **Article 12 Common Use Units**

### **12.1 Transfer to Corporation**

In that the Project shall be comprised of any Unit or Units which, by virtue of the Restrictive Covenant and Article 1 hereof, are to be restricted in use for the enjoyment and benefit of all Owners, the Corporation and the Developer may enter into agreement pursuant to Article 1 hereof to transfer such Unit(s) to the Corporation, it being understood and agreed that such Unit(s) may include the Common Roadway, and in so doing the Corporation shall assume all benefit and obligations relating and attaching to such Unit(s).

### **12.2 Operation by Corporation**

Upon obtaining title to such Units referred to in Section 12.1 hereof, the Corporation will assume all responsibility for such Units, inclusive of all obligations of maintenance, repair and replacement as imposed upon a Unit Owner herein and under the Act, with full authority to the Corporation to control and manage such Unit as if the Corporation were an owner of the Unit.

## **Article 13 Amendment of By-law**

### **13.1 Requirements**

Subject to Section 13.3 hereof, this By-law, or any part hereof, may be added to, amended or repealed by Special Resolution of the Corporation and not otherwise and the Corporation shall cause to be prepared and distributed to each Mortgagee a notice or memorandum of any proposed amendments, addition or repeal 30 days prior to the date of any such Special Resolution and thereafter provide each such Mortgagee with a copy of any registered amendment, addition or repeal.

### **13.2 On Modification of By-law**

In the event of any amendment to this By-law, the rights and privileges of any Owner which would have been directly terminated in consequence of such amendment, shall remain intact and in effect until the Owner has abandoned such rights or privileges, and in particular but without limiting the generality of the foregoing, on modification of any Section affecting pet ownership,

the Owner of a pet in compliance with this Section prior to the amendment shall be entitled to keep a pet for so long as the Owner shall comply with such Section as it existed before such amendment.

### **13.3 Restricted Amendment**

Notwithstanding Section 12.1 of this By-law and subject to Section 12.2, the following Articles of this By-law may not be rescinded, amended, modified added to or replaced unless by Unanimous Resolution: Sections 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, Paragraphs 2.1(c), 2.1(e) and 2.1(f), Section 2.2, Sections 7.3 and 7.7, Article 9 and this Article 13.

## **Article 14 Termination of Condominium Status**

### **14.1 Procedure**

Subject to the provisions of the Act and any order of the Court, in the event the condominium status of the Project shall be terminated, the following shall apply:

- (a) the Corporation shall become manager of the Project and agent for the Owners in respect of the day-to-day affairs of the Project, and for the purpose of entertaining any offer to purchase made to the Owners in respect of the Project;
- (b) all rules, regulations and provisions of this By-law shall continue to govern the operations of the Corporation notwithstanding the termination of the status of the Project as a condominium; and,
- (c) all decisions of the Corporation and the Board shall continue to be binding upon the Owners in the same manner and having the same effect as if the condominium status of the Project continued, notwithstanding the termination of such condominium status.

### **14.2 Qualification**

Any and all sale, transfer or disposition of the Project or any part thereof shall, upon termination of the condominium status of the Project, subject to Article 14.1 hereof, be made pursuant to section 63 of the Act.