

NIAGARA NORTH VACANT LAND CONDOMINIUM CORPORATION NO. ____

BY-LAW NO. 1

CONDOMINIUM ACT, 1998

CERTIFICATE IN RESPECT OF A BY-LAW
(under subsection 38(1) of the Ontario Regulation 49/01 and subsection 56 (9) of
the *Condominium Act, 1998*)

Niagara North Vacant Land Condominium Corporation No. ____, (known as the
“**Corporation**”) certifies that:

- 1. The copy of By-law Number 1, attached as schedule A, is a true copy of the By-law.
- 2. The By-law was made in accordance with the *Condominium Act 1998*.
- 3. The owners of a majority of the units of the Corporation have voted in favour of confirming the By-law.

Dated this day of _____, 20__.

NIAGARA NORTH VACANT LAND CONDOMINIUM
CORPORATION NO. ____

, President

, Secretary-Treasurer

“We have authority to bind the Corporation.”

NIAGARA NORTH VACANT LAND CONDOMINIUM CORPORATION NO. ____

BY-LAW NO. 1

Be it enacted as a By-Law of **NIAGARA NORTH VACANT LAND CONDOMINIUM CORPORATION NO. ____** (hereinafter referred to as the "**Corporation**") as follows:

ARTICLE I **DEFINITIONS**

1. The following terms used herein and in the By-laws of the Corporation have the meanings set out below, unless the context otherwise requires:
 - (a) "auditor" means a person licensed as a public accountant under The Public Accountancy Act of Ontario;
 - (b) "Board" means the Board of Directors of the Corporation;
 - (c) "common elements" means all the property except the units;
 - (d) "common expenses" means the expenses of the performance of the objects and duties of the Corporation and any expenses specified as common expenses in the Act or in the Declaration of the Corporation;
 - (e) "common interest" means the interest in the common elements appurtenant to a unit;
 - (f) "common surplus" means the excess of all receipts of the Corporation over expenses;
 - (g) "Corporation" means the Condominium Corporation created under the Act by registration of the Declaration and the Description;
 - (h) "encumbrance" means a claim that secures the payment of money or the performance of any other obligation and includes a Mortgage and a Lien;
 - (i) "owner" means the owner or owners of the freehold estate or estates in a unit and common interest, but does not include a mortgagee unless in possession;
 - (j) "owner occupant" means the owner of an owner-occupied unit as defined by s. 51 (5) of the Act;
 - (k) "property" means the land and interests appurtenant to the land described in the Description and Schedule "A" of the Declaration, and includes any land and interests appurtenant to lands that are added to the common elements;
 - (l) "records" shall include those items enumerated in Section 55 of the Act and financial records prepared on behalf of the Corporation, Minutes of owners' meetings and Board meetings, as well as any amendments to the Declaration, By-Laws and Rules of the Corporation;
 - (m) "reserve fund" means a fund set up by the Corporation in a special account for major repair and replacement of common elements and assets of the Corporation including, where applicable, without limiting the generality of the foregoing, roads, sidewalks, sewers and parking facilities;
 - (n) "unit" includes dwelling units, as referred to herein and means a part or parts of the land included in the Description and designated as a unit by the Description, and comprises the space enclosed by its boundaries and all the material parts of the land within this space at the time the Declaration and Description are registered;
 - (o) Other terms used herein shall have ascribed to them the definitions contained in the Condominium Act, 1998 and Regulations made thereto, as may be amended from time to time, referred to as the "Act" in this By-law.

ARTICLE II **SEAL**

The Corporate seal of the Corporation shall be in the form impressed herein.

Seal

ARTICLE III **REGISTER**

The Corporation shall keep a record (hereinafter called the "**register**") respecting the property which shall note the name and address of the owner and mortgagee of each unit who have notified the Corporation of an entitlement to vote. The address of each owner shall be the unit address and the address of each mortgagee shall be the address shown on the mortgage or charge registered in the Land Titles Division for the Registry Office of Niagara North (No. 30), Ontario, unless the Corporation is given notice in writing of a different address by such owner or mortgagee.

ARTICLE IV **MEETINGS OF OWNERS**

1. Annual Meeting

- (a) The annual meeting of the Owners shall be held at such place within the City of Hamilton at such time and on such day in each year as the Board may from time to time determine, for the purpose of hearing and receiving the reports and statements required by the Act, the Declaration and the By-Laws of the Corporation, to be read at or laid down before the owners at an annual meeting; electing Directors; appointing the auditor; and for the transaction of such other matters relevant to the affairs and business of the Corporation.
- (b) The annual general meeting shall be held within six (6) months of the end of each fiscal year of the Corporation.

2. Special Meeting

- (a) The Board or any mortgagee holding mortgages on not less than fifteen per cent (15%) of the units may at any time call a special meeting of the owners of the Corporation for the transaction of any business, the nature of which shall be specified in the notice calling the meeting.
- (b) Such meeting shall be held at such time and at such place as may be determined by the Board.

3. Requisitioned Meeting

- (a) The Board shall also call and hold a special meeting of the owners upon receipt of a requisition in writing to the Board stating the nature of the business to be presented at the meeting and signed by the requisitionists and delivered personally or mailed by registered mail to the President or Secretary of the Corporation or deposited at the address for service of the Corporation within thirty-five (35) days of receipt of such notice.
- (b) The requisition must be signed by owners of the Corporation who together own at least fifteen per cent (15%) of the units and who are listed in the register of the Corporation and are entitled to vote.
- (c) The notice calling the meeting shall state the nature of the business to be presented at the meeting as requisitioned by the owners and include a copy of the

requisition. If the nature of the business to be presented at the meeting includes the removal of one or more Directors the requisition shall state the name of each Director who is proposed to be removed, the reasons why that Director is to be removed and whether that Director occupies the position on the Board reserved for voting by owner-occupants.

- (d) If the requisitionists request it in the requisition or a majority of them consent in writing after the requisition has been made, the business to be presented at the meeting shall be added to the agenda of the next annual general meeting of the owners.
- (e) If the Board does not, within thirty-five (35) days after receipt of such requisition call and hold such meeting, any of the requisitionists may call such meeting which shall be held within forty-five (45) days of the day the meeting is called.

4. Conduct at Meetings

Owners, their proxies, or other invitees to an owners' meeting of the Corporation shall, at all times while at the meeting, conduct themselves in a civil and respectful manner and shall refrain from making false, misleading or deceptive statements in respect of other attendees, residents, the Board of Directors, the property manager, or other persons or their firms attending at the meeting. Attendees shall not use foul language or make derogatory comments, or other offensive statements or gestures which, in the opinion of the chair are offensive. If, in the opinion of the chair of the meeting, an individual is contravening this provision, the chair may request that the offending individual leave the meeting, and if such individual does not leave, the chair, at his or her discretion, adjourn the meeting for such length of time as is required to obtain compliance.

5. Notices

- (a) Notice of the date, hour, place of, and nature of the business to be presented for each annual, requisitioned or special meeting shall be given in accordance with Article X herein.
- (b) A notice of meeting as hereinbefore required shall have appended to it an agenda of matters to be considered at such meeting and no vote may be taken, motion made or consent or approval given in respect of any matter that is not included in the agenda for such meeting other than for routine procedural matters. The notice shall also include a copy of all proposed changes to the Declaration, By-Laws, Rules or agreements that are to be discussed at the meeting. If the notice is issued for a meeting requisitioned by the owners, it must contain a copy of the requisition.
- (c) The notice given for the annual general meeting shall contain a copy of the Financial Statements for the Corporation approved by the Board in accordance with the Act and a copy of the Auditor's Report.

6. Persons Entitled to be Present

The only persons entitled to attend a meeting of owners shall be the owners and mortgagees whose names and address for service were entered on the register for the Corporation as of the twentieth, (20th) day prior to the date of the meeting and are entitled to vote, their proxies, the auditor, and others who, although not entitled to vote, are entitled or required under the provisions of the Act or the Declaration and By-Laws of the Corporation to be present at the meeting. Any other person may be admitted only on the invitation of the Chairperson of the meeting or with the consent of the meeting.

7. Quorum

- (a) A quorum for the transaction of business at a meeting of owners shall be:
 - i. those owners who own 25 per cent of the units in the Corporation, if it is the first attempt to hold the meeting;

- ii. those owners who own 25 per cent of the units in the Corporation, if a quorum is not present at the first attempt to hold the meeting and it is the second attempt to hold the meeting; or
 - iii. those owners who own 15 per cent of the units in the Corporation, if a quorum is not present at the second attempt to hold the meeting and it is the third or subsequent attempt to hold the meeting.
- (b) To be counted towards the quorum of a meeting an owner must have been entitled to receive notice of the meeting, be entitled to vote at the meeting and be present in person or by proxy.

8. Right to Vote

- (a) At each meeting of owners, every owner shall be entitled to vote who is entered on the register as an owner of a dwelling unit subject to paragraph 6 of this Article.
- (b) If a unit has been mortgaged, the owner of the unit (or proxy) may vote in respect of it unless, under the terms of the mortgage, the mortgagee was expressly authorized to vote in the place of the unit owner, the mortgagee is otherwise entitled to vote and the mortgagee has notified the Corporation and the owner of its intention to exercise such right at least four (4) days before the date specified in the notice of the meeting in which case such mortgagee (or proxy) may attend meetings and vote in respect of such unit, upon filing with the Secretary of the meeting sufficient proof of the terms of such instrument and notice to the owner. Any dispute over the right to vote shall be resolved by the Chairperson of the meeting upon such evidence as may be deemed sufficient.
- (c) At any meeting of the owners, every owner or mortgagee shall have the right to cast one (1) vote for each such unit registered in the name of the owner, provided that if a unit or a mortgage on a unit is owned by two persons, both of them must agree or, where the unit or mortgage is owned by more than two persons, a majority must agree as to the manner in which the vote applicable to their unit is to be cast, otherwise the vote in respect of that unit shall not be counted.

9. Loss of right to vote

- (a) An owner or mortgagee of a unit is not entitled to vote at any meeting if any contributions payable in respect of the unit have been in arrears for thirty (30) days or more at the time of the meeting. The owner or mortgagee of a unit that is in arrears of the contributions payable in respect of the unit may tender payment in full, together with interest as set out in this By-Law and such other reasonable costs as the Corporation may be entitled to in respect of such arrears, at any time prior to the commencement of such meeting provided that such payment shall be in cash or by certified cheque or bank draft payable to the Corporation and dated on or before the same date as the meeting provided that the Chairperson of the meeting shall have the right, exercising absolute discretion, to allow payment of such arrears by ordinary cheque.
- (b) An owner or mortgagee shall not be entitled to vote at a meeting if the owner or mortgagee was not entitled to receive notice of the meeting in accordance with the Act and this By-Law.

10. Conduct of Meetings

- (a) At any general or special meeting, the President of the Corporation, or failing the President, the Vice-President, or failing the Vice-President some person elected at the meeting, shall act as Chairperson of the meeting, provided that the Chairperson may, whenever the Chairperson believes in his or her sole discretion, it is appropriate in the circumstances to do so, appoint the Corporation's Manager or Solicitor to chair all or part of any meeting of the owners. The Secretary of the Corporation shall act as Secretary of the meeting or, failing the Secretary, the Chairperson shall appoint a Secretary of the meeting.

- (b) Unless the Act, the Declaration or the By-Laws of the Corporation provide otherwise, any question as to: the calling of the meeting; the right to vote at a meeting; the validity of proxies presented at the meeting; the method used to vote or the validity of any vote held at a meeting; or the rules of order for a meeting shall be decided by the Chairperson.
- (c) In rendering a decision, the Chairperson may make reference to Nathan's Company Meetings including Rules of Order and/or Nathan's Society Meeting including Rules of Order, (both published by CCH Canadian Limited, North York, Ontario) for assistance in determining any question or procedure as to the Rules of Order for a meeting.

11. Method of Voting - General Matters

Any question raised at a general, special, or requisitioned meeting shall be decided by a show of hands unless a recorded vote is required by the Chairperson of the meeting or is demanded by an owner or mortgagee present in person or by proxy and entitled to vote either before or promptly after the vote, and unless a recorded vote is so required or demanded, a declaration by the Chairperson of the meeting that the vote upon the question has been carried, or carried by a particular majority, or not carried, is prima facie proof of the fact without proof of the number or proportion of votes recorded in favour of or against such question.

12. Method of Voting - For Directors

- (a) If the number of candidates nominated for the position of Director is equal to the number of positions available at a meeting, and nominations have been properly closed, the Chairperson may declare that the candidates so nominated shall be elected to the office directly by acclamation.
- (b) If there are more candidates nominated for the position of Director than there are vacancies to be filled at any meeting, the vote for the election of Directors shall be made by ballot and by proxy only in the following manner:
 - i. a ballot shall be given to every owner and mortgagee present in person and entitled to vote which ballot may either be a blank paper or paper containing the names of the persons nominated.
 - ii. if it is a blank ballot, those persons entitled to vote shall write the names of the candidates of their choice on the paper or if it is a printed ballot, they shall mark an "x", check mark or make some other clear indication of their choice opposite the candidates of their choice. If it is a blank ballot, the persons entitled to vote shall not write the name of a candidate on such ballot more than once.
 - iii. if a valid proxy is submitted for the election of Directors it may, in accordance with the Act, include the name of the candidate(s) that the donor of the proxy wishes to vote for and such proxies shall be counted in the election of the Directors in the same fashion as a ballot and the proxy holder shall not receive a ballot for the election of Directors in respect of such proxy.
 - iv. if a valid proxy is submitted at a meeting where Directors are to be elected but does not contain the names of any of the candidates it may be used for the election of any Director, including those that may be nominated from the floor, and the proxy holder may also exercise the right to vote for each proxy he or she holds for other matters listed in the agenda for the meeting or are otherwise properly brought before the meeting.
 - v. if a meeting is held at which the position on the Board that is reserved for a Director that is to be elected only by the owner-occupants, (the "**owner-occupant Board position**"), then only the owner-occupants may vote for that position using a ballot that includes a statement on it indicating that it is to be used for the election of the owner-occupant Board position or by a valid proxy.
 - vi. at a meeting of owners at which, due to a vacancy on the Board two or more positions on the Board must be filled one of which is the owner-occupant Board position, an individual may stand for election for both the owner-occupant Board position and that of a regular Board position. If an election is to take

place for both positions, the election for the owner-occupant Board position must take place first. Anyone who has stated an intention to stand for election for both positions and given notice and who is elected to fill the owner-occupant Board position is deemed to have withdrawn his or her candidacy for the regular Board position. However, if the said individual is not elected to the owner-occupant Board position, such individual may then be considered for the regular position available on the Board to be elected following the election for the owner-occupant Board position.

- vii. If a meeting is called at which a vote is to be held to remove a Director or Directors prior to the end of their term the level of vote required to remove such Director(s) shall be those owners who represent a majority of all of the units in the Corporation.

13. Nominations

- (a) Any person who is qualified to be a Director may be nominated by another owner to be a candidate for any position on the Board of Directors that is open for election and such nominations do not require a seconder.
- (b) An owner may nominate himself or herself.
- (c) Any notification received from the Board in accordance with this section shall be considered a valid nomination in accordance with the By-Laws.
- (d) A proxy that is provided by an owner for a meeting at which one or more Directors are to be elected that contains the names of one or more candidates for those positions shall be considered as a valid nomination of those candidates named in the proxy.

14. Scrutineers

The Chairperson may appoint scrutineers to assist in collecting, examining and counting the ballots but only the Chairperson may rule on the validity of a ballot or proxy.

15. Representatives

A committee of a mentally incompetent owner or mortgagee, an estate trustee, attorney, guardian or trustee of an owner or mortgagee and, where a Corporation acts in such capacity, any person duly appointed by proxy for such Corporation, upon filing with the Secretary of the meeting sufficient proof of such appointment, may represent the owner or mortgagee at a meeting of the owners of the Corporation, and may vote in the same manner and to the same extent as an owner or mortgagee. If there be more than one estate trustee, committee, attorney, guardian or trustee, the provisions of paragraphs 5 and 6 of this Article shall apply.

16. Proxies

- (a) An instrument appointing a proxy shall be in writing under the hand of the appointer or the appointer's attorney, shall be for one or more particular meetings of owners, shall comply with the Act and shall be in the prescribed form.
- (b) The instrument appointing a proxy shall be deposited with the Secretary of the meeting prior to the commencement of the meeting.
- (c) Any question as to the validity of a proxy shall be decided by the Chairperson of the meeting.
- (d) Proxies submitted for a meeting of the owners shall be retained by the Corporation as a record for a period of ninety (90) days from the date of the meeting.

17. Votes to Govern

At all meetings of owners every question shall, unless otherwise required by the Act, Declaration or By-Laws, be decided by a majority of the votes duly cast on the question

by those owners who are present, in person or by proxy, at the meeting and are entitled to vote.

18. Adjournment of Meeting

The Chairperson at a meeting of owners may, with the consent of the meeting and subject to such conditions as the meeting may decide, adjourn the meeting from time to time and from place to place, provided that the calling and holding of such meeting shall be governed by the Act and this By-Law.

19. Electronic Owners' Meetings and Electronic Voting

Notwithstanding anything else contained within this Article:

1. Owners are authorized to attend an owners' meeting electronically, specifically:

- a. any owner may attend any owners' meeting electronically or by telephone so long as all owners can hear and respond to each other; and
- b. the entire meeting can be held electronically or telephonically so long as all owners can hear and respond to each other.

2. Owners are hereby authorized to cast votes by a recorded vote indicated by electronic or telephonic means by the use of telephone or any other electronic or other technological means to transmit information or data, including telephone calls, fax, e-mail, automated touch-tone telephone system, computer or computer networks ("**Electronic Voting**").

3. At any meeting of the owners, any question to be determined may be decided by a show of hands, by ballot and proxies, and/or Electronic Voting if approved by a resolution of the Board and subject to the procedures approved by the Board. Any owner who submits their vote by Electronic Voting shall be deemed to be present at the meeting for the purposes of constituting a quorum for the transaction of business at the meeting.

4. A declaration by the Chairperson that a question, except for the election or removal of directors, has by a show of hands been carried, is prima facie proof of the fact without further proof of ownership of the votes cast in favour of such question.

5. When a vote of owners is held for any purpose other than the removal or election of directors, the Board, may by resolution prior to the meeting, or the Chairperson of the meeting may, determine that voting may continue over a set period of time after the date of the meeting (the "**Voting Period**"). The matter to be voted upon must be on the agenda for the meeting. The votes shall be counted by the scrutineers appointed at the meeting, at the end of the Voting Period, and owners shall be notified of the results of the vote as soon as reasonably possible. If a scrutineer is unavailable at the end of the Voting Period to count the votes, the Board may appoint an alternate scrutineer. All ballots, proxies and electronic votes shall be kept as required by the Act. Notwithstanding any motion at the meeting to adjourn or terminate the meeting, if the Board has enacted a resolution to establish a Voting Period or if the Chairperson of the meeting determines that voting may continue over a fixed period of time, the meeting of owners shall be deemed to terminate immediately after the tabulation of the votes following the end of the Voting Period. Any owner who votes during the Voting Period shall be deemed to be present at the meeting for the purposes of constituting a quorum for the transaction of business at the meeting.

ARTICLE V **THE CORPORATION**

1. Duties of the Corporation

The duties of the Corporation shall include but shall not be limited to the following:

- (a) controlling, managing and administering the common elements and the assets of the Corporation;
- (b) collecting the common element charges from the owners;
- (c) arranging for the supply of natural gas, hydro, and water to the units and common elements except where the Corporation is prevented from carrying out such duty by reason of any event beyond the reasonable control of the Corporation. If any apparatus or equipment used in effecting the supply of natural gas, hydro or water to the units or common elements at any time becomes incapable of fulfilling its function or is damaged or destroyed, the Corporation shall have a reasonable time within which to repair or replace such apparatus and the Corporation shall not be liable for indirect or consequential damages or for damages for personal discomfort or illness by reason of the breach of such duty;
- (d) obtaining and maintaining insurance for the property as may be required by the Act, Declaration and By-laws;
- (e) repairing and restoring of the common elements in accordance with the provisions of the Act, Declaration and By-laws;
- (f) obtaining and maintaining fidelity bonds when it is considered appropriate to do so by the Board, in such amounts as the Board may deem reasonable, for such officers and directors or employees as are authorized to receive or disburse any funds on behalf of the Corporation;
- (g) causing audits to be made after every year end and making auditors' reports and financial statements available to the owners and mortgagees;
- (h) send information certificates to owners as required pursuant to the Act;
- (i) filing the following returns in the prescribed manner and within the prescribed time and by paying the applicable fee: initial return, turn-over return, annual return, and any other returns as prescribed;
- (j) preparation of estimated budgets;
- (k) keeping accurate accounts and sending to each owner an annual statement of income and expenditures in respect thereto and keeping such accounts open for inspection by owners;
- (l) effecting compliance with the Act, the Declaration, the By-Laws, and the Rules from time to time;
- (m) maintaining a register of the owners and mortgagees in accordance with the Act;
- (n) keeping accurate records; and
- (o) establishing and maintaining one or more reserve funds and obtaining a Comprehensive Reserve Fund Study or update of it in accordance with the Act.

2. Powers of the Corporation

The Powers of the Corporation shall include but shall not be limited to the following:

- (a) employment and dismissal of personnel necessary for the maintenance and operation of the common elements;
- (b) adoption, amendment and repeal of Rules concerning the operation and use of the property;
- (c) employing a manager at a compensation to be determined by the Board to perform such duties and services as the Board shall authorize;
- (d) obtaining and maintaining fidelity bonds for any manager where deemed necessary by the Board, and in such a manner as the Board may deem reasonable;

- (e) investing reserves held by the Corporation, provided that such investment shall be permitted by s.115 of the Act, and amendments thereto, and convertible into cash within ninety (90) days;
- (f) settling, adjusting, compromising or referring to mediation, arbitration or the courts any dispute, claim or claims which may be made upon or on behalf of the Corporation;
- (g) borrowing such amounts as in its discretion are necessary or desirable in order to protect, maintain, preserve or insure the due and continued operation of the property in accordance with the Declaration and By-laws of the Corporation, and securing any such loan by mortgage, pledge or charge of any asset owned by the Corporation, and adding the repayment of such loan to common expenses, subject to the passage of a by-law authorizing each such borrowing for expenditures that are not listed in the annual budget for the corporation;
- (h) retaining and holding any securities or other property, whether real or personal, which shall be received by the Corporation, whether or not the same is authorized by any law, present or future, for the investment of trust funds;
- (i) selling, conveying, exchanging, assigning or otherwise dealing with any real or personal property at any time owned by the Corporation at such price, on such terms, and in such manner as the Corporation in its sole discretion deems advisable and doing all things and executing all documents required to give effect to the foregoing;
- (j) leasing any part or parts of the common elements and granting or transferring an easement or licence through the common elements subject to the passing of a by-law for such lease, easement or licence;
- (k) to object and/or appeal assessments under the *Assessments Act* on behalf of owners in respect of their units; and
- (l) to enter into any service agreement, contract, bulk billing arrangement, or other contract for the provision of services to the Corporation or the units the cost of which shall form part of the common expenses.

ARTICLE VI

BOARD OF DIRECTORS

1. Business

The affairs of the Corporation shall be managed by a Board of Directors.

2. Quorum

Until changed by a further By-Law, the number of directors shall be 3 of which 2 shall constitute a quorum for the transaction of business at any meeting of the Board. Notwithstanding vacancies, the remaining Directors may exercise all the powers of the Board so long as a quorum of the Board remains in office.

3. Teleconference and Telecommunications Systems

If a Director is absent from a meeting, such Director may for the purposes of constituting a quorum and for the transaction of business at any meeting of the Board, be deemed to be present and the Board shall be properly constituted if such Director participates in the meeting by teleconference or other telecommunications system to communicate with all other Board members present during such meeting simultaneously and instantaneously at all times throughout the meeting and the other Directors have agreed to such method of participation.

4. Qualifications

- (a) Each Director of the Board shall:
 - i. be an individual;
 - ii. be over 18 years of age;
 - iii. be an owner;
 - iv. not reside with a current Director;

- v. not have a certificate of lien registered against any units owned by them;
- vi. not have the status of bankrupt;
- vii. not be found to be incapable of managing property under the *Substitute Decisions Act, 1992* or the *Mental Health Act*;
- viii. not be found to be incapable by any court in Canada or elsewhere;
- ix. comply with the Directors' Code of Ethics; and
- x. comply with the prescribed disclosure obligations within the prescribed time.

(b) A person immediately ceases to be a Director if the person has:

- i. the status of bankrupt;
- ii. been found, under the *Substitute Decisions Act, 1992* or the *Mental Health Act*, to be incapable of managing property;
- iii. been found to be incapable by any court in Canada or elsewhere;
- iv. a certificate of lien registered under subsection 85 (2) against a unit owned by the person and the person does not obtain a discharge of the lien under subsection 85 (7) within ninety (90) days of the registration of the certificate of lien;
- v. not completed the prescribed training within the prescribed time;
- vi. not complied with the prescribed disclosure obligations within the prescribed time;
- vii. commenced a lawsuit, application, including a tribunal application, or other legal proceeding against the Corporation or upon the Corporation commencing a lawsuit, application or other legal proceeding against him or her (for the purpose of this provision "other legal proceeding" shall not include mediation in accordance with section 132 of the Act or a claim in accordance with section 55(10) of the Act);
- viii. been adjudged to be in breach of the duty to act honestly and in good faith in the performance of his or her duties to the Corporation;
- ix. failed to attend a majority of the regularly scheduled Board meetings in any given fiscal year of the Corporation without reasonable justification and the Board shall, in its sole discretion, determine whether the reason for such absenteeism was justified;
- x. begun to reside with another Director, in which case of those two Directors one or the other, as they may decide between themselves, shall cease to be a Director, failing which the one with the shortest term of office remaining shall cease to be a Director, and in either event their term of office shall end effective at the first meeting of the Board following the date upon which the Directors began to reside with each other;
- xi. has ceased to be an owner or a resident spouse of an owner;
- xii. violates the "Directors' Code of Ethics" on three (3) occasions over the course of the Director's term, unless determined otherwise by a court. For the purposes of this section, a violation of the Directors' Code of Ethics will be established if:
 - a. another Director on the Board or an owner of a unit notifies the Corporation, in writing, of the violation (the "**Code of Ethics Violation**"), upon which the matter shall be added as the first agenda item to the very next meeting of the Board and shall be identified in the agenda as the "Ethics Review". The procedure to be used for the Ethics Review shall be the same procedure used by the Board decide all Corporation matters except, to ensure fairness, the Director named in the Code of Ethics Violation shall be allowed to address the Board at the meeting, but shall not vote nor be present when the Board votes on the matter; and
 - b. the majority of the remaining Directors on the Board, present at the meeting during the Ethics Review, determine that a Code of

Ethics Violation has occurred. The decision rendered at the conclusion of the Ethics Review shall be duly noted in the Corporation's records. If it is determined at the end of the Ethics Review that the Code of Ethics Violation has occurred and constitutes the subject Director's third (3rd) violation, then prior to concluding the Ethics Review, the subject Director shall provide, in writing, his/her immediate resignation from the Board, failing which it shall be deemed to have been provided and duly noted within the minutes as such.

- xiii. Fails to sign the Directors' Code of Ethics at the outset of their term of office as a Director or within thirty (30) days after the Board amends the Directors' Code of ethics.
- (c) a person who has served as a Director of the Corporation for three (3) consecutive terms of office may not be elected for a fourth term but may stand for election to the Board at the first annual general meeting held subsequent to the annual general meeting at which the Directors third term of office ended.
- (d) all Directors shall abide by the Canadian Condominium Institutes Code of Ethics for Directors, a copy of which is attached hereto as Appendix "A". In order to qualify to be a Director a Director must sign and deliver the Directors' Code of Ethics to the Corporation at the outset of their term of office as a Director. The Board has the power to amend the Directors' Code of Ethics from time to time, by resolution of the Board and any such amended Directors' Code of Ethics shall be then considered to be the Directors' Code of Ethics. Directors must sign any amended Directors' Code of Ethics within thirty (30) days of the same becoming effective. If any Director fails to sign and deliver the amended Directors' Code of Ethics in the time allocated, then such Director shall be deemed to have resigned from the Board effective as of the end of the thirty (30) day period set out herein.

5. Disclosure Obligations – Material Interest in Contract or Transaction

- (a) A Director, or officer that is not a Director, of the Corporation who has, directly or indirectly, a material interest in a material contract or transaction to which the Corporation is a party or a proposed material contract or transaction to which the Corporation will be a party, shall disclose in writing to the Corporation the nature and extent of the interest.

(b) Time of Disclosure

- i. The disclosure shall be made by a Director:
 - a. at the meeting of the Board at which the contract or transaction or the proposed contract or transaction is first considered;
 - b. at the meeting of the Directors held after the director becomes so interested;
 - c. if the director becomes interested in the contract or transaction after it is entered into, at the first meeting of the directors held after the director becomes so interested; or
 - d. if the contract or transaction or the proposed contract or transaction is one that in the ordinary course of the Corporation's business would not require approval by the Directors or owners, at the first meeting of the Directors held after the Director becomes aware of the contract or transaction or the proposed contract or transaction.

- ii. An officer shall make the disclosure at the first meeting of the Board held after the officer becomes aware of the contract or transaction or the proposed contract or transaction.

(c) Minutes

The Board shall enter the disclosure made by a Director or officer in the minutes of the meeting of the Board at which the disclosure was made.

(d) Right to vote

The Director shall not be present during the discussion at a meeting, vote or be counted in the quorum on a vote with respect to a contract or transaction or a proposed contract or transaction to which subsection (a) applies unless the Director's interest in it,

- i. is or would be limited solely to the insurance described in section 39 of the Act or remuneration as a Director, officer or employee of the Corporation; or
- ii. arises or would arise solely because the person is a Director, officer or employee of the Declarant, if the Director has been appointed to the first board by the Declarant.

(e) Effect of disclosure

A Director or officer who has complied with the requirements of the Act and this Article and who was acting honestly and in good faith at the time the contract or transaction was entered into, is not, by reason only of holding the office of Director or officer, accountable to the Corporation or to its owners for any profit or gain realized from the contract or transaction, and the contract or transaction is not voidable by reason only of the director's interest in it.

(f) Confirmation by owners

A Director or officer who has acted honestly and in good faith is not accountable to the Corporation or to the owners for any profit or gain realized from the contract or transaction by reason only of holding the office of Director or officer, and the contract or transaction is not voidable by reason only of the Director's or officer's interest in it if,

- i. the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a meeting of owners duly called for that purpose; and
- ii. the nature and extent of the Director's or officer's interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting.

6. Election and Term

At each annual meeting the number of Directors equal to the number of Directors retiring in such year shall be elected for a term of three (3) years. In subsequent elections where there is, for any reason, more than one vacancy on the Board to be filled the candidate receiving the highest number of votes shall fill the vacancy on the Board which has the longest term, and in the event of an election by acclamation the Director's shall decide amongst themselves who shall fill such terms. Provided that if one of the terms to be filled is that of the owner-occupant Board position the Director so elected by the owner occupants shall complete the term of the existing owner-occupant Board position.

7. Removal of Directors

A Director may be removed before the expiration of the Director's term by a vote of owners who together own a majority of all of the units in the Corporation. The owners may elect any person qualified to be a member of the Board under the Declaration or By-Laws for the remainder of the term of the Director removed.

8. Filling of Vacancies

If a vacancy in the membership of the Board occurs, the majority of the remaining members of the Board may appoint any person qualified to be a member of the Board under the Declaration or By-Laws to fill the vacancy until the next annual meeting at which time the vacancy shall be filled by election by the owners.

9. Calling of Meetings

- (a) Meetings of the Board shall be held from time to time at such place and at such time and on such day as a quorum of Directors may determine.
- (b) The person calling a meeting of Directors shall give a written notice of the meeting to every Director of the Corporation:
 - i. at least ten (10) days before the day of the meeting; and
 - ii. by delivering it to the Director personally or by sending it by prepaid mail, courier delivery or electronic communication addressed to the Director at the latest address as shown on the records of the Corporation.
- (c) A Director who attends a meeting shall be deemed to have waived the right to object to a failure to give the required notice unless the Director expressly objects to the failure at the meeting.

10. Regular Meetings

- (a) The Board may appoint a day or days in any month or months for regular meetings at a place and hour to be named. Provided that there shall be at least ten (10) Board meetings in each fiscal year of the Corporation. A copy of any resolution of the Board fixing a place and time of regular meetings of the Board shall be given personally or by ordinary mail to each Director forthwith after being passed, but no other notice or agenda shall be required for any such regular meeting. Until changed by the Board, the regular meetings of the Board shall take place on a date and place to be mutually agreed by the Board.
- (b) In order to facilitate an open dialogue at all meetings of the Board, the recording of the meeting by the use of tape recorders, video recorders, digital recorders or any other means, is strictly prohibited, except if such device is used by the appointed recording secretary. Notwithstanding the foregoing, if all Directors present at the meeting agree by way of a unanimous resolution to allow recording to take place, the individual wishing to tape the meeting may do so, however, that person must, within forty-eight (48) hours of the meeting date, provide an unedited copy of the recording to the Corporation. The person making the recording may not distribute such recording to any other individual or broadcast or reproduce the contents for distribution in any way whatsoever.
- (c) A Director who is present at a meeting of Directors is deemed to have consented to any resolution at such meeting or to any action taken thereat, unless such Director:
 - i. requests that his or her dissent is entered in the minutes of the meeting; or
 - ii. delivers a written dissent to the Secretary of the meeting before the meeting is terminated.

- (d) A Director who was not present at a meeting at which a resolution was passed or any action taken is deemed to have consented thereto unless within seven (7) days after becoming aware of the resolution, the Director:
 - i. causes his or her dissent to be entered into (or annexed to) the minutes of the meeting; or
 - ii. delivers a written dissent to the Corporation, personally or by registered mail.
- (e) Directors who attend a meeting of the Board shall while at the meeting, at all times, conduct themselves in a civil and respectful manner and shall refrain from making false, misleading or deceptive statements in respect of other Directors, other residents, the property manager or other persons, whether attending at the meeting or otherwise. Directors shall not use foul language or make derogatory comments or other offensive statements or gestures which, in the opinion of the Chair, or in the opinion of a majority of the other Directors present at the meeting, are offensive. If, in the opinion of the Chair, or a majority of the other Directors present at the meeting, an individual is contravening this provision, the Chair or the majority of Directors at the meeting, may request that the offending Director leave the meeting; if such Director does not leave, the Chair or the majority of the other Directors at the meeting, may adjourn the meeting for such length of time as required to obtain compliance.
- (f) Owners may attend Board meetings if invited to do so by the Board. Owners who wish to attend a Board meeting must submit a request in writing at least ten (10) days in advance of the Board meeting which notice must state the business to be discussed by the owner.

11. First Meeting of Board after Annual General Meeting

The Board may without notice hold a meeting for the purpose of the election and appointment of officers immediately following each annual general meeting, provided a quorum of Directors is present.

12. Standards of Care of Directors

Every Director of the Corporation shall exercise the powers and discharge the duties of the office honestly and in good faith and shall exercise the care, diligence and skill that a reasonably prudent person would exercise in similar circumstances. Directors shall adopt the Canadian Condominium Institute's Director's Code of Ethics, a copy of which is appended hereto as Appendix "A".

13. Indemnity of Directors and Officers

Subject to Section 38 of the Act, as amended, every Director or officer of the Corporation and their heirs, estate trustee(s) and estate respectively shall from time to time and at all times be indemnified and saved harmless from and against:

- (a) any liability and all costs, charges and expenses whatsoever which such Director or officer sustains or incurs in respect of any action, suit or proceeding that is proposed or is brought, commenced or prosecuted against the Director for or in respect of anything done or permitted by the Director in or about the execution of the duties of the Director's office; and
- (b) all other reasonable costs, charges and expenses which the Director sustains or incurs in or about or in relation to the affairs thereof;

except where such Director has been held by a court of competent jurisdiction to have breached the duty to act honestly and in good faith.

14. Directors and Officers Insurance

If the insurance is reasonably available, the Corporation shall purchase and maintain insurance for the benefit of the Directors and officers against the matters described in of the Act and this By-Law.

15. Compensation

The Directors shall receive such compensation as may from time to time be decided by a By-Law provided that the By-Law shall fix the compensation and state the period, not to exceed three, (3) years for which it is to be paid.

16. Validity of Act

The acts of a Director or officer are valid despite any defect that may afterwards be discovered in the person's election, appointment or qualifications.

ARTICLE VII **OFFICERS**

1. Elected Officers

At the first meeting of the Board after each election of directors, the Board shall elect from among its members a President. In default of such election the then incumbent, if a member of the Board, shall hold office until a successor is elected. A vacancy occurring from time to time in such office may be filled by the Board from among its members.

2. Appointed Officers

From time to time the Board shall appoint a Secretary and may appoint one or more Vice-Presidents, a Treasurer and such other officers as the Board may determine, including one or more assistants to any of the officers so appointed. The officer so appointed may, but need not, be a member of the Board. One person may hold more than one office, and if the same person holds both the office of Secretary and the office of Treasurer, their title shall be Secretary-Treasurer.

3. Term of Office

In the absence of written agreement to the contrary, the Board may remove at its pleasure any officer of the Corporation.

4. President

The President shall, when present, preside at all meetings of the owners and of the Board, and shall be charged with the general supervision of the business and affairs of the Corporation.

5. Vice-President

During the absence of the President, the duties of that office may be performed and powers may be exercised by the Vice-President, or if there are more than one, by the Vice-Presidents, in order of seniority (as determined by the Board) save that no Vice-President shall preside at a meeting of the Board or at a meeting of owners who is not qualified to attend the meeting as director or owner, as the case may be. If a Vice-President exercises any such duty or power, the absence of the President shall be presumed with reference thereto. A Vice-President shall also perform such duties and exercise such powers as the Board may prescribe.

6. Secretary

The Secretary shall:

- (a) give or cause to be given all notices required to be given to the owners, directors, auditors, mortgagees and all others entitled thereto;
- (b) attend all meetings of the directors and of the owners and shall enter or cause to be entered in books kept for that purpose minutes of all proceedings at such meetings;
- (c) be the custodian of all books, papers, records, documents and other instruments belonging to the Corporation;
- (c) perform such other duties as may from time to time be prescribed by the Board.

7. Treasurer

The Treasurer shall:

- (a) keep or cause to be kept complete and accurate books of account in which shall be recorded all receipts and disbursements of the Corporation;
- (b) under the direction of the Board, control the deposit of money, the safekeeping of securities and the disbursement of the funds of the Corporation;
- (c) render to the Board at the meeting thereof, or whenever required of him, an account of all transactions as Treasurer, and of the financial position of the Corporation.

8. Other Officers

The duties of all other officers of the Corporation shall be such as the terms of their engagement call for, or the Board requires of them. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant unless the Board otherwise directs.

9. Agents and Attorneys

The Board shall have power from time to time to appoint agents or attorneys for the Corporation with such powers of management or otherwise (including the power to sub-delegate) as may be thought fit.

10. Standards of Care of Officers

Every officer of the Corporation shall exercise the powers and discharge their duties honestly and in good faith and shall exercise the care, diligence and skill that a reasonably prudent person would exercise in similar circumstances.

ARTICLE VIII **BANKING ARRANGEMENTS & CONTRACTS**

1. Banking Arrangements

The banking business of the Corporation or any part thereof shall be transacted with such bank, trust company or credit union as the Board may designate, appoint or authorize from time to time by resolution, and all such banking business, or any part thereof, shall be transacted on the Corporation's behalf by such one or more officers or other persons as the Board may designate, direct or authorize from time to time by resolution and, to the extent therein provided, including, without restricting the generality of the foregoing, the operation of the Corporation's accounts, the making, signing, drawing, accepting, endorsing, negotiating, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders relating to any property of the Corporation; the execution of any agreement relating to any such banking business and defining the rights and powers of the parties thereto; and the authorizing of any officer of such bank to do any act or thing on the Corporation's behalf to facilitate such banking business.

2. Execution of Instruments

Deeds, transfers, assignments, contracts and obligations on behalf of the Corporation may be signed by the President or a Vice-President together with the Secretary or any other director. Any contract or obligation within the scope of any Management Agreement entered into by the Corporation may be executed on behalf of the Corporation in accordance with the provisions of such Management Agreement. Notwithstanding any provisions to the contrary contained in the By-laws of the Corporation, the Board may at any time and from time to time direct the manner in which, and the person or persons by whom, any particular deed, transfer, contract or obligation or any class of deeds, transfers, contracts or obligations of the Corporation may or shall be signed.

3. Execution of Status Certificates Under Section 76 of The Act

Certificates provided pursuant to Subsection 8 of Section 32 of the Act, as amended, may be signed by any officer or any director of the Corporation provided that the Board may by resolution at any time and from time to time direct the manner in which, and the person by whom, such certificates may or shall be signed.

ARTICLE IX **REPORTS & RECORDS**

1. Until otherwise ordered by the Board, the financial year of the Corporation shall end on the 31st day of December in each year, or on such other day as the Board by resolution may determine.
2. The Corporation shall, at such regular intervals, as the Board may from time to time decide, but not less frequently than annually, forward to each owner a full and complete statement of the receipts and expenditures of common expenses and a balance sheet with respect to the common expenses and similar statements with respect to the reserve fund. All such statements are referred to in this By-law No. 1 as regular periodic statements. The Corporation shall, furnish, without charge, upon being requested to do so, but not more than once in each calendar year, to the holder of a mortgage on a unit, a copy of the most current regular periodic statements, and shall furnish copies of any additional regular periodic statements requested, upon payment of a reasonable charge therefor, as the Board may from time to time establish.
3. Every owner of a unit, upon becoming an owner, shall, on request, be furnished by the Corporation, upon payment of a reasonable charge therefor as the Board may from time to time establish, with a copy of the Declaration, By-laws, and Rules, and all amendments thereto, of the Corporation. Additional copies of the

Declaration, By-laws, and Rules, as amended, shall be furnished by the Corporation to any owner upon payment of such reasonable charge therefor as the Board may from time to time establish.

4. Owners are entitled to review the corporation's record's subject to the restrictions imposed by section 55 (4) the Act. Owners shall submit a written request to the corporation for access to the records indicating what records they wish to review and the reason for reviewing such records. Such request must be delivered to the corporation at its address for service at least forty-eight, (48) hours, (not including weekends or statutory holidays) in advance of the date on which the owner wishes to review the records. The time during which the records will be available for review will be between the hours of 9:00 a.m. and 5:00 p.m on any day except weekends and statutory holidays unless otherwise agreed to by the Board. Owners must attend at the location where the records are typically stored to review them unless the Board agrees otherwise. The Corporation shall within a reasonable period of time, provide copies of the records that the owner has examined, if the owner requests them and has paid a reasonable fee to compensate the Corporation for the labour and copying charges incurred to make the copies.

ARTICLE X

NOTICE

1. Method of Giving Notice by the Corporation

(a) Any notice that is required under this Act to be given to owners shall:

- i. be in writing;
- ii. be given at least fifteen (15) days before the day of the meeting, if the notice is a notice of meeting of owners;
- iii. if the notice is a preliminary notice described in subsection 45.1 (1) of the Act, be given at least twenty (20) days before the subsequent notice of meeting of owners described in that subsection;
- iv. be given to the owners in accordance with subsection (b); and
- v. if the notice is a notice of meeting of owners or a preliminary notice described in subsection 45.1 (1) of the Act, be given to the mortgagees described in subsection (c).

(b) A notice that is required to be given to an owner shall be:

- i. delivered to the owner personally;
- ii. sent by prepaid mail addressed to the owner at the address for service that appears in the record of the Corporation;
- iii. sent by facsimile transmission, electronic mail or any other method of electronic communication if,
 - a. the owner agrees that the party giving the notice may give the notice by that method, and
 - b. a statement of that method of giving notice appears in the record of the Corporation; or
- iv. delivered at the owner's unit or at the mailbox for the unit unless,
 - a. the party giving the notice has, by the following time, received a written request from the owner that the notice not be given in this manner,
 - A. in the case of a notice of meeting of owners, at least twenty (20) days before the day of the meeting, or
 - B. in the case of a preliminary notice described in subsection 45.1 (1) of the Act or any other notice to owners that is not a notice of meeting of owners, at least five (5) days before the day the notice is given, and
 - b. the owner has given an address for service that is not the address of the unit of the owner or the address for the mailbox for the unit.

- (c) A notice required to be given to a mortgagee shall be:
- i. delivered to the mortgagee personally;
 - ii. sent by prepaid mail addressed to the mortgagee at the address for service that appears in the record of the Corporation;
 - iii. sent by facsimile transmission, electronic mail or any other method of electronic communication if,
 - a. the mortgagee agrees that the party giving the notice may give the notice by that method, and
 - b. a statement of that method of giving notice appears in the record of the Corporation.

2. Notice to the Board or Corporation

Any notice, communication or other document to be given to the Board or the Corporation shall be sufficiently given if mailed by prepaid mail in a sealed envelope addressed to it at the address for service of the Corporation set out in the Declaration, or as changed in accordance with the requirements of the Act. Any notice, communication or document so mailed shall be deemed to have been given when deposited in a post office or public letter box.

3. Omissions and Errors

The accidental omission to give any notice to anyone entitled thereto or the non-receipt of such notice or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.

ARTICLE XI **ASSESSMENT AND COLLECTION OF COMMON EXPENSES**

1. Duties of the Board

- (a) All expenses, charges and costs of maintenance or replacement of the common elements and other expenses, charges or costs which the Corporation may incur or expend pursuant hereto shall be assessed by the Board and levied as a monthly common expense or as an extraordinary expenditure against the owners in the proportions in which they are required to contribute to the common expenses as set forth in the Declaration.
- (b) The Board shall at least thirty (30) days prior to each financial year end, prepare a budget for the property and determine by estimate the amount of common expenses for the next ensuing fiscal year, or remainder of the current fiscal year, as the case may be. The Board shall allocate and assess such common expenses as set out in the budget for such period among the owners, according to the proportion in which they are required to contribute to the common expenses as set forth in the Declaration. In addition, the Board shall provide in the annual budget a reserve fund in accordance with the Act which reserve fund shall be an asset of the Corporation. The Board shall advise all owners promptly in writing of the amount of common expenses payable by each of them respectively determined as aforesaid, and shall deliver or mail by prepaid mail copies of each budget on which such common expenses are based to all owners entered on the register, and to all mortgagees entered on the register provided that such mortgagees have delivered to the Board a requisition, in writing, requesting a copy of each budget of the Corporation.
- (c) Extraordinary expenditures not contemplated in the foregoing budget and for which the Board shall not have sufficient funds may be assessed, at any time during the year in addition to the annual assessment, by the Board

serving notice of such further assessment on all owners which shall include a written statement setting out the reasons for the extraordinary assessment, and such extraordinary assessment shall be payable by each owner within ten (10) days after notice thereof has been given or delivered to such owner, or within such further period of time and in such instalments as the Board may determine, as an additional common expense and which is enforceable as such.

- (d) Any payment tendered to the Corporation by an owner or mortgagee for monthly common expenses or extraordinary expenditures shall, where default has been made in the obligation to contribute the common expenses or extraordinary expenses for a unit to the Corporation has previously been made, be applied firstly, to interest; secondly, to late payment charges, thirdly, to costs, legal fees, expenses and disbursements incurred by the Corporation in enforcing payment, and fourthly, towards the most aged common expenses or extraordinary expenditures as may be owing to the Corporation for the unit but nothing in this provision shall preclude the Corporation's rights under Article XI to enforce payment of any outstanding common expense contributions or extraordinary expenditures at any time.

2. Owner's Obligations

- (a) Each owner shall be obliged to pay to the Corporation, or as it may direct, the amount of the common expenses assessed for their unit in equal monthly payments on the first day of each and every month next following delivery of such assessment until such time as a new assessment shall have been delivered to such owner.
- (b) Each owner shall deliver to the Corporation postdated cheques for the equal monthly payments, prior to the commencement of each fiscal year of the Corporation or as the Board may direct from time to time or, at the request of the Corporation, enter into such Pre-Authorized Payment Plan for automatic withdrawal of such monthly payments as the Corporation may implement from time to time.

3. Conveyance of Unit

No owner shall be liable for the payment of any part of the common expenses assessed against their unit prior to a transfer of such unit but payable subsequent thereto, provided that the owner to which the unit is transferred shall be liable to pay such common expenses.

4. Default in Payment of Assessment:

- (a) Arrears of any payments owing to the Corporation required to be made under the provisions of this Article XI and the Act shall bear interest at the rate of fifteen percent (15%) per annum, and shall be compounded monthly until paid.
- (b) Each owner who defaults in their obligation to contribute to the Corporation under the provisions of Article XI shall reimburse the Corporation for administration charges for non-negotiable cheques, legal expenses and other late payment charges incurred by the Corporation for each month the owner is in default, and such charges will be in addition to the interest payable pursuant to this By-law and shall also be deemed to constitute a reasonable charge incurred by the Corporation in collecting any unpaid common expenses within the meaning of the Act.
- (c) If the Corporation registers a Notice of Lien as provided by the Act upon an

owner defaulting in their obligation to contribute to the Corporation towards the common expenses under this Article XI and the Act, the owner shall reimburse the Corporation for all costs, legal fees, (determined on the basis of costs as between a solicitor and its own client), expenses and disbursements, (and all applicable sales taxes) incurred by the Corporation in preparing and registering the Notice of Lien and a Discharge thereof. All payments upon account shall be applied firstly to interest; secondly, to late payment charges; thirdly, to costs, legal fees, expenses and disbursements incurred by the Corporation in registering the Notice of Lien and a Discharge thereof (which shall themselves bear interest at the rate of eighteen percent (18%) per annum compounded monthly until paid); and fourthly, to the most aged arrears of payments required to be made under the provisions of this Article XI and the Act. In addition to any remedies or liens provided by the Act, if any owner is in default in payment of any assessment levied, or payment of its common element expenses for a period of ten (10) days, the Corporation may institute such legal action and proceedings as it deems proper or advisable to enforce collection thereof, and there shall be added to any amount found due all costs of such action including costs as between a solicitor and its own client (which shall themselves bear interest at the rate of fifteen percent (15%) per annum compounded monthly until paid) expenses and disbursements (including all applicable sales taxes).

ARTICLE XII **DEFAULT**

1. Notice of Unpaid Common Expenses

The Corporation whenever so requested in writing by an owner or mortgagee entered on the register shall promptly report any unpaid common expenses, due from, or any other default by, such owner, and any common expenses assessed or other money claimed by the Corporation against such owner.

2. Notice of Default

The Corporation shall deliver a "Notice of Lien To Owner" in the form prescribed by the Act at least ten, (10) days prior to registering a lien against the owner's unit for unpaid common expenses.

ARTICLE XIII **DAMAGE**

1. Procedure Where Damage Occurs

Subject to Section 123 of the Act, where the Board has determined that there has been substantial damage to the buildings for which the cost of repair is estimated to equal or exceed 25% of the replacement cost of all of the buildings and structures located on the property, the Board shall give notice of such determination within ten (10) days of the determination to all owners and mortgagees entered on the register kept for such purpose, with such notice to the mortgagees to be sent by registered mail. Such notice may be combined with notice to the owners of a meeting called for the purpose of voting for repair, or termination of the Corporation.

2. Plans and Specifications: A complete set of all the original architectural and structural plans and specifications for the buildings, including plans and specifications for any additions, alterations or improvements from time to time made to the common elements or to any unit with the prior consent in writing of the Board, shall be maintained in the office of the Corporation at all times, or at such other place as the Board shall from time to time determine by resolution, for the

use of the Corporation in rebuilding or repairing any damage to the building, and for the use of any owner.

ARTICLE XIV **INDEMNIFICATION**

Owners shall indemnify and save harmless the Corporation from and against, any loss, costs, damage, injury or liability whatsoever which the Corporation may suffer or incur resulting from or caused by an act or omission of such owner, his family or any member thereof, any resident of his unit or any guests, invitees or licensees of such owner or resident to or with respect to the common elements and/or all other units. Without limiting the generality of the foregoing, all costs, charges and expenses including solicitors' costs, on the basis of costs between a solicitor and the solicitor's own client, incurred by the Corporation in enforcing its rights against an owner, arising from the Act, the Declaration, the By-Laws, the Rules or otherwise, including the costs of bringing a court application or responding to a tribunal application commenced by an owner against the Corporation, shall be payable by the owner to the Corporation. All such monies, interests and costs payable by an owner to the Corporation may be collected as additional common expense payments and shall be recoverable as such.

ARTICLE XV **RESERVE FUND**

1. The Corporation shall establish and maintain one or more reserve funds and shall collect from the owners, as part of their contribution towards common expenses, amounts that, calculated on the basis of expected repair and replacement costs and life expectancy of things comprising the common elements and the assets of the Corporation, are reasonably expected to provide sufficient funds for major repair and replacement of common elements and assets of the Corporation, but in no event shall contributions to the reserve fund or funds be less than ten percent (10%) of the amount required for contributions to the common expenses exclusive of the reserve fund.
2. No part of a reserve fund shall be used except for the purposes for which the fund was established.
3. The amount of a reserve fund shall constitute an asset of the Corporation and shall not be distributed to any owner except on termination of the Corporation.
4. Interest earned on monies held in a reserve fund shall itself form part of the reserve fund.
4. The cost of obtaining any class of reserve fund study prescribed by the Act may be paid from the reserve fund itself at the discretion of the Board.
6. Money in a reserve fund may be invested in the manner described in this By-law, but only after the Corporation has developed an Investment Plan based upon the anticipated cash requirements of the Corporation's reserve fund as set out in the most recent reserve fund study.

ARTICLE XVI **AUDITORS AND FINANCIAL STATEMENTS**

1. The owners shall at each annual meeting appoint one or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.
2. The financial statement prepared by the auditor in accordance with the Act shall be approved by the Board and the approval shall be evidenced by the signature at the

foot of the balance sheet by two of the Directors duly authorized to sign, and the auditors' report prepared in accordance with the Act shall be attached to or accompany the financial statement.

ARTICLE XVII **GENERAL MATTERS AND ADMINISTRATION**

1. Rights of Entry

- (a) The Corporation or any insurer of the property or any part thereof, their respective agents, or any other person authorized by the Board, shall be entitled to enter any unit at all reasonable times and upon giving reasonable notice to perform the objects and duties of the Corporation, and, without limiting the generality of the foregoing, for the purpose of making inspections, adjusting losses, making repairs, correcting any condition which violates the provisions of any insurance policy or policies, and remedying any condition which might result in damage to the property and/or is a violation of the Act or the Declaration, By-Laws or Rules of the Corporation.
- (b) In case of an emergency, an agent of the Corporation may enter a unit at any time and without notice for the purpose of repairing the unit, common elements, or for the purpose of correcting any condition which might result in damage or loss to the property. The Corporation or anyone authorized by it may determine whether an emergency exists.
- (c) If an owner shall not be personally present to grant entry to their unit, the Corporation, or its agents, may enter upon such unit without rendering it, or them, liable to any claim or cause of action for damages by reason thereof provided that they exercise reasonable care.
- (d) The rights and authority hereby reserved to the Corporation, its agents, or any insurer or its agents, do not impose any responsibility or liability whatever for the care or supervision of any unit except as specifically provided in the Declaration or the By-laws.

2. Units Subject to Declaration, By-Laws, and Rules of the Corporation

All present and future owners, tenants and residents of units, their families, guests, invitees or licensees, shall be subject to and shall comply with the provisions of the Act, the Declaration, the By-laws, and the Rules of the Corporation. The acceptance of a deed or transfer, or the entering into of a lease, or the entering into occupancy of any unit, shall constitute an agreement that the provisions of the Act, the Declaration, the By-laws, and the Rules, as they may be amended from time to time, are accepted and ratified by such owner, tenant or resident, and all of such provisions shall be deemed and taken to be covenants running with the unit and shall bind any person having, at any time, any interest or estate in such unit as though such provisions were recited and stipulated in full in each and every such deed or transfer or lease or occupancy agreement.

ARTICLE XVIII **INSURANCE DEDUCTIBLES**

If any damage should occur to a unit or part of it or to other units and/or the common elements or part of them and the damage was not caused by the Corporation or any agent or employee of it, and such damage was of a type that is insured against by the Corporation, the owner of the unit where the damage occurred or originated shall be responsible for reimbursing the Corporation for the lesser of the cost of repairing the damage and the deductible limit of the Corporation's insurance policy and, in accordance with the Act, such amounts shall be added to the common expenses payable for the owner's unit. This provision shall apply regardless of how the damage occurred or who or what may have caused

ARTICLE XIX **PROPERTY TAX ASSESSMENTS**

1. The Corporation is authorized, but is not obligated to, object to assessments made

under the *Assessment Act* on behalf of the owners.

2. Prior to making an objection the Corporation must give at least ten, (10) days prior written notice to the owners of its intent to object and what the objections are provided the Corporation may give such shorter notice as the Board deems necessary in the event that an objection limitation period would be missed by reason of giving ten (10) days' notice.
3. On written notice to the Board given before the hearing of a complaint under section 40 of the *Assessment Act*, an owner may withdraw a complaint that the corporation has made on the owner's behalf.
4. All costs associated with making the objections, including, without being limited to, the cost of any consultants, experts or others hired by the Corporation to assist or represent it in making the objections shall be paid for from the common expenses.
5. The Corporation shall not be liable to any owner for an alteration in the assessment of a unit or for any other matter relating to the complaint including, without being limited to, the failure to make an objection within the required time period.

ARTICLE XX

MEDIATION/ARBITRATION PROCEDURE

1. In accordance with the Act, the procedures contained in this Article shall apply to:
 - (a) disagreements arising between the Corporation and an owner in respect to the Declaration, the By-Laws and the Rules of the Corporation;
 - (b) a dispute by an owner as to the fair market value of the property or part of the common elements that has been sold by the Corporation;
 - (c) to those agreements listed in the Act subject to any specific contractual provisions contained in such agreements relating to the use of mediation or arbitration to resolve disputes. Should there be a conflict between such contractual provisions and the provisions contained in this Article the contractual provisions shall take precedence.
2. Before requiring a disagreement to be submitted to mediation a person entitled to utilize the mediation process, (the "**requesting part**") shall notify, in writing, the other party to the dispute (the "**responding party**") and shall disclose in such notification, in reasonably sufficient detail, the nature of the dispute and the requesting party's suggestions for resolving it. The responding party shall have five (5) days from receipt of such notification to respond, in writing, to the requesting party's concerns. If the requesting party is not satisfied with the response, the requesting party may either, continue efforts to resolve the dispute or, submit a notice of request for mediation in accordance with the provisions contained in this Article. Notwithstanding the foregoing, either of the requesting party and the responding party may disregard the requirement for pre-mediation notice or a response to it, if they have a genuine concern that to delay commencement of the mediation process will prejudice their position or that of others who may have some interest in the dispute, in some real and measurable fashion.
3. Any party to a dispute that is governed by this Article who wishes to commence the mediation process must send a notice of request to mediate to the other party(s) to the dispute. The notice need not be in any specific form but must:
 - (a) be typewritten or printed legibly;
 - (b) clearly identify the matter in dispute;
 - (c) set out, in reasonably sufficient detail, the reasons why the matter is being disputed and the disputing party's suggestions as to resolving the matter, (this condition may be satisfied by attaching a copy of the pre-mediation notice, if any);
 - (d) include the following statement:
 " , (**name of party requesting mediation**) hereby requires that the disagreement described in this notice be submitted to mediation in accordance with the *Condominium Act 1998*."
 - (e) include with it three, (3) signed copies of an Agreement to Mediate in the Corporation's form as may be amended from time to time at the discretion of

- the Board copies of which shall be made available by the Corporation promptly upon request;
- (f) the names of three, (3) independent persons qualified to provide mediation services in accordance with this Article and their addresses and telephone numbers, any of which the requesting party agrees to accept as the mediator of the disagreement; and
 - (g) be dated and signed by the requesting party.
4. Any notices to be delivered pursuant to this Article shall be delivered in accordance with this By-Law.
 5. The limitation period for choosing a mediator established in the Act shall commence running as of the date a notice of request to mediate is delivered to the responding party.
 6. Upon receipt of a notice of request to mediate the responding party shall have five (5) days to sign and return one copy of an Agreement to Mediate to the requesting party. If the responding party:
 - (a) fails to return the Agreement to Mediate within the required time;
 - (b) refuses to sign the Agreement to Mediate;
 - (c) refuses to submit the disagreement to mediation; or
 - (d) does nothing in response to the request to mediate.

they shall be deemed to have accepted the appointment of any one of the persons listed in the notice of request to mediate to act as the mediator with respect to the disagreement as chosen by the requesting party and, in the event that mediation takes place, to be bound by the mandatory provisions to be included in the Agreement to Mediate as listed in this Article.
 7. If the parties agree to mediate but cannot agree to a mediator within five, (5) days of receipt by the responding party of the notice of request for mediation, or a mediator has been agreed upon but is unable or unwilling to act and the parties cannot agree on a replacement, the mediator who was agreed upon shall select a new mediator or if no mediator was agreed upon then any of the parties may request one of the ADR Institute of Ontario (the “**ADR Ontario**”) or the Canadian Condominium Institute, (the “**CCI**”) on a without personal liability basis, to recommend a mediator and the parties will be deemed to have agreed to accept that mediator for the mediation.
 8. To be qualified to act as a mediator for a dispute governed by this Article, a person must belong to the ADR Ontario or the CCI and have a basic knowledge of condominium law and administration which may be evidenced by; their involvement with condominiums (such as having worked in a profession directly related to the condominium industry or served as a Board member for a condominium); education, (such as having taken or taught one or more seminars/courses relating to condominium law and administration sponsored by the CCI, ADR Ontario, or other recognized educational organization); or experience, (such as having acted as a mediator for one or more condominium related disputes).
 9. Any Agreement to Mediate utilized by the Corporation shall be reasonable, fair and drafted in a manner as to give equal treatment to all parties to it. The following are the mandatory statements or provisions that the Agreement to Mediate must always contain unless changed by a By-Law of the Corporation:
 - (a) an explanation of the mediator’s role as being a neutral facilitator to assist the parties in reaching their own settlement;
 - (b) the mediator will not provide legal advice and that each party is advised to retain and consult with their own lawyer to be properly counselled about their legal rights, interests and obligations;
 - (c) that for the mediation to be successful open and honest communication is essential and accordingly all, written and oral communications, negotiations and settlements, including, but not limited to the pre-mediation notice, and the notice of request to mediate, that are made in the course of mediation will be treated as privileged settlement discussions and shall be confidential to the fullest extent provided by law unless the parties agree otherwise and in writing;

- (d) that the parties shall not demand the production of any records, notes, work product or other documents relating to the mediation from the mediator or call the mediator or anyone else associated with the mediation as a witness in any legal or administrative proceeding concerning the parties;
 - (e) notwithstanding the foregoing, the parties agree that the Agreement to Mediate, the record of settlement produced by the mediator in respect of the mediation and any written agreement made between the parties as a result of the mediation may be used in any subsequent proceeding involving the parties that arises by reason of a breach of any such agreement or settlement by one of the parties;
 - (f) the parties or their representatives who actually participate in the mediation will have express authority to negotiate and settle the disagreement themselves;
 - (g) the parties will disclose and produce all relevant and pertinent information and documents that relate to the disagreement to be mediated to each other and to the mediator;
 - (h) when a settlement is reached between the parties the mediator will prepare a written record of the settlement which shall form part of the agreement or matter that was the subject of the mediation;
 - (i) that should a party wish to withdraw from the mediation after it has commenced the withdrawing party must discuss the withdrawal with the mediator before doing so;
 - (j) should the mediator determine that it is not possible to resolve the matter through mediation, with or without the agreement of the parties, he or she shall issue a notice to the parties stating the mediation has failed in a timely fashion and not more than five (5) days after the mediator has reached this decision and neither party shall be obligated to continue with the mediation unless all the parties agree in writing;
 - (k) each party shall pay the fees and expenses relating to the mediation that the settlement agreement reached between them specifies if a settlement is obtained or that the mediator specifies in the notice stating that the mediation has failed;
 - (l) each party shall pay in advance such deposits as the mediator shall reasonably require towards the costs of the mediation and for the purposes of this clause, "reasonable costs" shall include one-half of the mediator's total estimated costs for the mediation;
 - (m) the parties will execute such other agreements or consents as the mediator may reasonably require with respect to the mediation;
 - (n) the mediation shall take place at such location as the mediator may choose provided that it is located within the City or Town that the Corporation is located within;
 - (o) the names, addresses and telephone numbers of the parties;
 - (p) an agreement that the parties jointly and severally agree to indemnify and save harmless the mediator for all liability, costs, claims and proceedings howsoever arising under the Agreement to Mediate or as a result of the conduct of the mediation and its consequences, provided that the mediator has carried out his or her duties honestly and in good faith;
 - (q) the agreement will be governed by the laws of the province of Ontario; and
 - (r) the agreement will enure to the benefit of and be binding upon the Parties and the mediator, their heirs, executors, administrators, successors and assigns.
10. If the mediator determines that the mediation will not take place or has failed, the matter under dispute shall be submitted to arbitration in accordance with the *Arbitrations Act 1991*.
11. Nothing in this Article shall preclude the Corporation, an owner or other party from exercising any of the rights or remedies afforded to them under the Act or at law.
12. In the event that mediation fails, or is declared to have failed by the mediator, and the matter proceeds to arbitration, the parties to the dispute agree that only one person will be appointed as an arbitrator pursuant to the *Arbitrations Act, 1991*.

ARTICLE XXI **NON-RESIDENTS**

1. An owner who has leased, rented or otherwise allowed someone to occupy his or her unit and as a result does not reside on a regular basis in the unit is prohibited

from using any of the common elements without the prior written consent of the Board except:

- (a) as a guest of another unit owner;
 - (b) at the invitation of the Board;
 - (c) to the extent necessary to inspect the owner's unit and the exclusive use areas allocated to it and for carrying out such maintenance, repairs or replacement of the unit or common elements that the owner may be responsible for; and
 - (d) where it is reasonably necessary to collect rents, show the unit to prospective buyers/tenants and to otherwise carry out his or her responsibilities as an absentee owner.
2. The owner of a unit who leases the unit or renews a lease of the unit shall, within ten (10) days of entering into the lease or the renewal, as the case may be,
 - (a) notify the Corporation that the unit is leased;
 - (b) provide the Corporation with the lessee's name, the owner's address and a copy of the lease or renewal or a summary of it in the prescribed form; and
 - (c) provide the lessee with a copy of the Declaration, By-Laws and Rules of the Corporation.
 3. If a lease of a unit is terminated and not renewed, the owner of the unit shall notify the Corporation in writing within ten (10) days of the termination.

ARTICLE XXII

REPORTS & RECORDS

1. The Corporation shall keep adequate records, including the following records:
 - (a) The financial records of the Corporation;
 - (b) A minute book containing the minutes of owners' meetings and the minutes of Board meetings;
 - (c) A copy of the Declaration, By-Laws and Rules;
 - (d) The returns and notices that it has filed with the registrar;
 - (e) All lists, items, records and other documents mentioned in subsections 43 (4) and (5) of the Act;
 - (f) The report described in subsection 44 (8) of the Act that the Corporation receives from the person who conducts a performance audit;
 - (g) The records required under subsections 46.1 (3) and 83 (3) of the Act;
 - (h) A record of all reserve fund studies and all plans to increase the reserve fund under subsection 94 (8) of the Act;
 - (i) A copy of all agreements entered into by or on behalf of the Corporation.
 - (j) The report that the Corporation receives from an inspector in accordance with subsection 130 (5) of the Act;
 - (k) All instruments appointing a proxy or ballots for a meeting of owners that are submitted at the meeting;
 - (l) All other records, if any, that are prescribed; and
 - (m) Any additional records specified in the By-Laws of the Corporation.
2. In addition to satisfying the requirements of any taxing authority in Ontario, the government of Canada or any other jurisdiction to which the Corporation is subject, the Corporation shall retain the records mentioned in subsection (1) for the prescribed time periods.
3. Records may be kept in electronic or paper form in accordance with the prescribed requirements, if any.
4. The Corporation shall permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing, to examine or obtain copies of the records of the Corporation in accordance with the Act.

ARTICLE XIII

MISCELLANEOUS

1. **Invalidity:** The invalidity of any part of this By-law shall not impair or affect in any manner the validity and enforceability or effect of the balance thereof.

- 2. Gender: The use of the masculine or feminine gender in this By-law shall be deemed to include masculine or feminine respectively and neuter genders and the use of the singular shall be deemed to include plural wherever the context so requires.
- 3. Waiver: No restriction, condition, obligation or provision contained in this By-law shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches thereof which may occur.
- 4. Headings: The headings in the body of this By-law form no part thereof but shall be deemed to be inserted for convenience of reference only.
- 5. Alterations: This By-law, or any part thereof, may be varied, altered or repealed by a by-law passed in accordance with the provisions of the Act, and the Declaration.

The foregoing By-law No. 1 is hereby passed by the Directors of the Corporation pursuant to *The Condominium Act 1998* as evidenced by the respective signatures hereto of all the Directors.

DATED this day of , 20

, President

, Secretary-Treasurer

, Director

The undersigned, which owns 100% of the units, hereby confirms, pursuant to the provisions of *The Condominium Act 1998*, the foregoing By-law No. 1 of the By-laws of the said Corporation signed by all the Directors of the said Corporation as a By-law thereof pursuant to the provisions of the said Condominium Act on the day of 201 .

DATED the day of , 20 .

Phelps Homes Ltd.
Per: David Samis, President

“I have authority to bind the Corporation”

Appendix “A”

NIAGARA NORTH VACANT LAND CONDOMINIUM CORPORATION NO. ____

BY-LAW NO. 1

DIRECTORS’ CODE OF ETHICS

I have consented to act as a Director of the Corporation and I agree to comply with the following Director’s Code of Ethics throughout my terms as a Director:

Honesty and Good Faith – I will act honestly and in good faith. I will do nothing to violate the trust of the unit owners I serve.

Care, Diligence and Skill – I will exercise the degree of care, diligence and skill of a reasonably prudent person in comparable circumstances. I will make a concerted effort to attend all Board and owners' meetings. I will act responsibly and with due diligence to become familiar with the affairs of the Corporation and to uphold its Declaration, Description Plans, By-Laws, Rules, Resolutions, Policies, Agreements and Requirements of the Condominium Act and other legislation.

Conflict of Interest – I am not currently aware of any actual or potential conflict of interest with respect to any contract, transaction, building deficiency claim, warranty claim, legal action, proceedings or any matter detrimental to the Corporation. If I become aware of any conflict, I will immediately disclose it to the Board. I will not promote my own interests or those of any owner, resident, family member, friend or contractor to the detriment of the Corporation. I will not seek any special benefits or privileges as a Director or Officer or accept any compensation either personally or on behalf of any other person except as permitted by a By-Law. I will act only in the best interests of the Condominium Corporation as a whole and I will not favor the interests of any individual or group of owners or residents.

Confidentiality – I will not disclose to any person (including my spouse) information decided by the Board to be confidential or privileged or which reasonably ought to be deemed confidential. When in doubt, I will request determination by a resolution of the Board.

Good Conduct – At all times, I will conduct myself in a professional and businesslike manner at meetings of Directors or Owners. I will approach all Board issues with an open mind, preparing to make the best decisions on behalf of the Corporation. I will act ethically with integrity and in accordance with legal criteria. I will comply with rules of good conduct and will deal with others in a respectful manner. I will comply with principles of good governance and procedural rules of order.

Support – I will abide by decisions of the majority of the Directors even though I may disagree, but I reserve the right to express my own views to owners upon non-confidential issues.

Defamation – I will not make erroneous or defamatory statements about the Corporation or any owner, resident, director, officer, manager, staff or contractor of the Corporation.

Minimize Conflict – I will attempt to prevent or minimize conflict and disruption and will promote good relations amongst persons involved in our Condominium Community. I will promote a first class image for our Corporation, its units, owners and residents.

Education – recognizing that governance of a Condominium Corporation involves complex and changing requirements, I will continue to educate myself by reading relevant magazines (such as CCI's News & Views, CM Magazine or Condominium Business Magazine). I will support attendance by one or more Board members at any condominium seminars presented by the Canadian Condominium Institute (CCI), including CCI's Basic Directors' Course and CCI Advanced Directors' Courses at the cost of the Corporation.

Agreement – I hereby agree to comply with the provisions set out in the Directors' Code of Ethics.