

## DECLARATION MADE PURSUANT TO

### *THE CONDOMINIUM ACT, 1998*

THIS DECLARATION (hereinafter called the “**Declaration**”) is made and executed pursuant to the provisions of the *Condominium Act, 1998*, and the regulations made thereunder (all of which are hereinafter referred to as the “**Act**”), by:

**PHELPS HOMES LTD.**  
(hereinafter called the “**Declarant**”)

WHEREAS the Declarant is the Owner in fee simple of the lands and premises more particularly described in Schedule “A”, and in the Description submitted herewith by the Declarant for registration in accordance with Section 8 of the *Act*;

AND WHEREAS the said lands include forty-five (45) vacant land condominium units; and

AND WHEREAS the Declarant intends that the said lands, and the interests appurtenant thereto, and the buildings thereon, all as described in the Description, shall be governed by the *Act*;

**NOW THEREFORE THE DECLARANT HEREBY DECLARES AS FOLLOWS:**

### **ARTICLE I** **INTRODUCTION**

#### **1.1 DEFINITIONS**

All words used herein which are defined in the *Act* shall have ascribed to them the meanings set out in the *Act*, as amended from time to time.

#### **1.2 CONDOMINIUM ACT**

The lands and the interests appurtenant to the lands described in the Description and described in Schedule “A” (the “**Property**”) shall be governed by the *Act*.

#### **1.3 TYPE OF CONDOMINIUM CORPORATION**

The Condominium Corporation created by the registration of this Declaration shall be a Freehold Vacant Land Condominium Corporation.

#### **1.4 CONSENT OF ENCUMBRANCERS**

The consent of every person having a registered mortgage against the land or interest appurtenant to the land described in Schedule “A” is contained in Schedule “B” attached hereto.

#### **1.5 BOUNDARIES OF UNITS AND MONUMENTS**

The monuments controlling the extent of the Units are those referred to as the boundaries of Units in Schedule “C” attached hereto and illustrated with heavy lines on Part 1 Sheet 1 of the Description.

Notwithstanding the said monuments:

- (a) any portion of any dwelling, or of any other structure or improvement constructed or erected within the boundaries of a Unit, except as specifically provided otherwise by this Declaration, shall form part of that Unit;
- (b) any sewer mains, water mains or pipes (from the shut off valve or main line tee) or any wires, cables, conduits, ducts, equipment or fixtures, including

any heating and air- conditioning equipment, which serve exclusively, or provide services exclusively, to one Unit only, shall form part of that Unit, whether the same are located within or beyond the boundaries established for that Unit;

- (c) any sewer mains, water mains or pipes (from the shut off valve or main line tee), or any wires, cables, conduits, ducts and any other above grade or below grade works, equipment, fixtures or services (including but not limited to any landscape irrigation system, fire hydrants, street lighting standards, transformers and hydro vaults) which serve, or provide services to, more than one Unit, shall form part of the Common Elements, whether the same are located within or beyond the boundaries established for any Unit;
- (d) any storm sewers draining catch basins, and any catch basins, shall form part of the Common Elements, whether the same are located within or beyond the boundaries established for any Unit;
- (e) any entrance gates, retaining walls or perimeter boundary fencing, as illustrated on both or either of a Site Plan with respect to the Property approved by the Town of Lincoln pursuant to the *Planning Act of Ontario* or the Draft Plan of Condominium approved for the Property pursuant to the *Act*, shall form part of the Common Elements, whether the same are located within or beyond the boundaries established for any Unit; and
- (f) The Unit shall include the heating, ventilating and air conditioning system wherever it may be situated which services the dwelling constructed on the Unit.

#### 1.6 **COMMON INTEREST**

Each Owner shall have an undivided interest in the Common Elements as a tenant in common with all other Owners in the proportions set forth opposite each Unit number in Schedule "D" attached hereto. The total of the proportions of the common interests shall be one hundred per cent (100%).

#### 1.7 **COMMON EXPENSES**

Each Owner shall contribute to the Common Expenses in the proportion set forth opposite each Unit number in Schedule "D" attached hereto. The total of the proportions of the Common Expenses shall be one hundred percent (100%).

#### 1.8 **ADDRESS FOR SERVICE AND MAILING ADDRESS**

The Corporation's address for service shall be c/o 166 Main St. West Grimsby, Ontario, L3M 1S3 or such other address as the Corporation may by resolution of the Board determine; and the Corporation's address for mailing shall be the same or such other address as the Corporation may by resolution of the Board determine.

### **ARTICLE 2** **COMMON EXPENSES**

#### 2.1 **SPECIFICATION OF COMMON EXPENSES**

"Common Expenses" means the expenses related to the performance of the objects and duties of the Corporation and all expenses specified as Common Expenses by the *Act*. Without limiting the generality of the foregoing, Common Expenses shall also include those expenses set out in Schedule "F" attached hereto.

**ARTICLE 3**  
**BUILDINGS, STRUCTURES AND IMPROVEMENTS ON UNITS**

**3.1 APPROVALS**

Any approval required by any provision of this Article 3 shall be obtained in writing from the Declarant, so long as the Declarant is the Owner of at least one Unit, and subsequently from the Board of Directors. Subject to the specific provisions of this Article 3, both the Declarant and the Board of Directors shall have full discretion to establish, and to subsequently amend or revoke, procedures and criteria for processing and granting such approvals. Subject to complying with the provisions of this Declaration and with any procedures and criteria established by it, the Declarant or the Board of Directors, as the case may be, shall have absolute and unfettered discretion in granting or denying any approval.

**3.2 SINGLE FAMILY DWELLING**

Subject to the following restrictions, one (1) single family dwelling may be constructed on each Unit.

**3.3 OTHER STRUCTURES AND IMPROVEMENTS**

No other structure, improvement, fence, landscaping feature or planting (an “**Improvement**”) or a replacement dwelling for that originally approved by the Declarant shall be undertaken, erected, constructed, re-constructed, placed, replaced or altered on any Unit unless the Improvement and its plans and specifications, including full plans and specifications detailing all design components and features, construction materials, exterior finishes, associated landscaping features and treatment, location, final grades and all other associated site improvements, have been approved in writing.

**3.4 CRITERIA FOR BUILDINGS, STRUCTURES AND IMPROVEMENTS**

The Corporation may, by By-Law, establish additional guidelines and restrictions with respect to the construction, re-construction, or alteration of a dwelling pursuant to paragraph 3.2, or with respect to the undertaking, erection, construction, re-construction, placement, replacement, or alteration of an Improvement pursuant to paragraph 3.3, provided that such additional guidelines or restrictions shall not be in conflict with, or alter, any provision of this Article 3.

**3.5 GRADES**

- (a) The land of any Unit shall not be graded except in general conformity with the grades and elevations shown on the grading plan established for the Corporation, which shall also be the grading plan forming part of any site plan or any plan otherwise approved by the municipal, regional or local government having jurisdiction.
- (b) No newly constructed dwelling shall be occupied or used unless the Unit is rough graded so that water will not accumulate at or near the dwelling and will not adversely affect adjacent properties.

**3.6 CONSTRUCTION**

Notwithstanding any of the previous provisions set out in this Article 3, the following provisions shall apply to the construction, re-construction or renovation of all buildings or structures:

- (a) All buildings and structures shall conform to all federal, provincial and municipal legislation, regulations and by-laws, and specifically with the Ontario Fire Code, the Ontario Building Code and all applicable municipal building and zoning by-laws.
- (b) All construction, re-construction or renovation shall be completed with a

level of workmanship and materials consistent with construction by a professional builder.

- (c) All construction, re-construction or renovation save and except that to be completed by the Declarant shall conform to any further reasonable restrictions imposed by the Board of Directors, which further restrictions shall be consistent with the specifications and standards set out in this Article 3.
- (d) All construction, re-construction or renovation shall be in accordance with the plans and specifications delivered to the Declarant or the Board of Directors.
- (e) The Owner shall obtain, at the Owner's expense, all permits, approvals or permissions required from any government authority having jurisdiction and shall be responsible for payment of any fees, charges or levies payable to any such government authority with respect to such construction, re-construction or renovation.
- (f) The Owner shall comply with all site plan agreements or building covenants and restrictions registered on title to the Property including providing any architectural or engineering certificate that may be required.
- (g) The indemnity provided for in sub-paragraph (h) below shall, in the event that a lien pursuant to the *Construction Lien Act* relating to construction, re-construction or renovation should be registered against the title to the Common Elements or any other Unit, include an indemnity of the Corporation and all other Owners against any expense arising from such lien, including the cost of obtaining a discharge of such lien by payment of money into, or the placement of security with, the court.
- (h) The Owner shall indemnify and hold harmless the Corporation from all costs and expenses of any nature arising from or related in any way to all such construction, reconstruction or renovation, including any additional costs or expenses to the Corporation with respect to the operation, maintenance, repair or replacement of the balance of the Common Elements and arising from or related in any way to such construction, reconstruction or renovation. Without limiting the generality of the forgoing, the Owner shall be responsible for all cleaning, maintenance, repair and replacement required with respect to curbs, and roadways as a result of construction, re-construction or renovation on a Unit. Owners shall be bound by the decision of the professional engineer appointed by the Declarant or the Corporation in assessing and allocating the responsibility for such cleaning, maintenance, repair and replacement.
- (i) Any amounts owing to the Corporation pursuant to this Article 3, including any amounts owing pursuant to the indemnity provided for in sub-paragraph (h) above and any other amounts owing or found to be owing by the Owner to the Corporation as a result of a breach of this Article 3, including legal costs on a solicitor and the solicitor's own client basis, shall be added to the Common Expenses for the Owner's Unit, with the Corporation having the right to specify a time for the payment thereof, and may be recovered by the Corporation in the same manner as Common Expenses and by any other procedure or action that the Corporation may elect.
- (j) The provisions of this Article 3 may be enforced by the Corporation by injunctive relief.

## **ARTICLE 4**

### **OCCUPATION AND USE OF UNITS**

#### **4.1 OCCUPATION AND USE**

The occupation and use of the Units, and the use of any service provided to the Units, shall be in accordance with the *Act*, this Declaration, By-Laws and Rules, as passed and amended from time to time in accordance with the normal and usual use of such Units and services for the purposes intended therefore and subject to the following restrictions and stipulations:

- (a) Each of the Units shall be occupied and used only as a single-family residence and for no other purpose. No business, occupation or commercial activities of any type or kind will be conducted on or from any Unit.
- (b) Only personal use passenger cars are to be parked overnight on a Unit. The words "private passenger automobile" shall include a motorcycle, a station wagon, a sport utility vehicle, a passenger van or a pick-up truck in which the box height does not exceed four (4) feet from the box bed floor. Recreational vehicles, off road vehicles, slide in pickup campers, boats, boat trailers, motor homes, fifth wheels, snowmobiles, utility trailers or other types of trailers are not to be parked on a Unit except over one night, at the discretion of the Board of Directors, immediately before or after a recreational trip using such vehicle.
- (c) No motorcycle, minibike, moped or golf cart, the presence or use of which has been deemed by the Board of Directors to create a nuisance or a disturbance, shall be kept or used on a Unit or Common Elements.
- (d) The Owner of each Unit shall require all residents of, and visitors to, the Owner's Unit to comply with the *Act*, this Declaration, the By-Laws and the Rules and shall be responsible to the Corporation for any breaches committed by such person.
- (e) Without the written consent of the Corporation, no television antenna, aerial, tower, or similar structure and appurtenances thereto shall be erected on or fastened to any Unit or any portion of the Common Elements, save and except that small satellite tv receiving dishes with a maximum diameter of 20 inches may be mounted at the rear of each house.

#### **4.2 REQUIREMENTS FOR LEASING**

- (a) 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:
  - 1. notify the Corporation that the Unit is leased;
  - 2. 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
  - 3. provide the lessee with a copy of the Corporation's Declaration, By-Laws and Rules.
- (b) 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.
- (c) No owner shall lease their Unit unless such owner causes the tenant to deliver to the Corporation an agreement signed by the tenant, to the following effect:

*"I,..... covenant and agree that I, the members of my household and my guests from time to time, will, in using the unit rented by me and the common elements, comply with The Condominium Act, the Declaration and the By-laws, and all Rules of the Condominium Corporation, during the term of my*

*tenancy."*

- (d) Prior to the commencement date of the tenancy, the Owner shall provide access to the Unit to the Board, if so requested, for the express purpose of inspecting the Unit, including air conditioning/heating components and plumbing fixtures, to ensure that the Unit has been maintained in a good state of repair in accordance with this Declaration and the *Act*, and the Owner shall forthwith comply with any notice from the Corporation requiring the Owner to effect repairs to the unit prior to the commencement of the date of tenancy.
- (e) The Owner shall provide access to the Unit to the Board annually (normally within fifteen (15) days of the anniversary date of the tenancy), if requested, for the express purpose outlined in section 4 herein. The Owner shall forthwith comply with any notice from the Corporation requiring the Owner to effect repairs to the Unit.
- (f) No tenant shall be liable for the payment of common expenses unless notified by the Corporation that the Owner is in default of payment of common expenses, in which case the tenant shall deduct, from the rent payable to the Owner, the Owner's share of the common expenses, and shall pay the same to the Corporation.
- (g) Any Owner leasing their Unit shall not be relieved thereby from any of their obligations with respect to the Unit, which shall be joint and several with the tenant.

#### 4.3 **PETS**

No animal, which is deemed by the Board, in its absolute discretion, to be a nuisance, shall be kept by any Owner in any Unit. An Owner shall, within two (2) weeks of receipt of a written notice from the Board advising that an animal has been so deemed and requesting the removal of such animal, permanently remove the animal from the property. No animals shall be kept on, in, or around any Unit for a commercial purpose or for breeding.

### **ARTICLE 5** **COMMON ELEMENTS**

#### 5.1 **USE OF COMMON ELEMENTS**

Subject to the provisions of the *Act*, this Declaration, the By-Laws and the Rules, each Owner shall have the full use, occupancy and enjoyment of the whole or any part of the Common Elements, except as herein otherwise provided. The use of the Common Elements shall at all times be in accordance with the *Act*, this Declaration, the By-Laws and the Rules, and in accordance with the normal and intended use of the Common Elements and all of the components thereof. Air conditioning condensers servicing each Unit are permitted to encroach a reasonable distance into the common elements and shall be a part of each Unit which it services.

#### 5.2 **EXCLUSIVE USE PARTS OF COMMON ELEMENTS**

Subject to the provisions of and compliance with the *Act*, this Declaration, the By-Laws and Rules, the Owners of Units shall have the exclusive use and enjoyment of those parts of the Common Elements as described in Schedule "F" hereto.

## **ARTICLE 6**

### **MAINTENANCE AND REPAIRS**

#### **6.1 MAINTENANCE AND REPAIR OF UNITS**

Each Owner shall maintain and keep in good repair the Owner's Unit, which maintenance and repair shall include:

- (a) prior to the improvement of a Unit by the construction of a dwelling, the cutting of weeds and grasses on the vacant Unit;
- (b) cleaning and the removal of garbage, and debris from the Unit;
- (c) subject to paragraph 6.3 herein, maintenance of all landscaped areas and plants in an attractive and healthy condition, including removal of weeds, proper pruning for both appearance and removal dead plant material, treatment for infestations of insects, and pruning or removal of any roots or limbs which are encroaching onto other Units or the Common Elements;
- (d) all maintenance and repair to any dwelling, structure, fixture or improvement on the Unit required to maintain such dwelling, structure, fixture or improvement in a state of repair and appearance consistent with its original standard of quality subject to reasonable wear and tear and consistent with the standards of quality and appearance of those dwellings on the other Units, which standards shall be determined and set from time to time by the Board of Directors in their sole and unfettered discretion; and
- (e) all maintenance, repair and replacement of the heating, ventilating and air conditioning system wherever it may be situate, which services the dwelling on the Unit.

#### **6.2 MAINTENANCE AND REPAIRS TO COMMON ELEMENTS**

The Corporation shall maintain, clean, repair and replace the Common Elements, which shall include the plowing of snow from the laneway and visitor parking area. In addition, the Corporation shall also shovel, plow or remove snow from the Unit driveways, sidewalks and walkways of the Units. When space is required, plowed snow shall be removed to designated snow storage areas or trucked off site.

#### **6.3 LANDSCAPE PROGRAM**

The Corporation will secure contract landscape maintenance services on behalf of Owners for the purpose of maintaining the irrigation system and cutting the grass on common areas and any grass areas on the Units. All costs incurred by the Corporation pursuant to such an authorization shall be added to the Common Expenses, with the Corporation having the right to recover the same in the same manner as Common Expenses and by any other procedure or action that the Corporation may elect.

#### **6.4 GARBAGE COLLECTION**

The Corporation shall be responsible for arranging garbage collection and removal from the site with a private contractor unless same is arranged with the municipality. The Corporation shall advise owners as to the designated pick up location for garbage.

## **ARTICLE 7**

### **OWNERS' OBLIGATIONS**

#### **7.1 DAMAGE TO UNITS OR COMMON ELEMENTS**

- (a) 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 it.

- (b) 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, their family or any member thereof, any resident of their 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 lawyers' 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.

## 7.2 **MONIES OWING**

Monies owing pursuant to this Declaration shall bear interest at eighteen percent (18%) per annum above the prime lending rate charged by the Corporation's Bank to its best risk customers.

# **ARTICLE 8** **INSURANCE TRUSTEE AND PROCEEDS OF INSURANCE**

## 8.1 **INSURANCE TRUST AGREEMENT**

The Corporation may, but is not required, to enter into an agreement with an Insurance Trustee which in such case shall be a Trust Company registered under the Loan and *Trust Corporations Act*, or shall be a Chartered Bank, which agreement shall, without limiting its other terms, provide for the following:

- (a) the receipt by the Insurance Trustee of any proceeds of insurance payable to the Corporation;
- (b) the holding of such proceeds in trust for those entitled thereto pursuant to the provisions of this Declaration;
- (c) the disbursement of such proceeds in accordance with the provisions of the Insurance Trust Agreement; and
- (d) the notification by the Insurance Trustee to the mortgagees of any insurance moneys received by it.

If the Corporation desires but is unable to enter into such agreement with a Trust Company or a Chartered Bank, by reason of their refusal to act, the Corporation may enter into such agreement with such other Corporation, authorized to act as a Trustee, as the Owners may approve by By-Law at a meeting called for that purpose. The Corporation shall pay the fees and disbursements of any Insurance Trustee and any fees and disbursements shall constitute a Common Expense.



## **ARTICLE 9** **INSURANCE**

### **9.1 BY THE CORPORATION**

The Corporation shall obtain and maintain insurance on its own behalf and on behalf of the owners as required by the *Act* in such amounts and upon such terms as the Board of Directors may determine from time to time. Every policy of insurance shall insure the interests of the Corporation and the Owners from time to time, as their respective interests may appear, with mortgagee endorsements; shall be subject to the provisions of the Declaration and any Insurance Trust Agreement; and shall contain the following provisions:

- (a) waivers of subrogation against the Corporation, its Directors, property managers, agents, and employees and as against the Owners, and, if residents of an Owner's household, the Owner's spouse, the relatives of either and any other person under the age of twenty-one (21) in the care of an Owner or the Owner's spouse, except for arson, fraud, vehicle impact, to the extent reasonably available from time to time;
- (b) a condition that such policy or policies of insurance shall not be terminated or substantially modified without at least sixty (60) days' prior written notice to the Corporation and to the Insurance Trustee; and
- (c) a waiver of the insurer's option to repair, rebuild or replace in the event that after damage the government of the property by the Act is terminated.

### **9.2 GENERAL PROVISIONS**

Prior to obtaining any policy of insurance covering the replacement cost of the Common Elements, or any renewal or renewals thereof, or at such other time as the Board may deem advisable, the Board may obtain from an independent qualified appraiser such appraisals or opinions as it deems necessary in order to determine the full replacement cost of such property for the purpose of determining the amount of insurance to be effected and any costs incurred in obtaining such opinions and appraisals shall be a Common Expense.

The Board shall have the exclusive right, on behalf of itself and as agents for the Owners, to adjust any loss and settle any claims with respect to all insurance placed by the Corporation, and to give such releases as are required, and any claimant shall be bound by such adjustment.

A certificate or memorandum of all insurance policies and endorsements thereto shall be issued as soon as possible to each Owner, and a duplicate original or certified copy of the policy, certificate or memorandum to each mortgagee. Renewal certificates or certificates of new insurance policies shall be furnished to each Owner and mortgagee not later than ten (10) days before the expiry of any current insurance policy. The policy for any insurance coverage shall be kept by the Corporation in its offices and be available for inspection by an Owner or mortgagee on reasonable notice to the Corporation. A certificate or memorandum of all insurance policies and endorsements thereto and renewal certificates thereof shall be furnished only to each Owner and mortgagee who has notified the Corporation of becoming an owner or mortgagee.

No insured, other than the Corporation, shall be entitled to amend any policy or policies of insurance obtained and maintained by the Corporation, or to direct that any loss shall be payable in any manner other than as provided in the Declaration and the Act.

### **9.4 BY THE OWNER**

It is acknowledged that the foregoing insurance is the only insurance required to be obtained and maintained by the Corporation and that the following insurance,

or any other insurance, should be obtained and maintained by each Owner for each Owner's own benefit:

- (a) insurance on the Owner's Unit, including any dwelling or Improvement thereon, and on the Owner's furnishings, fixtures, equipment, decorating and personal property and chattels, including the Owner's automobile or automobiles, and for loss of use and occupancy of the Unit in the event of damage;
- (b) public liability insurance covering any liability of any Owner to the extent not covered by any public liability and property damage insurance obtained and maintained by the Corporation; and
- (c) additional living expenses incurred by an Owner as a result of one of the hazards protected against under the Owner's personal policy.

Every such policy of insurance shall contain a waiver of subrogation against the Corporation, its Directors, property managers, agents, and employees and as against the Owners, and, if residents of an Owner's household, the Owner's spouse, the relatives of either and any other person under the age of twenty-one (21) in the care of an Owner or the Owner's spouse, except for arson, fraud, vehicle impact, vandalism or malicious mischief.

## **ARTICLE 10** **MISCELLANEOUS**

### **10.1 ORGANIZATIONAL PROCEDURES**

The Declarant may, while the Declarant is still the owner of 100 percent of the Units, pass or confirm any resolution or by-law that would otherwise require a meeting of the Owners, without holding such meeting, provided that the resolution or by-law to be passed or confirmed is executed by the Declarant.

### **10.2 INVALIDITY**

Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or effect in any manner the validity or enforceability of the remainder of this Declaration.

### **10.3 INTERPRETATION**

This Declaration shall be read with all changes of number and gender required by the context.

### **10.4 WAIVER**

No restriction, condition, obligation or provision contained in this Declaration 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.

### **10.5 HEADINGS**

The headings in the body of this Declaration form no part of the Declaration but shall be deemed to be inserted for convenience only.

### **10.6 OBLIGATIONS OF THE CORPORATION**

The following matters are the responsibility of the Corporation to observe and perform:

- (a) The Corporation is responsible for all services, facilities and all aspects of the water and sanitary sewers and storm water drainage system, which are located on the common elements or service more than one unit, which includes the on-going maintenance, repair and replacement of same, as need be, in accordance with municipal requirements;
- (b) The Corporation is responsible for all aspects of the maintenance, repair and replacement, as need be, of all trees, shrubs and other vegetative plantings, walls, fences located on common element areas.
- (c) At the time that the Corporation arranges for a Performance Audit in accordance with the requirements of section 44 of the Condominium Act, 1998, the Corporation shall permit the Declarant and its authorized employees, agents, and representatives to accompany and confer with the consultants retained by the Corporation to carry out the Performance Audit while same is being conducted. In so doing, the Corporation shall provide the Declarant with at least fifteen (15) days written notice in advance of the commencement of the audit. Furthermore, the Corporation shall permit the Declarant and its authorized employees, agents, and representatives to carry out any repair or remedial work identified or recommended by the consultant.
- (d) The Corporation and/or each relevant unit owner, as the case may be, shall provide notice to the Declarant of any matter which may or does result in initiation of a claim to or investigation by TARION WARRANTY CORPORATION, and will provide the Declarant with copies of all correspondence with TARION WARRANTY CORPORATION relative to same. Furthermore, the Corporation and/or relevant unit owner shall give the Declarant reasonable notice of and the opportunity to fully participate in the investigation and rectification of any deficiency claim matter related to either the common elements or units.

## 10.7 **EASEMENT MATTERS**

For greater certainty, the Corporation enjoys an easement pursuant to subsection 12(2) of the Condominium Act through the units (but not the dwellings thereon) for the purposes of accessing utility services, the irrigation system and other common elements and for inspections and provision of such services as may be required of the Corporation. As such, there shall be no fence or other obstruction erected on the units which would interfere with such access by the Corporation or its designated agents in particular from the common element laneway through the sides of end units between the dwellings. The rear of the units cannot be fenced or otherwise obstructed in a manner that hinders access.

For greater certainty, the Corporation also enjoys an easement pursuant to subsection 12(2) of the Condominium Act through the units (but not the dwellings thereon) for the purposes of storm water drainage. As such, there shall be no obstruction erected on the units which would interfere with such drainage.

## 10.8 **EFFECTIVE DATE**

This Declaration shall take effect upon registration.

## **ARTICLE 11** **CANADIAN NATIONAL RAILWAY REQUIREMENTS**

11.1 All persons presently having or who may in the future acquire any interest in the Property or any part thereof, including, without limitation, the Declarant, Corporation, Owners and their tenants, acknowledge and confirm as follows:

11.1.1 Canadian National Railway Company ("CN Rail") is the registered owner of certain lands to the north of the Property ("CN Lands").

11.1.2 The CN Rail Agreement registered on title as instrument No. \_\_\_\_\_ ("CN Agreement") shall be binding upon the Corporation, Owners and tenant thereof and the

terms thereof shall be assumed, observed, performed and complied with as per provisions of the said Agreement.

- 11.1.3 The CN Rail Easement registered on title as instrument No. \_\_\_\_\_ shall be observed and complied with as per terms noted therein.
- 11.1.4 It is acknowledged that CN Rail may undertake alterations or expansions of the rail facilities on the CN Lands in the future, which expansion may affect the residents in the vicinity, notwithstanding the inclusion of any measures required by the CN Agreement.
- 11.1.5 It is agreed that neither CN Rail nor any other railway company or their successors or assigns shall be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the CN Lands.
- 11.1.6 The Declarant, Corporation and Owners hereby agree to implement, maintain and repair rail noise, vibration, safety and other impact mitigation measures in the Property as described in the CN Agreement and this Declaration.
- 11.1.7 In relation to dwellings on Lots 1 to 12 (inclusive) as defined in the CN Agreement: Purchaser/tenants are advised that despite the including of noise control features in the development and within the building units, sound levels due to increasing road and rail traffic may on occasion interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Municipality and the Ministry of the Environment, Conservation and Parks.
- 11.1.8 In relation to dwellings on Lots 1 to 12 (inclusive) as defined in the CN Agreement: This dwelling unit has been fitted with a forced air heating system and ducting etc., was sized to accommodate central air conditioning. Installation of central air conditioning will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the noise criteria of the Municipality and the Ministry of the Environment, Conservation and parks. (Note: the location and installation of the outdoor air conditioning device should be done so as to minimize the noise impacts and comply with criteria of MECP publication NPC-300, as applicable)
- 11.1.9 In relation to all dwellings on all lots as defined in the CN Agreement: Warning: Purchasers or tenants are to be advised that Canadian National Railway or its successors or assigns, have an operating right-of-way within 300 metres from the land subject hereof and there may be alterations to the right-of-way including the possibility that the Railway may expand its operations, which expansion may affect the living environment of the residents notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the subdivision and individual units, and that the Railway will not be responsible for complaints or claims arising from use of its facilities and/or operations.

IN WITNESS WHEREOF the Declarant has executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**PHELPS HOMES LTD.**

Per: \_\_\_\_\_  
Davids Samis, President

*"I have authority to bind the Corporation"*

**SCHEDULE "A"**

PART LOT 17 CON 2 DESIGNATED AS PART 1 ON 30R15029, save and except Parts 1 and 2 Plan 30R15529; TOWN OF LINCOLN, being all of PIN 46128-0702 (LT)

Subject to an easement as in NR546423.

Subject to an easement in gross as in NR546426.

Subject to an easement as in NR546526.

Subject to an easement as in NR548927.

In our opinion, based on the parcel register and the plans and documents recorded therein, the legal description is correct, the described easements will exist in law upon the registration of the Declaration and the Description and the Declarant is the registered owner of the property and appurtenant interests

DATED at Hamilton, Ontario this            day of            , 20\_\_

**SimpsonWigle LAW LLP**

Per: \_\_\_\_\_

**SCHEDULE “B”  
Condominium Act, 1998**

**(Under clause 7(2)(b) of the Condominium Act, 1998)**

- 1. We, Marshallzehr Group Inc., have a registered mortgage within the meaning of clause 7 (2) (b) of the *Condominium Act, 1998* (“the Act”), registered as Number NR482175 in the Land Registry Office for the Land Titles Division of Niagara North.
- 2. We consent to the registration of this Declaration pursuant to the Act, against the land or the interests appurtenant to the land, as the land and the interests are described in the Description.
- 3. We postpone the mortgage and the interest under it to the Declaration and the easements described in Schedule “A” to the Declaration.
- 4. We are entitled by law to grant this consent and postponement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**MARSHALLZEHR GROUP INC.**

Per \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

*“I/WE have authority to bind the Mortgagee“*

**SCHEDULE “B”****Condominium Act, 1998****(Under clause 7(2)(b) of the Condominium Act, 1998)**

5. We, Laurentian Bank of Canada, have a registered mortgage within the meaning of clause 7 (2) (b) of the *Condominium Act, 1998* (“the Act”), registered as Number NR508727 in the Land Registry Office for the Land Titles Division of Niagara North.
6. We consent to the registration of this Declaration pursuant to the Act, against the land or the interests appurtenant to the land, as the land and the interests are described in the Description.
7. We postpone the mortgage and the interest under it to the Declaration and the easements described in Schedule “A” to the Declaration.
8. We are entitled by law to grant this consent and postponement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**LAURENTIAN BANK OF CANADA**

Per \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

*“I/WE have authority to bind the Mortgagee”*

**SCHEDULE “C”**

**BOUNDARIES OF THE UNITS**

***[SURVEYOR TO INSERT]***

**Boundaries of Residential Units**  
(Being units 1 to 45 inclusive on Level 1)

Each residential unit shall comprise the area within the heavy lines shown on Part 1, Sheet 1 of the Description with respect to the unit numbers indicated thereon. The monuments controlling the extent of the units are the planted survey monuments referred to immediately below, and are illustrated on Part 1, Sheet 1 of the Description, and all dimensions shall have reference to them.

Without limiting the generality of the foregoing, the boundaries of each residential unit are as follows:

**HORIZONTAL BOUNDARIES**

There is no upper or lower horizontal limit.

**VERTICAL BOUNDARIES**

The vertical planes established by measurement from survey monument as illustrated on Part 1, Sheet 1 of the Description.

I hereby certify that the written description of the monuments and boundaries of the Units contained herein accurately corresponds with the diagrams of the Units shown on Part 1, Sheet 1 of the description.

Dated at the City Of \_\_\_\_\_  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Ontario Land Surveyor

Reference should be made to the provisions of the Declaration itself, in order to determine the maintenance and repair responsibilities for any Unit, whether specific physical components (such as wires, pipes, cables, conduits, equipment, fixtures, structural components and/or any other appurtenances) are included or excluded from the Unit, regardless of whether same are located within or beyond the boundaries established for such Unit.



**SCHEDULE “D”**

**PROPORTION OF COMMON INTEREST AND PROPORTION OF CONTRIBUTION**  
**TO COMMON EXPENSES EXPRESSED IN PERCENTAGES**

Unit No.	Level	Proportion %
1	1	2.2222%
2	1	2.2222%
3	1	2.2222%
4	1	2.2222%
5	1	2.2222%
6	1	2.2222%
7	1	2.2222%
8	1	2.2222%
9	1	2.2222%
10	1	2.2222%
11	1	2.2222%
12	1	2.2222%
13	1	2.2222%
14	1	2.2232%
15	1	2.2222%
16	1	2.2222%
17	1	2.2222%
18	1	2.2222%
19	1	2.2222%
20	1	2.2222%
21	1	2.2222%
22	1	2.2222%
23	1	2.2222%
24	1	2.2222%
25	1	2.2222%
26	1	2.2222%
27	1	2.2222%
28	1	2.2222%
29	1	2.2222%
30	1	2.2222%
31	1	2.2222%
32	1	2.2222%
33	1	2.2222%
34	1	2.2222%
35	1	2.2222%
36	1	2.2222%
37	1	2.2222%
38	1	2.2222%
39	1	2.2222%
40	1	2.2222%
41	1	2.2222%
42	1	2.2222%
43	1	2.2222%
44	1	2.2222%
45	1	2.2222%
Total		100.0000%

I certify that this total is correct.

**SIMPSONWIGLE LAW LLP**

Per: \_\_\_\_\_

## SCHEDULE “E”

### COMMON EXPENSES

Common Expenses shall include the following:

- (a) all expenses of the Corporation incurred by it or the Board in the performance of the objects and duties of the Corporation, whether such objects or duties are imposed under the provisions of the Act or of this Declaration, or performed pursuant to any By-Law of or agreement entered into by the Corporation ;
- (b) all sums of money levied or charged to the Corporation on account of any and all insurance coverage, taxes, utilities and any other private or public services whatsoever, including without limiting the generality of the foregoing, levies or charges for:
  - garbage collection (unless provided by municipality);
  - insurance premiums;
  - water, except where separately metered for each unit;
  - electricity, except where separately metered for each Unit;
  - waste disposal;
  - maintenance, materials, tools and supplies;
  - snow removal as required from common elements and unit driveways/walkways;
  - lawn mowing, grounds maintenance and landscaping
- (c) remuneration payable by the Corporation to any employees deemed necessary for the proper operation and maintenance of the property;
- (d) the cost of maintaining fidelity bonds as provided in the By-Laws;
- (e) all sums of money paid or payable by the Corporation to or for the benefit of any and all persons, firms or corporations engaged or retained by the Corporation, the Board, its duly authorized agents, servants and employees, for the purpose of performing any or all of the duties of the Corporation, including without limitation, legal, engineering, accounting, expert appraisal, advisory, maintenance, managerial and secretarial services;
- (f) all sums of money paid or payable by the Corporation pursuant to the provisions of Section 97 of the *Act*;
- (g) the cost of borrowing money for the purpose of carrying out the objects and duties of the Corporation;
- (h) the cost of insurance appraisals;
- (i) the fees of an insurance trustee (if any);
- (j) the cost of providing security for the property if required by the Corporation; and
- (l) the cost of repair and maintenance of any perimeter walls, fences, landscape irrigation system.

**SCHEDULE “F”**

**EXCLUSIVE USE OF PARTS OF COMMON ELEMENTS**

None

**SCHEDULE “G”  
CERTIFICATE OF ENGINEER**

I certify that:

1. Each building and structure dot the declaration and description show are included in the common elements has been constructed in accordance with the regulations made under the CondominiumAct.1998 with respect to the following matters:

*[check whichever boxes are applicable]*

- 1,2,3 ☐ The declaration and description show that there are no buildings or structures included in the common elements.

**OR**

1. ☐ The exterior building envelope, including roofing assembly, exterior wall cladding, doors and windows, caulking and sealants, is weather resistant if required by the construction documents and has been completed in general conformity with the construction documents.
2. ☐ Floor assemblies of the buildings and structures are constructed and completed to the final covering.
3. ☐ Walls and ceilings of the buildings and structures are completed to the drywall (including, taping and sanding), plaster or other final covering.
4. ☐ All underground garages have walls and floor assemblies in place.

**OR**

- ☐ There are no underground garages
5. ☐ All elevating devices as defined in the *Elevating Devices Act* are licensed under that Act if it requires a license, except for elevating devices contained wholly in a unit and designed for use only within the unit

**OR**

- ☐ There are no elevating devices as defined in the *Elevating Devices Act*, except for elevating devices contained wholly in a unit and designated for use only within the unit.
6. ☐ All installations with respect to the provision of water and sewage services are in place and operable.

**OR**

- ☐ There are no installations with respect to the provision of water and sewage services.
7. ☐ All installations with respect to the provision of heat and ventilation are in place and heat and ventilation can be provided.

**OR**

- ☐ There are no installations with respect to the provision of heat and ventilation.
8. ☐ All installations with respect to the provision of air conditioning are in place.

**OR**

- ☐ There are no installations with respect to the provision of air conditioning.
9. ☐ All installations with respect to the provision of electricity are in place and operable.

**OR**

☐ There are no installations with respect to the provision of electricity.

10. ☐ All indoor and outdoor swimming pools are roughed in to the extent that they are ready to receive equipment and accessories.

**OR**

☐ There are no indoor or outdoor swimming pools.

*[Strike out whichever is not applicable]*

II. All facilities and services that the declaration and description show are included in the common elements

**OR**

The following facilities and services that the declaration and description show are included in the common elements:

have been installed and provided in accordance with the requirements of the municipalities in which the land is situate or the requirements of the Minister of Municipal Affairs and Housing, if the land is not situated in a municipality.

DATED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_, P. Eng.

**SCHEDULE "H"****A. Buildings and Structures included in the common elements.**

There are no buildings and structures included in the common elements.

**B Facilities and services that service the common elements and/or more than one (1) Unit and that are included in the common elements:**

- (1) storm drainage system
- (2) light fixtures on concrete poles along the laneway;
- (3) water, hydro, telecommunications, cable tv, gas and sanitary sewer facilities;
- (4) landscaping features;
- (5) laneway and visitor parking area
- (6) landscape irrigation system