

# *Summer Gardens*

Halifax County Condominium Corporation No. 130

## Declaration

*June 9, 1987; Accepted for Registration July 8, 1987)*

as amended by

## Amendments to Declaration

*February 16, 2005; Accepted for Registration January 5, 2006*

*December 10, 2018; Accepted for Registration January 9, 2019*

*April 15, 2023; Accepted for Registration June 21, 2023*



**DECLARATION**  
MADE PURSUANT TO THE CONDOMINIUM ACT  
STATUTES OF NOVA SCOTIA, 1970-71, CHAPTER 12  
FOR HALIFAX COUNTY CONDOMINIUM CORPORATION NO. 130

THIS DECLARATION (the "Declaration") made pursuant to the *Condominium Act*, Statutes of Nova Scotia, 1970-71, Chapter 12, and the Regulations made thereunder (the "Act"), by:

**United Equities Limited**, a body corporate, with Head  
Office at Halifax, in the County of Halifax, Province of Nova  
Scotia

(the "Declarant").

WHEREAS the Declarant is the owner in fee simple of land and premises located in the City of Halifax; known as Civic No. 1470 Summer Street and more particularly described in Schedule "A" attached to this Declaration and in the Description filed in accordance with Section 11 of the Act;

WHEREAS the Declarant has constructed a building upon the land containing 120 dwelling units; and

WHEREAS the Declarant intends that the land described in Schedule "A", together with the building constructed on the land, shall be governed by the Act;

THEREFORE THE DECLARANT DECLARES AS FOLLOWS:

**1 INTRODUCTORY**

**1.01 Definitions**

The following terms used in this Declaration have the meanings set out below, unless the context otherwise requires:

- (a) "Corporation" means the Corporation created under the Act by the acceptance for registration of this Declaration and the Description;
- (b) "Description" means the Description submitted for registration by the Declarant under Section 11 of the Act;
- (c) Any other words and phrases used in this Declaration which are defined in the Act have the meaning ascribed to them by the Act.

## **1.02 Statement of Intention**

The Declarant intends that the land and building referred to in the recitals (the "property") be governed by the Act and any amendments to the Act. By virtue of the Act, the provisions of this Declaration, the Description, and the By-laws including the Common Element Rules are imposed upon the property for the benefit or all the units and all persons having interests in the units from time to time.

## **1.03 Consent of Encumbrancers**

The consent of all persons having registered encumbrances against the land or interests appurtenant to the land described in the Description is contained in Schedule "B" attached to this Declaration.

## **1.04 Boundaries of Units**

Each unit shall comprise the area bounded:

### **(a) *Horizontally,***

On all levels, by the exterior surfaces of the drywall sheeting on the walls and the extensions of the planes of such surfaces across windows, doors and other openings.

### **(b) *Vertically,***

On all levels, by the upper surface of the concrete floor slab and by the upper surface of the sprayed texture on the ceiling, where such sprayed texture has been installed, and otherwise by the upper surface of the suspended drywall sheeting.

Unit 1, Level 1 comprises, in addition to the area described in sub-paragraphs (a) and (b) above, all that volume of space, shown as Terrace A and horizontally delineated on Servant, Dunbrack, McKenzie & MacDonald Limited Plan Number 71-117-0, lying between the horizontal plane located at geodetic elevation 131.0 feet (lower surface of concrete deck slab) and the horizontal plane located at geodetic elevation 144.0 feet.

Unit 2, Level 1 comprises in addition to the area described in sub-paragraphs (a) and (b) above, all that volume of space, shown as Terrace B and horizontally delineated on Servant, Dunbrack, McKenzie & MacDonald Limited Plan Number 71-117-0, lying between the horizontal plane located at geodetic elevation 131.3 feet (upper surface of concrete deck slab) and the horizontal plane located at geodetic elevation 144.0 feet.

Notwithstanding the foregoing, the unit shall not include:

- (a) any exterior walls, columns or beams within the boundaries of the unit;
- (b) concrete floor slabs within the boundaries of the unit;
- (c) such pipes, wires, cables, conduits, ducts, flues, shafts, public utility lines and other horizontal or vertical service facilities which are used for the distribution of power, water, drainage and other services within the building and that are within the boundaries of the unit; but the unit shall include the fixtures, outlets and other facilities which are within the boundaries of the unit and which service the unit only.

#### **1.05 Monuments**

The monuments controlling the extent of units are fully described in the Description and all dimensions shall have reference to them.

#### **1.06 Proportions of the Common Interests**

The owner of each unit shall have an undivided interest in the Common Elements as a tenant-in-common with the owners of all units. Schedule "C", attached to this Declaration denotes the proportions of the common interests expressed in percentages allocated to the units.

#### **1.07 Contributions to the Common Expenses**

The owner of each unit shall contribute to the common expenses in the proportions outlined In Schedule "C", expressed in percentages.

#### **1.08 Voting Rights**

Voting rights accrue to each unit in the proportions outlined in Schedule "C", expressed in percentages.

### **2 COMMON EXPENSES**

#### **2.01 Specification of Common Expenses**

"Common expenses" means the expenses of the performance of the objects and duties of the Corporation, and, without limiting the generality of the foregoing, include:

- (a) the maintenance, repair, replacement and the operation of the Common Elements;
- (b) the cost of electricity, water, heating, fuel and all other utilities and services purchased by the Corporation;
- (c) the payment of realty taxes (including local improvement charges) levied against the property which consists of the Common Elements;
- (d) the remuneration payable by the Corporation to any employees deemed necessary for the operation and maintenance of the property including the payment of any remuneration payable pursuant to any management agreement which the Corporation may enter into;
- (e) the cost of furnishings and equipment for use in and about the Common Elements including the repair, maintenance or replacement thereof;
- (f) the cost of legal, accounting and auditing services, premiums for the Corporation's insurance obligations, appraisals, fees and disbursements of the Insurance Trustee, fidelity bonds and the cost of any other objects and duties imposed by the Act, this Declaration and the By-laws of the Corporation and its Board of Directors;
- (g) the cost of borrowing money to carry out the objects and duties of the Corporation and the repayment including principal and interest of debts incurred for the objects and duties of the Corporation, provided that the borrowing of such money shall have been duly authorized by a By-law of the Corporation;
- (h) all sums of money assessed by the Corporation for collection from the owners to be set aside in such separate fund or funds as may be provided for by the By-laws of the Corporation, and to be applied, from time to time in whole or in part in the absolute discretion of the Corporation, towards meeting deficits and such other common purposes, or to be used or expended for major maintenance items, which occur less frequently than annually and for major items of repair or replacement made necessary by damage, deterioration or obsolescence, as the Corporation may deem necessary or desirable in order to carry out the objects and duties of the Corporation.

## **2.02 Payment of Common Expenses**

Each owner, including the Declarant, shall pay to the Corporation or to its nominee its proportionate share of the common expenses, which shall include payments towards any separate fund or funds, as may be provided for by the By-laws of the Corporation, and the assessment and collection of contributions towards the common expenses may be regulated by the Board of Directors of the Corporation pursuant to the Bylaws of the Corporation.

## **3 COMMON ELEMENTS**

### **3.01 Use of Common Elements**

Subject to the provisions of the Act, this Declaration, the By-laws, including the Common Element Rules and any other rules and regulations passed pursuant thereto, each owner has the full use, occupancy and enjoyment of the whole or any part of the Common Elements, except as is otherwise provided in this Declaration.

### **3.02 Limited Common Elements**

Subject to the provisions of the Act, this Declaration, the By-laws and the rules and regulations passed pursuant thereto;

- (a) each owner is entitled to the exclusive use and possession of the inner surface of the glass windows to which his unit has sole access and the interior side of the exterior doors which provide the means of ingress to and egress from his unit;
- (b) each owner is entitled to the exclusive use and possession of the balcony, to which its unit has sole access;
- (e) each owner is entitled to the exclusive use and possession of one parking space, said space to be assigned to the owner by the Corporation;
- (d) each owner is entitled to the exclusive use and possession of one storage locker, said locker to be assigned to the owner by the Corporation;
- (e) the owner of Unit 5, Level 2, is entitled to the exclusive use and possession of the opening in the concrete floor slab which provides direct access to Unit 2, Level 1, for such time as said units are utilized as one residential premise;

- (f) the owner of Unit 3, Level 20, is entitled to the exclusive use and possession of the opening in the demising wall (Doorway A) which provides direct access to Unit 4, Level 20, for such time as said units are utilized as one residential premise.

## **4 UNITS**

### **4.01 Occupation and Use**

The occupation and use of the units shall be in accordance with the following restrictions and stipulations:

- (a) each unit shall be occupied and used only as a residence for a single family and for no other purpose;
- (b) nothing shall be done, or permitted to be done or brought into, or kept in the unit which will in any way increase the rate of fire insurance on the property or any part thereof, or on chattels kept within any unit;
- (c) no unit shall be occupied or used by any one in such a manner as to result in the cancellation of any policy of insurance referred to in this Declaration;
- (d) the owner of each unit, and all residents and visitors of its unit, shall comply with the Act, this Declaration, the By-laws, and the Common Element Rules;
- (e) prior to making any alterations or repairs to its unit, the owner shall submit its plans to the Board of Directors of the Corporation in accordance with the By-laws for approval and the Board shall approve the plans unless the proposed alterations or repairs or the manner of carrying them out are likely to damage or impair the value of any other unit or the Common Elements;
- (f) the occupation and use of such unit shall be subject, in all respects to the terms and provisions of any mortgage financing on the property until such time as such mortgage is paid in full and discharged;
- (g) until all of the units have been sold for the first time, nothing herein contained shall prevent and no By-law or house rule shall be made to prevent the Declarant remedying defects, maintaining units as models for display and sales purposes and otherwise marketing units and maintaining marketing offices, displays and signs relating to the property;



- (h) to enhance the appearance of Summer Gardens, owners shall line draperies and window coverings with liner materials or a color as selected by design personnel for the property.

#### **4.02 Smoke Free Condominium Corporation<sup>1</sup>**

- a) Halifax County Condominium Corporation No. 130 is a smoke free Condominium Corporation and smoking is prohibited in the units, exclusive use common elements, and common elements;
- b) For purposes of this section, “smoking” is defined as inhaling, exhaling, burning, vaping, or being in possession of any lit cigarettes, cigar, pipe, tobacco in any form, cannabis (marijuana) in any form, cannabis resin, controlled drug or substance, to the use of any e-cigarette or vaping device of any kind;
- c) Notwithstanding subsection (a), the Board may designate an area of the common elements where smoking of tobacco is permitted, from time to time, at the board’s sole discretion;
- d) Notwithstanding subsections (a) and (b), a unit owner or tenant who declares themselves a tobacco smoker to the Board within thirty (30) days from the date of this Declaration Amendment shall be permitted to smoke tobacco within their unit only. This exception shall expire on the earlier of the date that the unit owner or tenant ceases the smoking of tobacco or the date that the owner or tenant ceases to occupy the unit.

#### **4.03 Prohibition of Cannabis Growing and Processing<sup>2</sup>**

The growing or processing of cannabis (marijuana) in any form in the units, exclusive use common elements and common elements is strictly prohibited without exception.

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<sup>1</sup> Section 4.02 adopted Dec. 6, 2018, and accepted for registration on Jan. 9, 2019.

<sup>2</sup> Section 4.03 adopted Dec. 6, 2018, and accepted for registration on Jan. 9, 2019.

## 5 BY-LAWS

5.01 The Corporation may, by a vote or members who own collectively ~~66 2/3 per cent~~ sixty per cent (60%)<sup>3</sup> of the Common Elements, make By-laws:

- (a) governing the management of the property;
- (b) governing the use to the units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment to the Common Elements and other units;
- (c) governing the use of the Common Elements;
- (d) regulating the maintenance of the units and Common Elements;
- (e) governing the use and management of the assets of the Corporation;
- (f) respecting the Board of Directors of the Corporation;
- (g) specifying duties of the Corporation;
- (h) regulating the assessment and collection of contributions towards the Common Expenses;
- (i) respecting the conduct generally of the affairs of the Corporation.

## 6 PETS

6.01 Owners shall be allowed to keep household pets in their units and such pets shall be permitted ingress to and egress from such units provided that the keeping of such pets and their control shall be strictly in compliance with the rules and regulations relating to pets.

## 7 MODIFICATIONS OF COMMON ELEMENTS AND ASSETS

7.01 For the purpose of Section ~~20(1)~~ 11(2)(j)<sup>4</sup> of the Act, the determination whether any addition, alteration or improvement to or renovation of the Common Elements or any change in the assets of the Corporation is "substantial", shall be made by an affirmative vote of the members who own collectively 66 2/3 per cent of the Common Elements.

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<sup>3</sup> Revised 2005

<sup>4</sup> Revised 2005

## 8 MAINTENANCE AND REPAIRS

### 8.01 Maintenance and Repairs to Units by the Owner

- (a) Each owner shall maintain its unit, and, subject to the provisions of this Declaration and Section 20 of the Act, each owner shall repair its unit after damage, including without limiting the generality of the foregoing, repair of all improvements made by the Declarant in accordance with the architectural plans and specifications, notwithstanding that some of such improvements may have been made after the registration of this Declaration, at its own expense, with the intent that such owner will restore its unit to a state of repair at least equivalent to its condition at the time it was originally completed for sale by the Declarant.
- (b) each owner shall be responsible for all damages to any and all other units and to the Common Elements, which are caused by the failure of the owner to so maintain and repair its unit, save and except for any such damages to the Common Elements for which the cost of repairing same may be recovered under any policy or policies of insurance held by the Corporation;
- (c) the Corporation shall make any repairs that an owner is obligated to make and which are not made within a reasonable time, and in such an event, an owner shall be deemed to have consented to having such repairs made by the Corporation; and such owner shall reimburse the Corporation in full for the cost of such repairs, including any legal or collection costs incurred by the Corporation in order to collect the costs of such repairs, and all sums of money shall bear interest at such rate as the Board of Directors may decide upon. The Corporation may collect all such sums of money in such instalments as the Board of Directors may decide upon, which instalments shall be added to the monthly contributions towards the Common Expenses of such owner, after receipt of a notice from the Corporation thereof. All such payments are deemed to be additional contributions towards the Common Expenses and recoverable as such,

## **8.02 Repairs of Common Elements by the Corporation**

The Corporation shall repair the Common Elements after damage, including the repair and replacement of all exterior doors providing ingress to and egress from all units at its own expense.

## **8.03 Maintenance of the Common Elements**

The Corporation shall maintain the Common Elements, save and except for any improvements made by an owner to the limited Common Elements appurtenant to his unit, the inner surface of the exterior glass Windows to which a unit has sole access, the interior side of the exterior doors which provide the means of ingress to or egress from a unit, which excluded portions of the Common Elements shall be maintained by the owner having the exclusive use and possession thereof pursuant to this Declaration the maintenance by an owner of such excluded portions of the Common Elements shall be in accordance with any directions and specifications set from time to time by the Board of Directors of the Corporation.

## **9 DAMAGE**

### **9.01 Procedure Where Damage Occurs**

Where there has been a determination by the Board of Directors there has been substantial damage to the extent that the cost of repairs would be twenty-five per cent (25%) of the value of the building immediately prior to the occurrence, notice of such determination shall, within ten days thereof, be given by the Corporation by registered mail to the owners and mortgagees entered in the register kept for such purpose, addressed to the owner and mortgagee at the address set out in the register in accordance with the provisions of the By-laws of the Corporation, and together with such notice there shall be notice to the owners and mortgagees of a meeting called for the purpose of voting to repair, or termination of the Condominium.

### **9.02 Repair after Damages**

- (a) In the event that owners who own eighty percent (80%) of the Common Elements vote to repair, the Corporation shall repair the units and common elements in accordance with the architectural plans and specifications and certificate contained in the Description, with the following provisos:
  - (i) the obligation of the Corporation to repair after damage extends to all improvements made to the units by the Declarant in accordance with the architectural plans and specifications, notwithstanding that

some of such improvements may have been made alter registration of this Declaration and the Description, but does not include repair or any improvements made to the unit by the Declarant for the owner of the unit, which are not included in the architectural plans and specifications of the Declarant; and

- (ii) the obligation of the Corporation to repair the units after damage shall be limited to repair in respect of all risks which are insured or insurable under any available policy or policies of insurance;
- (b) In the event that the Board of Directors shall determine that there has not been substantial damage to the extent that the cost of repairs would be twenty-five per cent (25%) of the value of the building immediately prior to the occurrence, then the Corporation and such owners whose units have been damaged shall repair in accordance with the provisions of Clauses 8.01 and 8.02 of this Declaration.

### **9.03 Plans and Specifications**

A complete set of all the original architectural and structural plans and specifications for the building, including plans and specifications for any additional 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 of Directors, shall be maintained in the office of the Corporation at all times for the use of the Corporation in rebuilding or repairing any damage to the building and for the use of any owner.

## **10 INSURANCE**

### **10.01 By the Corporation**

- (1) The Corporation shall be required to obtain and maintain, to the extent obtainable, the following insurance, in one or more policies:
  - (a) Insurance against damage by fire and extended perils and such other perils as the Board of Directors may from time to time deem advisable insuring
    - (i) the property, excluding the units; and
    - (ii) personal property owned by the Corporation, but not including furnishings, furniture, or other personal property supplied or installed by the owners;

in an amount equal to the full replacement cost of such real and personal property without deduction for depreciation, which policy may be subject to a loss deductible clause.

- (b) insurance against damage by fire and extended perils and such other perils as the Board of Directors may from time to time deem advisable, insuring the units including all improvements made to the units by the Declarant in accordance with its architectural plans and specifications, notwithstanding that some of such improvements may have been made after registration of the Declaration and the Description, but excluding any improvements made by the owners thereof, in an amount equal to the full replacement costs of such units without deduction for depreciation;
- (c) public liability and property damage insurance insuring the liability of the Corporation with limits to be determined by the Board of Directors, but in no event for less than One Million Dollars (\$1,000,000.00) and without right of subrogating as against the Corporation, its manager, agents, servants, and employees, and as against the owners, and any member of the household or guests or any owner or occupant of a unit; and
- (d) boiler and machinery insurance to the extent required as the Board of Directors may from time to time deem advisable.

(2) Such policy or policies of insurance as required by paragraphs (a) and (b) of subsection (1) hereof, shall insure the interest of the Corporation and the owners from time to time as their respective interests may appear, with mortgagee endorsements, which mortgagee endorsements shall be subject to the provisions hereof, and all such policy or policies of insurance shall contain the following provisions:

- (i) that loss shall be payable to the Insurance Trustee; provided that where the amount receivable from an Insurer for any loss arising out of any one occurrence does not exceed Five Thousand Dollars (\$5,000.00), loss shall be payable to the Corporation and not the Insurance Trustee;
- (ii) waivers of subrogation against the Corporation, its manager, agents, employees and servants and owners and any member of the household of any owner or occupant of a unit, except for arson and fraud;
- (iii) that such policy or policies of insurance shall not be cancelled or substantially modified without at least sixty days prior written notice to all parties whose interests appear thereon, and to the Insurance Trustee;

- (iv) waivers of any defence based on co-insurance or of invalidity arising from the conduct or any act or omission of any insured;
- (v) all policies of insurance (Insuring the liability of the Condominium Corporation) shall provide that the same shall be primary insurance in respect of any other insurance carried by the unit owner;
- (vi) a waiver of the insurer's and/or insurer's' option to repair, rebuild or replace in the event that after damage the government of the property by the Act is terminated pursuant to Clause 9.01 of this Declaration.

#### **10.02 General Provisions**

- (a) Prior to obtaining any policy or policies of insurance under clause 10.01 of this Section 10, or any renewal or renewals thereof, or at such time as the Board of Directors may deem advisable, the Board of Directors shall obtain an appraisal from an independent qualified appraiser of the full replacement cost of the property for the purpose of determining the amount of insurance to be effected pursuant to clause 10.01 of this Section 10 and the cost of such appraisal shall be a common expense.
- (b) The Corporation, its Board of Directors, and its Officers shall have the exclusive right, on behalf of itself and as agents for the owners, to adjust any loss and settle all claims with respect to all insurance placed by the Corporation, and to give such releases as are required, and any claimant, including the owner of a damaged unit, shall be bound by such adjustment; provided, however, that the Board of Directors may in writing, authorize an owner to adjust any loss to its unit with an Insurer.
- (c) No mortgage may be placed against any unit unless the mortgagee agrees to waive any contractual or statutory provision giving the mortgagee the right to have proceeds of any insurance policy or policies applied on account of the mortgage and thereby prevent application of the proceeds of any insurance policy or policies towards the repair of the property pursuant to the provisions of this Declaration. This paragraph (c) shall be read without prejudice to the right of any mortgagee to exercise the right of an owner to vote or to consent, if the mortgage itself contains a provision giving the mortgagee that right, and also to the right of any mortgagee to receive the proceeds of any insurance policy, if the property is not repaired.

- (d) A certificate of all insurance policies and endorsements thereto shall be issued as soon as possible to each owner and mortgagee; renewal certificates or certificates of new insurance policies shall be furnished to each owner and mortgagee not later than ten days before the expiry of any current insurance policy. The master policy for any insurance coverage shall be kept by the Corporation in its offices available for inspection by an owner or mortgagee on reasonable notice to the Corporation.
- (e) 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 loss shall be payable in any manner other than as provided in this Declaration.
- (f) Where the Corporation, instead of the Insurance Trustee, receives any proceeds of Insurance pursuant to sub-paragraph (i) of paragraph (2) of clause 10.01 of this Section 10, the proportion of such proceeds attributable to damage to any unit or units shall be held in trust for the owner or owners of such unit or units and, at the discretion of the Board of Directors, may be applied by the Corporation to the repair of such unit or units or may be paid to such owner or owners subject at all times to the interest, if any, of the mortgagee.
- (g) Where any insurance proceeds have been paid to an owner for the purpose or effecting repairs to his unit, then such owner shall effect such repairs within two months of such payment or within such further period of time as the Board of Directors of the Corporation may permit, and it shall furnish the Corporation with evidence that such repairs have been completed in accordance with Section 8 of this Declaration.

### **10.03 By the Owner**

- (a) Each unit owner may obtain and maintain its own insurance on any additions or improvements made by the owner to its unit and for furnishings, fixtures, equipment, decorating and personal property and chattels of the owner contained in its unit and its personal property and chattels stored elsewhere on the property, including its automobile or automobiles, and for the loss of use and occupancy of its unit in the event of damage, which policy or policies of insurance shall contain waivers of subrogation against the Corporation, its manager, agents, employees and servants, and against the other owners and any members of their



household or any owner or occupant of another unit, except for arson and fraud.

- (b) Each owner may obtain and maintain its own public liability insurance covering any liability of the owner with regard to the property and its unit pursuant to this Declaration to the extent not covered by any public liability and property damage insurance obtained by the Corporation.

## **11 INSURANCE PROCEEDS**

### **11.01 Insurance Trustee**

The Board of Directors on behalf of the Corporation shall enter into an agreement with an Insurance Trustee which shall be a Trust Company authorized to carry on business in Nova Scotia and having a capital surplus and undivided profits of at least One Million Dollars (\$1,000,000.00) or which shall be a Chartered Bank, which agreement shall, without limiting its generality, provide the following:

- (a) the receipt by the Insurance Trustee of any proceeds of insurance payable to the Corporation where such proceeds exceed Five Thousand Dollars (\$5,000.00);
- (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.

In the event that the Board of Directors is unable to enter into such agreement with such Trust Company, or such Chartered Bank, by reason of their refusal to act, the Board of Directors may enter into such Agreement with such other corporation authorized to act as a Trustee, as in its discretion the Board of Directors may deem advisable.

The Corporation shall pay the fees and disbursements of any Insurance Trustee and any fees and disbursements shall constitute a common expense.

### **11.02. Distribution of Insurance Proceeds by Insurance Trustee**

In the event that:

- (a) the Corporation is obligated to repair any unit insured under sub-paragraph (b) of paragraph 1 of clause 10.01 of Section 10 of this

Declaration, in accordance with the provisions of Section 9 hereof, the Insurance Trustee shall hold all proceeds for the Corporation and shall disburse the same in accordance with the provisions of the Insurance Trust Agreement, in order to satisfy the obligation of the Corporation to make such repairs;

- (b) there is no obligation by the Corporation to repair any unit in accordance with the provision of Section 9 hereof and there is termination in accordance with the provisions of Section 23 of the Act, the Insurance Trustee shall hold all proceeds for the owners in the proportion of their respective interests in the common elements and shall pay such proceeds to the owners in such proportions, upon registration of a notice of termination by the Corporation;
- (c) Where the Board of Directors in accordance with the provisions of subsection (1) of Section 23 of the Act determines that there has not been substantial damage to the extent that the cost of repairs would be twenty-five percent (25%) of the value of the building immediately prior to the occurrence, the Insurance Trustee shall hold all proceeds for the Corporation and the owners whose units have been damaged, and shall disburse such proceeds for the benefit of the Corporation and the owners whose units have been damaged, as to their respective interests may appear in accordance with the provisions of the Insurance Trust Agreement in order to satisfy the respective obligations to make repairs pursuant to the provisions of Section 8 of this Declaration.

Notwithstanding anything to the contrary In this Declaration, any proceeds payable by an Insurance Trustee to an owner, in accordance with the provisions of paragraph (b) of this clause 11.02 or Section 11 of this Declaration, shall be subject to payment in favour of any mortgagee or mortgagees to whom such loss is payable In such policy or policies of insurance and in satisfaction of the amount due under any liens registered by the Corporation against such unit.

## **12 INDEMNIFICATION**

### **12.01 Indemnity by Owner**

Each owner 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 any act or omission of such owner, its family or any member thereof, any other occupants of its unit or any guests, invitees or licensees

of such owner or occupant to or with respect of the Common Elements and/or all other units, except for any loss, costs, damages, injury or liability caused by an insured (as defined in any policy or policies of insurance) and insured against by the Corporation.

Any sums of money to be paid by an owner to the Corporation pursuant to this clause 12.01 of Section 12 shall include any legal or collection costs incurred by the Corporation in order to collect such sums of money. All such sums of money shall bear interest at such rate of interest as the Board of Directors of the Corporation may decide upon. The Corporation may collect such sums of money in such instalments as the Board of Directors may decide upon which instalments shall be added to the monthly contribution towards the common expenses of such owner, after receipt of notice from the Corporation thereof. All payments pursuant to this clause 12.01 are deemed to be additional contributions towards the common expenses and are recoverable as such.

### **12.02 Indemnity by Corporation**

The Corporation shall indemnify and save harmless the owner of each unit from and against any loss, costs, damages, injury or liability whatsoever which may be suffered or incurred by each owner, its family or any member thereof, any other occupants of its unit or any guests, invitees or licensees of such owner or occupants, resulting from or caused by the negligence or wrongful act or omission of the Corporation, its manager, agents, servants, employees or independent contractors, or for damage done to the unit substantially resulting from the repair or maintenance by the Corporation of the Common Elements; provided that, notwithstanding anything to the contrary in this Declaration, each owner agrees to look solely to the proceeds received from the Insurer or Insurers of the public liability and property damage insurance of the Corporation in the event of such loss, costs, damage, injury or liability.

## **13 TERMINATION**

### **13.01 Management after Termination**

In the event that sale of the property or any part of the Common Elements or termination of the government of the property by the Act is authorized, then the Board of Directors of the Corporation may authorize any procedures, rules and regulations and any other matters deemed necessary to complete such sale or termination and to manage the property pending such completion.

## **14 EXPROPRIATION**

### **14.01 Expropriation in Whole of the Property**

If the whole of the property is expropriated, the claim for compensation shall be negotiated and settled by the Board of Directors, whether or not proceedings are necessary. The compensation received from the expropriating authority, less expenses incurred in obtaining compensation, if any, shall be distributed among the owners in proportion to their respective interests in the common elements.

Notwithstanding the above provisions in this clause 14.01, each owner shall have its own separate right to negotiate and settle its personal compensation for additions, alterations or improvements made by the owner to its unit after registration of this Declaration, the cost of moving and other similar items personal to each owner.

### **14.02 Part of Common Elements Only Taken**

If no units are taken by the expropriation and the expropriation includes only part of the Common Elements, then compensation shall be negotiated and settled by the Board of Directors, whether or not proceedings are necessary. The Board of Directors may deal with the compensation in any one or more of the following ways:

- (a) to distribute the compensation among the owners in proportion to their respective Interests In the Common Elements; or
- (b) to retain the compensation as an asset of the Corporation; or
- (c) to use the compensation to add to, change or alter the Common Elements; or
- (d) where the part of the Common Elements expropriated includes Common Elements, the exclusive use or which is annexed to one or more specified units by virtue of this Declaration, the Board of Directors may deal with the compensation received in respect of such exclusive-use Common Elements by distributing such compensation among the owners whose exclusive-use elements have been taken or by applying such compensation to the replacement of such exclusive-use Common Elements.

### **14.03 Partial Expropriation Including Units**

In the event of a partial expropriation which includes some units, each owner whose unit is expropriated shall deal with the expropriating authority with regard to

compensation relating to its unit and interest in the Common Elements. The compensation for any damage suffered by the remaining owners whose units are not expropriated shall be negotiated and settled by the Board of Directors of the Corporation, whether or not proceedings are necessary; and the compensation so received from the expropriating authority, less expenses involved, if any, in obtaining such compensation, shall be distributed proportionately among such remaining owners, except as required in connection with the restoration of the balance of the property.

The cost of restoring the balance of the property so that it may be used shall be determined by the Corporation, and the Corporation shall negotiate with the expropriating authority with regard to compensation for this expenditure, and shall, unless the government of the property by the Act is terminated within thirty (30) days of the receipt of such compensation, reconstruct using the funds received for such reconstruction.

#### **14.04 Reconstitution of Scheme of Condominium after Reconstruction**

In the event of reconstruction as provided in clause 9.02 of Section 9 of this Declaration, all of the owners and other persons having an interest in or encumbrance against any part of the property agree to do all that is reasonably necessary and sign such documents and so vote on all occasions as may be necessary to reconstitute the scheme of the condominium property as follows;

(a) *Payment for shares or assets of the Corporation*

Any owners whose units have been wholly taken or rendered completely unusable shall have no further interest in the Common Elements or the property itself but shall be entitled only to receive the value of their share of the assets of the Corporation as determined by their percentage interest in the Common Elements. Said assets are to be valued at book value and in this respect any asset shall be deemed to have a book value of cost less the maximum allowable depreciation that would be allowed on such asset under the Income Tax Act (Canada) then in force.

(b) *Determination of value of remaining portion*

The value of the portion of any unit partially expropriated or rendered partially unusable by the expropriation and/or reconstruction, together with the interest in the Common Elements of such partial unit shall be determined, and if it cannot be determined, shall be arbitrated. The owners

of portions so taken shall receive the appropriate portion of the payment provided by paragraph (a) of this clause 14.04.

(c) *Reduction of interest in Common Elements*

The percentage contribution towards common expenses and the percentage interest in the Common Elements of all units and portions of units that are taken by the expropriating authority shall thereafter be dissolved and ended.

(d) *Remaining interests expended*

The remaining interests in the Common Elements and the percentage obligation towards common expenses shall be determined by calculating this percentage as a percentage of the total percentages left in the property after its reconstruction, and shall be increased accordingly.

## 15 GENERAL MATTERS AND ADMINISTRATION

### 15.01 Rights of Entry

- (a) The Corporation, or any person authorized by the Corporation shall be entitled to enter any unit or any part of the Common Elements over which any owner has the exclusive use and possession thereof, at all reasonable times and upon giving reasonable notice, for the purpose of making inspections, adjusting losses, making repairs, correcting any condition which violates the provisions of any insurance policy or policies, remedying any condition which might result in damage to the property or carrying out any duty imposed upon 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 any part of the Common Elements over which any owner has the exclusive use and possession thereof, or for the purpose of correcting any condition which might result in damage or loss to the property.
- (c) In the event of an emergency, if an owner is not personally present to grant entry to its unit, the Corporation, by its servants or agents, may enter upon such unit without rendering It liable for any claim or cause of action for trespass or damages by reason thereof, provided that it exercises reasonable care.

- (d) The Corporation shall not be liable to the owner of any unit for damages for any interference or inconvenience caused by repairs or any other work permitted by this Article 15.01 provided such repairs or work are carried out as expeditiously as reasonably possible and provided further that such damages are not caused by the negligent or wilful acts of the Corporation, its servants, agents and workmen.

#### **15.02 Units: Subject to Declaration, By-laws, Common Element Rules and Rules and Regulations**

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 this Declaration, the By-laws, including the Common Element Rules, and any other rules and regulations. 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 this Declaration, the By-laws, including the Common Element Rules, and any other rules and regulations, 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 are recited and stipulated in full in each and every such deed or transfer or lease or occupation agreement.

#### **15.03 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 the provisions of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event all the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

#### **15.04 Waiver**

The failure to take action to enforce any provision contained in the Act, this Declaration, the By-laws, including the Common Element Rules or any other rules and regulations of the Corporation, irrespective of the number of violations or breaches which may occur, shall not constitute a waiver of the right to do so thereafter, nor be deemed to abrogate or waive any such provision.

### **15.05 Resolution of Conflict of Provisions**

In the event of a conflict between the provisions of the Act, this Declaration or the By-laws, including the Common Element Rules, the provisions of the Act shall govern; subject to the Act, the provisions of this Declaration shall govern; subject to the Act and this Declaration, the provisions of the By-laws shall govern; the provisions of the Common Element Rules shall only be valid so long as they are not in conflict with anything in the Act, this Declaration or those portions of the By-laws excluding the Common Element Rules

### **15.06 Notice**

Any notice, direction or other instrument required or permitted to be given hereunder shall be in writing and shall be sufficiently given if served personally by delivering the same to the party to be served or to any officer of the party to be served, or may be given by ordinary mail, postage prepaid, addressed to the Corporation in the care of its recognized agent, to each owner at its respective unit or at such other address as is given by the owner to the corporation for the purpose of notice, and to each mortgagee who has notified his interest to the Corporation at such address as is given by each mortgagee to the Corporation for the purpose of notice and if mailed as provided for in this Declaration the same shall be deemed to have been received and to be effective on the first business day following the day on which it was mailed. Any owner or mortgagee may change its address for service by notice given to the Corporation in the manner aforesaid.

### **15.07 Construction of Declaration**

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

### **15.08 Headings**

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



### 15.09 Effective Date

This Declaration shall take effect upon acceptance for registration.

DATED at Halifax, in the County of Halifax, Province of Nova Scotia, this 9<sup>th</sup> day of June, 1987.

IN WITNESS WHEREOF United Equities Limited, the Declarant, has caused these presents to be properly executed and its corporate seal to be hereunto affixed by its proper officers in that behalf duly authorized.

Executed in the presence of:

UNITED EQUITIES LIMITED

(sgd) Michael Kennedy

per: (sgd) J Keith Allen  
President

Per: (sgd) Henry B Rhude  
Secretary

### CONDOMINIUM ACT

Accepted for registration this 8<sup>th</sup> day of July, 1987 at the hour of 10:00 a.m.

(sgd) Wendy Jordan  
Deputy Registrar of Condominiums

CANADA  
PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX SS)

On this 29<sup>th</sup> day of June, 1987, before me, the subscriber, personally came and appeared Michael Kennedy, a subscribing witness to the foregoing Declaration, who having been by me duly sworn, made oath and said that UNITED EQUITIES LIMITED, one of the parties thereto, caused the same to be properly executed and its corporate seal to be thereunto affixed by its proper officers in that behalf duly authorized in his presence.

(sgd) Brian MacLellan  
A Barrister of the Supreme Court of Nova Scotia

## Schedule A

LOT F-2-C  
"SUMMER GARDENS"  
SPRING GARDEN ROAD, HALIFAX, NOVA SCOTIA

ALL that certain lot of land on the southern side of Spring Garden Road in the City of Halifax, Province of Nova scotia shown as Lot F-2-C on a plan (Servant, Dunbrack, McKenzie & MacDonald Limited Plan Number 71-117-0) showing Lot F-2-C and Boundaries of Units 1 and 2, Level 1 "Summer Gardens" surveyed for United Equities Limited (Sheet 1 of 4) signed by Michael S. Tanner, N.S.L.S. dated June ,5th, 1987 and described as follows :

BEGINNING on the southern street line of Spring Garden Road at its intersection with the western street line of summer Street said point of intersection being distant 17.12 feet on a bearing of S 07° 01' 21" W, from Nova Scotia Coordinate Monument Number 4822;

THENCE S 21° 04' 42" E, 330.31 feet along the western street line of Summer street to its intersection with the northern street line of College Street;

THENCE S 68° 46' 50" W, 198.00 feet along the northern street line of College Street to the southeastern corner of Lot F-2A;

THENCE N 21° 04' 42" W, 330.65 feet along the eastern boundary of Lot F-2A and the eastern boundary of lands owned by Halifax Medical Arts Building Limited (Book 1076, Page 1201) to the southern street line of Spring Garden Road;

THENCE N 68° 52' 49" E, 198.00 feet along the southern street line of Spring Garden Road to the place of beginning.

CONTAINING 65,435 square feet.

ALL bearings are Nova Scotia Coordinate Survey System Grid Bearings and are referred to Central Meridian, 64° 30' West.

THE herein described Lot F-2-c being and intended to be the same lands as defined as Lot F-2-C on a plan prepared by Servant, Dunbrack, McKenzie & MacDonald Limited (Plan Number 14-60-C) entitled "Plan of survey of Lot F-2-A Consolidation of Lots 10 and 11 and Lot F-2-C Consolidation of Lots 1 to 9 incl. Lands Conveyed to United Equities Limited, Spring Garden Road, College Street and Summer Street" signed by Granville Leopold, N.S.L.S. and dated January 30th, 1985.

(sgd) Michael S. Tanner  
Michael s. Tanner, N.S.L.S.  
Halifax, Nova Scotia  
June 5th, 1987

## Schedule B

### Consent of Encumbrancers

The undersigned, being all persons having registered encumbrances against the land or interests appurtenant to the land described in Schedule "A" attached to this Declaration, hereby acknowledge having read the Declaration and consent to the registration of this Declaration.

#### Type of Encumbrance

#### Encumbrancer

Debenture

The Bank of Nova Scotia

Dated at Toronto, Ontario, this 23<sup>rd</sup> day of June 1987

IN WITNESS WHEREOF the party hereto has caused its corporate seal to be hereunto affixed, duly attested to by the signatures of its properly authorized officers the day and year first above written.

THE BANK OF NOVA SCOTIA

per: (sgd) M. Penney  
Senior Vice President

per: (sgd) L. M. Boyd  
Assistant Secretary

## Schedule C

	Unit #	Apt. #	% of Common Interest	% of Common Expenses	% of Voting Rights
Level 1	1	101	1.62601	1.62601	1.62601
	2	102	.81301	.81301	.81301
Level 2	1	201	.81301	.81301	.81301
	2	202	.81301	.81301	.81301
	3	203	.81301	.81301	.81301
	4	204	.81301	.81301	.81301
	5	205	.81301	.81301	.81301
	6	206	.81301	.81301	.81301
Level 3	1	301	.81301	.81301	.81301
	2	302	.81301	.81301	.81301
	3	303	.81301	.81301	.81301
	4	304	.81301	.81301	.81301
	5	305	.81301	.81301	.81301
	6	306	.81301	.81301	.81301
Level 4	1	401	.81301	.81301	.81301
	2	402	.81301	.81301	.81301
	3	403	.81301	.81301	.81301
	4	404	.81301	.81301	.81301
	5	405	.81301	.81301	.81301
	6	406	.81301	.81301	.81301
Level 5	1	501	.81301	.81301	.81301
	2	502	.81301	.81301	.81301
	3	503	.81301	.81301	.81301
	4	504	.81301	.81301	.81301
	5	505	.81301	.81301	.81301
	6	506	.81301	.81301	.81301
Level 6	1	601	.81301	.81301	.81301
	2	602	.81301	.81301	.81301
	3	603	.81301	.81301	.81301
	4	604	.81301	.81301	.81301
	5	605	.81301	.81301	.81301
	6	606	.81301	.81301	.81301
Level 7	1	701	.81301	.81301	.81301
	2	702	.81301	.81301	.81301
	3	703	.81301	.81301	.81301
	4	704	.81301	.81301	.81301
	5	705	.81301	.81301	.81301
	6	706	.81301	.81301	.81301

	Unit #	Apt. #	% of Common Interest	% of Common Expenses	% of Voting Rights
Level 8	1	801	.81301	.81301	.81301
	2	802	.81301	.81301	.81301
	3	803	.81301	.81301	.81301
	4	804	.81301	.81301	.81301
	5	805	.81301	.81301	.81301
	6	806	.81301	.81301	.81301
Level 9	1	901	.81301	.81301	.81301
	2	902	.81301	.81301	.81301
	3	903	.81301	.81301	.81301
	4	904	.81301	.81301	.81301
	5	905	.81301	.81301	.81301
	6	906	.81301	.81301	.81301
Level 10	1	1001	.81301	.81301	.81301
	2	1002	.81301	.81301	.81301
	3	1003	.81301	.81301	.81301
	4	1004	.81301	.81301	.81301
	5	1005	.81301	.81301	.81301
	8	1008	.81301	.81301	.81301
Level 11	1	1101	.81301	.81301	.81301
	2	1102	.81301	.81301	.81301
	3	1103	.81301	.81301	.81301
	4	1104	.81301	.81301	.81301
	5	1105	.81301	.81301	.81301
	6	1106	.81301	.81301	.81301
Level 12	1	1201	.81301	.81301	.81301
	2	1202	.81301	.81301	.81301
	3	1203	.81301	.81301	.81301
	4	1204	.81301	.81301	.81301
	5	1205	.81301	.81301	.81301
	6	1208	.81301	.81301	.81301
Level 13	1	1301	.81301	.81301	.81301
	2	1302	.81301	.81301	.81301
	3	1303	.81301	.81301	.81301
	4	1304	.81301	.81301	.81301
	5	1305	.81301	.81301	.81301
	6	1306	.81301	.81301	.81301
Level 14	1	1401	.81301	.81301	.81301
	2	1402	.81301	.81301	.81301
	3	1403	.81301	.81301	.81301
	4	1404	.81301	.81301	.81301
	5	1405	.81301	.81301	.81301
	6	1406	.81301	.81301	.81301

	Unit #	Apt. #	% of Common Interest	% of Common Expenses	% of Voting Rights
Level 15	1	1501	.81301	.81301	.81301
	2	1502	.81301	.81301	.81301
	3	1503	.81301	.81301	.81301
	4	1504	.81301	.81301	.81301
	5	1505	.81301	.81301	.81301
	6	1506	.81301	.81301	.81301
Level 16	1	1601	.81301	.81301	.81301
	2	1602	.81301	.81301	.81301
	3	1603	.81301	.81301	.81301
	4	1604	.81301	.81301	.81301
	5	1605	.81301	.81301	.81301
	6	1606	.81301	.81301	.81301
Level 17	1	1701	.81301	.81301	.81301
	2	1702	.81301	.81301	.81301
	3	1703	.81301	.81301	.81301
	4	1704	.81301	.81301	.81301
	5	1705	.81301	.81301	.81301
	6	1706	.81301	.81301	.81301
Level 18	1	1801	.81301	.81301	.81301
	2	1802	.81301	.81301	.81301
	3	1803	1.13821	1.13821	1.13821
	4	1804	1.30081	1.30081	1.30081
	5	1805	.81301	.81301	.81301
Level 19	1	1901	.81301	.81301	.81301
	2	1902	.81301	.81301	.81301
	3	1903	.81301	.81301	.81301
	4	1904	.81301	.81301	.81301
	5	1905	.81301	.81301	.81301
	6	1908	.81301	.81301	.81301
Level 20	1	2001	.81301	.81301	.81301
	2	2002	.81301	.81301	.81301
	3	2003	.81301	.81301	.81301
	4	2004	.81301	.81301	.81301
	5	2005	1.62601	1.62601	1.62601
Level 21	1	2101	.81301	.81301	.81301
	2	2102	.81301	.81301	.81301
	3	2103	.81301	.81301	.81301
	4	2104	.81301	.81301	.81301
	5	2105	.81301	.81301	.81301
	6	2106	<u>.81301</u>	<u>.81301</u>	<u>.81301</u>
<b>Total</b>			<b><u>100.00000</u></b>	<b><u>100.00000</u></b>	<b><u>100.00000</u></b>

# Amendment to Declaration

made pursuant to the *Condominium Act*  
Statutes of Nova Scotia, 1989, Chapter 85, as amended for

## Halifax County Condominium Corporation No. 130

WHEREAS Halifax County Condominium Corporation No. 130 wishes to amend its Declaration;

AND WHEREAS all owners voted in favour of this Amendment at a meeting duly called for that purpose on December 13, 2004.

NOW THEREFORE Halifax County Condominium Corporation No. 130 declares as follows:

1. Delete section 5.01 of the Declaration in its entirety and replace with the following:

"5.01 The Corporation may, by a vote of Members who own collectively sixty percent (60%) of the Common Elements, make By-laws:

- (a) governing the management of the property;
- (b) governing the use of the units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the Common Elements and other units;
- (c) governing the use of the Common Elements;
- (d) regulating the maintenance of the units and Common Elements;
- (e) governing the use and management of the assets of the Corporation;
- (f) respecting the Board of Directors of the Corporation;
- (g) specifying duties of the Corporation;
- (h) regulating the assessment and collection of contributions towards the Common Expenses;
- (i) respecting the conduct generally of the affairs of the Corporation."

2. **Section 7 - Modifications of Common Elements and Assets** - Retain this section, but amend the reference to the section to read Section 11 (2)(j).

3. **Rental of Units** - The rental of units of duration of less than thirty (30) days are prohibited.

4. **Duties of the Corporation** - The duties of the Corporation are to manage the property and any assets acquired by the corporation in connection with the use and enjoyment of the property, to prepare budgets and collect common expenses with a view to maintaining financial stability and to provide such services to the owners as are specified in the Act, the Declaration or the By-laws. Without limiting the generality of the foregoing, the duties of the Corporation shall include the following:

- (a) to collect and receive all contributions towards the common expenses from the owners, or from any mortgagee if the same are collected by a mortgagee and deposit the same in a separate account with a chartered bank, loan or trust company;
- (b) to keep accurate accounts of the financial transactions involved in the performance of its duties and the exercise of its rights and send to each owner annual audited statements with respect thereto;
- (c) Within ninety (90) days after the end of each fiscal year to deliver or mail to each owner, and to each mortgagee who has notified his interest to the Corporation a copy of the Corporation's audited financial statements for the preceding fiscal year, prepared and certified by the auditors of the Corporation and signed by two directors;
- (d) For the purpose of complying with the provisions of the Act and the Declaration with respect to insurance, to do all acts and things and to take out and maintain such insurance as the Board may from time to time deem advisable;
- (e) To control, manage and administer the common elements for the benefit of all the owners and for the benefit of the entire corporation, and to maintain such staff as may be required to carry- out at all times promptly and efficiently its duties in such management of the property;
- (f) To repair and maintain the common elements in accordance with the provisions of the Act, the Declaration and the Bylaws of the Corporation;



- (g) To keep the common elements clean and suitably decorated and to maintain the same in appearance, including, without limiting the generality of the foregoing, dipping, edging, mowing and such similar gardening and landscaping services, but specifically excluding, nevertheless, the removal of ice and snow from the limited common elements appurtenant to the units;
- (h) To purchase public utilities for use in the common elements as well as basic T.V., cable and water for the units;
- (i) To effect compliance by the owners of units with the Act, the Declaration and the Bylaws;
- (j) To obtain and maintain fidelity bonds or insurance where obtainable, in such amounts as the Board may deem reasonable, for such officers and directors or employees as are authorized to receive or disperse any funds on behalf of the Corporation;
- (k) The Corporation has caused a Reserve Fund Study respecting the Corporation to be completed in the manner and form, containing such information, opinions and recommendations and prepared by such person or a member of such class of persons as prescribed by the regulations, and the study was filed with the Registrar on the 30th day of January, 2002;
- (l) The Corporation shall conduct an update of the Reserve Fund Study at five (5) year intervals or at any time that there is significant change in the assets of the Corporation;
- (m) The Corporation, shall, within each ten (10) year period cause another Reserve Fund Study to be completed and filed with the Registrar no later than thirty (30) days after it is completed.

5 **Powers of the Corporation** - The powers of the Corporation include, but shall not be limited to the following:

- (a) All things reasonably necessary for the performance of the duties under the Act, the Declaration, the By-laws of the Corporation and the Common Element Rules and generally to manage the property and the assets of the Corporation; and
- (b) Employing and dismissing any and all personnel necessary to carry out the duties and the powers of the Corporation and for the maintenance and operation of the common elements; and

- (c) Adoption and amendment of rules and regulations concerning the operation and the use of the property; and
- (d) Employing a general manager, at a compensation to be determined by the Board, to perform such duties and services as the Board shall authorize subject to ratification by a By-law of the Corporation; and
- (e) Obtaining and maintaining fidelity bonds or insurance for any manager where deemed necessary by the Board, in such manner as the Board may deem reasonable; and
- (f) Investing reserves held by the corporation provided that such investments shall be those permitted by the *Trustees Act*, R.S.N.S. 1967, Chapter 317 and amendments thereto and convertible into cash in not more than ninety (90) days; and
- (g) Settling, adjusting, compromising or referring to arbitration any claim or claims which may be made upon or which may be asserted on behalf of the Corporation; and
- (h) Borrowing such amounts of money as in its discretion is necessary in order to protect, maintain, preserve or ensure the due and continued operation of the property in accordance with the Act, the Declaration and By-laws and securing the repayment of such moneys borrowed by it, in way of mortgage, pledge or charge of any asset owned by the Corporation and to add the repayment of such loan to the common expenses, subject to the sanction of a By-Law of the Corporation previously passed at an annual or general meeting; and
- (i) Purchasing, hiring or otherwise acquiring property, either directly or through an agent of the Corporation, for the use by the unit owners in connection with their enjoyment of the common elements, and for use in the management and maintenance of the common elements and the property, except the units; and
- (j) Making any agreement with any unit owner or occupier of a unit for the provision of amenities or services or payment of the same; and
- (k) Granting to any unit owner the right to exclusive use and enjoyment of any part of the common elements or special privileges in respect thereof and to revoke any grant so provided on reasonable notice; and

- (l) Entering into contracts for the repair and maintenance on a continuing or periodic basis of any part or parts of the common elements for services to the common elements or of installations contained in the units and subject to easements for services to the common elements or other units but no such contract shall extend to more than two (2) years unless approved by a By-law.

## 6. Board of Directors:

- (a) **Number.** The affairs of the Corporation shall be managed by the Board of Directors and until changed by By-law the number of members of the Board of Directors of the Corporation shall be seven (7);
- (b) **Quorum.** A majority of the Members of the Board shall constitute a quorum at any meeting of the Board of Directors. Notwithstanding vacancies the remaining directors may exercise all the powers of the Board so long as a quorum of the Board remains in office;
- (c) **Qualifications of Members of the Board.** Any person who is a member of the Corporation, or any representative of a mortgagee who has possession of one or more units is qualified to be elected as a director of the Corporation provided that each director shall have attained the age of majority. If a unit has more than one owner, only one such owner may be a member of the Board at any one time;
- (d) **Election of Directors.** At each annual meeting of the Corporation, the members shall elect seven (7) directors, including among their number a President, Vice-President, Secretary and Treasurer. Not less than sixty (60) days prior to the annual meeting the Board shall appoint a member of the Corporation, who will serve as Chair of the Nominating Committee:
  - i. The Chair of the Nominating Committee will appoint one or two other members of the Corporation to the committee, one of whom shall be a retiring director. The committee will act with the authority of the Board to identify and nominate a proposed new slate of directors at the annual meeting. The proposed slate shall be first communicated to all members at the time of notice of the annual meeting;
  - ii. Notwithstanding the authority of the committee to present a proposed slate, there shall still be a call for further nominations

from the floor during the annual meeting. If this process results in more than seven (7) nominated directors, there will be an immediate vote in accordance with the stipulations of Article V of the By-law, whereby each member will indicate a choice of seven (7) from the nominees presented, and the seven (7) nominees with the most votes will be deemed elected;

- (e) **Term of Directors.** All directors shall hold office for one (1) year and shall be eligible for re-election to any office. Notwithstanding that their term of office may have expired, all directors may continue to act until their successors are elected;
- (f) **Removal of Directors.** The members may by resolution passed by a majority vote at a general meeting called for such purpose, remove any director before the expiration of the term of office, and may elect a replacement to hold office for the remainder of the term;
- (g) **Filling of Vacancies.** Any vacancy occurring in the Board of Directors may be filled for the remainder of the term of office of the retired director by the remaining directors at a meeting of the Board;
- (h) **Calling of Meetings.** *Repealed 2023-04-15 - accepted 2023-06-21.*
- (i) **Regular Meetings.** *Repealed 2023-04-15- accepted 2023-06-21.*
- (j) **Adjourned Meeting.** At any adjourned meeting, any business which might have been transacted at the meeting originally called may be transacted without further notice;
- (k) **Vote.** At meetings of the Board of Directors, all matters shall be decided by majority vote, provided that the Chairman of the meeting shall have a casting as well as an original vote, in the case of an equality of votes;
- (l) **Interest of Directors in Contracts.** No director shall be disqualified by their office from contracting with the Corporation nor shall any contract or arrangement entered into by or on behalf of the Corporation with any director or any firm or company in which any director is in any way interested be voided. nor shall any director so contracting or being so interested be liable to the Corporation for any profit realized by any such contract or arrangement, by reason of such director holding such office or by reason of the fiduciary relationship, thereby established; provided that the provisions of paragraph 12 of this Article III are complied with;

- (m) **Declaration of interest.** It shall be the duty of every director of the Corporation who is in any way, whether directly or indirectly, interested in a contract or agreement or proposed contract with the Corporation to declare such interest and to refrain from voting in respect thereto;
- (n) **Protection of Directors and Officers.** No director or officer of the Corporation shall be liable for the acts, neglect or default of any director or officer or for joining in any act for conformity or for any loss or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by order of the Board for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Corporation shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any of the moneys, securities or effects of the Corporation shall be deposited, or for any loss occasioned by an error in judgment or oversight on their part or for any other loss, damage or misfortune whatever shall happen in the execution of the duties of their office or in relation thereto unless the same shall happen through their own dishonest or fraudulent act or acts:
- (o) **Indemnity of Directors and Officers.** Every director or officer of the Corporation and their heirs, executors, administrators and estate and effects respectively shall from time to time and at all times be indemnified and saved harmless out of the funds of the Corporation from and against:
- i. all costs, charges and expenses whatsoever which Such director or officer sustains or incurs in or about any action, suit or proceeding which is brought, commenced or prosecuted against them for or in respect of any act, deed, or thing whatsoever made, done or permitted by them in or about the execution of the duties of their office; and
  - ii. all other costs, charges and expenses which he properly sustains or incurs in or about or in relation to the affairs thereof, except for his own dishonest or fraudulent acts;
- (p) **Fidelity Bonds and Liability Insurance.** The Board may require that all directors, officers and employees of the Corporation, handling or responsible for the Corporation's moneys or securities shall furnish adequate fidelity bonds or liability insurance. The premiums on such bonds or insurance shall be paid by the Corporation.

## 7. Officers:

- (a) **Elected Officers.** At the first meeting of the members of the Corporation and at each subsequent annual meeting, a President, Vice-President, Secretary, and Treasurer shall be elected, all of whom shall be directors properly elected in accordance with Article III, paragraph 4. Any vacancy occurring in any such offices may be filled by the Board of Directors from among its members for the remainder of the term of office of the retiring officer. At any annual meeting, the retiring President, Vice-President, Secretary and Treasurer shall be eligible for re-election;
- (b) **Appointed Officers.** From time to time, the Board may appoint a General Manager as well as committees and such other officers as the Board may determine, including one or more assistants to any -of the elected or appointed officers. The officers so appointed may, but need not be members of the Board. Any officer whether elected or appointed, other than the President may hold more than one office in the Corporation;
- (c) **Term of Office.** In the absence of a written agreement to the contrary, the Board may remove, at its pleasure, any officer of the Corporation with the exception of the officers elected under Article III, paragraph 4 who may only be removed from office by a majority vote of the members of the Corporation at a general meeting;
- (d) **President.** The President, when present shall preside at all meetings of the Corporation and of the Board and shall be charged with the general supervision of the business and affairs of the Corporation. The President shall also have such other powers and duties as the Board may from time to time determine;
- (e) **Vice-President.** During the absence or the inability to act of the President, his powers and duties shall fall upon the Vice-President. If a Vice-President exercises any such power or duty, the absence of the President shall be presumed with reference thereto. The Vice-President shall also have such powers and duties as the Board may prescribe;
- (f) **General Manager.** The General Manager, if one be appointed, shall have the general management and direction of the Corporation's business and affairs and the power to appoint and remove any and all employees and agents of the Corporation not elected by the members or appointed by the Board and to settle the terms of their employment and their remuneration, subject,

nevertheless, to the authority of the Board and the supervision of the President. The General Manager need not be a director, a unit owner, a member of the Corporation or a person entitled to vote at meetings of the Corporation;

- (g) **Secretary.** The Secretary shall give or cause to be given all notices required to be given to the members, directors, auditors, mortgagees and all others entitled thereto; he shall attend at all meetings of the directors and of the members and shall enter or cause to be entered in books kept for that purpose, minutes of all proceedings at such meetings; and shall be the custodian of all books papers documents and other instruments belonging to the Corporation except those kept by the General Manager and the Treasurer, and he shall perform such other duties as may from time to time be prescribed by the Board;
- (h) **Treasurer.** The Treasurer shall keep or cause to be kept full and accurate books of accounts and accounting records in which shall be recorded all receipts and disbursements of the Corporation. The Treasurer shall have the care and custody of all funds and securities of the Corporation in such bank or trust company or trust companies or with such depository or depositories as the Board of Directors shall direct except to the extent delegated to an agent The Treasurer shall disburse the funds of the Corporation when necessary and proper, taking proper vouchers for such disbursements and shall render or cause to be rendered to the President and directors at the meetings of the Board of Directors or whenever they may require it, an account of all the transactions as Treasurer and of the financial position of the Corporation, shall prepare or cause to be prepared annual financial statements for all funds, shall prepare or cause to be prepared an annual budget for common area expenses, reserve funds and contingency funds and shall perform such other duties as may from time to time be prescribed by the Board of Directors except to the extent delegated to an agent;
- (i) **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 any officer to whom an assistant has been appointed may be exercised and performed by such assistant unless the Board otherwise directs;
- (j) **Compensation.** No compensation shall be paid to any officer or director of the Corporation for the performance of his duties as an officer or director unless such compensation is determined and approved by a general meeting

of the Corporation at which owners or mortgagees or any combination thereof entitled to vote with respect to 66 2/3 percent of the units are present in person or by proxy. This provision shall not preclude the Board of Directors from employing any director as an employee of the Corporation nor shall it preclude any director from entering into a contract with the Corporation for the management of the Corporation.

#### **8. Assessment and Collection of Contributions Towards the Common Expenses:**

- (a) **Assessment.** All expenses, charges and costs of maintenance or replacement of the common elements and any other expenses, charges or costs which the Board may incur or expend pursuant thereto shall be assessed by the Board and levied against the owners in the proportions in which they are required to contribute to the common expenses as set forth in the Declaration, The Board shall advise all owners promptly in writing of the amount of common expenses payable by each of them respectively and shall deliver copies of each budget on which such common expenses are based to all owners and mortgagees entered on the register;
- (b) **Annual Budget.** The Board shall, at least thirty (30) days prior to the commencement of each fiscal year, prepare a budget for the Corporation and determinably estimate the amount of common expenses for the next ensuing fiscal year. The Treasurer may be required to prepare and present a draft budget to the Board but the preparation of the draft budget shall not be the sole responsibility of the Treasurer, at least forty five (45) days prior to the commencement of each fiscal year. The Board shall allocate and assess such common expenses as set out in the budget for such period among the owners and mortgagees, according to the proportion in which they are required to contribute to the common expenses. In addition to all expenses, charges and costs in the maintenance, repair and replacement of the common elements and any other common expenses, charges or costs which the Board may incur or expend shall be included in the annual budget provisions for the following:
  - i. An Operational Fund which shall be used for the payment of common expenses; and
  - ii. A Reserve Fund which shall include moneys received to be accumulated in the Reserve fund as provided for in paragraph 4 of this Article VIII and to be used or expended for major maintenance items which occur less frequently than annually and for major items



of repair or replacement made necessary by damage, deterioration or obsolescence; and

iii. A Contingency Fund which shall be used and applied from time to time towards meeting deficits and such other common purposes as the Board may deem necessary.

- (c) **Contingency Fund.** Upon the purchase of each unit from the Declarant, or at any time thereafter at the request of the Corporation, each owner shall deposit with the Corporation, or as the Corporation may otherwise direct an amount equal to three (3) times the monthly assessment relating to each owner's unit for the year in which such deposit is requested. Such amount shall be held, together with the amounts similarly deposited by other unit owners, as a Contingency Fund for common expenses and shall be used and applied from time to time towards meeting the deficit and such other common expenses as the Corporation may deem necessary, but not amounts to be expended from the Reserve Fund;
- (d) **Reserve Fund.** The Corporation shall establish and maintain a Reserve Fund for major repair and replacement of the common elements and assets of the Corporation including, where applicable and without limiting the generality of the foregoing, roofs, exteriors of buildings, roads, sidewalks, sewers, heating, electrical and plumbing systems, elevators, laundry, recreational, parking facilities and any other items as specified in the Reserve Fund Study. The board shall assess and collect contributions from the owners in an amount that will result in the Reserve Fund amount achieving and maintaining at least the minimum amount recommended in the Reserve Fund Study. No part of the Reserve Fund shall be used except for the purposes for which the fund was established. In the event that, in any one year, the Reserve Fund is totally or substantially expended, the Board shall prepare succeeding budgets which provide for the restoration of the Reserve Fund over a period of no less than three (3) years and not exceeding five (5) years;
- (e) **Contingency and Reserve Funds Part of Common Elements.** The Contingency Fund and the Reserve Fund shall be deemed part of the common elements and, in the event of a sale by the owner, such owner shall not be entitled to any refund of the whole or any part of the contributions or deposits made from time to time by them to the Contingency Fund or the Reserve Fund, but all his interest in the unexpended portion of each of the said Funds, if any, shall be transferred

and enure to the purchaser of the unit with whom the owner will make any necessary adjustments;

- (f) **Copies of Budget and Notices of Assessment** A copy of the budget for the ensuing fiscal year together with a notice showing the amount assessed to each owner or such year for common expenses, must be given to each owner not less than 21 days after the beginning of each fiscal year by one of the following methods:
- a) personally or by delivery to the owner's residence as shown in the records of the Corporation;
  - b) by ordinary mail addressed to the owner at their home or address for mailing as shown in the records of the Corporation; or
  - c) by electronic message delivered to the owner's electronic address as shown in the records of the Corporation.

A notice delivered personally or to the owner's residence is deemed received when so delivered. A notice sent to the owner's electronic address is deemed delivered when sent. A notice sent by ordinary mail is deemed delivered on the second day following the day of mailing. Each owner shall be obliged to pay to the Corporation, or as the Corporation may in writing direct, the amount of such annual assessment as follows: one twelfth (1/12) of such assessment on the first day of each and every month next following the delivery of such notice of assessment;

*Amended 2023-04-15- accepted 2023-06-21*

Each owner shall, on or before the first day of the second month in each fiscal year, unless otherwise directed by the mortgagee for such unit, deliver to the Corporation, or as the Corporation may direct in the notice of assessment, twelve (12) post-dated cheques or suitable arrangements for electronic fund transfer covering the payments due by each owner during the ensuing twelve months and such cheques or suitable electronic transfer, shall be deposited as they become payable;

Until the annual budget for the ensuing year has been sent to each owner, each owner shall continue to pay each month an amount equal to the monthly installments payable by such owner under the annual budget for the preceding fiscal year;

- (g) **Revised Assessments.** If at any time during the course of any fiscal year the Board shall determine that the annual assessment of contributions are

inadequate by reason of a revision in the Board's estimates of either expenses or income, the Board shall prepare and cause to be delivered to each owner and to each mortgagee who has notified their interest to the Corporation a revised annual budget for the balance of the fiscal year. Thereafter, monthly contributions shall be determined and paid on the basis of such revised budget;

- (h) **Moneys on Deposit.** All moneys of the Corporation, except petty cash on hand or moneys invested, shall be kept on deposit in a chartered bank or trust company carrying on business in Nova Scotia;
- (i) **Conveyance of Unit.** No owner shall be liable for the payment of any part of the common expenses assessed against his unit prior to the transfer by them of such unit but payable by them subsequent thereto, provided that they first give notice of such assessment to the transferee of the unit;
- (j) **Statement of Account.** Within ten (10) days following written application therefor, the Board shall furnish any owner or mortgagee, or any person authorized in writing by either of them, with a statement as of the first day of the month in which such request is made setting forth the following:
  - i. any assessment unpaid or payable as of such date, together with accrued interest thereon;
  - ii. any accelerated monthly contributions remaining unpaid or payable as of such date; and
  - iii. the amount outstanding in a reserve fund and contingency fund contributed or deposited or required to be contributed or deposited by the unit owner or mortgagee;
- (k) **Inspection of Books.** Upon written application therefor, the Board shall make the books of account and accounting records available at all reasonable times for inspection by an owner, or a mortgagee (if authorized hereunder) or any person authorized in writing by either of them;
- (l) **Collection.** The Corporation shall take all necessary steps to enforce the payment by each owner of all unpaid assessments, monthly contributions and all other amounts owed by him to the Corporation;

- (m) **Estoppel Certificates.** Any certificate issued by the Corporation to a mortgagee, purchaser or other person dealing with an owner, to certify an owner's position with respect to assessments, contributions or otherwise, which has been signed by two officers of the Corporation under its corporate seal, shall be binding upon the Corporation and all other owners and it and they shall be estopped from denying the accuracy of such certificate against such mortgagee, purchaser or other person dealing with the owner; but this shall not prevent the enforcement against the owner of obligations of the owner whether improperly stated in such certificate;
- (n) **Default in Payment of Assessment**
- i. In the event that payments required under the provisions of this Article VIII are fifteen (15) days, or more, in arrears, an additional charge of Five Dollars (\$5.00) dollars per month will be added to the arrears;
  - ii. In addition to any remedies or liens provided by the Act, if any owner is in default in payment of an assessment levied against him for a period of fifteen (15) days, the Board may bring legal action for and on behalf of the Corporation to enforce collection thereof and there shall be added to any amount found due all costs of such action including costs as between solicitor and client.

**9. Corporation Decisions Requiring Voting by Unit Owners:**

In accordance with Section 14(3) of the *Condominium Act*, a corporation may, with the consent of the owners of at least sixty-six and two thirds percent (66 2/3%) of the common elements:

- (a) acquire by purchase, gift, devise, bequest or any other means, real or personal property and sell, mortgage, convey or otherwise deal with the property;
- (b) borrow money;
- (c) mortgage, hypothecate or pledge any of its property or rights, including any future right to be paid money as a result of a levy made pursuant to this Act, in order to secure repayment of money borrowed by it or the payment or performance of any of its obligations;
- (d) grant easements affecting the common elements;
- (e) grant leases of the common elements;

- (f) make capital expenditures;
- (g) subject to the regulations, consolidate into one unit two or more adjacent units that are included in the property that is managed by the corporation;
- (h) levy special assessments for extra-ordinary common element expenses.

9. This amended Declaration shall take effect upon acceptance for registration.

Dated at Halifax, in the County of Halifax, Province of Nova Scotia, this 16<sup>th</sup> day of February, A.D., 2005.

I Hereby Certify that the above is a true copy of the Amendment to the Declaration consented to by the owners owning at least eighty percent (80%) of the common elements in Halifax County Condominium No. 130

EXECUTED IN THE PRESENCE  
OF:

Halifax County Condominium Corporation  
No 130

(sgd) Patrick Cassidy

Per: (sgd) L.F Kirkpatrick

Per: (sgd) G.R. Bustin