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CERTIFICATE OF RECEIPT
HALTON NO. 20 MILTON
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DECLARATION

CONDOMINIUM
ACT, 1998

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~~HALTON~~
(Insert Office Name) CONDOMINIUM PLAN NO. 504

NEW PROPERTY IDENTIFIER'S BLOCK 25806

RECENTLY: 07065-0114

DECLARANT: BAXTER'S WHARF INC.

SOLICITOR: TURKSTRA MAZZA ASSOCIATES

PAUL DOUGLAS MAZZA

ADDRESS: 15 BOLD STREET

HAMILTON, ONTARIO L8P 1T3

PHONE: 905-529-3476

FAX: 905-777-1140

No. OF UNITS

522

FEES: \$70.00 + (\$5.00 x (number of unit) = \$2,680.00

THIS DECLARATION (hereinafter called the "**Declaration**") is made and executed pursuant to the provisions of the Condominium Act, 1998, c.19 and the Regulations made thereunder as amended from time to time (all of which are hereinafter collectively referred to as the "**Act**"), by:

BAXTER'S WHARF INC.

(hereinafter called the "**Declarant**")

WHEREAS:

- A. The Declarant is the owner in fee simple of certain lands and premises situate in the City of Burlington and being more particularly described in Schedule "A" annexed hereto and in the description submitted herewith by the Declarant (hereinafter called the "Description") for registration in accordance with the Act and which lands are sometimes referred to as the "Property";
- B. The Declarant has constructed a building upon the Property containing One Hundred and Twenty-Two (122) Residential Units; Twelve (12) Commercial Units, Two Hundred and Thirty-Two (232) Parking Units and One Hundred Fifty-Six (156) Locker Units.
- C. The Declarant intends that the Property, together with the building constructed thereon, shall be governed by the Act.
- D. The registration of the Declaration and Description will create a standard condominium corporation.

NOW THEREFORE THE DECLARANT HEREBY DECLARES AS FOLLOWS:

ARTICLE I.

INTRODUCTORY

1. Definitions

The terms used in this Declaration shall have the meanings ascribed to them in the Act, unless this Declaration specifies otherwise, or unless the context otherwise requires and in particular:

- (1) "**Board**" means the Corporation's Board of Directors;
- (2) "**By-Laws**" means the by-laws of the Corporation enacted from time to time;
- (3) "**Commercial Units**" means Unit 1 – 12 inclusive on Level 1 and shall also mean commercial/retail units;
- (4) "**Common Elements**" means all the Property except the Units;
- (5) "**Corporation**" means the Condominium Corporation created by the registration of this Declaration;
- (6) "**Locker Units**" shall also mean throughout this document "locker spaces" and shall mean

Units 15 to 29 inclusive on Level 2,
Units 16 to 35 inclusive on Level 3,
Units 16 to 35 inclusive on Level 4,
Units 16 to 35 inclusive on Level 5,
Units 16 to 35 inclusive on Level 6,

Units 15 to 21 inclusive on Level 7,
 Units 15 to 21 inclusive on Level 8,
 Units 8 to 15 inclusive on Level 9,
 Units 8 to 15 inclusive on Level 10,
 Units 91 to 104 inclusive on Level A,
 Units 99 to 115 inclusive on Level B,

and intended to be used solely for the purposes set out in this Declaration;

(7) "**Owner**" means the Owner or Owners of the freehold estate(s) in a Unit, but does not include a mortgagee unless in possession;

(8) "**Parking Units**" shall mean

Units 1 to 90 inclusive on Level A
 Unit 105 on Level A
 Units 1 to 98 inclusive on Level B
 Units 13 to 55 inclusive on Level 1

And intended to be used solely for purposes set out in this Declaration.

(9) "Recreational Facilities" shall mean collectively a meeting room, a Lounge/Games room with billiards, equipped exercise room, wet sauna and change rooms, bar with serving area and full kitchen, hobby room and 9th floor terrace with barbeque area..

(10) "Residential Units" shall mean

Level 2 – Units 1 – 14 inclusive
 Level 3 – Units 1 – 15 inclusive
 Level 4 – Units 1 – 15 inclusive
 Level 5 - Units 1 – 15 inclusive
 Level 6 - Units 1 – 15 inclusive
 Level 7 - Units 1 – 14 inclusive
 Level 8 - Units 1 – 14 inclusive
 Level 9 – Units 1 – 7 inclusive
 Level 10 – Units 1 – 7 inclusive
 Level 11 – Units 1 – 4 inclusive
 Level 12 – Units 1 and 2

(11) "**Rules**" means the Rules passed by the Board;

(12) "**Unit**" shall mean a part of the lands included in the Description and designated as a unit by the description, and shall comprise the space enclosed by it's boundaries and all the material parts of the land within such space, in accordance with this Declaration and the Description. For greater certainty, the definition of "unit" relating to the duties to maintain and repair under Sections 41 and 42 of the Act and pursuant to this Declaration, shall extend to all improvements made by the Declarant thereto in accordance with it's structural plans pertaining to same, notwithstanding that some of such improvements be made after registration of this Declaration.

2. Statement of Intention

The Declarant intends that the lands described in Schedule "A" annexed hereto and in the Description together with all interests appurtenant to the land be governed by the Act.

3. Consent of Encumbrancers

The consent of every person having a registered charge or mortgage against the Property or interest appurtenant thereto is contained in Schedule "B" attached hereto.

4. Boundaries of Units and Monuments

The monuments controlling the extent of the Units are the physical surfaces mentioned in the Boundaries of Units in Schedule "C" attached hereto.

5. Certificate of Architect or Engineer

Pursuant to Section 8 (1) (e) and (h) of the Act, a certificate of an architect or of an engineer that all buildings have been constructed in accordance with the regulations, is attached hereto in Schedule "G".

6. Common Interest and Common Expense Allocation

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 and shall contribute to the common expenses in the proportions set forth opposite each Unit number in Schedule "D" attached hereto. The total of the proportions of the common interests and proportionate contribution to common expenses shall each be one hundred (100%) percent.

7. Address for Service and Mailing Address of the Corporation

The Corporation's address for service shall be c/o 399 Elizabeth Street, Burlington, Ontario or such other address as the Corporation may by resolution of the Board determine, and the Corporation's mailing address shall be c/o 399 Elizabeth Street, Burlington, Ontario.

ARTICLES II.

COMMON EXPENSES

1. 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, shall include those expenses set out in the Act and in Schedule "E" attached hereto.

2. Payment of Common Expenses

Each Owner, including the Declarant, shall pay to the Corporation its proportionate share of the common expenses, as may be provided for by the By-Laws and the assessment and collection of contributions toward common expenses may be regulated by the Board pursuant to the By-Laws. In addition to the foregoing, any losses, costs or damages incurred by the Corporation by reason of a breach of any provision of this Declaration, or in any by-law or Rules in force from time to time by any Owner, or by members of his family and/or their respective tenants, invitees or licensees, shall be borne and paid for by such Owner and may be recovered by the Corporation against such Owner in the same manner as common expenses.

3. Reserve Fund

- (a) The Corporation shall establish and maintain one or more Reserve Funds and shall collect from the Owners as part of their contribution towards the common expenses, amounts that are reasonably expected to provide sufficient funds for major repair and replacement of Common Elements and assets of the Corporation; and
- (b) No part of the Reserve Fund shall be used except for the purpose for which the fund was established. The Reserve Fund shall constitute an asset of the Corporation and shall not be distributed to any Owner except on termination of the Corporation.

4. Certificate of Common Expenses

The Corporation shall, upon request, provide the requesting party with a status certificate and accompanying documentation and information in accordance with the Act. The Corporation shall forthwith provide the Declarant with a status certificate and all such accompanying documentation and information, as may be requested from time to time by or on behalf of the Declarant in connection with a sale or mortgage of any Unit(s), all at no charge or fee to the Declarant or the person requesting same on behalf of the Declarant.

ARTICLE III.

COMMON ELEMENTS

1. Use of Common Elements

Subject to the provisions of the Act, this Declaration, the By-Laws and any Rules, each Owner has the full use, occupancy and enjoyment of the whole or any parts of the Common Elements, except as herein otherwise provided.

2. Exclusive Use Common Elements

- (a) Subject to the provisions of and compliance with the Act, this Declaration, the By-Laws and the Rules, the Owner of each Unit shall have the exclusive use of those parts of the Common Elements as set out in Schedule "F" attached hereto.

3. Restricted Access

- (a) Without the consent in writing of the Board, no Owner shall have the right of access to those parts of the Common Elements used from time to time as a utility area, building maintenance or storage area, an area for operating machinery, the roof or any other parts of the Common Elements used for the care, maintenance or operation of the Property or any part thereof;
- (b) Subparagraph 3(a) of this Article III shall not apply to any first mortgagee holding mortgages on at least thirty percent (30%) of the Units who shall have a right of access for inspection upon giving forty-eight (48) hours prior written notice to the Corporation or its Property Manager;
- (c) No Owner of a Parking Unit or a Locker Unit or any tenant, licensee or permitted occupant thereof who is not also co-incidentally the Declarant, the Corporation, or any Owner, tenant, licensee or permitted occupant of a Residential Unit in this Corporation shall have the right or use of the Common Elements, save and except for the right to the use of areas of the Common Elements required to be used in order to gain access to such Owner's Parking Unit or Locker Unit.

4. Modifications of Common Elements and Assets

(1) General Prohibition

No owner shall make any change or alteration to the Common Elements whatsoever, including any installations) thereon, nor alter, decorate, renovate, maintain or repair any part of the Common Elements (except for maintaining those parts of the Common Elements which he or she has a duty to maintain in accordance with the provisions of this Declaration) without obtaining the prior written approval of the Corporation in accordance with the Act.

(2) Substantial Alteration

The Corporation may, by a vote of owners who own eighty (80%) percent of the Units, make any substantial additions, alterations or improvements to, or renovations of the Common Elements, or may make any substantial change to the assets of the Corporation.

(3) Non-Substantial Alterations

The Corporation may, by a vote of the majority of the owners, make any non-substantial addition, alteration, or improvement to or renovation of the Common Elements, or may make any other non-substantial change to the assets of the Corporation.

(4) Board's Discretion

For the purposes of this paragraph 4, the Board shall decide whether any addition, alteration, or improvement to or renovation of the Common Elements, or any change to the assessed of the Corporation, is substantial.

5. Pets

No animal, livestock or fowl, other than as permitted pursuant to Article IV of this Declaration, is permitted to be on or about the Common Elements, including the exclusive use Common Elements, except for ingress to and egress from a Unit. All dogs and cats must be kept under personal supervision and control and held by leash at all times during ingress to and egress from a Unit and, while on the Common Elements of the building or on the grounds. Notwithstanding the generality of the foregoing, no attack dogs are permitted to be on or about the Common Elements.

ARTICLES IV.**UNITS**1. General Restrictions

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

- (1) No Unit shall be occupied or used by anyone in such a manner as to result in the cancellation or threat of cancellation of any policy of insurance placed by or on behalf of the Corporation;
- (2) If any Owners shall do or permit anything to be done in the Unit and/or Common Elements or bring or keep anything thereon which will in any way increase the risk of fire or other perils insured against and consequently will increase the premium of the policy or policies of insurance obtained from time to time by the Corporation, then such Owner shall pay with his next monthly contribution towards the common expenses after receipt of notice from the Corporation, all increases in premium in respect of such policy or policies of insurance. All payments pursuant to this clause are deemed to be additional contributions towards common expenses and recoverable as such;
- (3) Each Owner shall comply and shall require all members of his family, residents, tenants, invitees and licensees to his Unit to comply with the Act, this Declaration, the By-Laws and the Rules;

- (4) No change shall be made in the colour of any exterior glass, window, door or screen, of any Unit except with the prior written consent of the Board. Each Owner shall ensure that nothing is affixed, attached to, hung, displayed or placed on the exterior walls, including awnings and/or storm shutters, doors or windows of the building, nor shall an Owner grow any type of plant, shrubbery, flower, vine or grass outside his Unit, except with the prior written consent of the Board, and further, when approved, subject to the Rules. All shades or other window coverings shall be white or off-white on the outside and all draperies shall be lined in white or off-white to present a uniform appearance to the exterior of the building. No clothesline or similar device shall be allowed on any portion of the Property nor shall clothes or other laundry be hung anywhere except where designated by the Board;
- (5) No exterior aerial, antenna, satellite dish, or window air conditioning unit shall be placed on the Property, including Units and Common Elements, unless the Board consents in writing to the said antenna, aerial, satellite dish, or window air conditioning unit which consent may be arbitrarily withheld.

2. Residential Units

- (1) Each Residential Unit shall be occupied and used only for residential purposes in accordance with the applicable zoning by-laws pertaining to the Property and for no other purpose whatsoever. The foregoing shall not prevent the Declarant from completing the building and all improvements to the Property, maintaining Units as models for display and sale purposes, and otherwise maintaining construction offices, displays and signs for marketing/sales purposes in respect of the Corporation or any of the Declarant's other developments, upon the Common Elements, and within or outside any unsold Unit, until all Units have been sold by the Declarant;
- (2) No sign, advertisement or notice of any type shall be inscribed, painted, affixed or displayed on any part of the inside or outside of any Residential Unit which can be seen from the outside of the building;
- (3) No Owner of a Residential Unit shall make any change, addition, modification or alteration, except for any change, addition modification or alteration which is solely decorative in nature, in or to his Residential Unit or make any change, addition, modification or alteration to an installation upon the Common Elements, or maintain, decorate, alter or repair any part of the Common Elements, except for maintenance of those parts of the Common Elements which he has the duty to maintain, without the prior written consent of the Board, which consent shall be in the sole and unfettered discretion of the Board and may be subject to such conditions as may be determined by the Board;
- (4) No animal, livestock or fowl of any kind other than two (2) dogs or two (2) cats per Residential Unit; and/ or not more than two (2) canaries, budgies or other small birds; or an aquarium of goldfish or tropical fish; and/ or one (1) small caged animal usually considered to be a pet shall be kept or allowed in any Residential Unit. No animal, which is deemed by the Board or the Property Manager, in their absolute discretion, to be a nuisance shall be kept by any Owner in any Residential Unit. Such Owner shall, within two (2) weeks of receipt of a written notice from the Board requesting the removal of such animal, permanently remove such animal from the Property. Notwithstanding the generality of the foregoing, no attack dogs shall be allowed in any Residential Unit. No breeding of animals for sale shall be carried on, in or around any Residential Unit;
- (5) In the event the Board determines in its sole discretion acting reasonably, that any noise is being transmitted to another Residential Unit and that such noise is an annoyance and/or a nuisance and/or disruptive (regardless of whether that Unit is

adjacent to or wherever situated in relation to the offending Unit), then the Owner of such Residential Unit shall at his own expense take such steps as shall be necessary to abate such noise to the satisfaction of the Board. In the event the Owner of such Residential Unit fails to abate the noise, the Board shall take such steps as shall be necessary to abate the noise and the Owner shall be liable to the Corporation for all expenses incurred by the Corporation in abating the noise, which expenses are to include reasonable solicitor's fees on a solicitor and his own client basis; and

- (6) No boundary, load-bearing or partition wall, floor, door or window, toilet, bath tub, wash basin, sink, heating, plumbing or electrical installation contained in or forming part of a Residential Unit shall be installed, removed, extended or otherwise altered without the prior written consent of the Board, but the provisions of this subparagraph shall not require any Owner to obtain the consent of the Corporation for the purpose of painting or decorating the surface of any wall, floor or ceiling which is within any Residential Unit.

3. Parking Units

- (1) Each Parking Unit shall be used and occupied only for motor vehicle parking purposes, in strict compliance with the Rules of the Corporation in force from time to time, and without limiting any wider definition of the term "motor vehicle" as may be imposed by the Board from time to time, the term "motor vehicle" shall be restricted to a private passenger automobile, station wagon, motor cycle, mini van or passenger truck not exceeding 1.9 metres in height, and shall exclude any type of commercial vehicle or commercial truck, trailer and/or van, as well as any recreational vehicle, motorhome, boat and/or snowmobile (and such other vehicles as the Board may wish to exclude from the property from time to time), but shall nevertheless specifically include any construction, service and/or loading vehicles utilized by the Declarant and/or its agents, employees or contractors in the course of constructing, servicing and/or completing this condominium. Notwithstanding the foregoing, the owner of a Parking Unit, described as a "**tandem parking unit**" may park no more than two (2) motor vehicles or one (1) or more recreational vehicle, motorhome, boat and/or snowmobile not exceeding 1.9 metres in height (hereinafter collectively referred to as "recreational vehicle") within the boundaries of such tandem parking units, provided however that in no instance shall any portion of any motor vehicle or recreational vehicle park within a Parking Unit protrude beyond the boundaries thereof, nor encroach upon any portion of the common elements or exceed the permissible loads as set forth or contemplated in the structural plans and specifications of the condominium's underground garage. The Owners of the following Parking Units cannot lease or sell their Parking Units to any other Residential or Commercial Unit Owner unless that Residential or Commercial Unit Owner owns the adjacent Parking Unit:

Level A – Units 34, 60, 62, 64, 66, 68, 70, 72 and 74

Level B – Units 35, 36, 51, 53, 55, 57, 68, 70, 72, 74, 76, 78, 80 and 82

Level 1 – Units 35, 37, 39, 41, 43 and 45

The Owner of a Parking Unit shall keep such Unit in a clean and slightly condition. The Corporation may make provision in its annual budget for the cleaning and sweeping of the Parking Units, either in their totality, or in groups of Parking Units. Notwithstanding the foregoing, the Declarant shall, while it continues to own one or more units in the condominium be permitted to park in any parking unit which he owns.

- (2) The Declarant, at its option, shall have the right to use and allow its sales staff, authorized personnel or any prospective purchaser or tenant to use any unsold Parking Units which right shall continue until such time as all the Residential Units in the Corporation have been sold.

- (3) Notwithstanding the provisions of this paragraph, in the event the Corporation becomes the Owner of certain of the Parking Units the Board may, from time to time, designate the said Parking Units for alternate uses, provided that such alteration of use is in accordance with the requirements and the by-laws of the Municipality and approved by the requisite number of Owners at a meeting duly called for that purpose.

4. Locker Units

- (a) Each Locker Unit shall be used and occupied only for the storage of non-combustible materials and for no other purpose. The Board may from time to time restrict the categories of materials that may be stored in each Locker Unit and which, as the Board may determine, constitute a danger or nuisance to the property and the other Owners;
- (b) No gift, sale or license or lease of a Locker Unit may be given or granted or otherwise conveyed to anyone other than an Owner, a tenant in actual occupation of a Residential or Commercial Unit, the Declarant or the Corporation. Notwithstanding any other clauses in this Declaration, the Owners of the following Locker Units are restricted at all times from selling or leasing their Locker Units to any other Residential or Commercial Unit Owner:

Level B – Units 114 and 115; and

- (c) The term of any lease of a Locker Unit to a tenant of a Residential or Commercial Unit shall not extend beyond the term of the tenancy of such Residential or Commercial Unit.

5. Ownership of Units

I. Restrictions of Commercial/Retail Units

The occupation and use of the commercial/retail units shall be in accordance with the following restrictions and stipulations.

- a) Save as hereinafter otherwise provided to the contrary, each of the commercial/retail units shall be used and occupied only for commercial/retail purposes (such as stores, restaurants or offices) in conformity with the applicable zoning and building by-laws and regulations of the Governmental Authorities (with such zoning and building by-laws, as amended or varied from time to time, being hereinafter collectively referred to as the “**Applicable Zoning By-laws**”); provided however that the foregoing shall not restrict or prevent the Declarant from completing the building (s) situate on the Real Property and all improvements thereto, and maintaining some or all of the commercial/retail units as models for display, sale and/or leasing purposes, and maintaining construction or customer-service offices, displays and signs therein, pursuant to the Declarant’s ongoing marketing/sales/construction/customer-service programs in respect of this Condominium, at such locations and having such dimensions as the Declarant may determine in its sole discretion, until such time as all dwelling units and commercial/retail units in this Condominium (or such lesser number as the Declarant may determine in its sole and unfettered discretion) have been sold, conveyed and transferred by the Declarant to each of the respective unit purchasers thereof.
- b) Notwithstanding anything hereinbefore or hereinafter provided to the contrary, under no circumstances shall any owner be permitted to use (or allow any other party to use) his or her commercial/retail unit (or any portion thereof) for any of the following uses or purposes, namely:

- i) any use involving or requiring the consumption, storage, manufacture or utilization of any toxic waste or contaminant;
 - ii) any purpose (or in any manner) which would likely constitute a nuisance to (or otherwise interfere with) the other unit owners or occupants in this Condominium, or the owners or occupants of any building(s) adjacent to the Real Property, by reason of the creation or emission from such owner's commercial/retail unit of vibrations, odours, gases, smoke, noise, extremely bright lights, fumes, cinders, soot, waste or otherwise;
 - iii) the administration of any treatment, procedure and/or use determined to be obnoxious or offensive by the Declarant or the Board of Directors of this Condominium in their sole and unfettered discretion (acting reasonably), nor for any use or purpose which may contravene the Applicable Zoning By-Laws;
 - iv) an adult entertainment or x-rated video store or parlour, at which is offered services, entertainment or items appealing to (or designed to appeal to) erotic or sexual appetites or inclinations, or for any other type of use similar or analogous thereto, regardless of whether same is otherwise lawfully permitted by the Applicable Zoning By-Laws; and
 - v) an abortuary, or a medical office dispensing medical services to the public whose primary practice or ancillary services may likely cause the insurance premiums of the Condominium to increase substantially beyond that which would otherwise be ordinarily attributable to the commercial/retail uses allowed under the Applicable Zoning By-Laws, or which may likely pose a greater degree of risk, nuisance or danger to the residents and occupants of this Condominium as determined by the Declarant or the Board of Directors of this Condominium in their sole and unfettered discretion (acting reasonably), regardless of whether same is otherwise lawfully permitted by the Applicable Zoning By-Laws.
- c) Each commercial/retail unit owner shall, at such owner's sole cost and expense, be solely responsible for:
- i) determining and satisfying himself or herself as to whether his or her commercial/retail unit may be lawfully or properly used for such owner's intended use; and
 - ii) obtaining an occupancy permit (or such other occupancy authorization issued by the Governmental Authorities), and any other consents or permissions to any use proposed to be made of such owner's commercial/retail unit, as required by the Governmental Authorities pursuant to any applicable legislation, by-law, rule or regulation.
- d) Each owner of a commercial/retail unit shall be entitled to erect and maintain signs (or other advertising materials) within his or her unit, and to affix or place his or her desired sign or advertisement materials to (or within) the designated space allocated to such owner by the Declarant or the Corporation beneath the glass, canopy within the sign band installed by the Declarant on the exterior face of the commercial/retail component of this Condominium (hereinafter referred to as the "**Sign Band/Canopy**"), and all such signs and materials shall be erected, affixed and/or otherwise maintained in strict conformity with the provisions of the Applicable Zoning By-Laws, and at each owner's sole cost, risk and expense.
- e) Notwithstanding any provision contained in this declaration or in any bylaws or rules hereafter passed or enacted to the contrary, each owner of a commercial/retail unit shall be responsible for connecting his or her unit to the Condominium's servicing and utilities systems, and to the public or local utility authority's systems (and shall also be responsible

for any changes made to the servicing systems with respect to his or her unit, implemented from time to time), all at such owner's sole cost, risk and expense, subject however to the following overriding provisions, namely:

- i) the commercial/retail unit owner shall first submit detailed plans, drawings and specifications to both the Board of Directors and the Declarant (for their information only), outlining the unit's servicing requirements (and/or changes thereto) and the desired outlets for such unit;
 - ii) the consulting engineer that is retained by the commercial/retail unit owner to implement the aforementioned servicing plans shall then certify to the Corporation and to the Declarant that the plans and specifications so submitted are in conformity within the Ontario Building Code and the Electrical Code (if applicable), and the public or local utility authority's requirements, and in accordance with the schedule of tolerances (or maximum consumption capacities) pertaining to the various utilities provided to the Condominium, as specified or outlined by the architect and or engineer which had been retained by the Declarant in connection with the overall servicing, design and operation of the Condominium, in order to ensure that the Condominium's overall water, gas, hydro-electric and/or sanitary sewer consumption or usage does not exceed permitted or acceptable levels (so as to avoid power blackouts, water shortages, etc.);
 - iii) the cost of implementing the physical hook-up work, and procuring all requisite permits, licenses and approvals as are required in accordance with the Applicable Zoning By-Laws, the public or local utility authority's guidelines or requirements and the Ontario Building Code and the Electrical Code (if applicable) shall be borne by the owner of the subject commercial/retail unit, along with the cost of procuring adequate liability insurance to cover any potential claim(s) for loss and/or damage to persons and/or property occasioned by the negligent hook-up or installation of any services to the unit (with coverage not less than two million dollars per occurrence), and a certified copy of said policy (naming both the Declarant, while it owns any unit in this Condominium, and the Corporation, as co-insureds) shall be submitted to the Board of Directors and the Declarant (along with evidence that the annual premium(s) for such insurance coverage has been paid by such unit owner) prior to the commencement of any such work;
 - iv) the Corporation shall, forthwith upon demand, provide the commercial/retail unit owner with copies of all relevant plans, drawings and specifications of the Condominium which are in the Board of Director's possession or control (i.e. pertaining to the Condominium's heating/cooling, lighting, electrical, mechanical, plumbing and servicing systems, etc.), in order to assist such owner's consultants to determine the safest and most expeditious manner of connecting the said unit to the Condominium's various servicing systems; and
 - v) the Corporation shall ensure that no actions or steps are taken by or on behalf of any other owner, resident or occupant within this Condominium, or by anyone else, which, would limit, restrict or interfere with the commercial/retail unit owner's access to, and egress from, his or her unit, and those common element areas on Level 1, at all reasonable times, in order to allow such owner (and such owner's tenants and duly authorized employees, agents, representatives and/or contractors) to carry out and complete all requisite servicing work as hereinbefore provided or contemplated.
- f) Notwithstanding any provision contained in this declaration or in any bylaws or rules hereafter passed or enacted to the contrary (and subject to compliance with the provisions of subparagraph 5(g) below), each owner of the commercial/retail unit shall be entitled to affix, attach, install, replace, pierce, puncture, or protrude onto any part of his or her unit, and/or implement and complete any Minor Installations upon or within any part of his or her unit and those portions of the common element areas located on (or immediately adjacent to)

Level 1, which contain any pipes, wires, cables or conducts that lead to (and exclusively service) his or her unit, all without having to obtain the consent of the board or any other unit owners(s) thereto, in order to carry out or implement any of the following, namely:

- i) to install, alter, repair or replace any servicing equipment, fixture or system which services (or is intended to service) his or her commercial/retail unit exclusively, including without limitation, any air-conditioning system, heating system, plumbing system, sewage or drainage system, electrical system, mechanical system, lighting system, ecology or air filtration/ventilation system, fire alarm or fire prevention system, sound insulation or heat insulation system, sprinkler system, security system and/or loading or storage system;
 - ii) to alter the configuration of any non-load bearing wall(s) situate within the commercial/retail unit, and/or to perform any Commercial Unit Partition Removal;
 - iii) to erect, replace, cover or re-cover any partition wall(s) or interior glass panel(s)/window(s), and/or rear door(s) situate within (or leading into) any such commercial/retail unit, together with all glass, plastic or other material(s) enclosing said unit (or contained therein) which constitutes part of said unit; and
 - iv) to install, alter, remove or replace any floor covering, wall covering, ceiling covering, light fixture(s), and/or other similar finishings or installations within the subject commercial/retail unit, and generally to implement and carry out all similar improvements to or renovations of the said unit which the owner wishes to make, in order to assist such owner in the operation or conduct of his or her commercial/retail business, or any other activity lawfully carried out (or intended to be carried out) therefrom.
- g) Prior to the commencement of any of the work described or contemplated in the preceding subparagraph 5(f), the commercial/retail unit owner intending to implement or carry out such work shall comply with the following namely:
- i) provide copies of all plans, drawings and specifications prepared by the commercial/retail unit owner's architect or engineer to both the Declarant and the Board of Directors, showing in reasonable detail, the proposed installation, removal and/or alteration work, accompanied by a certificate from said architect or engineer confirming to both the Declarant and the Board of Directors that such work will not unduly disturb, interrupt or interfere with (nor damage) any of the equipment or services that provide power or any utility services to any portion of the common elements, or to any dwelling unit, or to any other commercial/retail unit, or to the commercial storage area and/or the commercial garbage area, and further confirming that such work complies with the provisions of the Applicable Zoning By-Laws, and the Ontario Building code and the Electrical Code (if applicable); and
 - ii) establish and implement reasonable measures to ensure that any noise, vibration or interference likely to be caused to any other owner or owners (or to the pedestrian access to and egress from any of the other commercial/retail units) is minimized to a reasonable extent, and thereafter implement such measures throughout the course of undertaking and completing such work.
- h) Any work or other construction activity carried out by an owner of a commercial/retail unit in accordance with the foregoing terms and provisions of this Section 5, shall not be

considered substantial in nature, nor under any circumstances shall same be considered or construed as an alteration, improvement or renovation of the common elements of the Corporation within the meaning or context of the Condominium Act.

II. Modifications of Commercial/Retail Units

Notwithstanding any provision in this declaration or in any By-laws or Rules hereafter passed or enacted to the contrary, the Declarant and each of the owners of any of the commercial/retail units shall be entitled to remove all or any portion of any non-load bearing partition or demising wall that separates two adjoining commercial/retail units and which comprises part of any such unit(s), as monumented in **Schedule "C"** annexed hereto (hereinafter referred to as the "**Commercial Unit Partition Removal**"), provided such adjoining units are owned by the same party or parties, without having to obtain the consent of the Board of Directors nor any other unit owner(s) thereto, and provided further that such removal or alteration work complies with the provisions of Article III hereof and all applicable By-laws and regulations of the Governmental Authorities. Notwithstanding any Commercial Unit Partition Removal as aforesaid, the adjoining units affected thereby shall still constitute two separate commercial/retail units, as illustrated in the description filed concurrently herewith, and all obligations of the owner of the said two adjoining units, whether arising under the Act, this Declaration, the By-laws or Rules of this Condominium (or any agreement(s) authorized by any By-law) shall remain unchanged. Where any partition or demising wall has been so removed, the owner of the two adjoining commercial/retail units may thereafter resurrect said wall, without having to obtain the prior consent of the Board of Directors or any other unit owner(s) thereto, provided such reconstruction work complies with the original specifications with respect thereto, and with all applicable By-laws and regulations of the Governmental Authorities, and provided further that said partition or demising wall is erected in the exact same location as originally constructed by the Declarant, as illustrated and delineated in the description filed concurrently herewith, with the final siting and relocation of such wall to be certified to the Board of Directors by an accredited Ontario Land Surveyor, all without any cost, charge or expense to the Corporation.

III. Restrictions on Parking and Locker Units

- a) Notwithstanding anything hereinbefore or hereinafter provided to the contrary, and save and except for any parking and/or locker unit(s) (which Units in this Section collectively are referred to as "**Restricted Units**" and individually as a "**Restricted Unit**" owned by the Declarant and/or the Corporation, the ownership, sale, leasing, charging, assignment, transfer or other conveyance or encumbrance of any of the restricted units shall be subject to the following restrictions and limitations, namely:
 - i) No one shall retain ownership of any restricted unit after he/she has sold and conveyed title to his/her Residential or Commercial Unit;
 - ii) Any sale, transfer, assignment or other conveyance of any restricted unit shall be made only to a Declarant, or to the Condominium, or to any owner of a Residential or Commercial Unit in the condominium;
 - iii) Any lease of any restricted unit shall be made only to the Declarant, or to the Condominium, or to any owner or tenant of a residential unit within the condominium, provided however that if any restricted unit is so leased to a tenant of a Residential or Commercial Unit then the term of such lease shall not extend beyond the term of the tenancy in respect of such Residential or Commercial Unit;
 - iv) Where any restricted unit is leased to an owner of a Residential or Commercial Unit, then upon the sale, transfer, assignment or other conveyance of the lessee's residential unit, the lease in respect of such

Restricted Unit shall also be assigned by the said lessee to the transferee or new owner of such Residential or Commercial Unit within thirty (30) days of the registration of the transfer of title to the said Residential or Commercial Unit, failing which the lease of such restricted unit shall be automatically terminated and be of no further force or effect, and the Restricted Unit which is subject to such lease shall thereupon revert to the lessor thereof; and,

- v) a) Where the lessee of a restricted unit is an owner of a Residential or Commercial Unit and such lessee is deprived of possession and/or ownership of his/her Residential or Commercial unit through any legislation, by any party holding a registered mortgage, charge, execution, lien or other encumbrance against the said residential unit, then such lease shall be deemed to have been in default, shall thereupon be automatically terminated and of no further force or effect, whereupon the said Restricted Unit which is subject to such lease shall automatically revert to the lessor thereof.
- b) Any instrument or other document purporting to effect the sale, transfer, assignment or other conveyance of any restricted unit, in contravention of any of the foregoing provisions of this section, shall be automatically null and void, and of no force or effect whatsoever, and a lease of any Restricted Unit shall automatically be deemed and construed to be amended in order to accord with the foregoing provisions of this section.

6. Leasing of Units

Notification of Lease:

- 1 Where an Owner leases his/her Residential or Commercial Unit, Parking Unit or Locker Unit, the Owner shall forthwith notify the Corporation that such Unit is leased and shall provide to the Corporation the tenant's name and the Owner's address;
- 2 No Owner other than the Declarant shall lease his Residential Unit, Parking Unit or Locker Unit, unless he first delivers to the Corporation a covenant or agreement signed by the tenant to the following effect: "I acknowledge and agree that I, the members of my household, my employees, customers, licensees, invitees 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, the By-Laws, and all the Rules and regulations of the Condominium Corporation, during the term of my tenancy, and will be subject to the same duties imposed by the above as if I were an Owner, except for the payment of common expenses, unless otherwise provided by the Condominium Act";
- 3 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; and
- 4 Any Owner leasing his/her Residential or Commercial Unit, Parking Unit or Locker Unit shall not be relieved thereby from any of his/her obligations with respect to such Unit, which shall be joint and several with his/her tenant.
5. The Declarant initially has no intention of leasing any units but should the Declarant decide to lease units, it is anticipated that the Declarant will not lease more than 25% of the units.

ARTICLES V.**MAINTENANCE AND REPAIRS**1. Repairs and Maintenance by Owner

- (1) Each Owner shall maintain his/her Unit(s), and subject to the provisions of this Declaration, each Owner shall repair his/her Unit(s) after damage, all at his/her own expense with the exception of the repairs to the Parking Units, namely the structural integrity of the garage and the asphaltting or re-surfacing of the garage floor which shall be the responsibility of the Corporation. In addition, without limiting the generality of the foregoing, each Owner shall maintain:
 - (a) the interior surface of doors which provide the means of ingress and egress from a Residential Unit or Commercial Unit and repair damage to those doors caused by the negligence of residents, family members, tenants, licensees, employees, patrons or invitees to his Unit;
 - (b) the interior surface of all windows in Residential or Commercial Units and interior and exterior surfaces of all windows and window sills contiguous to his/her Unit and which are accessible by the balcony together with the balcony itself which has been designated as an exclusive use area in respect of such Unit; and repair damage to those windows caused by the negligence of the Owner, tenants, licensees, invitees, employees or patrons to the Unit;
 - (c) the bathtub enclosures, tiles, shower fans, ceiling and exhaust fans and fan motors located in the kitchen and bathroom areas of the Unit;
 - (d) if fireplace constructed or installed by the Declarant as part of the Residential Unit, shall be responsible for the cleaning and overall maintenance and repair of the gas fired fireplace itself and the flue appurtenant to such fireplace, while the Corporation shall be responsible for the maintenance and repair of the exterior portion of the exhaust pipe appurtenant to such fireplace.
 - (e) if fireplace constructed or installed by the Declarant as part of the Residential Unit, shall be responsible for the cleaning and overall maintenance and repair of the gas fired fireplace itself and the flue appurtenant to such fireplace, while the Corporation shall be responsible for the maintenance and repair of the exterior portion of the exhaust pipe appurtenant to such fireplace.
 - (f) One or more glass or plastic skylights or solariums installed by the Declarant as part of the Residential Unit, shall be responsible for cleaning the underside glass or skylights, but the Corporation shall be responsible for cleaning the exterior or upper side surface thereof, and for repairing any cracks or breakage to or leakage from any such skylight or solarium, provided however that in no event shall the Corporation be liable for repairing any damage caused to any fixtures or chattels within the units, or any other personal property of the unit owner, tenants, invitees or licensees, as a result of such breakage or leakage.
 - (g) His/her Parking Unit or Locker Unit in a clean and sightly condition, notwithstanding that the Corporation may make provision in its annual budget for the cleaning of the Parking or Locker Unit; and,
 - (h) The balcony or terrace to which the Unit has direct access in a clean and sightly condition.

- (2) Each Owner shall further maintain, repair and replace the heating, air conditioning and ventilation equipment, including thermostatic controls contained within or not within and servicing his Unit only, such maintenance to include regularly scheduled inspections of all such equipment. The Corporation may make provision in its annual budget for the maintenance and repair of the heating and air-conditioning system, servicing each Unit, including the replacement of air filters, whereupon such costs shall be allocated as part of the common expenses. Each Owner shall be liable for any damage due to the malfunction of such equipment caused by the act or omission of an Owner, his servants, agents, tenants, family or guests. No Owner shall make any change, alteration or addition in or to such equipment without the prior written consent of the Board.
- (3) Each owner of a commercial retail unit shall be solely responsible for:
- (a) the cost of all water, gas and hydro-electric services utilized or consumed by his or her unit (whether billed or invoiced directly by the applicable gas and hydro utility authorities pursuant to the respective individual meters appurtenant to such unit, or billed or invoiced by the Corporation pursuant to the check or consumption water meter appurtenant to such unit), including the cost of heating and air-conditioning such owner's commercial retail unit;
 - (b) the maintenance and repair of all windows and doors contained within (or leading into) his or her unit, and all glass, plastic and other materials enclosing said unit (or otherwise contained therein) which constitutes part of such unit, including without limitation, the cost of maintaining, repairing and/or replacing all signs and advertising materials placed within (or affixed to) the designated space allocated to such owner by the Declarant or the Corporation within the Sign Band Canopy, as and when necessary or desired by such owner, as well as all plate glass windows and doors situate within (or leading into) his or her unit, together with the cost of insuring all such plate glass windows, doors and signs; and,
 - (c) the cost of maintaining and repairing all mechanical, electrical, lighting, heating, cooling, refrigeration and plumbing equipment, fixtures and systems, and all appurtenances thereto, which provide power and/or any other service exclusively to his or her unit, including without limitation, sewage or drainage system, ecology or air filtration/ventilation system, fire alarm or fire prevention system, sound insulation system, heat insulation system, sprinkler system, security system and/or loading or storage system, regardless of whether such equipment, fixtures and/or systems lie within (or beyond) the boundaries of such unit, as monumented in **Schedule "C"** of this Declaration.
- (4) The Corporation shall make any repairs that an Owner is obliged to make and that he does not make within a reasonable time and in such an event, an Owner shall be deemed to have consented to having said repairs done by the Corporation, and an Owner shall reimburse the Corporation in full for the cost of such repairs, including any legal or collection costs incurred by the Corporation to collect the costs of such repairs, and all such costs shall bear interest at the rate of eighteen (18%) per cent per annum calculated monthly, until paid by said Owner. The Corporation may collect all such costs in such installments as the Board may decide upon. The installments shall form part of the monthly contributions towards the common expenses of such Owner, after the Corporation has given written notice thereof. All such payments are deemed to be additional contributions towards the common expenses and recoverable as such.

(5) Repair and Maintenance to the Common Elements

- (a) Save as otherwise specifically provided in this Declaration to the contrary, the Corporation shall maintain, and repair after damage, the common elements other than any improvements to (and/or facilities, services and/or amenities installed by any unit owner upon) any common element area set aside for the exclusive use of any owner. Accordingly, this Condominium shall be responsible for the illumination, maintenance and repair of all other common elements of this Condominium including without limitation, the cleaning, removal of all dirt, debris and snow therefrom from time to time. In order to maintain uniformity of appearance throughout the condominium, the Corporation's duty to maintain and repair the common elements shall extend to all outdoor landscaping, including grass cutting, trimming, fertilizing, weed control and watering, and to all exterior perimeter fences or decorative walls erected by the Declarant erected along the boundaries of the property and to the exterior surfaces or doors which provide access to the units, and to the exterior door frames, exterior window frames and all exterior surfaces and windows and skylights and solariums, if any (except for the maintenance of the exterior surfaces of windows within any units accessible by balconies, porches, decks, patios or terraces, in respect of which the responsibility for maintenance only but not for repairs, shall reside solely with the respective Unit Owner).
- (b) Notwithstanding anything and before provided to the contrary, but subject to the overriding provisions of Article X hereof, each owner:
- i) Shall be responsible for the maintenance of all interior door and window surfaces with respect to his/her Unit;
 - ii) Having exclusive use of any balcony, deck, patio or terrace, shall be responsible for the cleaning and sweeping thereof, and may install any rug, carpet, tile or similar flooring material within same, provided however that no owner may alter or repair any balcony, deck, patio or terrace area, nor apply any wallpaper, varnish, stain or other covering to any portion thereof (or to any portion of the exterior window glazing) alter or change the colour, texture, design, size or appearance of any materials or substances constituting or comprising same without the prior written consent of the Corporation.
- (c) Notwithstanding anything and before provided to the contrary, every owner of a dwelling unit having an exclusive use of an outdoor terrace or patio appurtenant to or allocated to his/her Residential Unit pursuant to the provisions of Schedule "F" to this Declaration shall be responsible for watering and maintaining all flowers, plants, shrubs and or trees growing or placed within same, as well as the responsibility for maintaining and repairing all interlocking stones, concrete slabs, paving stones, planter boxes, hot tubs, wrought iron fences (or any other type of privacy fence), and any other materials or features constructed, erected or installed upon or within or otherwise affixed to said exclusive use terrace area, provided that all waterproofing/weatherproofing materials, insulation materials, grout and/or crushed stone, and all other materials are substances installed by or on behalf of the Declarant immediately beneath or on the underside of any interlocking stones, concrete slabs and/or pave stones shall be maintained and repaired by the Corporation. Moreover, no addition or alteration intended or desired to be made to any such Unit owner to any of the interlocking stones, concrete slabs, pave stones, planter boxes, hot tubs, wrought iron fence or any other type of privacy fence and/or to any other landscaping materials or features

shall be made or implemented without the prior written consent of the Corporation. In the event that any Unit owner responsible fails to discharge his/her maintenance or repair obligations as hereinafter set forth, then the Corporation shall be empowered (but not obliged) to enter upon or within any exclusive use common element areas appurtenant to such owners unit, in order to enable the Corporation to carry out and complete the maintenance and repair responsibilities on such owners behalf, and in such case the said owner shall be responsible for reimbursing the Corporation for all costs and expenses incurred by the Corporation in so doing, and all payments to be made by any Owner pursuant to this provision shall be deemed to constitute additional contribution towards the common elements payable by such owner and shall be recoverable as such with corresponding lien rights in favour of the Corporation similar to the case of common expense arrears.

- (d) Upon the Corporation's request, each owner shall provide access to any common area, balcony, or patio terrace area set aside for the exclusive use of such owner, to the Corporation's authorized workers, contractors, agents, and representatives for the purposes of facilitating and/or expediting any requisite maintenance and/or repair work to same or to any other part of the Condominium's property or the building erected on the property and/or for the purposes of facilitating the window installation or window washing equipment thereon where applicable.
- (e) Notwithstanding anything contained in this Declaration to the contrary, no one shall bring onto, place, fix, erect or install on or within any balcony or deck, front porch, patio, or terrace area any object, material or thing that exceeds the permissible load set forth or contemplated in the structural plans or specifications of the condominium.
- (f) Each Owner shall be responsible for all damage to any and all other Units and to the Common Elements, which is caused by the failure of the Owner to maintain and repair his/her Unit and such parts of the Common Elements for which he/she is responsible, save and except for any such damage for which the cost of repairing same may be recovered under any policy of insurance held by the Corporation.
- (g) The Corporation shall be responsible for the repairs to the Parking Units, namely the structural integrity of the garage and the asphaltting or re-surfacing of the garage floor.

ARTICLES VI.

INDEMNIFICATION

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 an act or omission of such Owner, his family, guests, visitors or tenants to or with respect to 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. All payments to be made by an Owner pursuant to this Article shall be deemed to be additional contributions toward common expenses payable by such Owner and shall be recoverable as such.

ARTICLES VII.

TERMINATION

The Corporation shall, within twenty (20) days after a determination that there has been substantial damage to twenty-five percent (25%) of the building give to all Owners and to all mortgagees noted on the record of the Corporation notice of the determination and of a meeting of Owners to be held within sixty (60) days after the determination for the purpose of allowing the Owners to vote for termination.

ARTICLES VIII.

INSURANCE

1. By the Corporation

The Corporation shall obtain and maintain to the extent obtainable, at reasonable cost, the following insurance, in one or more policies:

- (1) "All Risk Insurance" Insurance against "all risks" (including fire and major perils as defined in the Act) as is generally available from commercial insurers in a standard "all risks" insurance policy and insurance against such other perils or events as the Board may from time to time deem advisable, insuring:

- (1) the Property and building, but excluding improvements and betterments made or acquired by an Owner; and
- (2) all assets of 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 as determined by the Board from time to time which deductible shall be the responsibility of the Corporation in the event of a claim with respect to common elements and shall be the responsibility of the Unit Owner in the event of a claim related to said Owner's Unit.

(2) Policy Provisions

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 all mortgagee endorsements subject to the provisions of the Act, this Declaration and the Insurance Trust Agreement) and shall contain the following provisions:

- (1) waivers of subrogation against the Corporation, its directors, officers, manager, agents, employees and servants and against the Owners, and the Owners' respective residents, tenants, invitees or licensees, except for damage arising from arson, fraud, vehicle impact, vandalism or malicious mischief caused by any one of the above;
- (2) 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;

- (3) waivers of the insurer's obligation to repair, rebuild or replace the damaged property in the event that after damage the government of the Property is terminated pursuant to the Act;
 - (4) waivers of any defense based on co-insurance (other than a stated amount co-insurance clause); and
 - (5) waivers of any defense based on any invalidity arising from the conduct or act or omission of or breach of a statutory condition by any insured person.
- (3) Public Liability Insurance: Public liability and property damage insurance, and insurance against the Corporation's liability resulting from breach of duty as occupier of the Common Elements insuring the liability of the Corporation and the Owners from time to time, with limits to be determined by the board, but not less than TWO MILLION (\$2,000,000.00) DOLLARS per occurrence and without right of subrogation as against the Corporation, its directors, officers, manager, agents, employees and servants, and as against the Owners and any member of the household or guests of any Owner or occupant of a Unit.
 - (4) Boiler, Machinery and Pressure Vessel Insurance
Insurance against the Corporation's liability arising from the ownership, use or occupation, by or on its behalf of boilers, machinery, pressure vessels and motor vehicles to the extent required as the Board may from time to time deem advisable.

2. General Provisions

- (a) The Corporation, its Board and its officers 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, including the Owner of a damaged Unit, shall be bound by such adjustment. Provided, however, that the Board may in writing, authorize any Owner, in writing, to adjust any loss to his/her Unit;
- (b) Every mortgagee shall be deemed to have agreed to waive any right to have proceeds of any insurance applied on account of the mortgage where such application would prevent application of the insurance proceeds in satisfaction of an obligation to repair. This subparagraph 2(b) of this Article VIII 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;
- (c) 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 to each mortgagee who has notified the Corporation of its interest in any unit. Renewal certificates or certificates of new insurance policies shall be furnished to each Owner and to each mortgagee noted on the Record of the Corporation who have requested same. The master policy for any insurance coverage shall be kept by the Corporation in its offices, available for inspection by any Owner or mortgagee on reasonable notice to the Corporation;
- (d) No insured, other than the Corporation, shall be entitled to amend any policy or policies of insurance obtained and maintained by the Corporation. No insured shall be entitled to direct that the loss shall be payable in any manner other than as provided in the Declaration and the Act;
- (e) Where insurance proceeds are received by the Corporation or any other person rather than the Insurance Trustee, they shall be held in trust and applied for the same purposes as are specified otherwise in Article IX; and

- (f) Prior to obtaining any new policy or policies of insurance and at such other time as the Board may deem advisable and also upon the request of a mortgagee or mortgagees holding mortgages on fifty (50%) per cent or more of the Units and in any event, at least every three (3) years, the Board shall obtain an appraisal from an independent qualified appraiser of the full replacement cost of the assets for the purpose of determining the amount of insurance to be effected and the cost of such appraisal shall be a common expense.

3. 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 his own benefit at such Owner's own expense:

- (1) Insurance on any additions, improvements or betterments made by an Owner to his/her Unit and for furnishings, fixtures, equipment, decorating and personal property and chattels of the Owner contained within his Unit, and his personal property and chattels stored elsewhere on the property, including his automobile or automobiles, and for loss of use and occupancy of his Unit in the event of damage. Every such policy of insurance shall contain waiver of subrogation against the Corporation, its manager, agents, employees and servants, and against the other Owners and any members of their household or guests except for any damage arising from arson, fraud, vehicle impact, vandalism or malicious mischief caused or contributed by any of the aforementioned parties;
- (2) Public liability insurance covering any liability of any Owner or any resident, tenant, invitee or licensee of such Owner, to the extent not covered by any public liability and property damage insurance obtained and maintained by the Corporation;
- (3) Insurance covering additional living expenses incurred by an Owner if forced to leave his/her Residential Unit by one of the hazards protected against under the Corporation's policy; and
- (4) Insurance covering special assessments levied by the Corporation and contingent insurance coverage in the event the Corporation's insurance is inadequate.

ARTICLES IX.

INSURANCE TRUSTEE AND PROCEEDS OF INSURANCE

1. The Corporation shall enter into, and at all times maintain, an agreement with an Insurance Trustee which 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 generality, provide the following:

- 1) the receipt by the Insurance Trustee of any proceeds of insurance in excess of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS payable to the Corporation;
- 2) the holding of such proceeds in trust for those entitled thereto pursuant to the provisions of the Act, this Declaration, and any amendments thereto;
- 3) the disbursement of such proceeds in accordance with the provisions of the Insurance Trust Agreement; and

- 4) the notification by the Insurance Trustee to the mortgagees of any insurance monies received by it.

If the Corporation is unable to enter into such agreement with such Trust Company or such Chartered Bank, by reason of its 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.

2. In the event that:

- (1) the Corporation is obligated to repair or replace the Common Elements, any Unit, or any asset insured in accordance with the provisions of the Act, the Insurance Trustee shall hold all proceeds for the Corporation and shall disburse same in accordance with the provisions of the Insurance Trust Agreement in order to satisfy the obligation of the Corporation to make such repairs;
- (2) there is no obligation by the Corporation to repair or replace, and if there is termination in accordance with the provisions of the Act, or otherwise, 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.

Notwithstanding the foregoing, any proceeds payable as aforesaid shall be subject to payment in favour of any mortgagee or mortgagees to whom such loss is payable in any policy of insurance and in satisfaction of the amount due under a Notice of Lien registered by the Corporation against such Unit, in accordance with the priorities thereof;

- (3) the Board, in accordance with the provisions of the Act, determines that:
 - (1) there has not been substantial damage to twenty-five (25%) per cent of the building; or
 - (2) there has been substantial damage to twenty-five (25%) per cent of the buildings and within sixty (60) days thereafter the Owners who own eighty (80%) per cent of the Units do not vote for termination,

the Insurance Trustee shall hold all proceeds for the Corporation and Owners whose Units have been damaged as their respective interests may appear and shall disburse same in accordance with the provisions of this Declaration and the Insurance Trust Agreement in order to satisfy their respective obligations to make repairs pursuant to the provisions of this Declaration and the Act.

ARTICLE X

DUTIES OF THE CORPORATION

Duties

In addition to any other duties set out elsewhere in this declaration, and specified in the by-laws of the Corporation, the Corporation shall have the following duties, namely:

- a) To cause water, heat, hydro and all other requisite utility services to be provided to the units and common elements (and to all amenities and facilities situate therein) so that same are fully functional and operable;

- b) To illuminate, maintains and repair (as the case may be) all portions of the common elements of this Condominium, in accordance with the provisions of the Act and this Declaration including without limitation, the maintenance and repair of any retaining walls or exterior perimeter fences erected along the boundaries of the Condominium (or any portion thereof), as well as the Condominium's landscaping treatments and features, and to clean and remove all dirt, debris and snow from all portions of the exterior roadways, driveways and walkways situate within this Condominium.
- c) To ensure that no actions or steps are taken by the Corporation, or by anyone else, which would prohibit, limit or restrict the access and egress over the common elements by the Declarant, its marketing/sales agents and representatives, the Declarant's construction/customer service employees and representatives, and any prospective unit purchasers or other invitees of the Declarant, during the opening hours of the Declarant's marketing/sales/construction/customer service office(s), in order to facilitate the Declarant's marketing/sale efforts with respect to its unsold units in this Condominium, provided however that such access and egress shall nevertheless be subject to any reasonable and customary restrictions imposed or implemented by any security personnel or by any security concierge located within the lobby of this Condominium.
- d) To ensure that no actions or steps are taken by the Corporation, or by anyone else, which would prohibit, limit or restrict the use and enjoyment of any Recreational Facilities within the Condominium at the times, in the manner and by those persons specifically contemplated or provided for in this Declaration.
- e) To ensure that no actions or steps are taken by the Corporation, or by anyone else, which would prohibit, limit or restrict the pedestrian egress from the underground garage, for fire and emergency purposes only, by the unit owners of the Condominium (and their respective residents, tenants, invitees and licensees) through designated stairwells and fire exit doors situate within this Condominium.
- f) To enter into, abide by and comply with the terms and provisions of any outstanding agreements (and any successor or supplementary agreement(s) with respect thereto) which are (or may be) registered against the units and/or common elements.
- g) To enter into an agreement with the Declarant immediately after the registration of this declaration (hereinafter referred to as the "License Agreement"), if so required by any of the Governmental Authorities, pursuant to which the Corporation shall formally grant the Declarant a license to enter upon the common elements for the purposes of complying with all of the terms and provisions of the Outstanding Municipal Agreements and/or the terms and provisions of any outstanding site works agreement with the City (i.e. pertaining to the completion of all grading, landscaping and site plan requirements in connection with the development of the Condominium), which license shall automatically expire upon the completion and fulfillment of all obligations of the Declarant thereunder (but in no case later than 21 years following the registration of this Declaration, in order to obviate any contravention of the subdivision-control and part-lot control provisions of The Planning Act R.S.O. 1990, as amended) and which license shall be duly authorized by a special by-law, pursuant to section 9(1)(b) of the Act.
- h) To enter into, abide by and comply with the terms and provisions of an assumption agreement to be entered into with the Declarant (and/or the City) immediately after the registration of this Declaration (hereinafter referred to as the "Assumption Agreement"), which provides for the Corporation's formal assumption of all outstanding obligations arising under either or both of the Outstanding Municipal Agreements to maintain any works, services or facilities heretofore constructed or installed upon (or with respect to) the Real Property, if so required by the City or the Declarant.
- i) To grant, immediately after the registration of this declaration, an easement in perpetuity in favour of the local gas company (the "Gas Company") over, under, upon, across and through

the common elements, for the purposes of facilitating the construction, installation, operation, maintenance and/or repair of the Gas Company's gas lines (and all necessary appurtenances thereto) in order to facilitate the supply of gas service to each of the units in the Condominium, with each unit owner being separately billed or invoiced for all gas services so consumed, and if so requested by the Gas Company, to enter into (and abide by the terms and provisions of) an agreement with the Gas Company pertaining to the provision of gas service to the Condominium (hereinafter referred to as the "Gas Agreement").

- j) To grant, immediately after the registration of the Declaration, if specifically requested to do so by the Declarant, an easement in perpetuity in favour of the local cable company or a company associated or affiliated thereto (the "Cable Company") over, under, upon, across and through the common elements, for the purposes of facilitating the installation, operation, maintenance and/or repair of the Cable Company's cable television and internet lines (and all necessary appurtenances thereto) in order to facilitate the supply of cable television and internet service to each of the units in the Condominium, with each unit owner being separately billed or invoiced for all cable television and internet services so consumed, and if so requested by the Cable Company, to enter into (and abide by the terms and provisions of) an agreement with the Cable Company pertaining to the provision of cable television and internet service to the Condominium (hereinafter referred to as the "Cable Agreement").
- k) To grant, immediately after the registration of the Declaration, if specifically requested to do so by the Declarant, an easement in perpetuity in favour of the local hydro-electricity company or a company associated or affiliated thereto (the "Hydro Company") over, under, upon, across and through the common elements, for the purposes of facilitating the installation, operation, maintenance and/or repair of the Hydro Company's electricity lines (and all necessary appurtenances thereto) in order to facilitate the supply of hydro-electricity service to each of the units in the Condominium and if so requested by the Hydro Company, to enter into (and abide by the terms of provisions of) an agreement with the Hydro Company pertaining to the provision of hydro-electricity service to the Condominium (hereinafter referred to as the "Hydro Agreement").
- l) To grant, immediately after the registration of the Declaration, if specifically requested to do so by the Declarant, an easement in perpetuity in favour of other local utility company or a company associated or affiliated thereto (the "Utility Company") over, under, upon, across and through the common elements, for the purposes of facilitating the installation, operation, maintenance and/or repair of the Utility Company's lines, pipes, conduits, as the case may be (and all necessary appurtenances thereto) in order to facilitate the supply the utility service to each of the units in the Condominium, and so requested by the Utility Company, to enter into (and abide by the terms and provisions of) and agreement with the Utility Company pertaining to the provision of service to the Condominium (hereinafter referred to as the "Utility Agreement").
- m) In the event that the Corporation decides to carry out a technical audit of the dwelling units and any other structures located on the Real Property (the "Technical Audit") at any time within the first five years following the date of registration of this Declaration, then the Corporation shall have a duty to:
 - i) permit the Declarant and its authorized employees, agents and representatives to accompany (and confer with) the engineer(s) or consultant(s) retained to carry out the Technical Audit for the Corporation (the "Technical Engineer"), while same is being conducted and to provide the Declarant with at least fifteen (15) days written notice prior to the commencement of same, and
 - ii) permit the Declarant and its authorized employees, agents and representatives to carry out any repair or remedial work identified or recommended by the Technical Engineer in connection with the Technical Audit (if the Declarant chooses to do so);

for the purposes of facilitating and expediting the rectification and audit process (by bringing all matters requiring rectification to the immediate attention of the Declarant so that same may be promptly dealt with), and affording the Declarant the opportunity to verify, clarify and/or explain any potential matters of dispute to the Technical Engineer, prior to the finalization of the Technical Audit.

- n) To maintain and keep in good repair the Declarant's logo or hallmark of distinction (or that of any other company associated, affiliated or related to the Declarant) which has been permanently installed or affixed by the Declarant within the lobby of (or elsewhere within the common elements of) this Condominium, all as more particularly located, illustrated, identified or otherwise referred to in the condominium description plan filed concurrently herewith, and to ensure that no actions or steps are taken by the Corporation (or by anyone else) to remove, relocate, tarnish, deface, damage or alter (in any way or manner) the aforementioned logo or hallmark.
- o) To take all reasonable steps to collect from each unit owner his or her proportionate share of the common expenses, and to maintain and enforce the Corporation's lien arising pursuant to section 32(4) of the Act, against each unit in respect of which the owner has defaulted in the payment of common expenses, and,
- p) To, if requested by the Declarant, or by the Declarant's agent, accept, at no cost to the Declarant, a transfer from the Declarant or the Declarant's agent, of title to any individual parking units, locker units, or any number of parking or locker units in this Corporation as determined requisite or advisable by the Declarant and/or the Declarant's agent as often as the Declarant shall request, and to execute all Land Transfer Tax affidavits and other documents and assurances as are necessary to effect and register such transfer or transfers and the Corporation appoints the Declarant of the Declarant's designated agent as Power of Attorney to execute such documents.

ARTICLE XI.

GENERAL MATTERS AND ADMINISTRATION

1. Rights of Entry to the Unit

- (1) The Corporation or any insurer of the Property or any part thereof, their respective agents, or any other person authorized by the Board, shall be entitled to enter any Unit or any part of the Common Elements over which any Owner has the exclusive use, at all reasonable times and upon giving reasonable notice, to perform the objects and duties of the Corporation, and, without limiting the generality of the foregoing, for the purpose of making inspections, adjusting losses, making repairs, correcting any condition which violates the provisions of any insurance policy and remedying any condition which might result in damage to the Property or any part thereof or carrying out any duty imposed upon the Corporation. In addition, the Corporation, its agents or any other person authorized by the Board of Directors shall be entitled to enter where necessary, any Unit or any part of the common Elements over which the Owners of such Units have the exclusive use, at such reasonable times and upon giving reasonable notice, to facilitate window washing of the suites below.
- (2) 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, including any part of the Common Elements over which any Owner has the exclusive use, or for the purpose of correcting any condition which might result in damage or loss to the Property. The Corporation or anyone authorized by it may determine whether an emergency exists;

- (3) If an Owner shall not be personally present to grant entry to such Unit, the Corporation or its agents may enter upon such Unit without rendering it, or them, liable to any claim or cause of action for damages by reason thereof provided that they exercise reasonable care;
- (4) The Corporation shall retain a key to all locks to each Unit. No Owner shall change any lock or place any additional locks on the doors to any Unit or in the Unit or to any part of the Common Elements of which such Owner has the exclusive use; and
- (5) The rights and authority hereby reserved to the Corporation, its agents, or any insurer or its agents, do not impose any responsibility or liability whatever for the care or supervision of any Unit except as specifically provided in this Declaration or the By-Laws.

2. Architectural, Structural, Mechanical, Electrical and Landscaping Plans

A complete set of all the original as-built architectural, structural, mechanical, electrical and landscaping plans and specifications including copies of all plans and specifications for any additions, alterations or improvements from time to time made to the Common Elements or to any Unit which required the prior consent of the Board shall be maintained in the office of the Corporation at all times or at such other place as the Board may determine by resolution for the use of the Corporation and any Owner or mortgagee in rebuilding or repairing any damage.

3. Units Subject to Declaration, By-laws and Rules and Regulations

All present and future Owners, tenants and occupants of Units, including their families, guests and visitors, shall be subject to and shall comply with the provisions of this Declaration, the By-Laws and any other Rules and regulations of the Corporation.

The acceptance of a deed or transfer, or the entering into of a lease, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the By-Laws 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 were recited and stipulated in full in each and every such deed or transfer or lease or occupancy agreement.

4. 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 affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

5. Waiver

The failure to take action to enforce any provision contained in the Act, this Declaration, the By-Laws 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.

6. Interpretation of Declaration

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

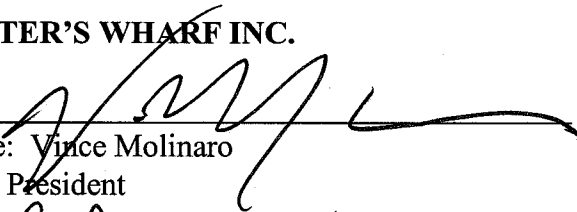
7. Headings

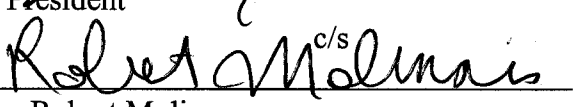
The headings in the body of this Declaration form no part of the Declaration but shall be deemed to be inserted for convenience of reference only.

IN WITNESS WHEREOF the Declarant has hereunto affixed its corporate seal under the hands of its proper officers duly authorized in that behalf.

DATED at Hamilton, this 25th day of July, 2006.

BAXTER'S WHARF INC.

Per: 
Name: Vince Molinaro
Title: President

Per: 
Name: Robert Molinaro
Title: Director

I/We have the authority to bind the Corporation.