

## JAMES RIVER RETREAT

BY-LAWS OF THE OWNERS: CONDOMINIUM PLAN NO. 9711840

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#### SCHEDULE 'A'


## JAMES RIVER RETREAT

### BY-LAWS OF THE OWNERS: CONDOMINIUM PLAN NO.

#### DEFINITIONS

1.1 In these by-laws unless the context or subject matter requires a different meaning:

(a) "Act" means the CONDOMINIUM PROPERTY ACT, Revised statutes of Alberta, 1980, Chapter C-22, as amended from time to time or any statute or statutes passed in substitution therefor;

 (b) "Architectural Standards" means those specifications for design and appearance as prescribed in the restrictive Covenant attached hereto as Schedule "B";

(c) "Board" means the Board of Managers of the Corporation;

(d) "Building" means any residential dwelling constructed on a unit and forming an integral part thereof;

(e) "by-laws" means the by-laws of the Corporation, as amended from time to time;

(f) "common expenses" mean the expense of performance of the objects and duties of the Corporation and any expenses specified as common expenses in these by-laws;

(g) "common property" means those portions of the condominium Plan which are designated "common property", so much of the parcel as is not comprised in or does not form part of any unit shown on the condominium plan, such additional portions of the Parcel not designated as a unit as shall from time to time be designated common property by the Developer and any unit acquired for common use of the owners and occupants of the Project as herein provided for;

(h) "condominium plan" means the bare land plan registered at the Land titles Office under the Act as No. ;

(i) "Corporation" means the corporation constituted under the Act by the registration of the condominium plan whose legal name is "the Owners: Condominium PLAN NO.  
";

(j) "Insurance trustee" means a trust company authorized to carry on the business of a trust company under the laws of Alberta selected from time to time on ordinary resolution of the Board, whose duties include the receiving, holding and disbursing of proceeds of policies of insurance pursuant to these by-laws and the Act;

(k) "Interest Rate" means that rate of interest per annum which may be or shall become payable hereunder by an owner in respect of monies Owning by him to the Corporation and shall be equal to the commercial prime rate in Calgary of the Canadian chartered bank with which the corporation conducts its banking business at that time plus Four (4%) percent on the earliest date on which any portion of the said monies becomes due and payable by an owner;

(l) "Manager" means any manager contractually appointed by the Board;

(m) "Managed Property" means the common property and all those parts of the units including the portions of the Buildings thereon which, pursuant to these By-laws, the Corporation is required to administer, control, manage, maintain and repair as if the same were common property, as well as the fences and dry hydrant system;

(n) "occupant" or "tenant" means the rightful and lawful occupant or lessee of a Building or unit, whether or not the occupant is an owner, and includes all family members, invitees, licensees, servants and guests of such occupant or tenant;

(o) "ordinary resolution" means a resolution:

(i) passed at a properly convened meeting of the corporation by a majority of not less than 51% of all the persons present at such meeting and entitled to exercise the power of voting conferred under the Act or these by-law; or

(ii) in writing signed by not less than 51% of all of the persons who, at a properly convened meeting of the corporation, would be entitled to exercise the power of voting conferred by the Act or these by-laws and representing not less than 51% of the total unit factors for all of the units;

(p) "owner" means a person who is registered as the owner of the fee simple estate in a unit and where the term "owner" is used in By-Law 62, that term includes a tenant;

(q) "Parcel" means the land comprised in the condominium plan;

(r) "project" means all of the real and personal property and fixtures comprising the parcel, land and buildings which constitute the units and common property;

(s) "Restrictive Covenant" means that Restrictive Covenant and Easement annexed hereto as Schedule "A" to be registered against title to specific units;

(t) "special resolution" means:

(i) a resolution passed at a properly convened meeting of the Corporation, of which at least seven (7) days' notice specifying the proposed resolution has been given, by a majority of not less than 75% of all the persons entitled to exercise the power of voting conferred under the Act or these by-laws and not less than 75% of the total unit factors for all the units: or

(ii) a written resolution signed by not less than 75% of all of the persons who, at a properly convened meeting of the corporation, would be entitled to exercise the power of voting conferred by the Act or these by-laws and representing not less than 75% of the total unit factors for all the units;

(u) "unanimous resolution" means a resolution:

(i) passed unanimously at a properly convened meeting of the corporation by all the persons entitled to exercise the power of voting conferred by the Act or these by-laws representing the total unit factors for all units; or

(ii) signed by all persons who, at a properly convened meeting of the corporation, would be entitled to exercise the powers of voting conferred by the Act or these by-laws;

(v) 'unit' means land that is situated within the Parcel and is described as a unit in the condominium plan by reference to boundaries governed by monuments placed pursuant to the provisions of the Surveys Act respecting subdivision surveys;

(w) "unit factor" means the unit factor for each unit as more particularly specified or apportioned and described in and set forth on the condominium plan.

#### DEFINITIONS - INTERPRETATION

1.2 Words and expressions which have a special meaning assigned to them in the Act have the same meaning in these by-laws and other expressions used in these by-laws and not defined in the Act or in these by-laws have the same meaning as may be assigned to them in the LAND TITLES ACT of Alberta or the LAW OF PROPERTY ACT of Alberta, as amended from time to time or in any statute or statutes passed in substitution therefor.

#### NUMBER AND GENDER

1.3 Words importing the singular number also include the plural, and vice versa, and words importing the masculine gender include the feminine gender or neuter, and vice versa, and words importing persons include firms and corporations and vice versa, where the context so requires.

#### MISCELLANEOUS PROVISIONS

##### 2. (a) HEADINGS

The headings used throughout these by-laws are inserted for reference purposes only and are not to be considered or taken into account in construing the terms or provisions of any by-law;

##### (b) RIGHTS OF OWNERS

The rights and obligations given or imposed on the corporation or the owners under these by-laws are in addition to any rights or obligations given or imposed on the Corporation or

the owners under the Act;

**(c) CONFLICT WITH ACT**

If there is any conflict between the by-laws and the Act, the Act prevails;

**(d) SEVERABILITY**

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

**(e) EXTENDED MEANINGS**

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

**DUTIES OF THE OWNERS**

**3. An owner SHALL:**

(a) permit the corporation and its agents, at all reasonable times on notice (except in case of emergency when no notice is required), to come onto his unit for the purpose of inspecting the exterior of the unit and to enter any Building thereon and maintaining, repairing, renewing, operating or to ensure the operation of, either or both, the common property or Managed Property, including but not limited to any, facilities for the furnishing of utilities and the dry hydrant system and capable of being used in connection with the enjoyment of any unit or common property, or for the purpose of maintaining, repairing or renewing the common property and Managed Property, or for the purpose of ensuring that the by-laws are being observed, or for the purpose of doing any work for the benefit of the corporation generally or for the purpose of monitoring the use of any utility;

(b) forthwith carry out all work that may be ordered by any municipality or public authority in respect of his unit and pay all rates, taxes, charges, outgoings and assessments that may be payable in respect of his unit to the corporation or any governmental authority;

(c) meet the standards as set out in the architectural controls as they may be amended from time to time;

(d) manage the exterior portions of each unit by seeing to it that the grass is cut and that all clippings and deadfall are removed so as to limit any fire hazard;

(e) maintain and keep in a neat, clean and tidy state and appearance consistently with

and in total integrity with the balance of the project, his unit and all Buildings, improvements and additions thereon and if an owner shall not maintain his unit to a standard similar to that of the remaining project, the Corporation may give ten (10) days' notice to the owner to this effect and if such notice has not been complied with at the end of that period, then the Corporation may carry out such work and the provisions of By-Law 57 shall apply:

- (f) not make any repairs, additions or alterations to the common property, the Managed Property, the exterior of any Building without first obtaining the written consent of the corporation;
- (g) use and enjoy his unit and the common property in accordance with these by-laws and all rules and regulations prescribed by the Corporation and in such a manner as to not unreasonably interfere with the use and enjoyment thereof by other owners, their families or visitors;
- (h) not use his unit or permit it to be used in any manner for any purpose which may be illegal, injurious or that will cause nuisance or hazard to any occupier of another unit (whether an owner or not) or the family of such an occupier;
- (i) not do any act or permit any act to be done or alter or permit to be altered the exterior of his unit (or any Buildings thereon) in any manner whatsoever, or which will alter either of the appearance or grade of his unit or of any other units or the appearance of any Building thereon;
- (j) not do or permit anything to be done that may cause damage to or will alter the appearance of any of the Managed Property or the common property (including any area to which the owner has been granted exclusive use) without first obtaining the written consent of the corporation;
- (k) notify the corporation forthwith upon any change of ownership or of any mortgage, lease or other dealing in connection with his unit;
- (l) comply strictly with these by-laws and with such rules and regulations as may be adopted pursuant thereto from time to time and cause all adult occupiers of and visitors to his unit to similarly comply;
- (m) pay to the corporation (or if requested to the Manager) when due all contributions levied or assessed against his unit together with interest on any arrears thereof at the interest Rate calculated from the due date and the Corporation is hereby permitted to charge such interest in accordance with Section 32 of the Act;
- (n) permit the Corporation, its representatives and persons authorized by the corporation, to enter his unit to carry out maintenance and repair work required to be performed for the maintenance and betterment of the Project generally;
- (o) abide by any system imposed by the condominium association with respect to the identification of the vehicles;

- (p) shall make himself available for training as part of the volunteer fire department.

#### DUTIES OF THE CORPORATION

4. In addition to the duties of the corporation set forth in the Act, the corporation, through its Board SHALL:

- (a) control, manage, maintain, repair and administer the common property (except as herein before and hereinafter set forth), the Managed Property, and all real property, chattels, personal property or other property owned by the corporation for the benefit of all of the owners and for the benefit of the entire condominium project;
- (b) do all things required of it by the Act, these by-laws and any other rules and regulations in force from time to time;
- (c) maintain and repair (including renewal where reasonably necessary) common utilities, fences, dry hydrant system, wherever located, for the furnishing of utilities for the time being existing in the parcel and capable of being used in connection with the enjoyment of one or more unit (s) or common property;
- (d) provide and maintain in force all such insurance as is required by the Act and by the provisions of these by-laws and enter into any insurance trust agreements from time to time as required by any insurance trustee and approved by the Board and, on the written request of an owner or registered mortgagee of a unit, or the duly authorized agent of such owner or mortgagee, produce to the owner or mortgagee, a certified copy of the policy or policies of insurance effected by the corporation or a certificate or memorandum thereof and the receipt or receipts for the last premium or premiums in respect thereof;
- (e) subject to any obligations imposed by the By-Laws or by the corporation upon any owners, to maintain and repair any part of the common property or a unit owned by the corporation and the Managed Property;
- (f) collect and receive all contributions towards the common expenses and deposit same in a separate account with a chartered bank or trust company or Province of Alberta Treasury Branch;
- (g) provide and maintain out of the assessments to be levied by the Corporation towards the common expenses or otherwise such amount as the Board may determine from time to time to be fair and prudent for a replacement reserve fund and the replacement reserve fund shall be an asset of the Corporation;
- (h) pay all sums of money properly required to be paid on account of all services, supplies and assessments pertaining to or for the benefit of the parcel, the corporation and the owners, as the Board may seem justifiable in the management or administration of the entire condominium project;



- (i) remove snow from and keep and maintain in good order and condition all areas of the common property being roadways and keep and maintain in good order and condition all grassed or landscaped areas of the Managed Property and the common property;
- (j) provide for regular garbage collection from a bin to be provided by the corporation and located on common property;
- (k) at all times keep and maintain for the benefit of the Corporation and all owners copies of all warranties, guarantees, drawings and specifications, plans, written agreements, certificates and approvals provided to the corporation pursuant to Section 37 of the Act;
- (l) establish and maintain lawns, trees and shrubs and other landscaping on the Managed Property and the common property ;
- (m) not allow any parking on the roadway at any time for any purpose.

#### POWERS OF THE CORPORATION

5. In addition to the powers of the corporation set forth in the Act, the corporation through its Board, MAY and is hereby authorized to:

- (a) purchase, hire or otherwise acquire personal property and/or real property for use by owners in connection with the maintenance, repair, replacement or enjoyment of the real and personal property of the Corporation or the common property, or their units or any of them, provided that real property shall only be acquired or disposed of by special resolution of the Corporation;
- (b) borrow monies required by it in the performance of its duties or the exercise of its powers provided that each such borrowing in excess of 15% of the current year's common expenses budget has been approved by special resolution with the exception of mortgaging required for the construction of the community building;
- (c) secure the repayment of monies borrowed by it, and the payment of interest thereon, by negotiable instrument, or the mortgage of unpaid contributions (whether levied or not), or the mortgage of any property vested in it, or by any combination of those means;
- (d) invest as it may determine appropriate any contributions towards the common expenses SUBJECT to the restrictions set forth in Section 35 of the Act;
- (e) make an agreement with an owner, tenant or other occupier of a unit for the provision of amenities or services by it to the unit or to the owner, tenant or occupier thereof;
- (f) grant to an owner the right to exclusive use and enjoyment of part of the common property or the Managed Property, any such grant to be determinable on reasonable notice,

unless the corporation by special resolution otherwise resolves;

(g) make such rules and regulations as it may deem necessary or desirable from time to time in relation to the use, enjoyment and safety of the managed Property and the common property and do all things reasonably necessary for the enforcement of these by-laws and for the control, management and administration of the common property generally including the commencement of an action under Section 29 of the Act and all subsequent proceedings relating thereto;

(h) determine from time to time the amounts to be raised and collected for the purposes hereinbefore mentioned;

(i) raise amounts so determined by levying contributions on the owners in proportion to the unit factors for their respective units or as otherwise herein provided;

(j) charge interest under Section 32 of the Act on any contribution or common expenses owing to it by an owner at the Interest Rate;

(k) pay an annual honorarium, stipend or salary to members of the Board in the manner and in the amounts as may be from time to time determined by ordinary resolution at a general meeting;

(l) join any organization serving the interests of the Corporation and assess the membership fee in such organization as part of the common expenses;

(m) do all things which are, either or both, incidental or conducive to the exercise of its powers granted under the Act and the by-laws;

(n) subject to any limitations and prohibitions contained in the Act, these By-Laws and otherwise by law, have such powers and do all such things which any body corporate shall be empowered and authorized to do under the Business Corporations Act of Alberta (as amended and replaced from time to time) and do all things and have such rights, powers and privileges of a natural person;

(o) purchase, acquire, own and operate Real Property (provided such real property is a unit) for the general use or benefit of the owners, and acquire and grant (as the case may be) rights to joint access or mutual use (including entering into and observing and performing any agreement for joint or mutual administration and management thereof) to shared services or facilities;

(p) establish rules and regulations for the identification of vehicles allowed into the project.

#### THE CORPORATION AND THE BOARD

6. The powers and duties of the Corporation shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the Board.

#### NUMBER ON BOARD

7. During the initial existence of the corporation and prior to the first annual general meeting of non-Developer owners, the Board shall consist of up to two nominees of the Developer. Thereafter the Board shall consist of not less than three nor more than seven owners or legal spouses of owners or representatives of mortgagees who have notified their interests to the Corporation and the Board shall be elected at each annual general meeting. The number of members of the Board for the next ensuing year shall be fixed by resolution at the annual general meeting just prior to the election of the Board. A Board member must be 18 years of age or older. Where a unit has more than one owner, only one owner in respect of that unit may sit on the Board at any point in time.

#### RETIREMENT FROM BOARD

8. At each annual general meeting of the corporation all the members of the Board shall retire from office and the Corporation shall elect a new Board.

#### ELIGIBILITY FOR RE-ELECTION TO BOARD

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

#### REMOVAL FROM BOARD

10. Except where the Board consists of all of the owners, the corporation may, by resolution at an extraordinary general meeting, remove any member of the Board before the expiration of his term of office and appoint another owner in his place, to hold office until the next annual general meeting.

#### CASUAL VACANCY ON BOARD

11. Where a vacancy occurs on the Board under By-Law 20, the remaining members of the Board may appoint a person to fill that office for the remainder of the former member's term provided such person qualifies for membership pursuant to By-Law 7.

#### QUORUM FOR BOARD

12. Except where there is only one owner, a quorum of the Board is two where the Board consists of four or less members, three where the Board consists of five or six members and four where it consists of seven members. Any member of the Board may waive notice of a meeting before, during or after the meeting and such waiver shall be deemed the equivalent of receipt of due and proper notice of the meeting.

#### OFFICERS OF THE CORPORATION

13. At the first meeting of the Board held after each annual general meeting of the Corporation, the Board shall elect from among its members a President, a Vice-President, a Treasurer and/or

a Secretary who shall hold their respective offices until the conclusion of the next annual general meeting of the corporation or until their successors are elected or appointed. The President shall be the chairman of the Board and shall have a casting vote in addition to his original vote. A person ceases to be an officer of the corporation if he ceases to be a member of the Board. Where a person ceases to be an officer of the Corporation, the Board shall designate from its members a person to fill that office for the remainder of the term. A person may simultaneously hold two offices.

#### CHAIRMAN OF BOARD MEETINGS

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

#### DUTIES OF OFFICERS

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

#### VOTES OF BOARD

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

#### FURTHER POWERS OF BOARD

17. The Board may:

(a) meet together for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit, and it shall meet when any member of the Board gives to the other members of the Board not less than fourteen (14) days' notice of a meeting proposed by him, specifying the reason for calling the meeting provided that the Board shall meet at the call of the President on such notice as he may specify without the necessity of the President giving reasons for the calling of the meeting;

(b) appoint or employ for and on behalf of the Corporation such agents or servants as it thinks fit in connection with the control, management and administration of the common property and the exercise and performance of the powers and duties of the Corporation;

(c) • subject to any valid restriction imposed or direction given at a general meeting of owners, delegate to one or more members of the Board such of its powers and duties as it thinks fit, and at any time revoke such delegation;

(d) obtain and retain by contract the services of a Manager or of any professional real property management firm or professional real property manager or agent for such purposes (including but not so as to limit the generality of the foregoing the supervision, management and performance of any or all of the duties of the Corporation) and upon such terms as the Board may from time to time decide SUBJECT ALWAYS to the control and direction of the Corporation and the Board, such Manager to be reasonably fit and suited to perform such duties. The Manager employed by the Board need not devote its full time to the performance of duties of the Corporation so long as those duties are performed in a good and sufficient fashion. If under such contract the Manager holds funds for the Corporation, the contract shall require the Manager to arrange or maintain a fidelity bond owned by and in the name of the Corporation and for the benefit of the Corporation and such bond shall be in an amount required by the Corporation but in any event not less than:

- (i) the total amount of any replacement reserve funds in the hands of or controlled by the Manager; and
- (ii) one month's total condominium contributions of the Corporation or 1/12 of the total annual condominium contributions for all units in the Project (excluding any special contributions) whichever is greater; and
- (iii) a sum representing the average monthly amount of cash in the control of the Manager.

(e) enter into an insurance trust agreement in form and on terms as required by any insurance trustee.

#### ADDITIONAL DUTIES OF THE BOARD

#### 18. The Board SHALL:

- (a) subject to any valid restriction imposed or direction given at a general meeting of the owners, carry on the day to day business and affairs of the corporation;
- (b) keep minutes of its proceedings and, upon written request at the expense of the person requesting, provide copies thereof to owners and to mortgagees who have notified their interests to the corporation;
- (c) cause minutes to be kept of general meetings of the owners and, upon written request at the expense of the person requesting, provide copies thereof to owners and to mortgagees who have notified their interests to the Corporation;
- (d) cause proper books of account to be kept in respect of all sums of money received and expended by it and the matters in respect of which receipt and expenditure shall take place;
- (e) prepare, or cause to be prepared, proper accounts relating to all monies of the Corporation, and the income and expenditure thereof, for each annual general meeting;

- (f) maintain financial records of all the assets, liabilities and equity of the Corporation;
- (g) on written application of an owner or mortgagee, or any person authorized in writing by him, make the books of account available for inspection at all reasonable times;
- (h) at least once a year, cause the books and accounts of the corporation to be audited by an independent chartered accountant to be selected at each annual general meeting of the corporation and cause to be prepared and distributed to each owner and to each mortgagee who has notified its interest to the Corporation a copy of the audited Financial Statements of the receipts of contributions of all owners towards the common expenses and disbursements made by the corporation and a copy of the Auditor's Report within ninety (90) days of the end of the fiscal year of the corporation. The report of the Auditor shall be submitted to each annual general meeting of the Corporation;
- (i) keep a register of all owners and mortgagees who have notified their interests to the Corporation;
- (j) within fifteen (15) days of a person becoming or ceasing to be a member of the Board, file or cause to be filed at the Land titles office a notice in the prescribed form stating the name and address of that person and the day that the person became or ceased to be, as the case may be, a member of the Board;
- (k) file or cause to be filed at the Land titles office a notice in the prescribed form of any change in the address for service of the corporation.

#### DEFECTS IN APPOINTMENT TO BOARD

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

#### VACATING OFFICE OF BOARD MEMBERS

20. The office of a member of the board shall be vacated if the member:

- (a) by notice in writing to the Corporation resigns his office; or
- (b) dies; or
- (c) is in arrears more than sixty (60) days of any contribution, levy or assessment required to be made by him as an owner; or
- (d) becomes bankrupt; or
- (e) is found lunatic or becomes of unsound mind, or is the subject of a Certificate of Incapacity issued under the MENTAL HEALTH ACT; or

- (f) is convicted of an indictable offence for which he is liable to imprisonment; or
- (g) is absent from meetings of the Board for a continuous period of three (3) months or three (3) consecutive meetings without the consent of the remaining members of the Board and a majority of the remaining members of the Board resolve at the next subsequent meeting of the Board that his office be vacated; or
- (h) he ceases to qualify for membership pursuant to By-Law 7; or
- (i) in the case of a company which is a member of the Board, if the company shall become bankrupt or make an assignment for the benefit of creditors or if proceedings are commenced to wind up the company, otherwise than for the purpose of amalgamation or reconstruction;
- (j) commences any legal proceedings against the Board or the Corporation.

#### SIGNING AUTHORITIES

21. The Board shall determine, by resolution from time to time, the manner in which officer or officers shall sign cheques, drafts, notes and other instruments and documents, including banking forms and authorities not required to be under corporate seal and may authorize the Manager to sign the same with or without co-signing by any officer or officers.

#### CORPORATE SEAL

22. The corporation shall have a common seal, which shall be adopted by resolution and which shall at no time be used or affixed to any instrument except in the presence of at least one member of the Board or by the persons as may be authorized from time to time by resolution of the Board, except that where there is only one member of the Corporation his signature shall be sufficient for the purposes of this by-law, and if the only member is a company the signature of its appointed representative on the Board shall be sufficient for the purpose of this by-law.

#### ANNUAL GENERAL MEETINGS

23. The first annual general meeting shall be held within the time prescribed by the Act. Subsequent annual general meetings shall be held once in each calendar year, and not more than fifteen (15) months shall elapse between the date of one annual general meeting and that of the next.

#### EXTRAORDINARY GENERAL MEETINGS

24. All general meetings other than annual general meetings shall be called extraordinary general meetings,

#### CONVENING EXTRAORDINARY GENERAL MEETINGS

25. The Board may whenever it thinks fit and shall upon a requisition in writing by owners

representing not less than 25% of the total unit factors for all the units or upon the request in writing from mortgagees holding registered mortgages (and who have notified their interests to the Corporation) against units in respect of which corresponding unit factors represent not less than 25% of the total unit factors or a combination of such owners or mortgagees entitled to vote with respect to 25% of the total unit factors convene an extraordinary general meeting, which meeting shall be held within thirty (30) days of the Board's receipt of the said requisition. The agenda for such meeting shall include any legally valid items specified by the requisitioners.

#### NOTICE OF GENERAL MEETINGS

26. Thirty (30) days' notice of every general meeting specifying the place, the date and the hour of meeting (and in the case of special business the general nature of such business), shall be given to all owners and mortgagees who have notified their interests to the Corporation. Notice shall be given to the owner and to such mortgagees in the manner prescribed in these by-laws, but the accidental omission to give notice to an owner or mortgagee or non-receipt by an owner or mortgagee does not invalidate the meeting or any proceedings thereat. The computing the number of the days of notice of a general meeting required under these by-laws, the day on which the notice is deemed to have been received and the day of the meeting shall be counted. Notice of any meeting may be waived either at, before or after the meeting by persons entitled to vote at the meeting and such waiver shall be deemed the equivalent of receipt of due and proper notice of the meeting.

#### PROCEEDINGS AT GENERAL MEETINGS

27. All business that is transacted at an annual general meeting, with the exception of the consideration of accounts and election of members to the Board, or at any extraordinary general meeting, shall be deemed special.

#### QUORUM FOR GENERAL MEETINGS

28. Save as in these by-laws otherwise provided, no business shall be transacted at any general meeting unless a quorum of persons entitled to vote is present at the time when the meeting proceeds to business and one-quarter of the persons entitled to vote present in person or by proxy shall constitute a quorum.

#### ADJOURNMENT FOR LACK OF QUORUM

29. If within one-half hour from the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time and if at the adjourned meeting a quorum is not present within one-half hour from the time appointed for the meeting, the persons entitled to vote who are present shall be a quorum.

#### CHAIRMAN FOR GENERAL MEETINGS

30. The President of the Board shall be the chairman of all general meetings or in his absence from the meeting or in case he shall vacate the chair, the Vice-President of the Board shall act as chairman provided always that if the President and Vice-President be absent or shall vacate the



chair or refuse to act, the meeting shall elect a Chairman.

#### ORDER OF BUSINESS FOR GENERAL MEETINGS

31. The Order of Business at general meetings, and as far as is appropriate at all extraordinary general meetings, shall be:

- (a) if the President or Vice-President of the Board shall be absent or elects to vacate the chair or refuses to act, the election of the Chairman of the meeting;
- (b) calling to order by the Chairman and establish quorum;
- (c) proof of notice of meeting or waiver of notice;
- (d) reading and disposal of any unapproved minutes of general meetings;
- (e) reports of officers;
- (f) reports of committees;
- (g) financial report;
- (h) appointment of auditors;
- (i) resignation of Board;
- (j) election of Board;
- (k) unfinished business;
- (l) new business;
- (m) adjournment.

#### VOTING BY SHOW OF HANDS

32. At any general meeting a resolution by the vote of the meeting shall be decided on a show of hands, unless a poll is demanded by any owner or registered mortgagee present in person or by proxy. Unless a poll be so demanded, a declaration by the Chairman that a resolution has, on the show of hands, been carried is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour or against the resolution. Except for matters requiring a special resolution or unanimous resolution, all matters shall be determined by ordinary resolution.

#### POLL VOTES

33. A poll, if demanded, shall be taken in whatever manner the chairman thinks fit, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was

demand. In the case of equality in the votes, whether on a show of hands or on a poll, the chairman of the meeting is entitled to a casting vote in addition to his original vote. A demand for a poll may be withdrawn.

#### VOTING CALCULATION

34. On a show of hands, each Unit shall have one vote. On a Poll, the votes of persons entitled to vote for such unit shall correspond with the number of unit factors for the respective units owned or mortgaged to them.

#### VOTES PERSONALLY OR BY PROXY

35. On a show of hands or on a poll, votes <sup>MAY</sup> be given either personally or by proxy.

#### PROXIES

36. An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be either general or for a particular meeting. A proxy need not be an owner.

#### ELIGIBILITY TO VOTE

37. Except in cases where by or under the Act a unanimous resolution or special resolution is required, no owner is entitled to vote at any general meeting unless all assessments payable in respect of his unit have been duly paid to the date thirty (30) days prior to the date of such meeting but the presence of any such defaulting owner shall be included in the count for quorum constitution purposes pursuant to By-Law 28.

#### VOTE BY CO-OWNERS

38. (a) Co-owners may vote by proxy but only if the proxy is jointly appointed by them or by one of the co-owners appointed by the other or all others, as the case may be, and in the absence of such proxy, co-owners are not entitled to vote separately on a show of hands except when a unanimous resolution is required by the Act, but any one co-owner may demand a poll;

(b) On any poll, each co-owner is entitled to such part of the vote applicable to a unit as is proportionate to his interest in the unit. The joint proxy (if any) on a poll shall have a vote proportionate to the interests in the unit of the joint owners as do not vote personally or by individual proxy.

#### RESOLUTION OF THE OWNERS

39. A resolution of the owners in writing signed by each owner or his duly appointed proxy shall have the same effect as a resolution passed at a meeting of the owners duly convened and held.

### SUCCESSIVE INTERESTS

40. Where owners are entitled to successive interests in a unit, the owner entitled to the first interest (or if his interest is mortgaged by registered first mortgage notified to the Corporation, the mortgagee under such mortgage) is alone entitled to vote, whether on a show of hands or a poll.

### TRUSTEE VOTE

41. Where an owner is a trustee, he shall exercise the voting rights in respect of the unit to the exclusion of persons beneficially interested in the trust, and those persons shall not vote.

### VOTING RIGHTS OF MORTGAGEE

42. Notwithstanding the provisions of these by-laws with respect to appointment of a proxy, where the owner's interest is subject to a registered mortgage and where the mortgage or these by-laws or any statute provides that the power of vote conferred on an owner may or shall be exercised by the mortgagee and where the mortgagee has given written notice of his mortgage to the Corporation, no instrument or proxy shall be necessary to give the mortgagee the said power to vote and the mortgagee's power to vote shall not be limited or proscribed by the owner's failure to pay contributions.

### VIOLATION OF BY-LAWS

43. (a) Any infraction or violation of or default under these by-laws or any rules and regulations established pursuant to these by-laws on the part of an owner, his servants, agents, licensees, invitees or tenants that has not been corrected, remedied or cured within ten (10) days of having received written notification from the corporation to do so, may be corrected, remedied or cured by the Corporation and any costs or expenses incurred or expended by the corporation including costs as between a solicitor and his own client, in correcting, remedying or curing such infraction, violation or default shall be charged to such owner and shall be added to and become part of the assessment of such owner for the month next following the date when such costs or expenses are expended or incurred (but not necessarily paid) by the Corporation and shall become due and payable on the date of payment of such monthly assessment and shall bear interest both before and after judgment at the Interest Rate until paid;

(b) The Corporation may recover from an owner by an action for debt in any court of competent jurisdiction any sum of money which the Corporation is required to expend as a result of any act or omission by the owner, his servants, agents, licensees, invitees or tenants, which violates these by-laws or any rules or regulations established pursuant to these by-laws and for which ten (10) days prior written notice has been given by the Corporation and there shall be added to any judgment, all costs of such action including costs as between a solicitor and his own client. Nothing herein shall be deemed to limit any right of any owner to bring an action or proceeding for the enforcement and protection of his rights and the exercise of his remedies;

(c) In addition, the Corporation may exercise the powers provided for in Section 29 of

the Act.

#### AMENDMENT OF BY-LAWS

44. These By-laws, or any of them, may be added to, amended or repealed by special resolution of the Corporation and not otherwise and the Corporation shall cause to be prepared and distributed to each mortgagee who has notified its interest to the corporation a notice or memorandum of any proposed amendments, additions or repeal thirty (30) days prior to the date at any such special resolution and thereafter provide each such mortgagee with a copy of any registered amendment, addition or repeal,

#### DAMAGE OR DESTRUCTION

45. (a) In the event of damage or destruction as a result of fire or other casualty, the owner must declare within sixty (60) days of the occurrence whether it is their intention to repair the damage occurring or demolish the structure. In any event, the owner must within one hundred (100) days of the event proceed with repair or restoration or demolition, failing which the association shall be at liberty, at the expense of the owner, to demolish the structure. Should the owner decide to rebuild, repair or replace, that must be completed within one (1) year of the event.

(b) No owner shall be entitled to claim any compensation from the corporation for any loss or damage to the property or person of the owner arising from any defect or want of repair of the common property or any part thereof, unless such loss or damage is covered by the insurance held or required to be held by the corporation pursuant to the Act or these by-laws, whichever is the greater;

(c) Where the corporation is required to enter a unit or a Building for the purpose of maintaining, repairing or renewing utilities, fences or dry hydrant systems for the time being existing in the unit or Building and capable of being used in connection with the enjoyment of any other unit, Building or the common property, the Corporation and its servants, employees and agents shall in carrying out any work or repairs do so in a proper and workmanlike manner and shall make good any damage to the unit occasioned by such work and restore the unit or Building to its former condition, leaving the unit and Building clean and free from debris;

(d) An owner shall indemnify and save harmless the corporation from the expenses of any maintenance, repair or replacement rendered necessary to the common property or to any unit or Building by his act or omission or by that of any member of his family or his or their guests, servants, agents, invitees, licensees or tenants, but only to the extent that such expense is not met by the proceeds of insurance carried by the corporation.

#### INSURANCE

46. (a) The Board, on behalf of the corporation, shall obtain and maintain, subject always to the Act and in particular, Section 38 thereof, the following insurance:

(i) All Risk insurance with extended coverage endorsement for such perils as the Board shall deem advisable insuring:

- (A) all of the insurable common property;
- (B) all insurable property of the corporation, both real and personal of any nature whatsoever;
- (C) the corporation; and
- (D) the Board of Managers and any person referred to in By-Law 17 hereof (hereinafter collectively called the 'insureds') as their respective interest may appear;

(ii) Boiler and vessel insurance if any boilers and vessels exist;

(iii) Public liability insurance insuring the Insureds against any liability to the public and/or to the Owner and their invitees, licensees or tenants, incidental to the ownership and/or use of the common property and such insurance will be limited to liability in an amount not less than \$2,000,000.00 inclusive for bodily injury and/or property damage per occurrence:

(iv) Directors and Officers liability insurance, including error and omissions coverage, in such amounts and with such deductibles as the Board may determine insuring the Board and every member thereof from time to time and all employees of the corporation from and against all loss, costs, and expenses, including counsel fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a manager or officer of the corporation, except as to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct;

(v) Such other insurance and coverage for such other risks or causes as the Board may determine or as may be determined by special resolution;

(b) Each and every said policy of insurance shall name the Insureds and shall, as available and where applicable, provide:

(i) that the policy may not be canceled or substantially modified without at least sixty (60) days' prior written notice to all insureds;

(ii) that in no event shall insurance coverage be brought into contribution with insurance purchased by any owner or mortgagee and such insurance shall be deemed as primary insurance:

(iii) standard mortgage endorsements attached to each such policy:

(iv) a waiver by the insurer of its rights of subrogation against the corporation, its Manager, agents, employee and servants

- (v) a waiver by the insurer of any defence based upon co-insurance (provided that policies of physical damage insurance may contain co.-insurance on a stated amount basis so long as the appraisal provisions of the by-law are met) or of invalidity arising from the conduct of or any omission or act or breach of a statutory condition by any Insured;
  - (vi) a waiver of the insurer's option to repair, rebuild or replace in the event that after damage the status of the condominium is terminated; and
  - (vii) a cross liability endorsement wherein the rights of any Insured shall not be prejudiced with respect to another Insured;
- (c) Prior to obtaining any policy of insurance hereunder or any renewal thereof, and at least annually, the Board shall obtain an appraisal from a duly qualified appraiser setting out the full replacement cost of the property, units, Buildings and all of the property of the corporation. A copy of such appraisal shall be delivered to each Mortgagee who has given written notice of his mortgage to the corporation. The Board shall forthwith obtain insurance coverage under any and all such policies of insurance in accordance with such appraisal to insure the full replacement value as set forth in such appraisal. In addition to such insurance coverage for the replacement value of the common property, units, Buildings and any other property of the Corporation, the Board shall review and adjust the level of insurance coverage for other risks (including liability) to such amounts and levels required by and as would be maintained by an owner of similar property in the locality in which the condominium property is situate;
- (d) A certificate or memorandum of all insurance policies and endorsements thereto shall be issued by the Board, or by the manager on its behalf, as soon as practicable to each of the Insured: immediately upon written request therefor, and a duplicate original or certified copy of each such policy shall be forwarded and aforesaid to each mortgagee who has in writing notified the Board of its interest. Further, a renewal certificate or memorandum of new insurance policies shall be furnished to each Insured. The original policies of all insurance coverage shall be retained by the Corporation in its offices, and shall be available for inspection by any and all of the Insureds upon reasonable request:
- (e) Notwithstanding anything aforesaid, and subject to the terms of any Insurance Trust Agreement, all proceeds of insurance on loss or claim shall be paid to the insurance trustee (if any), and exclusive authority to adjust losses and settle proceeds under all insurance policies shall be vested in the Board or its authorized representative, and the Insurance trustee (if any); provided that any expense of the insurance trustee shall be treated as common expenses of the Corporation;
- (f) The owners shall carry insurance, including liability insurance naming the corporation as a named insured with notice of cancellation being sent to the corporation, on their own units as permitted by the ACT and shall provide proof of the insurance to the Board of Managers by the 1<sup>st</sup> day of July in each year. PROVIDED further that neither the Corporation nor the Board shall be required or have any duty to insure the interests of tenants against liability or for their belongings, contents or other property;

ASSESSMENTS FOR COMMON EXPENSES AND BUDGETS

47. (a) The common expenses of the Corporation shall be paid by the unit owners in proportion to the unit factors for their respective unit: and without limiting the generality hereof, shall include the following:
- (i) All levies or charges on account of garbage removal, electricity, water, sewer, gas and fuel services and television antenna or cable services (if any) supplied to the Corporation for the Project and for the benefit of all owners and not charged directly to any one owner either by meter or otherwise;
  - (ii) Management fees and Insurance trustee fees, if any, wages, salaries, taxes and other expenses payable to or on account of employees or independent contractors of the corporation;
  - (iii) All the charges on account of cleaning Managed Property, lawn maintenance and landscaping and for ice, snow and debris removal from the Managed Property or common property;
  - (iv) All charges on account of lighting fixtures situated on the Managed Property or common property;
  - (v) All charges on account of maintenance for those portions of a unit, Buildings, Managed Property, or common property for which the corporation is responsible under these by-laws;
  - (vi) All costs of furnishings and equipment for use in and about the project facilities or amenities including the repair, maintenance or replacement thereof;
  - (vii) All insurance costs in respect of the insurance for which the corporation is responsible under these by-laws and/or the Act;
  - (viii) All costs of and charges for all manner of consultation, professional and servicing assistance required by the corporation including without limiting the generality of the foregoing all legal and accounting fees and disbursements;
  - (ix) All reserves for repairs and replacement of common property and portions of units or Buildings the repair or replacement of which is the responsibility of the Corporation;
  - (x) Maintenance of the common land, buildings and managed lands.
  - (xi) The cost of maintaining fidelity bonds as provided in these By-Laws;
  - (xii) The cost of borrowing money for the purpose of carrying out the duties and objects of the corporation;

(xiii) The allocable or pro rata portion of the cost of any electricity taken from any exterior plug which is billed directly to an owner by the provider of such electricity and which is used by the corporation for purposes of operating or maintaining common property;

(b) At least fifteen (15) days prior to the end of each fiscal year the corporation shall deliver or mail to each owner at the municipal address of his unit:

(i) a copy of the budget for the ensuing fiscal year; and

(ii) a notice of the assessment for his contribution towards the common expenses for said ensuing fiscal year. Said assessment will be made to the owners in proportion to their unit factors;

(c) The budget shall set out by categories an estimate of the common expenses of the corporation for the next fiscal year. The budget shall include a reasonable provision for contingencies and replacements ("replacement reserve fund");

(d) the replacement reserve fund may be used for the repair or replacement of any real and personal property owned by the Corporation, the Buildings, the Managed Property and the common property but is not intended to be used to cover annually recurring maintenance and repair costs which are to be set out and provided for in the annual budget. The corporation may by resolution determine the maximum amount that may be paid from the replacement reserve fund in respect of a single expenditure;

(e) the common expenses set forth in each contribution shall be payable to the Corporation, or to any other person, firm or corporation to whom the corporation shall direct payment to be made from time to time, in twelve (12) equal consecutive monthly installments payable, in advance on the first day of each month, the first installment to be made on the 1st day of the month immediately following receipt of such notice of assessment, or such other time as may be prescribed by the corporation;

(f) All payments of whatsoever nature required to be made by each owner and not paid within ten (10) days from the due date for payment shall bear interest at the Interest Rate from the date when due until paid. All payments on account shall first be applied to interest and then to the contribution payment first due;

(g) The Corporation shall, on the application of an owner or any person authorized in writing by him, certify within twenty (20) days:

(i) the amount or any contribution determined as the contribution of the owner;

(ii) the manner in which the contribution is payable;

(iii) the extent to which the contribution has been paid by the owner; and

(iv) the interest owing if any, on any unpaid balance of a contribution;



and, in favor of any person dealing with that owner the certificate is conclusive proof of the matters certified therein;

(h) Upon the written request of an owner, purchaser or mortgagee of a unit the Corporation shall, within twenty (20) days of receiving that request, provide to the person making the request one or more of the following as requested by that person:

- (i) a statement setting forth the amount of any contributions due and payable in respect of a unit;
- (ii) the particulars of
  - (A) any action commenced against the Corporation and served upon the Corporation;
  - (B) any unsatisfied judgment or order for which the corporation is liable; and
  - (C) any written demand made upon the corporation for an amount in excess of \$5,000.00 that, if not met, may result in an action being brought against the Corporation;
- (iii) the particulars of or a copy of any subsisting management agreement;
- (iv) the particulars of or a copy of any subsisting recreational agreement;
- (v) a copy of the current budget of the Corporation;
- (vi) a copy of the most recent financial statement of the corporation;
- (vii) a copy of the by-laws of the Corporation;
- (viii) a copy of any minutes of proceedings of a general meeting of the corporation or of the Board;
- (ix) the particulars of or a copy of any subsisting lease of any of the common property;

(i) the omission by the Board to fix the contributions hereunder for the next ensuing fiscal year or other period provided for herein, shall not be deemed a waiver or modification in any respect of the provisions of these by-laws or release of the owner or owners from their obligation to pay the contributions or special assessments, or any installments thereof for any year or period, but the contributions fixed from time to time shall continue until new contributions are fixed. No owner can exempt himself from liability for his contributions toward the common expenses by waiver of the use or enjoyment of any of the common property or by vacating or abandoning his unit;

(j) the Board or the Manager supplying any documents required to be provided in these By-laws or under Section 36 of the Act, shall be entitled to charge a reasonable fee for the production thereof.

#### SPECIAL ASSESSMENTS

48. If at any time it appears that the annual contributions towards the common expenses will be insufficient to meet the common expenses, the corporation may assess and collect a special contribution or assessment against each unit in an amount sufficient to cover the additional anticipated common expenses. The Corporation shall give notice of such further assessment to all owners which shall include a written statement setting out the reasons for the assessment and each assessment shall be due and payable by each owner in the manner and on the date or dates specified in the notice. Each such special assessment shall be determined and assessed against the owners in proportion to their unit factors. All such special assessments shall be payable within ten (10) days of the due date for payment as specified in the notice and if not paid shall bear interest at the Interest Rate from the due date until paid.

#### DEFAULT IN PAYMENT OF ASSESSMENTS

49. Default in payment of assessments and lien for unpaid assessments, installments and payments:

(a) the corporation shall and does hereby have a lien on and a charge against the estate or interest of any owner for any unpaid contribution, assessment, installment or Payment due to the Corporation, which lien shall be a lien against such estate or Interest subject only to the rights of any registered mortgagee and any municipal or local authority in respect of unpaid realty taxes, assessments or charges of any kind against the unit title or interest of such owner. The Corporation shall have the right to file a caveat or encumbrance against the unit title or interest of such owner in respect of the lien or charge for the amount of such unpaid contribution, assessment, installment or payment as hereinbefore mentioned, and for so long as such unpaid contribution assessment, installment or payment remains unpaid, provided that each such caveat or encumbrance shall not be registered until after the expiration of thirty (30) days following the due date for the first payment in arrears. As further and better security, each owner responsible for any such unpaid contribution, assessment, installment or payment which is in arrears for more than thirty (30) days, shall give to the Corporation a mortgage or encumbrance for the full amount thereof and all contributions, assessments, installments and/or payments, and interest thereon which shall bear interest at the Interest Rate from the due date or dates for payment of the same, and the corporation shall be entitled to enforce its lien, charge and security and pursue such remedies as may be available to it at law or in equity, from time to time including the recovery by the Corporation of its legal fees and disbursements on a solicitor and his own client basis from such defaulting owner;

(b) Any other owner or person, firm, or corporation whatsoever may pay any unpaid contribution, assessment, installment or payment after the expiration of thirty (30) days following the due date for payment by the owner in default, with respect to a unit, and upon such payment, such party, person, firm or corporation shall have a lien, subject to the

estates or interests hereinbefore mentioned and shall be entitled to file a caveat or encumbrance in respect of the amount so paid on behalf of the owner in default, and shall be entitled to enforce his lien, thereby created, in accordance with the other terms and conditions of this By-Law;

(c) Notwithstanding and in addition to any other term, condition or provision herein contained or implied, each unpaid contribution, assessment, installment or payment shall be deemed a separate, distinct and personal debt and obligation of the owner against whom the same is assessed and collectible as such. Any action, suit or proceeding to recover such debt or to realize on any judgment therefore shall be maintainable as a separate action, suit or proceeding without foreclosing or waiving the lien, charge or security, securing the same;

(d) In the event of any contribution, assessment against or installment or payment due from an owner remaining due and unpaid for a period of ninety (90) days, the Board shall give notice of such default to all mortgagees having an interest in such owner's unit who have notified their interests to the corporation;

(e) In the event of any contribution, assessment against or installment or payment due from an owner remaining due and unpaid for a period of thirty (30) days, the Board, at its election, may accelerate the remaining monthly contributions, assessments, installments and payments for the fiscal year then current upon notice to the owner in arrears, and thereupon all such unpaid and accelerated monthly contributions, assessments, installments and payments shall become payable on and as of the date of the said notice, PROVIDED that no such acceleration shall affect the interests of or be binding upon any registered mortgagee;

(f) Notwithstanding all other provisions hereof the lien, charge, or security created, as hereinbefore mentioned and referred to in the preceding paragraphs, shall be subject always and subordinate to, and shall not affect the rights of the holder of, any indebtedness secured by any registered mortgage and the corporation or other party shall, upon the request of such registered mortgagee, at the expense of such other party or the Corporation, as the case may be, execute and deliver such postponements, agreements or instruments of subordination as the said mortgagee shall reasonably require to fully and effectively establish or maintain its priority as a registered mortgagee in respect of a unit title against which it has registered its mortgage;

(g) All reasonable costs of the Manager and legal costs and disbursements incurred by the Corporation (including costs on a solicitor and his own client basis) in registering and discharging a Caveat which either the Manager or the Corporation expends as a result of any act or omission of an owner, his servants, agents, licensees, invitees or tenants which violates these By-Laws or any rules or regulations established pursuant thereto or incurred or in any way for securing or enforcing its interests hereunder or the taking of any remedies to cure any default hereunder shall constitute a payment due the Corporation.

ESTOPPEL CERTIFICATE*being precluded, or exclude*

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

LEASING OF UNITS

51. (a) In the event that any owner desires to lease or rent his unit or Building he shall furnish to the Corporation an undertaking, in form satisfactory to the corporation, signed by the proposed lessee or occupant, that the proposed lessee or occupant of the unit will comply with the provisions of the Act and of the by-laws of the corporation. The owner shall not be released of any of his obligations and shall be jointly and severally liable with the proposed lessee or occupant with respect to such obligations;
- (b) the Corporation is authorized to:
- (i) impose and collect deposits under Section 44 of the Act;
  - (ii) give notices to give up possession of residential units under Section 45 of the Act; and
  - (iii) make applications to the Court under Sections 46 and 47 of the Act;
- (c) No tenant shall be liable for the payment of contributions or assessments or common expenses under these By-Laws unless notified by the Corporation that the owner from whom he rents the unit is in default of payment of contributions, in which case the tenant shall deduct from the rent payable to the owner, such default contributions and shall pay the same to the Corporation. Any such payment by the tenant shall be deemed to be a rental payment made to the owner.

SEVERABILITY

52. The provisions hereof shall be deemed independent and severable and the invalidity in whole or in part of any by-law does not affect the validity of the remaining by-laws, which shall continue in full force and effect as if such invalid portion had never been included herein.

NOTICES

53. Unless otherwise expressly provided in these by-laws, service of any notice required to be given under the Act or under these by-laws shall be well and sufficiently given if sent by prepaid registered mail to the owner at the address of his unit or other known address or if left with him or some adult person at the said address or to the Corporation at its address for service shown on

the condominium plan, or to a mortgagee at its address supplied to the Corporation. Any notice given by post shall be deemed to have been sent and received seven (7) days after it is posted. An owner or a mortgagee may at any time in writing advise the Corporation of any change of address at which notices shall be served or given and thereafter the address specified therein shall be deemed to be the address of such owner or a mortgagee, as the case may be, for the giving of notices. The word "notice" shall include any request, statement or other writing required or permitted to be given hereunder or pursuant to the Act or these by-laws.

#### NOTICE OF DEFAULT TO MORTGAGEES

54. Where a mortgagee has notified the Corporation of its interest, any notice of default sent to an owner shall also be sent to the mortgagee.

#### DEBT RETIREMENT ON TERMINATION

55. Subject to the provisions of the Act, upon termination of the condominium status for any purpose, all debts of the corporation shall first be paid out of the assets, and the balance of the assets, if any, shall be distributed to the owners in proportion to their unit factors subject to the interests of any mortgagees.

#### COMPANY WHICH IS MEMBER OF BOARD

56. A company which is a member of the Board may by proxy, power of attorney or resolution of its directors appoint such person as it thinks fit to act as its representative on the Board and to attend meetings thereof and vote at such meetings on behalf of the company and such representative shall be entitled to so act provided notice in writing thereof shall have been given to the Board. Where a company is the only member of the Board a minute or resolution signed by its representative shall be deemed to be a resolution of the Board.

#### EXCLUSIVE USE AREAS

57. (a) The Board may, in addition to other restrictions set out in these by-laws, specify and limit the nature and extent of the use or uses of any exclusive use area assigned or designated by it hereunder;
- (b) While any such exclusive use area is not included in the condominium plan as part of a condominium unit, and shall not be deemed to be an area leased pursuant to Section 41 of the Act, any such exclusive use area shall be maintained at the sole expense of the owner to whom it has been assigned;
- (c) If the owner shall fail to properly maintain any such exclusive use area assigned to him after ten (10) days' notice to him to correct any maintenance problem set forth in said notice from the Board, then the Board or its representative may order the maintenance corrected and the owner affected shall reimburse the Board for all monies expended and all costs incurred in order to rectify said maintenance problem and pay interest thereon at the Interest Rate after demand for payment;

(d) The term exclusive use area does not include any fence, rail or similar structure bordering any designated exclusive use area;

(e) The corporation and its servants and agents shall, notwithstanding the grant of any right, licence or privilege of exclusive use of any area to any owner, have and enjoy free and uninterrupted right at any and all times from time to time to enter upon, pass and repass over, and occupy any and all parts of such exclusive use area for the purpose of carrying out any of the duties or functions of the Corporation.

#### REALTY TAXES

58. The realty taxes and other municipal and governmental levies or assessments against the common land, common Buildings and managed properties shall be paid by the Condominium Association and each owner will pay their own tax with respect to their unit.

#### INDEMNIFICATION OF OFFICERS AND MANAGERS

59. The Corporation shall indemnify every member of the Board, manager, officer or employee and his or her heirs, executors and administrators against all loss, costs and expense, including counsel fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Board member, manager or officer of the corporation, except as to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for fines or penalties imposed in a criminal suit or action or for unjustified profit or advantage or for any illegal act done or attempted in bad faith or dishonesty. All liability, loss, damage, costs and expenses incurred or suffered by the Corporation by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Corporation as common expenses. The Corporation may by ordinary resolution, require that all members of the Board be bonded by a recognized bonding institution in an amount not less than ten thousand (\$10,000.00) Dollars, the cost of such bonding to constitute a common expense of the Corporation.

#### NON-PROFIT CORPORATION

60. The Corporation is not organized for profit. No owner, member of the Board or person from whom the corporation may receive any property or funds or shall receive or shall be lawfully entitled to receive any pecuniary profit from the operations thereof. The foregoing, however, shall neither prevent nor restrict the following:

(a) reasonable compensation may be paid to any member of the Board or owner while acting as an agent or employee of the Corporation for services rendered in effecting one or more of the purposes of the Corporation; and

(b) any member of the Board or owner may, from time to time, be reimbursed for his actual and reasonable expenses incurred in connection with the administration of the affairs of the Corporation;

- (c) members of the Board may receive an annual honorarium, stipend or salary established pursuant to By-Law 5(1).

#### USE AND OCCUPANCY RESTRICTIONS

61. (a) An owner SHALL NOT:

(i) use his unit or Building or any part thereof for any commercial, professional or other business purposes or for any purpose which may be illegal or injurious to the reputation of the condominium project or for a purpose involving the attendance of the public at such Building or unit;

(ii) make or permit noise within or about any Building or unit or the common property which in the opinion of the Board is a nuisance or unreasonably interferes with the use and enjoyment of a unit or the common property by any other owner or occupant. No instrument or other device shall be used within a Building or unit which in the opinion of the Board causes a disturbance or interferes with the comfort of other owners;

(iii) keep or allow any animal, livestock, fowl or pet of any kind at any time to be within his unit or on the common property without the specific approval in writing of the Board, which approval the Board may arbitrarily withhold and may, if given, be withdrawn anytime on seven (7) days notice to that effect. All pets must be kept under control at all times. No more than one dog over six (6) months of age will be allowed on one unit. No pets are to be left outside over night and noisy pets will be excluded. All dogs approved must be kept under control as defined by the Board and in the custody of a responsible person at all times, who shall not allow the animal to defecate on any landscaped area of the project. Any County By-Law in effect in the municipality with regard to pets at any point in time shall have effect within the common property and municipal officers are hereby authorized and are permitted to enforce County By-Laws on the common property;

*Kevin.*

(iv) use or permit the use of the Building or unit other than as a single family dwelling or for a purpose other than for residential purposes. No secondary buildings will be permitted on the property with the exception of a garden or tool shed built to specific building standards of the municipality and architectural standards of the Corporation;

(v) permit his Building or unit to be occupied as a place of residence by more than twelve (12) persons (whether adult or minor) at any time for a period in excess of fourteen (14) days without the consent in writing of the Board;

(vi) do any act or permit any act to be done, or alter or permit to be altered his Building or unit in any manner, which will alter the exterior appearance of the structure comprising his or any other Buildings or units without the prior written approval of the Board;

- (vii) permit laundry to be hung other than inside the Building on his unit;
- (viii) erect or place any building, structure, tent, or trailer, (either with or without living, sleeping or eating accommodation) on the unit, the common property or on any exclusive use area assigned to him for a period in excess of fourteen (14) days without the prior written approval of the Board;
- (ix) permit, erect or hang over or cause to be erected or to remain outside any Building, the unit or on the common property or on the Managed Property of the Corporation, clothes lines, garbage disposal equipment, recreational or athletic equipment, fences with the exception of one chain-link pet enclosure which must be located out of sight of the road, attached to the leisure residences and built to the corporation standards, hedges, barriers, partitions, awnings, shades or screens or any other matter or thing without the consent in writing of the board first had and obtained. Nor any radio antenna, tower or similar structure without the consent in writing of the board first had and obtained;
- (x) store any combustible, inflammable or offensive goods, provisions or materials on his unit or on the common property;
- (xi) do anything or permit anything to be done within his unit, Building or upon the common property or the real or personal property of the Corporation or fail to do any act or thing which will or would tend to increase the risk of fire or the rate of fire insurance premiums with respect thereto or which would render invalid any insurance maintained by the Corporation;
- (xii) do anything or permit anything to be done by any occupier of his unit within his Building or unit or the common property that is contrary to any statute, ordinance, by-law or regulation of any government authority whether Federal, Provincial, Municipal or otherwise;
- (xiii) do or permit anything to be done that may cause damage to trees, plants, bushes, flowers or lawns and shall not place chairs, tables, children's play things, devices or toys or other objects on the lawns and grounds of the common property or the Managed Property so as to damage them or to prevent growth or to interfere with the cutting of the lawns or the maintenance of the grounds generally;
- (xiv) deposit household refuse in any containers except bear resistant containers to be provided by the Corporation on the common property and at no time to allow household garbage to be stored outside of the buildings on the unit.. All bulk waste items, such as discarded household furnishings, shall be removed from the Project by the owner at his sole cost and expense;
- (xv) erect, place, allow, keep or display signs, billboards, advertising matter or other notices or displays of any kind on the common property or in or about any Building on the unit in any manner which may make the same visible from the outside of the unit or the Building without the prior written approval of the Board;



- (xvi) permit any member of his household, guests or visitors to trespass on the part of the parcel to which another owner is entitled to exclusive occupation;
- (xvii)
  - (A) use the common driveway or roadway or any part of the common property or Managed Property for the parking of any motor vehicles except in accordance with permission in writing from the Board;
  - (B) wash cars other than on his unit in such a manner as will not cause nuisance or annoyance to other owners;
  - (C) carry out any repairs or adjustments to motor vehicles on the project;
  - (D) bring onto the project any vehicles other than private passenger automobiles, 3/4 ton or lighter vans or trucks without the written consent of the Board or the Manager or duly authorized nominee thereof;
  - (E) allow trailers, campers, boats, snowmobiles, trail bikes, all terrain vehicles, or any type of motor home or recreational vehicle or equipment to be parked or stored on or outside his unit other than in an area designated by the Board, if any;
  - (F) keep on the parcel any private passenger automobile which is not currently licensed, in Operating condition and being used from day to day without the prior written consent of the Board;
  - (G) drive any motor vehicle on the parcel at a speed in excess of 15 kilometers per hour; *30 Km.*
  - (H) operate any all-terrain vehicles, snowmobiles or other recreational vehicles on the parcel;
- (xviii) obstruct or permit any passage or driveways or parking areas on the common property or Managed Property to be obstructed by any occupant, his family, guests or visitors or their vehicles;
- (xix) allow his Building, unit, or any exclusive use area assigned to him to become unsanitary or unsightly in appearance;
- (xx) keep open fires unless confined to a fire pit built to the standards set by the local governmental authorities having jurisdiction and to the standards set by the Condominium Association and may only be operated when the fire hazard reading permits;
- (xxi) permit hunting or the discharge of firearms to be allowed on the condominium property or in the owners units;
- (xxii) allow the area around his Building to become untidy. The Board shall be at

liberty to remove any rubbish or clean up a unit or the common property in close proximity to an owner's premises to its satisfaction and charge the expense to the owner;

(xxiii) be responsible for ice and snow removal other than from his own steps and back deck or patio;

(xxiv) allow or cause any household or personal effects or articles belonging to him (except patio furniture and barbecues) to be kept anywhere except inside the Building of his respective unit when not in actual use, and each owner will comply with all requests of the Board or its representatives that all household or personal effects or articles, including bicycles, toys and like things belonging to an owner's household be put away inside such Building when not in actual use;

(xxv) prevent or prohibit access to and use of exterior water taps or electrical plugs on the Building of his unit for purposes of maintaining common property;

(xxvi) without the prior written approval of the Board, have any right of access to those portions of the managed Property or common property used from time to time for utilities areas, building maintenance, storage areas, operating machinery or any other parts of the managed Property or common property used for the care, maintenance or operation of the project generally;

(b) An owner shall ensure that his occupants comply with those requirements that the owner must comply with under subsection (a) hereof.

## 62. MANAGED PROPERTY

### 62.1 Restricted Development, Architectural Standards and Restrictive Covenant

(a) No Owner shall improve, develop, construct upon or otherwise modify his Building or unit unless such development or improvement strictly complies with any and all development restrictions imposed upon the unit by the Municipal Authority (whether disclosed on title to the unit or not), the Restrictive Covenant (the terms of which are hereby incorporated into this By-Law) and the Architectural Standards;

(b) The Corporation is hereby empowered, and the Board is authorized on behalf of the Corporation, to take whatever procedures are reasonably necessary, in the Board's opinion, to ensure compliance with By-Law 63.1(a) hereof and enforce the Restrictive Covenant and the Architectural Standards (enforcement to be limited to the extent it is limited by law);

### 62.2 Elements of Managed Property

The Managed Property shall be comprised of those portion of the units constituted by common utility systems, dry hydrant system, fence, natural areas and common areas.

### 62.3 DUTIES AND RESTRICTIONS ON OWNERS REGARDING MANAGED PROPERTY

Each owner shall, in respect to the Managed Property on or in his unit:

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

### 62.4 POWERS, DUTIES AND RESTRICTIONS OF THE CORPORATION

The Corporation:

- (a) shall, in addition to and without limiting its powers relating to the management and control of common property, be empowered to:
  - (i) enact rules and regulations relating to the management and control of the Managed Property;
  - (ii) employ and contract for services for repair, maintenance, replacement, cleaning and other similar services (including painting, gardening, lawn mowing and ice and snow removal) necessary to properly maintain the Managed Property;
  - (iii) as part of and in accordance with its general power of levying assessments, assess the owners for their respective shares in the costs of the Corporation carrying out of its duties hereunder; and
  - (iv) generally manage, operate and control the managed Property in accordance with such election as if and to same extent as if the Managed Property was common property.
- (b) shall, in addition to and without limiting its obligations generally relating to the

maintenance, management, repair and control of common property, control, manage, maintain, repair and administer the Managed Property unless otherwise directed by ordinary resolution of the corporation, provided that such duties and obligations may, from time to time, be amended and adjusted (including without limitation, by increasing or reducing same) by ordinary resolution of the Corporation. If, pursuant to ordinary resolution, it is resolved that the Corporation shall be relieved and is not, from the effective date thereof, to be responsible for the management, repair, maintenance, upkeep, replacement and control of the Managed Property, all such duties and responsibilities shall therefor be performed by the unit owners and these by-laws shall be interpreted accordingly PROVIDED NEVERTHELESS THAT the Corporation shall continue to be responsible for and perform its insurance and replacement reserve fund obligations under these by-laws and its duties to maintain, repair, replace and manage Units

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

ENACTED this \_\_\_\_ day of \_\_\_\_\_, 1997.  
(Witness the corporate seal of the Corporation)

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary





## SCHEDULE A

### RESTRICTIVE COVENANT AND EASEMENT

MADE pursuant to section 71(l) of the Land Titles Act R.S.A. 1980. Chapter L-5 as of the 1<sup>st</sup> day  
of , 1997.

James River Retreat Ltd.  
a body corporate entitled to carry  
on business in the Province of Alberta  
(hereinafter called the 'Grantor')

OF THE FIRST PART

- and -

James River Retreat Ltd.  
a body corporate entitled to carry  
on business in the Province of Alberta  
(hereinafter called the 'Grantee')

OF THE SECOND PART

WHEREAS James River Retreat Ltd. is the registered owner of all of the Units in the bare land unit condominium project commonly known as JAMES RIVER RETREAT and registered pursuant to condominium Plan No. (the 'Project'); and,

WHEREAS in order to assure orderly and coordinated development of the Project in and as a homogeneous residential community, James River Retreat Ltd. wishes to implement a scheme of development control over the project, including, without limitation, restrictions against certain Units in the Project, as more particularly described in Schedules 'A', 'B' and 'C' attached hereto, for the use and enjoyment by all occupants of the Project; and,

WHEREAS to permit access by the owners and occupants of the Units and the Condominium Corporation to the Common Property and the Managed Property, or any part thereof (as same are hereinafter described), James River Retreat Ltd. wishes hereby to grant certain rights of easement and right of way;

NOW THEREFORE THIS RESTRICTIVE COVENANT AND EASEMENT WITNESSETH  
THAT:

1.0 Preamble, Definitions

1.1 The recitals of fact contained in the preamble to this Restrictive Covenant and Easement are true and form an integral part hereof.

1.2 All terms and phrases requiring meaning or definition hereunder, and in the annexed Schedules hereto, shall have the following meanings or definitions unless the context shall otherwise require:

- (a) 'Act' means the CONDOMINIUM property act, Revised Statutes of Alberta, 1980, Chapter C-22, as amended from time to time or any statute or statutes passed in substitution therefor;
- (b) 'Access, Roadway and Open Area Units' means those Units(s) described in Schedule 'A' annexed hereto and forming an integral part hereof;
- (c) 'Architectural Standards' means those specifications of colours, shades, textures, finishes, materials, hues, design, dimension, appearance and criteria prescribed for the construction, finish and appearance of any and all structures of any and every kind situate or to be situate on the units, the Common Property and the Managed Property, (with the exception, only, of the Access, Roadway and Open Area Units) as set forth in Schedule 'B' annexed hereto and forming an integral part hereof;
- (d) 'Common Property' for the purposes of this document, means the common property, as same is defined in subsection 1 (d) of the Act as amended and comprised in the Condominium Plan;
- (e) 'Condominium Corporation' means the body corporate incorporated or to be incorporated pursuant to Section 20 of the Act resulting from the registration of the Condominium Plan, including its duly authorized agents, servants and employees;
- (f) 'Condominium Plan' means the bare land unit condominium Plan, as same is defined under the Act, registered as Plan number
- (g) 'Dominant Units' means all Units comprising the Parcel under the Condominium Plan excepting the Servient Units;
- (h) 'Grantee' means James River Retreat Ltd. and its successors, assigns, and successors in title to the Dominant Units;
- (i) 'Grantor' means James River Retreat Ltd. and its successors, assigns, and successors in title to the Servient Units;
- (j) 'Lands' or 'Parcel' means all of the lands comprising the Project;
- (k) 'Local Authority' means that municipal government or agency having due and proper jurisdiction over the Lands and the development thereof, and, without limitation, shall include any insurer of the Lands and the development thereon;



(l) 'Managed Property' means that portion of the Units, the Access Roadway and Open Area Units, the Common Property and other portions of the Parcel which pursuant to the by-laws of the Condominium Corporation are to be administered, controlled, managed, maintained and repaired, as the case may be, by the Condominium Corporation as if all were common Property, including, without limitation, all utility and service lines and facilities, the dry hydrant system and fences serving any Unit or the Common Property;

(m) 'Restrictive Covenant' means the restrictive covenant and easement contained herein;

(n) 'Restricted Units' means those units described in Schedule 'C' that have specific restrictions as to the use for which the unit may be utilized as a consequence of being in a flood plain or the placement or type of structure that may be built thereon.

(o) 'Servient Units' means those Units referred to in this Agreement as being subject to the within restrictions and Easements; and,

(p) 'Unit' or 'Units' means that bare land unit or units, as same is defined or given meaning under the Act, created upon the registration of the Condominium Plan and, until the Condominium Plan is registered, means the Parcel.

1.3 For the purposes hereof 'structures' and any reference to 'structures' shall include anything built or placed upon the Lands, including, without limitation, satellite dishes and electronic equipment, storage sheds, children's swing sets and similar recreational structures, dog houses, fountains and lawn ornaments, entrance gates, fences, light standards or poles, hedges and other shrubbery and non-mobile barbecues and other looking equipment.

1.4 Unless specifically defined hereunder, all terms and phrases requiring definition shall have such meanings as ascribed thereto under the Act.

## 2.0 Grant of Restrictive Covenants and Easement

2.1 The Grantor, as owner of the Servient Units, does hereby covenant and agree to, with and in favour of the Grantee, as owner of the Dominant Units, and in favour of the Condominium Corporation, as authorized by the Grantee to oversee and enforce the provisions hereof, to observe, adhere to and be bound by those covenants, restrictions and prohibitions in respect of the Servient Units, and each and every Servient Unit, being namely:

(a) that the Grantor shall not in any manner whatsoever improve, develop, alter, build upon or otherwise disturb any of the Servient Units therein unless in compliance with this Restrictive Covenant and with the written consent of the Board of Managers of the Condominium Corporation;

(b) that no unit shall be used for any commercial, professional or other business purposes;

(c) that no building, structure, improvement, development or dwelling of any kind, type, size or shape whatsoever be placed, erected or constructed upon any of the Access, Roadway and Open Area Units without the written approval of the Board of Managers of the Condominium corporation;

(d) that no building, structure, improvement, development or dwelling of any kind, type, size or shape whatsoever be placed, erected or constructed upon units numbered 2, 3, 4, 5, 6, 7, 34, 35, 36, 37 and 38, being restricted units partially within the James River flood plain, unless same are constructed outside of the James River flood plain as determined by Alberta Environment.

(e) that no building, structure, improvement, development or dwelling of any kind, type, size or shape whatsoever be placed, erected or constructed upon the Lands or any Unit unless;

(i) such structure is a single family residential detached or semi-detached dwelling or other improvement constructed and to be maintained in accordance with the Architectural Standards, and all rules, regulations, codes and standards imposed by Local Authority in connection therewith; and,

(ii) such structure is first approved by the Board of Managers of the Condominium Corporation;

(f) that no fence, wall, hedge or enclosing structure whatsoever be constructed or be allowed to be maintained, upon either the Lands or any Unit unless such fence, wall, hedge or enclosing structure:

(i) fences, surrounds. or encloses the Parcel in whole or in part;

(ii) is placed, erected, constructed and maintained in accordance with the Architectural Standards and all rules, regulations, codes and standards imposed by Local Authority in connection therewith; and,

(iii) is first approved by the Board of Managers of the Condominium Corporation;

(g) The Grantor shall not keep or allow any animal, livestock, fowl or pet of any kind at any time to be within his unit or on the common property without the specific approval in writing of the Board, which approval the Board may arbitrarily withhold and may, if given, be withdrawn anytime on seven (7) days notice to that effect. All pets must be kept under control at all times. No more than one dog over six (6) months of age will be allowed on one unit. No pets are to be left outside over night and noisy pets will be excluded. All dogs approved must be kept under control as defined by the Board and in the custody of a responsible person at all times, who shall not allow the animal to befoul or defecate on any landscaped area of the project. Any County By-Law in effect in the municipality with regard to pets at any point in time shall have effect within the common property and municipal officers are hereby authorized and are permitted to enforce County By-Laws on the common property;

(h) that the Grantor shall not, in any manner whatsoever modify or alter any existing structure, in compliance with this Restrictive Covenant, without such modification or alteration complying with this Restrictive Covenant, and without limitation, in particular, paragraph 2.1(c) hereof;

(i) that the Access, Roadway and Open Area Units be used for no other purpose but the passage of vehicular and pedestrian traffic to, from, in and through the Project;

(j) that the Grantor shall not interfere with, adjust, modify, or in any manner whatsoever disturb any Managed Property, whether comprising a part of the Servient Units or not;

(k) that no one shall prohibit, restrict, deny or otherwise in any manner whatsoever hinder access to any Servient Unit by either the Grantee or the Condominium Corporation (including authorized agents and representatives thereof) subject to any rules for use as promulgated by the Board of Managers of the Condominium Corporation;

(l) that the Grantor shall not, in any manner whatsoever, modify or alter in any material respect the landscaping on the Servient Units and the Common Property; and,

(m) that the name of the Project 'JAMES RIVER RETREAT' shall not be changed.

2.2 The covenants and agreements expressed in paragraph 2.1 hereof are in addition to and not in substitution or replacement of all any every restriction, building code, regulation, by-law, standard, requirement and other provision governing the further development of the Lands and the Servient Units.

2.3 The Grantor, as owner of the Servient Units, does hereby grant to and in favor of the Grantee as owner of the Dominant Units, and in favour of the Condominium corporation, as the person responsible for control and maintenance of the Managed Property, an easement over the Lands and the Units to the extent necessary to permit access to the Managed Property, or any part thereof, in the Condominium Plan.

2.4 The Grantor as owner of the Access, Roadway and Open Area Units does hereby grant to and in favour of the Grantee as owner of the Dominant Units and the Condominium Corporation, being responsible for maintenance and control of Managed Property, the easement and right of way over the Access, Roadway and Open Area Units for the passage of pedestrian and vehicular traffic in the Project; provided that all such traffic and usage as -aforesaid shall be monitored, governed and controlled, through resolutions of the Board of Managers of the Condominium Corporation promulgated from time to time and at any time in respect thereto, who by these presents are appointed by the Grantor to so monitor, govern and control such traffic and usage.

2.5 The Grantor as owner of the Servient Units, does hereby grant to and in favour of the Grantee as owner of the Dominant Units, and in favour of the Condominium corporation as the Person responsible for control and maintenance of the Common Property and the Managed

Property, an easement and right of way over the Lands and the Units to the extent necessary for the placement, replacement, operation, maintenance and repair of the dry hydrant system, fences, all utility services including water, gas and electrical systems over, in and through the Units and the Common Property and all elements of the Managed Property as necessary to allow the condominium Corporation to carry out its obligations (through agents or appointees, if necessary) in respect thereto, and without limiting the generality of the foregoing, the Grantee and the Condominium Corporation shall be and are hereby granted the specific right of access to all structures on the Servient Units to install, maintain, repair, replace and generally operate utility services which pass through such structures in connection to the other Units.

2.6 The benefit of the covenants and agreements set forth in paragraph 2.1, 2.3, 2.4 and 2.5 hereof shall be for the benefit of the Dominant Units and each of them, and to the Grantee and its successors in title and assigns of the Dominant units, and the Condominium Corporation, as being generally and legally responsible for the control and maintenance of the Parcel, and shall be enforceable by either of the Grantee and its successors and assigns, and successors in title to the Dominant Units or the Condominium Corporation. The covenants and agreements of the Grantor herein shall run with the Lands, and shall be registrable accordingly.

### 3.0 General

3.1 The Grantor does hereby grant unto the Condominium Corporation, the Grantee and its successors and assigns and their respective contractors, subcontractors, officers, servants, agents and workmen the full right and liberty of ingress to and egress from and the right and liberty to pass and repass on, over, in and through the Servient Units, and all and each part thereof and of each Unit, either by foot or by way of vehicle or machine, and to remain on the Servient Units and all and each part thereof for the sole purposes of effecting any corrective measure relating to any of the foregoing covenants. The rights and privileges hereby granted are and shall be covenants running with title to the lands.

3.2 The Grantor covenants and agrees to observe and be bound by the covenants contained herein provided that the said covenants shall only be personally binding upon the Grantor for such time that it, individually, remains owner of the servient Units, and only to extent of those Servient Units which from time to time and at such relevant time are owned by the Grantor, and no action shall lie against the Grantor hereunder unless the Grantor, as the case may be, is then and remains the registered owner of the Unit alleged and proven by a court of competent jurisdiction to be in breach of this Restrictive Covenant and Easement the covenant contained in this paragraph 3.2 shall constitute an absolute defence to any such action and may be pleaded as such.

3.3 If any provision of this Restrictive Covenant and Easement shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and each provision hereof shall be enforced to the fullest extent permitted by law.

3.4 Words herein importing a number or gender shall be construed in grammatical conformance with the context of the party or parties affected by this Agreement from time to time.

3.5 As the Servient Units and the Dominant Units are or may be one and the same in this Restrictive Covenant and Easement, this Restrictive Covenant and Easement shall be construed so that the Grantor shall hereunder have granted this Restrictive Covenant in respect of each Unit, to the benefit of the Grantee in respect of the Lands save for that Unit.

3.6 This restrictive Covenant and Easement may be registered as a restrictive covenant against

the Lands in the Land titles office for the South Alberta Land Registration District.

IN WITNESS WHEREOF the party hereto has executed this Restrictive Covenant under seal, as  
of the 1st day of 1997

James River Retreat Ltd.

Per. \_\_\_\_\_  
President

Per. \_\_\_\_\_

James River Retreat Ltd.

Per. \_\_\_\_\_

Per. \_\_\_\_\_

## SCHEDULE 'A'

### Access, Roadway and Open Area Units

1. CONDOMINIUM PLAN , UNIT 41 EXCEPTING THEREOUT ALL MINES  
AND MINERALS
2. CONDOMINIUM PLAN , UNIT 42 EXCEPTING THEREOUT ALL MINES AND  
MINERALS