

**CERTIFICATE**

YORK CONDOMINIUM CORPORATION NO. 323 hereby certifies that By-Law No. 6 attached hereto was made in accordance with The Condominium Act, R.S.O. 1980, Chapter 84 as amended, the Declaration and the By-Laws of the Corporation, and that the said By-Law No. 6 has not been amended and is in full force and effect.

DATED at Toronto, this 20<sup>th</sup> day of October 1983.

YORK CONDOMINIUM CORPORATION NO. 323

Per: 

c/s

Per: J. H. Ballantyne

## BY-LAW NUMBER 6

BE IT ENACTED as a By-Law of York Condominium Corporation No. 323 as follows:

By-Laws Nos. 1 and 2 are hereby repealed in their entirety and replaced with the following By-Law specifying the duties of the Corporation, governing the assessment and collection of contributions towards the common expenses, authorizing the borrowing of money to carry out the objects and duties of the Corporation and respecting the conduct generally of the affairs of the Corporation.

### ARTICLE I

#### SEAL

1.00 The corporate seal of the Corporation shall be in the form impressed hereon.

### ARTICLE II

#### YEAR-END

2.00 The financial year end of the Corporation shall be the 30th day of April in each year or such other date as the Board may by resolution determine.

### ARTICLE III

#### RECORDS TO BE KEPT BY THE CORPORATION

The Corporation shall maintain the following records:

#### 3.01 General

- 1) a copy of Declaration and Description
- 2) a copy of all By-laws
- 3) a copy of all Rules
- 4) a copy of any Resolution of Board changing the address for service on the Corporation as registered
- 5) a copy of all Notices sent on behalf of the Corporation
- 6) a copy of all Reports and Financial Statements of the Corporation for at least the past ten financial years
- 7) a copy of all Easements, Licenses, Leases or Agreements entered into by the Corporation
- 8) a copy of all other financial records and business dealings of the Corporation for at least 6 years
- 9) a separate record of all receipts on account of common expense payments
- 10) all requests for Estoppel Certificates and a copy of the Certificates issued for the past five financial years.

#### 3.02 Membership

- 1) the names of owners and mailing address of those owners who have notified the Corporation of their address
- 2) the names of mortgagees and their mailing address
- 3) the names of Directors and mailing address and terms of office
- 4) the names of Officers and mailing address and terms of office
- 5) the names of all current tenants and a copy of their signed undertaking.

#### 3.03 Members Meetings

- 1) minutes of all owners meetings including reference to numbers in attendance and record of the votes taken.

#### 3.04 Board of Directors

- 1) minutes of all board meetings
- 2) a copy of all Resolutions of Board that were passed

- 3) a copy of all Annual Budgets
- 4) a copy of all additional Assessments
- 5) a copy of all Consents for alterations to units
- 6) a copy of all Consents for placing non-permanent chattels on common elements.

3.05 Records to be provided to Owners and Encumbrancers

- 1) A copy of the annual financial statement and a copy of the Auditor's Report shall be furnished to every owner and mortgagee entered on the register.
- 2) The books and records of the Corporation shall at all times upon twenty-four (24) hours written notice be made available during business hours for inspection by any member.
- 3) Copies of the declaration, by-laws and rules shall be made available to any member for their purchase at a reasonable cost.
- 4) Approved Minutes of Board Meetings shall within reasonable time following the dates of such meetings, be available to owners at all reasonable hours.

**ARTICLE IV**

DUTIES OF THE CORPORATION

- 4.00 The duties of the Corporation shall include, but shall not be limited to the following:
- 1) The operation, care, upkeep, maintenance of the common elements, excluding those exclusive use areas of Units 1-9, inclusive, Level 1, other than the underground parking spaces allocated to said units in the Declaration, and repair of the common elements and the repair of units when an owner fails to repair;
  - 2) The collection of contributions toward common expenses from the owners;
  - 3) Except for Units 1-9, inclusive, Level 1, the arranging for the supply of hydro and water and any other public or private service the owners may require for the units, the common elements or any asset of the Corporation except where the Corporation is prevented from carrying out such duty by reason of any event beyond the reasonable control of the Corporation. If any apparatus or equipment used in effecting the supply of heat, hydro, water, or television communication service at any time becomes incapable of fulfilling its function or is damaged or destroyed, the Corporation shall have a reasonable time within which to repair or replace such apparatus and the Corporation shall not be liable for indirect or consequential damage or for damages for personal discomfort or illness by reason of the breach of such duty;
  - 4) Obtaining and maintaining insurance for the property as may be required by the Condominium Act (the "Act"), the declaration or the by-laws;
  - 5) The preparation of estoppel certificates as required by the Act;
  - 6) The causing of audits to be made after every year end making auditors' statements available to the owners and mortgagees as required;
  - 7) The provision of a license to all public or private service companies to enter on the common elements for the purpose of supplying, installing, replacing and servicing their systems;
  - 8) The employment and dismissal of personnel necessary for the maintenance and operation of the common elements;
  - 9) The obtaining and maintaining of fidelity bonds for any person dealing with corporation monies and in such amounts as the Board may deem reasonable;
  - 10) The investment of reserve monies held by the Corporation in interest bearing accounts, term deposits and guaranteed investment certificates in

accordance with Section 36 and subsection 4 of Section 40 of the Condominium Act.

- 11) The settling, adjusting or referring to arbitration of any claim or claims which may be made upon or which may be asserted on behalf of the Corporation;
- 12) Obtaining and maintaining insurance for the benefit of all directors and officers in respect of anything done or permitted to be done by them in respect of the execution of the duties of their offices except insurance against a liability, cost, charge or expense of such directors or officers incurred as a result of a contravention of any of the duties imposed upon them pursuant to the Act;
- 13) The preparation of budgets annually;
- 14) The preparation and maintenance of the records to be kept by the Corporation in accordance with Article III hereof;
- 15) The calling and holding of meetings as required;
- 16) The delivery of notices;
- 17) The consistent and timely enforcement of the provisions of the Act, the declaration, the by-laws and the rules of the Corporation;
- 18) The entering into of an insurance trust agreement to ensure the disposition of monies in the event of an insurable loss in accordance with the declaration;
- 19) Establishing and maintaining adequate reserve funds for the major repair or replacement of the common elements and of the assets of the Corporation in accordance with the Act.

#### ARTICLE V

##### POWERS OF THE CORPORATION

- 5.00 The powers of the Corporation shall include, but shall not be limited to the following:
- 1) The entering into of an agreement with a person or corporation to provide professional management for the property. The Management Agreement shall be in a form acceptable to the Board;
  - 2) The borrowing of such amounts as in the Board's discretion are necessary or desirable in order to protect, maintain, preserve or insure the due and continued operation of the property in accordance with the declaration and by-laws of the Corporation to a maximum aggregate sum equivalent to one month's contribution towards common expenses in any fiscal year provided always that any such borrowing shall be without pledge or charge of any of the assets of the Corporation;
  - 3) The borrowing of such amounts in excess of one month's contribution towards common expenses in any fiscal year as the Board determines are necessary or desirable in order to protect, maintain, preserve or ensure the due and continued operation of the property in accordance with the declaration and by-laws of the Corporation and the securing of any loan of any amount by mortgage, pledge or charge of any asset owned by the Corporation, subject in each case to approval of each such borrowing, loan or security by a vote of the owners at a meeting duly called for that purpose;

#### ARTICLE VI

##### NOTICE

- 6.01 By the Corporation
- 1) Subject always to any specific provision to the contrary in the Act, any notice, communication or other document, including budgets and

notices of assessment required to be given or delivered by the Corporation to any owner or mortgagee shall be sufficiently given if:

- delivered personally to the person to whom it is to be given; or
  - delivered to the address noted in the record; or
  - mailed by prepaid ordinary mail or air mail in a sealed envelope addressed to the person at such address; or
  - sent by means of wire or wireless or any other form of transmitted or recorded communication addressed to the person at such address.
- 2) Any notice, communication or other document to be given by the Corporation to any person who is not an owner or mortgagee shall be given or delivered to such person in the manner provided by law.
- 3) Any notice, communication or document shall be deemed to have been received:
- when it is delivered personally or delivered to the address shown on the record;
  - when it is mailed and has been deposited in a post office or public letter box; and
  - when it is sent by any means of wire or wireless or any other form of transmitted or recorded communication when delivered to the appropriate communication company or agency or its representative for dispatch.

6.02 Notice to the Board or Corporation

- 1) Any notice, communication or other document to be given to the Board or Corporation shall be sufficiently given if mailed by prepaid ordinary mail or airmail in a sealed envelope addressed to the Board or Corporation at the address for service of the Corporation set out in the declaration, or such other address for service that has been amended and registered in accordance with the Act;
- 2) Any notice, communication or document so mailed shall be deemed to have been given when deposited in a post office or public letter box.

6.03 Omissions and Errors

- 1) The accidental omission to give any notice to anyone entitled thereto or the non-receipt of such notice or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon;
- 2) The Corporation shall not be obliged to give notice to any owner who has not notified the Corporation that he has become an owner or to any mortgagee who has not notified the Corporation that he has become a mortgagee and has been authorized or empowered in his mortgage to exercise the right of the mortgagor to vote;
- 3) The address of each owner shall be the address of his unit and the address of each mortgagee shall be the address shown for him on his mortgage that is registered in the Land Registry Office until the Corporation is given written notice of a different address for such mortgagee or owner.

6.04 Notices of Meetings

At least ten (10) days' written notice of each meeting of the owners of the Corporation specifying the place, the date and the hour thereof and the nature of the business to be presented shall be given

to each owner and to each mortgagee or chargee entitled to vote who is entered on the register twelve (12) days before the date of the meeting.

## ARTICLE VII

### BOARD OF DIRECTORS

#### 7.01 Duties

- 1) The affairs of the Corporation shall be managed by the Board;
- 2) The Board shall have the obligation to perform all of the duties of the Corporation; however, the Board may delegate certain specific duties to the manager subject to the overall supervision and control of the Board, and subject to the by-laws of the Corporation.

#### 7.02 Quorum

The minimum number of directors shall be five (5) of whom three (3) shall constitute a quorum for the transaction of business at any meeting of the Board. Notwithstanding vacancies, the remaining directors may exercise all the powers of the Board so long as a quorum of the Board remains in office.

#### 7.03 Qualifications

- 1) Each director shall be eighteen (18) or more years of age and be a resident owner, or has been appointed in writing to act as a nominee of a resident owner, or a mortgage in possession; provided, however, that the Board may appoint a non-resident owner to fill a vacancy in accordance with s.15(9) of the Condominium Act and such non-resident owner may continue to be qualified to be a member of the Board if his or her appointment is confirmed by election by the owners at the next annual meeting.
- 2) A director shall be deemed to have tendered his resignation when a written request for such resignation is made by a quorum of directors after the director has ceased to be an owner or the spouse of an owner or the owner or mortgagee who appointed such director ceases to be an owner or has in writing withdrawn the appointment as a nominee given to that director;
- 3) A director who has resigned or whose term has expired is eligible for re-election;
- 4) No undischarged bankrupt or mentally incompetent person shall be a director and if a director becomes a bankrupt or mentally incompetent person he thereupon ceases to be a director;
- 5) A person who is elected or appointed a director is not a director unless,
  - (a) He was present at the meeting when he was elected or appointed and did not refuse at the meeting to act as a director; or
  - (b) when he was not present at the meeting when he was elected or appointed, he consented to act as a director in writing before his election or appointment or within ten (10) days thereafter.

#### 7.04 Election and Term

- 1) The Directors of the Corporation shall be elected in rotation and shall be eligible for re-election. At the first meeting of the owners held to elect directors, two (2) directors shall be elected to hold office for a term of one (1) year; two (2) directors shall be elected to

hold office for a term of two (2) years; and one (1) director shall be elected to hold office for a term of three (3) years. At such election, the director receiving the greatest number of votes shall hold office for the longest term and the directors receiving the next greatest number of votes shall hold office for the next longest term. Such directors may, however, continue to act until their successors are elected. If more than one (1) of such directors whose terms are not of equal duration shall resign from the Board prior to the expiration of their respective terms, and shall be replaced at a meeting of owners called for that purpose, the director or directors receiving the greater number of votes shall complete the longest remaining terms of the resigning directors. At each annual meeting thereafter, the number of directors equal to the number of directors retiring in such year shall be elected for a term of three (3) years. If directors are elected by acclamation and the terms of office to be filled are unequal, the length of the term of such directors shall be determined by drawing lots.

- 2) Election to the Board shall be by written ballot.

7.05 Filling of Vacancy on the Board

- 1) If a vacancy in the membership of the Board occurs, the majority of the remaining members of the Board may appoint any person qualified to be a member of the Board under the declaration or by-laws to fill the vacancy for the remainder of the term until the next annual meeting at which time the vacancy shall be filled by election by the owners;
- 2) At a meeting duly called for that purpose, any director may be removed before the expiration of his term by a vote of owners who together own a majority of the units and the owners may elect any person qualified to be a member of the Board under the declaration or by-laws for the remainder of the term of the director removed;
- 3) If more than one of such directors whose terms are not of equal duration shall resign from the Board prior to the expiration of their respective terms, and shall be replaced at a meeting of owners called for that purpose, the director or directors receiving the greater number of votes shall complete the longest remaining term of the resigning directors.

7.06 Calling of Meetings

- 1) Meetings of the Board shall be held from time to time at such place and at such time and on such day as either the President or a Vice-President who is a director, or any two directors may determine, and the Secretary shall call meetings when directly authorized by the President or by the Vice-President who is a director or by any two directors. Notice of any meeting so called shall be given personally by ordinary mail or telegraph to each director not less than forty-eight (48) hours (excluding any part of a Sunday or of a holiday as defined by the Interpretation Act of Canada for the time being in force) before the time when the meeting is to be held, save that no notice of a meeting shall be necessary if all the directors are present or if those absent waive notice of or otherwise signify in writing their consent to the holding of such meeting;
- 2) The Board may appoint a day or days in any month or months for regular meetings at a place and hour to be named. A copy of the resolution of the Board fixing a place and time of regular meetings of the Board shall be sent to each director forthwith by ordinary prepaid post after being passed, but no other notice shall be required for any such regular meeting.

7.07 First Meeting of the New Board

- 1) The Board may without notice hold its first meeting for the purpose of organization and election and appointment of officers immediately

following the meeting of owners at which the directors or such Board were elected, provided a quorum of directors be present.

- 2) No director shall be disqualified by his office from contracting with the Corporation nor shall any contract or arrangement entered into by or on behalf of the Corporation with any director or any firm or corporation in which any director is in any way interested be voided, nor shall any director so contracting or being so interested be liable to account to the Corporation for any profit realized by any such contract or arrangement by reason of such director holding such office or of the fiduciary relationship thereby established provided that the provisions relating to Declaration of Interest are complied with.

#### 7.08 Declaration of Interest

- 1) It shall be the duty of every director of the Corporation who is in any way, whether directly or indirectly interested in a contract or arrangement or proposed contract or arrangement with the Corporation to declare such interest and to refrain from voting in respect thereto and shall absent himself from that part of the meeting of directors during which the said contract or arrangement or proposed contract or arrangement is discussed;
- 2) The Board shall, prior to voting on a contract in which another director is interested, obtain at least two other independent bids from other contractors to supply or provide the same supplies or services.

#### 7.09 Protection of Directors and Officers

No director or officer of the Corporation shall be liable for:

- the acts, neglect or default of any other director or officer; or
- Any loss or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by order of the Board for or on behalf of the Corporation; or
- the insufficiency or deficiency of any certificate or instrument in or upon which any of the monies of the Corporation shall be invested, provided always that the investment certificate or instrument conforms with Paragraph 10) of Article 4.00 hereof; or
- Any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any of the monies, certificates, term deposits, instruments or effects of the Corporation shall be deposited; or
- Any loss occasioned by an error of judgment or oversight on his part; or
- Any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto;

Unless the same shall happen through his own dishonest or fraudulent act or acts, bad faith, or willful misconduct

#### 7.10 Indemnity of Directors and Officers

Every director or officer of the Corporation and his heirs, executors and administrators and estate and effects respectively shall from time to time and at all times be indemnified and saved harmless out of the funds of the Corporation from and against:

- all costs, charges and expenses whatsoever which such director or officer sustains or incurs in or about any action, suit or



proceeding which is brought, commenced or prosecuted against him for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by him in or about the execution of the duties of his office;

- all other costs, charges and expenses which he properly sustains or incurs in or about or in relation to the affairs thereof; and
- except for dishonest or fraudulent act or acts, bad faith or wilful misconduct.

7.11 Consents

Any consent required under the provisions of the Act, the declaration, the by-laws or the rules shall be given by the Board in writing after a resolution for same has been passed.

7.12 Execution of Instruments

- 1) Deeds, transfers, assignments, cheques, contracts and obligations of the Corporation may be signed by any two directors who may be, but need not be, officers of the Corporation;
- 2) Any contract or obligation within the scope of any management agreement entered into by the Corporation may be executed on behalf of the Corporation in accordance with the provisions of such management agreement;
- 3) Subject to the Act and the declaration but notwithstanding any provisions to the contrary contained in the by-laws of the Corporation, the Board may by resolution at any time and from time to time direct the manner in which and the person or persons by whom any particular deed, transfer, contract or obligation or any class of deed, transfer, contract or obligation of the Corporation may or shall be signed;
- 4) Any member of the Board may execute an estoppel certificate and cause the corporate seal to be affixed thereon provided there is delivered with the estoppel certificate a statement under the signature of the manager or treasurer that he has examined the records and confirms that the particulars set out in the estoppel certificate are accurate;
- 5) The manager or any two members of the Board may execute a notice of lien or discharge of lien and cause the corporate seal to be affixed.

**ARTICLE VIII**

OFFICERS

8.01 Elected Officers

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

8.02 Appointed Officers

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

one office and if the same person holds both the office of Secretary and the office of Treasurer he may be known as Secretary-Treasurer.

8.03 Term of Office

In the absence of written agreement to the contrary, officers shall hold office until removed by the Board. Provided always that officers shall adhere and be governed by the same qualifications as hereinbefore applied to directors pursuant to Article 7.03. Officers shall have such authority and perform such duties as the Board may, from time to time determine that are consistent with the declaration and by-laws of the Corporation.

8.04 President

The President shall:

- 1) Be Chief Executive Director of the Corporation;
- 2) Have the power to delegate all his functions when not prohibited by the Act, the declaration, the by-laws or common law;
- 3) Have one vote at all meetings of the Board and at general and special meetings of the owners;
- 4) With the Secretary call all Board and general meetings;
- 5) Be the Chairperson at all meetings of the Board, general meetings of the owners or designate the Chairperson at all of the above meetings;
- 6) Co-ordinate the activities of the remaining members of the Board;
- 7) Deal directly with the management company and corporate solicitor in all areas of concern;
- 8) Direct the enforcement of:
  - the Act;
  - the declaration;
  - the by-laws and the rules of the Corporation;

By all lawful means at the Board's disposal.

8.05 Secretary

The Secretary shall:

- 1) Be a member of the Board;
- 2) Give or cause to be given all notices required to be given to the owners, directors, auditors, mortgagees and all others entitled thereto;
- 3) Attend all meetings of the directors and of the members;
- 4) Enter or cause to be entered in books kept for that purpose minutes of all proceedings at such meetings;
- 5) Be the custodian of all books, papers, records, documents and other instruments belonging to the Corporation;
- 6) Perform such other duties as may from time to time be prescribed by the Board;
- 7) Have the power to delegate all his functions where not prohibited by the Act, the declaration, the by-laws and common law;

- 8) Cause to have the by-laws registered and notice of the by-laws and of the rules to be sent to all owners and mortgagees as required by the Act.

8.06 Treasurer

The Treasurer shall:

- 1) Be a member of the Board;
- 2) Keep or cause to be kept full and accurate books of account in which shall be recorded all receipts and disbursements of the Corporation;
- 3) Under the direction of the Board, control the deposit of money, the safekeeping of term deposits, investment certificates and similar instruments of receipt and the disbursement of Corporation monies;
- 4) Cause an annual audit of the Corporation's records to be made;
- 5) Prepare statements of income and expenditures to be presented to the owners at the annual meeting;
- 6) Prepare budgets;
- 7) Perform such other duties as may from time to time be prescribed by the Board;
- 8) Have the power to delegate all his functions when not prohibited by the Act, the declaration, the by-laws or common law.

8.07 Vice-President

- 1) The Vice-President shall perform the duties of the President when the latter is absent or unable to act;
- 2) If there is more than one, the Vice-Presidents, in order of seniority (as determined by the Board) shall not preside at a meeting of the Board or at a meeting of members unless he is qualified to attend the meetings as a director or member, as the case may be;
- 3) Perform such duties and exercise such powers as the Board may prescribe.

8.08 Other Committees

- 1) In order to assist the Board in managing the affairs of the Corporation, the Board may from time to time constitute such advisory committees to advise and make recommendations to the Board in connection with the activities, management, budgets, house rules, or any other matter related to the recreational facilities and the common elements;
- 2) The members of such committees shall be appointed by the Board to hold office;
- 3) The members of such committees may be removed by resolution of the Board.

ARTICLE IX

MEETINGS OF THE OWNERS

9.01 Annual Meetings

- 1) The annual meeting of the owners shall be held at such place within the City of Toronto at such time and on such day in each year as the Board may from time to time determine, for the purpose of hearing

and receiving the reports and statements required to be read at and laid before the owners at an annual meeting; electing directors; appointing the auditor and fixing or authorizing the Board to fix his remuneration and for the transaction of such other business as may properly be brought before the meeting;

- 2) The Annual Meeting is to take place following the end of the Corporation's fiscal year and not later than fifteen (15) months following the preceding Annual Meeting.

#### 9.02 Special Meetings

- 1) At the request of the Board:

The Board shall have the power at any time to call a special meeting of the owners for the transaction of any business, the nature of which shall be specified in the notice calling the meeting;

Such meeting shall be held at such time and at such place within the said Municipality as may be determined by the Board.

- 2) At the request of owners owning not less than fifteen percent (15%) of the units or any mortgagee(s) holding mortgages on not less than fifteen (15%) of the units::

The Board shall, upon receipt of a requisition in writing made by owners who together own at least 15% of the units or made by any mortgagee holding mortgages on not less than 15% of the units or both, call and hold a meeting of the owners and if the meeting is not called and held within thirty (30) days of receipt of the requisition any of the requisitionists or a mortgagee may call the meeting, and in such case, the meeting shall be held within sixty (60) days of receipt of the requisition.

The requisition shall state the nature of the business to be presented at the meeting and shall be signed by the requisitionists or the mortgagee and deposited at the address for service of the Corporation.

#### 9.03 Persons Entitled to be Present

The only persons entitled to attend a meeting of owners shall be:

- the owners and mortgagees entered on the record; and
- any other person entitled to vote thereat;
- others who, although not entitled to vote, are entitled or required under the provisions of the Act or the by-laws of the Corporation to be present at the meeting;
- any other person on the invitation of the Chairman of the meeting or with the consent of the meeting.

#### 9.04 Quorum

- 1) At any meeting of owners a quorum shall be constituted when persons entitled to vote and representing not less than one-third (1/3) of the units are present in person or represented by proxy at such meeting;
- 2) A quorum for the passing of an ordinary by-law shall be constituted when persons entitled to vote and representing not less than fifty-one percent (51%) of the units are present in person or represented by proxy at such meeting;
- 3) A quorum for the passage of a special by-law shall be constituted when persons entitled to vote and representing not less than sixty-six and two-thirds percent (66 2/3%) of the units are present in person or represented by proxy at such meeting.

9.05 Voting

- 1) At each meeting of owners, every owner shall be entitled to vote who is entered on the register as an owner or has given notice to the Corporation in a form satisfactory to the Chairman of the meeting that he is an owner;
- 2) Subject to subparagraph 3) below, if the unit has been mortgaged and the right to vote has been given to the mortgagee, the owner (or his proxy) may nevertheless represent such unit at meetings and vote in respect thereof;
- 3) In the event the mortgagee has notified the Corporation and the owner of his intention to exercise such right at least two (2) days before the date specified in the Notice of Meeting, the mortgagee or his proxy may exercise the right to vote.
- 4) Except where under the Act, the unanimous vote of all the owners is required, an owner is not entitled to vote at any meeting if any contributions payable in respect of his unit are in arrears for more than thirty (30) days prior to the meeting.
- 5) Any dispute over the right to vote shall be resolved by the Chairman of the meeting upon such evidence as he may deem sufficient;
- 6) The Chairman shall not, in the case of a tie, cast a deciding vote;
- 7) Unless otherwise provided by the Act, the declaration or the by-laws, any vote shall be decided by a majority vote of those owners present in person or by proxy at a meeting called for the purpose of holding such vote.

9.06 Method of Voting

- 1) At any annual or special meeting any question may be decided by a show of hands. A declaration by the Chairman that such question has by a show of hands been carried, is prima facie proof of the fact without further proof of ownership of the votes cast in favour of such question;
- 2) A vote for the election of directors shall be by ballot only;
- 3) Anyone that has a right to vote may demand a vote by ballot and upon such demand the vote shall be a ballot vote unless the demand is withdrawn before the ballots are distributed;
- 4) All voting by owners shall be on the basis of one vote per unit;
- 5) When all ballots have been deposited into the ballot box the scrutineers shall then tabulate the votes for and against the matter being voted on. In the event the vote is not decided by the votes cast, the Board shall collect any outstanding ballots until the vote is conclusive either in favour of or against;
- 6) The official ballots shall not be destroyed until the next annual or special meeting of the owners at which meeting a resolution is carried to destroy the ballots, provided always that if a resolution of the owners is carried at the initial meeting during which the ballots were cast, to destroy the ballots immediately following said meeting, the official ballots shall be destroyed within seven (7) days thereafter.
- 7) Any dispute over the validity of a proxy or of a ballot shall be resolved by the Chairman at the meeting, whose decision shall be final and binding on all parties concerned.

9.07 Proxies

Every owner or mortgagee entitled to vote at meetings of owners may by instrument in writing appoint a proxy, who need not be an

owner or mortgagee, to attend and act at the meeting in the same manner, to the same extent and with the same power as if the owner or mortgagee were present at the meeting. The instrument appointing a proxy shall be in writing signed by the appointor or his attorney authorized in writing. The instrument appointing a proxy shall be deposited with the Secretary of the meeting before any vote.

9.08 Representatives

An executor, administrator, committee of a mentally incompetent person, guardian, trustee or representative of a corporation, upon filing with the Secretary of the meeting sufficient proof of his appointment shall represent the owner or mortgagee at all meetings of the owners and may vote in the same manner and to the same extent as such owner. If there be more than one executor, administrator, committee, guardian or trustee, the provisions relating to co-owners shall apply.

9.09 Co-owners

If a unit or a mortgage on a unit is owned by two or more persons, any one of them present or represented by proxy may in the absence of the other or others vote, but if more than one of them are present or represented by proxy, they shall vote in the same way, failing which the vote for such unit shall not be counted.

ARTICLE X

ASSESSMENT AND COLLECTION OF COMMON EXPENSES

10.01 Assessment of Common Expenses

- 1) All expenses, charges and costs of maintenance repair or replacement of the common elements and the assets of the Corporation and any other expenses, charges or costs which the Board may incur or expend pursuant to its duties shall be assessed by the Board and levied against the owners in the proportions in which they are required to contribute to the common expenses as set forth in the declaration;
- 2) The Board shall from time to time and at least annually prepare a budget for the property and determine by estimate the amount of common expenses for the next ensuing fiscal year or remainder of the current fiscal year as the case may be. The Board should allocate and assess such common expenses as set out in the budget for such period among the owners, according to the proportion in which they are required to contribute to the common expenses as set forth in the declaration.

10.02 Reserve Fund

- 1) The Board shall establish and maintain reserve funds in accordance with the Act;
- 2) The reserve funds shall be kept in separate interest bearing accounts with any Province of Ontario Savings Office or any Chartered Bank or trust company branch in the City of Toronto and may be invested in interest bearing term deposits, guaranteed investment certificates and similar instruments of any such bank or trust company maturing not later than five (5) years from their date of issue and fully insured by the Government of Canada.

10.03 Additional Expenditures

Any expenditures not contemplated in the budget and for which the Board shall not have sufficient funds may be assessed at any time during the year in addition to the annual assessment, by the Board serving notices of such further assessment on all owners which shall

include a written statement setting out the reasons for the additional assessment.

10.04 Delivery of Assessments

- 1) The Board shall advise all owners promptly in writing of the amount of common expenses payable by each of them respectively determined as aforesaid, and shall deliver copies of each budget on which such common expenses are based, to all owners and mortgagees entered on the record;
- 2) Additional assessments shall be payable by each owner within ten (10) days after the delivery thereof to such owner, unless a further period of time has been determined by the Board and set out in such notice.

10.05 Owners' Obligations to pay Assessments

- 1) Each owner shall be obliged to pay to the Corporation the full amount of such annual assessment within ten (10) days after the delivery or mailing of the notice of assessment to the owner; however, an owner may, within ten (10) days of the delivery or mailing of the notice of assessment, deliver to the Corporation, twelve (12) post-dated cheques in like amounts, each cheque being dated on the 1st day of each month during the fiscal year and the sum total of all cheques being equal to the whole of the annual assessment. Although this method of payment of the owner's assessment will be acceptable to the Corporation, in the event that an owner's cheque is not honoured when presented for payment by the Corporation on or after the due date, the then unpaid balance of the annual assessment shall become forthwith due and payable together with interest thereon calculated in accordance with Article 10.06 3) herein. The Board may, by resolution, authorize a further alternate method or methods of payment provided always that such method of payment shall apply consistently to and for the convenience of all interested owners;
- 2) No owner shall be liable for the payment of any part of the common expenses assessed against his unit prior to a transfer by him of such unit but payable by him subsequent thereto, provided he first gives notice of such assessment to the transferee of the unit.

10.06 Default in Payment of Assessment

- 1) The following procedures shall be taken for the collection of common expense payments:
- 2) If an owner fails to reinstate any payment of common expenses assessed against his unit within ten (10) days after default, the Corporation may without notice to the owner, institute lien proceedings in accordance with the Act.
- 3) Arrears of payment required to be made under the provisions of this Article IX shall bear interest at the rate of four (4) percentage points above the minimum lending rate charged by the Corporation's Bank on Canadian currency loans made by it to prime commercial borrowers in Canada effective as of the date the owner has fallen into arrears and to be varied from time to time in accordance with changes in the said minimum lending rate until payment has been received in full from the owner. Interest at the aforesaid rate shall be charged from time to time on the unpaid balance of common expenses plus unpaid interest and any legal costs incurred by the Corporation in the collection or attempted collection of the unpaid amount and interest shall be charged upon the aggregate total amount monthly and shall be compounded monthly until paid.
- 4) In any lien proceedings instituted by the Corporation to collect common expenses from the owner, there shall be added to any amount found due all costs of such action including costs as between a solicitor and his own client.

## ARTICLE XI

### MISCELLANEOUS

11.01 Invalidity

The invalidity of any part of this by-law shall not impair or affect in any manner validity and enforceability or effect of the balance thereof.

11.02 Gender

The use of the masculine gender in this by-law shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural wherever the context so requires.

11.03 Waiver

No restriction, condition, obligation or provision contained in this by-law shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches thereof which may occur.

11.04 Headings

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

11.05 Amendment

This by-law or any part hereof may be varied, altered or repealed by a by-law passed in accordance with the provisions of the Act and the declaration.

11.06 Conflicts

- 1) In the case of a conflict between the provisions of the Act and any provision in the declaration, by-laws or rules, the Act shall prevail;
- 2) In the case of a conflict between the provisions in the declaration and any provision in the by-laws or rules, the declaration shall prevail;
- 3) In the event the provisions of the Act or in the declaration are silent the provisions of the by-laws shall prevail.

## ARTICLE XII

### LIABILITY FOR COSTS

12.01 Abatement and Restraint of Violations by Unit Owners and Liability for Costs

- 1) The owner of a unit is responsible for any cost incurred to repair damage to the common elements or other units that may have been caused by either his use or his residents or their visitors use of same;
- 2) In the event that damage to the common elements has been caused by the deliberate or negligent conduct of any owner, residents or their invited guest, the owner of that unit shall be responsible for any costs incurred to repair such damage;
- 3) In those cases where it has been determined that the responsibility for payment of the cost to repair is that of the unit owner, or where an owner requests to repair a common element himself, the Board of Directors shall approve the selection of the contractor and/or the



method of repair. This decision, at the discretion of the Board, shall be based on a minimum of two (2) bids, the method of repair, the meeting of standards of uniformity and consideration of the convenience of the owner(s) involved;

4) The violation of any provisions of the Act, the declaration, the by-laws, and/or the rules adopted by the Board of Directors, shall give the Board the right, in addition to any other rights set forth in these by-laws:

- (a) to enter the unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; or
- (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, including without limiting the generality of the foregoing, an application for an order for compliance pursuant to Section 49 of Act.

WITNESS the corporate seal of the Corporation this            day of  
, 1983.

YORK CONDOMINIUM CORPORATION NO. 323

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

President

c/s

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

Secretary