

**YORK CONDOMINIUM CORPORATION NO. 323**

**BY-LAW NO. 3**

**BE IT ENACTED** as a by-law of York Condominium Corporation No. 323 (hereinafter referred to as the "corporation") as follows:

That the President and Secretary may from time to time enter into an agreement with an Insurance Trustee respecting insurance for the corporation, in the general form, a copy of which is hereto annexed.

That the President and Secretary be and are hereby authorized to enter into a Management Agreement in the form annexed hereto.

York Condominium Corporation No. 323 hereby enacts the foregoing By-Law No. 3 by the vote of its sole member, STARBURST INVESTMENTS LIMITED, which owns one hundred per cent (100%) of the common elements.

**DATED** at Toronto this 19th day of April, 1976.

**YORK CONDOMINIUM CORPORATION NO. 323**  
by its sole member

**STARBURST INVESTMENTS LIMITED**

**INSURANCE TRUST AGREEMENT**

THIS AGREEMENT made in duplicate this         day of  
                                  , 197

**BETWEEN:**

YORK CONDOMINIUM CORPORATION NO. 323, a Condo-  
minium located in the Municipality of Metropolitan Toronto, in  
the Province of Ontario,

(hereinafter called the "Settlor")

OF THE FIRST PART,

- and -

THE CANADA TRUST COMPANY

(hereinafter called the "Trustee")

OF THE SECOND PART.

**WHEREAS** the Settlor has obtained certain policies of insurance, set forth in Schedule "A" annexed hereto;

**AND WHEREAS** the Settlor desires to make provision for the expeditious payment out of the proceeds of such insurance in the event of damage to the property as described in the description registered pursuant to The Condominium Act, R.S.O. 1970, herein called the "Act";

**IN CONSIDERATION** of the mutual covenants herein contained, it is hereby mutually agreed by the parties hereto as follows:

**ARTICLE I - DEFINITIONS**

The terms used in this Agreement shall have ascribed to them the definitions contained in the Act.

**ARTICLE II - APPOINTMENT OF TRUSTEE**

The Settlor doth hereby appoint the Trustee to act as Trustee pursuant to the provisions of the declaration and by-laws of the Settlor, copies of which are submitted herewith to the Trustee.

**ARTICLE III - PAYMENT BY TRUSTEE**

All insurance proceeds received by the Trustee shall be held by it in trust and paid in accordance with the following terms and conditions:

1. In the event of:

(a) Damage to the building, if the Trustee receives a certificate duly executed by the President (or Vice-President) and the Secretary of the Settlor, certifying:

- (i) that the board has determined that less than 25% of the building has been substantially damaged, or,
- (ii) that the board has determined that 25% or more of the building has been substantially damaged, and that owners who own 80% of the common elements have voted for repairs within sixty (60) days of such determination by the board; or

(b) Damage to the property, excluding the building and the units,

the Trustee shall disburse the proceeds of all insurance in its hands and arising out of such damage, towards the cost of repairing such damage, from time to time, as the repairs of such damage progress, upon the written request of the Settlor accompanied by the following:

(i) a Certificate signed by the President (or the Vice-President) and the Secretary of the Settlor dated not more than thirty (30) days prior to such request and countersigned by the Architect or Engineer, if any, employed by the Settlor in connection with such repairs, setting forth the following:

- (a) that the sum then requested either has been paid by the Settlor or is justly due to contractors, sub-contractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for repairs therein specified, the names and addresses of such persons, a brief description of such services and materials, the several amounts so paid or due to each of said persons in respect thereto, that no part of such expenditures has been or is being made the basis of any previous or then pending request for the payment of

insurance proceeds then held by the Trustee, or has theretofore been paid out of such insurance proceeds, and that the sum then requested does not exceed the value of the services and materials described in such certificate;

- (b) that except for the amount, if any, stated in such certificate to be due for services or materials, there is no outstanding indebtedness known to the Settlor, after due enquiry, which is then due for labour, wages, material, supplies or services in connection with such repairs which if unpaid might become the basis of a mechanics' lien, by reason of such repair, to the building or any part thereof.
- (ii) an opinion of a Solicitor, acting for the Settlor or other evidence reasonably satisfactory to the Trustee to the effect that there has not been filed with respect to the building or the property, or any part thereof, any mechanics' lien which has not been discharged except such as will be discharged by payment of the amount then requested.

Any balance of proceeds of insurance remaining in the Trustee's hands after payment in full of the cost of the repairs of the buildings as aforesaid, shall be paid over by the Trustee to the Settlor.

2. If, upon the receipt of any certificate referred to in paragraph 1 of this Article the Trustee shall not have sufficient funds to pay the amount due and owing as set out therein, the Settlor shall be so notified by the Trustee, and the Settlor shall further notify, in writing, the Trustee, as to which of the persons or companies set forth in the said certificate are to be paid by the Trustee.

3. The Trustee shall not be under any duty to enquire as to the correctness of any amounts received by it on account of the proceeds of any insurance, nor shall it be under any obligation to take any steps to enforce the payment thereof to it.

#### ARTICLE IV - DEFICIENCY OF INSURANCE PROCEEDS

The Settlor shall be promptly notified of any proceeds of insurance deposited with the Trustee on behalf of the Settlor, and the Trustee shall be under no obligation to make any payments specified in this Agreement except out of the proceeds of insurance held in trust for the Settlor.

**ARTICLE V - LIABILITY AND  
INDEMNIFICATION OF TRUSTEE**

1. The Trustee shall have no duties except those which are expressly set forth in this Agreement and shall in no way be responsible or liable for any loss, cost or damages which may result from anything done or omitted to be done by such Trustee, hereunder, except in the case of negligence or bad faith. The Trustee shall be protected in acting upon any certificate, statement, request, consent, agreement or other instrument whatsoever, not only as to its due execution and validity and the effectiveness of its provisions, but also as to the truth and accuracy of any information therein contained, which it shall, in good faith, believe to be genuine, and to have been signed and presented by the proper person or persons. It shall have no responsibility with respect to any cheques deposited with it hereunder except the usual responsibilities of a collecting bank and it shall have no responsibility with respect to the application of any funds paid by it pursuant to the provisions of this Agreement.

2. The Settlor shall reimburse the Trustee for all expenses incurred by it in connection with its duties under this Agreement and shall indemnify it and save it harmless against any and all liabilities, costs and expenses including legal fees for anything done or omitted to be done by it in the performance of this Agreement, except as a result of negligence or bad faith.

**ARTICLE VI - TERMINATION OF CONDOMINIUM**

Notwithstanding anything to the contrary herein contained where a notice of termination is registered in accordance with the provisions of the Act, the Settlor shall forthwith notify the Trustee, in writing, of such registration, and upon receipt of such notice the Trustee shall pay any insurance proceeds then in its hands to the owners and any mortgagees with respect to the units of such owners, in the proportion of each owner's common interest, and in satisfaction of any liens registered by the Settlor against such unit in accordance with the priorities thereof.

**ARTICLE VII - TERMINATION OF AGREEMENT**

1. At any time hereafter the Settlor shall have the sole and unrestricted right to terminate this Agreement by written notice to the Trustee, upon delivery to the Trustee of a duplicate original agreement between the Settlor and a Trust Company

registered under the Loan and Trust Corporations Act or a Chartered Bank, or such corporation as the Settlor in its discretion may deem advisable in the event that the Settlor is unable to enter into such agreement with such Trust Company, or such Chartered Bank, by reason of their refusal to act, pursuant to which such other Trust Company or Chartered Bank or corporation shall assume such duties as Trustee, in the place of the Trustee herein. Following such termination, upon payment to the Trustee herein of all fees and charges due to the Trustee hereunder, the Trustee herein shall turn over all sums deposited with it, remaining in its hands, to such new Trustee, and thereupon its obligations hereunder shall cease.

2. The Trustee may at any time resign from its duties hereunder by giving to the Settlor not less than thirty (30) days notice in writing thereof and its obligations hereunder (except for the payment of any sums remaining in its hands to a successor Trustee, as hereinafter provided) shall cease. Following such resignation, upon payment to the Trustee of all fees and charges due to it hereunder and upon delivery to it of a duplicate or original agreement between the Settlor and another Trust Company registered under The Loan and Trust Corporations Act or a Chartered Bank, or such corporation as the Settlor in its discretion may deem advisable in the event that the Settlor is unable to enter into such agreement with such Trust Company, or such Chartered Bank by reason of their refusal to act, pursuant to which such other Trust Company or Chartered Bank or corporation shall assume such duties as Trustee in the place of the Trustee herein, the Trustee herein shall turn over all sums deposited with it, remaining in its hands, to such new Trustee, and thereupon its obligations hereunder shall cease.

**ARTICLE VIII - MODIFICATION OR AMENDMENT OF AGREEMENT,  
DECLARATION AND BY-LAWS AND RIGHTS OF THIRD PARTIES**

1. This Agreement shall not be modified or amended without the consent of the parties hereto and any mortgagee holding first mortgages on more than 50% per cent of the units. Any amendments to the declaration or by-laws shall be communicated to the Trustee by the Settlor.

2. Upon being advised of damage to the building or upon receipt of any monies in accordance with the terms of this Agreement, the Trustee shall notify all mortgagees shown on the Settlor's register.

3. Certain provisions of this Agreement are for the benefit of the mortgagees of the units and all such provisions are covenants for the benefit of any mortgagee shown on the Settlor's register and may be enforced by such mortgagee.

**ARTICLE IX - ADDRESS FOR SERVICE**

Any certificate, declaration or notice in writing given to the Settlor, pursuant to this Agreement, shall be sufficiently given if mailed by prepaid registered post to the Settlor at

The Management Office  
50 Quebec Avenue  
Toronto, Ontario  
M6P 4B4

Any certificate, declaration or notice in writing given to the Trustee pursuant to this Agreement shall be sufficiently given if mailed by prepaid registered post to the Trustee at:

110 Yonge Street  
Toronto, Ontario

Such certificate, declaration and notices in writing shall be deemed to have been received on the business day next following the date of such mailing.

**ARTICLE X - REMUNERATION OF TRUSTEE**

The corporation shall pay the Trustee's fees and charges as set out in Schedule "B" attached hereto.

**ARTICLE XI - ASSIGNMENT OF AGREEMENT**

This Agreement shall be binding upon and enure to the benefit of the parties hereto, and their respective successors and assigns, and this Agreement shall not be assignable by the Trustee without the prior written consent of the Settlor.

**ARTICLE XII - ACCEPTANCE OF TRUST**

The Trustee hereby accepts the trust herein set forth.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

SIGNED, SEALED AND DELIVERED) YORK CONDOMINIUM CORPORATION NO. 323  
in the presence of )

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) THE CANADA TRUST COMPANY  
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Repealed October, 2013 - see Bylaw 12