

**THIS DECLARATION** is made and executed pursuant to the provisions of the *Condominium Act, 1998*, S.O. 1998, C.19, and the regulations made thereunder, as amended from time to time (all of which are hereinafter collectively referred to as the “**Act**”), by:

**2717041 ONTARIO INC.**  
(hereinafter called the “**Declarant**”)

**WHEREAS:**

- A. The Declarant is the owner in fee simple of certain lands and premises situate in the Town of Fort Erie, in the Province of Ontario, being more particularly described in Schedule “A” annexed hereto (herein and hereinafter defined and referred to as the “**Lands**” or “**Property**”) and in the description submitted herewith by the Declarant for registration in accordance with Section 8 of the Act (hereinafter called the “Description”);
- B. The Declarant has constructed (or will construct) thirty-six (36) dwellings each comprising a parcel of tied land (individually referred to as a “**POTL**” and collectively referred to as “**POTLs**”), as more particularly described in the Declaration;
- C. The Declarant intends that the Property shall be governed by the Act and that the registration of this Declaration and the Description will create a freehold condominium corporation that constitutes a common elements condominium corporation (the “**Condominium**”) pursuant to Part X of the Act; and
- D. A POTL may not be divided into two (2) or more parcels unless an amendment is registered to the Declaration that takes into account the division of the parcel of tied land.

**NOW THEREFORE THE DECLARANT HEREBY DECLARES AS FOLLOWS:**

**ARTICLE I**  
**INTRODUCTORY**

**1.1 Definitions**

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

- (a) “**Adjacent Owner**” means Niagara South Standard Condominium Corporation No. 185;
- (b) “**Applicable Laws**” means the by-laws, rules, regulations and/or guidelines (as amended from time to time) of the municipality or any governmental or quasi-governmental authority having jurisdiction applicable to the Property;
- (c) “**Board**” means the Corporation's board of directors;
- (d) “**By-Laws**” means the by-laws of the Corporation enacted from time to time;
- (e) “**Common Elements**” means all the Property within the Condominium including the Exclusive Use Areas, if any;
- (f) “**Condominium**” or “**Corporation**” means the freehold condominium that is a common elements condominium corporation that will be created by the registration of this Declaration;
- (g) “**Declaration**” means this Declaration and all amendments thereto and all schedules referred to herein;
- (h) “**Developed POTL**” means a POTL upon which a Dwelling has been constructed which is actually occupied by an Owner (other than the Declarant) or title to which has been transferred by the Declarant to an Owner;
- (i) “**Dwelling**” means a freehold dwelling that will be constructed on the POTL, and collectively referred to as the “**Dwellings**”.
- (j) “**Exclusive Use Areas**” means those portions of the Common Elements over which Owners may have the exclusive use of, if any, as specifically outlined in Schedule “F” attached hereto, and individually referred to as an “**Exclusive Use Area**”;

- (k) **“First Fiscal Year of the Condominium”** means the period of time commencing on the day of the registration of the Condominium and ending on the first anniversary of the date prior to the registration of the Condominium;
- (l) **“First Year Budget”** means the budget of the Condominium in effect as of the date of the registration of the Condominium;
- (m) **“Manager”** means the manager that may be retained by the Corporation to manage the Condominium subsequent to registration;
- (n) **“Owners”** means the owner or owners of a POTL(s) and who own(s), pursuant to the Act, a common interest in the Common Elements, but does not include a mortgagee unless in possession and shall individually be referred to herein as an **“Owner”**;
- (o) **“POTL”** or **“POTLs”** means the thirty-six (36) parcel or parcel(s) of tied land to which a common interest is attached as described in Schedule “D” to this Declaration and described as Parts 1-36, both inclusive on the Plan 59R-\_\_\_\_\_;
- (p) **“Property”** means the lands and interests appurtenant to the land upon which it is intended that the Condominium and POTLs shall be situate, as described in Schedule “A” attached hereto, save and except for the servient lands, and includes any lands or interests appurtenant to the land that are added to the Common Elements;
- (q) **“Region”** means The Regional Municipality of Niagara;
- (r) **“Rules”** means the Rules passed by the Board in accordance with the provisions of the Act, as amended from time to time;
- (s) **“Shared Roadway Agreement”** means the agreement registered as Instrument No. SN748656;
- (t) **“Shared Roadways”** means the common elements roadways designated as Part of Block 5, Registered Plan 505, designated as Part 1 on Plan 59R-17392 as further described in the Shared Roadway Agreement;
- (u) **“Town”** means the Corporation of the Township of Fort Erie;
- (v) **“Undeveloped POTL”** means a POTL that is not a Developed POTL; and
- (w) **“Visitor Parking Spaces”** means the visitor parking spaces located in the Condominium and forming part of the Common Elements and individually referred to as a **“Visitor Parking Space”**.

## **1.2 Governs the Lands**

The Lands described in Schedule “A” annexed hereto and in the Description together with all interests appurtenant to the Lands are governed by the Act.

## **1.3 Common Elements Condominium**

The registration of this Declaration and the Description will create a freehold common elements condominium corporation in accordance with Part X of the Act.

## **1.4 Division of POTLs**

A POTL may not be divided into two (2) or more parcels unless an amendment is registered to the Declaration that takes into account the division of a POTL.

## **1.5 Consent of Encumbrancers**

The consent of every person having a registered mortgage against the Property or interests appurtenant to the land and against each POTL is contained in Schedule “B” attached hereto.

## **1.6 Common Interest and Common Expenses**

- (a) Each Owner shall have an undivided interest in the Common Elements as a tenant-in-common with all other Owners in the proportions set forth opposite each POTL number in Schedule “D” attached hereto and shall contribute to the common expenses in the proportion set forth opposite each POTL

number in Schedule “D” attached hereto. The total of the proportions of the common interest and proportionate contribution to common expenses shall each be one hundred percent (100%);

- (b) The Declarant, in its capacity as the Owner of the Undeveloped POTLs, shall contribute to the operating component of the common expenses (i.e., exclusive of the reserve fund component) in respect of the Undeveloped POTLs in an amount equal to the difference, if any, between the amount payable by Owners of the Developed POTLs under Subsection paragraph 1.6(a)(i) hereof and the amount of budgeted operating expenses actually incurred by the Corporation during the First Fiscal Year of the Condominium; and
- (c) The Declarant, in its capacity as the Owner of the Undeveloped POTLs, shall pay to the Corporation, for deposit into the Corporation’s reserve fund account, an amount equal to the difference between the amount payable by Owners of the Developed POTLs under paragraph 1.6(a)(i) hereof in respect of the reserve fund contribution required by the First Year Budget and the total budgeted amount for the reserve fund in the First Year Budget.

#### **1.7 Address for Service, Municipal Address and Mailing Address of the Corporation**

The Corporation's mailing address and address for service shall be:

9 - 315 Garrison Road, Fort Erie, Ontario, L2A 0G2

or such other address as the Corporation may by resolution of the Board determine. The Corporation consists primarily of common element roads and does not have a municipal address.

Individual dwelling addresses have been assigned as follows:

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#### **1.8 Approval Authority Requirements**

The following are the conditions of the approval authority, in approving or exempting the description under Section 9 of the Act that are required to be mentioned in this Declaration:

NIL (as of the date of the Disclosure Statement)

#### **1.9 Architect/Engineer Certificates**

The certificates of the architect and/or engineer that all facilities and services in the Property have been constructed in accordance with the regulations made under the Act is contained in Schedule(s) “G” attached hereto, if applicable.

### **ARTICLE II COMMON EXPENSES**

#### **2.1 Specification of Common Expenses**

The common expenses shall comprise the expenses of the performance of the objects and duties of the Corporation and such other expenses, costs and sums of money incurred by or on behalf of the Corporation that are specifically designated as (or collectible as) common expenses pursuant to the provisions of the Act and/or this Declaration and without limiting the generality of the foregoing, shall include the specific expenses set out in Schedule “E” attached hereto in the percentage interests set out in Schedule “D” attached hereto.

#### **2.2 Payment of Common Expenses**

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

### **2.3 Reserve Fund**

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

### **2.4 Status Certificate**

The Corporation shall provide a status certificate to any requesting party who has paid (in advance) the applicable fees charged by the Corporation for providing the same in accordance with the provisions of the Act, together with all accompanying documentation. The Corporation shall forthwith provide the Declarant (and/or any purchaser, transferee or mortgagee of a POTL from the Declarant) with a status certificate and all such accompanying documentation and information, as may be requested from time to time by or on behalf of the Declarant (or by any such purchaser, transferee, or mortgagee) in connection with the Declarant's sale, transfer or mortgage of any POTLs, all at no charge or fee to the Declarant or the person requesting same on behalf of the Declarant.

## **ARTICLE III COMMON ELEMENTS**

### **3.1 Use of Common Elements**

- (a) Subject to the provisions of the Act, this Declaration, the By-Laws, the Rules, and the Shared Roadways Agreement, each Owner has the full use, occupancy and enjoyment of the whole or any parts of the Common Elements, save and except for the Exclusive Use Areas, if any, and save and except as herein otherwise provided.
- (b) However, save and except as expressly provided or contemplated in this Declaration to the contrary, no condition shall be permitted to exist, and no activity shall be carried on or upon any portion of the Common Elements that:
  - (i) will result in a contravention of any term or provision set out in the Act, this Declaration, the By-Laws, the Rules of the Corporation, the Shared Roadways Agreement, or the applicable zoning by-laws;
  - (ii) is likely to damage the Common Elements or property of the Corporation, injure any person, or impair the structural integrity of any Common Elements area;
  - (iii) will unreasonably interfere with the use and enjoyment by the other Owners of the Common Elements;
  - (iv) may result in the cancellation (or threatened cancellation) of any policy of insurance obtained or maintained by the Corporation, or that may significantly increase any applicable insurance premium(s) with respect thereto, or any deductible portion in respect of such policy; or,
  - (v) may violate any Applicable laws.
- (c) No one shall, by any conduct or activity undertaken in or upon any part of the Common Elements, impede, hinder or obstruct any right, privilege, easement or benefit given to any party, person or other entity pursuant to this Declaration, any By-law, the Rules of the Corporation and/or the Shared Roadways Agreement.
- (d) No sign, advertisement or notice of any type shall be inscribed, painted, affixed or displayed on the Common Elements except for signs marketing the Condominium placed on the Common Elements by the Declarant or those signs previously approved in writing by the Declarant which approval may be unreasonably withheld and which must be signage prepared in accordance with the terms Shared Roadways Agreement, the Corporation's by-laws and the Applicable Laws, as amended or replaced.

- (e) No portion of the Common Elements including but not limited to any landscaped and open space areas may be leased or sold by any Owner nor may any portion of the landscaped and open space areas be considered to form part of the Exclusive Use Areas, if any.
- (f) No person shall be permitted to park on the Common Elements roadway.

In the event that this Section 3.1 of the Declaration is contravened, the Owner responsible for such contravention shall pay and fully reimburse the Corporation for all costs and expenses incurred to rectify such injury or damage (including without limitation, all increased insurance premium costs, and any legal expenses incurred by the Corporation to collect any of the aforementioned costs). Said Owner shall further fully indemnify the Corporation for all other costs, expenses and liabilities suffered or incurred by the Corporation as a result of such contravention and all such costs and expenses shall be deemed a common expense and shall be payable by such Owner, and recoverable by the Corporation against such Owner in the same manner as common expenses.

### **3.2 Exclusive Use Common Elements**

- (a) Subject to the provisions of the Act, this Declaration, the By-laws and the Rules of the Corporation, the Owner of each POTL listed in Schedule "F" shall have the exclusive use those parts of the Common Elements described in Schedule "F," that are respectively allocated to such Potl. The exclusive use being enjoyed by such Owner so entitled to same may be regulated by this Declaration, the By-laws and/or Rules of the Corporation.
- (b) Each Owner, upon the Corporation's request, shall provide to the Corporation or to any of its authorized workmen, servants, agents or contractors, full access to and use of the exclusive use Common Elements, if any, for the purpose of facilitating the maintenance and repair of any other part of the Common Elements, any other Unit or any other part of the Building; if requested provided that the Owner is responsible to maintain and repair the Exclusive Use Area unless stated otherwise in this Declaration.

### **3.3 Restricted Access**

- (a) Without the consent in writing of the Board, no Owner shall have the right of access to those parts of the Common Elements used from time to time as utility areas, mechanical and electrical rooms, building maintenance storage areas, or operating machinery, if any or other Common Elements used for the care, maintenance or operation of the Condominium, the POTLs or any part thereof as designated by the Board, from time to time;
- (b) This paragraph shall not apply to any mortgagee holding mortgages on at least thirty-three percent (33%) of the POTLs who shall have a right of access for inspection upon forty-eight (48) hours' written notice to the Manager or to the Corporation.

### **3.4 Modifications of Common Elements, Assets and Services**

- (a) General Prohibition

No Owner shall make any change or alteration to the Common Elements whatsoever, including any installation(s) thereon, nor alter, decorate, renovate, maintain or repair any part of the Common Elements (except for maintaining those parts of the Exclusive Use Areas which he or she has a duty to maintain in accordance with the provisions of this Declaration if applicable) without obtaining the prior written approval of the Board and having entered into an agreement with the Corporation in accordance with Section 98 of the Act.

- (b) Non-Substantial Additions, Alterations and Improvements by the Corporation

The Corporation may make a non-substantial addition, alteration, or improvement to the Common Elements, a non-substantial change in the assets of the Corporation or a non-substantial change in a service that the Corporation provides to the Owners in accordance with Subsections 97(2) and (3) of the Act.

- (c) Substantial Additions, Alterations and Improvements by the Corporation

The Corporation may, by a vote of Owners who own at least sixty-six and two-thirds (66 2/3%) percent of the POTLs, make a substantial addition, alteration or improvement to the Common Elements, a substantial change in the assets of the Corporation or a substantial change in a service

the Corporation provides to the Owner in accordance with Subsections 97 (4), (5) and (6) of the Act.

(d) Board's Discretion

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

### 3.5 Common Elements

All of the buildings, structures, facilities and services that are included in the Common Elements are listed in Schedule "H" attached hereto and form part this Declaration.

### 3.6 Declarant's Rights

Notwithstanding anything provided in this Declaration to the contrary, and notwithstanding any Rules or By-Laws of the Corporation hereafter passed or enacted to the contrary, it is expressly stipulated and declared that:

- (a) the Declarant and its authorized agents, representatives and invitees shall have free, unlimited and uninterrupted access to and egress from all parts of the Common Elements until the completion of the sales and the transfer of title to all POTLs, for the purposes of:
  - (i) gaining access to POTLs owned by the Declarant;
  - (ii) gaining entry to and transporting materials and goods to any POTL;
  - (iii) completing and finishing POTLs and/or the Common Elements;
  - (iv) general construction obligations, including without limiting the generality of the foregoing, in order for it to comply with all agreement obligations entered into with the Town, Region and/or any other municipal, provincial, utility and/or any other similar authorities (collectively, the "**Authorities**") obligations, including but not limited to the right to clean all storm and sanitary sewers, water facilities and any other electrical and mechanical services constructed and or installed by the Declarant within the Condominium in accordance with such agreements and/or any other repair or modifications to any of the Common Elements on such lands if required by the aforesaid Authorities from time to time;
  - (v) responding to and rectifying any claims submitted to the Declarant pursuant to the *Ontario New Home Warranties Plan Act* or otherwise in respect of outstanding construction matters (including effecting repairs to the Common Elements); and
  - (vi) showing unsold POTLs to persons interested in the same;
- (b) the Declarant and its authorized agents, representatives and invitees shall be entitled to erect and maintain signs for marketing and sales purposes upon any portion of the Common Elements and within or outside any unsold POTLs pursuant to the Declarant's ongoing marketing and sales program in connection with the Condominium, at such locations and having such dimensions as the Declarant may determine in its sole discretion until such time as all POTLs are conveyed;
- (c) the Declarant and its authorized agents, representatives and invitees shall be entitled to use and occupy any portion of the Condominium for the Declarant's marketing and sales program, and to erect and maintain sales and construction offices thereon at such locations as the Declarant may select in its sole discretion until such time as all POTLs are conveyed. The cost of erecting, maintaining and dismantling the sales and construction offices shall be borne by the Declarant but the Declarant shall not be charged for the use of the space so occupied nor for any utility services supplied thereto, which cost shall be the responsibility of the Corporation, nor shall the Corporation or anyone acting on behalf of the Corporation prevent or interfere with the provision of utility services to the sales and construction office. Without limiting the foregoing, the Declarant, at its option, shall have the right to use and allow its sales staff, authorized personnel or any prospective purchaser or tenant to use any Visitor Parking Spaces, or parking spaces forming part of any unsold POTL which right shall continue until such time as all POTLs have been conveyed by the Declarant; and
- (d) the Corporation shall ensure that no actions or steps are taken by anyone which would prohibit, limit or restrict the access and egress of the Declarant or a subsidiary body corporate, holding body corporate or affiliated body corporate of the Declarant and its authorized agents, representatives

and/or invitees in and over the Common Elements of the Corporation until such time as all POTLs have been transferred by the Declarant.

### **3.7 Visitor Parking Spaces**

- (a) The Visitor Parking Spaces form part of the Common Elements to the Condominium and are available to the invitees of the residents, tenants and Owners occupying the POTLs on a first come first served basis.
- (b) The Visitor Parking Spaces shall be maintained by the Corporation and shall be used solely by visitors to the Property for the parking of their motor vehicles and shall not be used by Owners or residents or for any other purpose whatsoever. The Visitor Parking Spaces shall be designated as visitor parking by means of clearly visible signs. The Declarant, its sales and management personnel, agents, workmen, sub-trades, invitees and prospective purchasers, may park motor vehicles within the Visitor Parking Spaces until such time as title to all POTLs have been conveyed by the Declarant.
- (c) None of the Visitor Parking Spaces may be leased or sold to any Owner, party or otherwise assigned.
- (d) Visitor Parking Spaces shall form part of the Common Elements and neither be used nor sold by the POTL Owners nor be considered to form part of the Exclusive Use Areas of the Common Elements.

### **3.8 Pets**

- (a) No animal, livestock or fowl, other than dogs or cats are permitted to be on or about the Common Elements except for ingress to and egress from a POTL.
- (b) All dogs and cats must be kept controlled by their owners at all times while on or about the Common Elements.
- (c) All dogs and cats shall be carried or attached to a short leash or chain while on any portion of the Common Elements.
- (d) No animal shall be permitted to soil or damage any part of the Common Elements and in the event of same, the owner of the pet shall make good such damage and effect the removal of such waste and save harmless the Corporation from any expense in connection therewith, in accordance with the Rules.
- (e) No animal deemed by the Board, in its sole and absolute discretion, to be a danger or nuisance to the residents of the Corporation is permitted to be on or about the Common Elements.
- (f) Anyone who keeps an animal on the Property contrary to the Declaration or the Rules shall within two (2) weeks of receipt of a written notice from the Board or the Manager requesting removal of such animal, permanently remove such animal from the Property.

## **ARTICLE IV MAINTENANCE AND REPAIRS**

### **4.1 Responsibility of Owner for Damage**

- (a) Each Owner shall be responsible for all damage to the Common Elements, which is caused by the negligence or willful misconduct of such Owner, his or her residents, family members, guests, visitors, tenants, licensees or invitees or the failure to comply with the Act, the Declaration, the By-Laws, the Rules, or the Shared Roadways Agreement save and except for any such damage for which the cost of repairing same may be recovered under any policy of insurance held by the Corporation. In the event that any insurance proceeds payable to the Corporation or to any Owner are reduced by the amount of a deductible and the loss giving rise to such payments was occasioned by the failure, breach, act or omission of an Owner, as set out above, then such Owner shall be liable to the Corporation for the amount of such deductible which amount will be added to the common expenses.
- (b) Each Owner shall comply, and shall require all occupants, tenants, invitees, servants, agents, contractors and licensees of its POTL to comply with the Act, the Declaration, the By-Laws, the Shared Roadways Agreement and all agreements authorized by the By-laws and the Rules.

#### **4.2 Repair and Maintenance by Corporation**

- (a) Save as otherwise specifically provided in this Declaration to the contrary, the Corporation shall be responsible for the regular maintenance, repair and upkeep of the Common Elements including but without limitation, private internal roadways and roadworks including all curbs and gutters, sidewalks and street lighting and all internal services including sanitary sewers, storm water sewer and water (the “**Private Works**”), which Private Works shall be and remain at all times under the separate ownership of the Corporation and form a portion of the Common Elements.
- (b) The Corporation shall also make any repairs that an Owner is obligated to make pursuant to this Declaration in the event that the Owner fails to make said repair within a reasonable time following request by the Corporation and the Owner shall be deemed to have consented to said repairs. The Owner will be responsible to fully reimburse the Corporation for its legal costs, said repairs and related costs which amounts will be added to the common expenses payable by said Owner.
- (c) The Corporation shall be responsible to cut the grass on all Common Elements landscaped and open space areas and to clear snow on all roadways and pedestrian walkways forming part of the Common Elements to the Condominium but has no obligation to any POTL.

#### **4.3 Access by the Town or the Region**

The Corporation shall at all times and it shall be a continuing duty and obligation of the Corporation to allow the Town, the Region or any other governmental authority full and unimpeded access to the Common Elements for the purposes of the following:

- (a) accessing all individual water shut-off valves for water distribution maintenance, if applicable;
- (b) accessing any meters on the Common Elements for the purposes of reading the meters for billing purposes; and
- (c) accessing the water meter building.

### **ARTICLE V INDEMNIFICATION**

#### **5.1 Indemnification by Owner**

Each Owner shall indemnify and save harmless the Corporation from and against any loss, costs, damage, injury or liability whatsoever which the Corporation may suffer or incur resulting from or caused by an act or omission of such Owner, his/her family, guests, visitors or tenants to or with respect to the Common Elements, except for any loss, costs, damages, injury or liability caused by an insured (as defined in any policy or policies of insurance) and insured against by the Corporation. All payments to be made by an Owner pursuant to this Article shall be deemed to be additional contributions toward common expenses payable by such Owner and shall be recoverable as such.

### **ARTICLE VI SHARED ROADWAYS**

#### **6.1 Shared Roadways**

- (a) Subject to Subsection 6.1(b) below, the cost of maintaining, repairing and replacing the Shared Roadways shall be shared between the Corporation and the Adjacent Owner in accordance with the particulars set out in the Shared Roadway Agreement.
- (b) Until the expiry of two (2) months after the first occupancy of any POTL (“**Shared Roads Costs Commencement Date**”), all costs relating to the Shared Roadways shall be paid wholly by the Adjacent Owner and the Owner shall not have to pay or be responsible for any portion of such costs until the Shared Roads Costs Commencement Date.
- (c) Subject to any rights granted over all or a portion of the common element roads in Schedule A to this Declaration, the Shared Roadways shall only be used by the Declarant, the Owners of units appurtenant to a common interest in the Condominium, the Adjacent Owners, and by each of their respective successors, heirs, assigns, residents, tenants, agents, workmen and invitees for vehicular and pedestrian purposes.
- (d) Until such time as the Condominium is registered, the Adjacent Owner shall have full control and use of the Shared Roadways together with the residents Adjacent Owner.

- (e) Save as otherwise provided in the Shared Roadway Agreement to the contrary, no provision contained in any of the By-laws or Rules of this Corporation shall restrict the access to, egress from and/or use of the Shared Roadways by the persons entitled thereof, save for any reasonable controls or restrictions imposed on access thereto by the Board (and the Declarant, prior to the date the POTLs or units are transferred) for the Shared Roadways as permitted by the Shared Roadway Agreement.
- (f) In the event of any inconsistency between this Declaration and the Shared Roadway Agreement, the provisions of the Shared Roadway Agreement shall prevail.

## **ARTICLE VII INSURANCE**

### **7.1 By the Corporation**

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

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

- (i) The Property and buildings (if any); and
- (ii) all assets of the Corporation, but not including anything supplied or installed by the Owners;

in an amount equal to the full replacement cost of such real and personal property, without deduction for depreciation. This insurance may be subject to a loss deductible clause as determined by the Board from time to time, and which deductible shall be the responsibility of the Corporation in the event of a claim with respect to the Common Elements ( or any portion thereof), provided however, that if an Owner, tenant or other person residing in a POTL with the knowledge or permission of the Owner, through an act or omission causes damage to any portion of the Common Elements, in those circumstances where such damage was not caused or contributed by any act or omission of the Corporation (or any of its directors, officers, agents or employees), then the amount which is equivalent to the lesser of the cost of repairing the damage and the deductible limit of the Corporation’s insurance policy shall be added to the common expenses payable in respect of such Owner’s POTL.

- (b) Policy Provisions

Every policy of insurance shall insure the interests of the Corporation, as their respective interests may appear (with all mortgagee endorsements subject to the provisions of the Act, this Declaration and the Insurance Trust Agreement, if applicable) and may contain the following provisions:

- (i) waivers of subrogation against the Corporation, its directors, officers, manager, agents, employees and servants and against the Owners, and the Owners' respective residents, tenants, invitees or licensees, except for damage arising from arson, fraud, vehicle impact, vandalism or malicious mischief caused by any one of the above;
- (ii) such policy or policies of insurance shall not be terminated or substantially modified without at least sixty (60) days prior written notice to the Corporation;
- (iii) waivers of the insurer's obligation to repair, rebuild or replace the damaged property in the event that after damage the government of the Property is terminated pursuant to the Act;
- (iv) waivers of any defence based on co-insurance (other than a stated amount co-insurance clause); and
- (v) waivers of any defence based on any invalidity arising from the conduct or act or omission of or breach of a statutory condition by any insured person.

- (c) Public Liability Insurance

Public liability and property damage insurance, and insurance against the Corporation's liability

resulting from a breach of duty as occupier of the Common Elements insuring the liability of the Corporation and the Owners from time to time, with limits to be determined by the Board, but not less than Five Million Dollars (\$5,000,000.00) per occurrence and without right of subrogation as against the Corporation, its directors, officers, manager, agents, employees and servants, and as against the Owners and any member of the household or guests of any Owner or occupant of a Dwelling located on a POTL.

## **7.2 General Provisions**

- (a) Subject to the terms of the Shared Roadways Agreement, the Corporation, its Board and its officers shall have the exclusive right, on behalf of itself and as agents for the Owners, to adjust any loss and settle any claims with respect to all insurance placed by the Corporation, and to give such releases as are required, and any claimant, shall be bound by such adjustment;
- (b) Every mortgagee shall be deemed to have agreed to waive any right to have proceeds of any insurance applied on account of the mortgage where such application would prevent application of the insurance proceeds in satisfaction of an obligation to repair. This Subsection 6.2(b) shall be read without prejudice to the right of any mortgagee to exercise the right of an Owner to vote or to consent if the mortgage itself contains a provision giving the mortgagee that right;
- (c) A certificate or memorandum of all insurance policies, and endorsements thereto, shall be issued as soon as possible to each Owner, and a duplicate original or certified copy of the policy to each mortgagee who has notified the Corporation of its interest in any POTL. Renewal certificates or certificates of new insurance policies shall be furnished to each Owner and to each mortgagee noted on the record of the Corporation who has requested same. The master policy for any insurance coverage shall be kept by the Corporation in its offices, available for inspection by any Owner or mortgagee on reasonable notice to the Corporation;
- (d) No insured, other than the Corporation, shall be entitled to amend any policy or policies of insurance obtained and maintained by the Corporation. No insured shall be entitled to direct that the loss shall be payable in any manner other than as provided in the Declaration and in the Act;
- (e) Where insurance proceeds are received by the Corporation or any other person, they shall be held in trust and applied, utilized and distributed in accordance with the Act; and
- (f) Prior to obtaining any new policy or policies of insurance and at such other time as the Board may deem advisable and also upon the request of a mortgagee or mortgagees holding mortgages on fifty percent (50%) or more of the POTLs and in any event, at least every three (3) years, the Board shall obtain an appraisal from an independent qualified appraiser of the full replacement cost of the assets for the purpose of determining the amount of insurance to be effected and the cost of such appraisal shall be a common expense.

## **7.3 By the Owner**

- (a) It is acknowledged that the foregoing insurance is the only insurance required to be obtained and maintained by the Corporation and that the following insurance, must be obtained and maintained by each Owner at such Owner's sole cost and expense:
  - (i) Insurance on the Owner's POTL and all Dwellings constructed thereon. Every such policy of insurance shall contain waiver of subrogation against the Corporation, its manager, agents, employees and servants, and against the other Owners and any members of their household or guests except for any damage arising from arson, fraud, vehicle impact, vandalism or malicious mischief caused or contributed by any of the aforementioned parties;
  - (ii) Public liability insurance covering any liability of any Owner or any resident, tenant, invitee or licensee of such Owner, to the extent not covered by any public liability and property damage insurance obtained and maintained by the Corporation; and
  - (iii) Insurance covering the deductible on the Corporation's master insurance policy for which an Owner may be responsible.
- (b) It is recommended but not a requirement that each Owner obtain insurance covering:
  - (i) additional living expenses incurred by an Owner if forced to leave his or her POTL by one of the hazards protected against under the Corporation's policy; and

- (ii) special assessments levied by the Corporation and contingent insurance coverage in the event the Corporation's insurance is inadequate.

#### **7.4 Indemnity Insurance for Directors and Officers of the Corporation**

The Corporation shall obtain and maintain insurance for the benefit of all of the directors and officers of the Corporation, if such insurance is reasonably available, in order to indemnify them against the matters described in the Act, including any liability, cost, charge or expense incurred by them in the execution of their respective duties (hereinafter collectively referred to as the “**Liabilities**”), provided however that such insurance shall not indemnify any of the directors or officers against any of the Liabilities respectively incurred by them as a result of a breach of their duty to act honestly and in good faith, or in contravention of the provisions of the Act or this Declaration.

### **ARTICLE VIII DUTIES OF THE CORPORATION**

#### **8.1 Corporation's Duties**

In addition to any other duties or obligations of the Corporation set out elsewhere in this Declaration and/or specified in the By-Laws of the Corporation, the Corporation shall have the following duties, namely:

- (a) To accept, comply, cooperate, facilitate and observe all obligations of the Condominium as required;
- (b) To not interfere with the supply of (and insofar as the requisite services are supplied from the Corporation's property, to cause) heat, hydro, water, gas and all other requisite utility services to be provided to the Condominium so that same are fully functional and operable during normal or customary hours of use;
- (c) To operate, maintain and keep in good repair (or cause to be operated, maintained and/or repaired) as would a prudent owner of similar premises at all times, those parts of the Common Elements of this Condominium, other than the Exclusive Use Areas (if any) which are the responsibility of the Owner to maintain;
- (d) To ensure that no actions or steps are taken by or on behalf of the Corporation or by any Owner which would in any way prohibit, restrict, limit, hinder or interfere with the Declarant's access and egress over any portion of the Property so as to enable the Declarant to construct and complete the Condominium;
- (e) To ensure that no actions or steps are taken by or on behalf of the Corporation, or by any Owner or their respective tenants or invitees which would prohibit, restrict, limit, hinder or interfere with the Declarant's ability to utilize portions of the Common Elements or any unsold POTLs for its marketing/sale/construction programs, as more particularly set out in the foregoing provisions of this Declaration;
- (f) To ensure that no actions or steps are taken by or on behalf of the Corporation, or by any Owner, or their respective tenants or invitees which would prohibit, limit or restrict the access to, egress from and/or use of any easement over the Condominium enjoyed by any of the Owners and/or their respective residents, tenants and invitees, the Town and/or the Region and/or the Declarant as more particularly set out in the foregoing provisions of this Declaration, where applicable;
- (g) To execute forthwith upon the request of the Declarant following the transfer of title to the POTLs any such documents, releases and assurances as the Declarant may reasonably require in order to evidence and confirm the formal cessation of all the Declarant's liabilities and obligations (as same relate to the Condominium and for which the Declarant was responsible for prior to the registration of the Condominium);
- (h) To enter into, abide by and comply with, the terms and provisions of any condominium, site plan, subdivision, development, easement or similar agreements related to the Property (as well enter into a formal assumption agreement with the Town, Region, Declarant or other governmental and/or utility authorities relating thereto, if so required);
- (i) To provide for the removal of excess snow from the Common Elements so as not to restrict vehicular and pedestrian access and to ensure that same are in good condition (but the Corporation has no obligation to remove snow from the POTLs);
- (j) To maintain the stormwater detention system, if any;

- (k) When the Corporation formally retains an independent consultant (who holds a certificate of authorization within the meaning of The Professional Engineers Act R.S.O. 1990, as amended, or alternatively a certificate of practice within the meaning of The Architects Act R.S.O. 1990, as amended) to conduct a performance audit of the Common Elements on behalf of the Corporation, in accordance with the provisions of Section 44 of the Act and Section 12 of O.Reg.48/01 (hereinafter referred to as the “**Performance Audit**”) at any time between the 6th month and the 10th month following the registration of this Declaration and Description, then the Corporation shall have a duty to:
- (i) permit the Declarant and its authorized employees, agents and representatives to accompany (and confer with) the consultant(s) retained to carry out the Performance Audit for the Corporation (hereinafter referred to as the “**Performance Auditor**”) while same is being conducted, and to provide the Declarant with at least fifteen (15) days written notice prior to the commencement of the Performance Audit; and
  - (ii) permit the Declarant and its authorized employees, agents and representatives to carry out any repair or remedial work identified or recommended by the Performance Auditor in connection with the Performance Audit (if the Declarant chooses to do so);

for the purposes of facilitating and expediting the rectification and audit process (and bringing all matters requiring rectification to the immediate attention of the Declarant, so that same may be promptly dealt with), and affording the Declarant the opportunity to verify, clarify and/or explain any potential matters of dispute to the Performance Auditor, prior to the end of the 11<sup>th</sup> month following the registration of this Declaration and the corresponding completion of the Performance Audit and the concomitant submission of the Performance Auditor’s report to the Board and Tarion Warranty Corporation pursuant to Section 44(9) of the Act, if required;

- (l) To take all reasonable steps to collect from each Owner his or her proportionate share of the common expenses and to maintain and enforce the Corporation's lien arising pursuant to the Act, against each POTL in respect of which the Owner has defaulted in the payment of common expenses;
- (m) To grant, immediately after registration of this Declaration, if required, an easement in perpetuity in favour of utility suppliers and/or telephone or television and internet operators, over, under, upon, across and through the Common Elements, for the purposes of facilitating the construction, installation, operation, maintenance and/or repair of utility or telephone or television lines or equipment (and all necessary appurtenances thereto) in order to facilitate the supply of utilities and telephone and television service to each of the POTLs and if so requested by the grantees of such easements, to enter into (and abide by the terms and provisions of) an agreement with the utility and/or telephone and television suppliers pertaining to the provision of their services to the Condominium and for such purposes shall enact such by-laws or resolutions as may be required to sanction the foregoing;
- (n) To take all actions reasonably necessary as may be required to fulfil any of the Corporation's duties and obligations pursuant to this Declaration;
- (o) To enter into (or assume if already entered into by the Declarant) any and all agreements relating to utilities, waste disposal or collection, access, building systems affecting the Property;
- (p) If required, to enter into a form of agreement relating to the ownership, operation, maintenance, repair and replacement of an electricity distribution system for distributing electricity within the Corporation with a distributor as defined in the Electricity Act, 1998, S. 0. 1998, c.15 as amended or re-enacted from time to time and the regulations thereunder (the “**Electricity Supply and Services Agreement**”), pursuant to which electricity consumption in each Owner's POTL shall be measured and invoiced by a sub-metering system installed and operated by a third party supplier (the “**Hydro Supplier**”) and which Electricity Supply and Services Agreement may provide, amongst other things, that each Owner of a POTL shall receive and be responsible for payment of the invoice with respect to the electricity consumption for his/her POTL and that such invoicing shall also include administrative fees for the services of the Hydro Supplier, including services relating to the measuring and recording of the consumption of electricity and the furnishing of the invoices and that the Owner shall remit payment to the Hydro Supplier for electricity consumption separate from any other obligations the Owner has with respect to the payment of common expenses; and
- (q) To enter into, accept, perform or assume and be bound by any of the covenants, agreements and obligations which it may or is required to assume under this Declaration and to take any and all steps which may be requested of it by the Declarant to fully implement in a timely manner the

purposes, intent and provision of this Declaration and any modifications and amendments thereto all as may be provided for under this Declaration.

## ARTICLE IX GENERAL MATTERS AND ADMINISTRATION

### 9.1 Rights of Entry

- (a) The Corporation or any insurer of the Property or any part thereof, their respective agents, or any other person authorized by the Board, shall be entitled to enter upon the Common Elements and onto any POTL, at all reasonable times and upon giving reasonable notice, to perform the objects and duties of the Corporation, and, without limiting the generality of the foregoing, for the purpose of making inspections, adjusting losses, making repairs, correcting any condition which violates the provisions of any insurance policy and remedying any condition which might result in damage to the Property or any part thereof or carrying out any duty imposed upon the Corporation.
- (b) In case of an emergency, an agent, employee or authorized representative of the Corporation may enter upon any POTL or any portion of the Common Elements without notice, including any part of the Common Elements over which any Owner has the exclusive use, if any, or for the purpose of correcting any condition which might result in damage or loss to the Property. The Corporation or anyone authorized by it may determine whether an emergency exists.
- (c) If an Owner shall not be personally present to grant entry to his/her POTL, the Corporation or its agents may enter upon such POTL without rendering it, or them, liable to any claim or cause of action for damages by reason thereof provided that they exercise reasonable care.
- (d) The rights and authority hereby reserved to the Corporation, its agents, or any insurer or its agents, do not impose any responsibility or liability whatever for the care or supervision of any POTL except as specifically provided in this Declaration or the By-Laws.

### 9.2 Owner's Default

If any Owner fails to pay the Corporation any amount (the “**Amount**”) of money required to be paid pursuant to (i) of this Declaration that may not be a common expense, or (ii) the Corporation's By-Laws and/or Rules, or otherwise when required, then in addition to any other rights, powers or remedies available to the Corporation at common law, by statute, or in equity, the Corporation shall be entitled to:

- (a) charge and levy interest against such Owner (hereinafter referred to as the “**Defaulting Owner**”) in respect of such unpaid Amount and on all costs and expenses incurred by the Corporation in collecting (or attempting to collect) same, including all legal expenses incurred by the Corporation on a solicitor-and-his/her-own-client basis, at a rate equal to eighteen percent (18%) per annum, calculated monthly, not in advance, with interest on the unpaid Amount commencing to accrue from and after the date which the Amount is due and payable and with interest on all of the expenses incurred in collecting (or attempting to collect) same commencing to accrue from and after the respective dates that the Corporation incurred or expended same, and all such interest shall continue to accrue at the aforesaid rate until the date that all of the foregoing amounts are fully paid; and
- (b) maintain and enforce a lien against the Defaulting Owner's POTL(s), as security for the payment of the Amount and all costs and expenses incurred by the Corporation in collecting (or attempting to collect) same together with all outstanding interest accruing thereon as aforesaid (hereinafter referred to as the “**Lien**”), with the Lien being enforceable by the Corporation in the same manner, and to the same extent, as a real property mortgage or charge, and with all the powers, rights and remedies inherent in (or available) to a mortgagee or chargee when a mortgage or charge of real estate is in default, pursuant to the provisions of the *Mortgages Act* as amended and/or any other applicable statutory provision or common law principle applicable thereto, and in the event that the Land Registrar requires the Corporation, as a prerequisite to the registration and/or enforcement of Lien, to apply to a court of competent jurisdiction of any order, direction, advice or authorization, then the Corporation shall be entitled to forthwith apply to such court for same and the Defaulting Owner shall for all purposes be deemed to have consented to any such application by the Corporation, and concomitantly, the Defaulting Owner shall be forever barred and estopped from bringing or instituting any action, suit, claim or other proceeding to defend, defeat, hinder or delay any such application by the Corporation or the maintenance and enforcement of the Lien by the Corporation.

### 9.3 Notice

Except as provided in the Act or as hereinbefore set forth, any notice, direction or other instrument required to be given shall be given as follows:

- (a) to an Owner, by giving same to him or to any director or officer of the Owner, either personally or by ordinary mail, email, postage prepaid, addressed to him at the address for service given by such Owner to the Corporation for its record, or if no such address has been given to the Corporation, then to such Owner at his respective POTL address;
- (b) to a mortgagee who has notified the Corporation of his interest in any POTL, by giving same to such mortgagee or to any director or officer of such mortgagee, either personally or by ordinary mail, postage prepaid, addressed to such mortgagee at the address for service given by such mortgagee to the Corporation; and
- (c) to the Corporation, by giving same to any director or officer of the Corporation, either personally or by ordinary mail, postage prepaid, addressed to the Corporation at its address for service.

If such notice is mailed as aforesaid, the same shall be deemed to have been received and to be effective on the third (3<sup>rd</sup>) business day following the day on which it was mailed. Business day shall mean any day which is not a Saturday, Sunday or a statutory holiday in the Province of Ontario.

#### **9.4 Invalidity**

Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

#### **9.5 Waiver**

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

#### **9.6 Organizational Procedures**

The Declarant may, while the Declarant is still the Owner of one hundred percent (100%) of the POTLs, pass or confirm any resolution or by-law that would otherwise require a meeting of the Owners, without holding such meeting, provided that the resolution or by-law to be passed or confirmed is executed by the Declarant. Within three (3) months after the registration of this Declaration, the members shall hold their first meeting for the purpose of electing directors. The Board so elected may, without notice, hold its first meeting, provided a quorum of directors is present. Any by-law may be passed by the Board. Any special by-law and by-law passed by the Board, from time to time, may be confirmed by the Owners without a meeting, provided the consent to and confirmation of the special by-law or by-law by Owners who own one hundred percent (100%) of the POTLs is endorsed thereon.

#### **9.7 Interpretation of Declaration**

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

#### **9.8 Headings**

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

#### **9.9 Voting Procedure**

All voting by Owners shall be on the basis of one (1) vote per Owner. For greater certainty, if an Owner owns more than one POTL he shall be entitled to one (1) vote for each POTL owned whenever a vote of the Owners is called for.

#### **9.10 Effective Date**

This Declaration shall take effect upon registration.

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

**DATED** at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**2717041 ONTARIO INC.**

Per: \_\_\_\_\_  
Name:  
Title:

I have authority to bind the Corporation.

## **SCHEDULE “A”**

In the Town of Fort Erie, in the Regional Municipality of Niagara, in the Province of Ontario, being composed of Block 7, Registered Plan 59M-XXX.

Being PIN 64220-XXXX (LT) (“Condo Lands”).

Reserving and together with an easement in favour of the Condo Lands, in, over, along and upon and through:

No. 1 Part of Block 3, Registered Plan 59M-XXX, being Part 1 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

No. 2 Part of Block 3, Registered Plan 59M-XXX, being Part 2 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

No. 3 Part of Block 3, Registered Plan 59M-XXX, being Part 3 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

No. 4 Part of Block 3, Registered Plan 59M-XXX, being Part 4 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

No. 5 Part of Block 3, Registered Plan 59M-XXX, being Part 5 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

No. 6 Part of Block 3, Registered Plan 59M-XXX, being Part 6 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

No. 7 Part of Block 3, Registered Plan 59M-XXX, being Part 7 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

No. 8 Part of Block 3, Registered Plan 59M-XXX, being Part 8 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

No. 9 Part of Block 4, Registered Plan 59M-XXX, being Part 9 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

No. 10 Part of Block 4, Registered Plan 59M-XXX, being Part 10 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

No. 11 Part of Block 4, Registered Plan 59M-XXX, being Part 11 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

No. 12 Part of Block 4, Registered Plan 59M-XXX, being Part 12 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

No. 13 Part of Block 4 Registered Plan 59M-XXX, being Part 13 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

No. 14 Part of Block 5, Registered Plan 59M-XXX, being Part 14 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

No. 15 Part of Block 5, Registered Plan 59M-XXX, being Part 15 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

No. 36 Part of Block 1, Registered Plan 59M-XXX, being Part 36 on Plan 59R-XXXX, Town of Fort Erie, being all of PIN 64220-XXXX (LT).

(“POTLs”) for the purposes of access, delivery, installation, reading, placement and replacement, inspection, maintenance and repair of any equipment, supplies and materials relating to any services and utilities located thereon (including without limitation: water mains; sewers; electrical and gas lines; fire hydrants; transformers; meters; curbing; telephone lines; cable television lines) and for piling of plowed snow.

In my opinion, based on the parcel register and the plans and documents recorded in therein, the legal description is correct, the easements described will exist in law upon the registration of the declaration and the description and the declarant is the registered owner of the land and the appurtenant interests.

Dated:

---

Michelle R. Frost

SCHEDULE "B"

CONSENT TO THE DECLARATION

(under clause 7(2) (b) of the *Condominium Act, 1998*)

- 1. Mamta Malik,Vishal Malik, Bala Malik and Narinder Malik have a mortgage registered as Number SN689103 in the Land Titles Division of Niagara (No. 59) against a parcel of land (the "**Parcel**") to which a common interest in a common elements condominium corporation (the "**Corporation**") will attach upon the registration of the attached declaration (the "**Declaration**") dated \*\*\* and the description (the "**Description**") creating the Corporation.
- 2. The undersigned acknowledges that, upon the registration of the Declaration and Description, the Parcel will become subject to all encumbrances, if any, outstanding against the property described in Schedule "A" to the Declaration.
- 3. The undersigned consents to the registration of a notice in the prescribed form indicating that a common interest in the Corporation, as the common interest is set out in Schedule "D" to the Declaration, attaches to the Parcel upon the registration of the Declaration and Description.
- 4. The undersigned is entitled by law to grant this consent and postponement.

DATED this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mamta Malik

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Vishal Malik

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Bala Malik

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Narinder Malik

SCHEDULE "B"

CONSENT TO ATTACHMENT OF A COMMON INTEREST

(under clause 140(c) of the *Condominium Act, 1998*)

- 1. Mamta Malik,Vishal Malik, Bala Malik and Narinder Malik have a registered mortgage as Number SN689103 in the Land Titles Division of Durham (No. 59) against a parcel of land (known as the “**Parcel**”) to which a common interest in a common elements condominium corporation (known as the “**Corporation**”) will attach upon the registration of the attached declaration (known as the “**Declaration**”) dated \*\*\* and the description (known as the “**Description**”) creating the Corporation.
- 2. The undersigned acknowledges that, upon the registration of this Declaration and Description, the Parcel will become subject to all encumbrances, if any, outstanding against the property described in Schedule “A” to the Declaration.
- 3. The undersigned consents to the registration of a notice in the prescribed form indicating that a common interest in the Corporation, as the common interest is set out in Schedule “D” to the Declaration, attaches to the Parcel upon the registration of the Declaration and Description.
- 4. The undersigned is entitled by law to grant this consent and postponement.

DATED this \_\_ day of \_\_\_\_\_ 202\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mamta Malik

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Vishal Malik

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Bala Malik

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Narinder Malik

**SCHEDULE "B"**

**CONSENT TO THE DECLARATION**

**(under clause 7(2) (b) of the *Condominium Act, 1998*)**

- 1. Mamta Malik, Vishal Malik and Bala Malik have a mortgage registered as Number SN768329 in the Land Titles Division of Niagara (No. 59) against a parcel of land (the "**Parcel**") to which a common interest in a common elements condominium corporation (the "**Corporation**") will attach upon the registration of the attached declaration (the "**Declaration**") dated \* and the description (the "**Description**") creating the Corporation.
- 2. The undersigned acknowledges that, upon the registration of the Declaration and Description, the Parcel will become subject to all encumbrances, if any, outstanding against the property described in Schedule "A" to the Declaration.
- 3. The undersigned consents to the registration of a notice in the prescribed form indicating that a common interest in the Corporation, as the common interest is set out in Schedule "D" to the Declaration, attaches to the Parcel upon the registration of the Declaration and Description.
- 4. The undersigned is entitled by law to grant this consent and postponement.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mamta Malik

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Vishal Malik

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Bala Malik

**SCHEDULE "B"**

**CONSENT TO ATTACHMENT OF A COMMON INTEREST**

**(under clause 140(c) of the *Condominium Act, 1998*)**

- 1. Mamta Malik, Vishal Malik and Bala Malik has a registered mortgage as Number SN768329 in the Land Titles Division of Durham (No. 40) against a parcel of land (known as the “**Parcel**”) to which a common interest in a common elements condominium corporation (known as the “**Corporation**”) will attach upon the registration of the attached declaration (known as the “**Declaration**”) dated \* and the description (known as the “**Description**”) creating the Corporation.
- 2. The undersigned acknowledges that, upon the registration of this Declaration and Description, the Parcel will become subject to all encumbrances, if any, outstanding against the property described in Schedule “A” to the Declaration.
- 3. The undersigned consents to the registration of a notice in the prescribed form indicating that a common interest in the Corporation, as the common interest is set out in Schedule “D” to the Declaration, attaches to the Parcel upon the registration of the Declaration and Description.
- 4. The undersigned is entitled by law to grant this consent and postponement.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mamta Malik

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Vishal Malik

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Bala Malik

## **SCHEDULE "C"**

Not Applicable

SCHEDULE “D”

| POTL NO. | DESCRIPTION                                                                 | ADDRESS | PERCENTAGE CONTRIBUTION TO COMMON EXPENSES | PERCENTAGE INTEREST IN COMMON AREAS |
|----------|-----------------------------------------------------------------------------|---------|--------------------------------------------|-------------------------------------|
| 1        | Part of Block 3, 59M-XXX, designated as Part 1, 50R-XXX, Town of Fort Erie  |         | 2.77778                                    | 2.77778                             |
| 2        | Part of Block 3, 59M-XXX, designated as Part 2, 50R-XXX, Town of Fort Erie  |         | 2.77778                                    | 2.77778                             |
| 3        | Part of Block 3, 59M-XXX, designated as Part 3, 50R-XXX, Town of Fort Erie  |         | 2.77778                                    | 2.77778                             |
| 4        | Part of Block 3, 59M-XXX, designated as Part 4, 50R-XXX, Town of Fort Erie  |         | 2.77778                                    | 2.77778                             |
| 5        | Part of Block 3, 59M-XXX, designated as Part 5, 50R-XXX, Town of Fort Erie  |         | 2.77778                                    | 2.77778                             |
| 6        | Part of Block 3, 59M-XXX, designated as Part 6, 50R-XXX, Town of Fort Erie  |         | 2.77778                                    | 2.77778                             |
| 7        | Part of Block 3, 59M-XXX, designated as Part 7, 50R-XXX, Town of Fort Erie  |         | 2.77778                                    | 2.77778                             |
| 8        | Part of Block 3, 59M-XXX, designated as Part 8, 50R-XXX, Town of Fort Erie  |         | 2.77778                                    | 2.77778                             |
| 9        | Part of Block 4, 59M-XXX, designated as Part 9, 50R-XXX, Town of Fort Erie  |         | 2.77778                                    | 2.77778                             |
| 10       | Part of Block 4, 59M-XXX, designated as Part 10, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 11       | Part of Block 4, 59M-XXX, designated as Part 11, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 12       | Part of Block 4, 59M-XXX, designated as Part 12, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 13       | Part of Block 4, 59M-XXX, designated as Part 13, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 14       | Part of Block 5, 59M-XXX, designated as Part 14, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 15       | Part of Block 5, 59M-XXX, designated as Part 15, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 16       | Part of Block 5, 59M-XXX, designated as Part 16, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 17       | Part of Block 5, 59M-XXX, designated as Part 17, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 18       | Part of Block 5, 59M-XXX, designated as Part 18, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 19       | Part of Block 5, 59M-XXX, designated as Part 19, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 20       | Part of Block 5, 59M-XXX, designated as Part 20, 50R-                       |         | 2.77778                                    | 2.77778                             |

| POTL NO. | DESCRIPTION                                                                 | ADDRESS | PERCENTAGE CONTRIBUTION TO COMMON EXPENSES | PERCENTAGE INTEREST IN COMMON AREAS |
|----------|-----------------------------------------------------------------------------|---------|--------------------------------------------|-------------------------------------|
|          | XXX, Town of Fort Erie                                                      |         |                                            |                                     |
| 21       | Part of Block 5, 59M-XXX, designated as Part 21, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 22       | Part of Block 6, 59M-XXX, designated as Part 22, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 23       | Part of Block 6, 59M-XXX, designated as Part 23, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 24       | Part of Block 6, 59M-XXX, designated as Part 24, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 25       | Part of Block 6, 59M-XXX, designated as Part 25, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 26       | Part of Block 6, 59M-XXX, designated as Part 26, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 27       | Part of Block 6, 59M-XXX, designated as Part 27, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 28       | Part of Block 6, 59M-XXX, designated as Part 28, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 29       | Part of Block 6, 59M-XXX, designated as Part 29, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 30       | Part of Block 2, 59M-XXX, designated as Part 30, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 31       | Part of Block 2, 59M-XXX, designated as Part 31, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 32       | Part of Block 2, 59M-XXX, designated as Part 32, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 33       | Part of Block 1, 59M-XXX, designated as Part 33, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 34       | Part of Block 1, 59M-XXX, designated as Part 34, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 35       | Part of Block 1, 59M-XXX, designated as Part 35, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
| 36       | Part of Block 1, 59M-XXX, designated as Part 36, 50R-XXX, Town of Fort Erie |         | 2.77778                                    | 2.77778                             |
|          |                                                                             |         | 100.00                                     | 100.00                              |

## **SCHEDULE "E"**

### **SPECIFICATION OF COMMON EXPENSES**

Common Expenses, without limiting the definition ascribed thereto, shall include the following:

1. all expenses of the Corporation incurred in connection with the performance of any of its objects, duties and powers whether such objects, duties and powers are imposed by the Act, the Declaration, the By-laws and Rules of the Corporation or other law or by agreement;
2. all sums of money payable by the Corporation on account of any insurance coverage required to be obtained by the Corporation under the Act or pursuant to this Declaration for the common elements of the Corporation;
3. all sums of money paid or payable for utilities and services including, without limiting the generality of the foregoing, levies or charges payable on account of:
  - (a) insurance premiums;
  - (b) maintenance, repair and replacement of the water and sanitary sewers servicing the common elements;
  - (c) maintenance materials, tools and supplies;
  - (d) snow removal from common elements roads (but not from walkways, stairs, driveways, or sidewalks associated with the Potls) and to remove same from the site, if required, and landscaping of common elements areas (but not any exclusive use common element areas, if any, associated with the Potls);
  - (e) maintenance, repair and replacement of utilities (hydro, water, etc.) and telecommunication cables required to service the common elements, including all street lighting;
  - (f) maintenance of any amenity area or open space;
  - (g) maintenance, repair and replacement of storm water sewers, drains, and drainage swales servicing or connected to the common elements; and,
  - (h) proportionate share of any costs for the Shared Roadways pursuant to the Shared Roadway Agreement;
4. all sums of money paid or payable by the Corporation pursuant to any management contract which may be entered into between the Corporation and a manager including usual office expenses such as but not limited to internet web page maintenance;
5. all sums of money required by the Corporation for the acquisition or retention of real property for the use and enjoyment of the Property or for the acquisition, repair, maintenance or replacement of personal property for the use and enjoyment in or about the Common Elements;
6. all sums of money paid or payable by the Corporation to any and all persons, firms, or companies engaged or retained by the Corporation, its duly authorized agents, servants and employees for the purpose of performing any or all of the objects, duties and powers of the Corporation including, without limitation, legal, engineering, accounting, auditing, expert appraising, advising, maintenance, managerial, secretarial or other professional advice and service required by the Corporation;
7. the cost of borrowing money for the carrying out of the objects, duties and powers of the Corporation;
8. the cost of maintaining fidelity bonds as provided by By-law;
9. all sums required to be paid to the reserve or contingency fund as required by the Declaration or in accordance with the agreed upon annual budget of the Corporation;
10. all sums of money paid for any addition, alteration, maintenance, improvement to or renovation of the Common Elements or assets of the Corporation that are the responsibility of the Corporation; including any equipment for use thereon;
11. all sums of money paid or payable by the Corporation to conduct a performance audit pursuant to Section 44 of the Act and to obtain a reserve fund study pursuant to Section 94(4) of the Act and to conduct all other required studies under the Act, from time to time; and,
12. all fees and payments payable to the Condominium Authority.

**SCHEDULE "F"**

**EXCLUSIVE USE OF COMMON ELEMENTS**

Subject to the provisions of the Declaration, Bylaws and Rules of the Corporation and the right of entry in favour of the Corporation thereto and thereon, for the purposes of facilitating any requisite maintenance and/or work, or to give access to the utility and services appurtenant thereto:

The owner(s)) of each parcel of land shall have the exclusive use of garbage pad as illustrated in heavy outline on Sheet 1, Part 2 of the Description, being designated by the letter ‘B’ and are as assigned below:

| <b><u>Parcel of Tied Land</u></b> | <b><u>Garbage Pad</u></b> |
|-----------------------------------|---------------------------|
| PIN XXXX-0022                     | B1                        |
| PIN XXXX-0023                     | B2                        |
| PIN XXXX-0024                     | B3                        |
| PIN XXXX-0025                     | B4                        |
| PIN XXXX-0026                     | B5                        |
| PIN XXXX-0027                     | B6                        |
| PIN XXXX-0028                     | B7                        |
| PIN XXXX-0029                     | B8                        |
| PIN XXXX-0030                     | B9                        |
| PIN XXXX-0031                     | B10                       |
| PIN XXXX-0032                     | B11                       |
| PIN XXXX-0033                     | B12                       |
| PIN XXXX-0034                     | B13                       |
| PIN XXXX-0035                     | B14                       |
| PIN XXXX-0036                     | B15                       |

**CERTIFICATE OF ARCHITECT OR ENGINEER**  
**(SCHEDULE G TO DECLARATION FOR A COMMON ELEMENTS**  
**OR VACANT LAND CONDOMINIUM CORPORATION)**  
**(UNDER SECTIONS 40(11) AND 56(7) OF ONTARIO REGULATION 48/01**  
**AND UNDER CLAUSES 8(1)(E) AND (H) OR CLAUASES 157 (1)(C) AND (E) OF**  
**THE *CONDOMINIUM ACT*, 1998)**

*Condominium Act, 1998*

I certify that:

- I. Each building and structure that the declaration and description show are included in the common elements has been constructed in accordance with the regulations made under the *Condominium Act, 1998*, with respect to the following matters:

*(Check whichever boxes are applicable)*

- 1,2,3   ☐ The declaration and description show that there are no buildings or structures included in the common elements.

OR

1.   ☐   The exterior building envelope, including roofing assembly, exterior wall cladding, doors and windows, caulking and sealants, is weather resistant if required by the construction documents and has been completed in general conformity with the construction documents.
2.   ☐   Floor assemblies of the buildings and structures are constructed and completed to the final covering.
3.   ☐   Walls and Ceilings of the buildings and structures are completed to the drywall (including taping and sanding), plaster or other final coverings.
4.   ☐   All underground garages have walls and floor assemblies in place.

OR

- ☐ There are no underground garages.
5.   ☐   All elevating devices as defined in the *Elevating Devices Act* are licensed under that Act if it requires a licence, except for elevating devices contained wholly in a unit and designed for use only within the unit.

OR

- ☐ There are no elevating devices as defined in the *Elevating Devices Act*, except for elevating devices contained wholly in a unit and designed for use only within the unit.
6.   ☐   All installations with respect to the provision of water and sewage services are in place and operable.

OR

- ☐ There are no installations with respect to the provisions of water and sewage services.
- 7. ☐ All installations with respect to the provision of heat and ventilation are in place and heat and ventilation can be provided.

OR

- ☐ There are no installations with respect to the provision of heat and ventilation.
- 8. ☐ All installations with respect to the provision of air conditioning are in place.

OR

- ☐ There are no installations with respect to the provision of air conditioning.
- 9. ☐ All installations with respect to the provision of electricity are in place and operable.

OR

- ☐ There are no installations with respect to the provision of electricity.
- 10. ☐ All indoor and outdoor swimming pools are roughed in to the extent that they are ready to receive finishes, equipment and accessories.

OR

- ☐ There are no indoor and outdoor swimming pools.

*[Strike out whichever is not applicable:]*

- II. All facilities and services that the declaration and description show are included in the common elements.

OR

The following facilities and services that the declaration and description show are included in the common elements:

.....*(specify by reference to the item numbers in Schedule H)*  
have been installed and provided in accordance with the requirements of the municipalities in which the land is situated or the requirements of the Minister of Municipal Affairs and Housing, if the land is not situated in the municipality.

Dated this ..... day of ....., .....

.....  
*(signature)*  
.....

### **SCHEDULE “H”**

List of all buildings, structures, facilities and services that are included in the Common Elements:

1. Buildings and Structures that the Declaration and Description show are included in the common elements:
  - a) NIL
2. Facilities and Services that the Declaration and Description show are included in the common elements:
  - a) NIL

**SCHEDULE “I”**

**CERTIFICATE OF OWNER IN THE MATTER OF A COMMON  
ELEMENTS CONDOMINIUM CORPORATION  
(under clause 139 (1) (b) of the Condominium Act, 1998)**

- 1) **2717041 ONTARIO INC.** is the owner of the freehold estate in the Town of Fort Erie, in the Regional Municipality of Niagara, being comprised of \*, being all of P.I.N. \*(LT) (known as the “Parcel”).
- 2) **2717041 ONTARIO INC.** consents to the registration of the attached declaration to create a Common Elements condominium corporation (known as the “Corporation”) \*, being all of P.I.N. \* (LT).
- 3) **2717041 ONTARIO INC.** acknowledges that, upon registration of the declaration and the description, the Parcel will become subject to all encumbrances, if any, outstanding against the property described in Schedule “A” to the declaration.
- 4) **2717041 ONTARIO INC.** consents to the registration of a notice in the prescribed form against the Parcel indicating that a common interest in the Corporation, as the common interest is set out in Schedule “D” to the declaration, attaches to the Parcel upon the registration of the declaration and description.

Dated this \_\_\_\_\_

**2717041 ONTARIO INC.**

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

Name:

Title:

I have authority to bind the corporation.

**SCHEDULE “J”**

**NOTICE OF ATTACHMENT OF A COMMON INTEREST  
IN A COMMON ELEMENTS CONDOMINIUM CORPORATION**

(under clause 139 (2) (b) of the Condominium Act, 1998)

Take notice that:

- 1) The attached declaration and the description create a common elements condominium corporation (known as the “Corporation”).
- 2) A common interest in the Corporation, as the common interest as set out in Schedule “D” to this declaration, attaches to the following parcels of land (known as the “Parcels”), being:
- 3) The common interest cannot be severed from the Parcel upon the sale of the parcel or the enforcement of an encumbrance registered against the Parcel.
- 4) A copy of the certificate of the owner of the Parcel consenting to the registration of the declaration and this notice is attached to this declaration as Schedule “I”.
- 5) If the owner of the Parcel defaults in the obligation to contribute to the common expenses of the Corporation, the Corporation has a lien against the Parcel.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

**2717041 ONTARIO INC.**

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

Name:

Title:

I have authority to bind the corporation.