

<p style="text-align: center;"><b>EVERGLADES RESORT USER AGREEMENT</b></p>
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The Vendor hereby grants to the Purchaser the exclusive license to use, occupy and enjoy (the "User Rights") the User Area so long as the Purchaser is not in default hereunder and subject to the following terms, covenants and conditions which the Purchaser covenants and agrees with the Vendor and with all other purchasers of User Rights under the terms of User Agreements to observe and perform, namely:

1. (a) Not to cause or permit any injury or damage to the User Area.
- (b) To comply with all requirements of all governmental authorities applicable to the use and occupancy of the User Area and with all ordinances, rules and regulations of any governmental authority.
- (c) So long only as the Purchaser is not in default hereunder and subject to paragraph 5 (d) hereof, the Purchaser may mortgage, assign or sub-grant any User Rights or part with possession of the User Area or any part thereof without the Vendors prior consent, provided that the Purchaser shall deliver to the Vendor a copy of any such mortgage, assignment, sub-grant or other document parting with possession of the User Area in which shall be expressed the full name and address of such mortgagee, assignee, sub-grantee or other person obtaining the right to possession of the User Area, within ten (10) days after such transaction being entered into.
- (d) Not to make or permit to be made any alteration to the User Area.
- (e) To use the User Area for private recreational purposes only.
- (f) To observe and perform such reasonable rules and regulations as the Vendor may from time to time adopt and of which written notice shall have been given to the Purchaser.
- (g) Not to construct any improvement on the User Area unless and until all requirements of all governmental authorities have been complied with, it being understood and acknowledged by the Purchaser that governmental authority presently prohibits construction of improvements on the User Area.
- (h) In the event that any improvement shall have been constructed on the User Area prior to the date hereof, the Purchaser acknowledges notice that although the same may have been constructed in compliance with governmental rules and regulations in existence at the date of construction, such improvement is now non-conforming and the Municipal Act of the Province of British Columbia contains certain restrictions on making changes to such improvements or relating to their reconstruction after damage by fire. Inasmuch as any such improvement was not erected or constructed by, for or on behalf of the Vendor, it has no knowledge of whether and to what extent such improvements may or may not have complied with governmental rules or regulations at the time such improvement was constructed or erected, and accordingly, no representations or warranties whatsoever are granted by the Vendor to the Purchaser with respect to whether or not such improvements have been constructed or erected in compliance with governmental rules or regulations in existence at the time of their construction or erection. In the event that any such improvements shall be erected on the property at the date hereof, the Purchaser agrees to keep the same in good repair and condition and pay for the cost of electricity used therein.

## **2. The Vendor Covenants with the Purchaser:**

- (a) That so long as the Purchaser is not in default hereunder he may possess and enjoy the User Rights granted hereunder without any interruption or disturbance from the Vendor or persons claiming by, from or under it.
- (b) To permit the Purchaser, his invitees and permittees in common with all other purchasers of User Rights under the terms of User Agreements, their invitees and permittees, and with Everglades Resorts Ltd. its invitees and permittees with respect to unsold User Areas.
  - (i) To use with or without vehicles the private roadways so designated on the sketch plan forming Schedule "C" hereto (the "Private Roadways"),
  - (ii) To use the common areas so designated on the sketch plan forming Schedule "C" hereto (the "Common Areas") for such purposes as Everglades Resorts Ltd. shall determine or after establishment of the Management Board as may be determined by the Management Board, and
  - (iii) To use the parking areas so designed for vehicular and boat parking purposes only (the "Parking Areas") subject to the right of the Vendor to utilize such part thereof as may from time to time be required to provide utilities and other services for the benefit of the User Areas.
- (c) To repair and maintain the washrooms, treatment plant, pump house and recreation hall identified on the sketch plan forming Schedule "C" hereto together with all other improvements and facilities on Common Areas.
- (d) To provide or engage the services of such staff as may be requisite for the proper care, maintenance, control and servicing of the Private Roadways, the Common Areas and the Parking Areas.
- (e) To pay all taxes, rates, duties and assessments whatsoever whether parochial, municipal, parliamentary or otherwise now charged or hereafter to be charged upon the Land or upon the Vendor on account thereof.
- (f) To maintain a policy or policies of fire insurance with respect to any improvements and facilities on the Common Areas and of general public liability insurance against claims for bodily injury, death or property damage arising out of the use and occupancy of the Land in such amount as the Vendor may from time to time determine.

## **3. OPERATING EXPENSES**

- (a) "Operating Expenses" in this Agreement means the total amount paid or payable by the Vendor in the performance of its covenants herein and includes but without restricting the generality of the foregoing, the amount paid or payable by the Vendor in connection with the maintenance, repair, operation, care, servicing and control of the Land, its improvements and facilities (except those within the boundaries of User Areas), the cost of providing heat, light, water, scavenging services, insurance, and the cost incurred for service, maintenance and property managers' contracts, water rates, taxes on land (excluding improvements on User Areas), business licenses,

staff salaries, cost of construction, maintenance and repair of all utility and service works constructed or to be constructed, all legal accounting charges and other expenses paid or payable by the Vendor in connection with the Land, the User Areas, Common Areas, Private Roadways, and Parking Areas. Operating Expenses shall not include any amount directly chargeable by the Vendor to any Purchaser or purchasers after collection of same or the total Excess Charges prescribed by the Management Board. The Vendor agrees to exercise prudent and reasonable discretion in incurring Operating Expenses consistent with its duties hereunder.

- (b) Prior to the commencement of each calendar year during the term of this Agreement, the Vendor shall furnish to the Purchaser an estimate of the Purchaser's Share of the Operating Expenses for such calendar year and the Purchaser shall pay to the Vendor on the 1st day of the following month the Purchaser's Share of such Operating Expenses together with such Excess Charge (if any) as the Management Board may, pursuant to the terms of Schedule "B" hereof, prescribe.
- (c) In the event that the actual Operating Expenses in any calendar year exceed the estimated Operating Expenses for that calendar year, the Purchaser agrees to pay, within thirty (30) days of written demand by the Vendor, the Purchaser's Share of such excess and in the event that the actual Operating Expenses in any calendar year is less than the estimated Operating Expenses for that year, the Purchaser's Share of the Operating Expenses for the following year shall be reduced accordingly. The actual Operating Expenses shall be calculated by the Vendor for each calendar year in accordance with generally accepted accounting principles.
- (d) In the event that the estimated Operating Expenses shall be insufficient to pay all Operating Expenses during any calendar year the Vendor shall furnish to the Purchaser a statement identifying any such deficiency and the Purchaser shall pay the Vendor on the 1st of the following month the Purchaser's share of such deficiency.
- (e) "Purchaser's Share" in this Agreement means the same per cent as the undivided interest held by the Purchaser in the title to the Land as shown in paragraph I of the Conveyance to which this Agreement forms a Schedule.

#### **4. LAND TAXES WITH RESPECT TO IMPROVEMENTS**

In the event that an improvement shall be erected on any part of the User Area and the same shall have been assessed for tax, the Vendor shall ascertain in consultation with the Assessor the taxes attributable to such improvement and the Purchaser shall pay the same to the Vendor within thirty (30) days of demand by the Vendor for same.

#### **5. PROVISOS**

Provided always and it is hereby agreed as follows:

- (a) If the Purchaser shall fail to perform any covenant or condition of this Agreement on his part to be performed, the Vendor may, but shall not be obligated so to do, perform such covenant or condition as agent for the Purchaser and all amounts paid by the Vendor in respect thereof and all costs, damages, and expenses suffered or incurred by the Vendor in respect thereof shall be due and payable by the Purchaser to the Vendor on demand.

- (b) Any money payable hereunder and not paid when due shall, without prejudice to any other right of the Vendor arising from such breach, bear interest at the rate of three (3%) per cent per annum above the prime lending rate of the main branch of The Toronto Dominion Bank in the City of Vancouver until paid.
- (c) If the Purchaser is in default in fulfilling any of his covenants hereunder, the User Rights granted hereby and all interests held by the Purchaser in this Agreement shall determine on the expiration of thirty (30) days after notice in writing thereof by the Vendor to the Purchaser and to any mortgagee of the interest of the Purchaser from whom the Vendor shall have received a copy of the mortgage in compliance with the terms of paragraph 1(c) hereof unless the default specified in the notice shall have been cured within such period or unless such mortgagee shall, within such period have taken action to foreclose such mortgage, diligently pursued the same and cured such default within thirty (30) days after foreclosure Order Absolute. On any such determination, the Vendor shall have the right to resume use and occupation of the User Area as of its former estate. The Certificate of the Vendor, or when established, of the Management Board, as to the determination of the User Agreement shall be conclusive evidence of its determination. The Purchaser acknowledges and agrees that Everglades Resorts Ltd. has complete, exclusive, and full authority and power without notice to or agreement from the Purchaser or the purchasers of other undivided interests in the title to the Land until establishment of the Management Board to exercise and perform all of the powers and duties of the Vendor pursuant to the User Agreement including and without restricting the generality of the foregoing, the right to determine User Agreements and enforce performance of their terms together with such other powers and duties as on establishment shall be performed by the Management Board.
- (d) The User Rights granted hereby shall not be assigned or transferred except in favour of the purchaser or other successor in title to the undivided interest in the Land of the Purchaser.
- (e) The User Rights held hereunder shall run with the land, such that they shall enure to the benefit of all persons who may for the time being be purchasers or other successors in title to the undivided interest of the Purchaser in the Land.
- (f) In the event that there shall be any improvement on any adjacent User Area which shall encroach on the User Area, the User Rights held hereunder shall be subject to the right of the adjoining User Area Holder to continue to use that part of the User Area which shall be occupied by the encroaching improvement without compensation and for so long as such encroaching improvement shall subsist.
- (g) In the event that the User Area, the subject of this User Agreement, shall bear a User Area Number shown in Column I of Schedule "A" hereto, the Purchaser shall, subject to the right if any, of the Vendor to grant the same, also have User Rights in accordance with the terms of this User Agreement over the User Area bearing the User Area number set forth in Column II of Schedule "A" alongside it (the "Additional User Area") The Additional User Areas comprise in whole or in part, land bounded in part by water and adjoining the Land, title to which may rest in the Provincial Crown or other governmental body, or which may constitute lawfully accreted land. In view of the uncertainty concerning legal ownership of the Additional User Areas, the undivided interest in the title to the Land owned by the purchaser who are entitled to User Rights with respect to Additional User Areas have been set at a percentage which is lower than that which would have been applicable if such uncertainty had not existed but which is greater than the percentage which would have been applicable if no User Rights in respect of Additional User Areas had been granted (thus giving recognition to the actual present use of the Additional User Areas and the prospective future use thereof). The Purchaser, together with all other purchasers of

User Rights under the terms of User Agreements agree with each other and with the Vendor to use all reasonable efforts to acquire title to such Additional User Area (to the extent that title to the same shall be determined not to presently rest with the Vendor) and in the event of any such future acquisition of title, any and all costs associated therewith shall be borne by the then holders of the Additional User Areas in respect of which title shall have been acquired and in shares equal to the proportion that the area of each of such Additional Area shall bear to the total area of such Additional User Areas. In the event that it shall be determined that title to the Land with respect to any such Additional User Areas shall not be legally held by the Vendor and that title cannot be acquired, the User Rights with respect to the Additional User Areas bearing the number set forth in Column II of Schedule "A" hereto shall determine, but there shall be no adjustment or reduction in the percentage undivided interest in the title to the Land held by the Purchaser in conjunction with his User Area bearing the number set forth in Column I of Schedule A hereto alongside it. It is further understood and agreed that in no event shall User Rights with respect to any Additional User Areas be assigned or transferred or dealt with in any way independently of and in favour of a different person from that to whom User Rights with respect to any User Area hearing the number in Column I of Schedule "A" alongside it shall be assigned, transferred or dealt with in any way.

- (h) The Purchaser acknowledges and agrees that Everglades Resorts Ltd. or when established, the Management Board, may restrict the number of visitors to the Land to a maximum number which, in its sole discretion, it shall determine on a fair basis to be such as to permit reasonable use by purchasers of their respective User Areas in a manner that will not unreasonably interfere with the use and enjoyment by others of their User Areas and subject to the continued free right of access of Everglades Resorts Ltd. its invitees and licensees in connection with the sale of all unsold User Areas.
- (i) If any dispute as to the boundaries of the User Areas shall arise between the holders of adjoining User Areas, the dispute shall be settled by Everglades Resorts Ltd. or, after its establishment, by the Management Board, who may fix the boundary on the Land in such place as it may determine. Such a submission shall constitute an arbitration and the proceeding shall be conducted in accordance with the Arbitration Act of the Province of British Columbia and the decision shall be final and binding upon the parties to the dispute. In the event that the boundary location as indicated on the sketch plan forming Schedule "C" hereto shall differ from the location indicated by any boundary markers which may be placed on the Land, the boundary indicated on the said plan shall prevail.
- (j) No condoning, excusing or overlooking by the Vendor of any default, breach or non-observance by the Purchaser at any time or times in respect of any covenant, proviso or condition herein contained shall operate as a waiver of the Vendors rights hereunder in respect of any continuing or subsequent default, breach or non-observance or so as to defeat or affect in any way the rights of the Vendor herein in respect of any such continuing or subsequent default or breach and no waiver shall be inferred from or implied by anything done or omitted by the Vendor save only express waiver in writing. All rights and remedies of the Vendor in this Agreement contained shall be cumulative and not alternative.
- (k) The Purchaser together with all other purchasers of User Rights under the terms of User Agreements agree with each other and with the Vendor to use all reasonable efforts to acquire title to all accreted or other land bounded by water adjoining the Land and in the event of any such future acquisition of title, the User Areas shall be deemed to be extended by the inclusion within their boundaries of the area of the land so acquired by projecting the Side Boundary Lines of the User Areas to the high water mark. For the purposes of this paragraph, "Side Boundary

Lines” means those boundaries which lie at an angle to the property line of the Land. Any and all costs associated with the future acquisition of title to such land shall be borne by the then holders of User Areas immediately adjoining the area acquired in shares equal to the proportion that the area of such extension to each such User Area shall bear to the total area of lands so acquired.

- (I) The parties hereto hereby declare and agree that no interest in land shall be created or shall be deemed to have been created by this User Agreement (as distinct from the Conveyance) and no subdivision of land shall have been effected or shall have been deemed to be effected nor shall there be any intent by the parties to effect any subdivision of the land.

## **6. MANAGEMENT BOARD**

The Purchaser shall be entitled and agrees with the Vendor and with Purchaser of like interests in the Land and of User Agreements to establish a Management Board representing all of the owners of undivided interests in the title to the Land and the Management Board shall be established in the manner and at the time and shall be entitled to exercise and perform the powers and duties as set forth in Schedule "B" hereto.

## **7. DUTIES OF PURCHASERS AND OF THE MANAGEMENT BOARD AND POWERS OF THE MANAGEMENT BOARD**

In addition to the duties of the Purchaser and in addition to the duties and powers of the Management Board as set forth in Schedule "B" hereto, the Purchaser and the Management Board shall respectively have the additional duties and powers as set forth in paragraph No.s 1, 2 and 3 of the First Schedule of the Strata Titles Act of the Province of British Columbia in the construction and interpretation of which the word 'owner' shall be deemed to mean the Purchaser and the words "Strata Corporation" shall be deemed to mean the Management Board and the strata lot shall be deemed to mean the User Area.

## **8. DEFINITIONS**

- (a) "Vendor" in this Agreement means the registered owner or owners in fee simple of the Land from time to time.
- (b) "Land" in this Agreement means the lands and premises more particularly described in the conveyance to which this Agreement forms a Schedule and shall include all structures and improvements thereon and thereto.
- (c) "User Agreements" means the agreements under which rights to use, occupy and enjoy User Areas are set out and being in the form hereof.
- (d) "Management Board" in this Agreement means the body so entitled having the powers and duties as set out in Schedule "B" hereto.

## **9. NOTICES**

Any notice required or contemplated by this Agreement shall be sufficiently given by personal delivery or by registered letter postage prepaid and mailed to the address of the party to whom such notice is to be given at the address of such party as given in the conveyance or to such other address as either party may notify the other of in writing during the term hereof and any such notice shall be effective and shall be conclusively deemed to have been received as of the day of such personal delivery or as of the second business day after the day of such mailing. Notice to the Vendor shall be given to it c/o the Management

Board, when established, at its address to be designated by it for such purpose and notices from the Vendor shall be given on its behalf by the Management Board on its establishment.

#### **10. INTERPRETATION**

The headings of the paragraphs in this Agreement are for convenience only and shall not constitute a part of this Agreement. The definition of any words used in any paragraph of this Agreement shall apply to such words when used in any other paragraph hereof whenever the Context is consistent.

#### **11. BINDING ON HEIRS. ETC.**

This Agreement and everything herein contained shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors, assigns and other legal representatives as the case may be of each of the parties hereto and every reference herein to any party shall include the heirs, executors, administrators, successors and assigns or other legal representatives of such party and where there is more than one Purchaser or there is a female party or a corporation, the provisions hereof shall be read with all grammatical changes thereby rendered necessary and all covenants shall be deemed joint and several. This Agreement and everything herein contained shall be binding on and shall enure to the benefit of all purchasers to the same extent as if it had been signed and sealed by each purchaser in a document to which all purchasers were parties.

**End of document**  
**Schedule A & B follows**

## Schedule A Additional User Areas

Column I User Areas	Column II (Additional User Areas)	Column III (% Undivided interest & purchasers share)
15	12	.374
16	11	.374
17	10	.374
118	119	.374
268	19	.374
269	20	.374
270	21	.374
271	22	.374
272	23	.374
273	24	.374
274	25	.374
275	26	.374
276	27	.374
277	28	.374
278	29	.374
279	42	.374
319	44	.374
320	45	.374
321	46	.374
283	47	.374
284	48	.374
285	49	.374
286	50	.374
287	51	.374
288	253	.374
289	254	.374
290	255	.374
292	256	.374
293	252	.374
41	40	.379

END OF SCHEDULE "A"

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## **Schedule "B"**

### **MANAGEMENT BOARD SCHEDULE**

After undivided interests in the title to the Land equaling 75% of the total thereof have been conveyed to purchasers, the then Owners of all undivided interests in the title to the Land (The "Owners") shall be entitled and agree to elect a Management Board at a general meeting of the Owners called by Everglades Resorts Ltd. within three (3) months after the said 75% of interests shall have been conveyed. Each Owner shall have one vote at all general meetings of Owners for each User Area held by him (except that User Areas and their linked Additional User Areas shall count as one User Area)

The Management Board shall, subject to any restriction imposed or direction given at a general meeting of Owners, be entitled to exercise and perform all of the powers and duties of the Vendor pursuant to the User Agreements and without restricting the generality of the foregoing, shall at its first meeting determine whether Management Contract should be entered into with the Manager of the former contract, if any, which shall expire at the date of such meeting on like or other terms or with another Manager on like or other terms or whether the powers and duties formerly exercised by the Manager should be performed by the Management Board.

Subject to the continued free right of access of Everglades Resorts Ltd., its invitees and licencees, in connection with the sales of all unsold User Areas, the Management Board shall have the further right to control access to the Lands at the gate constructed for such purpose for the mutual benefit of all Owners and to make such admission charges as it shall, from time to time, determine and to engage such staff for such purpose as may be requisite.

The Management Board shall have the further right (a) to acquire for the Owners title to accreted lands adjoining the Land, and (b) to install on the Land such utilities and services for the benefit of the Owners as it shall determine.

The Management Board shall have the further right, if in its reasonable opinion an item or category of Operating Expenses properly relates to but a portion of the Land or to some but not all of the User Areas or that the Purchaser's Share of Operating Expenses should be greater for some of the User Areas than other User Areas by virtue of the use to which some User Areas may customarily be put to prescribe, from time to time, that the Owners of such User Areas shall pay, in addition to the Purchaser's Share of Operating Expenses, an Excess Charge, which shall be payable concurrently with the Purchaser's Share of Operating Expenses. In calculating such Excess Charge, the Management Board shall fairly and reasonably arrive at the same in accordance with the terms hereof and the Excess Charge shall be payable yearly until such time as it is changed by the Management Board.

The Management Board shall be entitled in the performance of its duties and the exercise of its powers to enter into all requisite contracts and any such contract shall be binding on all Owners and shall be signed on behalf of the Management Board in the presence of any two members of the Management Board authorized by resolution of the Management Board.

The Management Board shall have the further right and duty in the event of the determination of any User Agreement (the "Determined User Agreement") to re-grant User Rights to the User Area described in the Determined User Agreement on the same terms and conditions as were contained in the Determined User Agreement to a person to be selected by the Management Board and for a sale price being the best available price reasonably available, and to be determined by the Management Board. The sale price shall be paid to or on behalf of the Management Board and shall be applied firstly in or towards payment

of all monies owing with respect to defaults under the Determined User Agreement, secondly, in or towards payment of all costs in connection with the re-granting of User Rights to the User Area, thirdly, in or towards payment of claims of mortgagees of the Determined User Agreement and determined fee simple interest in the order of their priority if more than one, and fourthly, any surplus shall be paid to the holder of the Determined User Agreement.

The Management Board shall consist of not less than three and not more than seven owners. At each Annual General Meeting of the Owners, all members of the Management Board shall retire from office and the Owners shall elect a new Management Board, but a retiring member of the Management Board shall be eligible for re-election. Any vacancy on the Management Board may be filled by the remaining members of the Management Board. The quorum of the Management Board shall be two where the Management Board consists of four or less members, three where it consists of five or six members, and four where it consists of seven members. At the first meeting of the Management Board held after each Annual General Meeting of Owners, the Management Board shall elect from amongst its members a Chairman and Vice-Chairman who shall hold office until the conclusion of the next Annual General Meeting of the Management Board or until their successors are elected or appointed. The Chairman of the Management Board shall have a casting vote in addition to his original vote. Where the Chairman is absent from any meeting of the Management Board or vacates the Chair during the course of any meeting, the Vice-Chairman shall act as Chairman and shall have all the duties and powers of the Chair while so acting. In the absence of both the Chairman and the Vice-Chairman, the members present shall, from among themselves, elect a Chairman for that meeting who shall have all the duties and power of the Chairman while so acting.

At meetings of the Management Board all matters shall be determined by simple majority vote. The Management may meet together for the conduct of business, adjourn or otherwise regulate the meetings as it thinks fit and it may meet when any members gives to the other members not less than seven days notice of a meeting proposed by him specifying the reason for calling the meeting unless the other members agree to waive the notice.

The Management Board shall keep minutes of all general meetings and Management Board meetings. General Meetings of Owners shall be held and the proceedings thereat shall be conducted in the same manner as set forth in paragraphs 23 to 45 inclusive of the First Schedule of the Strata Titles Act of the Province of British Columbia as if the Management Board were a Strata Council and as if the Owners were owners as defined by the Act and as if the User Areas were strata lots and the provisions of those paragraphs shall be construed and interpreted accordingly and as hereby amended shall be deemed to have been incorporated herein, save and except any provision which by its nature is applicable only to a Strata Lot.

The terms of this Schedule shall be binding on and shall enure to the benefit of all Owners to the same extent as if it had been signed and sealed by each Owner and formed a document to which all Owners were parties.

END OF SCHEDULE "B"

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PROVINCE OF BRITISH COLUMBIA

STATUTES

Passed in the Session Held in the Twenty Second and  
Twenty-third Years of the Reign of Her Majesty  
QUEEN ELIZABETH II

Being the Fourth Session of the Thirtieth Parliament of British  
Columbia Holden at Victoria, convened on the 31st January  
and adjourned on the 20th June, 1974

HONOURABLE WALTER STEWART OWEN, Q.C., LL.D.  
Lieutenant Governor

Printed by K. M. McDonald, Printer to the Queens's Most Excellent Majesty in right of the province of British  
Columbia, 1974

CHAP. 89 STRATA TITLES 22-23 ELIZ. 2

SCHEDULES

FIRST SCHEDULE

**Duties of an Owner**

1. An owner shall

- (a) permit the strata corporation and its agents, at all reasonable times on notice (except In case of emergency when no notice shall be required), to enter his strata lot for the purpose of inspecting the same and maintaining, repairing, or renewing pipes, wires, cables, and ducts for the time being existing in the strata lot and capable of being used in connection with the enjoyment of any other strata lot or common property, or for the purpose of maintaining, repairing, or renewing common property, common facilities, or other assets of the strata corporation, or for the purpose of ensuring that the by-laws are being observed;
- (b) forthwith carry out all work that may be ordered by any competent public or local authority in respect of his strata lot other than work for the benefit of the building generally, and pay all rates, taxes, charges, outgoings, and assessments that may be payable in respect of his strata lot;
- (c) repair and maintain his strata lot, including windows and doors, and areas allocated to his exclusive use, and keep them in a state of good repair, reasonable wear and tear and damage by fire, storm, tempest, or act of God excepted;
- (d) use and enjoy the common property, common facilities, Or other assets of the Strata Corporation in a manner that will not unreasonably interfere with the use and enjoyment thereof by other owners or their families or visitors;
- (e) not use his lot, or permit the same to be used, in a manner or for a purpose that will cause a nuisance or hazard to any occupier of a lot (whether an owner or not) or his family;
- (f) notify the Strata corporation forthwith upon any change of ownership or of any mortgage or other dealing in connection with his strata lot; and
- (g) comply strictly with these by-laws, and all other by-laws of the Strata Corporation, and with such rules and regulations as may be adopted from time to time.

## **Duties of Strata Corporation**

2. The Strata Corporation shall

- (a) control, manage, and administer the common property, common facilities, or other assets of the Strata Corporation for the benefit of all owners;
- (b) keep in a state of good and serviceable repair and properly maintain the fixtures and fittings, including the elevators, swimming pool, and recreational facilities, if any, and other apparatus and equipment used in connection with the common property, common facilities, or other assets of the strata corporation;
- (c) maintain all common areas both internal and external, including lawns, gardens, parking and storage areas, public halls, and lobbies;
- (d) maintain and repair (including renewal where reasonably necessary) pipes, wires, cables, chutes, and ducts for the time being existing in the parcel and capable of being used in connection with the enjoyment of more than one strata lot or common property;
- (e) on the written request of an owner or mortgagee of a strata lot, produce to such owner or mortgagee, or person authorized in writing by the owner or mortgagee, the policy or policies of insurance effected by the strata corporation and the receipt or receipts for the last premium or premiums in respect thereof;
- (f) maintain and repair the exterior of the building (excluding windows, doors, balconies and patios included in a strata lot), including the decorating of the whole of the exterior of the buildings;
- (g) collect and receive all contributions towards the common expenses paid by the owners and deposit the same with a chartered bank or trust company; and
- (h) pay all sums of money properly required to be paid on account of all services, supplies, and assessments pertaining to, or for the benefit of, the Strata Corporation.

## **Powers of Strata Corporation**

3. The Strata Corporation may

- (a) purchase, hire, or otherwise acquire personal property for use by owners in connection with their enjoyment of common property, common facilities or other assets of the strata corporation;
- (b) borrow money required by it in the performance of its duties or the exercise of its powers;
- (c) secure the repayment of moneys borrowed by it, and the payment of interest thereon by negotiable instrument, or mortgage of unpaid contributions (whether levied or not), or mortgage of any property vested in it, or by combination of those means;
- (d) invest as it may determine in separate accounts any moneys in the fund for administrative expenses or in the contingency reserve fund;
- (e) make an agreement with any owner or occupier of a strata lot for the provision of amenities or services by it to the strata lot or to the owner or occupier thereof;
- (f) grant to an owner the right to exclusive use and enjoyment of common property, or special privilege in respect thereof, the grant to be determinable on reasonable notice, unless the strata corporation by unanimous resolution otherwise resolves;

- (g) designate an area as limited common property and specify the strata lots that are to have the use of the limited common property;
- (h) make such rules and regulation as it may consider necessary or desirable from time to time in relation to the enjoyment, safety, and cleanliness of the common property, common facilities, or other assets of the Strata Corporation:
- (i) do all things necessary for the enforcement of the by-laws and the rules and regulations of the strata corporation, and for the control, management, and administration of the common property, common facilities, or other assets of the strata corporation, generally, including removing privileges in the use of certain facilities or fixing and collecting fines for contravention of the by-laws, rules or regulations;
- (j) determine the levy for the contingency reserve fund which shall be five per cent of the total annual budget, until the reserve reaches an amount that the strata council considers sufficient having regard to the type of buildings in the strata plan, and thereafter raise such further amounts or replacements of funds from time to time and over such a period of time as the strata council thinks fit; and
- (k) Join any organization serving the interests of strata corporations and assess the membership fee in the organization as part of the common expenses.

## **Section 23 - 45 Inclusive of Strata Titles Act, 1974**

- 23. Subsequent annual general meetings shall be held once in each year, and not more than thirteen months shall elapse between the date of one annual general meeting and that of the next.
- 24. All general meetings other than the annual general meetings shall be called extraordinary general meetings.
- 25. The strata council may, whenever it thinks fit, and shall upon a requisition in writing made by owners or mortgagees of twenty five per cent of the strata lots, convene an extraordinary general meeting.
- 26. Seven days notice of every general meeting specifying the place, the date, and the hour of the meeting, and in case of special business, the general nature of such business, shall be given to all owners and first mortgagees who have notified their interest to the strata corporation, but accidental omission to give notice to any owner or to any first mortgagee or non-receipt of notice by any owner does not invalidate any proceedings at any such meeting.

## **Procedures at General Meetings**

- 27. All business shall be deemed special that is transacted at an annual general meeting, with the exception of the consideration of accounts and election of members to the strata council, or at any extraordinary general meeting.
- 28 Save as in these by-laws otherwise provided, no business shall be transacted at any general meeting unless a quorum of persons entitled to vote Is present at the time when the meeting proceeds to business.
- 29 One third of the persons entitled to vote present in person or by proxy shall constitute a quorum.
- 30 If within one half hour from the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time; and if at the adjourned meeting a quorum is not present within one half hour from the time appointed for the meeting, the persons entitled to vote present shall be a quorum.

31. The chairman of the strata council shall be the chairman of all general meetings, or in his absence from the meeting or in case he shall vacate the chair, the vice chairman of the strata council shall act as chairman provided always that, if the chairmen and vice chairman be absent or shall vacate the chair, or refuse to act, the meeting shall appoint a chairman.

32 The order of business at general meetings and as far as is appropriate at all extraordinary general meetings, shall be

- (a) if the chairman or the vice-chairman of the strata council is absent, electing the chairman of the meeting;
- (b) calling the roll, certifying the proxies, and issuing a voting card for each strata lot represented at the meeting;
- (c) filing proof of notice of meeting or waiver of notice;
- (d) reading and disposing of any unapproved minutes;
- (e) receiving reports of committees;
- (f) considering the accounts;
- (g) electing a strata council, if necessary;
- (h) unfinished business;
- (i) new business; and
- (j) adjournment

33. At any general meeting a resolution by the vote of the meeting shall be decided on a show of hands, unless a poll is demanded by any owner present in person or by proxy.

34. Unless a poll be so demanded, a declaration by the chairman that a resolution has, on the show of hands, been carried is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

35. A demand for a poll may be withdrawn.

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

37. In the case of equality in the votes, whether on a show of hands or on a poll, the chairman of the meeting is entitled to a casting vote in addition to his original vote.

### **Votes of Owners**

38. On a show of hands, an owner shall indicate his vote by showing his voting card,

39. On a show of hands or on a poll, votes may be given either personally or by proxy.

40. An instrument appointing a proxy shall be in writing under the hand of the appointed or his attorney, and may be either general or for a particular meeting.

41. A proxy need not be an owner.

42. Except in cases where, by or under this Act, a unanimous resolution is required no owner is entitled to vote at any general meeting unless all contributions payable in respect of his strata lot have been duly paid.

43. Where owners are entitled to successive interests in a lot, the owner entitled to the first interest is alone entitled to vote, whether on a show of hands or a poll.

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

45. Notwithstanding the provisions of these by-laws with respect to appointment of a proxy, where the owner's interest is subject to a registered mortgage and where the mortgage provides that the power of vote conferred on an owner by or under the Strata Title Act may be exercised by the mortgagee and where the mortgagee has given written notice of his mortgage to the corporation, no instrument or proxy shall be necessary to give the mortgagee the said power to vote, and the mortgagee shall indicate his presence at the calling of the roll and he, rather than the strata lot owner, shall be issued a voting card.