

## **PART 8 – INSURANCE**

### **Section 30 - Insurance Maintained by the Corporation**

#### **a) Fire and Extended Risks**

The Corporation shall obtain and maintain insurance against damages by fire and major perils as defined in the Act, and insurance against such other perils or events as the board may from time to time deem advisable, in respect of its obligation to repair and in respect of the unit owners' interests in the units and common elements, and in respect of the unit owners' obligation to repair any damage to:

- i) the common elements;
- ii) personal property owned by the Corporation, excluding furnishings, furniture and other personal property supplied or installed by the owners; and
- iii) the units, except for any improvements or betterments made or acquired by the unit owners;

in an amount equal to the full replacement cost of such real and personal property, and of such units and common elements, without deduction for depreciation. This insurance may be subject to a loss deductible clause.

#### **b) Public Liability, and Boiler Insurance**

The Corporation shall obtain and maintain public liability and property damage insurance, for a minimum amount of One Million (\$1,000,000.00) Dollars or such higher limits that may be determined by the board, insuring the Corporation against its liability resulting from breach of duty as occupier of the common elements, or arising from the ownership, use or operation, by or on its behalf, of boilers, machinery, pressure vessels and motor vehicles.

#### **c) General Provisions re Policies of Insurance**

Such policy or policies of insurance will insure the interest of the Corporation and the owners from time to time, as their respective interests may appear with mortgagee endorsements which shall be subject to the provisions of the Act, this Declaration, and the Insurance Trust Agreement, and shall contain the following provisions:

- i) proceeds arising from any loss shall be payable to the insurance trustee, save and except that when the amount receivable from the insurer for any loss arising out of any one occurrence does not exceed fifteen (15%) percent of the replacement cost of the property covered by the policy, then the proceeds of such loss shall be payable to the Corporation and not to the Insurance Trustee;
- ii) waivers of subrogation against the Corporation, its directors, officers, manager, agents, employees and servants, and against the owners, and their respective servants, agents, tenants, family, invitees or licensees, except for damage arising out of arson or fraud caused by any one of the above;
- iii) such policy or policies of insurance shall not be cancelled or substantially modified without at least sixty (60) days written notice sent by registered mail to all parties whose interests appear thereon, and to the Insurance Trustee and to any first mortgagee who has a mortgage or charge registered against twenty-five (25%) percent or more of the dwelling units in the Condominium.
- iv) waivers of any defence based on co-insurance or of invalidity arising from any act or omission, or breach of statutory condition, by any insured;
- v) provision that the same shall be primary insurance in respect of any other insurance carried by the unit owner(s); and

- vi) waivers of the insurer's obligation or requirement 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.
- d) Notwithstanding anything else herein contained, for the purposes of clarity, it is intended that all insurance shall be maintained by the Corporation so as to comply with the Act, this declaration and the Reciprocal Agreement.

**Section 31 - General Provisions Regarding the Condominium's Insurance**

- a) Prior to obtaining any policy or policies of insurance under this part, or any renewal or renewals thereof, or at such other times as the board may deem advisable, the board shall obtain an appraisal from an independent qualified appraiser, of the full replacement cost of the common elements and assets of the Corporation, for the purpose of determining the amount of insurance to be effected pursuant thereto, and the cost of such appraisal shall be a common expense; provided that no appraisal shall be necessary with respect to the initial policy or policies placed by the Declarant.
- b) 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, including the owner of a damaged unit, shall be bound by such adjustment. Provided however that the board may, in writing, authorize an owner to adjust any loss to his unit.
- c) Every mortgagee shall be deemed to have agreed to waive any right to have the proceeds of any insurance applied on account of the mortgage. This paragraph (c) shall be read without prejudice to the right of any mortgagee to exercise the right of an owner to vote or to consent to matters at meetings of owners, if the mortgage itself contains such a provision, or the right of any mortgagee to receive the proceeds of any insurance policy if the property is not repaired or replaced.
- d) A certificate or memorandum of all insurance policies and endorsements thereto maintained by the Corporation shall be issued as soon as possible to each owner, and the duplicate original or certified copy of all such policies shall be delivered to each mortgagee whose has notified the Corporation of his interest in any unit. Renewal certificates or certificates of new insurance policies shall be furnished to each owner, and renewal certificates or certified copies of new insurance policies shall be furnished to each mortgagee no later than ten (10) days before the expiry of any current insurance policy. The master policies for any insurance coverage shall be kept by the Corporation in its offices, available for inspection by an owner or mortgagee on reasonable notice to the Corporation.
- e) No insured, other than the Corporation, shall be entitled to amend any policy or policies of insurance obtained and maintained by the Corporation, or to direct that loss shall be payable in any manner other than as provided in this Declaration.

**Section 32 - Indemnity Insurance**

The Corporation shall obtain and maintain insurance for the benefit of directors and officers of the Corporation, in order to indemnify them against any liability, cost, charge or expense ("Liabilities") incurred by them in the execution of their duties, provided that such insurance shall not indemnify them against the Liabilities incurred by them as a result of a contravention of s.37(1) of the Act.

**Section 33 - Insurance Maintained by the Individual Unit Owners**

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, or any other insurance, if deemed necessary or desirable by any owner, may be obtained and maintained by such owner at his sole cost or expense.

- a) Insurance on any additions or improvements made by the owner to his unit and for furnishings, fixtures, equipment, decorating and personal property and chattels of the owner contained within his unit, and his personal property and chattels stored elsewhere on the property, including his motor vehicle(s), and for loss of use and occupancy of his unit in the event of damage. Such policy or policies of insurance shall contain waivers of subrogation against the Corporation, its directors,

officers, manager, agents, employees and servants, and against the other unit owners and their servants, agents, tenants, family, invitees or licensees, except for any damage arising from vehicle impact, arson, fraud, caused or contributed by any of the above;

- b) Public liability insurance covering any liability of owners and their servants, agents, tenants, family, invitees or licensees, to the extent not covered by any public liability and property damage insurance obtained and maintained by the Corporation.
- c) Insurance covering additional living expenses incurred by an owner, if forced to leave his dwelling unit by one of the hazards protected against under the owner's personal policy.
- d) Insurance covering special assessments levied against an owner's unit by the Corporation and contingent insurance coverage in the event that the Corporation's insurance is inadequate.

#### **Section 34 - Indemnification by Owners**

Each owner shall indemnify and save the Corporation harmless from any loss, costs, damage, injury or liability which the Corporation may suffer or incur resulting from or caused by any act or omission of such owner, or his servants, agents, tenants, family, invitees or licensees to the common elements or to any unit, except for any loss, costs, damage, injury or liability insured against by the Corporation. All payments to be made pursuant to this section are deemed to be additional contributions toward the common expenses payable by such owner, and shall be recoverable as such.

#### **Section 35 - Insurance Trust Agreement**

- a) The Corporation shall enter into, and at all times maintain an Insurance Trust Agreement with a trust company, registered under The Loan and Trust Corporations Act, or a chartered bank or other firm qualified to act as an insurance trustee (the "Insurance Trustee"). Such agreement shall provide that the Insurance Trustee shall hold all insurance proceeds in trust and disburse the proceeds in satisfaction of the Corporation's and owner's respective obligations to repair in accordance with the provisions of the Act and this Declaration. Notwithstanding the foregoing, where insurance proceeds payable on any one loss, are less than fifteen (15%) percent of the replacement cost of the property covered by such policy, such proceeds shall be paid directly to the Corporation and held in trust and disbursed by it as if it were acting as the Insurance Trustee.
- b) The Insurance Trust Agreement entered into by the Corporation at a time when the Declarant owns a majority of the units, shall terminate within twelve (12) months from the date of registration of the declaration unless ratified within such twelve (12) month period by the board of directors elected at a time when the Declarant ceases to be the registered owner of a majority of the units. If the aforementioned Insurance Trust Agreement is not so ratified, then such new board shall enter into a new Insurance Trust Agreement so that an Insurance Trust Agreement will at all times be in existence and maintained by the Corporation. If ratified as aforesaid, this Insurance Trust Agreement shall continue automatically on an annual basis until such time as the Corporation delivers written notice to the Insurance Trustee of its desire to terminate the agreement. The time periods set forth in this subsection are expressly subject to the provisions of the Act and, in particular, Section 114 thereof.
- c) In regard to the fact that the Condominium is a Component of the Complex which is a mixed-use development and the fact that the Reciprocal Agreement requires that all of the owners of the Components of the Complex will enter into a single Insurance Trust Agreement, then, subject to any overriding provision of the Act or unless the owners of the Adjacent Components otherwise agree, the Condominium will take the necessary steps so that the Insurance Trust Agreement contemplated in this Declaration will be a single Insurance Trust Agreement for the Complex. Notwithstanding anything else contained in this Part 8 to the Declaration, the Condominium will be required to obtain such insurance contemplated in the Reciprocal Agreement and may be required to obtain its insurance through the manager of the other Components of the Complex.