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DECLARATIONSPINNAKER ARMS

MADE PURSUANT TO THE CONDOMINIUM ACT,  
STATUTES OF NOVA SCOTIA, 1970-71, CHAPTER 12, AS AMENDED,  
for Halifax County Condominium Corporation No. 155

THIS DECLARATION (the "Declaration") made pursuant to the Condominium Act, Statutes of Nova Scotia, 1970-71, Chapter 12, as amended, (hereinafter referred to as the "Act") BY:

MCL INVESTMENTS LIMITED, a body corporate,  
incorporated under the laws of the Province  
of Nova Scotia, (the "Declarant")

WHEREAS the Declarant is the owner in fee simple of lands and premises situate at Halifax, in the County of Halifax, Province of Nova Scotia, known as Spinnaker Arms and as more particularly described in Schedule "A" hereto annexed, and in the Description filed herewith in accordance with Section 11 of the Act;

WHEREAS the Declarant has constructed a building upon the said lands containing a total of forty-eight (48) dwelling units; and

WHEREAS the Declarant intends that the lands described in Schedule "A", together with the building constructed thereon, shall be governed by the Act.

NOW THEREFORE THE DECLARANT HEREBY DECLARES AS FOLLOWS:

I INTRODUCTORY1.01 Definitions

The following terms used herein have the meanings set out below, unless the context otherwise requires:

(a) "Corporation" means the Corporation created under the Act by the acceptance for registration of this Declaration and the Description;

(b) "Description" means the Description submitted for registration herewith by the Declarant; and

(c) Any other words and phrases used herein which are defined in the Act have the meaning given to them by the Act.

1.02 Statement of Intention

The Declarant intends that the property be governed by the Act. By virtue of the Act, the provisions of this Declaration, the Description and the By-Laws, including the Common Element Rules, are imposed upon the property for the benefit of all of the units and all persons interested therein from time to time.

1.03 Consent of Encumbrancers

The consent of all persons having registered encumbrances against the land or interests appurtenant to the land described in the Description is contained in Schedule "B" attached hereto.

1.04 Boundaries of Units

Each unit shall comprise the area bounded:

(a) Horizontally,

On all levels, by the exterior surfaces of the dry wall sheeting where such dry wall has been installed and otherwise by the exterior surfaces of the sprayed plaster and the extensions of the planes of such surfaces across windows, doors, and other openings.

(b) Vertically,

On all levels, by the upper surface of the concrete floor slab or by the upper surface of the floor joists and by the upper surface of the sprayed plaster on the ceiling where such sprayed plaster has been installed and otherwise by the upper surface of the dry wall sheeting, and where the floor projects beyond the horizontal boundaries, the lower surface of the wood floor decking or concrete slab on such projecting part.

Notwithstanding the foregoing, the unit shall not include:

(a) any load-bearing walls, columns or beams within the boundaries of the unit;

(b) such pipes, wires, cables, conduits, ducts, flues, shafts, public utility lines and other horizontal or vertical service facilities, which are used for the distribution of power, water, drainage and other services within the building, and that are within the boundaries of the unit; but the unit shall include the fixtures, outlets and other facilities with respect to such service facilities which are within the boundaries of the unit and which service the unit only.

1.05 Monuments

The monuments controlling the extent of units are fully described in the Description and all dimensions shall have reference to them.

1.06 Proportions of the Common Interests

Each owner shall have an undivided interest in the Common Elements appurtenant to each unit as a tenant-in-common with all other owners, the proportions of the common interests are the percentages allocated to each unit as set out in Schedule "C" attached hereto.

1.07 Contributions to the Common Expenses

Each owner shall contribute to the common expenses in the proportions identical to the percentages allocated to each unit as set out in Schedule "C" attached hereto.

1.08 Voting Rights

Each owner shall have voting rights in the Corporation in the proportions identical to the percentages allocated to each unit as set out in Schedule "C" attached hereto.

II COMMON EXPENSES

2.01 Specification of Common Expenses

Common expenses mean the expenses of the performance of the objects and duties of the Corporation and, without limiting the generality of the foregoing, include:

(a) the maintenance, repair, replacement, and the operation of the Common Elements;

(b) the cost of electricity, water, hot water, heating, fuel and all other utilities and services purchased by the Corporation for use in the Common Elements and the units;

(c) the payment of realty taxes, (including local improvement charges) levied against the property until such time as such taxes are levied against each unit;

(d) the remuneration payable by the Corporation to any employees deemed necessary for the operation and maintenance of the property including the payment of any remuneration payable pursuant to any management agreement which the Corporation may enter into;

(e) the cost of furnishings and equipment for use in and about the Common Elements including the repair, maintenance

or replacement thereof;

(f) the cost of legal, accounting and auditing services, premiums for the Corporation's insurance obligations, appraisals, fees and disbursements of the Insurance Trustee, fidelity bonds and the cost of any other objects and duties imposed by the Act, this Declaration and the By-Laws of the Corporation and its Board of Directors;

(g) the cost of borrowing money to carry out the objects and duties of the Corporation and the repayment including principal and interest of debts incurred for the objects and duties of the Corporation, provided, that each borrowing of such money shall have been duly authorized by a vote of the owners at a meeting held for the purposes of such authorization;

(h) all sums of money assessed by the Corporation for collection from the owners to be set aside in such separate fund or funds as may be provided for by the By-Laws of the Corporation and to be applied, from time to time in whole or in part in the absolute discretion of the Corporation towards meeting deficits and such other common purposes, or to be used or expended for major maintenance items, which occur less frequently than annually, and for major items of repair or replacement made necessary by damage, deterioration or obsolescence, as the Corporation may deem necessary or desirable in order to carry out the objects and duties of the Corporation.

#### 2.02 Payment of Common Expenses

Until the end of the calendar month during which the Declarant conveys sufficient units to make the total number of units conveyed thirty-nine (39), the Declarant shall pay all common expenses for the Corporation and the Board shall assess the estimated common expenses of the Corporation applicable to the units conveyed by the Declarant and shall levy against the new owners of such units conveyed by the Declarant such portion of such estimated common expenses which the Board in its discretion, which discretion shall be reasonably exercised, considers proper, and upon receiving the contribution of the new owners to the estimated common expenses for such period, the Corporation shall pay to the Declarant such common expense contributions as they are received from time to time.

Commencing with the calendar month immediately following that in which the Declarant conveys the thirty-ninth unit as aforesaid, and thereafter, each owner, including the Declarant, shall pay to the Corporation his proportionate share of the common expenses, which shall include payments towards any separate fund or funds, as may be provided for by the By-Laws of the Corporation, and the assessment and collection of contribu-

tions towards the common expenses may be regulated by the Board of Directors of the Corporation pursuant to the By-Laws of the Corporation.

### III. COMMON ELEMENTS

#### 3.01 Use of Common Elements

Subject to the provisions of the Act, this Declaration, the By-Laws, including the Common Element Rules, and any other rules and regulations passed pursuant thereto, each owner has the full use, occupancy and enjoyment of the whole or any part of the Common Elements, except as herein otherwise provided.

#### 3.02 Limited Common Elements

Subject to the provisions of the Act, this Declaration, the By-Laws and the rules and regulations passed pursuant thereto:

(a) Each owner is entitled to the exclusive use and possession of the inner surface of the glass windows to which his unit has sole access and the interior side of the exterior doors which provide the means of ingress to an egress from his unit; and

(b) Each owner is entitled to the exclusive use and possession of a patio or balcony as the case may be to which his unit has sole access and to the exclusive use and possession of those areas more fully shown and delineated on the survey plans attached to the Description.

#### 3.03 Restrictive Access

Without the consent in writing of the Board, no Owner, other than the Declarant, its successors and assigns, shall have any right of access to those parts of the common Elements used from time to time as a dwelling for any building superintendent, utilities area, Building maintenance areas, storage areas, manager's offices, operating machinery or any other parts of the Common Elements used for the care, maintenance or operation of the Property. This paragraph shall not apply to the Building manager who shall have such access to such Common Elements as the manager may, in his sole discretion, require.

### IV. UNITS

#### 4.01 Occupation and Use

The occupation and use of the units shall be in accordance with the following restrictions and stipulations:

(a) each unit shall be occupied and used only as a residence for single family housing and for no other purpose;

(b) nothing shall be done, or permitted to be done or brought into, or kept in a unit which will in any way increase the rate of fire insurance on the property or any part thereof, or on chattels kept within any unit;

(c) no unit shall be occupied or used by any one in such a manner as to result in the cancellation of any policy of insurance referred to in this Declaration;

(d) the owner of each unit shall comply and shall require all residents and visitors to his unit to comply with the Act, this Declaration, the By-Laws and the Common Elements Rules;

(e) prior to making any alterations or repairs to his unit, the Owner shall submit his plans to the Board of Directors of the Corporation in accordance with the By-Laws for approval; and the Board shall approve the plans unless the proposed alterations or repairs or the manner of carrying them out are likely to damage or impair the value of any other unit or the Common Elements;

(f) until all of the units have been sold for the first time by Declarant nothing herein contained shall prevent and no By-Law or house rule shall be made to prevent the Declarant from completing the buildings and all improvements to the property, remedying defects, maintaining units as models for display and sales purposes, and otherwise marketing units and maintaining marketing or construction offices, displays and signs relating to the property, provided that they are in accordance with any applicable by-laws of the municipality in which the property is situate.

#### 4.02 Restrictions on Leasing

(a) No Owner shall lease his unit unless he causes the tenant to deliver to the Corporation an undertaking signed by the Tenant under seal, to the following effect:

"I, \_\_\_\_\_, undertake that I, the members of my household and my guests from time to time, shall, in using the unit rented by me and the Common Elements, comply with the Condominium Act, the Declaration, the By-Laws, including Common Element Rules, and all other rules and directions of the Condominium Corporation during the term of my tenancy."

(b) Any Owner leasing his unit shall not be relieved thereby from any of his obligations with respect to the unit, which shall be joint and several with his tenant.

(c) No tenant shall be liable for the payment of Common Expenses unless notified by the Corporation that the Owner is in default of payment of Common Expenses, in which case the tenant shall deduct from the rent payable to the owner the Owner's share of the Common Expenses and shall pay the same to the Corporation.

(d) Where a tenant residing in a unit is in breach of any of the provisions of this Declaration, the Act, the By-Laws or the Rules and Regulations of the Corporation and such breach continues for a period of at least ten (10) days following written notification by the Board or the Property Manager to the tenant of such breach, or if such breach recurs, then the Corporation, in addition to any other remedies it may have pursuant to the Act, the Declaration, the By-Laws and the Rules and Regulations of the Corporation or any other remedies it may have at common law, shall have the right to do the following:

- (i) notify the unit Owner of such breach or recurring breach by his tenant and require the unit Owner to take immediate steps to remedy such breach; and
- (ii) if the unit Owner fails within seven (7) days after notification to remedy such breach (and the option of the Board or the Property Manager shall be conclusive in this regard), the Corporation shall be and is hereby irrevocably authorized, constituted and appointed the true and lawful attorney of the unit Owner for and in his name to:
  - (A) give notice to the tenant to terminate the tenancy and to forthwith vacate the unit; and
  - (B) to do all manner of acts, assurances, deeds, covenants and things as shall be required and as the Corporation or its counsel may see fit for any or all of the foregoing purposes.

#### V BY-LAWS

5.01 The Corporation may, by a vote of members who own sixtysix and two-thirds percent (66 2/3%) of the Common Elements, make By-Laws

- (a) governing the management of the property;
- (b) governing the use of units or any of them for the purpose of preventing unreasonable interference with the use

and enjoyment of the Common Elements and other units;

(c) governing the use of the Common Elements;

(d) regulating the maintenance of the units and Common Elements;

(e) governing the use and management of the assets of the Corporation;

(f) respecting the Board of Directors of the Corporation;

(g) specifying duties of the Corporation;

(h) regulating the assessment and collection of contributions towards the Common Expenses; and

(i) respecting the conduct generally of the affairs of the Corporation.

#### VI MODIFICATIONS OF COMMON ELEMENTS AND ASSETS

6.01 For the purpose of Section 20 of the Act, the determination whether any addition, alteration or improvement to or renovation of the Common Elements or any change in the assets of the Corporation is "substantial" shall be made by an affirmative vote of the members who own fifty-one percent (51%) of the Common Elements.

#### VII MAINTENANCE AND REPAIRS

##### 7.01 Maintenance and Repairs of units by the Owner

(a) Each Owner shall maintain his unit, and, subject to the provisions of this Declaration and Section 23 of the Act, each Owner shall repair his unit after damage, all at his own expense. The obligation of each Owner to repair his unit after damage, includes the repair of all improvements made to his unit by the Declarant in accordance with the architectural plans and specifications of the Declarant, notwithstanding that some of such improvements may have been made after acceptance for registration of this Declaration and the Description, so that his unit is restored to a state of repair at least equivalent to that at the time his unit was originally completed for sale by the Declarant.

(b) Each owner shall be responsible for all damage to any and all other units and to the Common Elements, which are caused by the failure of the Owner to so maintain and repair his unit, save and except for any such damage to the Common Elements for which the cost of repairing same may be recovered under any policy or policies of insurance held by the Corporation.



(c) The Corporation shall make any repairs that an Owner is obligated to make and which are not made within a reasonable time; and in such an event an Owner shall be deemed to have consented to having such repairs made by the Corporation; and such Owner shall reimburse the Corporation in full for the cost of such repairs, including any legal or collections costs incurred by the Corporation in order to collect the costs of such repairs, and all sums of money shall bear interest at such rate (not exceeding 2% above the prime rate charged by the Corporation's bankers from time to time) as the Board of Directors of the Corporation may decide upon. The Corporation may collect all such sums of money in such instalments as the Board of Directors may decide upon, which instalments shall be added to the monthly contribution towards the Common Expenses of such Owner, after receipt of a notice from the Corporation thereof. All such payments are deemed to be additional contributions towards the Common Expenses and recoverable as such.

**7.02 Repairs of Common Elements by the Corporation**

The Corporation shall repair the Common Elements after damage, which includes repair to all exterior doors which provide the means of ingress to and egress from a unit and to all exterior glass windows, all at its own expense.

**7.03 Maintenance of the Common Elements**

The Corporation shall maintain the Common Elements, save and except for any improvements made by an Owner to the Limited Common Elements appurtenant to his unit, the inner surface of the exterior glass windows to which a unit has sole access, the interior side of the exterior doors which provide the means of ingress to or egress from a unit, which excluded portions of the Common Elements shall be maintained by the Owner having the exclusive use and possession thereof pursuant to this Declaration; the maintenance by an Owner of such excluded portions of the Common Elements shall be in accordance with any directions and specifications set from time to time by the Board of Directors of the Corporation.

**7.04 Additions, Alterations or Improvements by Owners**

No Owner shall make any structural change in or to his unit or any change to an installation upon the Common Elements, or maintain, decorate or repair any part of the Common Elements (except for the maintenance of such portions of the Common Elements which the Owner having the exclusive use and possession thereof is obligated to maintain pursuant to Clause 7.03 of this Section VII) without the prior consent in writing of the Board.

Any change shall, if approved by the Board, be made in accordance with the provisions of all relevant municipal and

other governmental by-laws, rules, regulations or ordinances, and in accordance with the conditions, if any, of such approval, by the Board.

VIII DAMAGE

8.01 Procedure Where Damage Occurs

Where there has been a determination that there has been substantial damage to the extent that the cost of repairs would be twenty-five percent (25%) of the value of the buildings immediately prior to the occurrence, notice of such determination shall, within ten days thereof, be given by registered mail to the Owners and Mortgagees entered in the register kept for such purpose, in accordance with the provisions of the By-Laws of the Corporation, and together with such notice there shall be notice to the Owners and Mortgagees of a meeting called for the purpose of voting for repair, or termination of the condominium.

8.02 Repair after Damage

(a) In the event that Owners who own eighty percent (80%) of the Common Elements vote for repair, the Corporation shall repair the units and Common Elements in accordance with the architectural plans and specifications contained in the Description, with the following provisos:

(i) the obligation of the Corporation to repair after damage hereunder, extends to all improvements made to the units by the Declarant in accordance with its architectural plans and specifications, notwithstanding that some of such improvements may have been made after acceptance for registration of this Declaration and the Description, but does not include repair or any improvements made to the Unit by the Declarant for the Owner thereof, which were not included in the architectural plans and specifications of the Declarant;

(ii) the obligation of the Corporation to repair the units after damage shall be limited to repair in respect of all risks which are insured or insurable under any available policy or policies of insurance; and

(iii) each unit owner shall repair his unit after damage in respect of all risks which are not insured or insurable under any available policy or policies of insurance.

(b) In the event that the Board of Directors shall determine that there has not been substantial damage to the extent that the cost of repairs would be twenty-five percent

(25%) of the value of the buildings immediately prior to the occurrence, then the Corporation and such Owners whose units have been damaged shall repair in accordance with the provisions of Clauses 7.01 and 7.02 of this Declaration.

8.03 Plans and Specifications

A complete set of all the original architectural and structural plans and specifications for the buildings, including plans and specifications for any additions, alterations or improvements from time to time made to the Common Elements or to any Unit with the prior consent in writing of the Board of Directors, shall be maintained in the office of the Corporation at all times for the use of the Corporation in rebuilding or repairing any damage to the building, and for the use of any Owner.

IX INSURANCE

9.01 By the Corporation

(1) The Corporation shall be required to obtain and maintain, to the extent obtainable, the following insurance, in one or more policies:

(a) insurance against damage by fire and extended perils and such other perils as the Board of Directors may from time to time deem advisable insuring

(i) the property, excluding the units; and

(ii) personal property owned by the Corporation, but not including furnishings, furniture, or other personal property 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, which policy may be subject to a loss deductible clause;

(b) insurance against damage by fire and extended perils and such other perils as the Board of Directors may from time to time deem advisable, insuring the units including all improvements made to the units by the Declarant in accordance with its architectural plans and specifications, notwithstanding that some of such improvements may have been made after acceptance for registration of the Declaration and the Description, but excluding any improvements made by the Owners thereof, in an amount equal to the full replacement costs of such units without deduction for depreciation;

(c) public liability and property damage insurance insuring the liability of the Corporation with limits to be determined by the Board of Directors, but in no event for less than One Million Dollars (\$1,000,000.00) and without right of

subrogation as against the Corporation, its manager, agents, servants and employees, and as against the owners, and any member of the household or guests of any owner or occupant of a unit; and

(d) boiler and machinery insurance to the extent required as the Board of Directors may from time to time deem advisable.

(2) Such policy or policies of insurance as required by paragraphs (a) and (b) of sub-section (1) hereof, shall insure the interests of the Corporation and the Owners from time to time as their respective interests may appear, with mortgagee endorsements, which mortgagee endorsements shall be subject to the provisions hereof; and all such policy or policies of insurance shall contain the following provisions:

(a) that loss shall be payable to the Insurance Trustee; provided that where the amount receivable from an insurer for any loss arising out of any one occurrence does not exceed Five Thousand Dollars (\$5,000.00), loss shall be payable to the Corporation and not to the Insurance Trustee;

(b) waivers of subrogation against the Corporation, its manager, agents, employees and servants and owners and any member of the household of any owner or occupant of a unit, except for arson and fraud;

(c) that such policy or policies of insurance shall not be cancelled or substantially modified without at least sixty days' prior written notice to all parties whose interests appear thereon, and to the Insurance Trustee;

(d) waivers of any defence based on co-insurance or of invalidity arising from the conduct or any act or omission of any insured;

(e) all policies of insurance (insuring the liability of the Condominium Corporation) shall provide that the same shall be primary insurance in respect of any other insurance carried by the unit owner; and

(f) a waiver of the insurer's and/or insurers' option to repair, rebuild or replace, in the event that after damage the government of the property by the Act is terminated pursuant to Clause 8.01 hereof.

#### 9.02 General Provisions

(a) Prior to obtaining any policy or policies of insurance under Clause 9.01 of this Section IX, or any renewal or renewals thereof, or at such time as the Board of Directors may deem advisable, the Board of Directors shall obtain an

appraisal from an independent qualified appraiser, of the full replacement cost of the property, for the purpose of determining the amount of insurance to be effect pursuant to Clause 9.01 of this Section IX and the cost of such appraisal shall be a common expense.

(b) The Corporation, its Board of Directors and its Officers shall have the exclusive right, on behalf of itself and as agents for the owners, to adjust any loss and settle all claims with respect to all insurance placed by the Corporation, and to give such releases as required, and any claimant, including the owner of a damaged unit, shall be bound by such adjustment; provided however, that the Board of Directors may, in writing, authorize an owner to adjust any loss to his unit with an Insurer.

(c) No mortgage may be placed against any unit unless the mortgagee agrees to waive any contractual or statutory provisions giving the mortgagee the right to have the proceeds of any insurance policy or policies applied on account of the mortgage and thereby prevent application of the proceeds of any insurance policy or policies towards the repair of the property pursuant to the provisions of this declaration. 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, if the mortgage itself contains a provision giving the mortgagee that right, and also to the right of any mortgagee to receive the proceeds of any insurance policy, if the property is not repaired.

(d) A certificate of all insurance policies and endorsements thereto, shall be issued as soon as possible to each owner and mortgagee; each mortgagee shall be supplied with a duplicate original or certified copy of the policy and endorsements thereto; renewal certificates or certified copies of new insurance policies shall be furnished to each owner and mortgagee not later than ten days before the expiry of any current insurance policy. The master policy 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.

(f) Where the Corporation, instead of the Insurance Trustee, receives any proceeds of insurance pursuant to subparagraph (1) of paragraph (2) of Clause 9.01 of this Section IX, the proportion of such proceeds attributable to damage to any unit or units shall be held in trust for the

Owner or Owners of such unit or units and, at the discretion of the Board of Directors, may be applied by the Corporation to the repair of such unit or units or may be paid to such owner or owners subject at all times to the interest if any, of the mortgagee.

(g) Where any insurance proceeds have been paid to an Owner for the purpose of effecting repairs to his unit, then such Owner shall effect such repairs within such further period of time as the Board of Directors of the Corporation may permit, and he shall furnish the Corporation with evidence that such repairs have been completed in accordance with Section VII of this Declaration.

9.03 By the Owner

(a) Each unit owner may obtain and maintain, his own 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 in his unit and his personal property and chattels stored elsewhere on the property, including his automobile or automobiles, and for the loss of use and occupancy of his unit in the event of damage, which policy or policies of insurance shall contain waivers of subrogation against the Corporation, its manager, agents, employees and servants, and against the other owners and any members of their household or any owner or occupant of another unit, except for arson and fraud.

(b) Each owner may obtain and maintain his own public liability insurance covering any liability of the owner with regard to the property and his unit pursuant to this Declaration to the extent not covered by any public liability and property damage insurance obtain by the Corporation.

(c) No owner shall obtain and maintain any insurance on his unit other than in accordance with the provisions of this Section IX, without the consent in writing of the Corporation, which may be arbitrarily withheld.

X INSURANCE PROCEEDS

10.01 Insurance Trustee

The Board of Directors on behalf of the Corporation shall enter into an agreement with an Insurance Trustee which shall be a Trust Company authorized to carry on business in Nova Scotia and having a capital, surplus and undivided profits of at least One Million Dollars (\$1,000,000.00) or shall be a chartered bank, which agreement shall, without limiting its generality provide the following:

- (a) the receipt by the Insurance Trustee of any proceeds of insurance payable to the Corporation where such proceeds exceed Five Thousand Dollars (\$5,000.00);
- (b) the holding of such proceeds in trust for those entitled thereto pursuant to the provisions of this Declaration; and
- (c) the disbursement of such proceeds in accordance with the provisions of the Insurance Trust Agreement.

In the event that the Board of Directors is unable to enter into such agreement with such trust company, or such chartered bank, by reason of their refusal to act, the Board of Directors may enter into such agreement with such other corporation authorized to act as a Trustee, as in its discretion the Board of Directors may deem advisable.

The Corporation shall pay the fees and disbursements of any Insurance Trustee and any fees and disbursements shall constitute a common expense.

10.02 In the event that:

- (a) the Corporation is obligated to repair any unit insured under sub-paragraph (b) of paragraph (1) of Clause 9.01 of Section IX hereof, in accordance with the provisions of Section VIII hereof, the Insurance Trustee shall hold all proceeds for the Corporation and shall disburse the same in accordance with the provisions of the Insurance Trust Agreement, in order to satisfy the obligation of the Corporation to make such repairs;
- (b) there is no obligation by the Corporation to repair any unit in accordance with the provision of Section VIII hereof and there is termination in accordance with the provisions of Section 23 of the Act, the Insurance Trustee shall hold all proceeds for the owners in the proportion of their respective interests in the Common Elements and shall pay such proceeds to the owners in such proportions, upon registration of a notice of termination by the Corporation; and
- (c) the Board of Directors in accordance with the provisions of sub-section (1) of Section 23 of the Act determines that there has not been substantial damage to the extent that the cost of repairs would be twenty-five percent (25%) of the value of the buildings immediately prior to the occurrence, the Insurance Trustee shall hold all proceeds for the Corporation and the owners whose units have been damaged, and shall disburse such proceeds for the benefit of the Corporation and the Owners whose units have been damaged, as their respective interests may appear in accord-

ance with the provisions of the Insurance Trust Agreement in order to satisfy the respective obligations to make repairs pursuant to the provisions of Section VII of this Declaration.

Notwithstanding anything to the contrary herein contained any proceeds payable by an Insurance Trustee to an owner, in accordance with the provisions of paragraph (b) of this Clause 10.02 of Section X hereof shall be subject to payment in favour of any mortgagee or mortgagees to whom such loss be payable in such policy or policies of insurance and in satisfaction of the amount due under any liens registered by the Corporation against such unit.

#### XI INDEMNIFICATION

11.01 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 any act or omission of such owner, his family or any member thereof, any other occupants of his unit or any guests, invitees or licensees of such owner or occupant to or with respect to the Common Elements and/or all other units, 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.

Any sums of money to be paid by an owner to the Corporation pursuant to this Clause 11.01 Section XI shall include any legal or collection costs incurred by the Corporation in order to collect such sums of money. And all such sums of money shall bear interest at such rate of interest (not exceeding 2% above the prime rate charged by the Corporation's bankers from time to time) as the Board of Directors of the Corporation may decide upon. The Corporation may collect such sums of money in such instalments as the Board of Directors may decide upon, which instalments shall be added to the monthly contribution towards the common expenses of such Owner, after receipt of notice from the Corporation thereof. All payments pursuant to this Clause 11.01 are deemed to be additional contributions towards the common expenses and recoverable as such.

11.02 The Corporation shall indemnify and save harmless the Owner of each unit from and against any loss, costs, damages, injury or liability whatsoever which may be suffered or incurred by each Owner, his family or any member thereof, any other occupants of his unit or any guests, invitees or licensees of such owner or occupants, resulting from or caused by the negligence or wrongful act or omission of the Corporation, its manager, agents, servants, employees or independent contractors, or for damage done to the unit substantially resulting from the repair or maintenance by the Corporation of the Common Elements; provided that, notwithstanding anything hereinbefore contained, each owner



agrees to look solely to the proceeds received from the Insurer or Insurers of the public liability and property damage insurance of the Corporation in the event of such loss, costs, damage, injury or liability.

#### XII TERMINATION

##### 12.01 Management after Termination

In the event that sale of the property or any part of the Common Elements or termination of the government of the property by the Act is authorized, then the Board of Directors of the Corporation may authorize any procedures, rules and regulations and any other matters deemed necessary to complete such sale or termination and to manage the property pending such completion.

#### XIII EXPROPRIATION

##### 13.01 Expropriation in Whole of the Property

In the event of the expropriation of the whole of the property, the compensation to be paid for the whole of the property shall be negotiated and settled by the Board of Directors of the Corporation, whether or not proceedings are necessary. The compensation received from the expropriating authority, less expenses involved, if any, in obtaining said compensation, shall be distributed among the owners in proportion to their respective interests in the Common Elements.

Notwithstanding the above provisions in this Clause 13.01, the rights of each owner shall be separate to negotiate and settle his personal compensation for additions, alterations or improvements made by the owner to his unit after the acceptance for registration of this Declaration, the cost of moving and other similar items personal to each owner.

##### 13.02 Part Only of Common Elements Taken

If no units are taken by the expropriation and the expropriation includes only part of the Common Elements, then compensation shall be negotiated and settled by the Board of Directors of the Corporation, whether or not proceedings are necessary. The Board of Directors may deal with the compensation in any one or more of the following ways:

- (a) to distribute the compensation among the owners in proportion to their respective interests in the Common Elements; or
- (b) to retain the compensation as an asset of the Corporation; or

(c) to use the compensation to add to, change, or alter the Common Elements; or

(d) where the part of the Common Elements expropriated includes Common Elements the exclusive use of which is annexed to one or more specified units by virtue of this Declaration, the Board of Directors may deal with the compensation received in respect of such exclusive use Common Element by distributing such compensation among the owners whose exclusive use elements have been taken, or by applying such compensation to the replacement of such exclusive use Common Elements.

13.03 Partial Expropriation Including Units

In the event of a partial expropriation which includes some units, each owner whose unit is expropriated shall deal with the expropriating authority with regard to compensation relating to his unit and interest in the Common Elements. The compensation for any damage suffered by the remaining owners whose units are not expropriated shall be negotiated and settled by the Board of Directors of the Corporation, whether or not proceedings are necessary; and the compensation so received from the expropriating authority, less expenses involved, if any, in obtaining said compensation, shall be distributed proportionately among such remaining owners, except as required in connection with the restoration of the balance of the property.

The cost of restoring the balance of the property so that it may be used shall be determined by the Corporation, and the Corporation shall negotiate with the expropriating authority with regard to compensation for this expenditure, and shall, unless the government of the property by the Act is terminated within thirty (30) days of the receipt of such compensation, reconstruct using the funds received for such reconstruction.

13.04 Reconstitution of Scheme of Condominium after Reconstruction

In the event of reconstruction as provided in Clause 8.02 of Section VIII hereof, all of the owners and other persons having an interest in or encumbrance against any part of the property agree to do everything necessary and sign such documents and so vote on all occasions as may be necessary to reconstitute the scheme of the condominium property as follows:

(a) Payment for shares of assets of the Corporation:

any owners whose units have been wholly taken or rendered completely unusable shall have no further interest in the Common Elements or the property itself but shall be entitled only to receive the value of their share of the assets of the Corporation as determined by their percentage interest

in the Common Elements. Said assets are to be valued at book value, and in this respect any asset shall be deemed to have a book value, and in this respect any asset shall be deemed to have a book value of cost less the maximum allowable depreciation that would be allowed on such asset under the Income Tax Act (Canada) then in force.

(b) Determination of value of remaining portion:

the value of the portion of any unit partially expropriated or rendered partially unusable by the expropriation and/or reconstruction, together with the interest in the Common Elements of such partial unit, shall be determined, and if it cannot be determined shall be arbitrated. The owners of portions so taken shall receive the appropriate portion of the payment provided by paragraph (a) of this Clause 13.04.

(c) Reduction of Interest in Common Elements:

the percentage contribution towards common expenses and the percentage interest in the Common Elements of all units and portions of units that are taken by the expropriation shall thereafter be dissolved and ended.

(d) Remaining Interests Expanded:

the remaining interests in the Common Elements and the percentage obligations towards common expenses shall be determined by calculating this percentage as a percentage of the total percentages left in the property after its reconstruction, and shall be increased accordingly.

14.01 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 of Directors of the Corporation, shall be entitled to enter any unit or any part of the Common Elements over which any owner has the exclusive use and possession thereof, at all reasonable times and upon giving reasonable notice, for the purpose of making inspections, adjusting losses, making repairs, correcting any condition which violates the provisions of any insurance policy or policies, remedying any condition which might result in damage to the Property, or carrying out any duty imposed upon the Corporation.

(b) In case of an emergency, an agent of the Corporation may enter a unit at any time and without notice, for the purpose of repairing the unit, Common Elements, or part of the Common Elements over which any owner has the exclusive use and possession thereof, or for the purpose of correcting

any condition which might result in damage or loss to the property.

(c) 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 case of supervision of any unit except as specifically provided in this Declaration or the By-Laws.

14.02 Units Subject to Declaration, By-Laws, Common Element Rules and Regulations

All present and future owners, tenants and residents of units, their families, guests, invitees or licensees, shall be subject to, and shall comply with, the provisions of this Declaration, the By-Laws, including the Common Element Rules, and any other rules and regulations. The acceptance of a deed or transfer or the entering into of a lease or the entering into occupancy of any unit shall constitute an agreement that the provisions of this Declaration, the By-Laws, including the Common Element Rules, and any other rules and regulations, as they may be amended from time to time, are accepted and ratified by such owner, tenant or resident, and all of such provisions shall be deemed and taken to be covenants running with the unit and shall bind any person having, at any time, any interest or estate in such unit as though such provisions were recited and stipulated in full in each and every such deed or transfer or lease or occupation agreement.

14.03 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 the provisions of this Declaration 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 the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

14.04 Waiver

The failure to take action to enforce any provision contained in the Act, this Declaration, the By-Laws, including the Common Element Rules, 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.

14.05 Resolution of Conflict of Provisions

In the event of a conflict between the provisions of the Act, this Declaration or by By-Laws, including the Common Element Rules, the provisions of the Act shall govern; subject to the Act, the provisions of this Declaration shall govern; subject to the Act and this Declaration, the provisions of the By-Laws shall govern; the provisions of the Common Element Rules shall only be valid so long as they are not in conflict with anything in the Act, this Declaration or those portions of the By-Laws excluding the Common Element Rules.

14.06 Notice

Except as herein provided, any notice, direction or other instrument required or permitted to be given hereunder shall be in writing, and shall be sufficiently given if served personally by delivering same to the party to be served or to any officer of the party to be served, or may be given by ordinary mail, postage prepaid, addressed to the Corporation care of its recognized agent, to each owner at his respective unit or at such other address as is given by the owner to the Corporation for the purpose of notice, and to each mortgagee who has notified his interest to the Corporation at such address as is given by each mortgagee to the Corporation for the purpose of notice; and if mailed as aforesaid the same shall be deemed to have been received and to be effective on the first business day following the day on which it was mailed. Any owner or mortgagee may change his address for service by notice given to the Corporation in the manner aforesaid.

14.07 Construction of Declaration

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

14.08 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.

14.09 Effective Date

This Declaration shall take effect upon acceptance for registration.

DATED at Halifax, in the County of Halifax, Province of Nova Scotia, this 27<sup>th</sup> day of June, 1988.

IN WITNESS WHEREOF the Declarant has hereunto affixed

Page 4 - Description of Lot RP-5A.

THENCE to continue along said anticlockwise curve of radius 100.00 feet along the northeastern boundary of said Spinnaker Drive, a distance of 10.0 feet unto a point.

THENCE to run N12°-20'-40"W, bounded on the west by the remaining portion of said Lot RP-5A, a distance of 15.13 feet unto a point.

THENCE to run N77°-39'-20"E, bounded on the north by said remaining portion of Lot RP-5A, a distance of 10.0 feet unto a point.

THENCE to run S12°-20'-40"E, bounded on the east by said remaining portion of Lot RP-5A, a distance of 15.13 feet or unto the place of beginning of said easement.

CONTAINING 150 square feet more or less.

BEARINGS are referred to the Nova Scotia 3° Transverse Mercator Grid, 1968 Adjustment, Zone 5, Central Meridian 64°-30'W.

SIGNED: 

FRANK LONGSTAFF

NOVA SCOTIA LAND SURVEYOR

SCHEDULE "B" TO THE DECLARATION OF HALIFAX COUNTY  
CONDOMINIUM CORPORATION NO. 155


CONSENT OF ENCUMBRANCER

PURSUANT TO SECTION 10 (1) (b) OF THE CONDOMINIUM ACT

The undersigned, being all persons having registered encumbrances against the land or interest appurtenant to the land described in Schedule "A" hereto, hereby consent to the registration of this Declaration.

ENCUMBRANCER

COUNSEL TRUST COMPANY

  
PER: [Signature]  
PER: [Signature]

TYPE OF ENCUMBRANCE

Mortgage

[Signature]  
Witness

its corporate seal under the hands of its proper officers in that behalf duly authorized.

SIGNED, SEALED and DELIVERED  
in the presence of:

Witness

MCL INVESTMENTS LIMITED

PER: [Signature]

PER: [Signature]

CONDOMINIUM ACT

Accepted for Registration this  
1988, at the hour of 3

19<sup>th</sup> day of July  
o'clock p.m.

[Signature]  
Registrar of Condominiums



ALL THAT CERTAIN lot of land shown as Lot RP-5A on a plan titled: "Plan of Survey of Lots RP-5A and RP-23A, subdivision and consolidation of portions of land conveyed to Edmonds Grounds Services Limited and land conveyed to 1737287 Nova Scotia Limited, Armshore Drive Extension, Anchor Drive and Spinnaker Drive, Halifax, Nova Scotia", prepared by Servant, Dunbrack, McKenzie & MacDonald Ltd. and signed by Granville Leopold, Nova Scotia Land Surveyor; which said plan is dated the 7th day of August, A.D. 1987 and approved by the Development Officer for the City of Halifax on the 2nd day of September, A.D. 1987; and which said Lot RP-5A may be more particularly described as follows:

BEGINNING at the juncture of the northeastern boundary of Spinnaker Drive and the northwestern boundary of Lot RP-21, as shown on said plan.

THENCE to run N66°-10'-00"W along said northeastern boundary of Spinnaker Drive, a distance of 12.00 feet unto the beginning of an anticlockwise curve of radius 100.0 feet.

THENCE to follow said curve, continuing along said northeastern boundary of Spinnaker Drive, a distance of 73.51 feet unto the end of said curve.

THENCE to run S71°-43'-00"W along the northwestern boundary of said Spinnaker Drive, a distance of 222.46 feet unto the southeastern corner of Lot MD-5.

..... Continued

Page 2 - Description of Lot RP-5A.

THENCE to run  $N18^{\circ}-17'-00''W$  along the northeastern boundary of said Lot MD-5, a distance of 97.48 feet unto the southeastern corner of land owned by the City of Halifax Trustees of Armdale School Section No. 33 in the District of Halifax West.

THENCE to run  $N29^{\circ}-52'-30''E$  along the southeastern boundary of said land owned by the City of Halifax Trustees of Armdale School Section No. 33 in the District of Halifax West, a distance of 73.34 feet unto a point.

THENCE to follow an anticlockwise curve of radius 225.0 feet along the easterly boundary of Lot MD-8, a distance of 205.02 feet unto a point.

THENCE to continue along said curve of radius 225.0 feet along the easterly boundary of Lot MD-1, a distance of 58.0 feet unto a point.

THENCE to run  $N79^{\circ}-00'-06''E$ , bounded on the north by Lot RP-23A, a distance of 1.0 feet unto a point.

THENCE to deflect southerly and to follow a clockwise curve of radius 226.0 feet, bounded on the east by said Lot RP-23A, a distance of 58.40 feet unto a point.

THENCE to run  $S78^{\circ}-11'-39''E$  along the southern boundary of Lot RP-23A, a distance of 152.31 feet unto the southeastern corner of said Lot RP-23A.

..... Continued

Page 3 - Description of Lot RP-5A.

THENCE to run S03°-09'-46"W along the western boundary of Lot RP-22, a distance of 28.77 feet unto a point.

THENCE to run S15°-10'-00"E, continuing along said western boundary of Lot RP-22, and in continuation thereof along the western boundary of Lot RP-21, a distance of 191.94 feet unto a point.

THENCE to run S23°-50'-00"W along the southwestern boundary of said Lot RP-21, a distance of 23.0 feet or unto the place of beginning.

CONTAINING 65,236 square feet more or less.

RESERVING THEREFROM an easement in favour of the Maritime Telegraph and Telephone Company Limited; which said easement may be more particularly described as follows:

COMMENCING at the southeastern corner of Lot RP-5A; said point being on the northeastern boundary of Spinnaker Drive.

THENCE to run N66°-10'-00"W along said northeastern boundary of Spinnaker Drive, a distance of 12.0 feet unto the beginning of an anticlockwise curve of radius 100.00 feet.

THENCE to follow said curve, continuing along said northeastern boundary of Spinnaker Drive, a distance of 58.15 feet unto the PLACE OF BEGINNING of said easement.

..... Continued

SCHEDULE "C" TO THE DECLARATION OF HALIFAX COUNTY  
CONDOMINIUM CORPORATION NO. 155

153

LEVEL NO.	UNIT NO.	SUITE NO.	PROPORTION OF COMMON INTERESTS (%)	PROPORTION AT WHICH OWNERS ARE TO CONTRI- BUTE TO COMMON EX- PENSES (%)	PROPORTION OF VOTING RIGHTS (%)
1	1	101	2.1023	2.1023	2.1023
1	2	102	1.9886	1.9886	1.9886
1	3	103	2.1023	2.1023	2.1023
1	4	104	1.9886	1.9886	1.9886
1	5	105	2.1023	2.1023	2.1023
1	6	106	1.9886	1.9886	1.9886
1	7	107	2.1023	2.1023	2.1023
1	8	108	1.9886	1.9886	1.9886
1	9	109	2.1023	2.1023	2.1023
1	10	110	1.9886	1.9886	1.9886
1	11	111	2.1023	2.1023	2.1023
1	12	112	1.9886	1.9886	1.9886
1	13	113	2.1023	2.1023	2.1023
1	14	114	1.9886	1.9886	1.9886
1	15	115	2.1023	2.1023	2.1023
1	16	116	1.9886	1.9886	1.9886
2	1	201	2.1402	2.1402	2.1402
2	2	202	2.0265	2.0265	2.0265
2	3	203	2.1402	2.1402	2.1402
2	4	204	2.0265	2.0265	2.0265
2	5	205	2.1402	2.1402	2.1402
2	6	206	2.0265	2.0265	2.0265
2	7	207	2.1402	2.1402	2.1402
2	8	208	2.0265	2.0265	2.0265
2	9	209	2.1402	2.1402	2.1402
2	10	210	2.0265	2.0265	2.0265
2	11	211	2.1402	2.1402	2.1402
2	12	212	2.0265	2.0265	2.0265
2	13	213	2.1402	2.1402	2.1402
2	14	214	2.0265	2.0265	2.0265
2	15	215	2.1402	2.1402	2.1402
2	16	216	2.0265	2.0265	2.0265
3	1	301	2.1780	2.1780	2.1780
3	2	302	2.0644	2.0644	2.0644
3	3	303	2.1780	2.1780	2.1780
3	4	304	2.0644	2.0644	2.0644
3	5	305	2.1780	2.1780	2.1780
3	6	306	2.0644	2.0644	2.0644
3	7	307	2.1780	2.1780	2.1780
3	8	308	2.0644	2.0644	2.0644
3	9	309	2.1780	2.1780	2.1780

LEVEL NO.	UNIT NO.	SUITE NO.	PROPORTION OF COMMON INTERESTS (%)	PROPORTION AT WHICH OWNERS ARE TO CONTRI- BUTE TO COMMON EX- PENSES (%)	PROPORTION OF VOTING RIGHTS (%)
3	10	310	2.0644	2.0644	2.0644
3	11	311	2.1780	2.1780	2.1780
3	12	312	2.0644	2.0644	2.0644
3	13	313	2.1780	2.1780	2.1780
3	14	314	2.0644	2.0644	2.0644
3	15	315	2.1780	2.1780	2.1780
3	16	316	2.0644	2.0644	2.0644
TOTALS	48	48	100%	100%	100%

CANADA  
 PROVINCE OF NOVA SCOTIA }  
 COUNTY OF HALIFAX SS }

On this 27<sup>th</sup> day of June, 1988, before me, the subscriber, personally came and appeared DAVID B. RITCEY, a subscribing witness to the foregoing Declaration, who having been by me duly sworn, made oath and said that MCL INVESTMENTS LIMITED, one of the parties hereto, caused the same to be executed in its name and on its behalf and at the same time caused its corporate seal to be thereunto affixed by Grant MacNutt, its President, and Ian Logie, its Secretary, its proper officers duly authorized in that behalf, in his presence.

*Thomas E. Hart*  
 A Barrister of the Supreme  
 Court of Nova Scotia

THOMAS E. HART

Province of Nova Scotia  
 County of Halifax

I hereby certify that the within instrument  
 was recorded in the Registry of Deeds Office  
 at Halifax, in the County of Halifax, N. S.  
 at 9:04 o'clock P.M. on  
 the 20 day of July  
 A. D. 1988. in Book Number CA12  
 at Pages 126-155  
*James A. Stuart - Deputy*  
 Registrar of Deeds for the Registration District  
 of the County of Halifax