

**COVENANTS, CONDITIONS AND RESTRICTIONS
VICTORIA SHORES WITNESSETH:**

WHEREAS, Victoria Shores Developments Inc. (Victoria) is the owner of certain real property (the "Property") located in the Town of Lincoln being certain Lots and Blocks on Plans 30M-279 and Plan 30M-297, which are more particularly described in the Document General attached hereto.

WHEREAS, Victoria desires to impose certain covenants, conditions and restrictions upon the property, in the nature of a building scheme, in order to establish a general scheme for the development, sale, use and enjoyment of the Property for the purpose of enhancing and protecting the value, desirability and quality of life within said Property;

NOW, THEREFORE, Victoria hereby declares that the Property shall be held, developed, sold and conveyed subject to the restrictions, covenants, and conditions contained in this Declaration that are for the purpose of protecting the value and desirability of, and that shall run with said Property and be binding on all parties having any right, title or interest in said Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1

DEFINITIONS

- 1.1 **"Architectural Committee"** means the committee established by the Board pursuant to Section 2.4.
- 1.2 **"Architectural Committee Rules"** means the rules, if any, adopted by the Architectural Committee.
- 1.3 **"Articles"** means the Articles of Incorporation of the Association and as said Articles may be amended from time to time.
- 1.4 **"Assessments"** means the annual and special assessments levied and assessed against each Lot pursuant to Article 3 of this Declaration.
- 1.5 **"Association"** means the nonprofit corporation to be organized by Victoria to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Victoria intends to organize the Association under the name of Victoria Shores Homeowners Association.
- 1.6 **"Association Rules"** means the Rules and Regulations adopted by the Association, as the same may be amended from time to time.
- 1.7 **"Board"** means the Board of Directors of the Association.
- 1.8 **"Bylaws"** means the Bylaws of the Association, and as such Bylaws may be amended from time to time.
- 1.9 **"Common Area"** means all real property, and all Improvements located thereon, owned by the Association for the common use and enjoyment of the Owners.
- 1.10 **"Declarant"** means Victoria Shores Developments Inc.
- 1.11 **"Declaration"** means this Declaration of Covenants, Conditions and Restrictions, and as it

may be amended from time to time.

- 1.12 **"First Mortgage"** means any mortgage or deed of trust with first priority over any other mortgage or deed of trust.
- 1.13 **"Improvement"** or **"Improvements"** means buildings, driveways, roads, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.
- 1.14 **"Lot"** means any parcel of real property designated as a Lot or Block or part thereof on the Plan and which is covered by this Declaration.
- 1.15 **"Member"** means any person, corporation, partnership, joint venture, or other legal entity who owns one or more Lots in the Project and is therefore a Member of the Association.
- 1.16 **"Never Occupied Lot"** is one that is not a Once Occupied Lot.
- 1.17 **"Once Occupied Lot"** is any Lot with a dwelling thereon:
- (i) that is or has been occupied by someone residing thereon or,
 - (ii) that has been conveyed by Victoria to a Purchaser.
- 1.18 **"Owner"** means the record owner, whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) persons or entities having an interest in a Lot merely as security for the performance of an obligation, or (ii) a lessee or tenant of a Lot.
- Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Lot, whether legal or equitable, on payment in full of all monies due under the contract. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions, or similar executory contracts that are intended to control the rights and obligations of the parties to the transaction.
- 1.19 **"Plan"** means Plan 30M-279 or Plan 30M-297 as the context requires.
- 1.20 **"Project Documents"** means this Declaration and the Articles, Bylaws, Association Rules and Architectural Committee Rules.
- 1.21 **"Property"** or **"Project"** means the real property described on the Plan together with all buildings and other Improvements located thereon, and all easements, rights and appurtenances belonging thereto.
- 1.22 **"Purchaser"** means any person other than Victoria, who by means of a voluntary transfer becomes the Owner of a Lot.
- 1.23 **"Single Family"** means an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

- 1.24 **"Single Family Residential Use"** means the occupation or use of a residence by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other municipal statutes, bylaws, rules and regulations.
- 1.25 **"Visible From Neighbouring Property"** means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such Neighbouring property at an elevation no greater than the base of the object being viewed.

ARTICLE 2

THE ASSOCIATION: RIGHTS AND DUTIES, MEMBERSHIP AND VOTING RIGHTS

- 2.1 **RIGHTS, POWERS and DUTIES:** The Association shall be a nonprofit Ontario corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board of Directors.
- 2.2 **BOARD of DIRECTORS and OFFICERS:** The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint, in accordance with the Articles and Bylaws.
- 2.3 **ASSOCIATION RULES:** The Board, may from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.
- 2.4 **ARCHITECTURAL COMMITTEE:** The Board shall establish the Architectural Committee consisting of such number of regular members as Victoria may designate to be appointed by the Board to regulate the external design, appearance and use of the Property and to perform such other functions and duties as may be imposed upon it by this Declaration, the Bylaws or the Board. The Architectural Committee may promulgate rules concerning the standards and procedures for architectural review.
- 2.5 **IDENTITY of MEMBERS:** Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his membership shall automatically cease.
- 2.6 **TRANSFER of MEMBERSHIP:** Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such Purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.
- 2.7 **CLASSES of MEMBERS:** The Association shall have two (2) classes of voting membership.

CLASS A shall be all Owners of Lots, with the exception of Victoria until the termination of the Class B membership. Each Class A Member shall be entitled to one (1) vote for each Lot owned.

CLASS B shall be Victoria. The Class B Member shall be entitled to three (3) votes for each Lot owned by Victoria. The Class B membership shall cease and be converted to Class A membership with Victoria being entitled to one (1) vote for each Lot owned by Victoria on the happening of the earlier of the following:

- (a) Sixty (60) days after the date on which seventy-five percent (75%) of the Lots have been conveyed to Class A Members; or
- (b) When Victoria notifies the Association in writing that it relinquishes its Class B membership.

2.8 **JOINT MEMBERSHIP:** When more than one person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

2.9 **CORPORATE OWNERSHIP:** In the event any Lot is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership, and in the absence of such general partner or chief executive officer of such corporation, partnership or association shall have the power to vote for that membership.

2.10 **SUSPENSION of VOTING RIGHTS:** In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Project Documents for a period of ten (10) days, said Owner's right to vote as a Member of the Association shall be automatically suspended and shall remain suspended until all payments, including accrued interest, late charges and legal fees, are brought current. In addition, the Board may suspend an Owner's right to vote for a period not to exceed sixty (60) days for any other infractions of the Project Documents.

ARTICLE 3

COVENANT FOR MAINTENANCE ASSESSMENTS

3.1 **CREATION of the LIEN and PERSONAL OBLIGATION of ASSESSMENTS:** Victoria, for each Lot owned by Victoria, hereby covenant, and each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association annual assessments, special assessments and other charges as set forth herein. The Assessments, together with interest, late fees, costs and reasonable legal fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, late fees, costs and reasonable legal fees, also shall be the personal obligation of the Owner of such

Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the Owners successors in title unless expressly assumed by them.

- 3.2 **PURPOSE of the ASSESSMENT:** The Assessments levied by the Association shall be used exclusively for (a) the upkeep, maintenance and repair of Common Area, (b) promoting the health, safety and welfare of the Owners and residents of Lots within the Project; (c) the performance and exercise by the Association of its rights, duties and obligations under the Project Documents; and (d) the upkeep maintenance and repair of property assigned by the Town of Lincoln as Association responsibility including, but not limited to, all landscaping within the open spaces, collector and arterial street right-of-ways.

3.3 **ANNUAL ASSESSMENT:**

- (a) In order to provide for the operation and management of the Association and to provide funds for the Association to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each fiscal year of the Association commencing with the year in which the first Lot is conveyed to a Purchaser, shall assess against each Lot an annual assessment.

The amount of the annual assessment shall be at the sole discretion of the Board.

The Board shall give thirty (30) days notice prior to the beginning of each fiscal year of the Association; but, the failure to give such a notice shall not affect the validity of the annual assessment established by the Board nor relieve any Owner from its obligation to pay the annual assessment.

If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will become, inadequate to meet all expenses of the Association for any reason, including without limitation, nonpayment of Assessments by Members, it may increase the annual assessment for that fiscal year and the revised annual assessment shall commence on the date designated by the Board, except that no increase in the annual assessment for any fiscal year that would result in the annual assessment for such fiscal year shall become effective until approved by Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by each class of Members who are voting in person or by proxy at a meeting duly called for such purposes.

- (b) Until January 1st of the year immediately following the conveyance of the first lot to a Purchaser, the maximum annual assessment for each Lot shall be \$500.00. Any attached dwelling shall pay an additional fee for landscaping maintenance and snow removal of \$120.00.

- 3.3.1 **SURPLUS FUNDS:** The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

- 3.3.2 **WORKING CAPITAL FUND:** To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each purchaser of a lot from Victoria shall pay to the Association immediately upon becoming the Owner of the

Lot, a sum equal to one-sixth (1/6) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the project Documents. Payments made pursuant to this Section shall be non-refundable and shall not be considered as an advance payment of any Assessment levied by the Association pursuant to this Declaration.

- 3.3.3 **TRANSFER FEE:** Each Purchaser of a lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board.
- 3.4 **SPECIAL ASSESSMENTS:** In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any such special assessment shall have the assent of Members having at least two-thirds (2/3) of the votes entitled to be cast by each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.
- 3.5 **NOTICE and QUORUM for ANY ACTION AUTHORIZED UNDER SECTIONS 3.3 (a) or 3.4:** Written notice of any meeting called for the purpose of taking any action authorized under Section 3.3 (a) or 3.4 shall be sent to all Members not less than thirty (30) days nor more than fifty (50) in advance of the meeting. At the first such meeting called, the presence of Members or of Proxies entitled to cast twenty-five (25%) percent of all votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same, notice shall be one-half (1/2) of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- 3.6 **DATE of COMMENCEMENT of ANNUAL ASSESSMENTS; DUE DATES:** Unless otherwise determined by the Board, annual assessments shall be paid within thirty (30) days of written notice of annual assessment dues. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid and through what date they are paid.
- 3.7 **RATE of ASSESSMENT:** Both annual and special assessments must be fixed at a uniform rate for all assessable once Occupied Lots and at a uniform rate for all assessable Never Occupied Lots. The rate for Never Occupied Lots (NOL's) shall be twenty-five (25%) percent of the rate for Once Occupied Lots. The status of a Lot as Never Occupied or Once Occupied shall be determined as of the date an assessment is due. Declarant shall not be required to pay the difference between actual operating costs for the Association and all income if from assessments and other sources. When the Class B membership ceases as prescribed in Section 2.7 herein, Declarant shall become a Class A member shall be subject to assessment for each Lot owned by Declarant as described in this Section 3.7.
- 3.8 **EFFECT of NONPAYMENT of ASSESSMENTS; REMEDIES of the ASSOCIATION:** Any Assessment or any installment of an assessment, not paid within fifteen (15) days after the Assessment or the installment of the Assessment, first became due shall bear interest from the due date at the rate of twelve (12%) percent per annum, or in the alternative, at such rate as may be set by the Board. In addition to the interest charges, there shall be a late fee of fifteen (\$15.00) dollars per month for each month any Assessments or installments thereof remain delinquent.

Any Assessment or any installment of an Assessment, that is delinquent shall become a continuing lien on the Lot against which such Assessment was made. The lien shall be perfected by the recording of a "Notice of Claim of Lien" that shall set forth: (1) the name of the delinquent Owner as shown on records of the Association; (2) the legal description or street address of the Lot against which the claim of lien is made; (3) the amount claimed as of the date of the recording of the notice including interest, late fees, lien recording fees and reasonable legal fees; and (4) the name and address of the Association.

Before recording a lien against any Lot the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments together with interest and other allowable charges stating the date due and the amount of the delinquency through that date. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release any lien recorded pursuant to this Section until all delinquent Assessments, interest, late charges, lien fees and reasonable legal fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

The Association shall have the right, at its option, to enforce collection on of any delinquent Assessments together with interest, late charges lien fees, reasonable legal fees and any other sums due to the Association in any manner allowed by law including, but not limited to (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving any lien securing any such delinquent Assessments; or (b) bringing an action to foreclose its lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

- 3.9 **SUBORDINATION of the LIEN to MORTGAGES:** The lien of the Association for delinquent Assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessment as to payments that become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any Assessments thereafter becoming due or from the lien thereof.
- 3.10 **EXEMPTION of OWNER:** No Owner of a Lot may exempt himself from liability for Assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities or by the abandonment of his Lot.
- 3.11 **MAINTENANCE of RESERVE FUND:** Out of the annual assessments, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area.
- 3.12 **NO OFFSETS:** All Assessments shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in Project Documents.

ARTICLE 4

PERMITTED USES AND RESTRICTIONS

4.1 **RESIDENTIAL USE:** All Lots shall be used, improved and devoted exclusively to Single Family Residential Use. No gainful occupation, profession trades or other nonresidential use shall be conducted on any Lot.

4.2 **ANIMALS:** No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighbouring Property. Upon the written request of any Owner, the Board shall determine whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet, or nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Board shall be enforceable to the same extent as other restrictions contained in this Declaration.

No Owner or any lessee or guest of an Owner shall permit any dog or other pet to relieve itself on another Owners' Lot or on any part of the Common Area or municipal property. It shall be the responsibility of an Owner to remove immediately any droppings from pets. No dog, cat or other pet shall be permitted to run at large, and each dog, cat or other pet shall be confined entirely to an Owner's Lot except that a dog, cat or other pet shall be permitted to leave an Owner's Lot if such dog, cat or other pet is at all times kept on a leash not to exceed six (6) feet in length and is under the direct control of the Owner.

4.3 **ANTENNAS:** Subject to the provisions of applicable law, no antenna, satellite television dish antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, but without limitation, Citizen's Band or Amateur "Ham" Radio signals shall be erected, used or maintained outdoors on any Lot without the prior written approval of the Architectural Committee. No satellite television dish shall have a diameter of greater than 24 inches.

4.4 **UTILITY and DRAINAGE EASEMENTS:** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures, unless otherwise approved by the Board or Victoria.

No structure, landscaping or other Improvement shall be placed, erected or maintained upon any area designated on the Plan as a public utility easement that may damage or interfere with the installation and maintenance of utilities or that may change the direction of flow of drainage channels in such easement areas or channels in such easement areas. Such public utility easement areas, and all improvements thereon, shall be maintained by the easement area is maintained by the Owner of the Lot on which the easement area is located unless such easement area is maintained by the utility company or a county, municipality or other public authority.

4.5 **TEMPORARY OCCUPANCY:** No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time for a residence on any Lot, either temporary or permanent. Temporary buildings or structures used during the construction of a residence or other structure on a Lot shall be

removed immediately after the completion of construction.

- 4.6 **TRUCKS, TRAILERS, CAMPERS AND BOATS:** Truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment of non-commercial type or vehicle may be parked on the rear of Lots only. Driveways are reserved for Owner and guest parking and are restricted to passenger vehicles only. No trucks, trailers, campers, boats, or commercial vehicles, are to be parked on the driveways, front yards, boulevards or road allowances at any time.
- 4.7 **MOTOR VEHICLES:** No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any front Lot or street, and no inoperable vehicle may be stored or parked on any front or rear Lot or street, so as to be Visible From Neighbouring Property.
- 4.8 **PARKING:** All vehicles of Owners and of their lessees, employees, guests and invitees shall be kept in garages or residential driveways of the Owners wherever and whenever such facilities are sufficient to accommodate the number of vehicles on a Lot; provided, however, this Section shall not be construed to permit the parking in the above-described areas of any vehicle whose parking is otherwise prohibited by this Declaration or the parking of any inoperable vehicle.
- 4.9 **NUISANCES:** No nuisance shall be permitted to exist on any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupant or which shall in any way interfere with the quiet enjoyment of each of the Owners of their respective Lots and residences. Without limiting the generality of the forgoing provisions, no horns, whistles, bells or other sound devices, except fire detection and security devices used exclusively for such purposes, shall be located, used or placed on the exterior of any property.
- 4.10 **REPAIR of BUILDINGS:** No building, landscaping or other Improvement upon any Lot shall be permitted to fall into disrepair, and each such building, landscaping or other Improvement shall at all times be kept in good condition and repair by the Owner thereof.
- 4.11 **TRASH CONTAINERS and COLLECTION:** No garbage, rubbish or trash shall be placed or kept on any Lot except in covered containers. In no event shall such container be maintained so as to be Visible From Neighbouring Property except to make the same available for collection. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No incinerators shall be kept or maintained on any Lot.
- 4.12 **SCREENING and FENCING:** All clotheslines, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot, unless in the rear yard and unless they are erected, placed or maintained in such a manner as to not be Visible From Neighbouring Property.
- 4.13 **ENCROACHMENTS:** No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of eight (8) feet. The Common Area and all Lots shall be subject to an easement for overhangs and encroachments by walls, fences or other structures upon adjacent Lots and Common Area as constructed by Victoria or as reconstructed or repaired in accordance with the original plans and specifications or as a result of repair, shifting, settlement or movement of any such structure.

- 4.14 **MACHINERY and EQUIPMENT:** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or repair of a residence, appurtenant structures, or other Improvements constructed by Victoria or approved by the Architectural Committee.
- 4.15 **RESTRICTION on FURTHER SUBDIVISION:** No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than Victoria, and no portion less than all of any such Lot or an undivided interest in all of any such Lot shall be conveyed or transferred by any Owner other than Victoria.
- 4.16 **SIGNS:** Unless otherwise approved by the Architectural Committee, no signs whatsoever (including, but without limitation, Commercial, "for sale", "for rent" and similar signs) shall be erected or maintained on any Lot except:
- (a) One residential identification sign with a total face area of eighty square inches or less;
 - (b) Such signs as may be required by legal proceedings;
 - (c) One "for sale" or "for rent" sign with a total face area of five square feet or less; and
 - (d) Any signs approved or installed by Victoria.
- 4.17 **DECLARANT'S EXEMPTION:** Nothing contained in this Declaration shall be construed to prevent or restrict the erection or maintenance by Declarant, or their duly authorized agents, of structures, Improvements or signs necessary or convenient to the construction, development, identification, or sale of Lots or other property within the Project. Without limiting the generality of the foregoing, Victoria shall be exempt from the requirements of all architectural control provisions contained herein or in the Articles or Bylaws.
- 4.18 **MINERAL EXPLORATION:** No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.
- 4.19 **DISEASES and INSECTS:** No Owner shall permit anything or condition to exist upon any property that could induce, breed or harbor infectious plant diseases or noxious insects.
- 4.20 **IMPROVEMENTS and ALTERATIONS:** No addition, alteration, repair, change or other work that in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any Lot, or the Improvements located thereon, from their appearance on the date the Lot was conveyed by Victoria to a Purchaser shall be made or done without the prior written approval of the Architectural Committee. This shall also include but not be limited to patio additions, and storage sheds.

Any Owner desiring approval of the Architectural Committee for any addition, alteration, repair, change or other work that alters the exterior appearance of his Lot, or the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work including construction plans with material specification that the Owner desires to perform.

Any Owner requesting the approval of the Architectural Committee also shall submit to that Committee any additional information that the Architectural Committee may request.

All plans to the Committee shall bear the approval of the Town of Lincoln if required by law.

In the event that the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been received by it, approval shall be deemed granted. The approval by the Architectural Committee of any addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar addition, alteration, repair, change or other work subsequently submitted for approval. If the Owner fails to receive Architectural approval the Architectural Committee shall have authority to request the removal of such building, shed, alteration at the Owner's expense.

Upon receipt of approval from the Architectural Committee for any addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

- 4.21 **COMMON FENCES OR WALLS:** Common fences or walls or fences or walls separating the yards between two Lots, which do not constitute a portion of a dwelling unit shall be fences or walls constructed on the boundary line between two Lots. The rights and duties of Owners of Lots with respect to common fences or walls shall be as follows:
- (a) The Owners of contiguous Lots who have a common fence or wall shall both equally have the right to use such fence or wall provided that such use by the Owner does not interfere with the use and enjoyment of same by the other Owner;
 - (b) In the event that any common fence or wall is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to promptly rebuild and repair the common fence or wall without cost to the other Owner or Owners;
 - (c) In the event any such common fence or wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, pets or family (including wind damage, ordinary wear and tear and deterioration from lapse of time) then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good a condition as formerly at their joint and equal expense;
 - (d) Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes any common fence or wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements;
 - (e) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title;
 - (f) In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or bylaws, any Owner proposing to modify, make additions to or rebuild a common fence or wall shall first obtain the written consent of the adjoining Owners;
 - (g) In the event any common fence or wall encroaches upon a Lot or the Common Area a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Owners of the Lots that share such common fence or wall.
- 4.22 **OUTDOOR BURNING:** There shall be no outdoor burning of trash or other debris; provided, however, that the foregoing shall not be deemed to prohibit the use of normal

residential barbecues or other similar outside cooking grills or controlled fireplace approved by the Architectural Board.

- 4.23 **FUEL TANKS:** No fuel tanks of any kind shall be erected, placed or maintained on the Property except for propane or similar fuel tanks permitted under the bylaws of the Town of Lincoln and approved by the Architectural Committee.
- 4.24 **WINDOWS:** Within thirty (30) days of occupancy each Owner shall install permanent draperies or suitable window treatments on all windows facing the street. All window treatments that are Visible From Neighbouring Property must show white, unless otherwise approved by the Architectural Committee. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar types, shall be installed or placed upon the outside or inside of any windows.
- 4.25 **HVAC and SOLAR PANELS:** Except as initially installed by Victoria, no heating, air conditioning, evaporative cooling or solar energy collecting unit or panels shall be placed, constructed or maintained upon any Lot without the prior written approval of the Architectural Committee.
- 4.26 **GARAGES and DRIVEWAYS:** The interior of all garages situated on any Lot shall be maintained in a neat, clean and sightly condition. Garages shall be used only for the parking of vehicles and the storage of normal household supplies and material and shall not be used or convened for living quarters or recreational activities without the prior written approval of the Architectural Committee. All driveways shall be of concrete construction. Garage doors shall be opened only as needed for ingress and egress or when in use.
- 4.27 **LEASING RESTRICTIONS:** Any lease or rental agreement must be in writing and be subject to the requirements of the Project Documents. All leases must be for an entire residence and Lot and must have a minimum term of thirty (30) days. An Owner must notify the Board of any lease and must provide the Board the Following information: (a) name of tenant, (b) date and term of the lease, and (c) current address of the Owner.
- 4.28 **DEVELOPMENT GUIDELINES:** Notwithstanding anything to the contrary herein, the development of the Project and the construction of Improvements shall be subject to any lawful requirements of the Town of Lincoln.

ARTICLE 5

EASEMENTS

- 5.1 **UTILITY EASEMENT:** There hereby is created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities approved by Victoria; or the Board, including, but not limited to, water, sewer, gas, telephone, electricity and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility to erect and maintain any necessary facilities and equipment on the Common Area. This easement shall in no way affect any other recorded easements on the Common Area.
- 5.2 **EASEMENTS for INGRESS and EGRESS:** Easements for ingress and egress hereby are reserved to Victoria, the Owners, and their families, guests, tenants and invitees for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the common Area, and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.

- 5.3 **ASSOCIATION'S RIGHT of ENTRY:** Upon 48 hours notice and during reasonable hours, any member of the Architectural Committee, any member of the Board, or any authorized representative of the Association or Architectural Committee shall have the right to enter upon and inspect any Lot, excluding the interior of any residence located thereon, for the purpose of making inspections to determine whether the provisions of this Declaration, the Association Rules and the Architectural Committee Rules are being complied with by the Owner of said Lot.
- 5.4 **ASSOCIATION'S EASEMENT for PERFORMING MAINTENANCE RESPONSIBILITIES:** The Association shall have an easement upon, across, over and under the Common Area and the Lots for the purpose of repairing, maintaining and replacing the Common Area and for performing all of the Association's other rights, duties and obligations under the Project Documents.
- 5.5 **DECLARANT'S EASEMENT:** An easement hereby is reserved by Victoria over the Lots for the purpose of constructing, maintaining, and/or repairing all dwelling units and other Improvements.

ARTICLE 6

PROPERTY RIGHTS

- 6.1 **OWNERS' EASEMENT of ENJOYMENT:** Every Owner, and each person residing with such Owner, shall have a right and easement of enjoyment in and to the Common Area. Said easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:
- (a) The right of the Association to adopt reasonable rules and regulations governing the use of the common Area and facilities located thereon;
 - (b) the right of the Association to suspend the rights of an Owner (and his family, tenants and guests) to use the recreational facilities located on the Common Area for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Project Documents;
 - (c) the right of the Association to dedicate or transfer (including, but not limited to, mortgage) all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that (1) no such dedication or transfer (except utility easements) shall be effective unless evidenced by an instrument signed by at least two-thirds (2/3) of each class of Members (excluding Victoria) and (2) all such dedications and transfers shall be subject to easements in favor of Owners for ingress and egress through the common area to their respective Lots;
 - (d) the right of Declarant, and their agents and representatives, in addition to the rights set forth elsewhere in this declaration, to the non-exclusive use, without charge, of the Common Area for maintenance of sales and leasing facilities, and display and exhibit purposes.
- 6.2 **LESSEES:** If a Lot is leased or rented by the Owner thereof, the lessee and members of his family residing with such lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.
- 6.3 **GUESTS and INVITEES:** The Board shall have the right to regulate and limit the use of the Common Area by guests and invitees.

- 6.4 **LIMITATIONS:** An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement of enjoyment.

ARTICLE 7

MAINTENANCE

- 7.1 **MAINTENANCE of COMMON AREA by the ASSOCIATION:** The Association shall be responsible for the maintenance, repair and replacement of the Common Area and may without any approval of the Owners being required, do any of the following:
- (a) Reconstruct, repair, replace or refinish any Improvement or portion thereof located on the Common Area;
 - (b) Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a road, street, walk, driveway or parking area;
 - (c) Replace injured and diseased trees or vegetation in the Common Area, and Plant trees, shrubs and ground cover to the extent that the Board deems necessary for drainage or the conservation of water and for aesthetic purposes;
 - (d) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof, and
 - (e) Pay, before delinquent, ad valorem real property taxes assessed against the Common Area; and
 - (f) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the appearance thereof, in accordance with the general purposes specified in this Declaration.
- 7.2 **MAINTENANCE by ASSOCIATION of LANDSCAPING on COMMON AREAS:** The Association shall maintain, repair and replace the grass, plants, trees and other landscaping improvements situated on the Common Area. In the event the need for maintenance, repair or replacement of any portion of the Common Area that is being maintained by the Association pursuant to this Section is caused by the willful or negligent act of an Owner, his family, guest, invitees or animals for whom he is legally responsible under law, the Association shall cause the maintenance or repair to be performed and the cost of the maintenance or repairs shall be paid to the Association by the Owner, upon demand. The cost of the maintenance and repair shall be a lien on the Owner's Lot, and the Association shall enforce collection of such costs in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.
- 7.3 **MAINTENANCE of LOTS by OWNERS:** Each Owner shall be solely responsible for the maintenance, repair and replacement of his Lot, and the residence and all Improvements located thereon (including, but not limited to, the roofs of the residence and other structures situated on his Lot) and the landscaping improvements to both front and rear yards. Any improvements or landscaping that restricts, impedes or alters the free flow of storm water on any Lot will be a violation of this Declaration.
- 7.4 **DAMAGE or DESTRUCTION of COMMON AREA by OWNERS:** No owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association in connection therewith. Any expenses incurred by the Association by reason of any such act of an Owner shall be paid by said Owner, upon demand; to the Association to the extent that the Owner is liable therefor under law, and such amounts shall be a lien

on any Lots owned by said Owner and the Association shall enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

7.5 **NONPERFORMANCE by OWNERS:** If any Owner fails to maintain any portion of his Lot, and the Improvements located thereon, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of any such work performed by or at the request of the Association shall be paid for by the Owner of the Lot, upon demand from the Association, and such amounts shall be a lien upon the Owner's Lot and the Association shall enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

7.6 **PAYMENT of UTILITY CHARGES:** Each Lot shall be separately metered for water, sewer and electrical service and all charges for such services shall be the sole obligation and responsibility of the Owner of each Lot. The cost of water sewer and electrical service to the Common Area shall be a common expense of the Association and shall be included in the budget of the Association.

ARTICLE 8

INSURANCE

8.1 **SCOPE OF COVERAGE:** Commencing not later than the time of the first conveyance of a Lot to a person or entity other than Victoria, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

- (a) Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from a property policy;
- (b) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$ 1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a part;
- (c) Worker's compensation insurance to the extent necessary to meet the requirements of the laws of Ontario;
- (d) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, members of the Board and Architectural Committee or the Owner;
- (e) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:
 - (1) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;
 - (2) No act or omission by any Owner, unless acting outside the scope of his

authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(3) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees;

(4) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other owners; and

(5) The Association shall be the named insured.

- 8.2 **FIDELITY BONDS:** The Association may maintain blanket fidelity bonds as the Board deems appropriate or necessary for officers, directors, trustees and employees of the Association and any other persons handling or responsible for funds of or administered by the Association, whether or not they receive compensation for their services. The total amount of any fidelity bond maintained by the Association shall be based upon the best business judgement of the Board.
- 8.3 **PAYMENT of PREMIUMS:** The premiums for any insurance obtained by the Association pursuant to this Article shall be included in the budget of the Association and shall be paid by the Association.
- 8.4 **INSURANCE OBTAINED by OWNERS:** Each Owner shall be responsible for obtaining property insurance for his own benefit and at his own expense covering his Lot, and all Improvements and personal property located thereon. Each Owner shall also be responsible for obtaining at his expense personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of his Lot.
- 8.5 **PAYMENT of INSURANCE PROCEEDS:** With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.6 of this Article, the proceeds shall be disbursed for the repair or restoration of the damage to Common Area.
- 8.6 **REPAIR and REPLACEMENT of DAMAGED or DESTROYED PROPERTY:** Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or replacement would be illegal under any statute or bylaws, or (b) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any province or local health or safety statute or bylaws and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot.

ARTICLE 9

GENERAL PROVISIONS

- 9.1 **ENFORCEMENT:** The association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

- 9.2 **SEVERABILITY:** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.
- 9.3 **DURATION:** The covenants and restrictions of this Declaration shall run with and bind the property for a term of twenty (20) years from the date this Declaration is registered, after which time they shall be extended automatically for successive periods of ten (10) years. This Declaration may be terminated at any time by the written approval or the affirmative vote of Owners representing not less than seventy-five percent (75%) of the Lots. Any termination of this Declaration shall be evidenced by a Declaration of Termination signed by the President or Vice President of the Association.
- 9.4 **AMENDMENT:**
- (a) Except for amendments that may be executed by the Board or Victoria pursuant to Subsection (b) of this Section, the Declaration may only be amended by the written approval or the affirmative vote of Owners of not less than seventy-five percent (75%) of the Lots.
- (b) So long as Victoria owns any Lot, any amendment that would delete or modify any right granted to Victoria by this Declaration must be approved in writing by Victoria.
- 9.5 **BINDING EFFECT:** By acceptance of a deed or by acquiring any interest: in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof.
- 9.6 **SURVIVAL of LIABILITY:** The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any rights or remedies which the Association may have against such former Member arising out of or in any way connected with such membership and the covenants and obligations incident thereto.
- 9.7 **JOINT and SEVERAL LIABILITY:** In the case of joint ownership of a Lot the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration, shall be joint and several.