

**COLBY PLACE
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DECLARATION**

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DECLARATION

MADE PURSUANT TO THE CONDOMINIUM ACT STATUTES OF NOVA SCOTIA, 1970-71, CHAPTER 12 for Halifax County Condominium Corporation No. 92

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

Quad-Ram Development Group Limited, body corporate, with Head Office at Dartmouth, County of Halifax, Province of Nova Scotia, (the "Declarant").

WHEREAS the Declarant is the owner in fee simple of lands and premises situate at Colby Village, in the County of Halifax aforesaid, as more particularly described in Schedule "A" hereto annexed, and in the Description filed herewith in accordance with section 11 of the Condominium Act; and

WHEREAS the Declarant has constructed building upon the said lands containing dwelling units; and

WHEREAS the Declarant intends that the said lands together with the said buildings constructed thereon shall be governed by the Act.

NOW THEREFORE THE DELCARANT HEREBY DECLARES AS FOLLOWS:

I. **INTRODUCTORY**

1.01 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;
- (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 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 plaster on the walls and the extensions of the planes of such surfaces across windows, doors and other openings; and
- (b) on all levels, by the upper surface of the concrete floor slab or floor joists and by the upper surface of the plaster on the ceiling.

Notwithstanding the foregoing; the unit shall not include:

- (a) any load-bearing walls or joists within the boundaries of the unit;
- (b) concrete floor slabs within the boundaries of the unit.
- (c) 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 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 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 Interest**

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" 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 **Specifications of Common Expenses**

Common expenses mean the expenses of the performance of the objects and the 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, heating, fuel and all other utilities and services purchased by the Corporation for use in the Common Elements;
- (c) the payment of realty taxes (including local improvement charges) levied against the property until such time as said 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; and
- (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 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**

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 contributions 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 and egress from his unit; and
- (b) each owner is entitled to the exclusive use of one (1) outdoor parking space designated in the description by being numbered the same as the number of each unit with the letter "P" following such number for the purpose of parking of motor vehicle only.

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 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 of 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) nothing herein contained shall prevent and no By-law or house rule shall be made to prevent the Declarant until all of the units have been sold for the first time by it 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 and/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**

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, will, 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 terms of my tenancy.”

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.

V. **BY-LAWS**

- 5.01 The Corporation may, by a vote of members who own 66 2/3 percent (changed to 60% by pen) 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 Elements;
 - (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 sixty-six and two-thirds (66 2/3%) of the Common Elements.

VII. **MAINTENANCE AND REPAIRS**

7.01 **Maintenance and Repairs of units of the Owner**

- (a) each Owner shall maintain his unit, and, subject to the provisions of this Declaration, 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 collection 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 charge 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 installments as the Board of Directors may decide upon, which installments 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 toward 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 interior 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 exclude 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 the Owner of such excluded portions of the Common Elements shall be in accordance with any directions and specifications set 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.

VII. **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 (10) 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 repairs 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 the 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; and
 - (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 damages 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 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;
 - (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; and

- (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; and
- (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) the 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:
- (i) 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;
 - (ii) waivers of subrogation against the Corporation, its manager, agents, employees and servants and owners and member of the household of any owner or occupant of a unit, except for arson and fraud;
 - (iii) that such policy or policies of insurance shall not be cancelled or substantially modified without at least sixty (60) days prior written notice to all parties whose interest appear thereon, and to the insurance trustee;
 - (iv) waivers of any defence based on co-insurance or of invalidity arising from the conduct or any act or omission of any insured;
 - (v) 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.
 - (vi) 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 effected 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 (10) 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 sub-paragraph (i) of paragraph (2) of Clause 9.01 of this Section IX, the proportion of such proceeds attributable to any 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 servant, 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 obtained by the Corporation.

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;
- (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 Charter 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 obliged 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 VII 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;
- (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 25 percent of the value of building 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 accordance 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, cost, 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 for all other units, except for any loss, cost, 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 may decide upon, which installments 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, cost, 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, cost, 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 to the above provisions in the 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 other.

13.02 **Part of Common Elements Only 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 expropriation 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 owner 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 of cost less the minimum 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 portions 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 Interest Expanded:**

The remaining interest 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.

XIV. GENERAL MATTERS AND ADMINISTRATION

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 care 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 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, any other rules and regulations. The acceptance of a deed or transfer or the entering into 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 provisions.

14.05 **Resolution of Conflict of Provisions**

In the event of a conflict between the provisions of the Act, this Declaration or the By-laws including the Common Element Rules, 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 or the party to be served, or may be given by ordinary mail, postage prepaid, addressed to the Corporation c/o 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 is 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 20th day of September 1985.

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

Executed in the presence of:

QUAD-RAM DEVELOPMENT GROUP LIMITED

PER: _____

PER: _____

CONDOMINIUM ACT
Accepted for Registration this 17th day
of December, A.D., 1985, at the hour of 3:30 pm

Registrar of Condominiums

SCHEDULE "A"**LOT A-9A-A****HALIFAX COUNTY CONDOMINIUM CORPORATION NO. 92****COLE HARBOUR, HALIFAX COUNTY, NOVA SCOTIA**

All that certain lot of land on the eastern side of Cumberland Drive and the northern side of Colby Drive in the district of Cole Harbour, County of Halifax, Province of Nova Scotia being Lot A-9A-A on a plan (Servant, Dunbrack, McKenzie & MacDonald Limited Plan Number 71-43-0) showing Lot A-9A-A and Boundaries of Units 1 to 9 incl. and Extent and Location of Exclusive Use Portions of the Common Elements Level – 1, "Colby Place" surveyed for Quad-Ram Development Group Limited signed by Roy A. Dunbrack, N.S.L.S. dated September 17, 1985 and described as follows:

BEGINNING on the northern street line of Colby Drive where it is intersected by a northwestern boundary of Lot A-9B-B;

THENCE N 23° 36' 35", 152.34 feet along said northwestern boundary of Lot A-9B-B to an angle therein;

THENCE N 65° 25' 52" E, 130.09 feet along a northwestern boundary of Lot A-9B-B to an angle therein;

THENCE S 68° 45' 00", 24.63 feet along a northern boundary of Lot A-9B-B to an angle therein;

THENCE N 21° 15' 00", 108.00 feet along a western boundary of Lot A-9B-B to an angle therein;

THENCE S 68° 45' 00", 24.00 feet along a northern boundary of Lot A-9B-B to an angle therein;

THENCE N 69° 15' 40" E, 33.63 feet along a northern boundary of Lot A-9B-B to an angle therein;

THENCE N 61° 03' 20" E, 31.24 feet along a northwestern boundary of Lot A-9B-B to its intersection with the southern boundary of Lot A-7 said point being distant 1,314.35 feet on a bearing of S 45° 17' 38" E from Nova Scotia Coordinate Monument Number 22144;

THENCE N 68° 45' 00" W, 284.60 feet along said southern boundary of Lot A-7 to its intersection with the eastern street line of Cumberland Drive;

THENCE S 19° 00' 20" W, 381.08 feet along said eastern street line of Cumberland Drive to a point of curvature;

THENCE southerly on a curve to the left which has a radius of 20.00 feet for a distance of 30.63 feet to a point of curvature on the aforesaid northern street line of Colby Drive;

THENCE S 68°, 45' 00" E, 59.13 feet along said northern street line of Colby Drive to the place of beginning.

CONTAINING 60,712 square feet (1.394 acres)

ALL Bearings are Nova Scotia Coordinate Survey System Grid Bearings and are referred to Central Meridian, 64° 30' West.

SUBJECT to rights of the owners from time to time of Lot A-9B-B for the purpose of laying and constructing driveways, parking areas, storm sewers, sanitary sewers, water pipes, electrical and telephone wires, cable television and future similar services reasonably necessary for the enjoyment of Lot A-9B-B and of keeping and maintaining the same at all times in good condition and repair and for such purposes the owners from time to time of Lot A-9B-B shall have access to all such services at all times by its tenants, servants, employees and workmen both with and without vehicles.

TOGETHER with rights over Lot A-9B-B for the purpose of laying and constructing driveways, parking areas, storm sewers, sanitary sewers, water pipes, electrical and telephone wires, cable television and future similar services reasonably necessary for the enjoyment of Lot A-9A-A and of keeping and maintaining the same at all times in good condition and repair and for such purposes the owners from time to time of Lot A-9A-A shall have access to all such services at all times by its tenants, servants, employees and workmen both with and without vehicles.

Roy A. Dunbrack, N.S.L.S.

Halifax, Nova Scotia

September 17, 1985

SCHEDULE "B"
CONSENT OF ENCUMBRANCES
(Halifax Condominium Corporation No. 92)

The undersigned, being a registered encumbrancer against the lands described in Schedule "A" hereto, consents to the registration of this Declaration.

DATED at Halifax, Nova Scotia this 19th day of September A.D. 1985

MORGUARD TRUST COMPANY

per: _____

(Witness)

SCHEDULE "C"

HALIFAX COUNTY CONDOMINIUM CORPORATION NO. 92

COLE HARBOUR, HALIFAX COUNTY, NOVA SCOTIA

Level #	Unit #	Proportion of Common Interest (%)	Proportion of Contributions to Common Expenses (%)	Proportions of Voting Rights (%)
1 Ground Floor Level	1	2.67534	2.67534	2.67534
	2	2.50746	2.50746	2.50746
	3	2.50214	2.50214	2.50214
	4	2.50214	2.50214	2.50214
	5	2.69398	2.69398	2.69398
	6	2.48081	2.48081	2.48081
	7	2.50214	2.50214	2.50214
	8	2.51012	2.51012	2.51012
	9	2.55009	2.55009	2.55009
2 2 nd Floor Level	1	2.69666	2.69666	2.69666
	2	2.52078	2.52078	2.52078
	3	2.52078	2.52078	2.52078
	4	2.52078	2.52078	2.52078
	5	2.72862	2.72862	2.72862
	6	2.52878	2.52878	2.52878
	7	2.52878	2.52878	2.52878
	8	2.52878	2.52878	2.52878
	9	2.56875	2.56875	2.56875
	10	2.54744	2.54744	2.54744
3 3 rd Floor Level	1	2.69666	2.69666	2.69666
	2	2.52078	2.52078	2.52078
	3	2.52078	2.52078	2.52078
	4	2.52078	2.52078	2.52078
	5	2.72862	2.72862	2.72862
	6	2.52878	2.52878	2.52878
	7	2.52878	2.52878	2.52878
	8	2.52878	2.52878	2.52878
	9	2.56875	2.56875	2.56875
	10	2.54744	2.54744	2.54744
4 4 th Floor Level	1	2.69666	2.69666	2.69666
	2	2.52078	2.52078	2.52078
	3	2.52078	2.52078	2.52078
	4	2.52078	2.52078	2.52078
	5	2.73395	2.73395	2.73395
	6	2.52878	2.52878	2.52878
	7	2.52878	2.52878	2.52878
	8	2.52878	2.52878	2.52878
	9	2.56875	2.56875	2.56875
	10	2.54744	2.54744	2.54744