

The applicant(s) hereby applies to the Land Registrar.

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Applicant(s)

Name SIMCOE CONDOMINIUM CORPORATION NO 259
 Address for Service c/o
 Hassey Management Corp.
 17 Poyntz St.
 Barrie, ON L4M 3N6

SIMCOE Condominium Corporation No. 259 hereby certifies that by-law number 10 attached hereto See Schedules is a true copy of the by-law. The by-law was made in accordance with the Condominium Act. The owners of a majority of the units of the corporation have voted in favour of confirming the by-law.

I, S. BIEMILLER AND I, F. TAVARES, have the authority to bind the corporation.

Signed By

Milton Wedman Zwicker 93 Coldwater St. E., P.O. Box 310 acting for Applicant(s) Signed 2006 11 06
 Orillia L3V 6J7
 Tel 7053256146
 Fax 7053250044

Submitted By

ZWICKER EVANS LEWIS LLP 93 Coldwater St. E., P.O. Box 310 2006 11 06
 Orillia L3V 6J7
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Fees/Taxes/Payment

Statutory Registration Fee \$60.00
 Total Paid \$60.00

File Number

Applicant Client File Number : 20-2066-004

By-Law No 10
Simcoe Condominium Corporation No 259
Mediation and Arbitration Rules and Procedures

Whereas:

1. The Board wishes to establish the procedure with respect to the mediation and arbitration of disputes or disagreements between the Corporation and the Owners for the purpose of section 125 and/or 132 of the Condominium Act, 1998 as amended;
2. Mediation is a voluntary process where the Parties to a dispute, with the help of an impartial third person (the "Mediator"), attempt to work towards a mutually satisfactory solution;
3. Arbitration is a quasi-judicial informal procedure involving an impartial third person, other than a judge, who conducts a hearing and renders an award or decision based upon the merits of the dispute.

BE IT ENACTED as a By-law of Simcoe Condominium Corporation No 10 as follows:

1. Definitions

1.1 In this By-law,

- (a) "Act" means the Condominium Act, 1998, S. O. 1998, chapter. 19 as amended;
- (b) "Arbitration Act" means the Arbitration Act , 1991, S. O. 1991, chapter 17;
- (c) "Board" means the Board of Directors of the Corporation;
- (d) "Corporation" means Simcoe Condominium Corporation No ;
- (e) "Owner" means a person who owns a freehold interest in a unit and its appurtenant common interest and who is shown as the Owner in the records of the land registry office in which the description of the Corporation is registered, and includes a mortgagee in procession and a declarant with respect to any unit that the declarant has not transferred to another person;
- (f) "Parties" mean the Owner and the Corporation;
- (g) "Party" means the Owner or the Corporation;
- (h) "Service", "Serve" and "Serving" mean the method of service prescribed by subsection 47(7) of the Act.

Part I
Pre-Mediation & Mediation

2. **Pre-mediation**
- 2.1 If the Corporation receives notice of an allegation of non-compliance by an Owner of the declaration, by-laws or rules, the Board shall take reasonable steps to investigate the allegation including requesting a face-to-face meeting with the Owner by serving the Owner with a Notice Requesting a Face-to-Face Meeting-Form 1.
 - 2.2 The Board may appoint a committee to be made up of such person or persons as the Board shall decide from time to time to resolve a non-compliance issue with an Owner;
 - 2.3 In the event the Committee or the Board are unable to resolve the dispute resulting from the allegation within 60 days from the date Form 1 is served or the Owner fails to attend a face-to-face meeting with the Board or Committee as stated in Form 1, the Corporation shall serve the Owner with a Notice of Mediation-Form 2. The Corporation is deemed to be the Applicant and the Owner the Respondent.
 - 2.4 The Owner and the Corporation may at any time during the pre-mediation stage give each other notice they are willing to mediate their dispute by serving a Notice of Mediation-Form 2. The Party serving the Form 2 is deemed the Applicant. The other Party is deemed the Respondent.
 - 2.5 The Respondent must serve the Applicant with a completed Form 2 within 60 days of being served.
 - 2.6 At this pre-mediation stage the Parties shall take all reasonable steps to resolve the non-compliance allegation to the satisfaction of the Owner and the Corporation.
 - 2.7 If the Respondent fails to serve the Applicant with a completed Form 2 within 60 days from the date of service of Form 2, the dispute shall proceed to arbitration pursuant to the Act, the Arbitration Act and the arbitration procedures in this By-law.
 - 2.8 If the Parties have selected a Mediator but one of the Parties fails to attend the scheduled mediation, the Mediator shall issue a notice that the mediation has failed unless the Parties consent to a new mediation date prior to the issuance of a notice that the mediation failed. Once the Mediator issues a notice that the mediation has failed the dispute shall proceed to arbitration pursuant to the Act, the Arbitration Act and the procedures in this By-law.
 - 2.9 The Parties shall cooperate with the Mediator.

3. The Mediator

- 3.1 No person shall act as a Mediator in any dispute in which he or she has any financial or personal interest in the result of the mediation.
- 3.2 Prior to accepting an appointment, the prospective Mediator shall disclose any circumstances likely to create a presumption of bias or interest in the outcome of the proceedings, or prevent a prompt meeting with the Parties.
- 3.3 The Mediator has no authority to render a binding decision or force the Parties to accept a settlement.

4. The Mediation Agreement

- 4.1 Upon appointment, the Parties shall enter into a written agreement with the Mediator.
- 4.2 The Parties may, by written agreement, alter the mediation procedures set forth in this By-law, except for the items described in subsection 4.3 of this By-law.
- 4.3 The agreement shall include
 - (a) the date, time and location of the mediation session. The Parties and the Mediator may schedule more than one mediation session.
 - (b) A session shall be held in private. The only persons entitled to be present, without the consent of the Parties, shall be the Parties and their representatives.
 - (c) If the Parties are unable to reach a settlement, the Mediator shall not act as an Arbitrator.
 - (d) The Mediator or any member of the Mediator's firm or company shall not act for any of the Parties individually in relation to the subject matter of the mediation in any capacity during the currency of the mediation or at any time thereafter.
 - (e) The Parties recognize that mediation proceedings are settlement negotiations and that all offers, promises, conduct and statements, whether written or oral, made in the course of the proceedings are inadmissible in any litigation or arbitration of their dispute, to the extent the law allows.
 - (f) The Parties shall not rely on or introduce as evidence in any subsequent arbitral or judicial proceedings,
 - (1) any views expressed, or suggestions made, by the opposing Party to settle the dispute;
 - (2) any admissions made by the opposing Party;
 - (3) any indication by a Party that showed a willingness to accept a proposal

or recommendation from the Mediator to settle the dispute.

- (g) The Parties agree not to subpoena or otherwise require the Mediator to testify or produce records, notes or work product in any future proceedings. No recording or stenographic record shall be made of any mediation session. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in a mediation session.
- (h) In the event the Parties do reach a settlement that is made into a written agreement, the agreement will be admissible in a court or arbitration proceedings to enforce it, unless the Parties otherwise agree.
- (i) Any information disclosed to the Mediator in a private caucus shall remain confidential, unless the Party agrees that it may be disclosed.
- (j) The Parties undertake not to take any further steps in any legal proceedings regarding the issues being mediated while the mediation is in progress unless the same are required to preserve rights.

5. Conduct of Mediation Sessions

- 5.1 A Party may be represented by a lawyer or agent if prior notice, including the name, address and telephone number of the lawyer or agent, is given to the Mediator and other Parties at least 5 days prior to the scheduled mediation.
- 5.2 Ten (10) days before the date scheduled for the mediation, the Parties shall provide the Mediator with all information the Mediator reasonably requires to understand the issues, including:
 - (a) any written materials to be produced at the mediation;
 - (b) a list of all witnesses and a written statement from each; and
 - (c) any other material the Mediator may request.
- 5.3 At the mediation session(s), the Mediator will conduct an orderly settlement negotiation.
- 5.4 The Mediator will be impartial in such proceedings and has no authority to force the Parties to agree to a settlement.
- 5.5 The Mediator may conduct separate meetings (caucuses) with each Party to improve the Mediator's understanding of the respective positions of each Party.

6. Not Acting As Legal Counsel or Expert

6.1 The Parties agree that the Mediator:

- (a) Is not acting as legal advisor or legal representative for either of the Parties;
- (b) Has no duty to assert, analyse or protect any legal right or obligation including lien rights, statute of limitation or any other time limit or claim requirement;
- (c) Has no duty to make an independent expert analysis of the situation or raise issues the Parties do not raise or determine that additional necessary Parties should participate in the mediation;
- (d) Cannot guarantee that the mediation will result in a settlement.

6.2 The Mediator shall not be a party to any proceedings to enforce a settlement.

7. Termination

7.1 After the mediation commences, the mediation shall be terminated in any of the following circumstances:

- (a) By the execution of a settlement agreement by the Parties; or
- (b) By delivery of a notice to the Parties of a notice that the mediation has failed pursuant to subsection 132(1)(b)(ii) of the Act.

7.2 If the mediation is terminated pursuant to clause 7.1(b) hereof, the dispute shall proceed to arbitration pursuant to the Act, the Arbitration Act and procedures in this By-law.

8. Fees, Expenses and Costs

8.1 Each Party shall pay the share of the Mediator's fees and expenses that,

- (a) the settlement specifies, if a settlement is obtained; or
- (b) the Mediator specifies in the notice, that the mediation has failed, if the mediation fails.
- (c) if the Mediator fails to allocate the fees and expenses of the mediation between the Parties they shall share equally the fees and expenses.

8.2 Each Party shall bear its own costs and expenses of its participation in the mediation, unless otherwise agreed.

Part II
Arbitration

9. Arbitration Act

9.1 The Arbitration Act applies, except where modified by the procedures set out in this By-law.

10. Appointment of Arbitrator

10.1 Within ten (10) days from the date the

- (a) mediator delivers a notice that the mediation has failed in accordance with section 2.8 or 7.1(b) of this By-law, or
- (b) time has expired for the Respondent to serve Form 2 in accordance with section 2.7 of this By-law,

the Corporation shall serve the other Party to the mediation with a completed Notice to Begin Arbitration-Form A and a blank Notice of Reply-Form B.

10.2 The Notice to Begin Arbitration-Form A shall describe the dispute and propose the names of two arbitrators.

10.3 Within seven (7) days after receiving the Notice to Begin Arbitration-Form A, the Owner shall serve the Corporation with a completed Form B.

10.4 The Notice of Reply-Form B must indicate agreement to one of the proposed arbitrators or propose two arbitrators for the Corporation to consider.

10.5 If the Owner proposes two arbitrators in accordance with section 10.4 hereof, the Corporation shall within seven (7) days after service on it of Form B, serve the Owner with Notice Responding to Reply-Form C.

10.6 The Notice Responding to Reply-Form C must:

- (a) indicate agreement to one of the proposed arbitrators, or
- (b) reject the proposed arbitrators.

10.7 If the Parties are unable to agree to a single arbitrator within seven (7) days after Notice Responding to Reply-Form C is served, the Corporation shall apply to the Ontario Superior Court of Justice requesting an order to appoint a single arbitrator.

11. Substitution

11.1 If an Arbitrator refuses to act, is incapable of acting, withdraws from office, is

removed from office by order of the court, or dies, the Corporation shall follow the procedure described in section 10 of this By-law to replace the arbitrator.

12. Independence and Impartiality of Arbitrator

- 12.1 Unless otherwise agreed by the Parties an Arbitrator shall be and remain at all times wholly independent.
- 12.2 An Arbitrator shall be and remain wholly impartial and shall not act as an advocate for any Party to the arbitration.
- 12.3 Every person must, before accepting an appointment as Arbitrator, sign and deliver to the Parties a statement declaring that he or she knows of no circumstances likely to give rise to justifiable doubts as to his or her independence or impartiality and that he or she will disclose any such circumstances to the Parties if they should arise after that time and before the arbitration is concluded.

13. Representation

- 13.1 A Party may be self-represented or be represented or assisted by a lawyer. If represented by a lawyer, the Party shall, in writing, advise the other Party and the Arbitrator of the lawyer's name, address, telephone number, facsimile number, e-mail address and the capacity in which he or she is acting at least five (5) days before any scheduled hearing or meeting.

14. Pre-Arbitration Meeting

- 14.1 Within fourteen (14) days of the Arbitrator being appointed by the Parties or the court, the Arbitrator shall convene a pre-arbitration meeting. At the pre-arbitration meeting the Parties shall determine or in the absence of agreement by the Parties, the Arbitrator shall determine the following:
 - (a) what issues are in dispute and what matters and facts, if any, the Parties can agree to;
 - (b) the law governing the issues;
 - (c) what statements, if any, the Parties will exchange, including their format and exchange dates;
 - (d) the exclusion of witnesses;
 - (e) the production of correspondence, books, records and documents;
 - (f) any on-site inspections;

- (g) the names, addresses and credentials of witnesses, including written statements;
- (h) the presentation, if any, of affidavit evidence;
- (i) the time the Parties need to present their cases;
- (j) if the Parties want a stenographic record of the arbitration proceedings, including who will pay for it;
- (k) what to include in the record of the arbitration proceedings;
- (l) the requirement for special services, such as interpreters, translators, their costs and payment;
- (m) the Arbitrator's fees, payment and deposit.
- (n) the place and facilities;
- (o) the dates and times.

14.2 The Arbitrator shall within seven (7) days after holding the pre-arbitration meeting, deliver a report to the Parties setting out the determinations of the items in clause 14.1 hereof.

15. Conduct of the Arbitration

- 15.1 Subject to this By-law, the Act and the Arbitration Act, the Arbitrator may conduct the arbitration in the manner he or she considers appropriate.
- 15.2 Each Party shall be treated fairly and shall be given full opportunity to present its case.
- 15.3 The Arbitrator shall strive to achieve a just, speedy and cost effective determination of every proceeding on its merits.

16. Communications with Arbitrator

- 16.1 No Party or person acting on behalf of a Party shall have a communication with the Arbitrator in the absence of the other Party, concerning the substance of the dispute or any contentious matter relating to the proceeding.

17. General Powers of Arbitrator

17.1 The Arbitrator may:

- (a) order an adjournment of the proceedings from time to time;

- (b) make an interim award on any matter with respect to which he or she may make a final award;
- (c) grant such interim measures of protection as he or she deems appropriate, including an order for security for costs, for the posting of security for the amount claimed or for preservation of property that is the subject matter of the dispute;
- (d) make an award or interim award granting equitable relief, injunctions, or specific performance on such terms as may be just;
- (e) order inspection of documents, exhibits or other property;
- (f) order the taking down and recording of a transcript of any oral hearing;
- (g) at any time extend or abridge a period of time fixed or determined by him or her, or any period of time required in this By-law, except the time within which the award is to be made, where he or she considers it just and appropriate in the circumstances;
- (h) to hear motions and make procedural orders, including the settling of matters at the pre-arbitration hearing, that do not deal with the substance of the dispute;
- (i) request further statements clarifying issues in dispute;
- (j) give such direction with respect to procedural matters; and
- (k) request from a court of competent jurisdiction assistance in taking evidence.

18. Confidentiality

18.1 The Parties, the witnesses, and the Arbitrator shall treat all meetings and communications, the proceedings, documents disclosed in the proceeding, discovery and the awards of the Arbitrator as confidential, except in connection with a judicial challenge to, or enforcement of, an award, unless otherwise required by law. Nothing in this section shall preclude disclosure of such information to a Party's insurer, auditor, lawyer or other person with a direct financial interest in the arbitration.

19. Evidence

19.1 The Parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence under oath as the Arbitrator may deem necessary to an understanding and determination of the dispute. Strict conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the Arbitrator and the Parties, except where any of the Parties are voluntarily absent, in default or have waived the right to be present.

19.2 The Arbitrator shall determine the admissibility, relevance and materiality of the evidence offered and may exclude evidence deemed by the Arbitrator to be repetitive.

19.3 The Arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

20. Witnesses

20.1 The Arbitrator may determine the manner in which witnesses are to be examined, and save for a Party or the person nominated as that Party's representative for the purpose of the arbitration, may require witnesses to absent themselves from an oral hearing during the testimony of other witnesses.

20.2 Where the evidence of a witness is presented by written statement or sworn declaration, the Arbitrator may order that the witness be present at an oral hearing for cross-examination.

21. Arbitrator's Experts

21.1 If the Parties agree:

(a) the Arbitrator may appoint one or more independent experts to report on specific issues to be determined by the Arbitrator and may require a Party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for its inspection; and

(b) the Arbitrator shall allow the Parties fourteen (14) days to agree on the expert to be appointed by the Arbitrator, failing which the Arbitrator shall appoint the expert of his or her choice.

21.2 The Arbitrator shall communicate the expert's terms of reference to the Parties. Any dispute as to the terms of reference, the relevance of the required information, or production of it, shall be referred to the Arbitrator for decision. The cost of any such expert shall be borne by the Parties on a basis determined by the Arbitrator.

21.3 Upon receipt of the expert's report in writing, the Arbitrator shall deliver a copy of it to the Parties who shall be given the opportunity to challenge all or any part of the report in a manner determined by the Arbitrator.

21.4 The expert shall, on the request of a Party, make available to that Party for examination all documents, goods or other property in the expert's possession which the expert has used to prepare the report and shall provide that Party with a list of all documents, goods or other property not in the expert's possession, but which were provided to prepare the report, and a description of the location of those documents, goods or other property.

- 21.5 An expert shall, after delivery of the report, be required to attend for the purpose of cross-examination on some or all of the contents of that report, unless the Parties agree that such cross-examination is not required.

22. Default of a Party

- 22.1 Where a Party, without sufficient cause, fails to appear at a hearing or to produce evidence, the Arbitrator may continue the arbitration after being satisfied that a reasonable attempt has been made to communicate with the defaulting Party. The Arbitrator shall make an award based upon the evidence before him or her.

23. Formal Without Prejudice Offers of Settlement

- 23.1 At any time before the hearing on the merits, a Party may deliver to the other Party an offer marked "Without Prejudice" to settle one or more of the issues between it and any other Party on the terms specified in the offer. An offer to settle may specify a time within which it may be accepted and it will expire if not accepted within that time.
- 23.2 The Arbitrator shall take into consideration the offer, the time at which the offer was made and the extent to which it was accepted when dealing with questions of costs and interest.
- 23.3 The Arbitrator may be informed by a Party of the fact that an offer had been made under this section at the time of making any submission on the question of costs, but not before.

24. With Prejudice Offers

- 24.1 The Parties may deliver written offers marked "with prejudice" at any time, which offers may be put in evidence at the arbitration hearing.

25. Closure of Hearings

- 25.1 Where the Parties have, on inquiry, advised they have no further evidence to give or submissions to make, or the Arbitrator considers further evidence to be unnecessary or inappropriate, the Arbitrator may close the hearings.
- 25.2 On his or her own motion or on the application of a Party, the Arbitrator may, in exceptional circumstances, re-open the hearings to receive evidence or submissions concerning a matter, at any time, before the issuance of a partial final award or final award concerning that matter.

26. Settlement

- 26.1 If, during the arbitration proceedings, the Parties settle the dispute, the Arbitrator shall, upon receiving confirmation of the settlement or determining that there is a settlement, terminate the proceedings and, if requested by the Parties, record the settlement in the form of an arbitration award on agreed terms.

27. Award

- 27.1 The Arbitrator may make an interim award that he or she shall subsequently incorporate into and become part of a final award.
- 27.2 The Arbitrator shall make his or her final award with respect to the matters determined in the award, within thirty (30) days after the hearings have been closed.
- 27.3 Awards of the Arbitrator shall be in writing and shall, unless the Parties otherwise agree, state the reasons upon which they are based. The Arbitrator shall deliver to the Parties sufficient, originally signed copies of any award for each Party.

28. Interest

- 28.1 The Arbitrator may order interest to be paid in an award for such time and in such amount as he or she considers just and reasonable.

29. Costs

- 29.1 The Arbitrator shall fix the costs and expenses of the arbitration, including reasonable legal fees, the costs and expenses of the arbitration and the Arbitrator. If costs and expenses are awarded, such costs and expenses shall be made part of the award. The Arbitrator shall be entitled to make separate awards for legal costs and the fees and expenses of the arbitration and shall be entitled to apportion costs and expenses between the Parties.

30. Amendments and Corrections to the Award

- 30.1 The Arbitrator may, on the application of a Party or on its own initiative, amend or vary an award or interim award to correct:
- (a) a clerical or typographical error;
 - (b) an accidental error, slip, omission or other similar mistake; or
 - (c) an arithmetical error made in a computation.
- 30.2 An application by a Party to amend or vary shall be made within fifteen (15) days after that Party is notified of the award.
- 30.3 An amendment or variation shall not, without the consent of the Parties, be made more than thirty (30) days after the Parties have been notified of the award.
- 30.4 A Party may, within fifteen (15) days after being notified of the award, apply to the Arbitrator for clarification of the award, and the Arbitrator may clarify the award where he or she considers it appropriate, in which case the clarification becomes part of the award.

30.5 A Party may, within thirty (30) days after receiving the award, apply to the arbitrator to make an additional award with respect to claims presented in the proceedings but omitted from the award.

30.6 An original copy of an amended, varied or additional award shall be served on the Parties to the arbitration.

31. Time

31.1 In this By-law, where the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday. In the calculation of time, the first day shall be excluded and the last day included.

31.2 The Parties may, by agreement, modify any period of time in this By-law.

32. Miscellaneous

32.1 Invalidity

(a) The invalidity of any part of this By-law shall not impair or affect in any manner the validity and enforceability or effect of the balance of it.

32.2 Waiver of Enforcement

(a) No restriction, condition, obligation or provision contained in this By-law shall be deemed to have been abrogated or waived by reason of any failure to enforce it, regardless of the number of violations or breaches which may occur.

32.3 Headings

(a) The headings in the body of this By-law are inserted for convenience or reference only.

32.4 Amendment

(a) This By-law or any part of it may be amended or repealed in accordance with the provisions of the Act.

33. Conflicts

33.1 In the case of a conflict between the provisions of the Act and any provision in the declaration, By-laws or rules and regulations, the Act shall prevail;

33.2 In the case of a conflict between the provisions of the Declaration and any provision in the By-laws or rules and regulations, the Declaration shall prevail, unless the By-law or rule has been amended after the registration of the Declaration as provided for in the Act; and

33.3 If the provisions of the Act, the Arbitration Act or the Declaration are silent, the provisions of this By-law shall prevail.

ENACTED AND PASSED by the Board of Directors the 28th, day of July, 2006 and confirmed without amendment by the owners of a majority of the units on the 19th day of SEPTEMBER, 2006.

WITNESS the seal and the signatures of the signing officers of the Corporation this 27th day of SEPTEMBER, 2006.

Simcoe Standard Condominium Corporation No. 259

Per: Laura Beattie
President

Per: Francis Tavares
Secretary