

# CITY COUNCIL AGENDA



**DATE** June 16, 2008 at 6:00 p.m.

Please turn off or place on non-audible all cell phones, PDAs, Blackberrys and pagers during the meeting.

## **Disclosure of Pecuniary Interest**

### **MEETING AS SHAREHOLDER OF THE GUELPH JUNCTION RAILWAY**

#### **1. Financial Statements**

THAT the audited financial statements of Guelph Junction Railway for the period ended December 31, 2007, and the report of the auditors be received.

#### **2. Appointment of Auditors**

THAT Deloitte & Touche LLP be appointed as auditors of the Guelph Junction Railway to hold office until the next annual meeting of the shareholder of the Corporation, be approved.

#### **3. By-law No. 1**

THAT By-law No. 1, being a by-law relating generally to the transaction of business and affairs of the Guelph Junction Railway be received and referred to staff for review and comment back to Council.

#### **4. Staggering of Appointments for Directors Term of Office**

THAT the appointments to the Guelph Junction Railway Company Board be staggered to reflect 1, 2 and 3 year appointments;

AND THAT the Shareholders Declaration be amended accordingly.

## **ADJOURNMENT**



May 28, 2008

Corporation of the City of Guelph  
City Hall  
Guelph, ON

Attn: Ms. Lois Giles, City Clerk

Dear Ms. Giles:

*RE: Annual Meeting Guelph Junction Railway Company*

In connection with the foregoing, please find enclosed the following:

1. Notice of Annual General Meeting of the Shareholders of Guelph Junction Railway Company;
2. Financial Statements for the year ended December 31<sup>st</sup>, 2007 and Auditors Report thereon;
3. Copy of By-law No. 1 being a by-law relating generally to the transaction of the business and affairs of the Guelph Junction Railway Company.

Guelph Junction Railway Company

Secretary/Treasurer

Cc: Ms. Lois Payne, City Solicitor  
Mayor Karen Farbridge

**Guelph Junction Railway Company**

c/o City Hall, 59 Carden Street  
Guelph, Ontario, Canada N1H 3A1  
Located at: Suite 301, 98 Macdonell Street  
Tel: (519) 836-4848 Fax: (519) 837-5636



## GUELPH JUNCTION RAILWAY COMPANY

### NOTICE OF ANNUAL GENERAL MEETING OF SHAREHOLDERS

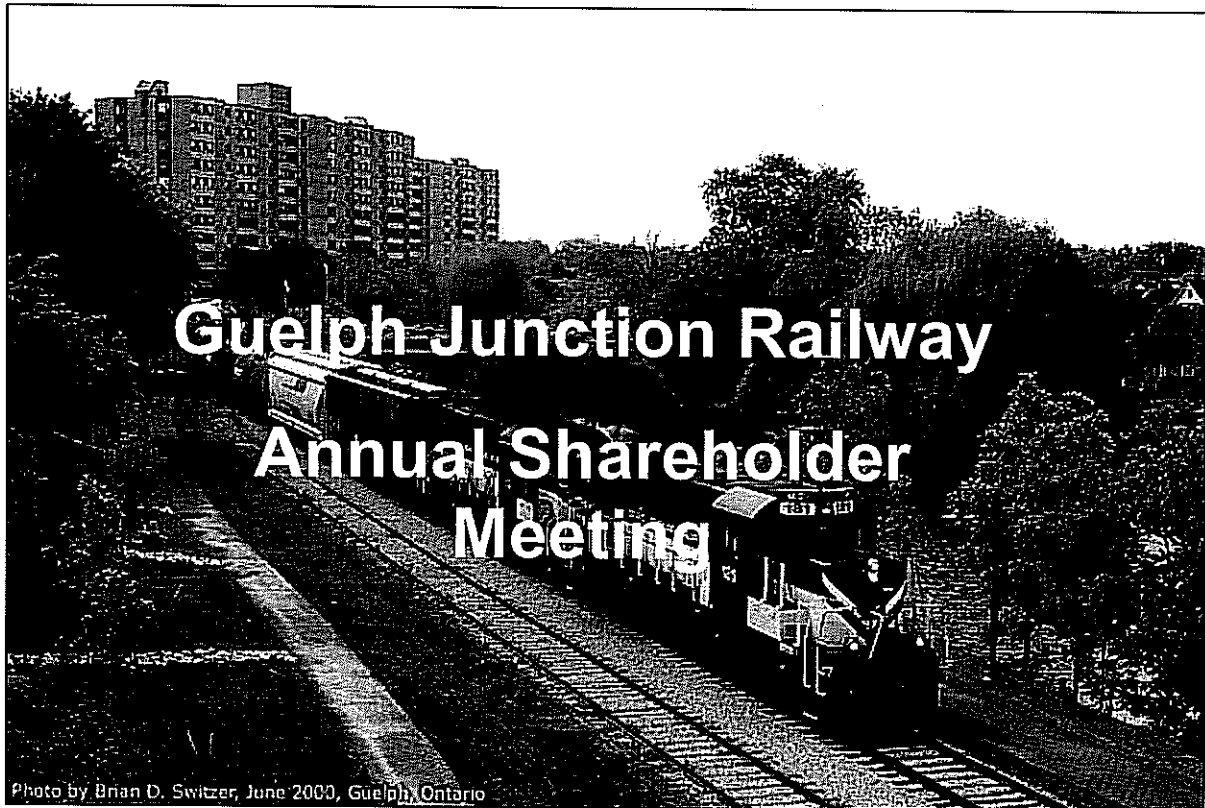
NOTICE IS HEREBY GIVEN that the Annual General Meeting of common shareholders of Guelph Junction Railway Company ("GJR") will be held in the Council Chambers, Guelph City Hall, 59 Carden Street, Guelph, Ontario on the 16<sup>th</sup> day of June, 2008 at the hour of 6:00 pm.

The Purpose of the Meeting is to:

1. Receive and consider the financial statements of GJR for the period ended December 31<sup>st</sup>, 2007 and the report of the auditors thereon;
2. Confirm the appointment of directors;
3. Appoint the auditors for the ensuing year and authorize the Directors to fix their remuneration;
4. Consider and, if deemed advisable, pass a resolution approving By-Law No. 1 being by-law relating generally to the transaction of the business and affairs of the Guelph Junction Railway Company; and
5. Transact such further and other business that may properly come before the meeting of any adjournments or postponements thereof.

Dated at Guelph this 28th day of May, 2008

By Order of the Board of Directors  
Paul G. Smith Q.C.  
Chair of the Board of Directors



**June 16<sup>th</sup>, 2008**

**Prepared By:  
Guelph Junction Railway**

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  - e) Company bylaw



June 16<sup>th</sup>, 2008

Your Worship Mayor Karen Farbridge  
And  
Members of Council

RE: Guelph Junction Railway Annual Shareholder Meeting

The Board of Directors of the Guelph Junction Railway are pleased to submit to Guelph City Council our 2007 Shareholder Report.

There were a number of firsts for the Railway in 2007. Rail traffic continued to increase allowing it to meet and exceed the yearly financial objectives of the approved five year Business Plan. The Guelph Junction Railway continues to recapitalize itself allowing it to meet our customers' requirements and enhance and preserve the Shareholders' asset value.

In 2007 the Guelph Junction Railway developed new Corporate Bylaws, the first in many years. These bylaws, which in accordance with the Shareholder Declaration are being placed before you for your approval will ensure the Railway's governance is conducted in full compliance with Statutory and Regulatory Requirements and best practices. The Board is further pleased to inform Council that it has passed all Transport Canada inspections and continues to conduct its operations in a safe and responsible manner in accordance with the approved Business Plan and Shareholder Declaration.

Yours truly

Ben Boehm, P.Eng.  
President  
Guelph Junction Railway

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Located at: Suite 301, 98 Macdonell Street  
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# **GUELPH JUNCTION RAILWAY 2007 YEAR END FINANCIAL REPORT**

Prepared by the Guelph Junction Railway

**Guelph Junction Railway Company**

c/o City Hall, 59 Carden Street

Guelph, Ontario, Canada N1H 3A1

Located at: Suite 301, 98 Macdonell Street

Tel: (519) 836-4848 Fax: (519) 837-5636

### Financial Executive Summary

	<u>2006</u>	<u>2007</u>	<u>Business Plan Projection</u>
REVENUE	\$1,550,862	\$1,556,001	1,683,200
EXPENSE	\$1,441,335	\$1,479,529	\$1,627,330
PROFIT (LOSS)	\$109,527	\$76,472	\$55,870
ADD SHAREHOLDER INVESTMENT		\$243,504	
EXCESS OF REVENUE OVER EXPENSE	\$109,527	\$319,976	\$55,870

As noted above the Guelph Junction Railway is showing an investment by the Shareholder. This entry is the result of City initiated railway works in conjunction with road construction projects at Morris Street, York Road and Victoria Road. Accounting rules require the City's financial contribution to these railway works to be shown as a revenue with a corresponding increase in railway asset value. Excluding this item the Guelph Junction Railway exceeded the business plan and budget projections for the year.



### Budget Performance and Variance Report

	Actual	Budget	Business Plan Projection	Actual/ Budget Variance
<b>REVENUE</b>				
Freight movement	\$1,335,798	\$1,356,187	\$1,356,200	
Crossings/leases	\$121,009	\$130,000	\$121,000	
Third Party Recoverable	\$99,165	\$22,000	\$206,000	
Other (Grants/interest)	\$29	\$0	\$0	
<b>TOTAL</b>	<b>\$1,556,001</b>	<b>\$1,508,187</b>	<b>\$1,683,200</b>	<b>+3%</b>
<b>EXPENSES</b> (less Interest, Taxes & Depreciation)				
Freight movement	\$896,205	\$925,800	\$926,530	
Infrastructure maintenance	\$255,998	\$266,500	\$266,500	
Administration/Legal/Other Audit/Grant	\$188,014	\$159,700	\$158,960	
Third Party Recoverable	\$39,865	\$0	\$175,000	
<b>TOTAL</b>	<b>\$1,380,082</b>	<b>\$1,352,000</b>	<b>\$1,526,990</b>	<b>+2%</b>
<b>Net Earnings</b>	<b>\$175,919</b>	<b>\$156,187</b>	<b>\$156,210</b>	
<b>Interest, Taxes &amp; Depreciation</b>	<b>\$99,447</b>	<b>\$100,340</b>	<b>\$100,340</b>	
<b>Profit [ Loss]</b>	<b>\$76,472</b>	<b>\$55,847</b>	<b>\$55,870</b>	<b>+37%</b>
Shareholder Investment	\$243,504			
Excess of Revenue over Expense	\$319,976	\$55,847	\$55,870	

### **Statement of Material Breach of the Requirements of Shareholders Declaration or Violation of Law**

In accordance with section 6.2 of the Shareholder Declaration the Board of Directors of the Guelph Junction Railway advises Council that no material breach of the requirements of the Shareholder Declaration or violation of law has occurred.

**Guelph Junction Railway Company**

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Consolidated financial statements of

**Guelph Junction Railway Company**

December 31, 2007

# **Guelph Junction Railway Company**

December 31, 2007

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## Auditors' report

To the Shareholder of  
Guelph Junction Railway Company

We have audited the consolidated balance sheet of Guelph Junction Railway Company as at December 31, 2007 and the consolidated statements of revenue, expense and surplus and of cash flows for the year then ended. These financial statements are the responsibility of the company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2007 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

*Deloitte & Touche LLP*

Chartered Accountants  
Licensed Public Accountants

April 30, 2008

# City of Guelph

## Guelph Junction Railway Company

Consolidated statement of cash flows

year ended December 31, 2007

	2007	2006
	\$	\$
<b>Operating activities</b>		
Cash from operations		
Excess of revenue over expense	319,976	109,527
Items not affecting cash		
Depreciation	89,300	87,897
Changes in non-cash operating working capital components		
Accounts receivable	124,689	(50,634)
Accounts payable and accrued liabilities	(2,643)	(192,298)
Inventory	(41,619)	-
	<u>489,703</u>	<u>(45,508)</u>
<b>Investing activity</b>		
Purchase of capital assets (net of deferred contributions \$643,092)	(245,933)	-
<b>Financing activity</b>		
Due to City of Guelph	(58,543)	(81,572)
Change in cash	<u>185,227</u>	<u>(127,080)</u>
Cash, beginning of year	125,803	252,883
<b>Cash, end of year</b>	<u>311,030</u>	<u>125,803</u>

# City of Guelph

## Guelph Junction Railway Company

Consolidated statement of revenue, expense and surplus  
year ended December 31, 2007

	2007	2006
	\$	\$
<b>Revenue</b>		
Freight movement	1,335,798	1,124,682
Non-freight movement	220,203	426,180
Other - City of Guelph (Note 4)	243,504	-
	<b>1,799,505</b>	<b>1,550,862</b>
<b>Expense</b>		
Audit	10,500	7,000
Depreciation	89,300	87,897
Food terminal	-	112,185
Freight movement and track maintenance	1,186,046	935,681
Administration and office	186,776	161,114
Other	6,907	137,458
	<b>1,479,529</b>	<b>1,441,335</b>
Excess of revenue over expense	<b>319,976</b>	<b>109,527</b>
Surplus, beginning of year	<b>5,542,953</b>	<b>5,433,426</b>
<b>Surplus, end of year</b>	<b>5,862,929</b>	<b>5,542,953</b>

# City of Guelph

## Guelph Junction Railway Company

Consolidated balance sheet  
as at December 31, 2007

	2007	2006
	\$	\$
<b>Assets</b>		
Current assets		
Cash	311,030	125,803
Accounts receivable	467,788	592,477
Prepaid expenses	350	350
Inventory	41,619	-
	820,787	718,630
Capital assets (Note 4, Note 5)	6,422,405	5,657,575
	7,243,192	6,376,205
<b>Liabilities, share capital and surplus</b>		
Current liabilities		
Accounts payable and accrued liabilities	90,142	92,785
Due to City of Guelph	142,324	200,867
	232,466	293,652
Deferred capital contributions (Note 5)	1,147,796	539,599
	1,380,262	833,251
Share capital	1	1
Surplus	5,862,929	5,542,953
	5,862,930	5,542,954
	7,243,192	6,376,205

# City of Guelph

## Guelph Junction Railway Company

Consolidated statement of cash flows  
year ended December 31, 2007

	2007	2006
	\$	\$
<b>Operating activities</b>		
Cash from operations		
Excess of revenue over expense	319,976	109,527
Items not affecting cash		
Depreciation	89,300	87,897
Changes in non-cash operating working capital components		
Accounts receivable	124,689	(50,634)
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Inventory	(41,619)	-
	489,703	(45,508)
<b>Investing activity</b>		
Purchase of capital assets (net of deferred contributions \$643,092)	(245,933)	-
<b>Financing activity</b>		
Due to City of Guelph	(58,543)	(81,572)
Change in cash	185,227	(127,080)
Cash, beginning of year	125,803	252,883
Cash, end of year	311,030	125,803



# City of Guelph

## Guelph Junction Railway Company

### Notes to the consolidated financial statements

December 31, 2007

#### 1. Description of business

Guelph Junction Railway Company was incorporated under the laws of Canada in 1844. The Company is wholly owned by The City of Guelph and is exempt from income taxes.

#### 2. Changes in accounting policies

##### *Future accounting changes*

##### *Financial instruments*

In April 2005, the CICA issued Section 1530, *Comprehensive Income*; Section 3251, *Equity*; Section 3855, *Financial Instruments – Recognition and Measurement*; Section 3861, *Financial instruments – Disclosure and Presentation* and Section 3865, *Hedges*. All these Sections will be applicable to financial statements relating to fiscal years beginning on or after October 1, 2007. Accordingly, the Company will adopt the new standards for its fiscal year beginning January 1, 2008. These standards provide guidance on: the recognition, measurement, classification and presentation of financial assets and liabilities including financial and non-financial derivative instruments and embedded derivatives; reporting items in other comprehensive income; hedge accounting criteria and methodologies and presentation of equity.

In December 2006, the CICA issued Section 3862, *Financial Instruments – Disclosures*; Section 3863, *Financial Instruments – Presentation*; and Section 1535, *Capital Disclosures*. All three Sections will be applicable to financial statements relating to fiscal years beginning on or after October 1, 2007. Accordingly, the Company will adopt the new standards for its fiscal year beginning January 1, 2008. Section 3862 on financial instruments disclosures, requires the disclosure of information about: a) the significance of financial instruments for the entity's financial position and performance and b) the nature and extent of risks arising from financial instruments to which the entity is exposed during the period and at the balance sheet date, and how the entity manages those risks. Section 3863 on the presentation of financial instruments is unchanged from the presentation requirements included in Section 3861. Section 1535 on capital disclosures requires the disclosure of information about an entity's objectives, policies and processes for managing capital.

##### *Inventories*

In June 2007, the Canadian Institute of Chartered Accountants ("CICA") issued Section 3031, *Inventories*, replacing Section 3030, *Inventories*. The new Section will be applicable to financial statements relating to fiscal years beginning on or after January 1, 2008. Accordingly, the Company will adopt the new standards for its fiscal year beginning January 1, 2008. It provides more guidance on the measurement and disclosure requirements for inventories. For example, it requires that fixed and variable production overheads be systematically allocated to the carrying amount of inventory.

##### *Goodwill and intangible assets*

In February 2008, the Canadian Institute of Chartered Accountants ("CICA") issued Section 3064, *Goodwill and intangible assets*, replacing Section 3062, *Goodwill and other intangible assets* and Section 3450, *Research and development costs*. Various changes have been made to other sections of the CICA Handbook for consistency purposes. The new Section will be applicable to financial statements relating to fiscal years beginning on or after October 1, 2008. Accordingly, the Company will adopt the new standards for its fiscal year beginning January 1, 2009. It establishes standards for the recognition, measurement, presentation and disclosure of goodwill subsequent to its initial recognition and of intangible assets by profit-oriented enterprises. Standards concerning goodwill are unchanged from the standards included in the previous Section 3062.

The Company is currently evaluating the impact of the adoption of these new Sections on its consolidated financial statements.

# City of Guelph

## Guelph Junction Railway Company

Notes to the consolidated financial statements

December 31, 2007

### 3. Basis of accounting

The financial statements of the Guelph Junction Railway Company are the representation of management prepared in accordance with Canadian generally accepted accounting policies.

#### *Basis of presentation*

The financial statements of the Guelph Junction Railway Company (the "Company"), for the year ended December 31, 2007 have been prepared on a consolidated basis. The consolidated financial statements include the accounts of the Guelph Junction Railway Operations Fund and Capital Fund.

#### *Inventory*

Inventory is valued at the lower of cost and net realizable value on a first-in, first-out basis.

#### *Capital assets*

Capital asset additions and major renewals are recorded at cost.

Depreciation is calculated using the declining-balance method at rates calculated to depreciate the cost of the assets over their estimated lives. The depreciation rates are as follows:

Tracks	4%
Structures	4%
Other	4%

#### *Revenue recognition*

The Company recognizes revenue when persuasive evidence of an arrangement exists, delivery has occurred or the services have been provided and when collection is reasonably assured.

#### *Use of estimates*

The preparation of financial statements in conformity with Canadian generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Significant estimates used within these financial statements include allowance for doubtful accounts, depreciation and amortization, and accrued liabilities. Actual results could differ from those estimates.

#### *Impairment of long-lived assets*

Long-lived assets are tested for recoverability whenever events or changes in circumstances indicate that their carrying amount may not be recoverable. An impairment loss is recognized when their carrying value exceeds the total undiscounted cash flows expected from their use and eventual disposition. The amount of the impairment loss is determined as the excess of the carrying value of the asset over its fair value.

# City of Guelph

## Guelph Junction Railway Company

Notes to the consolidated financial statements

December 31, 2007

#### 4. Related party transaction – City of Guelph

The Company has received capital asset contributions in the amount of \$243,504 from the City of Guelph, which is a related party. These contributions have been recognized as other revenue from the City of Guelph and are included in capital assets. These assets will be depreciated over their useful lives in accordance with the depreciation policies identified in Note 3.

#### 5. Capital assets

			2007	2006
	Cost	Accumulated depreciation	Net book value	Net book value
	\$	\$	\$	\$
Land	2,997,210	-	2,997,210	2,997,210
Tracks	3,545,176	699,570	2,845,606	2,056,627
Structures	481,327	104,566	376,761	392,459
Other	305,083	102,255	202,828	211,279
	<b>7,328,796</b>	<b>906,391</b>	<b>6,422,405</b>	<b>5,657,575</b>

During the year capital assets were acquired at an aggregate cost of \$889,025 (2006 - \$ Nil) of which \$643,092 (2006 - \$ Nil) were provided to the Company by a third party. The contributions provided by the third party are being deferred over the useful life of the capital assets acquired, which will reduce the depreciation expense.

#### 6. Financial instruments

##### *Credit risk*

Credit risk is the risk that counterparties will fail to act as contracted. The Company is exposed to credit risk through its trade accounts receivable. The Company provides credit to its customers in the normal course of its operations. There is no particular concentration of risk to the distribution of customers and the procedures for the management of credit risks.

##### *Fair value*

At year-end, the carrying amounts reported in the balance sheet for cash, accounts receivable, accounts payable and accrued liabilities, and due to the City of Guelph approximate fair value, due to the short-term nature of the balances.

#### 7. Comparative figures

Certain of the comparative figures have been reclassified to conform to the current year's presentation.



# **GUELPH JUNCTION RAILWAY**

## **Company Bylaw #1**

**(For Shareholder Approval as per Section 7.1 of  
Shareholder Declaration)**

Prepared by the Guelph Junction Railway

**Guelph Junction Railway Company**

c/o City Hall, 59 Carden Street  
Guelph, Ontario, Canada N1H 3A1  
Located at: Suite 301, 98 Macdonell Street  
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## **BY-LAW NO. 1**

### **A BY-LAW RELATING GENERALLY TO THE TRANSACTION OF THE BUSINESS AND AFFAIRS OF**

#### **GUELPH JUNCTION RAILWAY COMPANY**

BE IT ENACTED and it is hereby enacted as a by-law of

#### **GUELPH JUNCTION RAILWAY COMPANY**

(hereinafter called "Corporation") as follows:

Whereas the Corporation of the City of Guelph (the "City") is currently the sole shareholder of the Corporation;

And Whereas the City and the Corporation entered into a shareholders' declaration dated the 6th day of September, 2005, (the "Shareholder Declaration") to govern the relationship between the Corporation and its sole shareholder.

#### **GENERAL BUSINESS**

##### ***Registered Office***

1. The directors may from time to time by resolution fix the location of the registered office of the Corporation within the City of Guelph Ontario.

##### ***Seal***

2. The Corporation may, but need not, have a corporate seal. Should the Corporation choose to have a corporate seal such corporate seal shall be adopted and may be changed by resolution of the directors.

##### ***Financial Year***

3. The financial year of the Corporation shall be from January 1<sup>st</sup> to December 31<sup>st</sup> of any year.

##### ***Banking Arrangements***

4. The banking business of the Corporation, or any part thereof, shall be transacted with such bank, trust company or other firm or corporation carrying on a banking business as the directors may designate, appoint or authorize from time to time by resolution and all such banking business or any part thereof shall be transacted on the Corporation's behalf by such one or more officers and/or other persons as the board may designate, direct or authorize from time to time by resolution and to the extent therein provided, including without restricting the generality of the foregoing, the operation of the Corporation's accounts; the making, signing, drawing, accepting, endorsing, negotiating, allotting,

depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the giving of receipts for and orders relating to any property of the Corporation; the execution of any agreement relating to any banking business and defining the rights and powers of the parties thereto; and the authorizing of any officer of such banker to do any act or thing on the Corporation's behalf to facilitate such banking business.

### ***Execution of Instruments***

5. Deeds, transfers, assignments, contracts, obligations and other instruments in writing requiring the signature of the Corporation may be signed on behalf of the Corporation by

Any two of the President, Vice-President, Secretary-Treasurer, Chair of the Board

and the corporate seal, if any, shall be affixed to such instruments as may be required by any person so authorized to sign on behalf of the Corporation.

Notwithstanding any provisions to the contrary contained in the by-laws of the Corporation, the directors may at any time and from time to time by resolution direct the manner in which, and the person or persons by whom any particular deed, transfer, contract, obligation or other instrument in writing, any class of deeds, transfers, contracts, obligations or other instruments in writing requiring signature by the Corporation may or shall be signed.

## **DIRECTORS**

### ***Power of Directors***

6. The directors shall supervise the management of the business and affairs of the Corporation pursuant to the Shareholder Declaration.

### ***Number of Directors and Quorum***

7. Pursuant to the Shareholder Declaration, the maximum number of directors of the Corporation shall be ten (10). Five directors shall constitute a quorum at any meeting of the directors. Notwithstanding vacancies, the remaining directors may exercise all the powers of the board of directors so long as a quorum of the board of directors remains in office.

### ***Qualifications***

8. Each director shall be eighteen (18) or more years of age and a bona fide ratepayer of the City and having the necessary qualifications of a Councillor of the City. No person who is of unsound mind and has been so found by a court in Canada or elsewhere or who has the status of a bankrupt shall be a director. If a director acquires the status of a bankrupt or becomes of unsound mind and is so found, he/she shall thereupon cease to be a director.

### ***Election and Term***

9. The directors shall be elected in accordance with the Shareholder Declaration.

### ***Removal of Directors***

10. The removal of directors shall be in accordance with the shareholder declaration. The shareholders may by ordinary resolution at an annual or special meeting of the shareholders of the Corporation remove any director from office. Notice of intention to pass any such resolution shall be given in the notice calling the meeting and the shareholders may by a majority of votes cast at that meeting elect a person otherwise qualified to fill the vacancy created by the removal of such director.

### ***Vacancies***

11. Except as hereinafter provided vacancies on the board of directors may be filled in accordance with the Shareholder Declaration.

### ***Calling of Meetings***

12. Meetings of the board of directors shall be held from time to time at such place, at such time and on such day as the Chair of the Board or the President or a Vice-President who is a director or a quorum of directors may determine, and the Secretary shall call meetings when directed or authorized by the Chair of the Board or the President or by a Vice-President who is a director or by a quorum of directors. Notice of every meeting so called shall be given to each director not less than seven (7) days (excluding any part of a Sunday or Holiday as defined by the Interpretation Act of Canada for the time being in force) before the time when the meeting is to be held and such notice shall specify the general nature of any business to be transacted, save that no notice of a meeting shall be necessary if all the directors are present, and do not object to the holding of the meeting, or if those absent have waived notice of or have otherwise signified their consent to the holding of such meeting.

### ***Place of Meeting***

13. Meetings of the board of directors may be held at the registered office of the Corporation or at any other place within Guelph, Ontario.

### ***Participation by Telephone***

14. With the unanimous consent of all the directors of the Corporation present at or participating in a meeting, a meeting of directors or of a committee of directors may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to fully communicate with each other simultaneously and instantaneously and a director participating in such a meeting by such means is deemed to be present at that meeting. If a majority of the directors participating at a meeting held as herein provided are then in Canada the meeting shall be deemed to have been held in Canada.

### ***Votes to Govern***

15. At all meetings of the board of directors, unless otherwise provided in the Act, every question shall be decided by a majority of the votes cast on the question and in case of an equality of votes, the Chairman of the meeting shall **not** be entitled to a second or casting vote.

### ***Remuneration of Directors***

16. The directors of the Corporation may be paid such remuneration as may be determined by the board of directors, in accordance with the Shareholder Declaration. Any remuneration so payable to a director who is also an officer or employee of the Corporation or is counsel or solicitor of the Corporation or otherwise serves it in a professional capacity shall be, in addition to his/her salary as such officer, or his/her professional fees as the case may be. The directors shall also be paid such sums in respect of the out-of-pocket expenses incurred in attending board, committee or shareholder meetings or otherwise in respect of the performance by them of their duties as the board of directors may from time to time determine.

### ***Transaction of Business by Signature***

17. A resolution in writing signed by all the directors entitled to vote on that resolution at a meeting of directors or a committee of directors is as valid as if it had been passed at a meeting of directors or a committee of directors.

### ***Declaration of Interest***

18. Every director or officer of the Corporation who, is a party to a material contract or transaction or proposed material contract or transaction with the Corporation, or is a director or an officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the Corporation, shall disclose in writing to the Corporation or request to have entered in the minutes of the meeting of directors the nature and extent of his or her interest. All such disclosures shall be made at the time required by the excerpt from the Canada Business Corporations Act, RSC 1985, c. C-44 (attached as Appendix A), as if that Act applied to the Corporation and directors shall refrain from voting in respect of any such contract or transaction unless otherwise permitted by the Act.

### ***Avoidance Standards***

19. If a material contract is made or a material transaction is entered into between the Corporation and a director or officer of the Corporation or between the Corporation and any other person of which a director or officer of the Corporation is a director or officer or in which he has a material interest, the director or officer is not accountable to the Corporation or its shareholders for any profit or gain realized from the contract or transaction; and the contract or transaction is neither void or voidable, by reason only of that relationship or by reason only that the director is present at or is counted to determine the presence of a quorum at the meeting of directors that authorized the contract or transaction, if the director or officer disclosed his interest as hereinbefore provided and



the contract or transaction was reasonable and fair to the Corporation at the time it was so approved. A director or officer acting honestly and in good faith is not accountable to the Corporation or to its shareholders for any profit or gain realized from any such contract or transaction by reason only of his holding the office of director or officer and the contract or transaction, if it was reasonable and fair to the Corporation at the time it was approved, is not by reason only of the director's or officer's interests therein void or voidable where, the contract or transaction is confirmed or approved by special resolution at a meeting of the shareholders duly called for that purpose; and the nature and extent of the director's or officer's interest in the contract or transaction is disclosed in reasonable detail in the notice calling the meeting.

### ***Standard of Care***

20. Every director and officer of the Corporation in exercising his/her powers and discharging his/her duties shall act honestly and in good faith with a view to the best interests of the Corporation; and shall exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Every director and officer of the Corporation shall comply with the Act, the regulations, articles, by-laws and the Shareholder Declaration.

### ***Indemnity of Directors and Officers***

21. The Corporation shall indemnify the directors and officers of the Corporation, former directors or officers of the Corporation or a person who acts or acted at the Corporation's request as a director or officer of a body corporate of which the Corporation is or was a shareholder or creditor and his heirs and legal representatives against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of the Corporation or body corporate and with the approval of the court in respect of an action by or on behalf of the Corporation or body corporate to procure a judgment in its favour to which he is made a party by reason of being or having been a director or officer of the Corporation or body corporate against all costs, charges and expenses reasonably incurred by him in connection with such action, if, he acted honestly and in good faith with a view to the best interests of the Corporation; and in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.

### ***Insurance for Directors and Officers***

22. The Corporation shall purchase and maintain insurance for the benefit of the directors or officers of the Corporation, former directors or officers of the Corporation or persons who act or acted at the Corporation's request as a director or officer of a body corporate of which the Corporation is or was a shareholder or creditor and his/her heirs and legal representatives against any liability incurred by him/her, in his/her capacity as a director or officer of the Corporation, except where the liability relates to his/her failure to act honestly and in good faith with a view to the best interests of the Corporation; or in

his/her capacity as a director or officer of another body corporate where he/she acts or acted in that capacity at the Corporation's request, except where the liability relates to his/her failure to act honestly and in good faith with a view to the best interests of the body corporate.

### ***Financial Assistance***

23. The Corporation or any corporation with which it is affiliated, shall not, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise, to any shareholder, director, officer or employee of the Corporation or affiliated corporation or to an associate of any such person for any purpose; or to any person for the purpose of or in connection with a purchase of a share or a security convertible into or exchangeable for a share, issued or to be issued by the Corporation or affiliated Corporation.

## **OFFICERS**

### ***Appointed Officers***

24. The directors of the Corporation may from time to time designate the offices of the Corporation, appoint officers, specify their duties and, subject to the GJR Act and subject the Shareholder Declaration, delegate to them the powers to manage the business and affairs of the Corporation. A director may be appointed to any office of the Corporation and two or more offices of the Corporation may be held by the same person. The board of directors may remove at its pleasure any officer of the Corporation. The terms of employment and remuneration of any officer so appointed by it shall be settled from time to time by the board of directors. Unless otherwise from time to time specified by the board of directors the offices of the Corporation, if so designated, and the officers so appointed shall have the following duties and powers:

### ***President***

25. The President shall be charged with the general supervision of the business and affairs of the Corporation. Except when the board of directors has appointed a general manager or managing director, the President shall also have the powers and be charged with the duties of that office.

### ***Vice-President***

26. During the absence or inability of the President his duties may be performed and his powers may be exercised by the Vice-President, or if there are more than one, by the Vice-President in order of seniority (as determined by the board of directors) save that no Vice-President shall preside at a meeting of the board of directors or at a meeting of shareholders who is not qualified to attend the meeting as a director, as the case may be. If a Vice-President exercises any such duty or power, the absence or inability of the President shall be presumed with reference thereto. A Vice-President shall also perform such duties and exercise such powers as the President may from time to time delegate to him or the board may prescribe.

### ***General Manager***

27. The General Manager, if one be appointed, shall have the general management and direction, subject to the authority of the board of directors and supervision of the President, of the Corporation's business and affairs and the power to appoint and remove any and all officers, employees and agents of the Corporation not appointed directly by the board of directors and to settle the terms of their employment and remuneration. The General Manager shall be appointed by the Board and is not a Board member.

### ***Secretary***

28. The Secretary shall give, or cause to be given, all notices required to be given shareholders, directors, auditors and members of committees; he or she shall attend all meetings of the directors and of the shareholders and shall enter or cause to be entered in books kept for that purpose minutes of all proceedings at such meetings; he or she shall be the custodian of the stamp or mechanical device generally used by affixing the corporate seal, if any, of the Corporation and of all books, papers, records, documents and other instruments belonging to the Corporation; and he or she shall perform such other duties as may from time to time be prescribed by the board of directors. The Secretary shall be appointed by the Board and is not a Board member.

### ***Treasurer***

29. The Treasurer shall keep full and accurate books of account in which shall be recorded all receipts and disbursements of the Corporation and, under the direction of the board of directors, shall control the deposit of money, the safekeeping of securities and the disbursement of the funds of the Corporation; he or she shall render to the board of directors at the meetings thereof, or whenever required of him or her an account of all his or her transactions as Treasurer and of the financial position of the Corporation; and he or she shall perform such other duties as may from time to time be prescribed by the board of directors. The Treasurer shall be appointed by the Board and is not a Board member.

### ***Other Officers***

The Chair of the Board or in his absence, the Vice-Chair, shall, when present, preside at all meetings of the shareholders and of the board of directors. The Chair and the Vice-Chair shall be appointed from amongst the directors.

30. The duties of all other officers of the Corporation shall be such as the terms of their engagement call for or the board of directors requires of them. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant, unless the board of directors otherwise directs.

### ***Variation of Duties***

31. From time to time the board may vary, add to or limit the powers and duties of any officer or officers.

### ***Agents and Attorneys***

32. The board of directors shall have the power from time to time to appoint agents or attorneys for the Corporation in or out of Canada with such powers of management or otherwise (including the power to sub-delegate) as may be thought fit.

### ***Fidelity Bonds***

33. The board of directors may require such officers, employees and agents of the Corporation as the board of directors deems advisable to furnish bonds for the faithful discharge of their duties, in such form and with such surety as the board of directors may from time to time prescribe.

## **SHAREHOLDERS**

### ***Annual Meetings***

34. The annual meetings of shareholders shall, subject to the Shareholder Declaration, be held at Guelph, Ontario as the directors may determine for the purpose of hearing and receiving the reports and statements to be read and laid before the shareholders at any annual meeting, electing directors, reappointing, if necessary, the incumbent auditor and fixing or authorizing the board of directors to fix his remuneration. Subject to the Shareholder Declaration, no other business shall be transacted at an annual meeting of shareholders unless such meeting is also properly constituted as a special meeting of shareholders.

### ***Special Meeting***

35. The directors of the Corporation may at any time and from time to time call a special meeting of shareholders of the Corporation to be held at such time and at such place in Guelph, Ontario as the directors determine. The phrase "meeting of shareholders" wherever it occurs in this by-law shall mean and include the annual meeting of shareholders and a special meeting of shareholders and shall also include a meeting of any class or classes of shareholders.

### ***Notices***

36. No public notice or advertisement of any meeting of shareholders shall be required other than that subject to the Municipal Act for notice requirements in respect of meetings of municipal council, but notice of the time and place of each such meeting shall be given not less than ten (10) days nor more than fifty (50) days before the day on which the meeting is to be held, to the auditor, if any, the directors and to each shareholder entitled to vote at the meeting. Notice of a special meeting of shareholders shall state or be accompanied by a statement of, the nature of that special business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; and the text of any special resolution or by-law to be submitted to the meeting. A meeting of shareholders may be held at any time without notice if all the shareholders entitled to vote thereat are present or represented by a proxy and do not object to the holding of the meeting or those not

present or represented by a proxy have waived notice, if all the directors are present or have waived notice and if the auditor, if any, is present or has waived notice.

### ***Reports to Shareholders***

37. Subject to the provisions of the Shareholder Declaration a copy of the financial statements for the period that began immediately after the end of the last completed financial year and ended not more than six (6) months before the annual meeting, a copy of the auditor's report, if any, and any further information respecting the financial position of the Corporation and the results of its operations required by its incorporating statute, the by-laws or the Shareholder Declaration shall be sent to each shareholder not less than ten (10) days before each annual meeting of shareholders or before the transaction of the annual business of the Corporation pursuant to paragraph 49 hereof.

### ***Persons Entitled to be Present***

38. Persons entitled to attend a meeting of shareholders shall be those entitled to vote thereat, the auditor, if any, of the Corporation, the directors of the Corporation and others who although not entitled to vote are entitled or required under the provisions of the Shareholder Declaration to be present at the meeting. Any other person may be admitted only on the invitation of the Chairman of the meeting or with the consent of the meeting.

### ***Record Date***

39. The directors may fix in advance a date preceding by not more than fifty (50) days or by less than twenty-one (21) days a record date for the determination of persons entitled to receive notice of a meeting of shareholders and notice thereof shall be given not less than seven (7) days before the date so fixed by advertisement and by notice as provided in the Act. The directors may also fix in advance the date as the record date for the purpose of determining shareholders, entitled to receive payment of a dividend; entitled to participate in a liquidation or distribution; or for any other purpose except the right to receive notice of or to vote at a meeting which such record date shall not precede by more than fifty (50) days the date on which such particular action is to be taken and notice thereof shall be given as hereinbefore provided.

### ***Quorum***

40. One person present in person and entitled to vote thereat shall constitute a quorum for the transaction of business any meeting of shareholders.

### ***Right to Vote***

41. Subject to the Shareholder Declaration, at each meeting of shareholders every shareholder shall be entitled to vote who is entered on the books of the Corporation as a holder of one or more shares carrying the right to vote at such meeting in accordance with a shareholder list which, in the case of a record date shall be prepared not later than ten (10) days after such record date and where there is no record date at the close of business on the day immediately preceding the day on which notice is given or where no notice is given on the day on which the meeting is held. Where a person has transferred any of his

or her shares after the date on which the list hereinbefore referred to was prepared and the transferee produces satisfactory evidence in accordance with the provisions of the Act not later than ten (10) days before the meeting that such person owns shares in the Corporation such transferee is entitled to vote his or her shares at the meeting. Where a share or shares have been mortgaged or hypothecated, the person who mortgaged or hypothecated such share or shares (or his proxy) may nevertheless represent the shares at meetings and vote in respect thereof unless in the instrument creating the mortgage or hypothec he or she has expressly empowered the holder of such mortgage or hypothec to vote thereon, in which case such holder (or his proxy) may attend meetings to vote in respect of such shares upon filing with the Secretary of the meeting sufficient proof of the terms of such instrument.

### ***Proxies***

42. Every shareholder entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxy holder or one or more alternate proxy holders, who need not be shareholders, as his nominee to attend and act at the meeting in manner, to the extent and with the authority conferred by the proxy. The instrument appointing a proxy shall be executed by the shareholder or his attorney authorized in writing or, if the shareholder is a body corporate, by an officer or attorney thereof duly authorized and shall cease to be valid after the expiration of one year from the date thereof. The instrument appointing a proxy shall comply with the provisions of the Act and regulations thereto and shall be in such form as the directors or the Shareholder Declaration may from time to time prescribe or in such other form as the Chairman of the meeting may accept as sufficient and shall be deposited with the Secretary of the meeting before any vote is cast under its authority, or at such earlier time and in such manner as the board or directors may prescribe in accordance with the Act.

### ***Joint Shareholders***

43. Where two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may in the absence of the others vote the shares, but if two or more of those persons are present, in person or by proxy, they shall vote as one of the shares jointly held by them.

### ***Scrutineers***

44. At each meeting of shareholders one or more scrutineers may be appointed by a resolution of the meeting or by the Chairman with the consent of the meeting to serve at the meeting. Such scrutineers need not be shareholders of the Corporation.

### ***Votes to Govern***

45. At all meetings of shareholders every question shall, unless otherwise required by the Shareholder Declaration, be decided by the majority of the votes duly cast on the question.

### ***Show of Hands***

46. Unless otherwise required by the Shareholder Declaration, at all meetings of shareholders every question shall be decided by a show of hands unless a poll thereon be required by the Chairman or be demanded by any shareholder present in person or represented by proxy and entitled to vote. Upon a show of hands every person present and entitled to vote shall have one vote. After a show of hands has been taken upon any question the Chairman may require or any shareholder present in person or represented by proxy and entitled to vote may demand a poll thereon. Whenever a vote by show of hands shall have been taken upon a question, unless a poll thereon be so required or demanded, a declaration by the Chairman of the meeting that the vote upon the question has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes of the proceedings at the meeting shall be prima facie evidence of the fact without proof of the number or proportions of the votes recorded in favour of or against any resolution or other proceeding in respect of the said question, and the result of the vote so taken shall be the decision of the Corporation in annual or special meeting, as the case may be, upon the question. A demand for a poll may be withdrawn at any time prior to the taking of the poll.

### ***Polls***

47. If a poll be required by the Chairman of the meeting or be duly demanded by any shareholder and the demand be not withdrawn, a poll upon the question shall be taken in such manner as the Chairman of the meeting shall direct. Upon a poll each shareholder who is present in person or represented by proxy shall be entitled to one vote for each share in respect of which he is entitled to vote at the meeting and the result of the poll shall be the decision of the Corporation in annual or special meeting, as the case may be, upon the question.

### ***Casting Vote***

48. In case of an equality of votes at any meeting of shareholders, either upon a show of hands or upon a poll, the Chairman of the meeting shall **not** be entitled to a second or casting vote.

### ***Adjournment***

49. The Chairman of the meeting of shareholders may, with the consent of the meeting and subject to such conditions as the meeting may decide, unless otherwise provided by the Shareholder Declaration, adjourn the meeting from time to time and from place to place.

### ***Transaction of Business by Signature***

50. Subject to the provisions of the Shareholder Declaration, a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of shareholders.

### ***One Shareholder***

51. Where the Corporation has only one shareholder, all business which the Corporation may transact at an annual or special meeting of shareholders shall be transacted in the manner provided for in paragraph 50 hereof.

### ***Dividends***

52. Subject to the Shareholder Declaration, the board of directors may from time to time declare dividends payable to shareholders according to their respective rights and interests in the Corporation. The Corporation may pay a dividend by issuing fully paid shares of the Corporation or options or rights to acquire fully paid shares of the Corporation and the Corporation may pay a dividend in money or property. A dividend payable in money shall be paid by cheque drawn on the Corporation's bankers or one of them to the order of each registered holder of shares of the class in respect of which it has been declared and mailed by ordinary mail, postage prepaid, to such registered holder at his last address appearing on the books of the Corporation. In the case of joint holders the cheque shall, unless such joint holders otherwise direct, be made payable to the order of all such joint holders and if more than one address appears on the books of the Corporation in respect of such joint holding the cheque shall be mailed to the first address so appearing. The mailing of such cheque as aforesaid shall satisfy and discharge all liability for the dividend to the extent of the sum represented thereby, unless such cheque be not paid at par on due presentation. In the event of non-receipt of any cheques for dividends by the person to whom it is so sent as aforesaid, the Corporation on proof of such non-receipt and upon satisfactory indemnity being given to it, shall issue to such person a replacement cheque for a like amount. Any dividend which remains unclaimed after a period of twelve (12) years after the date on which it has been declared payable shall be forfeited and revert to the Corporation.

## **NOTICES**

### ***Method of Giving***

53. Any notice, communication or other document to be given by the Corporation to a shareholder, director, officer or auditor of the Corporation under any of the provisions of the Shareholder Declaration or by-laws or the Corporations Incorporating Statute shall be sufficiently given if sent to such shareholder, director, officer or auditor by prepaid mail addressed to, or may be delivered personally to, a shareholder at his or her last address as shown on the records of the Corporation or its transfer agent; and a director, officer or auditor at his or her last address as shown in the records of the Corporation or in the case of a director or officer in the most recent notice filed under the Corporations Information Act, whichever is the more current. A notice or document sent by prepaid mail as hereinbefore provided to a shareholder, director, officer or auditor of the Corporation shall be deemed to be received by the addressee on the fifth day after mailing. Where the Corporation sends a notice or document to a shareholder by prepaid mail as hereinbefore provided and the notice or document is returned on three consecutive occasions because the shareholder cannot be found, the Corporation is not required to send any further notices or documents to the shareholder until he informs the Corporation in writing of his new address.



### ***Computation of Time***

54. In computing the date when notice must be given under any provision of the Shareholder's Declaration or by-laws requiring a specified number of days' notice of any meeting or other event, the date of giving the notice and the date of the meeting or other event shall be excluded.

### ***Omissions and Errors***

55. The accidental omission to give any notice to any shareholder, director, officer or auditor or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.

### ***Notice to Joint Shareholders***

56. All notices with respect to any shares registered in more than one name may if more than one address appears on the books of the Corporation in respect to such joint holding, be given to such joint shareholders at the first address so appearing, and notice so given shall be sufficient notice to all the holders of such shares.

### ***Person Entitled by Death or Operation of Law***

57. Every person who by operation of law, transfer, death of a shareholder or by any means whatsoever, shall become entitled to any share or shares, shall be bound by every notice in respect of such share or shares which shall have been duly given to the person from whom he derives his or her title to such share or shares, previously to his or her name and address being entered on the books of the Corporation (whether it be before or after the happening of the event upon which he became entitled).

### ***Waiver of Notice***

58. Where a notice or document is required by the Shareholder's Declaration or the Corporations Incorporating Statute or by-laws of the Corporation to be sent, the notice may be waived or the time for sending the notice or document may be waived or abridged at any time with the consent in writing of the person entitled thereto.

## **INTERPRETATION**

### ***Interpretation***

59. In this by-law and all other by-laws of the Corporation, words importing the singular number only shall include the plural and vice-versa; words importing the masculine gender shall include the feminine and neuter genders; words importing persons shall include individuals, sole proprietorships, partnerships, unincorporated associations, unincorporated syndicates, unincorporated organizations, trusts, body corporates and natural persons in their capacity as trustees, executors, administrators or other legal representatives.

60. This bylaw is subject to the Guelph Junction Railway Act and any subsequent amendments to that Act and to the Shareholder Declaration and in case of any conflict between this bylaw and those documents, then those documents will prevail.

PASSED the ●

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President

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Secretary

We have authority to bind the Corporation

## APPENDIX "A"

### Conflict of Interest Excerpt from Canada Business Corporations Act, *supra*.

#### Disclosure of interest

**120.** (1) A director or an officer of a corporation shall disclose to the corporation, in writing or by requesting to have it entered in the minutes of meetings of directors or of meetings of committees of directors, the nature and extent of any interest that he or she has in a material contract or material transaction, whether made or proposed, with the corporation, if the director or officer

- (a) is a party to the contract or transaction;
- (b) is a director or an officer, or an individual acting in a similar capacity, of a party to the contract or transaction; or
- (c) has a material interest in a party to the contract or transaction.

#### Time of disclosure for director

(2) The disclosure required by subsection (1) shall be made, in the case of a director,

- (a) at the meeting at which a proposed contract or transaction is first considered;
- (b) if the director was not, at the time of the meeting referred to in paragraph (a), interested in a proposed contract or transaction, at the first meeting after he or she becomes so interested;
- (c) if the director becomes interested after a contract or transaction is made, at the first meeting after he or she becomes so interested; or
- (d) if an individual who is interested in a contract or transaction later becomes a director, at the first meeting after he or she becomes a director.

#### Time of disclosure for officer

(3) The disclosure required by subsection (1) shall be made, in the case of an officer who is not a director,

- (a) immediately after he or she becomes aware that the contract, transaction, proposed contract or proposed transaction is to be considered or has been considered at a meeting;
- (b) if the officer becomes interested after a contract or transaction is made, immediately after he or she becomes so interested; or
- (c) if an individual who is interested in a contract later becomes an officer, immediately after he or she becomes an officer.

#### Time of disclosure for director or officer

(4) If a material contract or material transaction, whether entered into or proposed, is one that, in the ordinary course of the corporation's business, would not require approval by the directors or shareholders, a director or officer shall disclose, in writing to the corporation or request to have it entered in the minutes of meetings of directors or of meetings of committees of directors, the nature and extent of his or her interest immediately after he or she becomes aware of the contract or transaction.

#### Voting

(5) A director required to make a disclosure under subsection (1) shall not vote on any resolution to approve the contract or transaction unless the contract or transaction unless the contract or transaction

(a) relates primarily to his or her remuneration as a director, officer, employee or agent of the corporation or an affiliate;

(b) is for indemnity or insurance under section 124; or

(c) is with an affiliate.

#### Continuing disclosure

(6) For the purposes of this section, a general notice to the directors declaring that a director or an officer is to be regarded as interested, for any of the following reasons, in a contract or transaction made with a party, is a sufficient declaration of interest in relation to the contract or transaction:

(a) the director or officer is a director or officer, or acting in a similar capacity, of a party referred to in paragraph (1)(b) or (c);

(b) the director or officer has a material interest in the party; or

(c) there has been a material change in the nature of the director's or the officer's interest in the party.

#### Access to disclosures

(6.1) The shareholders of the corporation may examine the portions of any minutes of meetings of directors or of committees of directors that contain disclosures under this section, and any other documents that contain those disclosures, during the usual business hours of the corporation.

#### Avoidance standards

(7) A contract or transaction for which disclosure is required under subsection (1) is not invalid, and the director or officer is not accountable to the corporation or its shareholders for any profit realized from the contract or transaction, because of the director's or officer's interest in the contract or transaction or because the director was present or was counted to determine whether a quorum existed at the meeting of directors or committee of directors that considered the contract or transaction, if

(a) disclosure of the interest was made in accordance with subsections (1) to (6);

(b) the directors approved the contract or transaction; and

(c) the contract or transaction was reasonable and fair to the corporation when it was approved.

#### Confirmation by shareholders

(7.1) Even if the conditions of subsection (7) are not met, a director or officer, acting honestly and in good faith, is not accountable to the corporation or to its shareholders for any profit realized from a contract or transaction for which disclosure is required under subsection (1), and the contract or transaction is not invalid by reason only of the interest of the director or officer in the contract or transaction, if

(a) the contract or transaction is approved or confirmed by special resolution at a meeting of the shareholders;

(b) disclosure of the interest was made to the shareholders in a manner sufficient to indicate its nature before the contract or transaction was approved or confirmed; and

(c) the contract or transaction was reasonable and fair to the corporation when it was approved or confirmed.

Application to court

(8) If a director or an officer of a corporation fails to comply with this section, a court may, on application of the corporation or any of its shareholders, set aside the contract or transaction on any terms that it thinks fit, or require the director or officer to account to the corporation for any profit or gain realized on it, or do both those things.

R.S., 1985, c. C-44, s. 120; 2001, c. 14, s. 48.