

**RESOLUTION OF THE SOLE SHAREHOLDER**

**AMENDED AND RESTATED, 2005  
BY-LAW NO. 1**

**a by-law relating generally to the conduct  
of the business and affairs of  
Welland Hydro-Electric Holding Corp.**

**WHEREAS** the Board of Directors of the Corporation approved this by-law on August 30, 2001;

**AND WHEREAS** the sole shareholder of the Corporation confirmed this by-law on October 30, 2001;

**AND WHEREAS** the Board of Directors of the Corporation approved certain amendments to this by-law on June 6, 2003;

**AND WHEREAS** the sole shareholder of the Corporation confirmed such amendments to this by-law on July 22, 2003;

**AND WHEREAS** the Board of Directors of the Corporation approved further amendments to this by-law on November 16, 2005;

**AND WHEREAS** the amendments were submitted and reviewed by the Shareholder;

**AND WHEREAS** the sole shareholder of the Corporation confirmed such amendments to this by-law on December 6, 2005;

**AND WHEREAS** it is desirable to evidence the said amendments to this by-law and to restate this by-law.

**THEREFORE BE IT RESOLVED** that said amendments to By-Law No. 1 as evidenced in the Amended and Restated 2005 By-Law No. 1 presented to Councillors of the City of Welland are hereby confirmed.

**MOVED:** Dzegan

**SECONDED:** Shupe

**DATE:** December 6, 2005

**CARRIED:** Patricia Gourbaine

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**AND WHEREAS** it is desirable to evidence the said amendments in this by-law and to restate this by-law as hereinafter set forth.

**BE I T MADE** as a by-law of the Corporation as follows:

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions.**

In these by-laws and all other by-laws of the Corporation, unless the context otherwise requires:

- (a) "Act" means the *Business Corporations Act*, R.S.O. 1990. c. B.16, or any statute that may be substituted for it, as from time to time amended;
- (b) "appoint" includes "elect" and vice versa;
- (c) "articles" means the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuance, articles of reorganization, articles of arrangement or articles of revival of the Corporation;
- (d) "board" means the board of directors of the Corporation, and "director" means a member of the board;

- (e) "by-laws" means this by-law and all other by-laws of the Corporation from time to time in force and effect;
- (f) "cheque" includes a draft;
- (g) "Corporation" means Welland Hydro-Electric Holding Corp.;
- (h) "family member" means a spouse, parent or child who normally resides with any person, and includes the partner of any person, as hereinafter defined;
- (i) "meeting of shareholders" includes an annual meeting of shareholders and a special meeting of shareholders;
- (j) "non-business day" means Saturday, Sunday and any other day that is a holiday as defined in the Interpretation Act (Ontario) as from time to time amended;
- (k) "partner" means one of two persons who have lived together for at least one year and have a close personal relationship that is of primary importance in both persons' lives;
- (l) "recorded address" means:
  - (i) in the case of a shareholder, its address as recorded in the securities register;
  - (ii) in the case of an officer, auditor or member of a committee of the board, his or her latest address as recorded in the records of the Corporation; and
  - (iii) in the case of a director, his or her latest address as recorded in the most recent notice filed under the Corporations Information Act (Ontario);
- (m) "resident Canadian" means an individual who is:
  - (i) a Canadian citizen ordinarily resident in Canada;
  - (ii) a Canadian citizen not ordinarily resident in Canada who is a member of prescribed class of persons as defined in the regulations to the Act; or
  - (iii) a permanent resident within the meaning of the Immigration Act (Canada) and ordinarily resident in Canada;
- (n) "shareholder declaration" means the written declaration of the owner of all of the issued shares of the Corporation, namely, the City of Welland, that restricts in part the powers of the directors to manage the business and affairs of the Corporation, as from time to time amended.
- (o) "special meeting of shareholders" includes a special meeting of all shareholders entitled to vote at an annual meeting of shareholders;

- (p) "Subsidiary" means, with respect to the Corporation, any body corporate of which more than 50% of the outstanding securities of any class carrying exercisable voting rights are beneficially owned, directly or indirectly, by the Corporation, and includes any body corporate in like relation to a Subsidiary. Initially, the Subsidiaries are Welland Hydro-Electric System Corp. and Welland Hydro-Energy Services Corp.;
- (q) "telephonic or electronic means" means telephone calls or messages, facsimile messages, electronic mail, transmission of data or information through automated touch-tone telephone systems, transmission of data or information through computer networks, any other similar means or any other prescribed means; and

## **1.2 Statutory Definitions.**

Other than as specified above, words and expressions defined in the Act have the same meanings when used herein.

## **1.3 Persons.**

Words importing the singular number include the plural and vice versa. Words importing gender include the masculine, feminine and neuter genders. Words importing a person include an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate and a natural person in his or her capacity as trustee, executor, administrator or other legal representative.

## **ARTICLE 2 GENERAL BUSINESS**

### **2.1 Registered Office.**

The registered office of the Corporation shall be in the City of Welland and thereafter as the shareholders may from time to time determine by special resolution and at such location therein as the board may from time to time determine.

### **2.2 Corporate Seal.**

The Corporation may, but need not, have a corporate seal, and, if one is adopted, it shall be in a form approved from time to time by the board.

### **2.3 Financial Year.**

The financial year end of the Corporation shall be December 31 and the board may from time to time, by resolution, change the financial year end of the Corporation.

### **2.4 Execution of Instruments.**

Deeds, transfers, assignments, contracts, obligations, certificates and other instruments may be signed on behalf of the Corporation by any two officers and/or directors.

In addition, the board may from time to time authorize any other person or persons to sign any particular instruments.

The secretary, or any other officer or any director, may sign certificates and similar instruments (other than share certificates) on the Corporation's behalf with respect to any factual matters relating to the Corporation's business and affairs, including, without limitation, certificates verifying copies of the articles, by-laws, resolutions and minutes of meetings of the Corporation. Any signing officer may affix the corporate seal to any instrument requiring the same.

The signature of any person authorized to sign on behalf of the Corporation may, if specifically authorized by resolution of the board, be written, printed, stamped, engraved, lithographed or otherwise mechanically reproduced.

## **2.5 Banking Arrangements.**

The banking business of the Corporation including, without limitation, the borrowing of money and the giving of security therefor, shall be transacted with such banks, trust companies or other bodies corporate or organizations as may from time to time be designated by or under the authority of the board. Such banking business or any part thereof shall be transacted under such agreements, instructions and delegations of powers as the board may from time to time prescribe.

## **2.6 Voting Rights in Other Bodies Corporate.**

The signing officers of the Corporation under section 2.4 hereof may execute and deliver proxies and arrange for the issuance of voting certificates or other evidence of the right to exercise the voting rights attaching to any securities held by the Corporation. Such instruments shall be in favour of such persons as may be determined by the officers executing or arranging for the same. In addition, the board may from time to time direct the manner in which and the persons by whom any particular voting rights or class of voting rights may or shall be exercised.

# **ARTICLE 3 BORROWING AND SECURITY**

## **3.1 Borrowing Powers.**

Without limiting the borrowing powers of the Corporation as set forth in the Act, but subject to the articles and the shareholder declaration, the board may from time to time on behalf of the Corporation:

- (a) borrow money upon the credit of the Corporation;
- (b) issue, reissue, sell or pledge bonds, debentures, notes or other debt obligations or guarantees of the Corporation, whether secured or unsecured;
- (c) subject to the provisions of the Act, give directly or indirectly financial assistance to any person for any purpose by means of a loan, a guarantee on behalf of the Corporation to secure performance of any present or future indebtedness, liability or obligation of any person, or otherwise; and

- (d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any currently owned or subsequently acquired real or personal, movable or immovable, property of the Corporation including, without limitation, accounts, rights, powers, franchises and undertakings, to secure any such bonds, debentures, notes or other debt obligations or guarantees or any other present or future indebtedness, liability or obligation of the Corporation.

Nothing in this section limits or restricts the borrowing of money by the Corporation on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the Corporation.

### **3.2 Delegation.**

Subject to the Act, the articles and the shareholder declaration, the board may from time to time delegate to a committee of the board, a director or an officer of the Corporation or any other person as may be designated by the board all or any of the powers conferred on the board by section 3.1 hereof or by the Act to such extent and in such manner as the board may determine at the time of such delegation.

## **ARTICLE 4 DIRECTORS**

### **4.1 Duties of Directors.**

Subject to the shareholder declaration, the board shall manage or supervise the management of the business and affairs of the Corporation.

### **4.2 Number of Directors.**

The Corporation shall be governed by the board which shall consist of a minimum of three (3) and a maximum of nine (9) directors to be appointed by the shareholders. The shareholders shall, by special resolution, designate the number of members of the board to hold office from time to time. On the date of this By-Law, the board shall be comprised of four (4) directors.

### **4.3 Composition of the Board.**

The board shall be comprised of four (4) members, which shall include: (a) the Mayor; (b) the President and Chief Executive Officer of the Corporation; and (c) two (2) directors, who shall not be members of Welland City Council (the "Private Directors").

### **4.4 Qualification.**

No person shall be qualified for election or appointment as a director if:

- (a) he is less than 18 years of age;
- (b) he is of unsound mind and has been so found by a court in Canada or elsewhere;
- (c) he is not an individual; or

- (d) he has the status of a bankrupt.

A majority of the directors shall be resident Canadians.

In addition to sound judgment and personal integrity, the qualifications of candidates for the board or the board of directors of any Subsidiary may include:

- (a) awareness of public policy issues related to the Corporation or a Subsidiary, as applicable;
- (b) business expertise (including retail experience);
- (c) experience on boards of corporations or other organizations;
- (d) financial, legal, accounting and/or marketing experience;
- (e) regulated industry knowledge including, but not limited to, knowledge of municipal electric utilities;
- (f) knowledge and experience with risk management strategy;
- (g) experience as a member of senior management in the service industry or educational institutions.

Preference will be given to qualified candidates for the Board who are residents of the City of Welland, however non-residents shall not be excluded from serving as Board members.

#### **4.5 Election and Term.**

Directors shall be elected by the shareholders at each annual meeting of shareholders at which an election of directors is required and shall hold office for a term expiring not later than the close of the third annual meeting of shareholders following the election, except as referred to below.

Subject to the Act and the shareholder declaration, the number of directors to be elected at any such meeting shall be the number of directors determined from time to time by special resolution. The election shall be by resolution. The term for each member of the Board shall be as follows:

- (a) The Mayor serving as a member of the Board shall serve for a term coincident with his or her term on Welland City Council;
- (b) The President and Chief Executive Officer shall serve as a member of the Board for a term coincident with his or her term as President and Chief Executive Officer;
- (c) Subject to a transition period, two (2) Private Directors shall be appointed to serve as members of the Board for a three year term;
- (d) The term of no more than one (1) director will end in any one (1) year;

- (e) Any member of the Board may serve for successive terms as determined by the shareholders.

If an election of directors is not held at the proper time, the incumbent directors shall continue in office until their successors are elected.

#### **4.6 Consent.**

An election or appointment of a director is not effective unless the person elected or appointed consents in writing before or within 10 days after the date of the election or appointment. If the person elected or appointed consents in writing after such time period, the election or appointment is valid. A consent is not necessary when a director is re-elected or reappointed where there is no break in the director's terms of office.

#### **4.7 Removal of Directors.**

Subject to the Act, the shareholders may by ordinary resolution passed at an annual or special meeting of shareholders remove any director from office and the vacancy created by such removal may be filled for the remainder of his or her term at the same meeting or thereafter by the shareholders.

#### **4.8 Ceasing to Hold Office.**

A director ceases to hold office when:

- (a) he or she dies;
- (b) he or she is removed from office by the shareholders;
- (c) he or she ceases to be qualified for election as a director;
- (d) his or her written resignation is received by the Corporation or, if a time is specified in such resignation, at the time so specified, whichever is later; or
- (e) he or she fails to attend fifty percent (50%) of Board meetings in any year without acceptable reasons to the shareholders.

#### **4.9 Filling Vacancies.**

If a member of the Board ceases to be a director for any reason, the shareholders will fill the vacancy created thereby as soon as reasonably possible. If a member of the board of directors of any Subsidiary ceases to be a director for any reason, the Corporation will cause the vacancy to be filled by another director of the Corporation as soon as reasonably possible, subject to, and in compliance with the OEB Affiliate Relationships Code. All directors of the Corporation appointed to fill vacancies of the Board shall serve for the balance of the term of the director(s) replaced.

#### **4.10 Action by the Board.**

Subject to the shareholder declaration, the board shall exercise its powers by or pursuant to a by-law or resolution either passed at a meeting of the directors at which a quorum is present and at which a majority of the directors present are resident Canadians or consented to by the signatures of all the directors then in office, if constituting a quorum. Where there is a vacancy in the board, the remaining directors may exercise all the powers of the board so long as a quorum remains in office.

#### **4.11 Principles of Governance.**

- (a) For the purposes of this By-Law, governance is defined as the process of governing the Corporation through the direction and supervision of the business affairs of the Corporation, in accordance with its articles, its Bylaws, the shareholder declaration and all appropriate legislation.
- (b) The Board shall be governed by the following Principles of Governance:
  - (i) The Board is responsible for the governance of the Corporation;
  - (ii) The Board provides strategic leadership to the Corporation in the establishment of and commitment to the Corporation vision, mission, and core values;
  - (iii) The Board acts in the best interests of the Corporation in carrying out its responsibilities;
  - (iv) The Board is responsive to the needs of the individual community served;
  - (v) The Board establishes a culture, forthright examination of all issues, due process and acts honestly, in good faith and in the best interests of the Corporation;
  - (vi) The Board strives for consensus on all issues but a majority vote will govern;
  - (vii) The Board provides policy leadership and does not engage in day-to-day operational matters, except as required by law or fiduciary obligations, maintaining at all times a clear distinction between Board and staff roles.

#### **4.12 Responsibilities of The Board of Directors.**

The Board shall:

- (a) adhere to the Principles of Governance in conducting the business of the Board;
- (b) adhere to the Corporation's vision, mission, and core values;

- (c) promote effective collaboration between the Board and the community served in the achievement of the Corporation's vision, mission and core values and/or other policy and planning initiatives;
- (d) seek resources to meet the electricity needs of the community served and monitor their efficient and effective use;
- (e) engage a Chief Executive Officer, set and approve compensation and ensure performance evaluation at least annually;
- (f) establish the parameters within which operational and business plans are developed to ensure the financial viability of the Corporation;
- (g) satisfy itself that the policies of the Corporation are reflected in the organization's practices and that there are governance and operational processes in place to monitor, evaluate and facilitate ongoing quality improvement;

#### **4.13 Responsibilities of Individual Directors.**

In contributing to the achievement of the responsibilities of the Board as a whole, each director shall:

- (a) adhere to the Principles of Governance and the vision, mission and core values of the Corporation;
- (b) work positively, co-operatively and respectfully as a member of the team with other directors and with the Corporation's management and staff;
- (c) act only in the best interests of the Corporation and not on behalf of any single interest cause;
- (d) declare any conflict of interest;
- (e) respect and abide by Board decisions and processes established by the Board for external communication;
- (f) maintain a strong attendance record and be available to serve on a committee;
- (g) complete the necessary background preparation in order to participate effectively in meetings of the Board and its committees;
- (h) keep informed about matters relating to the Corporation, the community it serves and the other electricity programs and services in the region;
- (i) participate in initial director orientation and on-going Board education;
- (j) participate in any evaluation of overall Board effectiveness; and
- (k) represent the Board, when requested, in activities within the Corporation and in external activities with other organizations.

## **ARTICLE 5 MEETING OF DIRECTORS**

### **5.1 Meetings by Telephone.**

If all the directors of the Corporation consent thereto generally or in respect of a particular meeting, a director may participate in a meeting of the board or of a committee of the board by means of such telephone, electronic or other communications facilities as permit all persons participating in the meeting to communicate with each other, simultaneously and instantaneously, and a director participating in such a meeting by such means is deemed to be present at the meeting. Any such consent shall be effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the board and of committees of the board.

### **5.2 Place of Meetings.**

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

### **5.3 Calling of Meetings.**

Meetings of the board shall be held from time to time at such time and at such place as the board, the Chair of the board or the president may determine.

### **5.4 Notice of Meetings.**

Notice of the time and place of each meeting of the board shall be given in the manner provided in Section 12 hereof to each director,

- (a) not less than seven (7) days before the time when the meeting is to be held if the notice is mailed; or
- (b) not less than five (5) days before the time the meeting is to be held if the notice is given personally, is delivered or is sent by any means of transmitted or recorded communication.

### **5.5 Waiver of Notice.**

A director may in any manner or at any time waive notice of or otherwise consent to a meeting of the board. Attendance of a director at a meeting of the board shall constitute a waiver of notice of that meeting except where a director attends for the express purpose of objecting to the transaction of any business thereof on the grounds that the meeting has not been properly called.

### **5.6 First Meeting of New Board.**

As long as a quorum of directors is present, each newly elected board may without notice hold its first meeting immediately following the meeting of shareholders at which such board is elected.

### **5.7 Adjourned Meeting.**

Notice of an adjourned meeting of the board is not required if the time and place of the adjourned meeting is announced at the original meeting.

### **5.8 Regular Meetings.**

The board may appoint a day or days in any month or months for regular meetings of the board at a place and hour to be named. A copy of any resolution of the board fixing the place and time of such regular meetings shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meeting except where the Act requires the purpose thereof or the business to be transacted thereat to be specified.

### **5.9 Chair and Secretary.**

The Chair of any meeting of the board shall be the first mentioned of such of the following officers as have been appointed and who is a director and is present at the meeting: Chair of the board; vice-chair; or president. If no such officer is present, the directors present shall choose one of their number to be Chair. The secretary of the Corporation (or a person designated by the secretary of the Corporation) shall act as secretary of any meeting of the board and, if the secretary of the Corporation be absent, the Chair of the meeting shall appoint a person who need not be a director to act as secretary of the meeting.

### **5.10 Quorum.**

A majority of the directors constitutes a quorum at a meeting of the board.

### **5.11 Votes to Govern.**

At all meetings of the board, every question shall, be decided by a majority of the votes cast on the question.

### **5.12 Casting Vote.**

In case of an equality of votes, the Chair of the meeting shall, not be entitled to a second or casting vote.

### **5.13 Procedures For Board Meetings.**

- (a) The statutory declaration of the Secretary or Chair that notice has been given pursuant to this By-law shall be sufficient and conclusive evidence of the giving of such notice;
- (b) No error or omission in giving notice for a meeting of directors shall invalidate such meeting or invalidate or make void any proceedings taken or had at any such meeting and any director may at any time waive notice of any such meeting and may ratify and approve any or all proceedings taken or had thereat. For the purpose of sending notice to any director or officer for any meeting or otherwise, the address of any director or officer shall be his or her last address recorded on the books of the Corporation;

- (c) Any officer of the Corporation shall cease to hold office and any member of any committee shall cease to be a member of that committee upon resolution of the board;
- (d) Minutes shall be kept for all meetings of the Board and all meetings of all committees;
- (e) Business arising at any meeting of the Board or any committee established pursuant to this By-law shall be decided by a majority of votes, provided that:
  - (i) votes shall be taken in the usual way by show of hands among all directors present and, in the event of a tie, the motion is lost;
  - (ii) the Chair shall have one original vote but shall not have a second vote and, in the event of a tie, the motion is lost;
  - (iii) votes shall be taken by written ballot if so demanded by any voting member present; and
  - (iv) a declaration by the Chair that a resolution, vote or motion has been carried and an entry to that effect in the minutes shall be admissible in evidence as prima facie proof of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution, vote or motion.
- (f) Any questions of procedure at or for any meetings of the Corporation, of the Board, or of any committee, which have not been provided for in this By-law or by the Act shall be determined by the Chair in accordance with an acceptable procedural text such as Roberts Rules of Order.
- (g) All Board meetings shall be open to the public unless the subject matter under consideration at the meeting will involve:
  - (i) the security of the property at the Corporation;
  - (ii) disclosure of personal or financial information in respect of individual persons;
  - (iii) acquisition or disposition of real and/or personal property;
  - (iv) decisions respecting negotiations with employees;
  - (v) litigation or potential litigation affecting the Corporation;
  - (vi) sensitive contractual or other legal matters; or
  - (vii) matters the disclosure of which would place the Board at a competitive disadvantage,

in which case, a majority of Board members present may vote, at any time at the commencement of or during the meeting, to hold the meeting in-camera.

#### **5.14 Resolution in Lieu of Meeting.**

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

#### **5.15 Remuneration and Expenses.**

The directors shall be paid such remuneration for their services as the shareholders may from time to time determine. The directors shall also be entitled to be reimbursed for travelling and other expenses properly incurred by them in attending meetings of the board or any committee thereof.

#### **5.16 Conflict of Interest.**

- (a) A director who is a party to, or who is a director or 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 at the time and in the manner provided by the Act. Where such a director is present at a board meeting at which the matter disclosed is the subject of consideration, such director shall not take part in the discussion of or vote on any question in respect of the matter and shall not attempt in any way whether before, during or after the meeting to influence the voting on such question and shall forthwith leave a meeting or a part of the meeting during which the matter is under consideration.
- (b) In the case of a proposed contract or transaction, the declaration referred to in subsection 5.16(a) shall be made at the meeting of the directors at which the question of entering into the contract or transaction is first taken into consideration or, if the director is not at the date of that meeting interested in the proposed contract or interested, and, in a case where the director becomes interested in a contract or transaction after it is made, the declaration shall be made at the first meeting of the directors held after he or she becomes so interested;
- (c) A general notice given to the directors by a director to the effect that he or she is to be regarded as interested in any contract or transaction or proposed contract or transaction made with any other corporation, association, agency, institution, public authority or person, shall be deemed to be a sufficient declaration of interest in relation to a contract or transaction so made, but no such notice is effective until it is given at a meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given;
- (d) If a director has made a declaration of his or her interest in a proposed contract or transaction or a contract or transaction in compliance with the provisions of this

section 5.16 and has not voted in respect of the contract or transaction, the director is not accountable to the Corporation or to its shareholders or creditors for any profit realized from the contract or transaction, and the contract is not voidable by reason only of the director holding that office or the fiduciary relationship thereby established;

- (e) Despite anything to the contrary in this section, a director is not accountable to the Corporation or to any of its shareholders or creditors for any profit realized from such contract or transaction and the contract is not by reason only of the director's interest therein voidable if it is confirmed by the majority of the votes cast at a general meeting of the shareholders duly called for that purpose and if the director's interest in the contract or transaction is declared in the notice calling the meeting;

Neither directors nor their Family Members shall enter into any proposed contract or transaction or contract or transaction with the Corporation, unless:

- (a) they enter a competitive bid in writing; and
- (b) the director has, in accordance with the foregoing provisions, declared his or her interest in the contract or transaction and refrained from voting on the matter.

#### **5.17 Confidentiality And Public Relations.**

- (a) Every director, officer and every employee of the Corporation shall respect the confidentiality of matters brought before the Board or before any committee of the Board or relating to the Corporation and any Subsidiary, or any matter dealt with in the course of the employee's employment activities in the Corporation;

All confidential matters disclosed to persons other than the directors, officers and employees of the Corporation shall be marked "confidential". The shareholders, directors, officers and employees of the Corporation (each a "Receiving Party") will ensure that no confidential information of shareholders or the Corporation is disclosed or otherwise made available to any person, except to the extent that:

- (i) disclosure to a Receiving Party's employees or agents is necessary for the performance of any Receiving Party's duties and obligations to the Corporation;
  - (ii) disclosure is required in the course of judicial proceedings or pursuant to law; or
  - (iii) the confidential information becomes part of the public domain other than through an unauthorized disclosure by the Receiving Party.
- (b) The Chair of the Board or the President and Chief Executive Officer is responsible for Board communication and may delegate authority to one or more directors, officers or employees of the Corporation to make statements to the news media on matters concerning the public brought before the Board.

## ARTICLE 6 COMMITTEES

### 6.1 Committees of the Board.

The board may appoint from their number one or more committees of the board, however designated, and delegate to any such committee any of the powers of the board except powers to:

- (a) submit to the shareholders any question or matter requiring the approval of the shareholders;
- (b) fill a vacancy among the directors or in the office of auditor or appoint or remove any of the Chief executive officers, however designated, the chief financial officer, however designated, the Chair or the president of the Corporation;
- (c) subject to the Act, issue securities except in the manner and on the terms authorized by the directors;
- (d) declare dividends;
- (e) purchase, redeem or otherwise acquire shares issued by the Corporation;
- (f) pay a commission for the sale of shares of the Corporation;
- (g) approve a management information circular;
- (h) approve a take-over bid circular, directors' circular or issuer bid circular;
- (i) approve any financial statements;
- (j) approve an amalgamation of the Corporation with its holding Corporation, or any subsidiary Corporation;
- (k) where the directors are authorized by articles to do so, approve an amendment to the articles to divide any class of unissued shares into series and determine the designation, rights, privileges, restrictions and conditions thereof;
- (l) where the Corporation has a number name, amend the articles to change that name to a name that is not a number name; and
- (m) adopt, amend or repeal by-laws.

A majority of the members of any such committee shall be resident Canadians.

### 6.2 Standing, Special and Advisory Committees.

- (a) At the first meeting of the Board following the annual meeting, the Board shall establish the following Standing Committees:
  - (i) the Finance and Audit Committee;



- (b) review and make its recommendations to the Board in respect of the annual operating plan and the related operating and capital budgets;
- (c) review the quarterly financial statements, review monthly highlights and advise the Board accordingly;
- (d) make recommendations on major expenditures not foreseen in the approved annual budget and deal with such expenditures in accordance with established Board policy;
- (e) consider on an annual basis the scope of the audit work performed, or to be performed, for the Corporation;
- (f) recommend for presentation to the Board annual financial statements and the related auditors' report;
- (g) discuss with the auditors any matters arising out of the annual financial statements;
- (h) receive and review the auditors' report on internal controls and related recommendations;
- (i) evaluate the auditor's performance and recommend appointment, reappointment or replacement; and
- (j) receive information on implications of changes in legislation related to financial matters, and advise the Board as necessary.

#### 6.7 Nominating Committee.

- (a) The Nominating Committee shall:
  - (i) nominate persons for election to the Board and to the boards of the Subsidiaries to fill any vacancies on such boards; and
  - (ii) nominate directors for consideration by the Board and the boards of the Subsidiaries for election or appointment as officers of the Corporation and the Subsidiaries.
- (b) In selecting persons as nominees for election to the boards, the Committee shall:
  - (i) endeavour to provide for broad community representation;
  - (ii) consider the names of all persons submitted as nominees in accordance with this By-law;
  - (iii) consider the potential contribution of any person nominated in relation to the function of the Corporation and the Subsidiaries;

- (iv) consider the demographic, geographic and social characteristics of the communities served;
- (v) adhere to the qualifications provided for in Section 4.4 of this By-law.

The Nominating Committee shall provide the shareholders with a list of all candidates who apply for a position as a director of the Corporation, the ranking used to short-list the candidates and a list of those persons the Committee has selected as nominees for election to the Board.

- (c) The Nominating Committee will be composed of:
  - (i) the Mayor;
  - (ii) the President and Chief Executive Officer of the Corporation;
  - (iii) one director from the Corporation selected by its Board;
  - (iv) one independent director from Welland Hydro-Electric System Corp. selected by its Board.

No Private Director shall be eligible to be a member of the Nominating Committee if his or her term as a board member is ending at the next annual shareholder meeting or at a special meeting of the shareholders for appointing directors.

## **6.8 Governance Committee.**

The Governance Committee shall:

- (a) review the By-laws and governance structure of the Corporation regularly;
- (b) establish procedures for the annual review of the overall performance of the Board and Committees in relation to the vision, mission and core values of the Corporation; and
- (c) review regulatory compliance matters applicable to the affairs of the Corporation.

## **ARTICLE 7 OFFICERS**

### **7.1 Appointment.**

Subject to the shareholder declaration, the board may from time to time designate the officers of the Corporation and from time to time appoint a Chair of the board, vice-chair, president, one or more vice-presidents (to which title may be added words indicating seniority or function), a secretary, a treasurer and such other officers as the board may determine, including, without limitation, one or more assistants to any of the officers so appointed. The board may specify the duties of and, in accordance with this by-law and subject to the Act, delegate to such officers powers to manage the business and affairs of the Corporation. One person may hold more than

one office and, except for the Chair of the board and the vice-chair, an officer may but need not be a director.

## **7.2 Officers Appointed.**

The Board shall appoint the following officers at a meeting immediately following the annual meeting:

- (a) Chair;
- (b) Vice-Chair;
- (c) President, who shall be the Chief Executive Officer and the Corporation's Secretary; and
- (d) Treasurer who shall also be the Chair of the Finance and Audit Committee.

## **7.3 Chair - Duties.**

The Chair shall:

- (a) preside at all meetings of the Board;
- (b) provide general leadership to the Board;
- (c) report to each annual meeting of shareholders of the Corporation concerning the management and operations of the Corporation; and
- (d) perform such other duties as may from time to time be determined by the Board.

## **7.4 Vice-Chair - Duties.**

The Vice-Chair shall have all the powers and perform all the duties of the Chair in the absence or disability of the Chair and shall perform any other duties as may be assigned by the Chair or the Board, from time to time.

## **7.5 President and Chief Executive Officer - Duties.**

The President and Chief Executive Officer shall perform such duties as may be set out in a position description approved and/or amended by the Board. Without limiting the generality of the foregoing, the President and Chief Executive Officer, shall:

- (a) be responsible to the Board for the general administration, organization and management of the Corporation in accordance with policies established by the Board;
- (b) establish an organizational structure to ensure accountability of all departments, divisions, services, programs and staff for fulfilling the vision, mission, core values and strategic plan of the Corporation;

- (c) develop, recommend and foster the values, culture and philosophy of the Corporation;
- (d) provide leadership in support of the Board's responsibility to periodically evaluate the vision, mission, core values and strategic plan of the Corporation;
- (e) ensure appropriate systems and structures are in place for effective management and control of the Corporation and its resources, including the employment, development, control, direction and discharge of all employees of the Corporation;
- (f) ensure effective human resources and strategic planning and identify resource implications;
- (g) represent the Corporation externally to the community, government, media and other organizations and agencies;
- (h) ensure that an annual operating plan is presented to the Board for approval, that resource use accountability mechanisms are in place to monitor performance and
- (i) adjust operations to meet plan objectives;
- (j) be responsible to the Board for taking such action as considered necessary to ensure compliance with the Act and the Regulations thereunder, the By-Laws and all other relevant statutory and regulatory requirements; and
- (k) perform such other duties as directed from time to time by the Board.

#### **7.6 Secretary.**

Unless otherwise determined by the board, the secretary shall attend and be the secretary of all meetings of the board, shareholders and committees of the board that he attends. The secretary shall enter or cause to be entered in records kept for that purpose minutes of all proceedings at meetings of the board, shareholders and committees of the board, whether or not he or she attends such meetings. He or she shall give or cause to be given, as and when instructed, all notices to shareholders, directors, officers, auditors and members of committees of the board. He or she shall be the custodian of the stamp or mechanical device generally used for affixing the corporate seal of the Corporation and of all books, records and instruments belonging to the Corporation, except when some other officer or agent has been appointed for that purpose. He or she shall have such other powers and duties as otherwise may be specified.

#### **7.7 Treasurer.**

The treasurer shall cause to be kept proper accounting records in compliance with the Act and shall oversee 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 whenever required an account of all his or her transactions as treasurer and of the financial position specified.

### **7.8 Powers and Duties of Officers.**

The powers and duties of all officers shall be such as the terms of their engagement call for or as the board or (except for those whose powers and duties are to be specified only by the board) the chief executive officer may specify. The board and (except as aforesaid) the chief executive officer may, from time to time and subject to the provisions of the Act and any unanimous shareholder agreement, vary, add to or limit the powers and duties of any officer. 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 or the chief executive officer otherwise directs.

### **7.9 Term of Office.**

The board, in its discretion, may remove any officer of the Corporation. Each officer appointed by the board shall hold office for a term of one year or until his or her successor is appointed or until his or her earlier resignation.

### **7.10 Agents and Attorneys.**

The board shall have power from time to time to appoint agents or attorneys for the Corporation in or outside Canada with such powers (including, without limitation, the power to subdelegate) of management, administration or otherwise as maybe thought fit.

### **7.11 Conflict of Interest.**

An officer shall disclose his or her interest in any material contract or transaction or proposed material contract or transaction with the Corporation in accordance with section 5.16 hereof.

## **ARTICLE 8 PROTECTION OF DIRECTORS, OFFICERS AND OTHERS**

### **8.1 Limitation of Liability.**

Every director and officer of the Corporation in exercising his or her powers and discharging his or her duties shall act honestly and in good faith with a view to the best interests of the Corporation and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Subject to the foregoing, no director or officer shall be liable for the acts, omissions, failures, neglects or defaults of any other director, officer or employee, or for joining in any act for conformity, or for any loss, damage or expense suffered or incurred by the Corporation through the insufficiency or deficiency of title to any property acquired by the Corporation or for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Corporation shall be invested, or for any loss or damage arising, from the bankruptcy, insolvency or tortuous acts of any person with whom any of the moneys, securities or effects of the Corporation shall be deposited, or for any loss occasioned by any error of judgment or oversight on his or her part, or for any other loss, damage or misfortune which shall happen in the execution of the duties of his or her office or in relation thereto. Nothing herein shall relieve any director or officer from the duty to act in accordance with the Act and the regulations thereunder or from liability for any breach thereof.

## **8.2 Indemnity.**

Subject to the Act, the Corporation shall indemnify a director or officer, a former director or officer 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 the heirs and legal representatives of such person, against all costs, charges and expenses, including, without limitation, an amount paid to settle an action or satisfy a judgment, reasonably incurred by such person in respect of any civil, criminal or administrative action or proceeding to which such person is made a party by reason of being or having been a director or officer of the Corporation or body corporate, if

- (a) the person acted honestly and in good faith with a view to the best interests of the Corporation, and
- (b) in the case of a criminal or administrative action or proceeding enforced by a monetary penalty, the person had reasonable grounds for believing that the relevant conduct was lawful.

The Corporation shall also indemnify that person in such other circumstances as the Act or law permits or requires. Nothing in this by-law shall limit the right of any person entitled to indemnity to claim indemnity apart from the provisions of this by-law.

## **8.3 Insurance.**

Subject to the Act, the Corporation may purchase and maintain such insurance for the benefit of any person referred to in section 8.2 hereof as the board may from time to time determine.

# **ARTICLE 9 SHARES**

## **9.1 Options or Rights.**

Subject to the Act, the articles and the shareholder declaration, the board may from time to time issue or grant options to purchase the whole or any part of the authorized and unissued shares of the Corporation at such times and to such persons and for such consideration as the board shall determine, except that no share shall be issued until it is fully paid as provided by the Act.

## **9.2 Securities Records.**

The Corporation shall prepare and maintain, at its registered office or at any other place in Ontario designated by the board, a securities register in which it records the securities issued by it in registered form, showing with respect to each class or series of securities:

- (a) the names, alphabetically arranged, of each person who:
  - (i) is or has been within six years registered as a shareholder of the Corporation, the address including, without limitation, the street and number, if any, of every such person while a holder and the number and class of shares registered in the name of such holder;

(ii) is or has been within six years registered as a holder of debt obligations of the Corporation, the address including, without limitation, the street and number, if any, of every such person while a holder and the class or series and principal amount of the debt obligations registered in the name of such holder;

(b) the date and particulars of the issue of each security and warrant.

### **9.3 Register of Transfers.**

The Corporation shall cause to be kept a register of transfers in which all transfers of securities issued by the Corporation in registered form and the date and other particulars of each transfer shall be set out.

### **9.4 Registration of Transfers.**

Subject to the Act, no transfer of a share shall be registered in a securities register except on presentation of the certificate representing such share with an endorsement which complies with the Act made on or delivered with it duly executed by an appropriate person as provided by the Act, together with such reasonable assurance that the endorsement is genuine and effective as the board may from time to time prescribe, on payment of all applicable taxes and any reasonable fees prescribed by the board, on compliance with the restrictions on issue, transfer or ownership authorized by the articles or shareholder declaration.

### **9.5 Share Certificates.**

Every holder of one or more shares of the Corporation shall be entitled, at his or her option, to a share certificate or to a non-transferable written certificate of acknowledgment of his or her right to obtain a share certificate, stating the number and class or series of shares held by him or her as shown in the securities register. The certificates shall be in such form as the board may from time to time approve. Unless otherwise ordered by the board, any such certificate shall be signed by two persons:

- (a) one of whom is the Chair of the board, the president or a director; and
- (b) the other of whom is the secretary, the treasurer, any assistant secretary, any assistant treasurer or a director and need not be under the corporate seal.

Signatures of signing officers may be printed or mechanically reproduced in facsimile upon share certificates and every such facsimile shall for all purposes be deemed to be the signature of the officer whose signature it reproduces and shall be binding upon the Corporation, except that at least one director or officer of the Corporation shall manually sign each certificate (other than a scrip certificate or a certificate representing a fractional share or a warrant or a promissory note that is not issued under a trust indenture) in the absence of a manual signature thereon of a duly appointed transfer agent, registrar, branch transfer agent or issuing or other authenticating agent of the Corporation or trustee who certifies it in accordance with a trust indenture. A security certificate executed as aforesaid shall be valid notwithstanding that an officer whose facsimile signature appears thereon no longer holds office at the date of issue of the certificate.

## **9.6 Replacement of Share Certificates.**

The board or any officer or agent designated by the board may in its or his or her discretion direct the issue of a new share or other such certificate in lieu of and on cancellation of a certificate that has been mutilated or in substitution for a certificate claimed to have been lost, apparently destroyed or wrongfully taken on payment of such reasonable fee and on such terms as to indemnity, reimbursement of expenses and evidence of loss and of title as the board may from time to time prescribe, whether generally or in any particular case.

## **ARTICLE 10 DIVIDENDS AND RIGHTS**

### **10.1 Dividends.**

Subject to the Act and the shareholder declaration, the board may from time to time declare dividends payable to the shareholders according to their respective rights and interests in the Corporation. Dividends may be paid in money or property or by the issue of fully paid shares of the Corporation or options or rights to acquire fully paid shares of the Corporation.

### **10.2 Dividend Cheques.**

A dividend payable in money (less any tax or other amounts required to be deducted or withheld by the Corporation) shall be paid to the order of each registered holder of the shares of the class or series in respect of which it has been declared by cheque in lawful money of Canada at par at any branch in Canada of the Corporation's bankers for the time being or, in respect of any particular holder, by any other means agreed upon between the Corporation and such holder. The mailing of such cheque by ordinary unregistered first class pre-paid mail addressed to a holder at his or her address as it appears in the securities register of the Corporation or, in the event of the address of any such holder not so appearing, then at the last address of such holder known to the Corporation or, in the case of joint holders, to the address of that one of the joint holders whose name stands first in such register. or the payment by such other means shall be deemed to be payment of the dividends represented thereby and payable on such date to the extent of the amount of such payment unless the cheque is not paid upon presentation or payment by such other means is not received.

## **ARTICLE 11 MEETINGS OF SHAREHOLDERS**

### **11.1 Annual Meetings.**

The annual meeting of shareholders shall be held at such time in each year and, subject to section 11.3 hereof; at such place as the board may from time to time determine, for the purpose of considering the financial statements and reports required by the Act to be placed before the annual meeting, electing directors, appointing an auditor, fixing or authorizing the directors to fix the remuneration payable to such auditor and for the transaction of such other business as may properly be brought before the meeting.

## **11.2 Special Meetings.**

The board shall have power to call a special meeting of shareholders at any time.

## **11.3 Place of Meetings.**

Meetings of shareholders shall be held at such place as the directors determine or, in the absence of such a determination, at the place where the registered office of the Corporation is located.

## **11.4 Meeting by Electronic Means.**

A meeting of shareholders may be held by telephonic or electronic means and a shareholder who, through those means, votes at the meeting or establishes a communications link to the meeting shall be deemed for the purpose of the Act to be present at the meeting. A meeting held by telephonic, or electronic means shall be deemed to be held at the place where the registered office of the Corporation is located.

## **11.5 Notice of Meetings.**

Notice of the time and place of each meeting of shareholders shall be given in the manner provided in Section 12 hereof, not less than 10 days, before the date of the meeting to each director, to the auditor and to each shareholder who at the close of business on the record date for notice is entered in the securities register as the holder of one or more shares carrying the right to receive notice of or vote at the meeting. Notice of a meeting of shareholders called for any purpose other than consideration of the minutes of an earlier meeting, financial statements, auditor's report, re-election of incumbent directors, reappointment of the incumbent auditor or fixing or authorizing the directors to fix the remuneration payable to such auditor shall state or be accompanied by a statement of:

- (a) the nature of the business in sufficient detail to permit the shareholder to form a reasoned judgment on it; and
- (b) the text of any special resolution or by-law to be submitted to the meeting.

## **11.6 Meetings Without Notice.**

A meeting of shareholders may be held without notice at any time and place permitted by the Act if:

- (a) all the shareholders entitled to vote at the meeting are present in person or duly represented or if those not present or represented waive notice of or otherwise consent to the meeting being held; and
- (b) the auditors and the directors are present or waive notice of or otherwise consent to the meeting being held,

so long as the shareholders, auditors or directors present are not attending for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

At such a meeting, any business may be transacted which the Corporation may transact at a meeting of shareholders.

### **11.7 Quorum.**

Subject to the shareholder declaration, a quorum of shareholders is present at a meeting of shareholders, irrespective of the number of persons actually present at the meeting, if the holders of a majority of the shares entitled to vote at the meeting are present in person or represented by proxy. A quorum need not be present throughout the meeting provided that a quorum is present at the opening of the meeting. If a quorum is not present at the time appointed for the meeting or within a reasonable time after that the shareholders may determine, the shareholders present or represented may adjourn the meeting to a fixed time and place but may not transact any other business.

### **11.8 Proxy holders and Representatives.**

Every shareholder entitled to vote at a meeting of shareholders may appoint a proxy holder, or one or more alternate proxy holders, as his or her nominee to attend and act at the meeting in the manner and to the extent authorized and with the authority conferred by the proxy. A proxy shall be in a form that is in written or printed format or a format generated by telephonic or electronic means. A proxy must be signed in writing or by electronic signature by the Shareholder or an attorney who is authorized by a document that is signed in writing or by electronic signature and shall conform with the requirements of the Act. Alternatively, every shareholder which is a body corporate or other legal entity may authorize by resolution of its directors or governing body an individual to represent it at a meeting of shareholders, and that individual may exercise on the shareholder's behalf all the powers it could exercise if it were an individual shareholder. The authority of such an individual shall be established by depositing with the Corporation a certified copy of the resolution or in such other manner as may be satisfactory to the secretary of the Corporation or the Chair of the meeting. Any such proxy holder or representative need not be a shareholder. A shareholder or an attorney may sign, by electronic signature, a proxy, a revocation of proxy or a power of attorney authorizing the creation of either of them if the means of electronic signature permits a reliable determination that the document created or communicated by or on behalf of the shareholder or the attorney, as the case may be.

### **11.9 Votes to Govern.**

At any meeting of shareholders, every question shall, unless otherwise required by the articles, by-laws, the shareholder declaration or by law, be determined by a majority of the votes cast on the question.

### **11.10 Casting Vote.**

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

### **11.11 Show of Hands.**

Subject to the Act, any question at a meeting of shareholders shall be decided by a show of hands, unless a ballot is required or demanded as hereinafter provided. On a show of hands,

every person who is present and entitled to vote shall have one vote. Whenever a vote by show of hands has been taken on a question, unless a ballot is required or demanded, a declaration by the Chair of the meeting that the vote on 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 meeting shall be prima facie evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against any resolution or other proceeding in respect of the question, and the result of the vote so taken shall be the decision of the shareholders on the question.

#### **11.12 Ballots.**

On any question proposed for consideration at a meeting of shareholders, and whether or not a show of hands has been taken on it, the Chair may require a ballot or any person who is present and entitled to vote on the question at the meeting may demand a ballot. A ballot so required or demanded shall be taken in such manner as the Chair shall direct. A requirement or demand for a ballot may be withdrawn at any time before the taking of the ballot. If a ballot is taken, each person present shall be entitled, in respect of the shares which he is entitled to vote at the meeting on the question, to that number of votes provided by the Act or the articles, and the result of the ballot so taken shall be the decision of the shareholders on the question.

#### **11.13 Adjournment.**

The Chair at a meeting of shareholders may, with the consent of the meeting and subject to such conditions as the meeting may decide, adjourn the meeting from time to time and from place to place. If a meeting of shareholders is adjourned for less than 30 days, it will not be necessary to give notice of the adjourned meeting other than by announcement at the earliest meeting that is adjourned. Subject to the Act, if a meeting of shareholders is adjourned by one or more adjournments for an aggregate of 30 days or more, notice of the adjourned meeting shall be given as for an original meeting.

#### **11.14 Resolution in Lieu of Meeting.**

A resolution in writing signed by all 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 the shareholders unless, in accordance with the Act:

- (a) in the case of the resignation or removal of a director or the appointment or election of another person to fill the place of that director, a written statement is submitted to the Corporation by the director giving the reasons for his or her resignation or the reasons why he opposes any proposed action or resolution for the purpose of removing him or her from office or the election of another person to fill the office of that director, or
- (b) in the case of the removal or resignation of an auditor or the appointment or election of another person to fill the office of auditor, representations in writing are made to the Corporation by that auditor concerning his or her proposed removal, the appointment or election of another person to fill the office of auditor or his or her resignation.



under the Act, the regulations, the articles, the by-laws, or otherwise, and that waiver or abridgement, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in the giving or in the time of the notice, as the case may be. Any such waiver or abridgement shall be in writing, except a waiver of notice of a meeting of shareholders or of the board or a committee of the board, which may be given in any manner.

**ARTICLE 13  
EFFECTIVE DATE**

**13.1 Effective Date.**

This by-law shall come into force when enacted by the board and confirmed by the shareholders in accordance with the Act.

**13.2 Paramountcy.**

In the event of any conflict between any provision of this by-law and any provision of the shareholders agreement, the provision of the shareholders agreement shall prevail to the extent of the conflict.

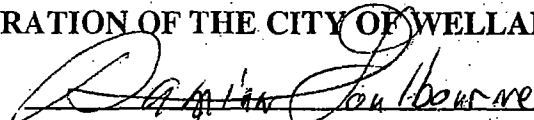
**13.3 Repeal.**

All previous by-laws of the Corporation are repealed as of the coming into force of this by-law. The repeal shall not affect the previous operation of any by-law so repealed or affect the validity of any act done or right, privilege, obligation or liability acquired or incurred under, or the validity of any contract or agreement made pursuant to, or the validity of any articles or predecessor charter documents of the Corporation obtained pursuant to, any such by-law before its repeal. All officers and persons acting under any by-law so repealed shall continue to act as if appointed under the provisions of this by-law, and all resolutions of the shareholders, the board or a committee of the board with continuing effect passed under any repealed by-law shall continue to be good and valid except to the extent inconsistent with this by-law and until amended or repealed.

DATED at Welland, Ontario as of this 6th day of December, 2005.

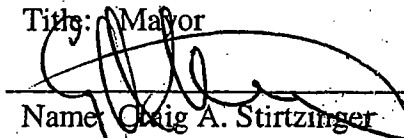
**THE CORPORATION OF THE CITY OF WELLAND**

Per:

  
Name: Damian Goulbourne

Title: Mayor

Per:

  
Name: Craig A. Stirtzinger

Title: City Clerk

We have the authority to bind the corporation