

BY-LAW NO. 2
OF
FIRST CAPITAL REALTY INC.

A by-law relating to the nomination of persons for election as directors of the Company.

1.1 For purposes of this By-Law No. 2:

“**Act**” means the *Business Corporations Act* (Ontario) and the regulations thereunder, as from time to time amended, and every statute or regulation that may be substituted therefor and, in the case of such amendment or substitution, any reference in this By-Law No. 2 shall be read as referring to the amended or substituted provisions;

“**Applicable Securities Laws**” means the applicable securities legislation of each relevant province and territory of Canada, as amended from time to time, the rules, regulations and forms made or promulgated under any such statute and the published national instruments, multilateral instruments, policies, bulletins and notices of the securities commission and similar regulatory authority of each province and territory of Canada;

“**public announcement**” means disclosure in a press release reported by a national news service in Canada, or in a document publicly filed by the Company under its profile on the System of Electronic Document Analysis and Retrieval at www.sedar.com; and

“**Representatives**” of a person means the affiliates and associates of such person, all persons acting jointly or in concert with any of the foregoing, and the affiliates and associates of any of such persons acting jointly or in concert, and “**Representative**” means any one of them.

1.2 Subject only to the Act, and for so long as the Company is a distributing corporation, only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Company. Nominations of persons for election to the board of directors of the Company (the “**Board**”) may be made at any annual meeting of shareholders, or at any special meeting of shareholders if one of the purposes for which the special meeting was called was the election of directors,

1.2.1 by or at the direction of the Board, including pursuant to a notice of meeting;

1.2.2 by or at the direction or request of one or more shareholders pursuant to a proposal made in accordance with the provisions of the Act or a requisition of the shareholders made in accordance with the provisions of the Act; or

1.2.3 by any person (a “**Nominating Shareholder**”):

1.2.3.1. who, at the close of business on the date of the giving of the notice provided for below in this Section 1 and at the close of business on the record date for notice of such meeting of shareholders, is entered in the securities register of the Company as a holder of one or more shares carrying the right to vote at such meeting or who beneficially owns shares that are entitled to be voted at such meeting; and

1.2.3.2. who complies with the notice procedures set forth below in this Section 1.

1.3 In addition to any other applicable requirements, for a nomination to be made by a Nominating Shareholder, such person must have given timely notice thereof (in accordance with Section 1.4 below) in proper written form to the Board (in accordance with Section 1.5 below).

1.4 To be timely, a Nominating Shareholder's notice to the Board must be made:

1.4.1 in the case of an annual meeting of shareholders (which includes an annual and special meeting), not less than 30 days prior to the date of the annual meeting of shareholders; provided, however, that in the event that the annual meeting of shareholders is called for a date that is less than 50 days after the date (the "**Notice Date**") that is the earlier of the date that a notice of meeting is filed for such meeting or the date on which the first public announcement of the date of the annual meeting was made, notice by the Nominating Shareholder may be made not later than the close of business on the tenth (10th) day following the Notice Date;

1.4.2 in the case of a special meeting (which is not also an annual meeting) of shareholders called for the purpose of electing directors (whether or not called for other purposes as well), not later than the close of business on the fifteenth (15th) day following the day that is the earlier of the date that a notice of meeting is filed for such meeting or the date on which the first public announcement of the date of the special meeting of shareholders was made; and

1.4.3 in the event of any adjournment or postponement of a meeting of shareholders, or an announcement thereof, the required time periods for the giving of a Nominating Shareholder's notice as described above shall apply using the date of the adjourned or postponed meeting, or the date of announcement thereof, as the case may be. This means that a Nominating Shareholder who failed to deliver a timely Nominating Shareholder's notice in proper written form to the directors for purposes of the originally scheduled shareholders' meeting shall nonetheless be entitled to provide a Nominating Shareholder's notice for purposes of any adjourned or postponed meeting of shareholders as the determination as to whether a Nominating Shareholder's notice is timely is to be determined based off of the adjourned or postponed shareholders' meeting date and not the original shareholders' meeting date.

1.5 To be in proper written form, a Nominating Shareholder's notice to the Board must:

1.5.1 set forth, as to each person whom the Nominating Shareholder proposes to nominate for election as a director (each, a "**Proposed Nominee**"):

1.5.1.1. the name, age, business address and residential address of the person;

1.5.1.2. the principal occupation or employment of the person for the past five years;

1.5.1.3. the status of such person as a "**resident Canadian**" (as such term is defined in the Act);

- 1.5.1.4. the class or series and number of shares which are controlled or which are owned beneficially or of record by the person as of the record date for the meeting of shareholders (if such date shall then have been made publicly available and shall have occurred) and as of the date of such notice;
 - 1.5.1.5. full particulars regarding any contract, agreement, arrangement, understanding or relationship (collectively, “**Arrangements**”), including without limitation financial, compensation and indemnity related Arrangements, between the Proposed Nominee or any associate or affiliate of the Proposed Nominee and any Nominating Shareholder or any of its Representatives; and
 - 1.5.1.6. any other information relating to the Proposed Nominee or his or her associates or affiliates that would be required to be disclosed in a dissident’s proxy circular in connection with solicitations of proxies for election of directors pursuant to the Act and Applicable Securities Laws.
- 1.5.2 set forth, as to each Nominating Shareholder giving the notice and each beneficial owner, if any, on whose behalf the nomination is made:
- 1.5.2.1. the name, age, business address and, if applicable, residential address of such person;
 - 1.5.2.2. their direct or indirect beneficial ownership in, or control or direction over, any class or series of securities of the Company, including the number or the principal amount;
 - 1.5.2.3. full particulars regarding (1) any proxy or other Arrangement pursuant to which such person or any of its Representatives has a right to vote or direct the voting of any shares of the Company, and (2) any other Arrangement of such person or any of its Representatives relating to the voting of any shares of the Company or the nomination of any person(s) to the Board;
 - 1.5.2.4. full particulars regarding any Arrangement of such person or any of its Representatives, the purpose or effect of which is to alter, directly or indirectly, the economic interest of such person or any of its Representatives in a security of the Company or the economic exposure of any such person or any of its Representatives to the Company;
 - 1.5.2.5. full particulars regarding any Arrangement, including without limitation financial, compensation and indemnity related Arrangements, between the Proposed Nominee or any associate or affiliate of the Proposed Nominee and such person or any of its Representatives;
 - 1.5.2.6. proof that the Nominating Shareholder is a holder of record of securities of the Company, or a beneficial owner, entitled to vote at such meeting;
 - 1.5.2.7. whether such person or any of its Representatives intends to deliver a proxy circular and/or form of proxy to any shareholder of the Company in connection with such nomination or otherwise solicit proxies or votes from shareholders of the Company in support of such nomination; and
 - 1.5.2.8. any other information relating to such person or any of its Representatives that would be required to be disclosed in a dissident's proxy circular in connection with

solicitations of proxies for election of directors pursuant to the Act and Applicable Securities Laws.

The Company may require any Proposed Nominee to furnish such other information as may be required to be contained in a dissident proxy circular or by applicable law or regulation to determine the independence of such Proposed Nominee or his or her eligibility to serve as a director of the Company or a member of any committee of the Board.

1.6 All information to be provided in a timely notice pursuant to Section 1.5 above shall be provided as of the record date for determining shareholders entitled to vote at the meeting (if such date shall then have been publicly announced) and as of the date of such notice. The Nominating Shareholder shall update such information forthwith if there are any material changes in the information previously disclosed.

1.7 For the avoidance of doubt, Section 1.2 above shall be the exclusive means for any person to bring nominations for election to the Board before any annual or special meeting of shareholders of the Company. No person shall be eligible for election as a director of the Company unless such person has been nominated in accordance with the provisions of this Section 1; provided, however, that nothing in this Section 1 shall be deemed to preclude discussion by a shareholder (as distinct from the nomination of directors) at a meeting of shareholders of any matter in respect of which such shareholder would have been entitled to submit a proposal pursuant to the Act. The chair of the meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in the foregoing provisions and, if any proposed nomination is not in compliance with such foregoing provisions, to declare that such defective nomination shall be disregarded.

1.8 Notwithstanding any other provision of this Section 1 or any other by-law of the Company, any notice or other document or information required to be given to the Board pursuant to this Section may only be given by personal delivery, facsimile transmission or by email (at such email address as may be stipulated from time to time by the Board for purposes of this notice), and shall be deemed to have been given and made only at the time it is served by personal delivery to the Board at the address of the principal executive offices of the Company, emailed (to the address as aforesaid) or sent by facsimile transmission (provided that receipt of confirmation of such transmission has been received); provided that if such delivery or electronic communication is made on a day which is a not a business day or later than 5:00 p.m. (Toronto time) on a day which is a business day, then such delivery or electronic communication shall be deemed to have been made on the next following day that is a business day.

1.9 Notwithstanding the foregoing, the Board may, in its sole discretion, waive all or any of the requirements in this Section.