

FOR OFFICE USE ONLY



(1) Registry ☐ Land Titles ☒

(2) Page 1 of 31 pages

(3) Property Identifier(s) 29931-0001 (LT) to 29931-2400 (LT) *inclusive*

Block Property Additional: See Schedule ☐

(4) Nature of Document

BY-LAW NO. 2 (THE CONDOMINIUM ACT)

SECTION 56(9)

(5) Consideration

Dollars \$

(6) Description

All units and common elements comprising the property included in York Region Standard Condominium Plan No. 1400, in the Town of Richmond Hill, Regional Municipality of York, Land Titles Office for York (No. 65)

(7) This Document Contains:

(a) Redescription New Easement Plan/Sketch ☐

(b) Schedule for: Description ☐ Additional Parties ☐ Other ☒

New Property Identifiers

Additional: See Schedule ☐

Executions

Additional: See Schedule ☐

(8) This Document provides as follows:
See Schedule for By-law and Certificate

Continued on Schedule ☒

(9) This Document relates to instrument number(s)

(10) Party(ies) (Set out Status or Interest)

Name(s)

Signature(s)

Date of Signature

YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1400

Per: *[Signature]*

2019 03 1

Name: Sam Sadr

Title: President

Per: *[Signature]*

2019 02 28

Name: Ronald Stein

Title: Secretary

We have authority to bind the Corporation

(11) Address for Service 25 Torbarrie Road, Toronto, Ontario M3L 1G5

(12) Party(ies) (Set out Status or Interest)

Name(s)

Signature(s)

Date of Signature

(13) Address for Service

(14) Municipal Address of Property

9191, 9199, 9201 and
9205 Yonge Street
Richmond Hill, Ontario

(15) Document Prepared by:

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Fees and Tax	
Registration Fee	
Total	

FOR OFFICE USE ONLY

CONDOMINIUM ACT. 1998

CERTIFICATE IN RESPECT OF A BY-LAW

(under subsection 56(9) of the *Condominium Act, 1998*)

York Region Standard Condominium Corporation No. 1400 (known as the "**Corporation**") certifies that:

1. The copy of By-law Number 2, attached as Schedule "A", is a true copy of the by-law.
2. The by-law was made in accordance with the *Condominium Act, 1998*.
3. The Owners of a majority of the units of the Corporation have voted in favour of confirming the bylaw.

DATED this 5th day of February, 2019.

**YORK REGION STANDARD CONDOMINIUM
CORPORATION NO. 1400**

Per: 

President – Sam Sadr

Per: 

Secretary – Ronald Stein

We have authority to bind the Corporation.

SCHEDULE "A"
YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1400
BY-LAW NO. 2

BE IT ENACTED AS By-Law No. 2 of YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1400 (hereinafter referred to as the "Corporation" or the "Condominium") as follows:

- 1. That the Corporation be and it is hereby authorized to execute and deliver the agreement (the "**Reciprocal Operating Agreement** ") attached hereto as Schedule "A" and to execute and deliver any formal transfers or conveyances of easements to Great Land (Yonge 16th) Inc., as may be required from time to time in order to give effect to the provisions of the said Reciprocal Operating Agreement.

- 2. That all the terms, provisions and conditions set out in the Reciprocal Operating Agreement, including without limitation, all covenants and agreements made by or on behalf of the Corporation, are hereby authorized, ratified, sanctioned and confirmed.

- 3. That any two directors of the Corporation be and they are hereby authorized to execute, on behalf of the Corporation, the Reciprocal Operating Agreement, together with all documents or instruments which are ancillary to the Reciprocal Operating Agreement, including without limitation, all instruments or affidavits which may be required in order to register the Reciprocal Operating Agreement, and any transfers or conveyances of easements, pursuant to the terms of the Reciprocal Operating Agreement against the title to the condominium property and/or adjacent lands. The affixation of the corporate seal of the Corporation to all such documents and instruments as hereby authorized, ratified, sanctioned and confirmed.

DATED the 5th day of February, 2019.

York Region Standard Condominium Corporation No. 1400 hereby enacts the foregoing by-law having been duly approved by the directors of the Corporation and confirmed without variation by the declarant which owns one hundred percent (100%) of the units in the Corporation pursuant to the provisions of the Condominium Act, 1998.

YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1400

Per: 
President – Sam Sadr

Per: 
Secretary – Ronald Stein

We have authority to bind the Corporation.

Schedule "A"

THIS AGREEMENT made the 5th day of February, 2019.

B E T W E E N:

YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1400

(hereinafter called the "**Residential Condominium**")

OF THE FIRST PART;

- and -

GREAT LAND (YONGE 16TH) INC.

(hereinafter called the "**Declarant**")

OF THE SECOND PART.

WHEREAS the Residential Condominium was created by the registration of the declaration and description in accordance with the provisions of the Act, which declaration and description has been registered in the Land Registry Office for the Land Titles Division of York (No. 65) as Instrument No. YR2926628 (the "**Declaration**") creating a condominium plan legally known as York Region Standard Condominium Plan No. 1400;

AND WHEREAS Great Land (Yonge 16th) Inc. is the declarant of the Residential Condominium and is the registered owner of the Commercial Lands;

AND WHEREAS the Declarant or related companies has developed and constructed a commercial project on the Commercial Lands and intends to register the Commercial Condominium on the Commercial Lands;

AND WHEREAS the Parties are entering into this Agreement to provide for the operation of the Residential Lands and Commercial Lands as an integrated mixed use development including, without limitation, for the use, operation, maintenance, repair, service, reconstruction, if necessary, and the sharing of responsibilities and costs for the Shared Facilities, confirmation of and certain general rules with respect to the Easements and to set forth certain other agreements of the parties relating to the Residential Lands and Commercial Lands and the sharing of other responsibilities and costs;

AND WHEREAS it is acknowledged and agreed that the Declarant is entering into this Agreement for and on behalf of itself and the Commercial Condominium, on the express understanding that as and when the Commercial Condominium is registered as a separate condominium corporation, it shall assume all covenants and obligations of the Declarant relating to this Agreement and correspondingly the Declarant upon registration of the Commercial Condominium shall be released, relieved and forever discharged from the said obligations and/or liabilities.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of Two (\$2.00) Dollars and other good and valuable consideration paid by each of the parties hereto to each of the others of them, the parties hereto covenant and agree with one another as follows:

ARTICLE 1.00

DEFINITIONS AND INTERPRETATIONS

Section 1.01 - Definitions

All capitalized words used herein and not otherwise specifically defined shall have ascribed to them the meanings defined or to be defined thereto in the Act. For the purposes of this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following expressions shall have their meanings respectively hereinafter ascribed to them:

- (a) "**Acceptable Standards**" means collectively, in first class condition and appearance, having regard to the standards that would, at a minimum, be equivalent to the standards employed by a prudent owner of a similar building

located in the Town of Richmond Hill, any standards prescribed by applicable laws, by-laws, rules and regulations, and:

- (i) with respect to any equipment, device, apparatus, system or service: efficient and safe operating capability for its intended purpose(s) in accordance with the standards specified by its manufacturer(s)/supplier(s) and prescribed by all applicable laws, by-laws, rules and regulations;
 - (ii) with respect to any paved, interlocking brick or stone and/or concrete surface or drive aisle, walkway, ramp, landscaped/grassed area, as applicable: appearing to be properly surfaced, striped and signed or cultivated/tended, properly maintained and suitable for its intended purpose(s) (including without limitation clear of ice and snow in winter months and otherwise clean and tidy) and in compliance with all applicable laws, by-laws, rules and regulations; and
 - (iii) with respect to any structural element, part or component: good repair, having regard to the standards maintained by a prudent owner of a comparable element of comparable age;
- (b) "**Act**" means the *Condominium Act, 1998* (Ontario) and any amendments and regulations thereto, together with any successor legislation intended to replace or supercede same;
- (c) "**Agreement**" means this Agreement including all of the schedules, which are annexed hereto, any subsequent amendments and any documents which are related to and stipulated to form a part of this Agreement;
- (d) "**Approved Budget**" means the Budget approved or deemed to be approved by the Shared Facilities Committee pursuant to this Agreement;
- (e) "**Arbitration**" means the mediation and arbitration procedures as set out in Article 9.00 of this Agreement;
- (f) "**Arbitration Notice**" has the meaning ascribed thereto in Section 9.02(a)(i) hereof;
- (g) "**Benefitting Owners**" means those owners of the dominant tenements with respect to the Easements that are entitled to the benefit of the Easements and who are Parties;
- (h) "**Bicycle Storage Racks**" means the surface bicycle storage racks accommodating approximately 18 or more bicycles located in the Residential Condominium intended to be used by both the Residential Condominium and owner of the Commercial Lands and the Commercial Condominium when so registered and all of their various owners, residents, tenants, guests and invitees;
- (i) "**Budget**" has the meaning ascribed thereto in Section 4.05(a) hereof;
- (j) "**Building Code**" means the building code defined under the *Building Code Act* (Ontario) as amended from time to time;
- (k) "**Charge**" has the meaning ascribed thereto in Section 10.01 hereof;
- (l) "**Commercial Condominium**" means the condominium corporation to be created by the registration of a declaration and description with respect to the Commercial Lands;
- (m) "**Commercial Lands**" means those certain lands and premises described in Schedule "B" hereto;
- (n) "**Commercial Structure**" means the Commercial Lands and any structures built or to be built on the Commercial Lands, together with all easements and appurtenances thereto. For greater certainty, the Commercial Structure excludes all pipes, wires, cables, conduits, ducts and mechanical or similar apparatus and services which may be physically located within the Commercial Lands, but which

serve or supply services to only the Residential Lands, but includes all pipes, wires, cables, conduits, ducts and mechanical or similar apparatus and services which may be physically located within the Residential Lands, but which service or supply services to only the Commercial Lands;

- (o) **"Common Structure"** means the foundation and structure for the Development common to two or more Parties and includes, as applicable:
 - (i) external walls and all supporting walls, pillars, columns and footings;
 - (ii) any retaining wall or fencing shown on any approved site plan for the Development;
 - (iii) applicable floor and roof slabs;
 - (iv) applicable waterproofing membranes; and
 - (v) any component of a building necessary for the support of any part(s) of the Structure or another Party;
- (p) **"Communication Room Unit"** means unit 80 on Level A of the Residential Condominium;
- (q) **"Condominium"** means either the Residential Condominium or the Commercial Condominium, as the case may be;
- (r) **"Declarant"** means Great Land (Yonge 16th) Inc., its successors and assigns;
- (s) **"Defaulting Party"** has the meaning ascribed thereto in Section 10.01 hereof;
- (t) **"Development"** means collectively the Residential Lands and the Commercial Lands and all buildings and structures constructed thereon;
- (u) **"Driveways, Lanes and Walkways"** means the drive lanes, roadway areas and walkways situate within the common elements on Levels 1 and A of the Residential Condominium and the proposed Commercial Condominium and which are intended to be shared by both Parties, including without limitation all driveway ramps, overhead entrance garage door, drive lanes and walkways, as situate on Parts 3, 8, 19, 20, 22 and 40 of the Reference Plan;
- (v) **"Easements"** means those easements, rights-of-way, and rights in the nature of easements described in the declaration of the Residential Condominium;
- (w) **"Easement Areas"** means collectively those portions of the Development which are subject to the Easements;
- (x) **"Electrical Room Units"** means units 83, 85, 86 and 89, on Level A of the Residential Condominium;
- (y) **"Fiscal Period"** means the twelve (12) month period or other period from time to time agreed upon by the Parties for the purpose of calculation of Shared Facilities Costs and the payments by each of the Parties with respect thereto;
- (z) **"Firefighters (CACF) Room Units"** means units 23 and 24 on Level 1 of the Residential Condominium;
- (aa) **"Force Majeure"** means war, other catastrophe, fire, storm, flood, earthquake, explosion, accident, energy shortage, sabotage, act of the Queen's enemies, riot or insurrection, strike, lock-out, or labour disturbance, inability to obtain materials, goods, equipment, services or utilities required, or any law, municipal by-law, governmental regulation or order, or inability to obtain any permission or authority required to be obtained;
- (bb) **"Garbage/Recycle Room Units"** means units 82 and 87, on Level A of the Residential Condominium;
- (cc) **"Gas Meter Station Unit"** means unit 28, on Level 1 of the Residential Condominium;

- (dd) **"Governmental Authorities"** means the Town of Richmond Hill and all other governmental authorities or agencies having jurisdiction over the Residential Lands and/or Commercial Lands;
- (ee) **"Liability Insurance"** means the insurance described and referred to in Section 6.02 hereof;
- (ff) **"Loading Bay Units"** means units 21 and 22 on Level 1 of the Residential Condominium;
- (gg) **"Mail Room Units"** means units 25 and 26 on Level 1 of the Residential Condominium;
- (hh) **"Major Change"** means any structural alteration, structural addition, structural change or structural improvement to the Development, or the demolition or partial demolition of the Development, or any part thereof, or any alteration, addition, change or improvement (other than minor changes and details) which affects or relates to the exterior of the Development (except for signage and all appurtenances thereto, canopies, storefronts and doors (but excluding masonry cladding and pillars)), the roof, Shared Service Facilities, the Easements or the landscape treatment of the lands surrounding the Development provided that restoration or repair following damage or destruction (where the original plans and specifications are substantially re-utilized) shall not constitute a Major Change within the meaning of Article 8.00 hereof;
- (ii) **"Mechanical Room Units"** means units 78, 79, 81 and 88, on Level A of the Residential Condominium;
- (jj) **"Members" and "Member"** has the meaning ascribed thereto in Section 4.05(a) hereof;
- (kk) **"Non-Defaulting Party"** has the meaning ascribed thereto in Section 10.01 hereof;
- (ll) **"Non-Repairing Party"** has the meaning ascribed thereto in Section 7.01(c) hereof;
- (mm) **"Parties"** means the parties to this Agreement from time to time and their respective successors and assigns; **"Party"** shall have a corresponding singular meaning;
- (nn) **"Prime Rate"** means that rate of interest that is declared by the Royal Bank of Canada to be the rate of interest charged by that Bank to its commercial borrowers for unsecured Canadian dollar loans in Canada, payable on demand, in effect from time to time;
- (oo) **"Proportionate Share"** means:
 - (i) for the Residential Condominium – 97%; and
 - (ii) for the Commercial Condominium – 3%;
- (pp) **"Receiving Party"** has the meaning ascribed thereto in Section 9.02(a)(i) hereof;
- (qq) **"Referring Party"** has the meaning ascribed thereto in Section 9.02(a) hereof;
- (rr) **"Reference Plan"** means that certain plan of survey which has been registered in the Land Registry Office for the Land Titles Division of York (No. 65) and is known as Plan 65R37833;
- (ss) **"Replacement Value"** means the cost of repairing, replacing or restoring the Shared Facilities or any portion thereof or property therein, with materials of like kind and quality on the same or a similar site without deduction for physical deterioration or any other depreciation, and including differences made necessary by Building Code requirements;
- (tt) **"Requesting Party"** has the meaning ascribed thereto in Section 12.01 and Section 13.01 hereof, as the context applies;



- (uu) **"Residential Condominium"** means York Region Standard Condominium Corporation No. 1400, its successors and assigns;
- (vv) **"Residential Lands"** means those certain lands and premises described in Schedule "A" hereto;
- (ww) **"Residential Structure"** means the Residential Lands and any structures built or to be built on the Residential Lands, together with all easements and appurtenances thereto. For greater certainty, the Residential Structure excludes all pipes, wires, cables, conduits, ducts and mechanical or similar apparatus and services which may be physically located within the Residential Lands, but which serve or supply services to only the Commercial Lands, but includes all pipes, wires, cables, conduits, ducts and mechanical or similar apparatus and services which may be physically located within the Commercial Lands, but which serve or supply services to only the Residential Lands;
- (xx) **"Secretary"** means the secretary of the Shared Facilities Committee;
- (yy) **"Service Units"** means collectively the Communication Room Unit, Electrical Room Units, Firefighters (CACF) Room Units; Garbage/Recycle Room Units, Gas Meter Station Unit, Loading Bay Units, Mail Room Units, Mechanical Room Units, Storm Water Tank Unit and Transformer Unit;
- (zz) **"Shared Elevators"** means those certain elevators located at grade level and the first below grade parking level and more particularly located within parts 13 and 39 on the Reference Plan, and the 2 garbage area loading elevators which are located within the Loading Bay Units;
- (aaa) **"Shared Facilities"** means the Common Structure, Bicycle Storage Racks, Driveways, Lanes and Walkways, Shared Landscaping, Shared Service Facilities, Service Units and the Shared Elevators;
- (bbb) **"Shared Facilities Costs"** includes the costs and expenses of supplying, operating, maintaining, repairing, replacing, insuring and administering the Shared Facilities and any other costs relating to the Shared Facilities all as may be set out from time to time in the Budget;
- (ccc) **"Shared Facilities Committee"** has the meaning ascribed thereto in Section 4.05(a) hereof;
- (ddd) **"Shared Facilities Insurance"** means the insurance described and referred to in Section 6.01 hereof;
- (eee) **"Shared Landscaping"** means the exterior landscaping and plantings (which includes without limitation the maintenance, repair and replacement of the spheres which delineate the parking spaces on the east/west private roadway described as Part 3 on Plan 65R-37833) intended to be shared by the Parties;
- (fff) **"Shared Service Facilities"** includes every service, utility (excluding gas), facility and system which now or in the future serves or benefits both of the Parties and without restricting the generality of the foregoing, shall include mechanical, plumbing, communication, electrical, air conditioning and heating systems, water system, waste disposal system, fire, life safety and security systems, mechanical system, sanitary sewer system, storm tank, ventilation shafts, air intake vents, any pipes, wires, cables, conduits or shafts required for any of the foregoing systems but does not include any of the foregoing which serves or benefits only one of the Parties exclusively;
- (ggg) **"Storm Water Tank Unit"** means unit 84 on Level A of the Residential Condominium;
- (hhh) **"Structure"** means the Residential Structure or the Commercial Structure, or both, as the context may require;
- (iii) **"Substantial Damage"** means damage for which the cost of repair is estimated to equal or exceed twenty-five (25%) per cent of the Replacement Value of the damaged Structure;

- (jjj) **"Termination"** has the meaning ascribed thereto in the Act;
- (kkk) **"Transfer Date"** means the earliest of the following dates:
 - (i) not more than forty-five (45) days following the date that the Residential Condominium has been registered; and
 - (ii) such earlier date as the Declarant may determine or designate in its sole and absolute discretion;
- (lll) **"Transformer Unit"** means unit 27, on Level 1 of the Residential Condominium;
- (mmm) **"Unit"** has the meaning ascribed to it in the Act; and
- (nnn) **"Unit Owner"** means the owner of a Unit.

Section 1.02 - Headings

The division of this Agreement in to Articles and Sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

Section 1.03 - Severability

If any provision of this Agreement is determined by a Court of competent jurisdiction to be illegal or beyond the powers or capacity of the Parties bound hereby, or in the event any part or provision of the Agreement is liable to determination pursuant to any provision of the Act, such provision or part shall be severed from this Agreement and the remainder of this Agreement shall continue in full force and effect mutatis, mutandis. For purposes of giving effect to this paragraph, each paragraph or Article of this Agreement shall be considered severable from every remaining paragraph or Article of this Agreement.

Section 1.04 - Number and Gender

In this Agreement, words importing the singular number only shall include the plural and vice versa, words importing gender shall include all genders and words importing persons shall include individuals, companies, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities.

Section 1.05 - Schedules

The following are the schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

<u>Description of Schedule</u>	<u>Schedule Number</u>
Residential Lands	"A"
Commercial Lands	"B"

Section 1.06 –Registration of Commercial Condominium

The Parties covenant and agree that: (a) where reference in this Agreement is made to the "Commercial Condominium" but the Commercial Condominium has not yet been registered as a condominium pursuant to the Act, such reference shall be deemed to mean the "Declarant"; (b) upon the registration of the Commercial Condominium, the Declarant thereof shall cause the Commercial Condominium to ratify this Agreement and to assume and be bound by all of the terms, provisions and conditions contained in this Agreement, as if such condominium corporation; had been an original party hereto in the place and stead of the Declarant; and (c) the term "Declarant" shall be deemed to mean for all purposes of this Agreement, the Commercial Condominium. Notwithstanding anything provided to the contrary in this Agreement, it is understood and agreed by all of the Parties hereto that as and when the Commercial Condominium is registered and has assumed all of the terms, provisions and conditions contained in this Agreement, required to be assumed by it, that the Declarant shall be automatically released and forever discharged from all of its agreements, covenants, obligations and liabilities under or pursuant to this Agreement as same relate to the Commercial Lands.

Section 1.07 – Applicable Law

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each Party hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.

Section 1.08 – Amendment and Waivers

No amendment or waiver of any provision of this Agreement shall be binding on any Party unless consented to in writing by such Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise expressly provided.

Section 1.09 - Recitals

The recitals hereinbefore set forth are true in substance and in fact.

ARTICLE 2.00**EASEMENTS****Section 2.01 - Easements**

The Residential Lands and Commercial Lands are subject to the Easements. The Parties hereby expressly confirm, ratify and accept the Easements. Notwithstanding that the Parties have attempted to set out all of the Easements, it is understood and agreed that the Parties shall create all such easements that are reasonably required to allow the Development and each Structure therein to function as designed and to permit their ongoing maintenance and repair.

Section 2.02 - Regulation and General Use of Easements

- (a) The use and enjoyment of the Easements by the Benefitting Owners, shall be subject to the overriding provisions and/or restrictions set forth in the Easements and this Agreement. Where there is any conflict or inconsistency with respect to the Easements or the contents thereof and this Agreement, the provisions of this Agreement shall prevail.
- (b) In exercising their rights to the Easements, the Benefitting Owners shall act in a prudent and reasonable manner so as to minimize the interference occasioned to any owner of an Easement Area.
- (c) Either Party shall have the right to partially obstruct (on a temporary basis only) an Easement Area (or alternatively, temporarily suspend the benefit of the Easement relating thereto) within its lands, in order to maintain and/or repair any buildings, installations, structures and/or services that the Party has a duty to maintain and repair whether pursuant to the Act, pursuant to this Agreement, or otherwise, upon ten (10) days prior written notice of such partial obstruction or temporary suspension (as the case may be), being given to the Benefitting Owners, provided that alternate arrangements with respect to the use and enjoyment of an Easement Area, satisfactory to the Benefitting Owners, acting reasonably, are implemented. Otherwise no obstructions of an Easement Area or suspension of the benefit of an Easement shall take place without the consent of the Benefitting Owners.

Section 2.03 - Invalidity of Easements

Without limiting the generality of the foregoing, and to the extent that any of the Easements shall be finally interpreted or adjudged (by a court of competent jurisdiction) as failing to, or incapable of, creating a right or interest in land, any such Easement so adjudged or interpreted shall be deemed to constitute a licence in favour of those parties and for those specific purposes, as set out therein and the parties hereto shall execute any and all documentation that may be required in order to give further effect to this provision.

ARTICLE 3.00

SERVICE UNITS OWNERSHIP

Section 3.01 - Ownership of Service Units

The Parties hereby acknowledge, confirm and agree that ownership of the Service Units shall ultimately be shared between the Parties, as tenants-in-common, each as to an undivided fifty (50%) per cent interest. (which aforesaid interest is sometimes called the "**Proportionate Interest**").

Section 3.02 - Transfer of Service Units

The actual transfer of ownership of the Service Units by the Declarant to the Residential Condominium, as a tenant in common as to an undivided 50% interest, shall occur no later than 60 days after the Transfer Date.

Section 3.03 - Further Transfer, etc.

Once ownership of the Service Units has been transferred to the Parties by the Declarant as aforesaid, any further sale, transfer or other conveyance of the whole or any portion of the Service Units or a beneficial interest therein by any one or more of the Parties shall require, (in addition to any other approvals which may be required pursuant to the provisions of the Act, if a Party is a condominium and/or the declaration of either of the Residential Condominium or the Commercial Condominium, if the Commercial Condominium has been registered) the prior approval of the other co-tenant in the Service Units.

ARTICLE 4.00

OPERATION OF DEVELOPMENT

Section 4.01 - Shared Use

The Parties hereby acknowledge, confirm and agree that the payment of all costs and expenses relating to the operation, maintenance, repair and replacement of the Shared Facilities shall be shared between the Parties, each as to their Proportionate Share and otherwise subject to the terms of this Agreement.

Section 4.02 - Immediate Use

Notwithstanding that the transfer of ownership of the Service Units to either of the Parties may or may not have yet occurred, the Parties shall have immediate use and enjoyment of all of the Service Units as soon as same are completed and operational, in accordance with the Act, the declaration of the Residential Condominium and this Agreement.

Section 4.03 - Use of Service Rooms

The service rooms forming part of the Service Units or containing any Shared Service Facilities shall only be used for the purpose of housing the mechanical and/or electrical equipment contained therein, including any ancillary equipment or supplies required from time to time in order to operate, maintain and repair any component(s) of the Shared Service Facilities contained therein. Access to the service rooms shall be restricted to the authorized agents, servants, employees and tradesmen or members of the board or any officers of either Condominium or the Shared Facilities Committee or the Declarant.

Section 4.04 - Acceptable Standards for Shared Facilities

The Shared Facilities Committee, as agent of the Parties, consistent with Acceptable Standards and in a first class manner shall provide for the maintenance, repair and replacement of the Shared Facilities as Shared Facilities Costs, such cost to be paid for in accordance with Section 4.09. Without limiting the generality of the foregoing, the Shared Facilities Committee has the right, in its maintenance, repair and replacement of the Shared Facilities to obstruct or close off all or any part of the Shared Facilities for the purpose of maintenance, repair, replacement or construction.

Section 4.05 - Shared Facilities Committee

- (a) The use and maintenance of the Shared Facilities, as well as the preparation and submission of a separate budget outlining the costs of operating, maintaining, repairing and replacing the Shared Facilities (which budget is called the "**Budget**"), shall be governed by a committee (hereinafter referred to as the "**Shared Facilities Committee**"). Each Party shall nominate and appoint two members (collectively the "**Members**" and individually a "**Member**") to sit on the Shared Facilities Committee. Except as hereinafter provided, each member of the Shared Facilities Committee shall serve for a period of one year, unless removed by the Party that appointed such Member. Any compensation to be paid to any Member of the Shared Facilities Committee shall be paid by the Party that appointed such Member. The Parties hereby covenant and agree to adopt and be bound by the Budget prepared by the Shared Facilities Committee and each Condominium covenants and agrees to adopt the Budget as part of the Condominium's overall annual budget and each Party agrees to pay and be solely responsible for their respective Proportionate Share of all repair, replacement, maintenance, operating, improvement and other costs related to the Shared Facilities as more particularly set forth in the Budget. If the annual budget is not prepared and submitted by the Shared Facilities Committee to the Parties in accordance with this Agreement, then the prior annual budget that was prepared and submitted by the Shared Facilities Committee to the Parties together with a bottom line inflation increase of 3% shall be deemed to be the then Approved Budget until such time as the Budget for the current year is so prepared and submitted to the Parties for approval in accordance with this Agreement.
- (b) The Shared Facilities Committee shall hold a meeting not less than annually for the purposes hereinafter set out. Either Party may in addition, call a meeting of the Shared Facilities Committee on at least seven (7) business days' written notice to the Members, such notice to be given by the Secretary.
- (c) At the first meeting of the Shared Facilities Committee, it shall elect from its own members the following officers:
 - (i) A Chairman who shall preside when present at all meetings and who shall be responsible for the general management and supervision of the affairs of the Shared Facilities Committee; and
 - (ii) A Secretary who shall give all notices required to be given to the members of the Shared Facilities Committee and who shall be responsible for keeping and maintaining proper records of proceedings at all meetings of the Shared Facilities Committee.
- (d) At least one representative of each of the Parties must be present, in person or by proxy, in order to constitute a quorum for any meeting held or convened by the Shared Facilities Committee, and all decisions of the Shared Facilities Committee shall be determined, effected and evidenced by the unanimous vote of all Members who are present (or represented by proxy) at any such meeting, and the chairman of such meeting(s) shall not have a casting or deciding vote.
- (e) The Shared Facilities Committee shall, inter alia, be responsible for the following:
 - (i) establishing rules and procedures with respect to the use, operation, maintenance and/or repair of the Shared Facilities, and determining the manner in which all maintenance and/or repair work with respect to same shall be carried out;
 - (ii) making arrangements for the operation, maintenance and/or repair of the Shared Facilities and procuring all requisite public liability and property damage insurance coverage with respect to same; and
 - (iii) preparing and submitting the Budget to each of the Parties, not less than once annually and no later than March 31st of each year;
 - (iv) ensuring that the obligations of each Party, relating to the Shared Facilities as described in this Agreement are complied with;

- (v) ensuring that regular reserve fund studies are conducted with respect to the Shared Facilities in accordance with the requirements of the Act and where the Shared Facilities do not form part of a Condominium, such reserve fund study shall be calculated in the same manner, to the same extent and in accordance with the Act and its regulations;
 - (vi) regulating the use of the Shared Facilities to ensure that all Parties entitled to use the Shared Facilities are able to exercise such rights;
 - (vii) ensuring that all contributions toward the Shared Facilities Costs are paid by the Parties in accordance with the terms of this Agreement;
 - (viii) enforcing all of the terms and conditions of this Agreement as may be necessary to ensure the proper operation, maintenance, repair, improvement, alteration, replacement and administration of the Shared Facilities; and
 - (ix) performing all other acts and doing all other things as may be prescribed by this Agreement as being functions and duties of the Shared Facilities Committee.
- (f) The Member or Members appointed by a Party which is a Defaulting Party shall not be permitted to vote on matters determined by the Shared Facilities Committee and only the approval of the Non-Defaulting Party or its Member or Members shall be required, provided that the Non-Defaulting Party shall not have the right to amend the terms and conditions of this Agreement or any of the Easements.

Section 4.06 - Budget Contents

The Budget shall set out the amount and type of each expense incurred in relation to the Shared Facilities, the frequency and level of services to be provided thereto and a projected breakdown of such expenses on a monthly basis in respect of the period covered by the Budget.

Section 4.07 - Review of Invoices

Each of the Parties shall be entitled to review all bills, invoices and receipts relating to the Shared Facilities Costs for which it is being asked to contribute. The Shared Facilities Committee shall keep or cause to be kept at the Residential Condominium's office or elsewhere in the Greater Toronto Area for a period of five (5) years original financial and other business records regarding the operation, maintenance, repair and replacement of the Shared Facilities.

Section 4.08 - Responsibility for Paying the Shared Facilities Costs

The Shared Facilities Costs shall be allocated and paid by each Party, each as to its Proportionate Share.

Section 4.09 - Payment of Shared Facilities Costs

Each Party shall promptly pay its share of the Shared Facilities Costs when a request is made by any of them or the Shared Facilities Committee or any manager of a Condominium and any cost or expense incurred in the collection of such costs, including all legal expenses incurred on a solicitor and its own client basis, shall be the sole liability of the Party who has omitted or neglected to pay same promptly when requested, and in addition, such defaulting party shall be solely liable for any interest or penalty charges incurred as a result of it not remitting any payment or charge promptly when due. All payments of Shared Facilities Costs may be paid into a separate bank account solely for the Shared Facilities, if so established by the Shared Facilities Committee.

Section 4.10 - Maintenance and Repair of Structures

Each Party with respect to its respective Structure shall operate, maintain and repair such portion of its respective Structure subject to Acceptable Standards and in a first class manner, including without limitation, keeping such portions clean and tidy, providing all necessary services and utilities, promptly removing from its respective Structure all garbage and refuse and providing all necessary security.

Section 4.11 - Car Share Agreement

The Residential Condominium:

- (a) acknowledges that there are two parking spaces on the ground level of the Commercial Lands that are to be used for public car share purposes and that a car share agreement has been entered into between the Declarant and Enterprise Rent-A-Car Canada Company in connection with those two spaces. Upon registration of the Commercial Condominium the two spaces will be deeded to the Town of Richmond Hill;
- (b) acknowledges and reaffirms its obligations as set out in Section 8.01(n) and (o) of the Declaration;
- (c) agrees to carry out those obligations in accordance with the terms and provisions of Section 8.01(n) and (o) of the Declaration; and
- (d) agrees to pay to the Declarant or the Commercial Condominium, if so registered the amounts as set out in Section 8.01(n) and (o) of the Declaration at the times and upon the terms as therein set out.

ARTICLE 5.00

COMPLIANCE WITH AGREEMENT

Section 5.01 - By Parties Hereto

The Parties covenant and agree to comply with all of the provisions contained in this Agreement and that they will not authorize or permit with respect to their respective Structure any breach of this Agreement by any occupant, visitor, guest, employee, servant, agent or tenant, as the case may be.

Section 5.02 - Compliance with Laws

The Parties covenant and agree to comply with all laws, by-laws, orders, ordinances, regulations, codes and requirements of all Governmental Authorities, when performing their respective obligations and exercising their respective rights under this Agreement.

Section 5.03 - By Condominium

Each Condominium agrees that it shall insofar as possible, compel the observance and/or compliance by all owners of units, residents and their respective tenants and/or invitees, with all of the terms and provisions contained in this Agreement including the obligation of such Condominium to pay all amounts required to be paid by it under this Agreement.

ARTICLE 6.00

INSURANCE

Section 6.01 - Shared Facilities Insurance

- (a) The Parties shall, at all times, cause the Shared Facilities to be insured against damage from fire and all other perils from time to time customarily included in a property damage insurance policy on an "all risk" coverage basis (as that term is commonly understood in the insurance industry). This insurance coverage shall be in amounts equal to the Replacement Value of the Shared Facilities.
- (b) The Parties shall, at all times, if customary for buildings of this nature, maintain comprehensive boiler and pressure vessel insurance coverage against loss or damage, by inter alia, explosion, boilers, pipes or accessories. This insurance coverage shall be in amounts equal to the Replacement Value of the Shared Facilities.

Section 6.02 - Liability Insurance

The Parties shall, at all times, maintain comprehensive general liability insurance against claims for personal injury, death or property damage or loss in an amount of not less than Five Million (\$5,000,000.00) Dollars in respect of any one accident or occurrence.

Section 6.03 - General

Where applicable the Shared Facilities Insurance, Liability Insurance and any other insurance maintained in accordance with this Agreement shall comply with the provisions of the Act and the declaration of each Condominium and shall contain such other provisions as would be included by prudent owners, or condominium corporations with respect to comparable buildings in the Greater Toronto Area. The cost of the Shared Facilities Insurance and Liability Insurance shall be included in Shared Facilities Costs.

Section 6.04 - Insured Parties and General Provisions

- (a) Policies of insurance to be obtained shall name as parties insured:
 - (i) the Residential Condominium, the Declarant and the Commercial Condominium as their interest may appear;
 - (ii) any registered encumbrancer if requested by the owner of the encumbered portion of the Development; and
 - (iii) any mortgagee in possession of any part of the Development.
- (b) All policies of insurance shall provide for thirty (30) days prior notice of cancellation and any party receiving such a notice shall immediately notify the other Party Structure (including Chargees) of this Agreement.
- (c) All policies of insurance required hereunder shall further provide:
 - (i) a waiver of any rights of subrogation; and
 - (ii) that no breach of conditions in the policy by any insured will affect the insurer's obligation to pay under the policy.

Section 6.05 - Premiums

The owner of the Commercial Structure shall pay the insurance premiums for its separate insurance policies as required by this Article. The Residential Condominium shall pay the insurance premiums for its separate insurance policies as required by this Article.

Section 6.06 - Failure to Pay Premiums or Maintain Insurance

If a Party shall fail to maintain insurance or to pay its premiums or its portion of any premium, for a policy required by this Article 6.00 when due, and which such Party is obligated to pay pursuant to this Article 6.00 or otherwise, then such other Party or Parties to this Agreement insured by such policy may, after ten (10) days written notice to the Defaulting Party, pay such insurance premium or portion of the insurance premium or obtain such insurance at the expense of the Defaulting Party. The Defaulting Party shall upon demand, reimburse the Party or Parties obtaining such insurance or making such payment for the amount thereof and for all costs and expenses incurred in connection therewith.

Section 6.07 - Application of Insurance Proceeds

Each insurance policy of each Party shall include a trustee and agency clause (or its equivalent) to enable another Party to obtain insurance on its behalf as contemplated by this Section.

Section 6.08 – Deductibles

Each Party shall be responsible for the payment of all deductibles under its own insurance policies, unless the loss or damage is caused in whole or in part by the fault or negligence of the other Party (or anyone for whom such Party is responsible in law), in which case the deductible shall be shared by the Parties in proportion to the degree of fault of each.

Section 6.09 - Evidence of Insurance

Each Party shall deliver to the other Party on upon request, adequate proof of the existence of all of the insurance policies as and when reasonably requested.

ARTICLE 7.00

DAMAGE

Section 7.01 - Damage

In the event there is damage to or the destruction of the Structures or any portion thereof by any cause whatsoever for which the cost of repair is estimated to be less than twenty-five (25%) per cent of the Replacement Value of the damaged Structure, each of the Parties shall forthwith proceed to repair, restore and reconstruct their Structure and to otherwise provide the Shared Facilities, that each is obligated to maintain, so that the use, benefit and enjoyment thereof will not be adversely affected in any material way. In the event of Substantial Damage to either of the Residential Structure and the Commercial Structure or any portion thereof, then each Party shall elect whether to rebuild, restore and repair same and:

- (a) in the event that both Parties elect to restore, rebuild and repair, then each Party shall expeditiously and diligently rebuild, restore and repair the damage at its sole cost and expense in a good and workmanlike manner and in accordance with all applicable laws, building codes, by-laws and regulations;
- (b) in the event both Parties elect not to restore, rebuild and repair, then neither Party shall be obligated to restore, rebuild or repair their respective Structure; and
- (c) in the event one Party elects to restore, rebuild and repair and the other Party (the "**Non-Repairing Party**") elects not to restore, rebuild and repair, then the Non-Repairing Party shall nevertheless diligently and expeditiously restore, rebuild and repair its portion of the Shared Facilities and Structure; save and except if a decision has been made under the Act to terminate the Residential Condominium, in which instance neither Party is obliged to restore, rebuild or repair.

Section 7.02 - Damage to Shared Facilities

Notwithstanding anything contained to the contrary in this Agreement, the cost of any repair or replacement necessitated by damage caused by the willful or negligent act or omission of any Party or any of such Party's occupants, employees, agents, contractors, licensees or invitees shall be paid by such Party and shall not form part of the Shared Facilities Costs.

Section 7.03 - No Insurance Proceeds

To the extent that insurance proceeds are not available therefor, the cost of the repairs, restoration and reconstruction of the Shared Facilities shall be borne by each Party in their Proportionate Share.

Section 7.04 - Commencement and Completion

All repairs, replacements, restoration, or reconstruction pursuant to this Article 7.00 shall be commenced as expeditiously as possible under the circumstances, and shall be carried out continuously and expeditiously in order to be completed as soon as reasonably possible, and in a good and workmanlike manner. Where both of the Structures are damaged, all restoration, rebuilding and repairs shall be carried out simultaneously and in a coordinated manner, whenever reasonably possible.

Section 7.05 - New Easements

The Party within whose Structure such repair, restoration and reconstruction of Shared Facilities is occurring will grant such relocated, amended or new easements, where it is reasonably able to do so, over its particular Structure to the other of the Parties whose particular Structure benefits from the Shared Facilities, as will enable the latter of the Parties to enjoy all of the benefits intended to be granted by the Easements.

Section 7.06 - Section 127(1) and (2) of the Act

For purposes of Section 127(1) and (2) of the Act, the obligations created by this Article 7.00 shall be deemed to be encumbrances against each Unit and their appurtenant common interest.

Section 7.07 - Original Project Plans

All repairs, restoration and reconstruction of the Shared Facilities shall be effected and performed substantially in accordance with the original plans, specifications, drawings and designs used in the original construction of the Development and with all applicable laws, by-laws and regulations. In the event that such original plans cannot be functionally or legally re-utilized, then variations or changes therefrom, desired or required by the Shared Facilities Committee shall be submitted to the Parties for their approval, not to be unreasonably withheld, together with detailed plans and specifications in duplicate of the proposed replacement, restoration or reconstruction.

ARTICLE 8.00**MAJOR CHANGES****Section 8.01 - Right to make Major Changes**

Each of the Parties may, at any time, at such Party's sole cost and expense, make a Major Change to its Structure and in connection therewith may relocate any Easement within its Structure that has been granted to the other Party pursuant to this Agreement or otherwise, provided however that such Major Change shall not, without the written consent of the other Party, diminish in any material way the benefits afforded to such other Party, or detrimentally interfere with any Shared Service Facilities or Shared Facilities.

Section 8.02 - Other Changes

Any alterations, additions or improvement made by a Party within its own Structure which does not affect the other Structure and which is not a Major Change, may be made by such Party without the consent of the other Party and need not be performed or effected in compliance with this Article 8.00.

Section 8.03 - Plan and Specification

If at any time a Party proposes to make a Major Change, then, before commencing such Major Change, such Party (the "**Changing Owner**") shall give to the other Party a copy of the plans and specifications showing in reasonable detail the proposed Major Change. If the other Party, within thirty (30) days after delivery of such plans and specifications, shall not give to the Changing Owner a written notice specifying the aspect in which the proposed Major Change will violate the provisions of Section 8.01 or any other rights of such Party under this Agreement, then such other Party shall conclusively be deemed to have agreed that such Major Change does not constitute such a violation, so long as such Major Change actually made is, in all material respects, as shown on the plans and specifications furnished by the Changing Owner. If the other Party gives a written notice as aforesaid, the Changing Owner shall not commence any Major Change until the Parties have agreed to a resolution of the question or issue raised in such notice, or until the disagreement has been resolved by Arbitration in accordance with this Agreement.

Section 8.04 - Undertaking Major Changes

The Changing Owner shall make Major Changes in compliance with all laws, by-laws, rules, orders, ordinances, regulations and requirements of any Governmental Authority or any Board, body or agency thereof having jurisdiction over the Development. Any Party shall, to the extent reasonably practicable, make Major Changes in such a manner as to reasonably minimize noise, vibration and other interference with the use or enjoyment of the other Structure by its occupants and during time periods which will not cause inconvenience or nuisance to the other Structure and its occupants.

Section 8.05 - Insurance

Before commencing any Major Change, the Changing Owner shall obtain, at its own expense, those kinds of insurance as would be obtained by a prudent contractor under the circumstances, including builders risk policy, public liability and property damage insurance indemnifying the other Party, as joint insured, and their respective mortgagees, up to Five Million (\$5,000,000.00) Dollars or any such amount as may be reasonably requested by such other Party and which is consistent with standard construction industry practice, from any and all claims for damage or injury to persons or property or for loss of life arising out of such Major Change and from and against the cost of defending any action upon such claims, and such insurance shall not have deductibles other than that which are standard for such insurance.

Section 8.06 - Dispute

A dispute or disagreement relating to a proposed Major Change shall first be referred to mediation and if such dispute or disagreement is not resolved then to Arbitration.

ARTICLE 9.00**MEDIATION/ARBITRATION****Section 9.01 - Mediation**

- (a) Any Party may refer any matter of disagreement respecting this Agreement, to mediation pursuant to the Act and otherwise in accordance with the following procedures.
- (b) The Mediator has no authority to render a binding decision or force the parties to accept a settlement.
- (c)
 - (i) The Parties shall co-operate to select a mediator (the "**Mediator**"), who shall be an impartial third party.
 - (ii) No person shall serve as a Mediator in any dispute in which he or she has any financial or personal interest in the result of the mediation.
 - (iii) Prior to accepting an appointment, the prospective Mediator shall disclose any circumstances likely to create a presumption of bias or interest in the outcome of the proceedings, or prevent a prompt meeting with the Parties.
- (d)
 - (i) Upon appointment, the parties shall enter into a written agreement with the Mediator.
 - (ii) The agreement shall include the time and location of the mediation session. The Parties and the Mediator may schedule additional mediation sessions.
 - (iii) If the Parties are unable to reach a settlement the Mediator shall not act as an arbitrator.
 - (iv) The Mediator or any member of the Mediator's firm or company will not act for any of the Parties individually in relation to the subject matter of the mediation in any capacity during the currency of the mediation or at any time thereafter.
- (e)
 - (i) At the first session, the Parties will produce all information the Mediator reasonably requires to understand the issues including, any written materials; a description of any witnesses and what they each could testify to; or the Mediator may ask the parties for written materials or information in advance of the mediation session.
 - (ii) At the mediation session(s), the Mediator will conduct an orderly settlement negotiation. The Parties shall be represented by a person with authority to settle the case. The Mediator will be impartial in such proceedings and has no authority to force the parties to agree to a settlement. The Mediator may conduct separate meetings (caucuses) with each Party to improve the Mediator's understanding of the respective positions of each party.
- (f)
 - (i) The Parties recognize that mediation proceedings are settlement negotiations and that all offers, promises, conduct and statements, whether written or oral made in the course of the proceedings are

inadmissible in any litigation or arbitration of their dispute, to the extent the law allows.

- (ii) The Parties agree not to subpoena or otherwise require the Mediator to testify or produce records, notes or work product in any future proceedings and no recording or stenographic record will be made of any mediation session. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in a mediation session.
 - (iii) In the event the Parties do reach a settlement that is made into a written agreement, the agreement will be admissible in a court or arbitration proceedings to enforce it, unless the Parties otherwise agree.
 - (iv) Any information disclosed to the Mediator in a private caucus shall remain confidential unless the party disclosing the information agrees that the Mediator may disclose it.
- (g) If one or more of the Parties has a substantial need for discovery to prepare for the mediation session, the Parties shall attempt to agree on a plan for such necessary discovery. Should they fail to reach agreement, the Parties will present the matter to the Mediator for a non-binding recommendation.
- (h)
- (i) All Parties agree that the Mediator:
 - (A) Is not acting as legal advisor or legal representation for either of the Parties;
 - (B) Has no duty to assert, analyze or protect any legal right or obligation including lien rights, statute of limitation or any other time limit or claim requirement;
 - (C) Has no duty to make an independent expert analysis of the situation or raise issues the parties do not raise or determine that additional or necessary Parties should participate in the mediation; and
 - (D) Cannot guarantee that the mediation will result in a settlement.
 - (ii) The Parties may be represented by a lawyer at any stage of the mediation process and are encouraged to consult legal counsel concerning the proceedings or any proposed settlement agreements.
 - (iii) The Mediator shall not be a party to any proceedings to enforce a settlement agreement.
- (i) The mediation shall be terminated in any of the following circumstances:
- (i) By the execution of a settlement agreement by the Parties;
 - (ii) By a declaration by the Mediator to the effect that, in the judgment of the Mediator, further efforts at mediation are no longer worthwhile; or
 - (iii) By a declaration by any Party to the effect that the mediation proceedings are terminated.
- (j) The Parties undertake not to take any further steps in any legal proceedings regarding the issues being mediated while the mediation is in progress unless the same is required to preserve rights.
- (k)
- (i) Each Party shall pay the share of the Mediator's fees and expenses that,
 - (A) the settlement specifies, if a settlement is obtained; or

- (B) the Mediator specifies in the notice that the mediation has failed, if the mediation fails.
- (ii) Each Party will bear its own costs and expenses of its participation in the Mediation, unless otherwise agreed.
- (l) The Mediator shall not be liable to the Parties for any act or omission in connection with the services provided by him or her in, or in relation to, the mediation, unless the act or omission is fraudulent or involves willful misconduct

Section 9.02 - Arbitration

- (a) Any Party (the "**Referring Party**") may refer any matter of disagreement respecting this Agreement, including its validity, interpretation, application or implementation to arbitration pursuant to the Act and the *Arbitrations Act* (Ontario) in accordance with the following procedure:
 - (i) the Referring Party shall give notice in writing (the "**Arbitration Notice**") to the other of the Parties (the "**Receiving Party**") specifying the matter being referred in reasonable detail;
 - (ii) the arbitrator selected to act hereunder shall be qualified by education and training to make reasoned decisions upon the particular question or dispute;
 - (iii) within ten (10) days after the giving of an Arbitration Notice, the Parties shall nominate and appoint an arbitrator;
 - (iv) if the Parties cannot agree on an arbitrator as contemplated in Section 9.02(a)(iii) hereof, then the arbitrator shall be appointed by the Superior Court of Ontario, pursuant to the Arbitrations Act.
- (b) Any arbitration carried out pursuant to Section 9.02(a) hereof shall take place in the City of Toronto or Town of Richmond Hill at the time and place fixed by the arbitrator, in the following manner:
 - (i) the arbitrator shall be sworn to faithfully and fairly determine the matter of difference in issue;
 - (ii) the arbitrator shall hear such evidence and representations as the Parties may present, with cross-examination of witnesses permitted;
 - (iii) the arbitrator shall proceed with all possible speed (but no later than 60 days after the appointment of the arbitrator) to make its decision in writing and shall give a signed copy thereof to each of the Parties;
 - (iv) the conduct and procedure during the arbitration shall be in accordance with the rules of natural justice;
 - (v) each of the Parties shall pay its Proportionate Share of the cost of the arbitrator and all other normal costs of the arbitration or costs which they all agree should be borne equally shall be borne equally, but the costs of any transcription services shall be borne solely by the Parties ordering same; and
 - (vi) a written decision of the arbitrator shall be final and binding upon the Parties as to any question or questions referred to arbitration and shall not be subject to appeal. The Parties shall be bound by any such decision and shall perform the terms and conditions thereof.

ARTICLE 10.00

CHARGING AND LIEN PROVISIONS

Section 10.01 - Charge and Lien

If at any time a Party shall fail to pay any monies required to be paid by it in accordance with this Agreement or shall fail to perform any of the terms and conditions required to be

performed by it pursuant to this Agreement, or fails to perform any of its obligations under this Agreement, (the "**Defaulting Party**") within fifteen (15) days after receipt of written notice from the other Party or the Shared Facilities Committee requiring payment and/or performance, then in addition to any other rights which the Party not in default of payment of monies or performance of terms, conditions or obligations (the "**Non-Defaulting Party**") may have by operation of law or otherwise, the Non-Defaulting party shall have a charge and lien (collectively the "**Charge**"), to secure the payment of such monies and/or the performance of such terms and conditions, together with all costs and interest accruing thereon pursuant to Section 10.07 hereof, against the Structure of the Defaulting Party. As security for the payment of monies and performance of obligations herein, each Party does hereby mortgage, charge and pledge as and by way of a fixed and specific mortgage, charge and pledge its respective Structure, to and in favour of the other Party.

Section 10.02 - Enforcement of Lien and Other Rights

The Charge created pursuant to Section 10.01 hereof shall be enforceable by the Non-Defaulting Party in the same manner and to the same extent, as a real property mortgage and charge, with all of the powers, rights and remedies inherent in, or available to, a mortgagee or chargee when a mortgage or charge of real property is in default pursuant to the terms of the *Mortgages Act*, (Ontario), as amended and/or any other applicable statutory provisions or common law principal applicable thereto. The Charge need not be registered against title to the Defaulting Party's lands (or common elements) assets or appurtenant interests (nor registered elsewhere) in order to enable or to entitle the Non-Defaulting Party to maintain or pursue any action against the Defaulting Party for breach of this Agreement. However and notwithstanding this Agreement, it is expressly understood and agreed that the Charge shall have full priority and claim over and in respect of the interest of any chargee, mortgagee, debenture or bond holder, or other encumbrancer which chargee, mortgagee, debenture or bond holder or other encumbrancer is called a "Chargee", of the Defaulting Party's lands, assets and appurtenant interest.

Section 10.03 - Land Registrar

In the event that the Land Registrar requires the Non-Defaulting Party to apply to a court of competent jurisdiction for any order, direction, advice or authorization prior to such Land Registrar allowing the registered title of the Defaulting Party's lands or common elements to be formally encumbered by the Charge, or to otherwise allow the enforcement of the Charge, then the Non-Defaulting Party shall be entitled to forthwith apply to such court for any required order, direction, advice or authorization and the Defaulting Party shall for all purposes be deemed to have consented to any such application so being made for this purpose and the Defaulting Party shall be forever barred and estopped from bringing or instituting any action, suit, claim or other proceeding to defend, defeat, hinder or delay any such application by the Non-Defaulting Party, or its enforcement of the Charge (save for the institution of dispute resolution proceedings pursuant to the provisions of this Agreement, in order to dispute any alleged default). Alternatively, if the Land Registrar permits, the Charge may be enforced by the filing of a caution, a certificate of pending litigation, or any restriction or notice as may be permitted by the provisions of the *Land Titles Act* (Ontario), as amended.

Section 10.04 - Liens Survive Termination of Agreement

Notwithstanding any termination of this Agreement, any lien which shall have arisen prior to such termination pursuant to Section 10.01 hereof shall remain in full force and effect until the amount secured thereby shall be paid in full or satisfied, together with the costs and interest provided for in Section 10.07 hereof.

Section 10.05 - Lien as Encumbrance against Unit

For the purposes of this Article 10.00 and Sections 123, 124, 125, 126, 127 and 128 of the Act, a lien against the Condominium shall be deemed to be an encumbrance against each Unit and its appurtenant Common Interest therein.

Section 10.06 - Liens Survive Conveyance

No conveyance or other divestiture of title shall in any way affect or diminish any lien arising pursuant to Section 10.01 hereof, and any lien which would have arisen pursuant to Section 10.01 had there been no conveyance or divestiture of title shall not be defeated, or otherwise diminished or affected, by reason of such conveyance or divestiture of title.

Section 10.07 - Interest and Costs

In each instance when a Party shall be obligated to pay any sum of money to another Party hereunder, interest shall accrue thereon and be payable hereunder at ten (10.0%) per cent above the Prime Rate from the date such sum first became due, calculated and compounded monthly, not in advance. If any legal action, demand or proceeding is brought, instituted or taken by a Party, or if a Party shall cure a default of the other party, the Party in default shall pay to the other Party all expenses incurred therefor, including a solicitor's fee (on a solicitor and his own client basis), unless a court shall otherwise award.

Section 10.08 - Mortgagee's Right to Assignment of Lien

Any mortgagee holding a mortgage upon any Structure, or upon any Unit shall have the right to receive an assignment or obtain a discharge of any lien that has arisen pursuant to Section 10.01 hereof as a result of a default made by a Defaulting Party which affects such Structure or Unit upon payment, in the case of a lien against a Structure, of the amount secured by such lien or, in the case of a Unit, upon payment of a portion of the lien in an amount determined by the proportion specified in the Declaration for sharing Common Interest in accordance with the provisions hereinafter set forth in this paragraph. Such mortgagee shall give to the person asserting the lien a written notice offering to purchase by way of assignment, or to obtain a partial discharge of same, which notice shall set forth a date and time of closing which shall be not less than ten (10) days nor more than thirty (30) days after the giving of such notice, and the place of closing in the City of Toronto. On the date of closing, the Party asserting the lien shall deliver to such mortgagee an instrument in registerable form discharging or assigning the lien, together with the debt secured thereby, or partially discharging and assigning the lien for any Unit and its appurtenant Common Interest to such mortgagee, upon payment by such mortgagee of the full amount secured by the lien, including interest, or that amount, including interest, to obtain a partial discharge of a lien affecting a Unit.

ARTICLE 11.00

TERMINATION OF AGREEMENT OR OF CONDOMINIUM

Section 11.01 - Termination of Agreement

This Agreement cannot be terminated other than by the written agreement of the Parties.

Section 11.02 - No Termination of Shared Facilities and Easements

Notwithstanding Section 11.01, unless the written agreement referred to therein includes a mutual and specific surrender of the rights and obligations relating to the Shared Facilities and the Easements by the Parties, the termination of this Agreement pursuant to and to the extent provided in Section 11.01 hereof shall not be deemed to terminate with respect to:

- (a) the Easements which shall remain in full force and effect regardless of whether any Structure is in a form similar to that which existed on the date this Agreement came into effect; and
- (b) the rights and obligations of the Parties as they relate to the Shared Facilities.

Section 11.03 - Debts and Liens Survive

Notwithstanding the termination of this Agreement, if at the time of such termination, any Party shall be obligated to pay any sum of money pursuant to the provisions hereof, such obligation shall not be extinguished until such sum of money, together with any interest accruing thereon, shall be paid, and any lien securing the payment of such sum of money shall, as provided in Section 10.04 hereof remain in full force and effect and continue to secure the payment and any interest which shall accrue thereon.

Section 11.04 - Continuity

For the purpose of greater certainty and clarity, this Agreement shall continue and remain in full force and effect upon any person succeeding to the interest of any Party, (other than in those circumstances resulting from Termination) and such succeeding person shall, at the request of any other Party, enter into an agreement or covenant with, or acknowledgment addressed to such other Party, wherein the succeeding person covenants to assume the obligations of that Party under this Agreement to which it is succeeding.

Section 11.05 - Termination of Residential Condominium

- (a) Notwithstanding Termination of the government of the Residential Condominium by the Act, the Units, the Unit Owners of the Residential Condominium from time to time and their interests in the Residential Structure will continue after Termination to be bound by the provisions of this Agreement as if they were original signatories to this Agreement.
- (b) For the purpose of greater certainty and clarity, after Termination, every reference to the Residential Condominium in this Agreement shall mean and be deemed to refer to the Unit Owners from time to time as tenants in common of the Residential Structure.
- (c) Without limiting the generality of the foregoing, the lien referred to in Article 10.00 asserted by a Non-Defaulting Party against a Defaulting Party in those situations where the Defaulting Party is the Residential Condominium shall be a lien against the Residential Structure only.
- (d) Notwithstanding anything contained in this Agreement to the contrary, any claim against the Residential Structure and any judgment by a court with respect to such claim shall be deemed to be a claim or judgment, as the case may be, against each Unit Owner of the Residential Condominium to the extent of each such Owner's proportionate common interest as specified in the Declaration for the Residential Condominium.
- (e) If Termination occurs, the Residential Condominium shall forthwith give notice thereof to the Commercial Condominium.

Section 11.06 - Termination of Commercial Condominium

- (a) Notwithstanding Termination of the government of the Commercial Condominium by the Act, the Units and Unit Owners of the Commercial Condominium from time to time and their interests in the Commercial Structure will continue after Termination to be bound by the provisions of this Agreement as if they were original signatories to this Agreement.
- (b) For the purpose of greater certainty and clarity, after Termination, every reference to the Commercial Condominium in this Agreement shall mean and be deemed to refer to the Unit Owners from time to time as tenants in common of the Commercial Structure.
- (c) Without limiting the generality of the foregoing, the lien referred to in Article 10.00 asserted by a Non-Defaulting Party against a Defaulting Party in those situations where the Defaulting Party is the Commercial Condominium shall be a lien against the Commercial Structure only.
- (d) Notwithstanding anything contained in this Agreement to the contrary, any claim against the Commercial Structure and any judgment by a court with respect to such claim shall be deemed to be a claim or judgment, as the case may be, against each Unit Owner of the Commercial Condominium to the extent of each such Unit Owner's proportionate common interest as specified in the Declaration for the Commercial Condominium.
- (e) If Termination occurs, the Commercial Condominium shall forthwith give notice thereof to the Residential Condominium.

ARTICLE 12.00

SELF HELP AND FORCE MAJEURE

Section 12.01 - Self Help

In addition to the other rights or privileges specifically provided for in this Agreement, a Non-Defaulting Party or the Shared Facilities Committee if it is not a Defaulting Party (the **"Requesting Party"**) may give the Defaulting Party written notice outlining the nature of the default and requesting the Defaulting Party to perform its obligation.

If, without reasonable cause, the Defaulting Party has not, within seventy-two (72) hours of receipt of such notice, commenced and thereafter is not taking all reasonable steps necessary to cure the default set out in such notice, then the Requesting Party may take all reasonable steps necessary to cure the default outlined in such notice, including, without limitation, the payment of any cost or expense required to be made by the Defaulting Party, the performance of maintenance, repair or replacement work, the hiring of contractors, entry onto the Structure of the Defaulting Party, the exercise of any right of access of such Defaulting Party, the payment of any sum secured by lien and/or the filing of a bond to discharge a lien and the Defaulting Party hereby grants and conveys an easement to and in favour of the Non-Defaulting Party for such purposes. The Defaulting Party agrees to pay directly to the Requesting Party any cost or expense actually paid or incurred by the Requesting Party in performing the obligations of the Defaulting Party pursuant to this Agreement together with interest at the rate equal to the Prime Rate plus ten (10%) per cent per annum, from the date such payment is made by the Requesting Party until reimbursement is made to the Requesting Party. Provided, however, that any amount expended or incurred by the Requesting Party as can clearly be demonstrated to be substantially in excess of the reasonable costs or expenses which would properly have been paid to cure the default is not recoverable from the Defaulting Party.

Section 12.02 - Exercising Rights of Condominium

- (a) If a Requesting Party is not the Residential Condominium and if the Requesting Party has elected, in accordance with Section 12.01 to cure the default set out in the notice to the Defaulting Party, then such Requesting Party shall be entitled, to the extent necessary, to exercise all of the rights of access over Units to which the Residential Condominium is entitled under the Act; and for such purposes the Unit Owners agree that the Requesting Party shall have all such rights of access.
- (b) If a Requesting Party is not the Commercial Condominium and if the Requesting Party has elected, in accordance with Section 12.01, to cure the default set out in the notice to the Defaulting Party, then such Requesting Party shall be entitled, to the extent necessary, to exercise all of the rights of access over Units to which the Commercial Condominium is entitled under the Act; and for such purposes the Unit Owners agree that the Requesting Party shall have all such rights of access.

Section 12.03 - Force Majeure

Whenever and to the extent any Party is prevented, hindered or delayed in the fulfillment of any obligation hereunder or the doing of any work or the making of any maintenance, repairs or replacements by reason of Force Majeure, the fulfillment of such obligation or the doing of such work or making of such maintenance, repairs or replacements shall be postponed and such Party shall be relieved from any liability in damages or otherwise for breach thereof, for so long as and to the extent such prevention, hindrance or delay continues to exist.

ARTICLE 13.00

STATUS CERTIFICATE

Section 13.01 - Status Certificate

Each Party, within ten (10) days after receipt of a written request by any person (the "**Requesting Party**") and the payment of a reasonable fee established by such Party to whom the request has been sent, shall execute, acknowledge and make available to the Requesting Party, a certificate stating:

- (a) whether or not this Agreement has been modified and if this Agreement has been modified, the certificate shall identify the nature of the modifications.
- (b) whether or not this Agreement has been terminated in accordance with Section 11.01 or Section 11.05 hereof.
- (c) whether or not a lien in accordance with Section 10.01 has arisen and is then outstanding in favour of or against the Party executing the certificate, and if a lien has so arisen and is then outstanding, stating the amount and subject matter of the lien and the Structure that is affected by the lien.
- (d) whether or not the Party executing the certificate has given or received a notice in accordance with Section 12.01; and if such notice has been either given or

received, stating the nature of the default set out in the notice and whether or not such Defaulting Party has taken or commenced all reasonable steps necessary to cure such default, whether or not the Requesting Party (as defined in Section 12.01) has elected to take steps to cure such default, and if so, the amount of the costs and expenses actually or anticipated to be paid or incurred by the Requesting Party in curing such default.

Section 13.02 - Estoppel Defence

The status certificate referred to in Section 13.01 may be pleaded and shall be a complete defence by the Requesting Party to any action brought on a claim that is inconsistent with the facts stated in such certificate.

ARTICLE 14.00

COMMERCIAL CONDOMINIUM

Section 14.01 - Effective Agreement

This Agreement shall be and remain in full force and effect and be binding upon the signatories hereto, notwithstanding that the Commercial Condominium is not in existence or does not come into existence with respect to the Commercial Lands.

Upon the registration of the Declaration under the Act in regard to the Commercial Lands or any part thereof, the condominium corporation so created will be deemed to have assumed the obligations of the Declarant. From and after such date the term "Declarant" as used in this Agreement will mean the Commercial Condominium and notwithstanding anything contained to the contrary in this Agreement, the Declarant shall be automatically released and relieved of all obligations and liabilities hereunder in respect of the performance of the duties, covenants and agreements to be performed by the Commercial Condominium.

ARTICLE 15.00

GENERAL PROVISIONS

Section 15.01 - Notices

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to this Agreement shall be in writing and shall be sufficiently given or made and served personally upon the party for whom it is intended, or (except in the case of actual or pending disruption of the postal service) mailed by registered mail, in the case of:

- (a) York Region Standard Condominium Corporation No. 1400

25 Torbarrie Drive
Toronto, Ontario
M3L 1G5

Attention: President

- (b) Great Land (Yonge 16th) Inc.

25 Torbarrie Drive
Toronto, Ontario
M3L 1G5

Attention: President

- (c) Shared Facilities Committee (when established)

to at least 1 member for each Party at the address
of such Party as noted above.

or to such other address as a Party may, from time to time, advise to the other party by notice in writing. The date of receipt of any such notice, demand, request, consent or approval, if served personally, shall be deemed to be the date of delivery thereof or if mailed as aforesaid, the fifth (5th) business day following the date of mailing.

Section 15.02 - Provisions Run with the Land

- (a) Each of the Parties covenant and agree that they shall not interfere with, hinder, impede, or disturb the enjoyment of any of the Easements and all other rights, benefits and privileges conferred on the other Party in this Agreement except as expressly provided in this Agreement.
- (b) The Parties hereby acknowledge and agree that the Easements, rights and provisions as set forth in this Agreement establish a basis for mutual and reciprocal use and enjoyment of such Easements, rights and provisions and as an integral and material consideration for the continuing right to such use and enjoyment, each Party does hereby accept, agree to assume the burden of, and to be bound by each and every of the covenants entered into by them in this Agreement.
- (c) Without limiting the operation of the provisions of Section 15.02(b) hereof, the Condominium hereby expressly acknowledges and agrees that its obligations and liabilities hereunder for Shared Facilities Costs are and shall be treated as Common Expenses of the Condominium.
- (d) The Parties consent to the registration of this Agreement against title to the Residential Lands and Commercial Lands and hereby acknowledge that the provisions of this Agreement are intended to run with the real property benefitted and burdened thereby, specifically, the real property described in Schedules "A" and "B" and except as may otherwise be specifically provided shall bind and enure to the benefit of the respective Parties and their respective successors and assigns.
- (e) Upon the sale, transfer or conveyance by any Unit Owner, such Unit Owner shall be automatically released and discharged pro tanto from any of the liabilities and obligations it would bear hereunder as the owner of such Units sold, transferred or conveyed and shall no longer be liable to any other owner for any breach of this Agreement caused or occurring subsequent to the date of such sale, transfer or conveyance relating to such Unit; correspondingly, any subsequent Unit Owner shall assume pro tanto to such liabilities and obligations insofar as the burden of such liabilities are capable of passing to such person by operation of law.

Section 15.03 – Disposition of Commercial Lands

In the event the Commercial Condominium is not registered on the Commercial Lands and the Declarant conveys or transfers all or part of the Commercial Lands, the Declarant covenants and agrees that it shall cause the person acquiring such lands (the "Transferee") to enter into an agreement and covenant in the form of Schedule "C" attached hereto. Any conveyance in contravention of this provision shall be null and void. In the event that any such agreement and covenant is executed by the Transferee, then the Declarant shall be released from all of its obligations and liabilities under this Agreement if the conveyance is of all of the Commercial Lands and save and except for any prior default thereof.

Section 15.04 - Performance of Work and Maintenance Standards

All work required to be performed pursuant to this Agreement shall be performed to Acceptable Standards.

Section 15.05 - Construction and Other Liens

Each of the Parties which has borrowed money, or contracted for work, services, or materials to be performed or installed, or supplied, as the case may be, covenants and agrees to remove any construction liens or other encumbrance or charge registered against the Structure of any of the other Parties, within thirty (30) days of written request from the party whose Structure is so affected.

Section 15.06 - The Planning Act

This Agreement is entered into subject to the express condition that it is to be effective only on obtaining such consents, if any, as may be required under Section 50 of the *Planning Act*, (Ontario), or any successor legislation or other statute which may hereafter be passed to take the place of or to amend the *Planning Act*, (Ontario). Where a consent under the Planning Act to any Easement, licence or right to use is required and has not then been granted, such Easement, licence or right to use shall be deemed to be for twenty-one (21) years less a day.

Section 15.07 - Time of the Essence

Time shall be of the essence of this Agreement and of each of the provisions hereof.

Section 15.08 - No Partnership or Agency

The Parties hereto do not by virtue of this Agreement in any way whatsoever or for any purpose become partners of each other, or joint venturers or members of a joint enterprise, nor is the relationship of principal and agent hereby created.

Section 15.09 - Further Assurances

The Parties covenant and agree to execute whatever further documents or assurances are required, and shall and will sign further and other papers and documents, and shall cause such meetings to be held, resolutions passed and by-laws enacted to and cause to be done and performed such further and other acts or things as may be necessary or desirable from time to time in order to give full effect to this Agreement, the Easements and each and every part hereof and thereof.

NEXT PAGE IS THE SIGNING PAGE

IN WITNESS WHEREOF the parties hereto in all of their respective capacities have executed this Agreement.

**YORK REGION STANDARD CONDOMINIUM
CORPORATION NO. 1400**

Per: 
Name: Sam Sadr
Title: President

Per: 
Name: Ron Stein
Title: Secretary

We have authority to bind the Corporation

GREAT LAND (YONGE 16TH) INC.

Per: 
Name: Sam Sadr
Title: President

I have authority to bind the Corporation

SCHEDULE "A"**RESIDENTIAL LANDS**

All units and common elements in York Region Standard Condominium Plan No. 1400.

SCHEDULE "B"**COMMERCIAL LANDS**

Parts of Lots 4, 5, 6 and 7, Plan 3806, Town of Richmond Hill, more particularly designated as Parts 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 on Plan 65R37833, being PINs:

03109-2448 (LT); 03109-2449 (LT); 03109-2450 (LT); 03109-2451 (LT); 03109-2452 (LT); 03109-2453 (LT); 03109-2454 (LT); 03109-2455 (LT); 03109-2456 (LT); 03109-2457 (LT); 03109-2458 (LT); 03109-2459 (LT); 031093-2460 (LT); 03109-2461 (LT); 03109-2462 (LT); 03109-2463 (LT); 03109-2464 (LT);

SCHEDULE "C"

The undersigned, the proposed transferee of [add description of Commercial Lands or part thereof] (the "**Real Property**"), (the receipt and sufficiency of which are hereby acknowledged by the undersigned) hereby covenants with York Region Standard Condominium Corporation No. 1400, and their respective successors and assigns, to observe and perform all the obligations of Great Land (Yonge 16th) Inc. under the agreement notice of which has been registered on the title to the Real Property as [add Land Registry Office registration number of this agreement] (the "**Agreement**") as fully and to the same extent as though the undersigned were originally named as a party thereto, and had executed and delivered such Agreement and to furthermore enter into an assumption agreement in form and content satisfactory to the other party to the Agreement, acting reasonably. Upon the undersigned disposing of the Real Property or any part thereof, the undersigned will cause the person to whom the disposition is made to covenant likewise.

IN WITNESS WHEREOF the undersigned has executed under seal this covenant.

Dated the day of , 20 .

Per: _____
 Name:
 Title:

Per: _____
 Name:
 Title:

I/we have authority to bind the Corporation.