(174)

THE DAYCARE CENTRE AGREEMENT

THIS AGREEMENT MADE this 24th day of June, 2011.

BETWEEN:

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2151
a condominium corporation created by the registration of a declaration and description on the 29th day of April, 2011, in the Land Titles Division of the Toronto Registry Office (No. 66) as Instrument No. AT-2677207
(hereinafter referred to as the "**Solaris Phase I Condominium**" or the "**Phase I Condominium**")

OF THE FIRST PART

- and -

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2166
a condominium corporation created by the registration of a declaration and description on the24th day of June, 2011, in the Land Titles Division of the Toronto Registry Office (No. 66) as Instrument No. AT-2731517
(hereinafter referred to as the "**Solaris Phase II Condominium**" or the "**Phase II Condominium**")

OF THE SECOND PART

- and -

METROGATE INC.
a corporation incorporated pursuant to the laws of the Province of Ontario
(hereinafter referred to as "**Metrogate**")

OF THE THIRD PART

- and -

VENTUS AT METROGATE INC.
a corporation incorporated pursuant to the laws of the Province of Ontario
(hereinafter referred to as the "**Ventus**")

OF THE FOURTH PART

WHEREAS the Phase I Condominium is a mixed-use highrise condominium registered under the *Condominium Act 1998, S.O. 1998 as amended* (hereinafter referred to as the "**Act**"), containing 435 dwelling units and 3 commercial/retail units, together with various parking, locker and other ancillary units, developed and created on those lands and premises encompassed within the condominium description plan of the Phase I Condominium municipally located at **125 Village Green Square, Toronto,** Ontario (hereinafter referred to as the "**Phase I Lands**");

AND WHEREAS the Phase II Condominium is a mixed-use highrise condominium registered under the Act, containing 453 dwelling units and 1 daycare centre unit, together with various parking, locker and other ancillary units, developed and created on those lands and premises encompassed within the condominium description plan of the Phase II Condominium municipally located at **135 Village Green Square, Toronto**, Ontario (hereinafter referred to as the "**Phase II Lands**");

AND WHEREAS either Metrogate or Ventus is currently the registered owner of those lands and premises situate in the neighbouring vicinity of the Phase I Lands and the Phase II Lands respectively, bounded by Highway 401 to the south, the Canadian Pacific Railway line to the north, and the Metrolinx/GO Transit/Canadian National Railway line to the east, and situate east of Kennedy Road (hereinafter collectively referred to as the "**Neighbouring Lands**"), and the Phase I Lands, the Phase II Lands and the Neighbouring Lands collectively comprise all of Blocks 1, 2, 4, 5, 6, 7 and 8 on Registered Plan 66M-2460, as well as Part 2 on Reference Plan 66R-23565, registered in the Land Titles Division of the Toronto Registry Office (No. 66), and are hereinafter collectively referred to as the "**Metrogate Site**";

AND WHEREAS all of the high-rise. mid-rise and/or low-rise condominium projects (including residential, mixed-use and/or commercial/office condominiums) now or hereafter developed by Metrogate and/or any other company or companies related to (or associated or affiliated with) Metrogate (hereinafter collectively referred to as the "**Metrogate Group**") on or within any portion of the Metrogate Site are hereinafter collectively referred to as the "**Metrogate Condominiums**" [with each of the Metrogate Condominiums being separately described (and further defined) in section 2.01(g) hereof, and hereinafter individually referred to as a "**Metrogate Condominium**", and with all of the Metrogate Condominiums so developed within the Metrogate Site collectively comprising (and being sometimes hereinafter collectively referred to as) the "**Metrogate Condominium Community**"], each of which may or may not also hereafter contain ground floor commercial/retail units;

AND WHEREAS pursuant to the provisions of an outstanding Section 37 Density Bonus/Development Agreement entered into between Metrogate and the City of Toronto, and registered in the Land Titles Division of the Toronto Registry Office (No. 66) on September 30th, 2008 as **Instrument No. AT-1911924**, as amended by an amending agreement registered on May 19th, 2010 as **Instrument No. AT-2384462** (which agreement, as so amended, and as may be further amended hereafter from time to time, shall hereinafter be collectively referred to as the "**Section 37 Agreement**"), Metrogate is obliged to construct, finish, furnish and equip two daycare centres (hereinafter collectively referred to as the "**Daycare Centres**", and each of which is hereinafter individually referred to as the "**Daycare Centre**")

in accordance with the requirements and specifications of the City of Toronto, as part of the development of the overall Metrogate Condominium Community, all as more particularly outlined in Schedule "A" annexed hereto (hereinafter referred to as the "**Excerpt from the Section 37 Agreement Pertaining to the Daycare Centres**");

AND WHEREAS the Section 37 Agreement provides, amongst other things, for:

a) each of the Daycare Centres to be operated as a non-profit daycare centre, available to care for children from the general public, but with priority placement being given to the children of the residents of each of the Metrogate Condominiums and the children of the employees of the businesses and/or offices located on (or operated within) the Metrogate Site;

b) the first of the two Daycare Centres to be developed (hereinafter referred to as the "**South Daycare Centre**") is required to be incorporated within that part of the overall Metrogate Condominium Community that includes the 500th dwelling unit, and accordingly the South Daycare Centre shall comprise part of (and be designated as a unit within) the Solaris Phase II Condominium;

c) the second of the two Daycare Centres to be developed (hereinafter referred to as the "**North Daycare Centre**") shall be incorporated within the development of Block 7 on Registered Plan 66M-2460 [and specifically the development by the Metrogate Group of those lands and premises municipally located at 148 Village Green Square, comprising the westerly portion of Block 7 on Registered Plan 66M-2460, situate to the south of the Canadian Pacific railway line], and the obligation to construct the North Daycare Centre shall be triggered when an application for site plan approval is filed with the City of Toronto which includes any residential dwelling unit on Block 7;

d) each of the Daycare Centres shall be sufficiently commodious or spacious to accommodate a minimum of 52 children to a maximum of approximately 62 children (including infants, toddlers, pre-schoolers and school-aged children) together with the necessary staff, and shall be comprised of not less than 532 square meters of interior space and not less than 290 square meters of contiguous exterior space (ie. for an exclusive outdoor playground area), being the minimum size facility for 52 children;

e) each of the Daycare Centres shall ultimately be owned by the Metrogate Condominiums as tenants-in-common, in accordance with their respective Proportionate Daycare Centre Interests (as hereinafter defined) [and pursuant to the provisions of this Agreement, Metrogate shall hold registered title thereto as a bare trustee and nominee for each of the Metrogate Condominiums so registered from time to time, until such time as the last of the Metrogate Condominiums is duly registered and the turnover meeting for such condominium has been convened, at which time Metrogate will convey title to the Daycare Centres, for nil consideration, to each of the Metrogate Condominiums as tenants in common, in accordance with their respective Proportionate Daycare Centre Interests]; and

f) the Daycare Centre Costs (as hereinafter defined), arising from (or in connection with) the ownership, operation, maintenance and repair of each of the Daycare Centres, shall ultimately be borne and paid for by each of the registered Metrogate Condominiums, in accordance with their respective Proportionate Daycare Centre Shares (as hereinafter defined), all as more particularly outlined or provided in the Daycare Centre Budget(s) (as hereinafter defined) so issued from time to time, provided however that each of the Metrogate Condominiums so registered shall nevertheless be jointly and severally liable to the Daycare Centre Operator (as hereinafter defined) for all obligations arising under the Section 37 Agreement in connection with the ownership, operation, maintenance and repair of each of the Daycare Centres, including without limitation, the payment of the Daycare Centre Costs (as hereinafter defined);

AND WHEREAS pursuant to the provisions of an outstanding subdivision agreement entered into between Metrogate and the City of Toronto governing the overall development of the Metrogate Site and registered in the Land Titles Division of the Toronto Registry Office (No. 66) on October 6th, 2008 as **Instrument No. AT-1917108** (hereinafter referred to as the "**Subdivision Agreement**"), Metrogate is obliged to develop an outdoor park (and all related or ancillary hard and/or soft landscaping features or elements) within Block 3 on registered Plan 66M-2460 and Part 1 on Reference Plan 66R-23565, including any required park benches and/or ancillary playground equipment, as well as all outdoor lighting fixtures and any irrigation fixtures/systems, if any, which may now or hereafter be placed, erected or installed thereon or therein pursuant to the provisions of the Subdivision Agreement (hereinafter collectively referred to as the "**Public Park**"), which is intended to be freely used, enjoyed and accessible by the general public, in addition to the owners, residents and occupants of each of the Metrogate Condominiums, and which Public Park shall ultimately be owned and maintained by the City of Toronto sometime after the expiration of 10 years following the date that the landscape architect so retained by Metrogate in connection with the development and construction of the Public Park has issued a formal certificate of completion in connection therewith to the City of Toronto, in accordance with (or pursuant to) the provisions of the Subdivision Agreement (hereinafter referred to as the "**Public Park Completion Date**");

AND WHEREAS the Subdivision Agreement also requires Metrogate to install certain sculptured art work (such as sculptured landscaping features, statues, fountains, patterned paving stones, etc.) within the Public Park or along the public boulevards within the Metrogate Site and/or within the private landscaped open spaces associated with any of Blocks 1, 2, 4, 5, 7 and/or 8 on registered Plan 66M-2460 comprising part of the Metrogate Site, and which art has been designed and created by (or in collaboration with) an artist selected by the City of Toronto's Chief Planner and approved by the Council of the City of Toronto, pursuant to the provisions of the Section 37 Agreement (hereinafter collectively referred to as the "**Public Art**"), and which Public Art is intended to be freely enjoyed and accessible by the general public, in addition to the owners, residents and occupants of each of the Metrogate Condominiums;

AND WHEREAS all costs and expenses incurred in connection with the maintenance and repair of the Public Park and the Public Art respectively, in accordance with the requirements of the City of Toronto and its approved park design, and at (or to) a level that is consistent with the best practices of the Landscape Ontario Trades Association (hereinafter collectively referred to as the "**Public Park & Art Costs**"), for and during a period of 10 years commencing from and after the Public Park Completion Date (hereinafter referred to as the "**10 Year Maintenance Period**"), are intended to be shared and paid for by each of the registered Metrogate Condominiums in accordance with their respective Proportionate Daycare Centre Shares (as hereinafter defined), and without limiting the generality of the foregoing, the Public Park & Art Costs shall include all costs and expenses incurred in connection with grass cutting, trimming, fertilizing, weed control, watering and lighting/illumination of the Public Park, as well as the maintenance, repair and illumination of the Public Art, including the periodic removal of garbage and debris from the Public Park and the procurement of public liability insurance (with a coverage of not less than $2 million dollars per occurrence) with respect to damage and/or injuries occasioned to persons and/or property within the confines of the Public Park;

AND WHEREAS the parties hereto have entered into this Agreement in order to provide for (and govern) the:

a) co-ownership, operation, maintenance and repair of each of the Daycare Centres, including the determination, quantification and budgeting of the Daycare Centre Costs (as hereinafter defined), and the corresponding allocation, sharing and payment of the Daycare Centre Costs between or amongst each of the Metrogate Condominiums so registered from time to time, in accordance with their respective Proportionate Daycare Centre Shares (as hereinafter defined), together with the leasing of each of the Daycare Centres to a permitted daycare centre operator or to the City of Toronto in accordance with the provisions Section 37 Agreement; and

b) quantification and budgeting of the Public Park & Art Costs, and the corresponding allocation, sharing and payment of the Public Park & Art Costs between or amongst each of the Metrogate Condominiums so registered from time to time, in accordance with their respective Proportionate Daycare Centre Shares (as hereinafter defined);

AND WHEREAS it is acknowledged and agreed that Metrogate and/or Ventus is/are entering into this Agreement for and on behalf of each of the future Metrogate Condominiums, and to consent to the registration of this Agreement against the title to the balance of the Metrogate Site, and to have some representation on the Daycare Centre Committee (as hereinafter defined) until such time as the last or final phase of the Metrogate Condominiums is registered or created as a separate condominium corporation under the Act;

AND WHEREAS although the only Metrogate Condominiums in existence as at the date hereof are the Phase I Condominium and the Phase II Condominium (hereinafter collectively referred to as the "**Two Solaris Condominiums**"), this Agreement is nevertheless intended to also bind and correspondingly oblige each of the subsequently-created Metrogate Condominiums to respectively honour and comply with the terms and provisions hereof, as and when each of same is hereafter registered and created as a separate condominium corporation under the Act;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration and the sum of TEN ($10.00) DOLLARS of lawful money of Canada now paid by each of the parties hereto to the other (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby covenant and agree, to and with each other, as follows:

ARTICLE 1.00 - RECITALS & AGREEMENT

1.01 The parties hereto hereby confirm the veracity and accuracy of the foregoing recitals, and expressly acknowledge and agree that the co-ownership of the Daycare Centres shall be governed by this Agreement, the operation, insuring, maintenance, repair and leasing of each of the Daycare Centres shall be undertaken and completed in compliance with the provisions of the Section 37 Agreement, and in accordance with the terms and provisions of this Agreement, and that each of the Metrogate Condominiums so created from time to time shall pay and contribute its Proportionate Daycare Centre Share (as hereinafter defined) of the Daycare Centre Costs (as hereinafter defined), at the times and in the manner outlined in this Agreement, pursuant to the Daycare Centre Budgets (as hereinafter defined) prepared and submitted from time to time, all in accordance with the provisions hereinafter set out.

ARTICLE 2.00 - DEFINITIONS

2.01 In addition to any other words, terms or phrases specifically defined elsewhere in this Agreement, the terms or phrases set out below shall have the meanings respectively ascribed to them as follows:

a) the "**Acceptable Standards**", in the context of the standard of maintenance and repair required with respect to each of the Daycare Centres, shall mean the following standards, namely:

i) with respect to any fixture, furniture, appliance, equipment, device, apparatus or system: efficient and safe operating capability for its intended purpose, in accordance with the standards specified by its manufacturer/supplier and prescribed by all applicable laws, regulations and by-laws at the time any such fixture, furniture, appliance, equipment, device, apparatus or system was provided or installed;

ii) with respect to any structural or other non-operating element, part or component: good repair, having regard to the standards maintained by a prudent owner of a comparable building of comparable age; and

iii) with respect to any landscaped area: appearing to be properly cultivated and tended, suitable for its intended purpose and in compliance with all applicable laws, regulations and by-laws at the time when such landscaped area was provided or installed.

b) the "**Daycare Centre Agreement**" shall mean this Agreement, and shall also be deemed to include any and all supplementary agreements or counterpart agreements that are entered into by each of the subsequently-created Metrogate Condominiums (shortly after their respective registration under the Act, sometime after the registration of the Phase II Condominium and the execution of this Agreement), with or without Metrogate and/or Ventus as a party or signatory thereto (and with or without any of the other previously registered Metrogate Condominiums as a party or signatory thereto, but nevertheless in favour of all of the previously-registered and subsequently-registered Metrogate Condominiums), and which supplementary agreements or counterpart agreements shall evidence and confirm, amongst other things, the formal assumption by each Metrogate Condominium of its obligations and liabilities arising under this Agreement in respect of the co-ownership, operation, insurance, maintenance and repair of each of the Daycare Centres, together with each Metrogate Condominium's formal agreement to pay and contribute its Proportionate Daycare Centre Share (as hereinafter defined) of the Daycare Centre Costs (as hereinafter defined) and the Public Park & Art Costs, and an acknowledgement that any such supplementary or counterpart agreement may be enforced against such Metrogate Condominium directly by each or all of the previously-registered Metrogate Condominiums, and by each or all of the subsequently-registered Metrogate Condominiums [and by the City of Toronto and the Daycare Centre Operator (as hereinafter defined)], even though they may not be a party or signatory thereto;

c) the "**Daycare Centre Budget(s)**" shall mean the budget(s), prepared not less than once annually following the registration of the Phase II Condominium and the corresponding execution of this Agreement, outlining the projected Daycare Centre Costs (as hereinafter defined) and the Public Park & Art Costs to be incurred for the ensuing 12 month period immediately following the preparation and submission of said budget [and initially submitted to each of the Two Solaris Condominiums following the registration of the Phase II Condominium, and thereafter submitted on an annual basis to each of the Metrogate Condominiums then in existence], and which budget(s) shall be formulated in accordance with the terms and provisions hereinafter set out, having due regard to the provisions and requirements of the Section 37 Agreement (insofar as the Daycare Centres and the Daycare Centre Costs are concerned) and the Subdivision Agreement (insofar as the Public Park, the Public Art and the Public Park & Art Costs are concerned) respectively;

d) the "**Daycare Centre Committee**" shall mean the committee initially composed of six members, two of which shall be members of the board of directors of each of the Two Solaris Condominiums, and the remaining two members of which shall be representatives of Metrogate, on the express understanding that as and when each of the other Metrogate Condominiums are respectively developed and registered as a separate condominium under the Act at any time after the Phase II Condominium, then the composition of the committee shall be increased by two additional members per registered condominium (and which members shall also correspondingly be members of the board of directors of their respective condominiums), provided however that once the last of the Metrogate Condominiums is registered and its turnover meeting has been convened, then the two nominees of Metrogate shall immediately thereafter permanently resign from said committee; and said committee shall be formed or established no later than 6 months following the registration of the Phase II Condominium, for the purposes of assisting in the preparation of the Daycare Centre Budgets from time to time, and administering, governing and managing the co-ownership, operation, maintenance and repair of each of the Daycare Centres on behalf of the Metrogate Condominiums, and correspondingly reporting to (and making recommendations to) each of the Metrogate Condominiums from time to time in connection with any joint by-laws or rules (respecting each of the Daycare Centres, the Public Park and/or the Public Art) enacted in accordance with the provisions of section 59 of the Act;

e) the "**Daycare Centre Costs**" shall mean all of the costs and expenses associated with the physical operation, illumination, ventilation, insurance, servicing, heating, cooling, maintenance and repair of each of the Daycare Centres (in accordance with the requirements, standards and specifications of the City of Toronto from time to time, all as more particularly outlined in the Section 37 Agreement), including without limitation, the cost of providing electricity, water and gas services (as applicable) to each of the Daycare Centres, as well all costs incurred with respect to:

i) the ongoing maintenance and repair of all heating, plumbing, ventilation and air-conditioning systems serving each of the Daycare Centres, as well as the building structures comprising, containing or incorporating each of the Daycare Centres (in whole or in part), together with the outdoor playground areas associated with each of the Daycare Centres, and all appurtenant services and systems (such as drains, pipes, cables, etc. located within, beside, beneath or above the boundaries of each of the Daycare Centres, or any portion thereof, and which exclusively service or benefit each of the Daycare Centres);

ii) all landscape maintenance and irrigation services with respect to all hard and soft landscaping features and areas situate within the confines of each of the daycare centre units;

iii) the pickup and removal (from a central depository) of all garbage and debris emanating from each of the Daycare Centres (including waste disposal services which will collect diapers and organic waste);

iv) obtaining and maintaining at all times fire, property damage and comprehensive general liability insurance coverage, against claims for property damage, personal injury and/or death, resulting from any act, omission or occurrence (in a form and with limits satisfactory to the City of Toronto), in an amount not less than $5 million dollars per occurrence [naming the City of Toronto, and each of the Metrogate Condominiums in existence from time to time, as additional insured parties];

v) all realty taxes assessed against each of the Daycare Centres;

vi) all costs and expenses of (and charges imposed by) the manager(s) of those Metrogate Condominiums which contain or incorporate each of the Daycare Centres, provided such costs, expenses and/or charges relate or pertain to either or both of the Daycare Centres;

vii) establishing a reserve fund for the major repair and replacement of each of the Daycare Centres; and

viii) the maintenance, repair and/or replacement of all meters or check meters for water, electricity, thermal energy and gas (where applicable) which service each of the Daycare Centres;

f) the "**Daycare Centre Operator**", shall constitute the individual(s) or company approved by the City of Toronto to operate either or both of the Daycare Centres, and shall either be an agency of the City of Toronto, or a corporation without share capital incorporated and organized by Metrogate and/or the registered Metrogate Condominiums for the sole purpose of being a permitted operator of the Daycare Centres;

g) the "**Metrogate Condominiums**", comprising the overall **Metrogate Condominium Community**, is presently intended to consist of approximately eight (8) separate condominium corporations, namely:

i) the Phase I Condominium;

ii) the Phase II Condominium, which includes or incorporates the South Daycare Centre;

iii) a residential lowrise condominium project developed by Metrogate on those lands and premises municipally located at 118 Village Green Square, comprising all of Blocks 4 and 5 on registered Plan 66M-2460 (hereinafter referred to as the "**Metrogate Townhouse Lands**"), being a phased condominium developed under Part XI of the Act, and presently intended to ultimately contain a total of approximately 92 townhouse dwelling units, with approximately 76 townhouse dwelling units to be included in the initial condominium plan so registered, and with approximately 16 townhouse dwelling units to be included in the expansion phase, if and when same is ultimately developed (hereinafter referred to as the "**Phase III Condominium**");

iv) a residential highrise condominium project to be developed by Ventus (a company included within the Metrogate Group) on those lands and premises municipally located at 151 Village Green Square, comprising the south half of Block 2 on registered Plan 66M-2460 (hereinafter referred to as the "**Ventus Phase I Lands**"), and to contain approximately 288 dwelling units (hereinafter referred to as the "**Phase IV Condominium**");

v) a residential highrise condominium project to be developed by Ventus (a company included within the Metrogate Group) on those lands and premises municipally located at 181 Village Green Square, comprising the north half of Block 2 on registered Plan 66M-2460 (hereinafter referred to as the "**Ventus Phase II Lands**"), and to contain approximately 314 dwelling units (hereinafter referred to as the "**Phase V Condominium**");

vi) a residential highrise condominium project to be developed by Metrogate (or by another company within the Metrogate Group) on those lands and premises municipally located at 148 Village Green Square, comprising the westerly portion of Block 7 on registered Plan 66M-2460, situate to the south of the Canadian Pacific Railway line, and which condominium is presently intended to contain approximately 300 dwelling units, together with a daycare centre which may or may not be designated as a separate unit in such condominium project (namely the **North Daycare Centre**), and which proposed dwelling unit count may hereafter be increased or decreased by no more than twenty (20%) percent either way, depending on market conditions and the zoning/municipal approvals hereafter procured in connection therewith (hereinafter referred to as the "**Phase VI Condominium**");

vii) a residential highrise condominium project to be developed by Metrogate (or by another company within the Metrogate Group) on those lands and premises municipally located at 138 Village Green Square, comprising the easterly portion of Block 7 on registered Plan

66M-2460, situate to the south of the Canadian Pacific Railway line, and which condominium is presently intended to contain approximately 300 dwelling units, and possibly several ground floor commercial/retail units, and which proposed dwelling unit count may hereafter be increased or decreased by no more than twenty (20%) percent either way, depending on market conditions and the zoning/municipal approvals hereafter procured in connection therewith (hereinafter referred to as the "**Phase VII Condominium**"); and

viii) a highrise commercial/office condominium project to be developed by Metrogate (or by another company within the Metrogate Group) on those lands and premises municipally located at 128 Village Green Square, comprising Block 8 on registered Plan 66M-2460, situate to the south of the Canadian Pacific Railway line, west of the proposed future TTC bus terminal and east of the Phase VII Condominium, and which office condominium is presently intended to contain approximately 400,000 square feet of gross floor area (hereinafter referred to as the "**Phase VIII Condominium**"), provided however that Metrogate may sometime hereafter initiate and pursue an amendment to the official plan and applicable zoning by-law governing the Metrogate Site so as to change the Phase VIII Condominium from the aforementioned office building to a residential condominium that may ultimately comprise anywhere between 350 to 450 dwelling units in the aggregate, and if all relevant governmental authorities or agencies having jurisdiction over the development of the Metrogate Site hereafter approve of Metrogate's official plan and re-zoning amendment applications, then the Phase VIII Condominium's Proportionate Daycare Centre Share (as hereinafter defined) will not be predicated on a "deemed dwelling unit count", but rather shall be based on its final registered dwelling unit count, in which case the Proportionate Daycare Centre Shares attributable to the other registered Metrogate Condominiums shall accordingly be adjusted prospectively thereafter;

On the express understanding that:

A) each of the Metrogate Condominiums (and their respective unit owners, residents and tenants from time to time) will be sharing (together with the general public) the use and enjoyment of each of the Daycare Centres, and the Public Park and the Public Art, as and when each of the Metrogate Condominiums is respectively developed and occupied, provided however that such use and enjoyment shall not occur until after the date that the Phase II Condominium has been completed and the daycare centre unit situate therein, namely the South Daycare Centre (which is the first of the two Daycare Centres to be developed) is fully operational;

B) each of the Metrogate Condominiums so registered as a separate condominium corporation under the Act will be correspondingly obliged to share and contribute payment towards the Daycare Centre Costs, from and after the date of registration of the Phase II Condominium, and shall also be obliged to contribute towards the Public Park & Art Costs, from and after the date that the Public Park has been completed and is ready for use by the residents of the Metrogate Condominium Community and the general public, as and when each of such Metrogate Condominiums is duly registered under the Act, notwithstanding the fact that the general public will also be entitled to have their children enrolled with (and will benefit from the use of) the Daycare Centres (and will also be entitled to use the Public Park), but without any corresponding obligation or requirement for the general public to contribute towards the Daycare Centre Costs, nor the Public Park & Art Costs, and without any contribution towards the Daycare Centre Costs and/or the Public Park & Art Costs being derived or emanating from any of the Governmental Authorities whatsoever; and

C) the Daycare Centre Costs and the Public Park & Art Costs shall be apportioned or allocated between or amongst each of the Metrogate Condominiums so registered, on a pro-rata basis, predicated on their respective registered dwelling unit and commercial/retail unit count (and deemed dwelling unit count, in the case of the presently-proposed future office condominium comprising the Phase VIII Condominium, as hereinbefore defined), in accordance with their respective Proportionate Daycare Centre Shares (as hereinafter defined);

h) the "**Proportionate Daycare Centre Interests**" or the "**Proportionate Daycare Centre Shares**" of each of the Metrogate Condominiums, with respect to both the ownership of the Daycare Centres, and with respect to the allocation or apportionment of the Daycare Centre Costs and the Public Park & Art Costs between and amongst them, shall mean that percentage or proportion attributable to each of the Metrogate Condominiums, derived by dividing each condominium's respective number of registered dwelling units and commercial/retail units, or "deemed dwelling units" in the case of the Phase VIII Condominium as hereinafter provided (if and when the Phase VIII Condominium is duly registered as a highrise commercial/office condominium as hereinbefore described), by the total number of registered dwelling units and commercial/retail units (and "deemed dwelling units", if and when the Phase VIII Condominium is duly registered as a highrise commercial/office condominium as hereinbefore described) in all of the Metrogate Condominiums so registered at any point in time, collectively [and with the respective interest or share of each of the Metrogate Condominiums, as so determined, being sometimes hereinafter individually referred to as its "**Proportionate Daycare Centre Interest**" or its "**Proportionate Daycare Centre Share**", and with the interests or shares of all of the Metrogate Condominiums being hereinafter collectively referred to as their "**Proportionate Daycare Centre Interests**" or their "**Proportionate Daycare Centre Shares**"], on the express understanding that since the proposed average gross floor area of a dwelling unit within each of the

Metrogate Condominiums is presently anticipated to be approximately 785 square feet (which figure is subject to change from time to time hereafter), and since the proposed gross floor area of the Phase VIII Condominium is presently anticipated to be approximately 400,000 square feet, the Phase VIII Condominium shall be deemed (upon its development and registration as a highrise commercial/office condominium) to contain or comprise **510 "deemed dwelling units"**, for the purposes of determining or calculating the Proportionate Daycare Centre Interest or the Proportionate Daycare Centre Share attributable to the Phase VIII Condominium and to each of the other Metrogate Condominiums so registered; and provided further that if the aforementioned size or square footage of the proposed Phase VIII Condominium should hereafter change, or if the average gross floor area of a dwelling unit within each of the Metrogate Condominiums should hereafter change, or if the office building site comprising the Phase VIII Condominium is hereafter re-zoned or varied to permit the development of a residential condominium tower (instead of an office building) that will contain anywhere between 350 to 450 dwelling units, then in any of the foregoing cases or circumstances the Proportionate Daycare Centre Interest or the Proportionate Daycare Centre Share attributable to the Phase VIII Condominium and to each of the other previously-registered Metrogate Condominiums shall be revised accordingly.

ARTICLE 3.00 - THE DEVELOPMENT AND OPERATION OF THE DAYCARE CENTRES

3.01 Each of the Daycare Centres shall be constructed, finished, furnished and equipped by Metrogate in accordance with the requirements of the City of Toronto, as part of the development of the overall Metrogate Condominium Community, pursuant to the provisions of the Section 37 Agreement. In addition, all parking spaces required for each of the Daycare Centres under or pursuant to the applicable zoning by-law, must be set aside for the exclusive use of the daycare centre operator and/or its employees (with one of the parking spaces to be accessible to persons with disabilities, and complying with the City of Toronto's accessibility guidelines).

3.02 Each of the Daycare Centres shall be operated as a non-profit daycare centre, available to care for children from the general public, but with priority placement being given to the children of the residents of each of the Metrogate Condominiums and the children of the employees of the businesses and/or offices located on (or operated within) the Metrogate Site.

3.03 Pursuant to the provisions of the Section 37 Agreement, the first of the two Daycare Centres to be developed (namely the South Daycare Centre), along with the requisite parking spaces associated therewith for the exclusive use of the Daycare Centre Operator and/or its employees, has been included within (and is designated as unit 2 on level 1 in) the Phase II Condominium. The second of the two Daycare Centres to be developed (namely the North Daycare Centre) shall be incorporated within the development of Block 7 on Registered Plan 66M-2460, and accordingly the North Daycare Centre (along with the requisite parking spaces associated therewith, for the exclusive use of the daycare centre operator and/or its employees) is presently anticipated to be included within (and possibly designated as a unit in) the Phase VI Condominium.

3.04 Each of the Daycare Centres shall be sufficiently commodious or spacious to accommodate a minimum of 52 children to a maximum of approximately 62 children (including infants, toddlers, pre-schoolers and school-aged children) together with the necessary staff, and shall be comprised of not less than 532 square meters of interior space and not less than 290 square meters of contiguous exterior space (ie. for an exclusive outdoor playground area).

3.05 Each of the Daycare Centres shall be operated by the Daycare Centre Operator approved by the City of Toronto, for an initial term of 25 years following each Daycare Centre's respective date of commencing operations, and may, at the direction of the City of Toronto, be renewed for additional consecutive terms of 25 years, 25 years and 24 years respectively (for a total duration of not more than 99 years in the aggregate), provided that the City of Toronto is satisfied with the manner in which the Daycare Centres are being operated, and is also satisfied with the continued need for the Daycare Centres, having due regard to the existing and future anticipated demand for such facilities.

3.06 With respect to each of the Daycare Centres that has been constructed, finished, furnished and equipped by Metrogate in accordance with the requirements of the City of Toronto (as outlined in the Section 37 Agreement), and that has been open for business by the Daycare Centre Operator, neither Metrogate nor Ventus, nor any of the Metrogate Condominiums, shall have any further obligation to replace any supplies required for the daily operation of such daycare centre, nor any obligation to maintain, repair or replace any of the fixtures, furnishings, appliances and/or equipment initially provided or installed by Metrogate.

ARTICLE 4.00 - THE CO-OWNERSHIP OF THE DAYCARE CENTRES

4.01 Each of the Daycare Centres (one of which is designated as unit 2 on level 1 in the Phase II Condominium, and the other of which is presently contemplated to be designated as a separate unit in the Phase VI Condominium, and may even be developed in one of the later phases in the overall Metrogate Condominium Community), shall ultimately be owned by all of the Metrogate Condominiums in accordance with their respective Proportionate Daycare Centre Interests, with Metrogate initially holding registered title thereto as a bare trustee, nominee and agent for all of the Metrogate Condominiums, until such time as the last of the Metrogate Condominiums (namely the Phase VIII Condominium) is duly registered and the turnover meeting for such condominium has been convened, at or shortly after which time Metrogate shall convey registered title to the Daycare Centres, for nil consideration, to each of the Metrogate Condominiums as tenants in common, in accordance with their respective Proportionate Daycare Centre Interests.

4.02 Metrogate hereby covenants and agrees to hold registered title to each of the Daycare Centres (as and when each of same are designated as separate units in a registered condominium) as a bare trustee, nominee and agent for all of the Metrogate Condominiums, with each of the registered Metrogate Condominiums being the sole beneficial owners thereof in accordance with their respective Proportionate Daycare Centre Interests. Metrogate further covenants and agrees that within 90 days of the turnover meeting convened in respect of the last of the Metrogate Condominiums to be developed and registered within the Metrogate Site, it shall convey registered title to the Daycare Centres, for nil consideration, to each of the Metrogate Condominiums as tenants in common, in accordance with their respective Proportionate Daycare Centre Interests, on the express understanding and agreement that title thereto shall be free and clear of all registered liens, mortgages and charges, but shall be expressly subject to all outstanding leases (and any and all amendments thereto) heretofore or hereafter entered into by Metrogate with any permitted Daycare Centre Operator and/or the City of Toronto, and the Metrogate Condominiums shall correspondingly assume all such leases (and any and all amendments thereto), without any question or objection thereto, and shall perform, fulfil and be bound by all of the obligations, covenants and commitments made or given thereunder by Metrogate in its capacity as the landlord/lessor thereunder. For purposes of addressing any land transfer tax issues on the ultimate conveyance of the Daycare Centres to each of the Metrogate Condominiums as aforesaid, the aforementioned trust arrangement with respect to the Daycare Centres shall be evidenced and confirmed by either a separate trust agreement executed contemporaneous herewith (by Metrogate as the trustee, and by each of the Two Solaris Condominiums as the only beneficial owners then in existence), or alternatively by a written declaration of trust executed by Metrogate alone on or shortly after the date of registration of the Phase II Condominium.

4.03 None of the Metrogate Condominiums shall demand that registered title to their respective Proportionate Daycare Centre Interests be conveyed by Metrogate to them, unless and until all of the condominium corporations that are contemplated to comprise part of the Metrogate Condominium Community have been duly registered under the Act, and Metrogate is in a position to convey title to both Daycare Centres to each of the Metrogate Condominiums as tenants-in-common (in accordance with their respective Proportionate Daycare Centre Interests) at one time. Once all of the Metrogate Condominiums intended to be developed within the Metrogate Site have been duly registered, and Metrogate is ready to convey title to the Daycare Centres, each of the Metrogate Condominiums shall accept the conveyance from Metrogate (for nil consideration) of its Proportionate Daycare Centre Interest in and to the Daycare Centres, and shall execute all requisite documents and affidavits (and shall provide such additional assurances) as may be reasonably required to carry out or implement the foregoing conveyance and the registration thereof in the Land Titles Division of the Toronto Registry Office (No. 66).

4.04 As at the date of this Agreement, it is anticipated that the Proportionate Daycare Centre Interest attributable to each of the Metrogate Condominiums shall be as follows:

i)	the Phase I Condominium - [435 dwelling units + 3 commercial/retail units = 438 units]	16.35%
ii)	the Phase II Condominium - [453 dwelling units]	16.91%
iii)	the Phase III Condominium - [76 dwelling units, and reflecting only the number of dwelling units in the Phase III Condominium at the time of its initial registration, but subject to re-adjustment when, and if, the expansion phase of this condominium is ultimately developed and registered]	2.83%
iv)	the Phase IV Condominium - [288 dwelling units]	10.75%
v)	the Phase V Condominium - [314 dwelling units]	11.72%
vi)	the Phase VI Condominium - [300 dwelling units]	11.20%
vii)	the Phase VII Condominium - [300 dwelling units]	11.20%
viii)	the Phase VIII Condominium - [510 deemed dwelling units, on the presumption of being an office condominium]	19.04%
		100.00%

The Proportionate Daycare Centre Interest attributable to each of the Metrogate Condominiums shall hereafter be adjusted, depending upon the final number of registered dwelling units and commercial/retail units within each of the Metrogate Condominiums so developed and registered after the Phase II Condominium, and depending upon whether the Phase VIII Condominium is ultimately developed as a highrise office condominium, or (pursuant to any re-zoning or minor variance application hereafter pursued) alternatively developed as a highrise residential condominium containing approximately 350 to 450 dwelling units in the aggregate, and with the Proportionate Daycare Centre Interests attributable to each of the Metrogate Condominiums to be fixed and crystalized only after the last of the Metrogate Condominiums (namely the Phase VIII Condominium) has been duly registered under the Act.

4.05 Once registered title to the Daycare Centres has been transferred by Metrogate to each of the Metrogate Condominiums as hereinbefore provided or contemplated, no further sale, transfer, mortgage, charge or other conveyance or encumbrance affecting the registered and/or beneficial ownership of the Daycare Centres (or any portion thereof) shall be permitted thereafter, without the prior written consent of the City of Toronto thereto (which consent may be arbitrarily withheld or denied), and without the consent of all the other co-owners or co-tenants of the Daycare Centres, together with the prior approval of two-thirds of the unit owners in the condominium corporation(s) purporting to so sell, transfer, mortgage, charge or encumber its/their respective ownership interest therein (with such unit owner approval being procured from owners who are present, in person or by proxy, at a meeting duly called for such purpose).

4.06 It is understood and agreed that pursuant to the provisions of the Section 37 Agreement, each of the Metrogate Condominiums shall be precluded from divesting its ownership interest in the Daycare Centres without the consent of the City of Toronto thereto, by means of a restriction registered against the title to the Daycare Centres pursuant to section 118 of the *Land Titles Act R.S.O. 1990, as amended* (registered in favour of, and correspondingly enforceable by, the City of Toronto). Notwithstanding the foregoing, Metrogate shall nevertheless have the right to transfer registered ownership of the Daycare Centres to each of the Metrogate Condominiums so registered from time to time (and specifically the transfer of their respective Proportionate Daycare Centre Interests therein), as and when the Metrogate Site is being developed.

4.07 Any instrument or other document purporting to sell, transfer, convey, mortgage, charge or encumber the ownership interest(s) of any of the Metrogate Condominiums in the Daycare Centres (or any portion thereof), in contravention of the foregoing provisions hereof, shall be null and void, and of no force or effect whatsoever.

ARTICLE 5.00 - THE OPERATION OF (AND BUDGETING FOR) THE DAYCARE CENTRES

5.01 Notwithstanding anything hereinbefore or hereinafter provided to the contrary, it is expressly understood and agreed that each of the Daycare Centres shall be owned, operated, maintained and repaired in accordance with the requirements, standards and specifications of the City of Toronto (as outlined by the Section 37 Agreement), all as mandated by the City of Toronto as part of the development approval process in respect of either or both of the Two Solaris Condominiums.

5.02 Despite the fact that each of the Daycare Centres will be available and operated to care for children from the general public (with priority placement being given to the children of the residents of the Metrogate Condominiums and the children of the employees of the businesses and/or offices located within the Metrogate Site), the Daycare Centre Costs arising from (or incurred in connection with) the ownership, operation, maintenance and repair of each of the Daycare Centres, shall be borne and paid for exclusively by each of the Metrogate Condominiums so registered from time to time, in accordance with their respective Proportionate Daycare Centre Shares, all as more particularly outlined or provided in the Daycare Centre Budget(s) issued from time to time, without any contribution towards such costs being made by the City of Toronto, nor derived or emanating from any other governmental authorities (nor from any other sources or parties whatsoever).

5.03 Metrogate and/or Ventus shall cause each of the Metrogate Condominiums so developed and registered after the Phase II Condominium to execute a supplementary agreement or counterpart to this Agreement, with or without Metrogate and/or Ventus as a party or signatory thereto (and with or without any of the other previously registered Metrogate Condominiums as a party or signatory thereto, but nevertheless in favour of all of the previously registered Metrogate Condominiums), as soon as reasonably possible after their respective registration under the Act, and which supplementary or counterpart agreement shall be correspondingly registered against the title to their respective units and common elements (and against the title to the respective units and common elements within each of the previously-registered Metrogate Condominiums, and against the title to the balance of the Metrogate Site), and shall evidence and confirm their respective formal assumption of the obligations and liabilities arising under this Agreement (ie. in respect of the co-ownership, operation, insurance, maintenance and repair of each of the Daycare Centres), and their concomitant obligation and agreement to pay and contribute their respective Proportionate Daycare Centre Share of the Daycare Centre Costs and the Public Park & Art Costs. Each supplementary or counterpart agreement so executed by any of the Metrogate Condominiums registered after the Phase II Condominium shall contain an express acknowledgement that same may be enforced against such Metrogate Condominium directly by each or all of the previously-registered Metrogate Condominiums, and by each or all of the subsequently-registered Metrogate Condominiums, and by the City of Toronto and/or any permitted Daycare Centre Operator, even though they may not be a party or signatory thereto.

5.04 Once the Daycare Centre Committee has been established or created in accordance with the provisions hereinafter provided, then at all times thereafter, the manner in which the Daycare Centres are co-owned, operated, illuminated, insured, maintained and/or repaired, and the manner in which the Public Park and the Public Art is maintained and/or repaired during and throughout the 10 Year Maintenance Period [including such matters as the grass cutting, trimming, fertilizing, weed control, watering and lighting/illumination of the Public Park, as well as the maintenance, repair and illumination of the Public Art, including the periodic removal of garbage and debris from the Public Park and the procurement of public liability insurance (with a coverage of not less than $2 million dollars per occurrence) with respect to damage and/or injuries occasioned to persons and/or property within the confines of the Public Park], as well as the preparation and submission of the Daycare Centre Budget(s) from time to time shall, subject to the overriding provisions of section 5.01 hereof and Article 7.00 hereof, be governed by the Daycare Centre Committee, on behalf of each of the Metrogate Condominiums. Without limiting the generality of the foregoing, it is expressly understood and agreed that the preparation and submission of the Daycare Centre Budget(s) outlining the Daycare Centre Costs estimated to

be incurred for each ensuing year following the registration of the Phase II Condominium, and outlining the Public Park & Art Costs estimated to be incurred for each ensuing year following the Public Park Completion Date throughout the 10 Year Maintenance Period, shall be conducted by (or under the auspices and guidance of) the Daycare Centre Committee. The Daycare Centre Budget(s) shall be submitted to each of the Metrogate Condominiums so registered from time to time, not less than once annually following the registration of the Phase II Condominium, and said budget(s) shall be incorporated as part of, and/or integrated with, the respective overall annual budget(s) of each of the Metrogate Condominiums so registered. Each of the Metrogate Condominiums so registered from time to time shall adopt, and be bound by, the Daycare Centre Budget(s) so submitted from time to time, and by the Daycare Centre Committee's determination of the Daycare Centre Costs and the Public Park & Art Costs respectively, and by the Daycare Centre Committee's decisions regarding the operation, illumination, insurance, maintenance and repair of each of the Daycare Centres, and regarding the maintenance and repair of the Public Park (as well as the maintenance, repair and insurance of the Public Art), and the Metrogate Condominiums so registered shall approve and accept (and be bound by) all arrangements and decisions made by or on behalf of the Daycare Centre Committee with respect to any maintenance and/or repair work involving the Daycare Centres (or any portion thereof), and/or involving the Public Park and the Public Art (and with respect to all services, facilities, works, operations and other matters involving the Daycare Centres and/or the Public Park and the Public Art) for which the Metrogate Condominiums so registered from time to time are liable (ie. under the provisions of the Section 37 Agreement and the Subdivision Agreement respectively, and pursuant to this Agreement), including all decisions involving the leasing of each of the Daycare Centres to the Daycare Centre Operator or to the City of Toronto, as the case may be.

5.05 Each of the Daycare Centre Budgets prepared from time to time shall include or reflect a reserve fund that is being maintained on behalf of the Metrogate Condominiums jointly, for the major repair and replacement of the Daycare Centres (or any portion thereof) and the Public Art, exclusively.

ARTICLE 6.00 - RESPONSIBILITY FOR PAYING THE DAYCARE CENTRE COSTS AND THE PUBLIC PARK & ART COSTS

6.01 From and after the date of registration of the Phase II Condominium, the Daycare Centre Costs shall be allocated and apportioned between or amongst each of the Metrogate Condominiums so registered, on a pro-rata basis, in accordance with their respective Proportionate Daycare Centre Shares. In addition, from and after the Public Park Completion Date, to and until the expiration of the 10 Year Maintenance Period, the Public Park & Art Costs shall be allocated and apportioned between or amongst each of the Metrogate Condominiums so registered, on a pro-rata basis, in accordance with their respective Proportionate Daycare Centre Shares.

6.02 Initially, the only Metrogate Condominiums in existence as at the date of this Agreement are the Two Solaris Condominiums. Accordingly, from and after the date of registration of the Phase II Condominium, to and until the date that any of the other Metrogate Condominiums are developed and registered as a separate condominium corporation under the Act, the Phase I Condominium shall be obliged to pay (on a monthly basis) and be solely responsible for **49.16%** of the Daycare Centre Costs and the Public Park & Art Costs, and the Phase II Condominium shall be obliged to pay (on a monthly basis) and be solely responsible for the remaining **50.84%** of the Daycare Centre Costs and the Public Park & Art Costs, all as more particularly outlined in the Daycare Centre Budget(s) prepared and submitted from time to time.

6.03 As and when the each of the other Metrogate Condominiums is registered after the Phase II Condominium as a separate condominium corporation under the Act, the Daycare Centre Costs and the Public Park & Art Costs shall be re-apportioned or re-allocated amongst each of the registered Metrogate Condominiums then in existence, in accordance with their respective Proportionate Daycare Centre Shares, without any re-adjustment or back charge for any portion of the Daycare Centre Costs and/or the Public Park & Art Costs arising, incurred and/or paid prior to the respective registration of each of the succeeding Metrogate Condominiums following the registration of the Phase II Condominium.

6.04 Each of the Metrogate Condominiums so registered shall be obliged to contribute and pay its Proportionate Daycare Centre Share of the Daycare Centre Costs (ie. associated with the ownership, operation, servicing, utilities, maintenance and repair of each of the Daycare Centres), and of the Public Park & Art Costs (associated with the maintenance and repair of the Public Park and the Public Art), on a monthly basis, on or before the first day of each month throughout the period governed by the applicable Daycare Centre Budget so issued from time to time, with all such monthly payments to be remitted to the Daycare Centre Committee or to the property manager retained by the Daycare Centre Committee (on behalf of all of the Metrogate Condominiums) to assist in managing the ownership, operation, maintenance and repair of the Daycare Centres.

6.05 Notwithstanding anything hereinbefore provided to the contrary, it is expressly acknowledged and agreed that pursuant to the provisions of the Section 37 Agreement, each of the Metrogate Condominiums so registered shall be jointly and severally liable for the obligations of Metrogate (and of all other registered Metrogate Condominiums) so owed to the Daycare Centre Operator and/or to the City of Toronto under or pursuant to any applicable lease in respect of each of the Daycare Centres, so that in the event of a default by any of the registered Metrogate Condominiums in paying its Proportionate Daycare Centre Share of the Daycare Centre Costs as and when due, or in the event of any other default or breach so committed, then the Daycare Centre Operator and/or the City of Toronto will not be required to seek recourse only against the defaulting Metrogate Condominium, but rather the non-defaulting Metrogate Condominiums shall be required to remedy such default and seek recourse against (and indemnification from) the defaulting Metrogate Condominium.

ARTICLE 7.00 - THE DAYCARE CENTRE COMMITTEE

7.01 The Daycare Centre Committee shall initially be composed of six members, two of which shall be members of the board of directors of each of the Two Solaris Condominiums, while the remaining two members of said committee shall be the designated nominees or representatives of Metrogate, on the express understanding that as and when each of the other Metrogate Condominiums is respectively developed and registered as a separate condominium corporation under the Act at any time after the registration of the Phase II Condominium, then the composition of the committee shall be increased by two additional members per registered condominium (and which members shall also correspondingly be members of the board of directors of their respective condominiums), provided however that once the last of the Metrogate Condominiums (namely the Phase VIII Condominium) is registered and its turnover meeting has been convened, then the two nominees or representatives of Metrogate shall permanently resign from said committee, and be replaced by the two members of the board of directors of the Phase VIII Condominium.

7.02 The Daycare Centre Committee shall be formed or established no later than 6 months following the registration of the Phase II Condominium, for the purposes of assisting in the preparation of the Daycare Centre Budgets from time to time, and administering, governing and managing:

a) the co-ownership, operation, maintenance and repair of each of the Daycare Centres on behalf of the Metrogate Condominiums, including without limitation, retaining a property manager to assist the committee in managing the overall operation and state of repair of the Daycare Centres, determining, quantifying, budgeting and collecting the Daycare Centre Costs from each of the Metrogate Condominiums so registered from time to time, and making decisions with respect to any maintenance and/or repair work involving the Daycare Centres or any portion thereof (and with respect to all services, facilities, works, operations and other matters involving the Daycare Centres) for which the Metrogate Condominiums are liable under the provisions of the Section 37 Agreement (including all decisions involving the leasing of each of the Daycare Centres to the Daycare Centre Operator or to the City of Toronto, as the case may be), and reporting to (and making recommendations to) each of the Metrogate Condominiums from time to time in connection with any joint by-laws or rules respecting the Daycare Centres, enacted in accordance with the provisions of section 59 of the Act; and

b) the Public Park and the Public Art, including such matters as the grass cutting, trimming, fertilizing, weed control, watering and lighting/illumination of the Public Park, as well as the maintenance, repair and illumination of the Public Art, including the periodic removal of garbage and debris from the Public Park and the procurement of public liability insurance (with a coverage of not less than $2 million dollars per occurrence) with respect to damage and/or injuries occasioned to persons and/or property within the confines of the Public Park, all in accordance with the provisions of the Subdivision Agreement, and reporting to (and making recommendations to) each of the Metrogate Condominiums from time to time in connection with any joint by-laws or rules respecting the Public Park and/or the Public Art.

7.03 All such appointments to the Daycare Centre Committee shall be for a period of one year each (unless such appointment is terminated earlier by the appointment of a replacement member). At least one representative of each of the Metrogate Condominiums (and at least one representative or nominee of Metrogate, until the date that the last of the Metrogate Condominiums is registered) must be present, in person or represented by proxy, in order to constitute a quorum for any meeting held or convened by the Daycare Centre Committee, and all decisions or recommendations of the Daycare Centre Committee shall be determined, effected and evidenced by a vote of the majority of all members who are present (or represented by proxy) at any such meeting(s), and in the event of a tie vote or deadlock situation, the chairman of such meeting(s) shall have a casting or deciding vote. The chairman shall be selected by a majority vote of all members of the committee who are present (or represented by proxy) at any such meeting(s), and the chairman shall decide all procedural matters relating to the conduct of the committee meetings. In addition, with respect to any documents or instruments proposed to be signed by or on behalf of the Daycare Centre Committee (and which are intended to be binding upon each of the Metrogate Condominiums), the signature of two members of the committee (who do not represent the same condominium corporation) shall be required on any such document(s) or instrument(s).

7.04 Any meeting(s) of the Daycare Centre Committee may be held or convened by way of teleconference, or any other form of communication system that allows all of the members of the Daycare Centre Committee (or their respective proxies) to participate concurrently, and to communicate with each other simultaneously and instantaneously, provided that all of the members of the Daycare Centre Committee participating in a meeting held or convened by such means have consented thereto, and a member (or his or her proxy) so participating in any such meeting held or convened by such means shall be deemed for all purposes to be present at such meeting. All of the members of the Daycare Centre Committee may, by written resolution signed by all of them, provide their collective consent, in advance, to have any or all meetings of the Daycare Centre Committee conducted in the manner contemplated herein, without the necessity of requiring new consents prior to each and every meeting, provided that such resolution (and the standing consent referred to therein) shall be automatically rendered ineffective from and after (but not prior to) the delivery to the Daycare Centre Committee by any member of a written notice revoking his or her consent to such resolution.

7.05 Once the Daycare Centre Committee has been established, then such committee shall, inter alia, thereafter be responsible for the following:

a) administering the co-ownership arrangements in respect of the Daycare Centres, and dealing with the Daycare Centre Operator in respect of each of the Daycare Centres, on the express understanding that pursuant to the provisions of the Section 37 Agreement, the Daycare Centre Committee shall be obliged to appoint and designate one person who will act as the single contact person (ie. for the Daycare Centre Committee and all of the Metrogate Condominiums collectively), who will be responsible for communicating and dealing directly with the Daycare Centre Operator of each of the Daycare Centres, and with the City of Toronto, in respect of any matters arising from the terms of the Section 37 Agreement and/or the terms and provisions of the Daycare Centre Lease (as hereinafter defined) in respect of each of the Daycare Centres;

b) making recommendations to each of the Metrogate Condominiums from time to time regarding any requirements, suggestions or procedures to be implemented with respect to the use, operation, illumination, maintenance and/or repair of the Daycare Centres, and the manner in which all maintenance and/or repair work with respect to same shall be carried out, subject however to the overriding requirements, standards and specifications of the City of Toronto from time to time in connection therewith;

c) making arrangements for the illumination, maintenance and/or repair of the Daycare Centres, including all landscape maintenance and irrigation services with respect to all hard and soft landscaping features and areas situate within the confines of each of the daycare centre units, including arrangements for the pickup and removal (from a central depository) of all garbage and debris emanating from each of the Daycare Centres, and for the payment of all realty taxes assessed against each of the Daycare Centres and for all charges of the condominium property manager relating or pertaining to each of the Daycare Centres, and procuring all requisite fire, property damage and comprehensive general liability insurance coverage, against claims for property damage, personal injury and/or death, resulting from any act, omission or occurrence (in a form and with limits satisfactory to the City of Toronto), in an amount not less than $5 million dollars per occurrence [naming the City of Toronto and each of the registered Metrogate Condominiums as additional insured parties];

d) making arrangements for the provision of all requisite utilities (eg. water, electricity, thermal energy and gas services, where applicable) in respect of the use or operation of each of the Daycare Centres, including without limitation, the maintenance, repair, replacement and reading of separate meters or consumption meters which will measure the consumption of water, electricity, thermal energy and gas (as the case may be) supplied to (and consumed by) each of the Daycare Centres;

e) making arrangements for the maintenance and/or repair of the Public Park, and the maintenance, repair and insurance of the Public Art, including the grass cutting, trimming, fertilizing, weed control, watering and lighting/illumination of the Public Park, as well as the maintenance, repair and illumination of the Public Art, including the periodic removal of garbage and debris from the Public Park and the procurement of public liability insurance (with a coverage of not less than $2 million dollars) with respect to damage and/or injuries occasioned to persons and/or property within the confines of the Public Park; and

f) preparing and submitting the Daycare Centre Budget(s) to each of the registered Metrogate Condominiums, not less than once annually following the registration of the Phase II Condominium, outlining the Daycare Centre Costs [inclusive of the costs of the matters listed in subparagraphs (a), (b), (c), (d) and (e) above], for incorporation by each of the registered Metrogate Condominiums as part of their respective overall annual budgets, in accordance with the foregoing provisions hereof.

7.06 All recommendations made (and all actions taken) by the Daycare Centre Committee shall, as soon as reasonably possible thereafter, be submitted and/or considered for acceptance, ratification and confirmation by the board of directors of each of the Metrogate Condominiums so registered from time to time, and where deemed necessary or appropriate, for ratification and approval by the respective owners of each of the Metrogate Condominiums at a joint owners' meeting, or alternatively at separate owners' meetings, duly called for that purpose. In addition, the respective boards of directors of the Metrogate Condominiums shall jointly determine such other provisions relating to the conduct, activities and operation of the Daycare Centre Committee as may be consistent with the provisions of the Act, the provisions of their respective declarations, the provisions of this Agreement, and the provisions of the Section 37 Agreement respectively, in accordance with the procedures governing the making, amending or repealing of joint by-laws or rules set forth in section 59 of the Act.

ARTICLE 8.00 - LEASING EACH OF THE DAYCARE CENTRES TO THE DAYCARE CENTRE OPERATOR

8.01 At least three months prior to the date that each of the Daycare Centres (hereinafter individually referred to as the "**Daycare Centre**") is completed, and ready for occupancy and the commencement of operations (hereinafter referred to as the "**Lease Commencement Date**"), Metrogate shall (on behalf of all of the existing and future Metrogate Condominiums) enter into a lease of the Daycare Centre (and all associated furniture and equipment) with the Daycare Centre Operator, the terms and provisions of which shall be in accordance with the Section 37 Agreement, and be in the form of lease that has been pre-approved by the City of Toronto's solicitor before it is submitted to the Daycare Centre Operator for the latter's execution (hereinafter referred to as the "**Daycare Centre Lease**"). In addition to any other terms and provisions which may hereafter be imposed by the City of Toronto, the Daycare Centre Lease shall contain, and be subject to, the following provisions, namely:

a) The initial term of the Daycare Centre Lease shall be 25 years, beginning on the Lease Commencement Date which, if required by the City of Toronto (sometimes hereinafter referred to as the "**City**"), may be renewed for additional terms of 25 years, 25 years and 24 years respectively (for an aggregate duration of no greater than 99 years), provided that:

i) the City and all of the Metrogate Condominiums so registered, both acting reasonably, are satisfied with the manner in which the Daycare Centre Operator has carried on the operation of the Daycare Centre, including, but not limited to, whether the Daycare Centre Operator has had a history of being in default; and

ii) the City, acting reasonably, is satisfied with the continued need for the Daycare Centre, having regard to the existing and future anticipated demand for such facilities, and other relevant considerations.

b) Rent for the Daycare Centre so leased, including all equipment and furnishings supplied to the Daycare Centre by Metrogate, shall be $2.00 for the initial term and all renewal terms.

c) All fixtures, furnishings, systems and equipment installed in the Daycare Centre by Metrogate shall continue to be owned by Metrogate (for and on behalf of all of the existing and future Metrogate Condominiums) and shall not be removed by the Daycare Centre Operator. All appliances, furnishings or equipment installed at the expense of the Daycare Centre Operator shall remain the property of (and shall be owned by) the Daycare Centre Operator. Any such appliances, furnishings or equipment may only be installed after the Daycare Centre Operator has provided Metrogate (and possibly the Daycare Centre Committee) with sufficient information so as to permit Metrogate or the Daycare Centre Committee (as the case may be) to provide its approval thereto, such approval not to be unreasonably withheld.

d) The leasehold interest created by the Daycare Centre Lease shall have appurtenant to it such rights of access as are satisfactory to the City's solicitor to provide the Daycare Centre Operator, its officers and employees, the children enrolled in the Daycare Centre, and their parents or others having custody of them, with a legal means of ingress to and egress from the Daycare Centre, as well as passage over or through that part of the Metrogate Site as is appropriate in the circumstances.

e) For each of the Daycare Centres, Metrogate shall, at its own expense and without charge, provide (in a location convenient to each of the Daycare Centres and approved by the City) any and all parking spaces as required for each of the Daycare Centres under or pursuant to the applicable zoning by-law, for the sole and exclusive use of the employees of each of the Daycare Centres (and with one parking space to be accessible to persons with disabilities, and complying with the City of Toronto's accessibility guidelines). The provision of such parking spaces shall not, in any way, make Metrogate liable for same.

f) For each of the Daycare Centres, Metrogate, at its own expense and without charge, shall provide a location convenient to the Daycare Centre to facilitate vehicles picking up and dropping off children thereto, to the satisfaction of the City of Toronto acting reasonably, including appropriate signage for drop-off and/or pick-up. The provision of such an amenity shall not in any way make Metrogate liable for same.

g) The Daycare Centre Lease shall oblige Metrogate (on behalf of the Metrogate Condominiums so registered from time to time) to be responsible for the maintenance and repair of the Daycare Centre so leased, in accordance with the Acceptable Standards, namely:

i) with respect to any fixture, furniture, appliance, equipment, device, apparatus or system: efficient and safe operating capability for its intended purpose, in accordance with the standards specified by its manufacturer/supplier and prescribed by all applicable laws, regulations and by-laws at the time any such fixture, furniture, appliance, equipment, device, apparatus or system was provided or installed;

ii) with respect to any structural or other non-operating element, part or component: good repair, having regard to the standards maintained by a prudent owner of a comparable building of comparable age; and

iii) with respect to any landscaped area: appearing to be properly cultivated and tended, suitable for its intended purpose and in compliance with all applicable laws, regulations and by-laws at the time when such landscaped area was provided or installed.

h) Without limiting the generality of the foregoing provisions, the Metrogate Condominiums so registered from time to time shall be responsible for:

i) the ongoing repairs and maintenance of the heating, ventilation and air-conditioning systems, the building structure and outdoor spaces associated with each of the Daycare Centres (including the outdoor playground spaces appurtenant thereto); and

ii) the provision of all necessary property management and reasonable caretaking/cleaning services, including waste disposal services which will collect diapers and organic waste,

subject however to the overriding obligations of the Daycare Centre Operator outlined in subparagraph (k) below.

i) The Daycare Centre Operator, at its sole cost and expense, shall be responsible for maintaining, repairing and replacing all fixtures, furnishings, appliances and equipment associated with the Daycare Centre so leased to it (including those initially installed or supplied by Metrogate), in accordance with the Acceptable Standards (as hereinbefore defined).

j) The Daycare Centre Lease shall require the Daycare Centre Operator to exercise due care with respect to the operation and use of the Daycare Centre so leased to it (and all associated fixtures, furnishings, appliances, systems and equipment, including all heating, ventilation and air-conditioning systems, the building structure, the outdoor spaces associated with the Daycare Centre and all appurtenant outdoor playground spaces). The Daycare Centre Operator shall reimburse the registered Metrogate Condominiums for any expenses incurred by them related to any damage to the foregoing occasioned wholly or in part by the negligent act(s) or omission(s) of the Daycare Centre Operator, provided that:

i) such obligation shall not result in any liability being imposed on the City of Toronto; and

ii) the obligations imposed by the Section 37 Agreement on Metrogate and the Metrogate Condominiums so registered from time to time, are not otherwise thereby reduced.

k) The Daycare Centre Operator shall be responsible for the daily cleaning of the Daycare Centre so leased to it, and for waste removal associated with food preparations and any other daycare centre activities. The Daycare Centre Operator shall be responsible for maintaining the Daycare Centre in a state of cleanliness, in accordance with all applicable laws and regulations, and shall adhere to and abide by all reasonable waste removal standards established by the Daycare Centre Committee, and all applicable standards and regulations. For greater certainty, the Daycare Centre Operator shall ensure that all garbage and any other waste emanating from the Daycare Centre is brought to a location or locations designated by Metrogate (or possibly the Daycare Centre Committee), from time to time.

l) The Daycare Centre Operator, at its sole cost and expense and from time to time, may install partitions, lighting, plumbing and mechanical improvements and equipment within the boundaries of the Daycare Centre so leased to it, subject to the prior approval of Metrogate (or possibly the Daycare Centre Committee), which approval shall not be unreasonably withheld or delayed. The Daycare Centre Operator shall provide sufficient information, including but not limited to plans and product specifications, to Metrogate (or possibly the Daycare Centre Committee) prior to the latter having to provide its consent.

m) The Metrogate Condominiums so registered shall, at their sole cost and expense, be responsible for:

i) supplying each of the Daycare Centres with all necessary heating, air conditioning, electricity, water, gas and other utilities;

ii) all costs relating to the repair and maintenance of each of the Daycare Centres and associated heating, ventilation and air-conditioning systems, the building structure, outdoor spaces associated with each of the Daycare Centres and all appurtenant outdoor playground spaces;

iii) the cost of all utilities and municipal services supplied to each of the Daycare Centres, and all realty taxes and local improvement charges assessed against same;

iv) the cost of procuring and maintaining property damage and liability insurance in respect of each of the Daycare Centres, in a form and with limits satisfactory to the City, acting reasonably;

v) all costs and expenses of (and charges by) the condominium property manager relating to each of the Daycare Centres;

vi) all costs associated with establishing a reserve fund for the major repair and/or replacement of each of the Daycare Centres; and

vii) all other expenses relating to the repair, maintenance and physical operation of each of the Daycare Centres.

n) Each of the Daycare Centres shall be operated on a non-profit basis, and the Daycare Centre Operator shall, at its sole cost and expense, be responsible for:

i) the day-to-day operating costs of the Daycare Centre so leased to it, including but not limited to, all costs relating to the employment of qualified staff for the Daycare Centre;

ii) telephone, internet and cable television service costs;

iii) all costs relating to the maintenance, repair and replacement of all fixtures, furnishings, appliances and equipment associated with the Daycare Centre, in accordance with the Acceptable Standards;

iv) the cost of procuring and maintaining property damage and liability insurance, to the satisfaction of the Daycare Centre Committee and the City of Toronto acting reasonably, with such property damage insurance covering all fixtures, furnishings, appliances and equipment associated with the Daycare Centre (including all outdoor playground equipment), and with such comprehensive general liability insurance covering all claims for personal injury, death, property damage and child abuse, resulting from any act, omission or occurrence, with such insurance coverage naming the City of Toronto, Metrogate and each of the Metrogate Condominiums so registered as additional insured parties, arising out of the operations of the Daycare Centre Operator; and

v) all supplies for the daily operation of the Daycare Centre, including but not limited to, food, first aid supplies, and arts and crafts supplies.

o) The Daycare Centre Operator shall provide proof of insurance to the City of Toronto and Metrogate (and possibly to the Daycare Centre Committee) on or before the Lease Commencement Date, and shall within 30 days prior to the expiry of the insurance coverage, provide each of them with proof of renewed insurance. The failure to provide original proof of insurance, and/or proof of any renewed insurance coverage, shall be grounds for termination of the Daycare Centre Lease.

p) The Daycare Centre Operator shall ensure that the daily operation of the Daycare Centre so leased to it is in compliance with all applicable municipal and provincial legislation, regulations and guidelines. Metrogate and the Metrogate Condominiums so registered from time to time shall perform their respective obligations under the Section 37 Agreement in respect of all applicable provincial legislation, regulations and guidelines.

q) Pursuant to the provisions of the Section 37 Agreement, the City of Toronto has been granted an option to lease each of the Daycare Centres (and all associated fixtures, furnishings, appliances, systems and equipment) on the terms and conditions more particularly set out in section 2.10 of the Section 37 Agreement (hereinafter referred to as the **"City's Option to Lease the Daycare Centre"**), and the Daycare Centre Operator shall be obliged to formally acknowledge the City's Option to Lease the Daycare Centre, and shall agree to comply with (and be bound by) the terms of such option.

r) The Daycare Centre Operator shall permit the City of Toronto, its employees and representatives, at all reasonable times after 24 hours prior notice, to enter on the leased premises for the purpose of determining whether there is compliance with the provisions of the Section 37 Agreement and the Daycare Centre Lease, and for the purpose of determining whether the City's Option to Lease the Daycare Centre has been triggered pursuant to the provisions of section 2.10 of the Section 37 Agreement.

s) In the event that the City of Toronto exercises the City's Option to Lease the Daycare Centre, the Daycare Centre Operator shall execute (or cause to be executed) all documents necessary to give effect to the City of Toronto's rights, as may be reasonably required by the City of Toronto's solicitor, all without any charge or expense to the City of Toronto therefor.

t) Metrogate (in its capacity as the lessor of the Daycare Centre on behalf of all of the existing and future Metrogate Condominiums) shall be entitled to exercise all remedies available to it under the Daycare Centre Lease, including without limitation, the right to terminate the Daycare Centre Lease (subject to approval by the City of Toronto, acting reasonably), if the Daycare Centre Operator defaults or commits a breach of covenant under the Daycare Centre Lease, and fails to rectify such default or breach within:

i) 20 days after the date on which written notice of the default or breach is given by Metrogate to the Daycare Centre Operator, if Metrogate determines, acting reasonably, that the Daycare Centre Operator's default or breach of covenant has endangered (or may endanger) the safety or health of the children attending the Daycare Centre, the employees of the Daycare Centre or any other person within the leased premises; or

ii) 60 days after the date on which written notice of the default or breach is given to the Daycare Centre Operator, in any other case.

u) If the Daycare Centre Lease is terminated for any reason, then Metrogate (in its capacity as the lessor of the Daycare Centre on behalf of all of the existing and future Metrogate Condominiums) shall conduct a selection process in consultation with the City of Toronto, and shall choose another permitted Daycare Centre Operator (subject to approval by the City of Toronto, acting reasonably, expeditiously and in accordance with the selection process) and shall thereafter enter into a new lease with such new Daycare Centre Operator (in the form of lease approved by the City of Toronto), for and on behalf of all of the existing and future Metrogate Condominiums, for a term equal to the balance of the unexpired term of the original Daycare Centre Lease.

v) Not later than each anniversary of the date which is six months after the Lease Commencement Date, the Daycare Centre Operator shall send to each of Metrogate and the City of Toronto its financial statements relating to the operation of the Daycare Centre so leased to it, which statements shall be in a form (and with the content) as may be required or approved by Metrogate and the City of Toronto, acting reasonably, to confirm that the Daycare Centre is being operated on a non-profit basis. From

time to time, and acting reasonably, Metrogate may request a copy of the most up to date financial statements and proof of compliance by the Daycare Centre Operator with all applicable laws and regulations, including but not limited to proof of all necessary permits and licenses.

8.02 Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that although Metrogate is the party who will be entering into the Daycare Centre Lease in respect of each of the Daycare Centres, as the landlord or lessor thereof, to and with the Daycare Centre Operator (or possibly with the City of Toronto) as the tenant or lessee thereof, all covenants, obligations and commitments on the part of Metrogate in its capacity as the landlord/lessor shall be deemed and construed to be obligations and commitments binding upon all of the Metrogate Condominiums jointly and severally, and all monies required to be paid or expended in order to perform and fulfil the covenants, obligations and commitments of Metrogate as the landlord/lessor thereunder shall correspondingly comprise part of the Daycare Centre Costs that shall be funded and paid for by each of the Metrogate Condominiums so registered from time to time (in accordance with their respective Proportionate Daycare Centre Shares), and not by Metrogate. Without limiting the generality of the foregoing, each of the Metrogate Condominiums so registered from time to time shall indemnify and save Metrogate harmless from and against:

a) all demands, claims, suits, actions and/or proceedings which may hereafter be initiated or pursued against Metrogate by or from the Daycare Centre Operator and/or the City of Toronto; and

b) all costs, expenses, damages and/or liabilities which Metrogate may hereafter suffer or incur;

arising (either directly or indirectly) from or in connection with:

c) the operation, maintenance and/or repair of each of the Daycare Centres, and any other obligations imposed in connection therewith by the Section 37 Agreement;

d) the Daycare Centre Lease in respect of each of the Daycare Centres, hereafter entered into by Metrogate with the Daycare Centre Operator; and/or

e) the City Lease in respect of each of the Daycare Centres, which may hereafter be entered into by Metrogate with the City of Toronto (in lieu of the Daycare Centre Lease with the Daycare Centre Operator).

ARTICLE 9.00 - THE DAYCARE ADVISORY COMMITTEE

9.01 Forthwith after the Lease Commencement Date, a volunteer advisory committee (hereinafter referred to as the "**Advisory Committee**") shall be established by Metrogate to review the operating policies and procedures which shall govern the operation of the Daycare Centre so leased to the Daycare Centre Operator, to discuss all issues relevant to the operation of the Daycare Centre, and to make recommendations regarding same to the Daycare Centre Operator. Notwithstanding the foregoing, the hiring, supervision and disciplining of the staff of the Daycare Centre shall be the sole responsibility of the Daycare Centre Operator.

9.02 The Advisory Committee shall be comprised of seven volunteer members (or such greater number as the Daycare Centre Operator considers appropriate). The members of the Advisory Committee shall include a representative of the City of Toronto (if so requested by the City), a corporate officer or representative of Metrogate, and at least five parents whose children are enrolled in the Daycare Centre so leased to the Daycare Centre Operator during their term on the Advisory Committee.

ARTICLE 10.00 - THE CITY'S OPTION TO LEASE THE DAYCARE CENTRE

10.01 The City of Toronto shall be entitled to exercise the City's Option to Lease the Daycare Centre by giving written notice to Metrogate and to the Daycare Centre Operator at any time after the occurrence of any one of the following events, namely:

a) if Metrogate fails to select a permitted Daycare Centre Operator (or fails to incorporate and organize a daycare corporation) on or before that date which is three months prior to the Lease Commencement Date;

b) if Metrogate fails to enter into the Daycare Centre Lease with the Daycare Centre Operator on or before that date which is three months prior to the Lease Commencement Date;

c) if any selected Daycare Centre Operator ceases to operate the Daycare Centre so leased to it, or terminates the Daycare Centre Lease, or surrenders its leasehold interest in the Daycare Centre and, within three months of such event, Metrogate has not arranged for the assignment of the Daycare Centre Lease to (or the execution of a new Daycare Centre Lease with) another permitted Daycare Centre Operator approved by the City of Toronto, acting reasonably, in the form (and with the content) approved by the City of Toronto, in consultation with the City of Toronto's solicitor, for the balance of the unexpired portion of the term of the initial Daycare Centre Lease [including any renewals contemplated by section 2.3.2 of the Section 37 Agreement];

d) if, after the expiry of a start-up period of three months following the Lease Commencement Date, the Daycare Centre so leased is not used for the purposes of a daycare centre for any period of 60 consecutive business days, unless Metrogate has entered into a new Daycare Centre Lease, in the form

(and with the content) approved by the City of Toronto, in consultation with the City of Toronto's solicitor, to another permitted Daycare Centre Operator approved by the City, acting reasonably, for the balance of the unexpired portion of the term of the initial Daycare Centre Lease [including any renewals contemplated by section 2.3.2 of the Section 37 Agreement];

e) if, within three months after the date on which the Daycare Centre is complete and ready for occupancy, it is not used for the purposes of a daycare centre;

f) if, at any time after six months following the Lease Commencement Date, the Daycare Centre is used for the purposes of a daycare centre but does not have an enrolment of at least 26 children for any period of six consecutive months following the expiry of such initial six month start-up period, provided the City of Toronto determines, acting reasonably and having regard to market forces, that the Daycare Centre Operator is not using its best efforts at all times to use the Daycare Centre for a daycare centre at its licensed capacity; or

g) if an amendment to the Daycare Centre Lease is made without the prior approval of the City of Toronto.

10.02 The lease of the Daycare Centre to the City of Toronto (hereinafter referred to as the "**City Lease**"), resulting from the exercise of the City's Option to Lease the Daycare Centre, shall contain the same terms and provisions as the Daycare Centre Lease to a permitted Daycare Centre Operator, *mutatis mutandis*, subject however to the following overriding provisions, namely:

a) the term of the City Lease shall commence 10 business days after the date of the City of Toronto's exercise of the City's Option to Lease the Daycare Centre, and shall correspondingly terminate on the day which is the earlier of:

i) the day upon which the City of Toronto, acting reasonably (and after considering the factors in section 2.3.2 and 2.7.1 of the Section 37 Agreement), determines that Metrogate is no longer required to provide the Daycare Centre;

ii) the end of a term or of all terms (as more particularly outlined in section 2.3.1 of the Section 37 Agreement), should they be validly renewed or exercised by the City of Toronto in accordance with the provisions of section 2.3 of the Section 37 Agreement; and

iii) the day upon which the Daycare Centre has been leased to another permitted Daycare Centre Operator with the consent of the City of Toronto, and provided Metrogate has entered into a new Daycare Centre Lease, in the form and content approved by the City of Toronto (in consultation with the City of Toronto's Solicitor), with another permitted Daycare Centre Operator approved by the City of Toronto, acting reasonably; and

b) the City Lease shall not impose a greater financial burden on Metrogate (and/or the Metrogate Condominiums so registered from time to time) than that which would have been imposed by a lease of the Daycare Centre to a permitted Daycare Centre Operator pursuant to the provisions of the Daycare Centre Lease as outlined in section 2 of the Section 37 Agreement.

ARTICLE 11.00 - MUTUAL INDEMNITIES

11.01 In light of the fact that the obligations of each of the Metrogate Condominiums so registered from time to time which are owed to Metrogate, the Daycare Centre Operator and/or the City of Toronto in connection with the operation, maintenance and repair of the Daycare Centres in accordance with the provisions of the outstanding Section 37 Agreement are intended to be joint and several obligations, it is expressly understood and agreed that each of the Metrogate Condominiums so registered from time to time shall indemnify and save each of the other registered Metrogate Condominiums harmless from and against:

a) all demands, claims, suits, actions and/or proceedings which may hereafter be initiated or pursued against each of the last-mentioned Metrogate Condominiums by or from Metrogate, the Daycare Centre Operator and/or the City of Toronto; and

b) all costs, expenses, damages and/or liabilities which each of the last-mentioned Metrogate Condominiums may hereafter suffer or incur;

arising (either directly or indirectly) from or in connection with:

c) any non-payment (in whole or in part), and/or any delay in payment (in whole or in part) of the first-mentioned Metrogate Condominium's Proportionate Share of the Daycare Centre Costs and/or the Public Park & Art Costs;

d) the operation, maintenance and/or repair of each of the Daycare Centres, and any other obligations imposed in connection therewith by the Section 37 Agreement;

e) the Daycare Centre Lease in respect of each of the Daycare Centres, hereafter entered into by Metrogate with the Daycare Centre Operator; and/or

f) the City Lease in respect of each of the Daycare Centres, which may hereafter be entered into by Metrogate with the City of Toronto (in lieu of the Daycare Centre Lease with the Daycare Centre Operator);

provided however that none of the Metrogate Condominiums shall be indemnified for its own non-payment and/or delay in payment (in whole or in part) of its Proportionate Share of the Daycare Centre Costs and/or the Public Park & Art Costs (as the case may be), nor for its own acts or instances of gross negligence or wilful misconduct (or for the gross negligence or wilful misconduct of those for whom such condominium corporation is in law responsible or liable, either vicariously or otherwise).

ARTICLE 12.00 - INSURANCE

12.01 The Daycare Centre Committee, on behalf of Metrogate and each of the Metrogate Condominiums so registered from time to time, shall arrange for the following insurance in respect of each of the Daycare Centres (hereinafter referred to as the "**Daycare Insurance**"), as and when each of same has been substantially completed and is ready for occupancy and commencing daycare centre operations, and shall keep and maintain the Daycare Insurance in place, and in good standing, for as long as the Daycare Centres are being operated as such, namely:

a) comprehensive general liability insurance with respect to incidents or occurrences happening upon or within the confines of each of the Daycare Centres and which may give rise to personal injury and/or death (resulting from any act, omission or occurrence), in a form and with limits satisfactory to the City of Toronto, and providing a minimum coverage of not less than $5,000,000.00 per occurrence; and

b) fire and property damage insurance sufficient to cover 100% of the repair and/or replacement cost of all damaged property (both realty and personalty) situate within (or comprising part of) each of the Daycare Centres.

12.02 All premiums payable with respect to the Daycare Insurance, together with any deductible amounts payable in connection therewith, shall be deemed to comprise or constitute part of the Daycare Centre Costs, and each of the insurance policies obtained and maintained pursuant to the foregoing provisions of the preceding section shall:

a) name Metrogate, each of the Metrogate Condominiums so registered from time to time, and the City of Toronto, as a named insured (or co-insured), and shall not contain any co-insurance clause;

b) contain a provision obliging the insurer not to cancel or alter (or refuse to renew) such insurance policy prior to its expiration date, except after giving not less than thirty (30) days prior written notice to each of the named insured parties thereunder (including notice to the Chief Financial Officer of the City of Toronto);

c) contain waivers of subrogation which cover, at a minimum, Metrogate and each of the Metrogate Condominiums so registered from time to time, as well as each of the directors, officers, managers, agents, employees and designated representatives of each of the registered Metrogate Condominiums and Metrogate respectively, save and except for arson, fraud, vandalism or wilful misconduct; and

d) contain a cross-liability and severability of interest clause, protecting each insured party to the same extent as if it were separately insured.

12.03 For the purposes of greater certainty and clarity, there shall be no obligation on any party to obtain insurance coverage with respect to any portion of each of the Daycare Centres that has not been fully constructed and completed from time to time.

ARTICLE 13.00 - TERMINATION OF ANY CONDOMINIUM

13.01 The respective obligations and responsibilities of each of the Metrogate Condominiums set forth in this Agreement shall apply notwithstanding that any one or more of the Metrogate Condominiums may hereafter elect to terminate the government of its lands under the Act (or is hereafter ordered to be terminated by a court of competent jurisdiction), and in the event of such termination, each of the unit owners of such terminated condominium (who are hereby acknowledged to become the owners of the lands which were formerly encompassed within the condominium, as tenants in common) shall be bound by the terms and provisions of this Agreement as if each of them were original parties/signatories hereto, and shall correspondingly be jointly and severally liable to comply with all of the covenants and obligations set forth in this Agreement which were binding upon their former condominium corporation, and shall also be obliged to execute and provide such further documents and assurances as may be required or desired by Metrogate and/or the other registered Metrogate Condominiums hereafter created, in order to give full force and effect to the provisions of this Agreement.

13.02 For the purposes of section 122, section 123 and section 127(1) of the Act, the obligations arising under this Agreement shall be deemed to constitute:

a) an encumbrance against each unit (and its appurtenant common interest) within the Phase I Condominium, created after the registration of the declaration and description of the Phase I Condominium;

b) an encumbrance against each unit (and its appurtenant common interest) within the Phase II Condominium, created after the registration of the declaration and description of the Phase II Condominium; and

c) an encumbrance against the balance of the Metrogate Site, and all interests appurtenant thereto, as well as an encumbrance against each unit (and its appurtenant common interests) within each of the other Metrogate Condominiums registered after the Phase II Condominium, created before the registration of the respective declaration and description of each of the Metrogate Condominiums so registered hereafter.

ARTICLE 14.00 - THE EASEMENT CHARGE

14.01 In the event that any of the registered Metrogate Condominiums fails to pay or contribute any monies required to be paid or contributed in accordance with the foregoing provisions of this Agreement, including without limitation, its Proportionate Daycare Centre Share of the Daycare Centre Costs and the Public Park & Art Costs (with such condominium being hereinafter referred to as a "**Delinquent Party**") within 30 days after receiving written notice from Metrogate or any of the other registered Metrogate Condominiums not in default, or from the Daycare Centre Committee on behalf of all of the registered Metrogate Condominiums not in default (hereinafter referred to as the "**Non-Delinquent Party**") requesting such monies to be paid or contributed, then the Non-Delinquent Party shall be entitled to pay or contribute those monies which the Delinquent Party should have paid or contributed, and all monies so expended by the Non-Delinquent Party shall, until repaid by the Delinquent Party, bear interest at the rate of **24% per annum**, calculated and compounded monthly on such amount as is from time to time unpaid, and until so paid, such outstanding amount (together with all interest accruing thereon as aforesaid) shall, to the extent thereof, be and constitute a lien and charge against the Delinquent Party's common elements (hereinafter referred to as the "**Daycare Charge**").

14.02 Subject to the overriding provisions of section 14.04 hereof, the Daycare Charge shall be enforceable by the Non-Delinquent Party in the same manner, and to the same extent, as a real property mortgage or 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 provisions of the *Mortgages Act R.S.O. 1990 as amended*, and/or any other applicable statutory provision or common law principle applicable thereto. In recognition of the fact that under the Polaris System, the Land Titles Office no longer opens or maintains a separate "common elements register", but rather abstracts, registers or records all claims, interests and/or encumbrances affecting or pertaining to the common elements (or any portion thereof) against the title to each of the units within the condominium (and correspondingly reflects same in the individual "unit register" for each unit within the condominium), it is therefore expressly acknowledged and agreed that the Daycare Charge shall be deemed and construed, for all purposes, to be a corresponding charge and encumbrance against each of the units within the condominium description plan of the Delinquent Party, and the Daycare Charge may accordingly be registered against each of the units therein, but shall nevertheless be subordinate to any and all of the Prior Charges (as hereinafter defined) so registered against any of such units.

14.03 In the event that the Land Registrar requires the Non-Delinquent Party to apply to a court of competent jurisdiction for any order, direction, advice or authorization prior to such Land Registrar allowing the Daycare Charge to be registered against the title of the Delinquent Party's common elements or units (as the case may be), then the Non-Delinquent Party shall be entitled to forthwith apply to such court for any required order, direction, advice or authorization, and the Delinquent Party shall, for all purposes, be deemed to have consented to any such application so being made for such purpose, and the Delinquent 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-Delinquent Party, or its enforcement of the Daycare Charge (save for the institution of arbitration proceedings pursuant to the provisions hereinafter set out, in order to dispute any alleged default and/or the entitlement of the Non-Delinquent Party to the Daycare Charge). Alternatively, if the Land Registrar permits, the Daycare 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 R.S.O. 1990, as amended.*

14.04 The Daycare Charge need not be registered against the title to the Delinquent Party's common elements and/or units (as the case may be), nor against any other assets of the Delinquent Party, nor registered elsewhere, in order to enable or entitle the Non-Delinquent Party to maintain or pursue a civil action against the Delinquent Party for breach of this Agreement. Moreover, notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that the Daycare Charge shall not have any priority claim whatsoever over (or in respect of) the interest(s) of any third party (or parties) in or to the common elements and/or units of the Delinquent Party, unless and until the Daycare Charge (or any notice thereof, or any caution or certificate of pending litigation with respect thereto) has been registered against the title to same, and once such registration occurs, the Daycare Charge shall then be deemed to be fully postponed and subordinate to all liens, mortgages, charges, interests and any other encumbrances (including any and all amendments thereto or extensions thereof, made from time to time) which are registered against the common elements and/or any (or all) of the units of the Delinquent Party in priority to the registration of the Daycare Charge (with all such prior liens, mortgages, charges, interests and/or encumbrances being hereinbefore and hereinafter collectively referred to as the "**Prior Charges**"), and shall also be deemed to be fully postponed and subordinate to all mortgage advances theretofore made (and thereafter to be made) under any of the Prior Charges.

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ARTICLE 15.00 - MEDIATION & ARBITRATION TO RESOLVE DISPUTES

15.01 Any dispute, difference, issue or question arising between or amongst any or all of the parties hereto (or between or amongst any of the Metrogate Condominiums so registered from time to time and/or Metrogate) which concerns (or touches upon) the validity, construction, meaning, performance or effect of this Agreement, or the rights and liabilities of any of the parties hereto (including each of the Metrogate Condominiums hereafter created), or with respect to any matter(s) arising out of (or connected with) this Agreement, shall:

a) in the first instance, be attempted to be resolved by the disputing parties through good faith negotiations conducted at a meeting of such parties, with the assistance and presence of legal counsel representing each of the disputing parties, all acting with a view to secure an amicable resolution of the question, matter or issue in dispute without further proceedings;

b) in the second instance (on the presumption that the questions, matters or issues in dispute have not been satisfactorily resolved through good faith negotiations as hereinbefore outlined), be attempted to be resolved by submitting the dispute to mediation, as expressly contemplated by section 132 (2) 2. of the Act, with each of the disputing parties attempting to jointly select and agree-upon a mediator within 60 days of submitting the dispute to mediation [on the understanding that the qualified mediator so selected shall confer with each of the disputing parties in an effort to mediate their differences and shall endeavour to obtain a settlement of all outstanding disagreements or disputes so submitted to mediation, with all costs of the mediator to be shared equally by all of the disputing parties, and with the mediator making a written record of the settlement which shall form part of the agreement or matter that was the subject of the mediation]; and

c) in the third and final instance (and on the presumption that the questions, matters or issues in dispute have not been satisfactorily resolved through either of the aforementioned processes outlined above), and specifically where the parties have been unable to jointly select or agree upon a mediator within 60 days after having submitted the disagreement to mediation, or where the mediator so selected has not been able to obtain a settlement of the dispute within 30 days after his or her selection or appointment, the outstanding questions, matters and/or issues in dispute shall then be referred to (and be resolved by) binding arbitration pursuant to the *Arbitration Act S.O. 1991, as amended*, in accordance with the overriding provisions set out hereafter in this Article. The substantive rules of law applicable to the dispute being arbitrated pursuant to the provisions hereof shall be those of the Province of Ontario, and the arbitration decision so rendered shall be binding upon the parties hereto, and their respective successors and assigns (including each of the existing and future Metrogate Condominiums, and their respective unit owners from time to time), and shall <u>not</u> be subject to appeal under any circumstances (whether with respect to a question of law, a question of fact, a question of mixed fact and law, or otherwise).

15.02 Subject to the provisions of section 15.03 hereof, the arbitration shall be conducted by a single arbitrator, and the parties hereto shall make every reasonable effort to reach an agreement on a single arbitrator within ten (10) days after the arbitration commences (or is deemed to have commenced) in accordance with the provisions of section 15.06 hereof.

15.03 The arbitration shall be conducted before three (3) arbitrators if the parties hereto fail to agree on a single arbitrator within ten (10) days after the arbitration commences (or is deemed to have commenced) in accordance with the provisions of section 15.06 hereof, or if the amount in dispute exceeds $100,000.00.

15.04 Any arbitrator appointed pursuant to the provisions of this Article shall have the following qualifications, namely:

a) be a lawyer in good standing with the Law Society of Upper Canada who has been called to the Bar of the Province of Ontario for at least 5 years, and who has condominium law experience;

b) be a member of the ADR Institute of Ontario, or someone who has successfully completed the Arbitration II course at the University of Toronto, or an equivalent course of study focusing on arbitration, or someone who possesses accreditation or certification as a qualified arbitrator in the Province of Ontario; and

c) be impartial and independent of the parties hereto, if acting as a sole arbitrator (other than by virtue of the circumstances set out in section 15.15(b) hereof), or if acting as the third arbitrator/chairperson [ie selected by the other two arbitrators appointed by the disputing parties, or selected or appointed by the Ontario Superior Court of Justice, as the case may be].

15.05 Any notice or document desired or required to be served or given in connection with the arbitration proceedings conducted in accordance with the provisions hereof shall be in writing, and shall be delivered to the intended party by bonded courier, or sent by telefax, in the manner (and via the telefax number) set out in Article 16 hereof.

15.06 Any party hereto (including any of the Metrogate Condominiums hereafter created) desiring arbitration (the "**Initiating Party**") shall indicate same by notice to the other disputing party or parties hereto (hereinafter individually referred to as the "**Responding Party**" and collectively referred to as the "**Responding Parties**"), setting forth a brief description of the issue(s) or matter(s) submitted for arbitration [and if appropriate, the pertinent sections of this Agreement which are relevant to the determination of the matter(s) or issue(s) in

dispute], and said notice (hereinafter referred to as the "**Initiating Notice**") shall be deemed for all purposes to have commenced the arbitration proceedings. The Initiating Party and the Responding Parties shall then have ten (10) days following the delivery of the Initiating Notice (the "**Sole Arbitrator Selection Period**") within which to agree upon a sole arbitrator having the qualifications set forth in section 15.04 hereof. If such agreement is not attained within such time, then the Initiating Party shall, by delivering notice (hereinafter referred to as the "**Appointment Notice**") to each of the Responding Parties within five (5) days after the expiry of the Sole Arbitrator Selection Period, appoint or designate an arbitrator of its own choice. Each of the Responding Parties shall, within five (5) days after receiving the Appointment Notice, appoint or designate another arbitrator (of its own choice) and give notice thereof (hereinafter referred to as the "**Corresponding Appointment Notice**") to the Initiating Party and to the other Responding Party. The three (3) arbitrators so appointed shall, within ten (10) days after the delivery of the Corresponding Appointment Notice, select a chairperson of the arbitral tribunal from amongst themselves. If said arbitrators are unable to agree upon the selection of such chairperson within such time, then the chairperson shall be designated or appointed (from amongst the three arbitrators so chosen or appointed by the parties hereto) by the Ontario Superior Court of Justice, pursuant to an application submitted by any of the disputing parties in accordance with the provisions of the *Arbitration Act S.O. 1991, as amended*, on notice to the other parties hereto. Moreover, if only one of the Responding Parties has appointed or designated an arbitrator of its choice, then the two arbitrators so chosen shall, within ten (10) days after the delivery of the Corresponding Appointment Notice (pursuant to which the second arbitrator was confirmed), select a third arbitrator having the qualifications set forth in section 15.04 hereof who shall act as the chairperson of the arbitral tribunal, and if the said two arbitrators are unable to agree on the selection of said chairperson within such time, then the chairperson shall be designated or appointed by the Ontario Superior Court of Justice upon an application submitted by any of the disputing parties in accordance with the provisions of the *Arbitration Act S.O. 1991, as amended*, on notice to the other parties hereto.

15.07 The arbitration proceedings shall take place in the City of Toronto, and the chairperson of the arbitral tribunal shall fix the time, date and place within the City of Toronto for the purpose of conducting the formal arbitration proceedings, and hearing such evidence and representations as the parties hereto may present, subject to the provisions hereinafter set forth.

15.08 The chairperson shall (with or without the participation of the other two arbitrators comprising the arbitral tribunal) conduct a pre-arbitration hearing with the disputing parties, not less than five (5) days prior to any date scheduled for the holding of any hearing for the presentation of evidence, in order to identify and narrow the issues in dispute, to discern the relevant evidence to be submitted and the number (and names) of the witnesses to be called (if any), including any expert witnesses needed or desired (and to limit the number of expert witnesses to be called), and to ultimately assess the approximate length of time that the arbitration proceedings will take.

15.09 To reduce the expenses of the arbitration process, no formal transcribing or recording of evidence shall be undertaken unless all parties to the dispute agree thereto (and concomitantly agree to the payment of all costs and expenses associated therewith), but any of the disputing parties and/or the arbitral tribunal may have a tape recorder present to assist in confirming what evidence has been submitted and to monitor the general conduct of the proceedings.

15.10 Each of the disputing parties will be required to submit brief written statements summarizing their respective claims or defences (as the case may be) within the time frame specified by the chairperson, indicating the facts supporting their respective positions, identifying the point(s) in issue and the relief sought, and accompanied by any documents considered relevant. A hearing will thereafter be convened by the arbitral tribunal for the presentation of evidence and the submission of oral arguments by or on behalf of the disputing parties, and the chairperson shall determine any matters of procedure regarding the arbitration proceedings which are not specified herein. To ensure the timeliness of the proceedings, the chairman of the arbitral tribunal may impose financial penalties for the breach of any time limits imposed or established in connection with the submission of written statements, the provision of any documents, or the taking of any step or action by any of the parties hereto in respect of the arbitration proceedings, not exceeding the sum of $500.00 per breach.

15.11 The arbitral tribunal, with or without the request of any party to the dispute, shall have the power to make an order for the detention, preservation or inspection of property and documents that are the subject matter of the arbitration (or connected with any question that may arise during the arbitration proceedings), and shall have the power to order any party to provide security in connection with same, akin to the powers exercisable under section 18(1) of the *Arbitration Act S.O. 1991, as amended.* Any objection to the lack of jurisdiction of the arbitral tribunal to arbitrate the matter(s) or issue(s) in dispute, or pertaining to the arbitral tribunal exceeding its authority, shall be raised by the party alleging same as soon as reasonably possible after the arbitration proceedings have commenced, and any such objection shall be ruled upon by the arbitral tribunal as a preliminary question (rather than being dealt with in its ultimate award), and there shall be no appeal or review of such ruling under section 17(8) of the *Arbitration Act S.O. 1991, as amended.* Moreover, under no circumstances shall the arbitration proceedings be terminated by the arbitral tribunal prior to rendering its decision (and written reasons therefor), simply because the arbitral tribunal finds that the continuation of the arbitration has become unnecessary or impossible pursuant to section 43(3)(b) of the *Arbitration Act S.O. 1991, as amended.*

15.12 The arbitral tribunal shall, after reviewing the statements submitted and hearing the evidence and arguments presented by or on behalf of the disputing parties, render a decision, together with written reasons therefor, as soon as reasonably possible, but in no event later than thirty (30) days following the date that the final submissions have been made by or on behalf of the parties to the dispute and the hearings with respect thereto

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have been formally concluded, and shall deliver a copy thereof to each of the parties hereto forthwith following the rendering of same. The decision of a majority of the arbitrators comprising the arbitral tribunal shall constitute the award of the tribunal enforceable in accordance with the provisions of section 50(1) of the *Arbitration Act S.O. 1991, as amended,* and correspondingly enforceable in accordance with the provisions of the *Condominium Act 1998, S.O. 1998, as amended,* and shall be binding upon the parties hereto, and their respective successors and assigns (including each of the existing and future Metrogate Condominiums, and their respective unit owners from time to time), and shall not be subject to appeal under any circumstances (whether with respect to a question of law, a question of fact, a question of mixed fact and law, or otherwise).

15.13 The arbitration tribunal shall not, on its own initiative, nor at the request of any party hereto, make any additional award to deal with a claim that was presented or raised (or that could have been presented or raised, based on the evidence or arguments submitted by or on behalf of the parties) in the arbitration proceedings so conducted but nevertheless omitted from the earlier award, as otherwise provided or contemplated under section 44(2) of the *Arbitration Act S.O. 1991, as amended.*

15.14 Unless otherwise provided in the arbitral decision to the contrary, each disputing party shall bear (and be solely responsible for) the costs of its own legal counsel and witnesses, and if the arbitral tribunal comprises three arbitrators, each disputing party shall bear (and be solely responsible for) the costs of the arbitrator that such party has appointed, and if the arbitration proceedings are conducted by a sole arbitrator, then each disputing party shall bear (and be solely responsible for) an equal share of the costs of such sole arbitrator. Notwithstanding the foregoing to the contrary, the chairperson of the arbitration tribunal or sole arbitrator shall, upon hearing brief oral submissions requested to be made with respect to an award of costs, have the power and discretion to award any scale of costs [ie. party and party scale (or partial indemnity scale), solicitor and client scale (or substantial indemnity scale) , etc.], or to fix costs between or amongst the disputing parties, in such amounts (and in such proportions) as the chairperson or sole arbitrator may deem appropriate, provided however that:

a) no prejudgment or postjudgment interest shall be considered or calculated in any award of costs; and

b) a party who exceeds any limit imposed by the chairperson of the arbitral tribunal or by the sole arbitrator at the pre-arbitration hearing with respect to the number of witnesses to be called, and/or the number of expert witnesses to be heard, shall be disentitled to receive any award of costs which purports to compensate such party (in whole or in part) for the provision or attendance of such excess witnesses/experts.

15.15 Notwithstanding anything hereinbefore provided to the contrary, it is understood and agreed by the parties hereto that if:

a) the arbitration is conducted by a single arbitrator agreed to by all of the disputing parties, as provided or contemplated in section 15.02 and section 15.06 hereof; or

b) if each of the Responding Parties fails to appoint an arbitrator (of its own choice) within five (5) days after receiving the Appointment Notice from the Initiating Party, as provided or contemplated in section 15.06 hereof, then the arbitrator appointed by the Initiating Party may proceed alone to determine the matter(s) or issue(s) in dispute, as the sole arbitrator;

then in either of such cases, all of the provisions hereinbefore set forth pertaining to the timing, manner and conduct of the arbitration proceedings, including the ultimate decision (and costs, if any) awarded in connection therewith shall apply, *mutatis mutandis*, to the arbitration proceedings conducted by such sole arbitrator (and all references to the powers, actions and/or decisions of the chairperson of the arbitral tribunal shall be deemed and construed to be references to the powers, actions and/or decisions of such sole arbitrator), and the decision of such sole arbitrator shall be binding upon the disputing parties, and their respective successors and assigns, and shall not be subject to appeal under any circumstances (whether with respect to a question of law, a question of fact, a question of mixed fact and law, or otherwise).

ARTICLE 16.00 - NOTICES

16.01 All notices required or desired to be given to any of the parties hereto (including any of the Metrogate Condominiums hereafter created) in connection with this Agreement, or arising herefrom, shall be in writing, and shall be hand delivered to an officer or director of the intended party at the following address, or be delivered by registered mail to the intended party at the following address [and if so mailed, same shall be deemed to have been delivered, received and effective on the 3rd day (excluding Saturdays, Sundays and statutory holidays) following the day on which such notice was mailed]:

a) to each of the Two Solaris Condominiums - c/o its property manager Del Property Management Inc. 4800 Dufferin Street, Suite 109, Toronto, Ontario, M3H 5S9, Attention: Mr. Saul York (fax no. 416-661-8653), with a copy concurrently delivered to the president or secretary of each of the Two Solaris Condominiums;

b) to Metrogate and/or Ventus -- delivered to 4800 Dufferin Street, Suite 200, Toronto, Ontario, M3H 5S9, to the attention of Mr. Dino Carmel (fax no. 416-661-0978);

c) to each of the Metrogate Condominiums hereafter created - c/o its property manager, at the address for service so provided by it from time to time, with a copy delivered to the respective president or secretary of each of such Metrogate Condominiums; and

d) to the Daycare Centre Committee (when established or created) - by giving same to at least one (1) representative or nominee of each of the Metrogate Condominiums so represented on such committee (and with a copy to Metrogate, until such time as the last of the Metrogate Condominiums is registered), either personally or by registered mail, addressed to the respective dwelling units of such members of the committee.

16.02 Any party hereto (including any of the Metrogate Condominiums hereafter created) may, from time to time, by written notice to the other parties hereto (and to the other Metrogate Condominiums hereafter registered) delivered in accordance with the foregoing provisions, change the address to which its notices are to be delivered.

ARTICLE 17.00 - REGISTRATION OF THIS AGREEMENT

17.01 Each of the parties hereto hereby consents to the registration of this Agreement against the title to all of the units within the Phase I Condominium and the Phase II Condominium respectively, and against the balance of the Metrogate Site, and hereby acknowledges, confirms and agrees that this Agreement shall be deemed and construed to run with the title to each of the Phase I Lands, the Phase II Lands and the balance of the Metrogate Site respectively.

17.02 Metrogate and Ventus further covenant and agree that as and when each of the other Metrogate Condominiums is hereafter registered as a separate condominium corporation under the Act, they shall cause each such condominium corporation to execute a counterpart to this Agreement, with or without Metrogate and/or Ventus as a party or signatory thereto, and with or without any of the previously registered Metrogate Condominiums as parties or signatories thereto, but nevertheless in favour of (and enforceable by) Metrogate, Ventus and each and all of the previously-registered and subsequently-registered Metrogate Condominiums (hereinbefore and hereinafter referred to as a "**Counterpart to the Daycare Centre Agreement**"), which shall evidence and confirm:

a) the formal assumption by such newly-registered condominium corporation of its obligations under this Agreement, including without limitation, the obligation to pay its Proportionate Share of the Daycare Centre Costs and the Public Park & Art Costs respectively; and

b) the commitment of such newly-registered condominium corporation to be bound by all of the terms and provisions of this Agreement, to the same extent as if it had been an original party hereto, as well as the express acknowledgement and agreement of such newly-registered condominium corporation that all previously-registered Metrogate Condominiums and all subsequently-registered Metrogate Condominiums (including any of the permitted Daycare Centre Operators and/or the City of Toronto) may enforce said terms and provisions against such newly-registered condominium corporation directly, even though they may not be parties or signatories thereto.

17.03 Each of the parties hereto hereby consents to the registration of each and every Counterpart to the Daycare Centre Agreement against the title to all of the units within the Phase I Condominium and the Phase II Condominium respectively, and further acknowledges, confirms and agrees that same shall be deemed and construed to run with the title to each of the Phase I Lands, the Phase II Lands and the balance of the Metrogate Site respectively.

ARTICLE 18.00 - CERTIFICATE OF COMPLIANCE

18.01 Each of the Metrogate Condominiums so registered from time to time (and Metrogate on behalf of each of the other Metrogate Condominiums prior to their respective registration) (hereinafter individually referred to as the "**Receiving Party**") shall, within ten (10) days after receiving a written request (hereinafter referred to as the "**Certificate Request**") accompanied by payment of a fee in the amount of $100.00 plus H.S.T. from or by any party interested in the status of (or compliance with) this Agreement (hereinafter called the "**Requesting Party**"), execute and deliver to the Requesting Party a certificate (hereinafter called the "**Certificate**") confirming:

a) whether or not this Agreement has been modified, and if so, the nature of such modification, and confirming that this Agreement (as may be amended by any subsequent amending agreement with respect thereto, or as may be supplemented or confirmed by any Counterpart to the Daycare Centre Agreement) is in full force and effect;

b) whether or not the terms and provisions of this Agreement have been complied with to date, and whether or not there is any outstanding default alleged (or complained of) by or against Metrogate, any of the Metrogate Condominiums and/or the Daycare Centre Committee, as well as the nature and extent of the default so alleged; and

c) whether or not any outstanding maintenance or repair work in connection with either or both of the Daycare Centres has been (or is presently being) performed by or on behalf of the Metrogate Condominiums and/or the Daycare Centre Committee, for which the costs of same will (or may) not be covered by the current Daycare Centre Budget or by the operating fund and/or reserve fund monies already in place, and which costs may therefore be claimed or charged against any of the Metrogate Condominiums pursuant to the foregoing provisions of this Agreement.

18.02 Notwithstanding any provision contained herein to the contrary, it is expressly understood and agreed that nothing shall be charged to (or be levied against) Metrogate and/or Ventus if either or both of them hereafter requests (or if their solicitor hereafter requests) the Certificate from any of the Metrogate Condominiums (or from the property manager retained by the Daycare Centre Committee) from time to time, pursuant to the preceding provisions hereof.

18.03 The contents of the Certificate may be pleaded by the Requesting Party as a bar to (and shall correspondingly constitute a complete defence by the Requesting Party against) any litigated suit, claim or action that is inconsistent with the facts recited in the Certificate.

18.04 If the Receiving Party fails to execute and deliver the Certificate to the Requesting Party within 10 days after receiving the Certificate Request and the accompanying fee, then the Receiving Party shall be deemed to have certified to the Requesting Party that:

a) no outstanding default exists under this Agreement by any of the Metrogate Condominiums, Metrogate and/or the Daycare Centre Committee, as at the date of the Receiving Party's receipt of the Certificate Request (and the Receiving Party shall accordingly be forever estopped from claiming or alleging that any such default then exists or continues, but shall not be precluded from claiming or alleging any future default); and

b) no outstanding maintenance or repair work in connection with either or both of the Daycare Centres has been (or is presently being) performed by or on behalf of the Metrogate Condominiums and/or the Daycare Centre Committee, for which the costs of same will (or may)be claimed or charged against any of the Metrogate Condominiums pursuant to the foregoing provisions of this Agreement.

ARTICLE 19.00 - SUCCESSORS AND ASSIGNS

19.01 This Agreement shall enure to the benefit of, and be correspondingly binding upon, each of the parties hereto and their respective successors and assigns, and specifically binding against all successors in title to any portion of the Phase I Lands, the Phase II Lands and the balance of the Metrogate Site respectively (including without limitation, each of the Metrogate Condominiums to be developed within the overall Metrogate Site, after the registration of the Phase II Condominium).

ARTICLE 20.00 - FURTHER ASSURANCES

20.01 The parties hereto hereby covenant and agree to forthwith execute and/or provide all further documents, instruments and/or assurances as may be necessary or required in order to carry out (and give full effect to) the true intent of these presents, and to register this Agreement (or notice thereof) against the title to the Phase I Lands (or against all of the units within the Phase I Condominium), against the title to the Phase II Lands (or against all of the units within the Phase II Condominium), and against the title to the balance of the Metrogate Site (and ultimately against all of the units within each of the Metrogate Condominiums so registered after the Phase II Condominium). Moreover, forthwith following the respective registration of each of the Metrogate Condominiums hereafter developed and registered as a separate condominium corporations under the Act), each of such newly-registered condominium corporations shall execute the Counterpart to the Daycare Centre Agreement, and shall take all requisite steps to register the executed Counterpart to the Daycare Centre Agreement against the title to all of the units within each of the Two Solaris Condominiums, and against the title to the balance of the Metrogate Site (including without limitation, against the title to all of the units within each of the previously-registered Metrogate Condominiums that have been created after the Phase II Condominium).

20.02 Whenever the Counterpart to the Daycare Centre Agreement has been duly executed by any of the Metrogate Condominiums hereafter created, then despite the fact that said counterpart agreement has not also been executed by any of the other Metrogate Condominiums (nor by the Daycare Centre Operator or the City of Toronto), it is nevertheless understood and agreed that Metrogate, Ventus and/or each or all of the previously-registered Metrogate Condominiums, and/or each or all of the subsequently-registered Metrogate Condominiums, as well as the Daycare Centre Operator in respect of each of the Daycare Centres and/or the City of Toronto, shall be entitled to enforce all of the terms and provisions of the Counterpart to the Daycare Centre Agreement (as well as all of the terms, provisions and obligations of this Agreement which correspondingly become binding upon such subsequently-registered Metrogate Condominium, by virtue of its execution of the Counterpart to the Daycare Centre Agreement) directly against the condominium corporation which has so executed the Counterpart to the Daycare Centre Agreement.

ARTICLE 21.00 - MISCELLANEOUS PROVISIONS

21.01 This Agreement is subject to compliance with the subdivision and part-lot control provisions of the *Planning Act R.S.O. 1990, as amended*, and each of the parties hereto hereby agrees to cooperate with one another in order to procure any requisite consents from the Committee of Adjustment for the City of Toronto.

21.02 In the event that any document(s) or instrument(s) is required to be registered against the title to the Phase I Lands, the Phase II Lands and/or the balance of the Metrogate Site (or against any or all of the units within each of the Metrogate Condominiums from time to time) pursuant to the foregoing provisions of this Agreement, then in those circumstances where such document or instrument is required by the Land Titles Registrar at Toronto to be registered electronically, then each of the parties hereto (including each of the subsequently-registered

Metrogate Condominiums) shall execute all required eReg authorizations (and ancillary documents) in order to effectively release any such document(s) or instrument(s) for completeness and registration electronically.

21.03 The headings used throughout the body of this Agreement form no part hereof, but shall be deemed to be inserted for convenience of reference only.

21.04 This Agreement shall be read and construed with all changes in gender and/or number as may be required by the context.

21.05 Time shall be of the essence in all respects, in connection with the performance and fulfilment of all obligations herein set out.

21.06 If any clause or section of this Agreement shall be determined by a court of competent jurisdiction to be illegal or unenforceable, then such clause or section shall be considered separate and severable from the rest of this Agreement, and the remaining provisions hereof shall remain in full force and effect, and shall continue to be binding upon the parties hereto as though the said illegal or unenforceable clause or section had never been included.

21.07 This Agreement may be executed in one or more counterparts, each of which when so executed shall constitute an original, and all of which shall together constitute one and the same agreement.

21.08 This Agreement shall be governed by (and be construed in accordance with) the laws of the Province of Ontario, and each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement, by their respective authorized signing officers, as of the date first above-mentioned.

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2151

Per:_____

Elio Zoffranieri - President
I have authority to bind the Corporation

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2166

Per:_____

Elio Zoffranieri - President
I have authority to bind the Corporation

METROGATE INC.

Per:_____

Dino Carmel - President
I have authority to bind the Corporation

VENTUS AT METROGATE INC.

Per:_____

Dino Carmel - President
I have authority to bind the Corporation

DAYCARE CENTRE STANDARDS

APPENDICES

Appendix 1 – Service Profiles

1.0 CHILDCARE CENTRES

Service Provider

- Varied
- Can be delivered by for-profit and non-profit corporations, as well as charitable institutions, colleges, and municipalities. However, only programs offered on a non-profit basis may be accommodated in facilities secured through the land use approval process.

Population Served

Children aged 0 to 12 years broken down accordingly:

- Infants: 0 to 18 months
- Toddlers: 18 to 30 months
- Preschoolers: 2 ½ to 6 years
- School-aged: 6 to 12 years

Description of Existing Programs and Services

- Licenced daycare or day nurseries, as defined by the Ontario Day Nurseries Act, refers to "....premises that receive more than five children who are not of common parentage, primarily for the purpose of providing temporary care for a continuous period not exceeding 24 hours, where the children are under 12 years of age."

Programs include:

- Half day nursery school, 10 to 12 months per year
- Full daycare, 10 to 12 months a year
- Care for children with special needs
- Weekend and emergency care
- Before and after school care
- Summer only programs

Licensing Requirements and On-going Monitoring

- All licensed daycare programs are inspected and licensed by staff from the Ministry of Children's and Youth Services to ensure compliance with the Ontario Day Nurseries Act. In addition, Ministry staff must approve all plans for new facilities.

- The City's role with respect to licensed daycare is varied and carried out by a number of City departments. The Children's Services Division provides fee subsidies to low income parents who qualify. The quality of programming is monitored through a purchase of service agreement entered into with individual daycare operators.

- Public Health, Buildings and Fire must all approve plans for new facilities, and Public Health and Fire have on-going monitoring duties, which require site inspections.

- The City Planning Division has responsibility for securing daycare facilities through the land use process. Planning staff assists in the preparation and execution of appropriate agreements, identification of appropriate locations, and implementation.

Program Priorities

- Additional services for children aged 0 to 6 years.
- Additional services in areas deemed to be under-served, in relation to other areas of the City, as identified in Children's Services Service Plan.
- Additional services in priority communities as defined by "The Social Indicators and Priority Areas" report prepared by City Planning.
- Protection of programs displaced as a result of school closures and/or the need for the space occupied by daycare operators for educational programs.
- Ability to program collaboratively with other agencies and service providers, through co-location.

Facility Description, Design & Locational Criteria

- Facilities may be co-located with a number of other uses including residential, mixed use commercial, institutional and other community service facilities. Shared amenities may include: outdoor play yards when not being used by the daycare operator and large multi-purpose rooms. The operator requires exclusive use of offices, kitchens and laundry rooms, all washrooms, play rooms and sleep rooms.
- Facilities must be located at-grade, or on the second floor if there is an opportunity for an adjacent play area on a podium.
- Optimal facility sizes are determined by maximizing the ratio of children to adults as stipulated in the Ontario Day Nurseries Act, while maintaining a financially viable program. The City's two standard facility sizes are:

1. 52 Child Centre – A program of this size will serve a maximum of:

   - 10 infants
   - 10 toddlers
   - 32 preschoolers
   - 15 school-aged children

   In order to meet the provincial requirements of 35 square feet of unobstructed play space, the interior play space must have a gross floor area of 5,720 square feet, with an adjacent outdoor play space of 3,120 square feet.

2. 72 Child Centre – A program of this size will serve a maximum of:

   - 20 infants
   - 20 toddlers
   - 20 preschoolers
   - 32 school-aged children

   The interior play space must have a gross floor area of 7,920 square feet, with an adjacent play space of 4,320 square feet.

Capital Funding

There are presently no capital funding programs at either the provincial or federal levels for licensed daycare. New capital construction is achieved primarily through charitable donations, loan guarantees made available by the City, and Section 37 of the *Planning Act*.

Daycare as a Community Benefit

Relevant Official Plan Policies: section 3.2.2 (Community Services and Facilities)

Where the community benefit in a development application involving Section 37 is the provision of a non-profit child care facility within the building or off-site, the following guidelines will be followed with respect to the facility. Recognizing that the total cost of a child care facility may not be financially feasible for smaller developments, more than one development can contribute funds toward the provision of such a facility. The Section 37 community benefit can thus involve the contribution of funds toward a specific day care facility that meets the criteria below.

3.8.1 The non-profit child care facility is to be provided on a turn-key basis. The developer is responsible for constructing, furnishing, finishing and equipping the daycare;

3.8.2 Start-up grants to off-set operational deficits in the first year are to be provided by the developer, and are generally in the order of $100,000 for a 52-space facility;

3.8.3 The developer either elects to establish a non-profit board of directors, or issues a request for proposals to existing non-profit operators with a proven track record of providing licensed care to children aged 0 to 6 years. The City must approve the owner's choice of operator.

3.8.4 On-going occupancy and maintenance costs are paid for by the owner, for a term of 99 years:

3.8.5 The non-profit child care facility is designed such that it meets all Ministry requirements and further that:

a. Exterior play space is provided adjacent to interior space, and is suitably weather protected and landscaped to facilitate year round use;

b. The location is at-grade or on second floor (pre-school aged children only);

c. Conditions regarding wind, sunlight, noise, air quality, and soil quality with respect to the facility space are acceptable to the City;

d. Security provisions are acceptable to the City;

e. Direct access is provided from the daycare to grade level and, if present, below-grade parking;

f. Facility is fully accessible to the disabled; and

g. All other licensing criteria are met.

3.8.6 The size requirements of the facility are generally as follows:

a. Minimum licensed capacity of 52, suitable for 10 infants, 10 toddlers and 32 preschoolers and school aged children (this capacity represents the financial and programmatic optimal size);

b. Interior space:

Gross (includes obstructed space):	110 sq. ft./child
Net (unobstructed play space):	35 sq. ft./child

c. Exterior space: 60 sq. ft./child