



D

<div>AT 4478336</div> <div>CERTIFICATE OF RECEIPT RÉCÉPISSÉ TORONTO (66)</div> <div style="font-size: 24pt; margin-top: 20px;">FEB 02 2017 13:23</div> <div style="margin-top: 20px;">LAND REGISTRAR </div> <div style="display: flex; justify-content: space-between; margin-top: 20px;"><div>New Property Identifiers</div><div>Additional: See Schedule <input type="checkbox"/></div></div> <div>Executions</div> <div style="display: flex; justify-content: space-between; margin-top: 20px;"><div>Additional: See Schedule <input type="checkbox"/></div><div>(7) This Document Contains</div><div>(a) Redescription New Easement Plan/Sketch <input type="checkbox"/></div><div>(b) Schedule for: Description <input checked="" type="checkbox"/> Additional Parties <input type="checkbox"/> Other <input checked="" type="checkbox"/></div></div>		(1) Registry <input type="checkbox"/> Land Titles <input checked="" type="checkbox"/> (2) Page 1 of 21 pages													
		(3) Property Identifier(s) Block Property Firstly: 76566-0001 to 76566-0976 (LT) Secondly: Secondly: 06164-0511; Thirdly: 06164-0476 Additional: See Schedule <input type="checkbox"/>													
		(4) Nature of Document Application to Register Notice of an Agreement (Section 71 of the Land Titles Act)													
		(5) Consideration Nil Dollars \$ Nil													
(6) Description Firstly: All units and common elements comprising the property included in Toronto Standard Condominium Plan No. 2566 in the City of Toronto, Land Titles Division of the Toronto Registry Office (No. 66) Secondly and Thirdly set out in Schedule attached															
(8) This Document provides as follows: I, Harry Herskowitz, am the solicitor for Metrogate Inc. (hereinafter referred to as "Metrogate"), one of the parties to the agreement annexed hereto. I hereby confirm that the applicant, Metrogate has an unregistered estate, right, interest or equity in the lands and premises described in box (6) hereof, and further confirm that the agreement annexed hereto as Schedule "A" affects an interest in said lands, and hereby applies under Section 71 of the Land Titles Act for the entry of the notice of agreement against: a) each of the unit registers in respect of the firstly described lands in Box (6) hereof; b) the title to the secondly described lands; and c) the title to the thirdly described lands. The agreement annexed hereto has been authorized by By-law No. 3 of Toronto Standard Condominium Corporation No. 2566, registered as Instrument No. AT- <u>4478165</u> . This notice will be effective for an indeterminate period of time. <div style="text-align: right;">Continued on Schedule <input type="checkbox"/></div>															
(9) This Document relates to instrument number(s) <u>AT 4478165</u>															
(10) Party(ies) (Set out Status or Interest) Name(s) METROGATE INC. BY ITS SOLICITORS, DELZOTTO, ZORZI LLP		Signature(s) Per: Harry Herskowitz Date of Signature Y M D 2017 01 23													
(11) Address for Service															
(12) Party(ies) (Set out Status or Interest) Name(s) TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2566 METROGATE INC.		Signature(s) Date of Signature Y M D													
(13) Address for Service c/o 4800 Dufferin Street, Toronto, Ontario, M3H 5S9															
(14) Municipal Address of Property 255 Village Green Square Toronto, Ontario		(15) Document Prepared by: Harry Herskowitz DelZotto, Zorzi LLP 4810 Dufferin St, Suite D North York, ON M3H5S8													
		<div style="display: flex; align-items: center;"><div style="writing-mode: vertical-rl; transform: rotate(180deg); font-size: 8pt; border: 1px solid black; padding: 2px;">FOR OFFICE USE ONLY</div><table border="1" style="margin-left: 10px; border-collapse: collapse;"><thead><tr><th colspan="2" style="font-size: 8pt;">Fees and Tax</th></tr></thead><tbody><tr><td style="font-size: 8pt;">Registration Fee</td><td></td></tr><tr><td style="font-size: 8pt;"> </td><td></td></tr><tr><td style="font-size: 8pt;"> </td><td></td></tr><tr><td style="font-size: 8pt;"> </td><td></td></tr><tr><td style="font-size: 8pt;">Total</td><td></td></tr></tbody></table></div>		Fees and Tax		Registration Fee								Total	
Fees and Tax															
Registration Fee															
Total															

SCHEDULE

(6) DESCRIPTION:

- Secondly: PART OF BLOCK 7 ON PLAN 66M2460 PARTS 14, 15 & 16 ON PLAN 66R28701; SUBJECT TO EASEMENT OVER PARTS 14, 15 & 16 ON PLAN 66R28701 AS IN AT2489582; SUBJECT TO EASEMENT OVER PARTS 14, 15 & 16 ON PLAN 66R28701 AS IN AT3827712; SUBJECT TO EASEMENT OVER PARTS 14, 15 & 16 ON PLAN 66R28701 IN FAVOUR OF ROGERS COMMUNICATIONS INC. AS IN AT3850488; TOGETHER WITH AN EASEMENT OVER PART OF THE COMMON ELEMENTS ON TORONTO STANDARD CONDOMINIUM PLAN 2566 PARTS 2 & 3 ON PLAN 66R28701 AS IN AT4458663; TOGETHER WITH AN EASEMENT OVER PART OF THE COMMON ELEMENTS ON TORONTO STANDARD CONDOMINIUM PLAN 2566 PARTS 7, 11, 12 & 13 ON PLAN 66R28701 AS IN AT4458663; TOGETHER WITH AN EASEMENT OVER PART OF THE COMMON ELEMENTS ON TORONTO STANDARD CONDOMINIUM PLAN 2566 PARTS 5, 8, 9 & 10 ON PLAN 66R28701 AS IN AT4458663; TOGETHER WITH AN EASEMENT OVER PART OF THE COMMON ELEMENTS ON TORONTO STANDARD CONDOMINIUM PLAN 2566 PARTS 5 & 6 ON PLAN 66R28701 AS IN AT4458663; TOGETHER WITH AN EASEMENT OVER THE COMMON ELEMENTS ON LEVELS 1, 2, A, B & C ON TORONTO STANDARD CONDOMINIUM PLAN 2566 AS IN AT4458663; TOGETHER WITH AN EASEMENT OVER THE COMMON ELEMENTS ON LEVELS 1, 2, 3, A, B & C ON TORONTO STANDARD CONDOMINIUM PLAN 2566 AS IN AT4458663; TOGETHER WITH AN EASEMENT OVER THE COMMON ELEMENTS ON TORONTO STANDARD CONDOMINIUM PLAN 2566 UNTIL 2027/01/13 AS IN AT4458663; TOGETHER WITH AN EASEMENT OVER THE COMMON ELEMENTS ON TORONTO STANDARD CONDOMINIUM PLAN 2566 AS IN AT4458663; SUBJECT TO AN EASEMENT OVER PART 15 ON PLAN 66R28701 IN FAVOUR OF TORONTO STANDARD CONDOMINIUM PLAN 2566 AS IN AT4458663; SUBJECT TO AN EASEMENT OVER PARTS 15 & 16 ON PLAN 66R28701 IN FAVOUR OF TORONTO STANDARD CONDOMINIUM PLAN 2566 AS IN AT4458663; CITY OF TORONTO, registered in the Land Titles Division of the Toronto Land Registry Office (No. 66), and being all of property identification number 06164-0511 (LT)
- Thirdly: BLOCK 8 ON PLAN 66M2460, SCARBOROUGH, TORONTO.; SUBJECT TO AN EASEMENT IN GROSS OVER BLOCK 8 ON PLAN 66M2460 AS IN AT2489582; TOGETHER WITH AN EASEMENT OVER PART OF THE COMMON ELEMENTS ON TORONTO STANDARD CONDOMINIUM PLAN 2566 PARTS 2 & 3 ON 66R28701 AS IN AT4458663; TOGETHER WITH AN EASEMENT OVER THE COMMON ELEMENTS ON LEVELS 1, 2, 3, A, B & C ON TORONTO STANDARD CONDOMINIUM PLAN 2566 AS IN AT4458663; TOGETHER WITH AN EASEMENT OVER THE COMMON ELEMENTS ON TORONTO STANDARD CONDOMINIUM PLAN 2566 UNTIL 2027/01/13 AS IN AT4458663; TOGETHER WITH AN EASEMENT OVER THE COMMON ELEMENTS ON TORONTO STANDARD CONDOMINIUM PLAN 2566 AS IN AT4458663; SUBJECT TO AN EASEMENT OVER PART 1 ON PLAN 66R29020 IN FAVOUR OF TORONTO STANDARD CONDOMINIUM PLAN 2566 AS IN AT4458663, registered in the Land Titles Division of the Toronto Land Registry Office (No. 66), and being all of property identification number 06164-0476(LT)

SHARED ROADWAY AGREEMENT

THIS AGREEMENT MADE this 23rd day of January, 2017.

B E T W E E N :

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2566

a condominium corporation created by the registration of a declaration and description on the 13th day of January, 2017, in the Land Titles Division of the Toronto Registry Office (No. 66) as Instrument No. AT-4458663 (hereinafter referred to as this or the "Avani Phase I Condominium")

OF THE FIRST PART

- and -

METROGATE INC.

a corporation incorporated pursuant to the laws of the Province of Ontario (hereinafter referred to as the "Declarant" or "Metrogate")

OF THE SECOND PART

WHEREAS the Avani Phase I Condominium is a residential high-rise condominium registered under the *Condominium Act 1998, S.O. 1998 as amended* (hereinafter referred to as the "Act"), containing 363 dwelling units together with various parking, locker and other ancillary units, developed and created on those lands and premises, comprising the easterly portion of Block 7 on registered Plan 66M-2460, situate to the south of the Canadian Pacific Railway line, municipally located at 255 Village Green Square, Toronto, Ontario (hereinafter referred to as the "Avani Phase I Lands");

AND WHEREAS the Declarant intends to develop and register a residential high-rise condominium containing 363 dwelling units, together with various parking, locker and other ancillary units (the "Avani Phase II Condominium"), on those lands and premises comprising the westerly portion of Block 7 on registered Plan 66M-2460, situate to the south of the Canadian Pacific Railway line, municipally located at 275 Village Green Square, Toronto, Ontario (hereinafter referred to as the "Avani Phase II Lands");

AND WHEREAS the Declarant also intends to develop and register a residential high-rise condominium that is presently intended to contain approximately 296 dwelling units, together with various parking, locker and other ancillary units, (the "Selene Condominium"), on those lands and premises comprising Block 8 on registered Plan 66M-2460, situate to the south of the Canadian Pacific Railway line and to the east of the Avani Phase I Lands, municipally located at 225 Village Green Square, Toronto, Ontario (hereinafter referred to as the "Selene Lands")

AND WHEREAS it is acknowledged and agreed that Metrogate is entering into this Agreement for and on behalf of each of the Avani Phase II Condominium and the Selene Condominium, until such time as the Avani Phase II Condominium and the Selene Condominium are respectively registered or created as separate condominium corporations under the Act;

AND WHEREAS each of the Avani Phase I Condominium, the Avani Phase II Condominium and the Selene Condominium is hereinafter individually referred to as a "Contributing Condominium", and are hereinafter collectively referred to as the "Contributing Condominiums" or the "Three Condominiums";

AND WHEREAS the Contributing Condominiums will be sharing the use and enjoyment of the Shared Roadway (as hereinafter defined), and have accordingly entered into this Agreement in order to formally evidence and confirm the terms and provisions governing the shared use and enjoyment of the Shared Roadway, and the corresponding allocation, sharing and payment of the costs and expenses incurred in connection with the use, operation, insurance, maintenance and repair of the Shared Roadway;

AND WHEREAS although the only Contributing Condominium in existence as at the date hereof is the Avani Phase I Condominium, this Agreement is nevertheless intended to also bind and correspondingly oblige each of the subsequently-created Contributing 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 others (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 each of the Contributing Condominiums shall accordingly be bound by all of the terms and 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 "Act" shall mean the *Condominium Act 1998, S.O. 1998 as amended*;
 - b) the "Benefitting Owners" or "Dominant Tenement Owners" shall mean the owner(s) of the dominant tenement(s) in respect of any of the Easements (as hereinafter defined) who is/are entitled to the benefit of same, provided however that for the purposes of giving and receiving notices, or for procuring or giving consents and/or for the purposes of carrying out any Work (as such term is hereinafter defined), or repairing and/or restoring any damage (all as contemplated in Articles 9.00, 10.00, 11.00 and/or 12.00 hereof), the term "Benefitting Owners" or "Dominant Tenement Owners" shall only mean (i) the Avani Phase I Condominium (for and on behalf of all unit owners, residents, tenants, invitees and licensees from time to time) in respect of the Avani Phase I Lands (or any portion thereof) which encompasses all or a portion of the aforesaid dominant tenement(s); (ii) the Avani Phase II Condominium (for and on behalf of all unit owners, residents, tenants, invitees and licensees from time to time) in respect of the Avani Phase II Lands (or any portion thereof) which encompasses all or a portion of the aforesaid dominant tenement(s); and (iii) the Selene Condominium (for and on behalf of all unit owners, residents, tenants, invitees and licensees from time to time) in respect of the Selene Lands (or any portion thereof) which encompasses all or a portion of the aforesaid dominant tenement(s);
 - c) the "Easements" shall mean the easements, rights of way, or rights in the nature of an easement, formally created and/or reserved in the registered declaration of the Avani Phase I Condominium, upon and across the Shared Roadway (as hereinafter defined), in favour of:
 - i) the Avani Phase I Lands and the Avani Phase I Condominium, and all of the respective unit owners, residents and tenants of the Avani Phase I Condominium, and their respective invitees and licensees from time to time, over that portion of the private internal roadway leading from the north side of Village Green Square along the south westerly perimeter of the Selene Condominium (and to comprise part of the common elements of the Selene Condominium, as and when the Selene Condominium has been registered as a condominium under the Act) more particularly designated **Part 1 on Reference Plan 66R-29020**, registered in the Land Titles Division of the Land Registry Office (No. 66) (hereinafter referred to as the "Selene Portion of the Shared Roadway");
 - ii) the Avani Phase II Lands and the Avani Phase II Condominium, and all of the respective unit owners, residents and tenants of the Avani Phase II Condominium (as and when so registered), and their respective invitees and licensees from time to time, over the Selene Portion of the Shared Roadway and also over that portion of the private internal roadway leading from the north side of Village Green Square along the easterly perimeter of the Avani Phase I Condominium (and comprising part of the common elements of the Avani Phase I Condominium) more particularly designated as **Parts 2 and 3 on Reference Plan 66R-28701**, registered in the Land Titles Division of the Land Registry Office (No. 66) (hereinafter referred to as the "Avani Phase I Portion of the Shared Roadway"); and
 - iii) the Selene Lands and the Selene Condominium, and all of the respective unit owners, residents and tenants of the Selene Condominium (as and when so registered), and their respective invitees and licensees from time to time, over the Avani Phase I Portion of the Shared Roadway;
 - d) an "Emergency" shall mean any circumstance or event which involves danger to (or risks the safety or security of) any person(s) or property, and which gives rise to the temporary loss or suspension of any pedestrian and/or vehicular access or egress over any portion of the Shared Roadway (as hereinafter defined), whether actually occurring or imminent;
 - e) the "Governmental Authorities" shall mean the City of Toronto, and all other governmental authorities or agencies having jurisdiction over the development of the Avani Phase I Lands, the Avani Phase II Lands and the Selene Lands;
 - f) the "Proportionate Two-Way Share" attributable to each of Avani Phase I Condominium and the Avani Phase II Condominium (hereinafter collectively referred to as the "Two Avani Condominiums") shall be that percentage or proportion attributable to each of the Two Avani Condominiums derived by dividing each condominium's respective number of registered dwelling

units, as the numerator, but the total number of registered dwelling units in each of the Two Avani Condominiums, collectively, as the denominator (with the respective share of each of the Two Avani Condominiums, as so determined in accordance with the foregoing formula, being sometimes hereinafter individually referred to as its "Proportionate Two-Way Share", and with the respective shares of both of the Two Avani Condominiums being hereinafter collectively referred to as their "Proportionate Two-Way Shares"). Since the Avani Phase I Condominium comprises 363 dwelling units, and the Avani Phase II Condominium is also intended to comprise 363 dwelling units, the Avani Phase I Condominium's Proportionate Two-Way Share of the Shared Roadway Costs (as hereinafter defined) will amount to 50%, while the Avani Phase II Condominium's Proportionate Two-Way Share of the Shared Roadway Costs will likewise amount to 50%, provided however that such proportionate shares shall be subject to adjustment hereafter, depending upon the final number of registered dwelling units within the Avani Phase II Condominium when same is registered;

- g) the "Proportionate Three-Way Share" attributable to each of the Three Condominiums, with respect to the allocation or apportionment of the Shared Roadway Costs (as hereinafter defined) pertaining to (and incurred in connection with) the insurance, operation, maintenance and/or repair of the Shared Roadway (as hereinafter defined), shall be that percentage or proportion attributable to each of the Three Condominiums derived by dividing each condominium's respective number of registered dwelling units, as the numerator, but the total number of registered dwelling units in each of the Three Condominiums, collectively, as the denominator (with the respective share of each of the aforementioned Contributing Condominiums, as so determined in accordance with the foregoing formula, being sometimes hereinafter individually referred to as its "Proportionate Three-Way Share", and with the respective shares of some or all of the Contributing Condominiums being hereinafter collectively referred to as their "Proportionate Three-Way Shares"). Since the Avani Phase I Condominium comprises 363 dwelling units, and the Avani Phase II Condominium is also intended to comprise 363 dwelling units, and the Selene Condominium is presently intended to comprise 296 dwelling units, the Avani Phase I Condominium's Proportionate Three-Way Share of the Shared Roadway Costs (as hereinafter defined) will amount to approximately 35.52%, while the Avani Phase II Condominium's Proportionate Three-Way Share of the Shared Roadway Costs will likewise amount to approximately 35.52%, and the Selene Condominium's Proportionate Three-Way Share of the Shared Roadway Costs will amount to approximately 28.96% thereof, provided however that such proportionate shares shall be subject to adjustment hereafter, depending upon the final number of registered dwelling units within each of the Avani Phase II Condominium and the Selene Condominium respectively;
- h) the term "repair" when used or referred to in this Agreement, with respect to any item, matter or component comprising part of the Shared Roadway, shall expressly include the obligation to repair and replace the item, matter or component (as the case may be) after normal wear and tear, damage, or failure, but shall not include the obligation to repair or replace any improvements made to the item, matter or component unless the Act or this Agreement provides otherwise;
- i) the "Servient Owners" shall mean the owners of the servient tenement in respect of the Easements who are subject to the burden of same, provided however that for the purposes of giving and receiving notices, or for procuring or giving consents, and/or for the purposes of carrying out any Work (as such term is hereinafter defined), or repairing and/or restoring any damage (all as contemplated in Articles 11.00, 12.00, 13.00 and/or 14.00 hereof), the term "Servient Owners" shall only mean (i) the Avani Phase I Condominium (for and on behalf of all unit owners, residents, tenants, invitees and licensees from time to time) in respect of the Avani Phase I Portion of the Shared Roadway; and (ii) the Selene Condominium (for and on behalf of all unit owners, residents, tenants, invitees and licensees from time to time) in respect of the Selene I Portion of the Shared Roadway;
- j) the "Shared Roadway" shall mean the shared private internal roadway (and any shared municipal watermain and/or sewer service connections situate within or beneath said roadway) so constructed or installed upon those lands and premises comprising that part of the common elements of the Avani Phase I Condominium more particularly designated as **Parts 2 and 3 on Reference Plan 66R-28701**, registered in the Land Titles Division of the Land Registry Office (No. 66), and also hereafter comprising that part of the common elements of the Selene Condominium more particularly designated as **Part 1 on Reference Plan 66R-29020**, including all sidewalks, boulevards and/or street landscaping elements (if any) developed in conjunction therewith, along either side of the travelled portion of said roadway, and with the Shared Roadway being intended for pedestrian and vehicular access and egress purposes by each of the Three Condominiums, and their respective unit owners, residents and invitees [and with the Shared Roadway ultimately leading into the underground parking garage of each of the Avani Phase I Condominium and the Selene Condominium respectively, and also connecting to the outdoor service/loading area at the rear of the Avani Phase I Condominium serving each of the Three Condominiums (ie. for service vehicles, municipal garbage and fire trucks, deliveries and move-ins, etc.)];
- k) the "Shared Roadway Budget" shall mean the budget, prepared not less than once annually following the registration of the Avani Phase I Condominium and the corresponding execution of this Agreement, formulated in accordance with the terms and provisions hereinafter set forth and correspondingly outlining the projected Shared Roadway Costs (as hereinafter defined) to be incurred for the ensuing 12 month period immediately following the registration of the Avani Phase I

Condominium [and which budget shall be prepared or approved by the Shared Roadway Committee (as hereinafter defined) and initially submitted to each the Avani Phase I Condominium and the Declarant on an annual basis, and following the registration of the Avani Phase II Condominium same shall be submitted to each of the Two Avani Condominiums and the Declarant on an annual basis, and following the registration of the Selene Condominium same shall be submitted to each of the Three Condominiums on an annual basis], and the Shared Roadway Budget(s) shall specifically contain or reflect a separate reserve fund to cover the major repair and replacement of the Shared Roadway, and shall ultimately be incorporated as part of the overall annual budget of each of the Three Condominiums, as and when each of same is registered;

- l) the "Shared Roadway Committee" shall mean the committee established sometime following the turnover meeting of the Avani Phase I Condominium convened pursuant to section 43 of the Act, but in no event later than the first anniversary of the registration of the Avani Phase I Condominium, and shall be composed of six (6) members in the aggregate, two (2) members of which shall be representatives or nominees of the board of directors of the Avani Phase I Condominium and four (4) members of which shall initially be representatives or nominees of the Declarant, pending the registration of the Avani Phase II Condominium and the Selene Condominium respectively, on the express understanding that as and when the Avani Phase II Condominium is registered, two (2) of the Declarant's nominees or representatives on this committee shall resign and be simultaneously replaced by two (2) nominees or representatives of the board of directors of the Avani Phase II Condominium, and that as and when the Selene Condominium is registered, the remaining two (2) nominees or representatives of the Declarant on this committee shall resign and be simultaneously replaced by two (2) nominees or representatives of the board of directors of the Selene Condominium, and the Shared Roadway Committee shall coordinate, oversee and assist in the operation and/or administration of the Shared Roadway (as well as the insurance, maintenance and/or repair of the Shared Roadway), and shall participate in the preparation and approval of the Shared Roadway Budget(s) from time to time, and all decisions of the Shared Roadway Committee shall be determined, evidenced and reflected by a majority vote of all members thereof at any given point in time; and
- m) the "Shared Roadway Costs" shall mean the aggregate of all costs and expenses incurred in connection with the insurance, operation, maintenance and/or repair of the Shared Roadway (or any portion thereof), including all sidewalks and street landscaping elements comprising part of (or contained within) the Shared Roadway, all as more particularly set out in the Shared Roadway Budget(s) issued from time-to-time, but in no case less than annually from and after the date of registration of the Avani Phase I Condominium, on the express understanding that 100% of the Shared Roadway Costs shall initially be borne and paid for solely by the Avani Phase I Condominium pending the registration of the Avani Phase II Condominium, and thereafter the Shared Roadway Costs shall be shared between (and be borne and paid for by) each of the Two Avani Condominiums on an equal or 50/50 basis pending the registration of the Selene Condominium, and from and after the date of registration of the Selene Condominium the Shared Roadway Costs shall be shared by and amongst (and be correspondingly paid for by) each of the Three Condominiums in accordance with their respective Proportionate Three-Way Shares, pursuant to the provisions of this Agreement.

ARTICLE 3.00 - THE OPERATION OF (AND BUDGETING FOR) THE SHARED ROADWAY

- 3.01 Each of the Contributing Condominiums shall be obliged to share and contribute towards the Shared Roadway Costs, from and after the date of the registration of the Avani Phase I Condominium, as and when each of the Contributing Condominiums is registered under the Act, on the express understanding that the Shared Roadway Costs shall be apportioned or allocated between or amongst each of the Contributing Condominiums in existence from time to time, on a pro-rata basis, predicated on their respective registered dwelling unit count, in accordance with the overriding provisions of Article 6:00 hereof.
- 3.02 Until the establishment of the Shared Roadway Committee in accordance with the provisions hereinafter set forth, the manner in which the Shared Roadway is utilized, operated, maintained and/or repaired (including the budgeting of the Shared Roadway Costs) shall, subject to the overriding terms and provisions of this Agreement, be governed and controlled solely by the Declarant.
- 3.03 Until the establishment of the Shared Roadway Committee in accordance with the provisions hereinafter set forth, the budget for the Avani Phase I Condominium shall incorporate the Shared Roadway Budget prepared or approved by the Declarant (outlining the Shared Roadway Costs estimated to be incurred for each ensuing 12 month period immediately following the registration of the Avani Phase I Condominium). Once the Shared Roadway Committee has been established, the Shared Roadway Budget shall be prepared by the Shared Roadway Committee and submitted to each of the Avani Phase I Condominium and the Declarant on an annual basis, and following the registration of the Avani Phase II Condominium, same shall be submitted to each of the Two Avani Condominiums and the Declarant on an annual basis, and following the registration of the Selene Condominium same shall be submitted to each of the Contributing Condominiums on an annual basis. Each of the Contributing Condominiums shall adopt, and be bound by, the Shared Roadway Budget(s), and by the decisions of the Shared Roadway Committee on (and its determination of) the Shared Roadway Costs, as well as the Shared Roadway Committee's arrangements with respect to all maintenance and/or repair work pertaining to the Shared Roadway or any portion thereof (and with respect to all services, operations and other matters involving the Shared Roadway), all without any qualification or amendment thereto whatsoever.

- 3.04 Once the Shared Roadway Committee has been established, then at all times thereafter, the manner in which the Shared Roadway is insured, utilized, operated, maintained and/or repaired, as well as the preparation and submission of the Shared Roadway Budget(s) shall, subject to the overriding terms and provisions of this Agreement, be governed and controlled solely by the Shared Roadway Committee on behalf of all of the Contributing Condominiums.
- 3.05 Notwithstanding anything contained in this Agreement to the contrary, it is expressly acknowledged and agreed that any and all disputes regarding the manner in which the Shared Roadway (or any portion thereof) is utilized, operated, maintained and/or repaired, as well as any and all disputes regarding the Shared Roadway Budget(s) and/or the Shared Roadway Costs (or any portion thereof), shall be submitted to (and ultimately be resolved by) binding arbitration, pursuant to the arbitration provisions set forth in Article 14.00 hereof.
- 3.06 Each of the Shared Roadway Budgets prepared from time to time shall include or reflect a reserve fund that is being maintained on behalf of all of the Contributing Condominiums jointly, exclusively for the major repair and replacement of the Shared Roadway. Each of the Contributing Condominiums shall accordingly be obliged to make periodic contributions to the reserve fund for the Shared Roadway, as and when such contributions are due or required by the Shared Roadway Budget(s), or as may otherwise be directed by the Shared Roadway Committee.

ARTICLE 4.00 - GENERAL USE OF THE SHARED ROADWAY

- 4.01 The use of the Shared Roadway by the unit owners, residents and/or tenants of the respective dwelling units of the Contributing Condominiums and their respective invitees and/or licensees, shall at all times be subject to (and be governed and regulated by) the provisions of the respective registered declarations of the Contributing Condominiums applicable thereto, and by this Agreement, and in the event of any conflict or inconsistency between the provisions of said declarations and the provisions of this Agreement (insofar as the operation, use, maintenance and/or repair of the Shared Roadway, and the budgeting, allocation and payment of the Shared Roadway Costs, are concerned), then the provisions of this Agreement shall prevail and supersede in such circumstances.

ARTICLE 5.00 - SPECIFIC USE OF THE SHARED ROADWAY AND THE SHARED ROADWAY INSURANCE

- 5.01 The Shared Roadway shall be utilized for pedestrian and vehicular access and egress purposes by each of the Three Condominiums, and each of their respective unit owners, residents, tenants, invitees and licensees, and by the Declarant, and its respective authorized agents, representatives, contractors and/or sub-contractors from time to time, to and from the underground parking garage of each of the Avani Phase I Condominium and the Selene Condominium respectively, and to and from the outdoor service/loading area at the rear of the Avani Phase I Condominium [which serves and benefits each of Three Condominiums (ie. for service vehicles, municipal garbage and fire trucks, deliveries and move-ins, etc.)].
- 5.02 Insurance shall be obtained and maintained by the Shared Roadway Committee, for and on behalf of each of the Contributing Condominiums, at all times throughout the existence of the Shared Roadway, providing both damage and replacement cost insurance coverage for (or in respect of) the Shared Roadway, including 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) the Shared Roadway, as well as comprehensive public liability insurance coverage for any damage or injury occasioned to any persons or property upon or within the Shared Roadway, providing a minimum coverage of \$5 million dollars per occurrence, noting the interests of each of the Contributing Condominiums as co-insured parties, and with such insurance coverage to contain cross-liability and severability of interest endorsements, and a waiver of subrogation (hereinafter referred to as the "Shared Roadway Insurance"). There shall be no obligation to enter into an insurance trust agreement with respect to the Shared Roadway Insurance, provided and so long as all insurance proceeds received or derived therefrom, in connection with any insured loss, is administered and disbursed by the Shared Roadway Committee to repair or replace any damaged property so insured or covered by the Shared Roadway Insurance. All premiums payable with respect to the Shared Roadway Insurance, together with any deductible amounts payable in connection therewith, shall be deemed to comprise or constitute part of the Shared Roadway Costs, and each of the insurance policies obtained and maintained pursuant to the foregoing provisions shall:
- a) name each of the Contributing Condominiums as a named insured (or co-insured) and shall not contain or be subject to any co-insurance clause;
 - b) contain a provision obliging the insurer not to cancel or alter (or refuse to renew) such insurance coverage prior to the insurance policy's expiration date, except after giving not less than thirty (30) days prior written notice of any such intended alteration or cancellation of coverage to each of the named insured parties thereunder;
 - c) be procured from (and maintained with) the same insurer(s), selected or chosen by the Shared Roadway Committee;

- d) contain waivers of subrogation which cover, at a minimum, each of the Contributing Condominiums and their respective directors, officers, managers, agents, employees and designated representatives, save and except for arson, fraud, vandalism or wilful misconduct; and
 - e) contain a cross-liability and severability of interest clause, protecting each insured party to the same extent as if it were separately insured.
- 5.03 For greater certainty, all costs and expenses incurred in connection with the operation, maintenance and repair of the Shared Roadway, and with respect to the Shared Roadway Insurance, shall comprise part of the Shared Roadway Costs.

ARTICLE 6.00 - RESPONSIBILITY FOR PAYING THE SHARED ROADWAY COSTS

- 6.01 Despite any other provision contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that from and after the date of registration of the Avani Phase I Condominium, to and until the date of registration of the Avani Phase II Condominium, the Shared Roadway Costs shall be fully borne, and entirely 100% paid for, on a monthly basis, by the Avani Phase I Condominium alone (irrespective of whether same is used or enjoyed by any of the future unit owners and residents of either or both of the Avani Phase II Condominium and/or the Selene Condominium, and their respective invitees and licensees).
- 6.02 Upon the registration of the Avani Phase II Condominium (and pending the registration of the Selene Condominium), the Shared Roadway Costs shall thereafter be shared by and between each of the Two Avani Condominiums on a pro-rata basis, based on their respective Proportionate Two-Way Shares. Since the Avani Phase I Condominium comprises 363 dwelling units, and the Avani Phase II Condominium is also intended to comprise 363 dwelling units, the Avani Phase I Condominium's Proportionate Two-Way Share of the Shared Roadway Costs will amount to 50% thereof, while the Avani Phase II Condominium's Proportionate Two-Way Share of the Shared Roadway Costs will likewise amount to 50% thereof, provided however that such proportionate shares may have to be adjusted hereafter, depending upon the final number of registered dwelling units within the Avani Phase II Condominium. Notwithstanding anything hereinbefore or hereinafter provided to the contrary, it is expressly understood and agreed that there shall be no retroactive readjustment whatsoever (relative to any period of time prior to the registration of the Avani Phase II Condominium) for any portion of the Shared Roadway Costs paid for by the Avani Phase I Condominium, in the event of (or as a result of) the total registered dwelling unit count of the Avani Phase II Condominium varying from the estimated dwelling unit count thereof as at the date of this Agreement, nor shall the Avani Phase I Condominium be entitled to seek or obtain any reimbursement from the Avani Phase II Condominium or the Selene Condominium (nor from the Declarant or any other party) for any portion of the Shared Roadway Costs so paid by the Avani Phase I Condominium prior to the registration of the Avani Phase II Condominium.
- 6.03 Once the Avani Phase II Condominium is registered under the Act and is correspondingly obliged to execute a counterpart to this Agreement (ie. to evidence and confirm its agreement to be bound hereunder, and to start contributing towards the Shared Roadway Costs), then the respective percentage contributions towards the Shared Roadway Costs payable by each of the Contributing Condominiums in existence shall be adjusted accordingly, in accordance with their Proportionate Two-Way Shares.
- 6.04 Upon the registration of the Selene Condominium, the Shared Roadway Costs shall thereafter be shared by and amongst each of the Three Condominiums, in accordance with their respective Proportionate Three-Way Shares. Since the Avani Phase I Condominium contains a total of 363 dwelling units, while the Avani Phase II Condominium is likewise intended to contain a total of 363 dwelling units, and the Selene Condominium is intended to contain a total of 296 dwelling units, the Avani Phase I Condominium's Proportionate Three-Way Share of the Shared Roadway Costs will amount to approximately 35.52%, the Avani Phase II Condominium's Proportionate Three-Way Share of the Shared Roadway Costs will amount to approximately 35.52%, and the Selene Condominium's Proportionate Three-Way Share of the Shared Roadway Costs will amount to approximately 28.96% thereof, provided however that such proportionate shares shall be subject to adjustment hereafter, depending upon the final number of registered dwelling units within each of the Avani Phase II Condominium and the Selene Condominium respectively. Notwithstanding anything hereinbefore or hereinafter provided to the contrary, it is expressly understood and agreed that there shall be no retroactive readjustment whatsoever (relative to any period of time prior to the registration of the Selene Condominium) for any portion of the Shared Roadway Costs paid for by either of the Two Avani Condominiums in the event of (or as a result of) the total registered dwelling unit count of the Selene Condominium varying from the estimated dwelling unit count thereof as at the date of this Agreement, nor shall either or both of the Two Avani Condominiums be entitled to seek or obtain any reimbursement from the Selene Condominium (nor from the Declarant or any other party) for any portion of the Shared Roadway Costs so paid by either of the Two Avani Condominiums prior to the registration of the Selene Condominium.
- 6.05 Once the Selene Condominium is registered under the Act and is correspondingly obliged to execute a counterpart to this Agreement (ie. to evidence and confirm its agreement to be bound hereunder, and to start contributing towards the Shared Roadway Costs), then the respective percentage contributions towards the Shared Roadway Costs payable by each of the Contributing Condominiums shall be adjusted accordingly, in accordance with their Proportionate Three-Way Shares.

ARTICLE 7.00 - THE SHARED ROADWAY COMMITTEE

- 7.01 The Shared Roadway Committee shall be created following the turnover meeting of the Avani Phase I Condominium convened pursuant to section 43 of the Act, but in no event later than the first anniversary of the registration of the Avani Phase I Condominium. The Shared Roadway Committee shall initially be composed of six (6) members in the aggregate, two (2) members of which shall be representatives or nominees of the board of directors of the Avani Phase I Condominium and four (4) members of which shall initially be representatives or nominees of the Declarant, pending the registration of the Avani Phase II Condominium and the Selene Condominium respectively, on the express understanding and agreement that as and when the Avani Phase II Condominium is registered, two (2) of the Declarant's nominees or representatives on this committee shall resign and be simultaneously replaced by two (2) nominees or representatives of the board of directors of the Avani Phase II Condominium, and that as and when the Selene Condominium is registered, the remaining two (2) nominees or representatives of the Declarant on this committee shall resign and be simultaneously replaced by two (2) nominees or representatives of the board of directors of the Selene Condominium.
- 7.02 The Shared Roadway Committee shall be formed or established for the purposes of assisting in the preparation of the Shared Roadway Budgets from time to time, and administering, governing, managing, controlling and/or operating the Shared Roadway on behalf of each of the Contributing Condominiums, and correspondingly reporting to each of the Contributing Condominiums from time to time in connection with (or respecting) the operation, maintenance and/or repair of the Shared Roadway or any portion thereof.
- 7.03 All such appointments to the Shared Roadway 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 Contributing Condominiums (or of the Declarant, in connection with each of the Avani Phase II Condominium and/or the Selene Condominium not yet registered) must be present, in person or represented by proxy, in order to constitute a quorum for any meeting held or convened by the Shared Roadway Committee, and all decisions or recommendations of the Shared Roadway Committee shall be determined, effected and evidenced by a majority vote of all members who are present (or represented by proxy) at any such meeting(s), and the chairman of such meeting(s) shall not have a casting or deciding vote.
- 7.04 Any meeting(s) of the Shared Roadway Committee may be held or convened by way of teleconference, or by any other form of communication system that allows all of the members of the Shared Roadway 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 Shared Roadway 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 Shared Roadway Committee may, by written resolution signed by all of them, provide their collective consent, in advance, to have any or all meetings of the Shared Roadway 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 Shared Roadway Committee by any member of a written notice revoking his or her consent to such resolution.
- 7.05 Once the Shared Roadway Committee has been established, the Shared Roadway Committee shall, inter alia, thereafter be responsible for the following:
- a) making arrangements for the Shared Roadway Insurance, and for the maintenance and/or repair of the Shared Roadway, including arrangements to keep the Shared Roadway free and clear of snow, ice and debris;
 - b) approving any desired or required maintenance or repair work to the Shared Roadway, as well as approving the timing/scheduling, the materials to be utilized and the manner in which all such maintenance and/or repair work shall be carried out, in an effort to minimize any disruption or inconvenience to the owners and residents of the Contributing Condominiums; and
 - c) preparing and submitting the Shared Roadway Budget(s) to each of the Contributing Condominiums, not less than once annually, outlining the Shared Roadway Costs anticipated to be incurred or expended in each ensuing year [inclusive of the costs of the matters listed in subparagraphs (a) and (b) above], for incorporation by each of them as part of their respective overall annual budgets, in accordance with the foregoing provisions hereof.
- 7.06 Each of the Contributing Condominiums shall be bound by (and shall correspondingly abide by and comply with) the decisions of the Shared Roadway Committee with respect to the operation, insurance, maintenance and/or repair of the Shared Roadway, and the manner in which any maintenance and/or repair work with respect to same shall be carried out, as well as the budgeting of the Shared Roadway Costs [subject, however, to any dispute(s) regarding same being hereafter submitted to (and ultimately resolved by) binding arbitration, pursuant to the arbitration provisions set forth in Article 14.00 hereof], without requiring any ratification, board approval or anything else whatsoever from each of the Contributing Condominiums, and accordingly it is expressly understood and agreed that any and all decisions made by the Shared Roadway Committee from time to time regarding any of the foregoing matters need not be formally adopted, ratified or confirmed by the board of directors of any of Contributing Condominiums, before or after (or as a prerequisite to) same being effective, operative, binding and enforceable.

ARTICLE 8.00 - THE EASEMENTS FOR ACCESS OVER THE SHARED ROADWAY

8.01 Confirmation of the Easements

The parties hereto confirm and agree that by virtue of the Easements which have been (or will hereafter be) created over (or in respect of) the Shared Roadway (or any portion thereof), each of the Contributing Condominiums and their respective unit owners, residents, tenants, invitees and licensees from time to time, shall have an easement, right of way or right in the nature of an easement over, upon and across the Shared Roadway, for the purposes of attaining vehicular and pedestrian access and egress thereover, and use of same, on the express understanding and agreement that such rights of access and/or use may be revoked in connection with any person or persons who are involved in any of the following prohibited activities or conduct, namely any one who:

- a) unreasonably interferes with or restricts (or attempts to unreasonably interfere with or restrict) the ability of lawful users, to access, use or enjoy the Shared Roadway, or any portion thereof;
- b) carries on (or attempts to carry on) any illegal or unlawful activity on or within the Shared Roadway, or any portion thereof;
- c) acts in a manner unreasonably inconsistent with the intended use of the Shared Roadway;
- d) obstructs or injures (or attempts to obstruct or injure) any other person or persons who are using or enjoying the Shared Roadway, or any portion thereof;
- e) harms or destroys (or attempts to harm or destroy) the Shared Roadway (or any portion thereof) or any property rights associated therewith, and/or any property (whether realty or personalty) of any person or persons entitled to use or enjoy the Shared Roadway (including without limitation, the property of any of the Contributing Condominiums, or the property of any of their respective unit owners, residents, tenants, invitees or licensees from time to time);
- f) obstructs, damages, injures or interferes with (or attempts to obstruct, damage, injure or interfere with) any lawful rights or interests of any person(s) lawfully using or traversing the Shared Roadway or any portion thereof (including without limitation, the Three Condominiums and the respective unit owners thereof); or
- g) commits (or attempts to commit) any criminal or quasi-criminal offence under the Criminal Code of Canada, or under any provincial legislation or municipal by-law(s), with respect to (or in connection with) the Shared Roadway, or any portion thereof.

8.02 Invalidity of Easements

In the event that the Easements hereinbefore defined or described are hereafter ultimately interpreted, construed or adjudged (by a court of competent jurisdiction) as failing to create (or being incapable of creating) a right or interest in land to the extent hereinbefore provided, intended or contemplated, then any such Easements so adjudged or interpreted shall be deemed and construed to constitute a mere licence (as opposed to a right or interest in land enduring beyond 21 years) in favour of the party or parties hereinbefore mentioned (and for those specific purposes hereinbefore set out), and each of the parties hereto shall thereupon execute and provide all such further documents and assurances as may be required or desired in order to give full force and effect to the foregoing.

8.03 General Use of the Easements

- a) The use and enjoyment of the Easements by the Benefitting Owners shall be subject to the provisions and restrictions hereinbefore and hereinafter set forth.
- b) It is further understood and agreed that the Benefitting Owners, when using or enjoying any of the Easements and/or exercising their rights in connection therewith, shall act (and endeavour to cause any other person or persons using or enjoying the benefit of any of the Easements to act) in a prudent and reasonable manner, and in accordance with all applicable laws and regulations of the Governmental Authorities, and shall specifically not be involved or participate in any of the prohibited activities or conduct outlined in section 8.01 hereof, so as to minimize (insofar as is reasonably possible) any interference with (and/or any inconvenience occasioned to) the Servient Owners.
- c) Notwithstanding any provision contained in this Agreement to the contrary, it is understood and agreed by the parties hereto that the Shared Roadway Committee shall be entitled to arrange for the partial obstruction (on a temporary basis only) of any portion of the Shared Roadway, and/or the temporary suspension of the benefit of any of the Easements relating thereto, provided any such suspension and/or obstruction is necessary or desired to facilitate or expedite the inspection, maintenance and/or repair of the Shared Roadway (or any portion thereof) or any of the Three Condominiums [or any portion(s) thereof], and provided further that in each such instance not less than five (5) days prior written notice of the temporary suspension or partial obstruction of the Shared Roadway (or any portion thereof) shall be given to the Benefitting Owners by or on behalf of the Shared Roadway Committee.

- d) The temporary suspension and/or partial obstruction of any rights of access or use of the Shared Roadway (or any portion thereof) shall be carried out in a reasonable and prudent manner, so as to minimize (insofar as is reasonably possible) any interference with (and/or any inconvenience occasioned to) the Benefitting Owners.

8.04 The Avani Phase I Support Easement Intended to Benefit the Shared Roadway

The parties hereto further acknowledge and agree that a portion of the underground parking garage of the Avani Phase I Condominium is situate directly beneath the Shared Roadway (or portions thereof), and accordingly the Avani Phase I Condominium has provided or granted an easement of support (or right of support) in favour of the Avani Phase II Condominium and the Selene Condominium respectively, over, across, along, upon and through all portions of the common elements of the Avani Phase I Condominium located on levels 1, 2, 3, A, B, and C thereof respectively (hereinafter collectively referred to as the "Avani Phase I Support Areas"), for the purposes of providing support to the Shared Roadway (and correspondingly benefitting each of the Avani Phase II Condominium and the Selene Condominium) and expressly supporting all structures, improvements and/or installations now or hereafter erected on or within the Shared Roadway, from and by all of the support structures (including the soil) located upon, within or beneath the Avani Phase I Support Areas. Accordingly, the declaration of the Avani Phase I Condominium imposes an express duty upon the Avani Phase I Condominium to at all times maintain, and keep in good repair, the Avani Phase I Support Areas situate within the confines of the Avani Phase I Condominium which are located immediately beneath (and which concomitantly support) the Shared Roadway or any portion thereof, and to correspondingly ensure that none of said support structures (nor the soil situate within the boundaries of the Avani Phase I Condominium which provides support to the Shared Roadway or any portion thereof) is hereafter altered, removed or otherwise dealt with in a way which may compromise or deleteriously affect the structural integrity of the Shared Roadway or the support being provided thereto.

8.05 The Selene Support Easement Intended to Benefit the Shared Roadway

The parties hereto further acknowledge and agree that a portion of the underground parking garage of the Selene Condominium is (or will be) situate directly beneath the Shared Roadway (or portions thereof), and accordingly the Selene Condominium shall hereafter provide an easement or right of support in favour of the Two Avani Condominiums, over, across, along, upon and through all portions of the common elements of the Selene Condominium located on levels A and B thereof (hereinafter collectively referred to as the "Selene Support Areas"), for the purposes of providing support to the Shared Roadway (and correspondingly benefitting each of the Two Avani Condominiums) and expressly supporting all structures, improvements and/or installations now or hereafter erected on or within the Shared Roadway, from and by all of the support structures (including the soil) located upon, within or beneath the Selene Support Areas. Accordingly, the declaration of the Selene Condominium shall impose an express duty upon the Selene Condominium to at all times maintain, and keep in good repair, the Selene Support Areas situate within the confines of the Selene Condominium which are located immediately beneath (and which concomitantly support) the Shared Roadway or any portion thereof, and to correspondingly ensure that none of said support structures (nor the soil situate within the boundaries of the Selene Condominium which provides support to the Shared Roadway or any portion thereof) is hereafter altered, removed or otherwise dealt with in a way which may compromise or deleteriously affect the structural integrity of the Shared Roadway or the support being provided thereto.

ARTICLE 9.00 - MAINTENANCE AND REPAIR WORK

- 9.01 The inspection, maintenance and/or repair of the Shared Roadway (or any portion thereof), including any and all installations, services, alterations and/or improvements hereafter made or undertaken thereto or in connection therewith (or conducted in the course of using the Shared Roadway, or any portion thereof), including any repair after damage (with any or all of the foregoing activities being hereinafter collectively referred to as the "Work") shall, subject to the provisions of Article 10.00 hereof, be carried out in accordance with the provisions of sections 9.02, 9.03 and 9.04 hereof.
- 9.02 Any Work relating to the Shared Roadway shall be undertaken and completed under the direction and control of the Shared Roadway Committee, for and on behalf of the Contributing Condominiums, and the cost of undertaking and completing the Work shall comprise part of the Shared Roadway Costs.
- 9.03 The Work shall be carried out as soon as reasonably possible, having due regard to weather conditions and the availability of labour, materials and equipment, and in a manner which endeavours to minimize or reduce (to the greatest extent reasonably possible) any interruption and/or interference with the pedestrian and vehicular access and egress over the Shared Roadway by those entitled thereto.
- 9.04 In the event that any building, structure, installation, service and/or improvement now or hereafter erected or installed upon or within the Avani Phase I Condominium and/or the Selene Condominium or any portion thereof (including the soil thereof) is physically altered or damaged in the course of carrying out or completing the Work, then such alteration or damage shall be forthwith restored and/or repaired (as the case may be) to substantially the same condition as existed prior to such physical alteration or damage having occurred, by (or on behalf of) the Shared Roadway Committee, on the express understanding and agreement that the cost of restoring and/or repairing any such damage or alteration shall comprise part of the Shared Roadway Costs.

ARTICLE 10.00 - SELF-HELP REMEDY WITH RESPECT TO ANY WORK

10.01 Notwithstanding anything hereinbefore or hereinafter provided to the contrary, it is expressly understood and agreed by the parties hereto that:

- a) In the case of an Emergency, each of the Contributing Condominiums shall be entitled to carry out and complete the Work (in lieu of waiting for the Shared Roadway Committee to direct and complete same), provided however that in such circumstances the Contributing Condominium purporting to do so shall make reasonable efforts to give prior notice of the nature of the Emergency (and of the nature and scope of the Work necessary to be undertaken in light of the Emergency) to the Declarant and each of the other Contributing Condominiums and to the Shared Roadway Committee, prior to undertaking the Work;
- b) In the event that:
 - i) the Shared Roadway Committee fails to implement, carry out and/or complete any Work that any of the Contributing Condominiums would otherwise have a duty to implement, carry out and/or complete pursuant to the Act; or
 - ii) any of the Responsible Parties (as hereinafter defined) or the Shared Roadway Committee (as the case may be) fails to obtain and maintain the Shared Roadway Insurance which it is obliged to obtain and maintain pursuant to the provisions of Article 5.02 hereof;

(and for the purposes of this Agreement, the party failing to carry out the Work, or to obtain and maintain the Shared Roadway Insurance, as the case may be, shall hereinafter be referred to as the "Defaulting Party", and the party or Contributing Condominium intending to carry out the Work, or to obtain and maintain the Shared Roadway Insurance (as the case may be) for and on behalf of (or in place of) the Defaulting Party, shall hereinafter be referred to as the "Non-Defaulting Party"), then provided:

- A) written notice has been delivered to the Defaulting Party, setting out the nature or substance of the default complained of, by the Non-Defaulting Party; and
- B) the default described in the aforesaid notice has not been rectified within fourteen (14) days of the Defaulting Party's receipt of said notice;

the Non-Defaulting Party shall thereafter be entitled to carry out and complete the Work (in accordance with, and subject to, the foregoing provisions hereof), or to obtain and maintain the Shared Roadway Insurance, for and on behalf of the Defaulting Party (as the case may be), and all costs and expenses incurred by the Non-Defaulting Party in connection with any of the foregoing matters shall, for all purposes, constitute part of the Shared Roadway Costs to be shared and paid for in accordance with the provisions hereinbefore set out.

10.02 For the purposes of this Article 10.00, the commencement of any Work by or on behalf of the Shared Roadway Committee shall be evidenced by either its institution of a tendering process with respect to the Work, or by the actual implementation or utilization of physical labour and/or materials with respect thereto.

10.03 The parties hereto hereby acknowledge and agree that the amount of any costs incurred by the Non-Defaulting Party in connection with any of the foregoing matters shall not be challenged by the Defaulting Party or by any of the other parties hereto at any time hereafter, nor by the Shared Roadway Committee, unless such amount is clearly demonstrated to be substantially in excess of the reasonable costs that would otherwise have been incurred by the Defaulting Party in connection therewith.

ARTICLE 11.00 - MUTUAL INDEMNITIES

11.01 The Avani Phase I Condominium hereby covenants and agrees to forthwith repair and/or replace any landscaping, equipment or other property (both realty and personalty) situate within the confines of the Selene Condominium, which is altered, damaged or destroyed by any of the respective unit owners of the Avani Phase I Condominium from time to time, and/or by any of their respective residents, tenants, invitees and/or licensees, or by the Avani Phase I Condominium's employees, agents, representatives, contractors and/or subcontractors, or by anyone else for whom the Avani Phase I Condominium is in law responsible or liable (either vicariously or otherwise), in the course of using (or enjoying the benefits of) the Shared Roadway or any portion thereof.

11.02 The Avani Phase II Condominium hereby covenants and agrees to forthwith repair and/or replace any landscaping, equipment or other property (both realty and personalty) situate within the confines of the Avani Phase I Condominium or within the confines of the Selene Condominium (as the case may be), which is altered, damaged or destroyed by any of the respective unit owners of the Avani Phase II Condominium from time to time, and/or by any of their respective residents, tenants, invitees and/or licensees, or by the Avani Phase II Condominium's employees, agents, representatives, contractors and/or subcontractors, or by anyone else for whom the Avani Phase II Condominium is in law responsible or liable (either vicariously or otherwise), in the course of using (or enjoying the benefits of) the Shared Roadway or any portion thereof.

- 11.03 The Selene Condominium hereby covenants and agrees to forthwith repair and/or replace any landscaping, equipment or other property (both realty and personalty) situate within the confines of the Avani Phase I Condominium, which is altered, damaged or destroyed by any of the respective unit owners of the Selene Condominium from time to time, and/or by any of their respective residents, tenants, invitees and/or licensees, or by the Selene Condominium's employees, agents, representatives, contractors and/or subcontractors, or by anyone else for whom the Selene Condominium is in law responsible or liable (either vicariously or otherwise), in the course of using (or enjoying the benefits of) the Shared Roadway or any portion thereof.
- 11.04 Notwithstanding anything provided in this Agreement to the contrary, it is expressly understood and agreed that each of the Contributing Condominium shall hereafter be obliged to forthwith repair and/or replace any landscaping, equipment or other property (both realty and personalty) situate within the confines of the Avani Phase I Condominium and/or the Selene Condominium, which is altered, damaged or destroyed by such Contributing Condominium and/or any of its respective residents, tenants, invitees and/or licensees, in the course of using (or enjoying the benefits of) the Shared Roadway or any portion thereof.
- 11.05 Subject to the foregoing provisions of this Article, each of the Contributing Condominiums shall hereafter indemnify and save each of the other Contributing Condominiums harmless, from and against all costs, claims, damages and/or liabilities which any of the Contributing Condominiums may hereafter suffer or incur as a result of (or in connection with) the use, operation, maintenance and/or repair of the Shared Roadway (or any portion thereof) by the first-mentioned Contributing Condominium, provided however that none of the Contributing Condominiums shall be indemnified 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 - DAMAGE TO THE SHARED ROADWAY

- 12.01 In the event that there is any damage occasioned to the Shared Roadway or any portion thereof, then same shall be repaired and restored in accordance with the provisions of Article 9.00 hereof.

ARTICLE 13.00 - THE EASEMENT CHARGE

- 13.01 In the event that any of the Contributing 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 share of the Shared Roadway Costs, and any costs incurred pursuant to the self-help remedy set out in Article 10.00 hereof) (hereinafter referred to as a "Delinquent Party"), within 30 days after receiving written notice from any of the other Contributing Condominiums not in default, or from the Shared Roadway Committee on behalf of all of the Contributing Condominiums not in default (hereinafter collectively 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 lands or common elements, as the case may be (hereinafter referred to as the "Easement Charge").
- 13.02 Subject to the overriding provisions of section 13.04 hereof, the Easement 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 Easement 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 Easement 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.
- 13.03 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 Easement Charge to be registered against the title of the Delinquent Party's lands, common elements and/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 Easement 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 Easement Charge).

Alternatively, if the Land Registrar permits, the Easement 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*.

- 13.04 The Easement 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. However, notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that the Easement 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 Easement 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 Easement 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 units of the Delinquent Party in priority to the registration of the Easement 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.

ARTICLE 14.00 - MANDATORY MEDIATION & ARBITRATION

- 14.01 Any dispute, difference, issue or question arising between or amongst any or all of the parties hereto (or between or amongst any of the Contributing Condominiums and/or the Shared Roadway Committee) 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 Contributing 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 and expeditious 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) 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 hereinafter set out 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 Contributing Condominiums, and their respective unit owners, tenants, sub-tenants, invitees and licensees from time to time), and shall not be subject to appeal under any circumstances whatsoever (whether with respect to a question of law, a question of fact, a question of mixed fact and law, or otherwise).
- 14.02 Subject to the provisions of section 14.03 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 14.06 hereof.
- 14.03 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 14.06 hereof, or if the amount in dispute exceeds \$150,000.00.
- 14.04 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 10 years, and whose practice is primarily devoted to real estate and/or condominium development law;
 - b) be a member of the ADR Institute of Ontario Inc., 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 14.15(b) hereof], or if acting as the third arbitrator/chairperson (i.e. 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).
- 14.05 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 courier, or sent by telefax, or by e-mail, in the manner (and via the telefax number or e-mail address) set out in Article 15 hereof.
- 14.06 Any party hereto (including any of the Contributing Condominiums hereafter created and/or the Shared Roadway Committee) 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 14.04 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 14.04 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.
- 14.07 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.
- 14.08 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.
- 14.09 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.
- 14.10 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.

- 14.11 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*.
- 14.12 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 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 the Act, and shall be binding upon the parties hereto, and their respective successors and assigns (including each of the Contributing Condominiums in existence, and their respective unit owners), and shall not be subject to appeal under any circumstances whatsoever (whether with respect to a question of law, a question of fact, a question of mixed fact and law, or otherwise).
- 14.13 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*.
- 14.14 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. partial indemnity 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 pre-judgment or post-judgment interest shall be considered or calculated in any award of costs;
 - 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; and
 - c) in no event shall any award of costs exceed the sum of \$5,000.00 per day (for each day of the arbitration hearings/proceedings) or \$50,000.00 in the aggregate.
- 14.15 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 14.02 and section 14.06 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 14.06 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 whatsoever (whether with respect to a question of law, a question of fact, a question of mixed fact and law, or otherwise).

ARTICLE 15.00 - NOTICES

- 15.01 All notices required or desired to be given to any of the parties hereto (including any of the Contributing Neighbours hereafter created or arising) in connection with this Agreement, or arising herefrom, shall be in writing, and shall be hand delivered or delivered by registered mail to the intended party or parties at the following addresses, or be delivered by telefax or e-mail to the intended party or parties at the following e-mail addresses or fax numbers:
- a) to the Avani Phase I Condominium - 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, and e-mail address: syork@delcondo.com), with a copy concurrently delivered to the president or secretary of the Condominium;
 - b) to the Declarant - c/o 4810 Dufferin Street, Suite 200, North York, Ontario, M3H 5S9, Attention: Mr. Dino Carmel (fax no.: 416-661-8923, and e-mail address: dcarmel@tridel.com) or Mr. Roy Berman (fax no.: 416-661-9932, and e-mail address: rberman@tridel.com), with a copy delivered to its solicitors, namely DelZotto, Zorzi LLP at 4810 Dufferin Street, Suite D, North York, Ontario, M3H 5S9, Attention: Harry Herskowitz (fax no.: 416-665-9653, and e-mail address: harry@dzlaw.com);
 - c) to each of the Contributing Condominiums hereafter created - c/o their respective address for service (or fax. no. or e-mail address) so provided by each of the Contributing Condominiums hereafter from time to time; and
 - d) to the Shared Roadway Committee (when established or created) - by giving same to at least one (1) representative or nominee of each of the Contributing Condominiums so represented on such committee (and with a copy to Declarant until such time as the last of the Contributing Condominiums is registered) either by personal delivery (via courier) or by delivering same to the fax no. or e-mail address so provided by the respective members of the committee.
- 15.02 Where any such notice is mailed to the intended recipient as aforesaid, then such notice shall be deemed to have been received (and to be effective) on the fourth (4th) day following the day on which same was mailed or posted. If any such notice is delivered personally (via courier), then such notice shall be deemed to have been received (and to be effective) on the next business day (excluding Saturdays, Sundays and statutory holidays) following the day on which same was so couriered. If any such notice is delivered by telefax, then such notice shall be deemed to have been received (and to be effective) on the next business day (excluding Saturdays, Sundays and statutory holidays) following the day on which same was so telefaxed, and provided further that if so telefaxed, a confirmation of such telefax transmission must be received by the transmitting party at the time of such telefax transmission (otherwise same shall be deemed not to have been properly or sufficiently telefaxed to the intended party). Any notice given or sent by e-mail shall be deemed to have been received by the recipient (and to be effective) on the next business day (excluding Saturdays, Sundays and statutory holidays) following the day on which same was so e-mailed, provided that an e-mail receipt (maintained by the sender) indicates or confirms that such e-mail transmission was successful. In the event of a postal strike or other interruption of mail service, all notices shall be delivered personally (via courier) or by telefax or e-mail (as the case may be). Where the date provided for the giving of any notice falls upon a Saturday, Sunday or statutory holiday, then such notice shall be effective if given on the next business day thereafter.
- 15.03 Any party hereto (including any of the Contributing Condominiums hereafter created) may, from time to time, by written notice to the other parties hereto (and to the other Contributing Condominiums hereafter registered) delivered in accordance with the foregoing provisions, change the address, fax. no. or e-mail address to which its notices are to be delivered.

ARTICLE 16.00 - REGISTRATION OF THIS AGREEMENT

- 16.01 Each of the parties hereto hereby consents to the registration of this Agreement against the title to all of the units within the Avani Phase I Condominium and against the title to the Avani Phase II Lands and the Selene Lands, and hereby acknowledges, confirms and agrees that this Agreement shall be deemed and construed to run with the title to each of the Avani Phase I Lands (and against the title to all of the units within the Avani Phase I Condominium), the Avani Phase II Lands and the Selene Lands respectively, once this Agreement (or notice thereof, or a counterpart to the Shared Roadway Agreement) has been registered against the title to same.
- 16.02 Metrogate further covenants and agrees that as and when each of the Avani Phase II Condominium and the

Selene Condominium is registered as a separate condominium corporation under the Act, it shall cause each such condominium corporation to enter into an agreement with the Avani Phase I Condominium (with or without Metrogate as a party or signatory thereto) that is substantially similar (both in content and substance) to this Agreement (hereinafter referred to as the "Supplementary Shared Roadway Agreement") or alternatively cause such condominium corporation to execute a counterpart to this Agreement, with or without Metrogate as a party or signatory thereto, and with or without any of the previously-registered Contributing Condominiums as parties or signatories thereto, but nevertheless in favour of (and enforceable by) all of the previously-registered and subsequently-registered Contributing Condominiums (hereinbefore and hereinafter referred to as a "Counterpart to the Shared Roadway 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 Shared Roadway Costs; 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 Contributing Condominiums and all subsequently-registered Contributing Condominiums (if any) may enforce all of the terms and provisions of this Agreement against such newly-registered condominium corporation directly, even though they may not be parties or signatories thereto.

- 16.03 Each of the parties hereto hereby consents to the registration of any Supplementary Shared Roadway Agreement and/or any Counterpart to the Shared Roadway Agreement against the title to all of the units within each of the Contributing Condominiums so registered, and against the title to the Selene Lands respectively, and further acknowledges, confirms and agrees that same shall be deemed and construed to run with the title to each of the Avani Phase I Lands (and against the title to all of the units within the Avani Phase I Condominium), the Avani Phase II Lands (and against the title to all of the units within the Avani Phase II Condominium) and the Selene Lands (and against the title to all of the units within the Selene Condominium) respectively, once the aforementioned Supplementary Shared Roadway Agreement or any Counterpart to the Shared Roadway Agreement has been registered against the title to same.

ARTICLE 17.00 - STATUS CERTIFICATE

- 17.01 Each of the Contributing Condominiums (and Metrogate on behalf of any Contributing Condominium prior to its 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 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 Supplementary Shared Roadway Agreement or any Counterpart to the Shared Roadway 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 any of the Contributing Condominiums and/or the Shared Roadway Committee, as well as the nature and extent of the default so alleged; and
- c) whether or not any Work has been (or is presently being) performed by or on behalf of any of the Contributing Condominiums and/or the Shared Roadway Committee, for which the costs of same will (or may) be claimed or charged against any of the Contributing Condominiums pursuant to the foregoing provisions of this Agreement.

- 17.02 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 in its capacity as the declarant of the Avani Phase II Condominium and the Selene Condominium respectively, if and when it requests (or any solicitor or authorized agent or representative of Metrogate ever requests) the Certificate from any of the Contributing Condominiums from time to time, pursuant to the preceding provisions hereof.

- 17.03 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.

- 17.04 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 Contributing Condominiums and/or

the Shared Roadway 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 Work has been (or is presently being) performed by or on behalf of any of the Contributing Condominiums and/or the Shared Roadway Committee, for which the cost of same is (or may be) claimed or charged against any of the Contributing Condominiums, pursuant to the foregoing provisions of this Agreement.

ARTICLE 18.00 - RECIPROCAL BENEFIT AND BURDEN

- 18.01 The parties hereto hereby declare and confirm their mutual intention that the principles of reciprocal benefit and burden (as espoused in the seminal case of Halsall v. Brizell [1957] 1 All E. R. 371), as well as the doctrine of conditional grant of benefits (as outlined in Halsbury's Laws of England 4th edition, volume 14 at page 79, and as further described in Megarry and Wade's Law of Real Property 5th edition, at page 769) shall apply to their relationship, and that each of the easements, rights and/or privileges hereinbefore described are intended to establish a basis or framework for the mutual and reciprocal use and enjoyment of the Shared Roadway, which is intended to be used, enjoyed and shared by each of the Contributing Condominiums and their respective unit owners thereof from time to time (and their respective residents, tenants and invitees). As an integral and material consideration for the continuing right of each of the Contributing Condominiums to use and enjoy the aforementioned easements, rights and privileges (as specifically confirmed in this Agreement, or as subsequently confirmed or incorporated by way of any Supplementary Shared Roadway Agreement or alternatively any Counterpart to the Shared Roadway Agreement), each of the Contributing Condominiums hereto hereby accepts (and agrees to assume) the corresponding burdens and obligations imposed upon them by virtue of the provisions and covenants set forth in this Agreement. The provisions of this Agreement are intended to run with the real property benefitted and burdened thereby, specifically the Avani Phase I Lands, the Avani Phase II Lands and the Selene Lands respectively (and each of the units and their appurtenant common interests in each of the Contributing Condominiums so created from time to time), and shall accordingly bind and correspondingly enure to the benefit of the respective successors in title thereof once a counterpart to this Agreement has been registered against the title to same.

ARTICLE 19.00 - PERPETUITIES

- 19.01 In the event that this Agreement or any of its provisions shall be deemed unenforceable pursuant to the provisions of the *Perpetuities Act R.S.O. 1990, as amended*, or at law or in equity by reason of a contravention of the rule against perpetuities, and the effect of same would be to render this Agreement or such provisions (as the case may be) void ab initio, then in such case this Agreement or such provisions (as the case may be) shall be operative and have effect from the date of execution of this Agreement by all parties hereto until the date which is twenty-one (21) years less one (1) day following the date of the death of the last survivor of the issue of Her Majesty, Queen Elizabeth II, the present Queen of the United Kingdom, who were alive as at the effective date of this Agreement.

ARTICLE 20.00 - VACATING CONSTRUCTION LIENS

- 20.01 Each of the parties hereto covenants and agrees to forthwith make any required payment or filing of appropriate security, so as to forthwith remove any construction lien (claimed in respect of the supply of any materials and/or the provision of any labour or services contracted for by it, or otherwise contracted on its behalf) which encumbers the lands, common elements or units (as the case may be) of any other party or parties hereto, by no later than thirty (30) days after the receipt of a written request to do so delivered by any of the other parties hereto (including Metrogate on behalf of each of the Contributing Condominiums prior to their respective registration), failing which the party requesting such lien removal may make the requisite payment or post the requisite security in order to vacate or discharge such construction lien from the title to its lands, common elements or units (as the case may be), and shall thereafter be entitled to full reimbursement from the defaulting party for all monies so expended (and all costs so incurred) in vacating such lien.

ARTICLE 21.00 - SUCCESSORS AND ASSIGNS

- 21.01 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 Avani Phase I Lands, the Avani Phase II Lands and the Selene Lands respectively, once this Agreement, or notice thereof, or a Counterpart to the Shared Roadway Agreement, has been registered against the title to same.
- 21.02 Notwithstanding anything provided in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that:
 - a) any reference to the Avani Phase I Condominium in this Agreement, where the context pertains to the

use or enjoyment of the Shared Roadway (or some other right, benefit or interest), shall be deemed to include the Avani Phase I Condominium's duly authorized agents, representatives, employees, contractors and/or subcontractors, and shall also specifically include the unit owners thereof and their respective tenants, residents, invitees and licensees from time to time;

- b) any reference to the Avani Phase II Condominium in this Agreement, where the context pertains to the use or enjoyment of the Shared Roadway (or some other right, benefit or interest), shall be deemed to include the Avani Phase II Condominium's duly authorized agents, representatives, employees, contractors and/or subcontractors, and shall also specifically include the unit owners thereof and their respective tenants, residents, invitees and licensees from time to time; and
- c) any reference to the Selene Condominium in this Agreement, where the context pertains to the use or enjoyment of the Shared Roadway (or some other right, benefit or interest), shall be deemed to include the Selene Condominium's duly authorized agents, representatives, employees, contractors and/or subcontractors, and shall also specifically include the unit owners thereof and their respective tenants, residents, invitees and licensees from time to time.

ARTICLE 22.00 - FURTHER ASSURANCES

- 22.01 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 Avani Phase I Lands (or against all of the units within the Avani Phase I Condominium), against the title to the Avani Phase II Lands (or against all of the units within the Avani Phase II Condominium), and the title to the Selene Lands (or against all of the units within the Selene Condominium). Without limiting the generality of the foregoing, each of the Avani Phase II Condominium and the Selene Condominium shall be obliged to execute a Counterpart to the Shared Roadway Agreement shortly after its respective registration as a condominium under the Act, and to also expressly permit or allow any such Counterpart to the Shared Roadway Agreement to be registered on title to each of the Avani Phase II Lands and the Selene Lands, and/or against the title to all of the units within each of said condominiums (as the case may be).
- 22.02 Notwithstanding anything hereinbefore provided to the contrary, it is expressly understood and agreed by the parties hereto that if the Counterpart to the Shared Roadway Agreement is duly executed by any of the Contributing Condominiums hereafter created (as and when same is registered under the Act), with or without its declarant as a party or signatory thereto, and without any of the previously registered Contributing Condominiums as additional parties or signatories thereto (and which counterpart agreement incorporates all material terms and provisions of this Agreement, by reference, and correspondingly confirms the formal assumption by such newly-registered condominium corporation of its respective obligations regarding the Shared Roadway and the payment of its proportionate share of the Shared Roadway Costs arising under this Agreement) then even though said counterpart agreement is not executed by any of the prior-registered Contributing Condominiums themselves, each of the Contributing Condominiums shall nevertheless be entitled to enforce all of the terms and provisions of the Counterpart to the Shared Roadway Agreement (as well as all of the terms and provisions of this Agreement which correspondingly become binding upon such subsequently registered Contributing Condominium, by virtue of its execution of the Counterpart to the Shared Roadway Agreement) directly against the condominium corporation which has so executed the Counterpart to the Shared Roadway Agreement, even though the previously-registered Contributing Condominiums and all subsequently-registered Contributing Condominiums may not be parties or signatories to the Counterpart to the Shared Roadway Agreement.

ARTICLE 24.00 - MISCELLANEOUS PROVISIONS

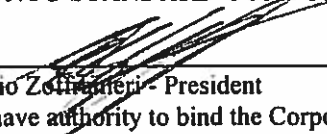
- 24.01 This Agreement is subject to compliance with the subdivision and part-lot control provisions of the *Planning Act R.S.O. 1990, as amended*.
- 24.02 In light of the fact that the electronic registration of instruments is now mandatory in the Land Titles Division of the Toronto Registry Office (No. 66), it is acknowledged and agreed that any reference in this Agreement to any document(s) or instrument(s) being executed and registered on title to (or against) the Avani Phase I Lands, the Avani Phase II Lands, and/or the Selene Lands (or against all of the units within each of the Contributing Condominiums in existence from time to time), shall be deemed and construed as a corresponding requirement on the party or parties responsible for executing and/or registering same to hereafter cause its solicitors to utilize the Teraview Electronic Registration System (operated by Teranet under the auspices of the Ministry of Government Services), and to authorize and direct its solicitors to electronically sign for completeness and release for registration any such document(s) or instrument(s) for registration electronically.
- 24.03 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.
- 24.04 This Agreement shall be read and construed with all changes in gender and/or number as may be required by the context.
- 24.05 Time shall be of the essence with respect to the performance and fulfilment of all provisions and obligations

herein set out.

- 24.06 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.
- 24.07 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.
- 24.08 This Agreement may not be modified, altered or amended, nor may any provisions hereof (or any rights hereunder) be waived or modified, except as expressly set out herein, or by an instrument in writing signed by all of the parties hereto.
- 24.09 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. 2566

Per: 
Elio Zottner - President
I have authority to bind the Corporation

METROGATE INC.

Per: 
Len Gigliotti - Secretary
I have authority to bind the Corporation