

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)

TWO-WAY SHARED FACILITIES 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 under the Act (as hereinafter defined) 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 "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 Phase I Condominium comprises a residential high-rise condominium containing 363 dwelling units, together with various parking, locker, service, recreation and other ancillary units, developed and created on those lands and premises municipally located at **255 Village Green Square, Toronto, Ontario**, comprising that Part of Block 7 on registered Plan 66M-2460, more particularly designated as Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 17 on Reference Plan 66R-28701, registered in the Land Titles Division of the Toronto Registry Office (No. 66) (hereinafter referred to as the "Phase I Lands");

AND WHEREAS the Declarant intends to hereafter develop, and register under the Act (as hereinafter defined) another residential high-rise condominium that is presently proposed to comprise approximately 363 dwelling units, together with 1 daycare centre unit, and various parking, locker, service, recreation and other ancillary units (hereinafter collectively referred to as the "Phase II Condominium"), on those lands and premises situate immediately adjacent to the west of the Phase I Condominium, municipally located at **275 Village Green Square, Toronto, Ontario**, comprising that Part of Block 7 on registered Plan 66M-2460, more particularly designated as Parts 14, 15 and 16 on Reference Plan 66R-28701, registered in the Land Titles Division of the Toronto Registry Office (No. 66) (hereinafter referred to as the "Phase II Lands");

AND WHEREAS the Phase I Condominium and the Phase II Condominium are hereinafter collectively referred to as the "Two Avani Condominiums", or the "Two Condominiums", and the Phase I Lands and the Phase II Lands are hereinafter collectively referred to as the "Avani Site";

AND WHEREAS the parties hereto have entered into this Agreement in order to provide for the mutual use, maintenance and cost-sharing of the Two-Way Shared Facilities (as such term is hereinafter defined) which are intended to be used, enjoyed and shared exclusively by the Declarant and each of the Two Avani Condominiums, and the respective unit owners, residents and tenants from time to time of each of the Two Avani Condominiums, and their respective invitees and licensees from time to time [save and except for the Two Recreation Centres, as hereinafter defined (and all of the recreational amenities, facilities, equipment and services situate therein or operated therefrom) to which the operator of the daycare centre unit in the Phase II Condominium (and its representatives and employees, together with all of the children attending the daycare centre and their respective parents and invitees) shall be permanently precluded and prohibited from accessing, using and/or enjoying, in whole or in part];

AND WHEREAS it is acknowledged and agreed that the Declarant is entering into this Agreement for and on behalf of the Phase II Condominium, on the express understanding that as and when the Phase II Condominium is registered as a separate condominium corporation under the Act (as hereinafter defined), it shall thereupon assume all covenants and obligations of the Declarant relating to such condominium and/or the Phase II Lands as set forth in this Agreement, and correspondingly the Declarant shall thereupon be automatically released, relieved and forever discharged from all obligations and/or liabilities arising hereunder;

AND WHEREAS it is further acknowledged and agreed that the Shared Roadway (as such term is defined in the Phase I Condominium's declaration) and the easements created with respect to same, shall be dealt with in a separate easement and cost sharing agreement (hereinafter referred to as the "Shared Roadway Agreement"), and shall be addressed or dealt with by this Agreement;

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

ARTICLE 1.00 - RECITALS

- 1.01 The parties hereto hereby confirm the veracity of the foregoing recitals, and agree with same, both in substance and in fact.

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*, and the regulations made thereunder from time to time;
- b) the "Avani Crash Wall/Berm" shall mean the concrete retaining wall or crash wall, and the landscaped berm, separating each of the Two Avani Condominiums from the adjacent or nearby Canadian Pacific railway line to the north thereof, and shall be deemed and construed to comprise part of the Two-Way Shared Facilities (as hereinafter defined), and which crash wall and berm shall at all times be maintained in good condition and repair, in perpetuity, by or on behalf of the Two Avani Condominiums, in accordance with the noise, vibration and/or safety impact mitigation measures, if any, imposed or required from time to time by the Canadian Pacific Railway Company and/or the City of Toronto in connection therewith;
- c) the "Benefitting Owners" shall mean the owner(s) of the dominant tenement(s) in respect of the Easements (as that term is hereinafter defined) who is/are entitled to the benefit of same, provided however that for the purposes of giving and receiving notice(s), procuring or giving consents and/or for the purposes of carrying out any Work (as that term is hereinafter defined) or repairing and/or restoring any damage or alterations (all as contemplated in Article 9.00 hereof), the term "Benefitting Owners" shall only mean the condominium corporation(s) (for and on behalf of the unit owners thereof) that is now or hereafter developed and created upon (or which correspondingly encompasses) all or any portion of the aforesaid dominant tenement(s);
- d) the "Declarant's Construction Easement" shall mean the specific Easements (as hereinafter defined) set forth in section 8.01 of this Agreement, enabling and facilitating the construction and completion of the Phase II Condominium on the Phase II Lands;
- e) the "Easements" shall mean the easements, rights of way, or rights in the nature of easements, over portions of the Phase I Lands in favour of the Declarant and the Phase II Condominium, and conversely over portions of the Phase II Lands in favour of the Phase I Condominium, all as more particularly described in Schedule "A" to the declaration of the Phase I Condominium, some or all of which are recited in Article 8.00 hereof, as well as the Declarant's Construction Easement, and the Relocated Easements (as hereinafter defined), and any other easements, rights or rights in the nature of an easement which are hereafter created between either of the Two Avani Condominiums and/or the Declarant, and the term "Easement" shall mean any particular portion of the Easements as dictated by the context in which said term is used;
- f) the "Easement Areas" shall mean those portions of the Avani Site which are subject to the Easements, namely the Shared Easement Areas and the Exclusive Easement Areas (as such terms are hereinafter defined) collectively, and shall also include any Relocated Easement Areas (as hereinafter defined), and the term "Easement Area" shall mean any particular portion of the Easement Areas as dictated by the context in which said term is used;
- g) an "Emergency" shall mean any circumstance(s) or event(s) which involves danger to (or risks the safety or security of) any person(s) or property, or which gives rise to the loss or suspension of any utility or service provided to (or benefitted by) either or both of the Two Avani Condominiums, whether actually occurring or imminent;
- h) the "Exclusive Easement Areas" shall mean those portions of the Avani Site which are subject to an Easement, but shall exclude the Shared Easement Areas (as hereinafter defined), and the term "Exclusive Easement Area" shall mean any particular portion of the Exclusive Easement Areas as dictated by the context in which said term is used;
- i) the "Exclusive Phase I Condominium Equipment" shall mean all of the equipment, fixtures, systems and appurtenant installations so installed, supplied or connected by or on behalf of the Declarant within the confines of the Phase I Condominium or within the confines of the Phase II Condominium, but which are intended, earmarked and/or designated for the ongoing operation, servicing, maintenance and/or repair of the Phase I Condominium (or any portion

thereof) exclusively, and the entire cost of operating, maintaining, repairing and insuring the Exclusive Phase I Condominium Equipment (or any portion thereof) shall comprise part of the common expenses of the Phase I Condominium and be correspondingly borne and paid for by the Phase I Condominium alone, and shall not comprise part of the Two-Way Shared Facilities Costs (as hereinafter defined);

- j) the **"Exclusive Phase II Condominium Equipment"** shall mean all of the equipment, fixtures, systems and appurtenant installations so installed, supplied or connected by or on behalf of the Declarant within the confines of the Phase I Condominium or within the confines of the Phase II Condominium, but which are intended, earmarked and/or designated for the ongoing operation, servicing, maintenance and/or repair of the Phase II Condominium (or any portion thereof) exclusively, and the entire cost of operating, maintaining, repairing and insuring the Exclusive Phase II Condominium Equipment (or any portion thereof) shall comprise part of the common expenses of the Phase II Condominium and be correspondingly borne and paid for by the Phase II Condominium alone, and shall not comprise part of the Two-Way Shared Facilities Costs (as hereinafter defined);
- k) the **"Governmental Authorities"** shall mean the City of Toronto, and all other governmental authorities or agencies having jurisdiction over the development of the Phase I Lands and the Phase II Lands;
- l) the **"Metrogate Condominiums"** or the **"Neighbouring Condominiums"** shall mean all of the high-rise, mid-rise and/or low-rise residential condominiums (inclusive of the Phase II Condominium) hereafter developed by the Declarant (or by Ventus At Metrogate Inc., a company related to or affiliated with the Declarant) on those lands and premises situate adjacent to and/or in the neighbouring vicinity of the Phase I Lands, namely the lands bounded by Highway 401 to the south, the Canadian Pacific Railway line to the north, and the Metrolinx/GO transit/Canadian National Railway line to the east, and located east of Kennedy Road (which lands are hereinafter collectively referred to as the **"Metrogate Site"**), each of which condominiums may or may not also contain a commercial/retail component and/or a daycare centre, and each of the Two Avani Condominiums along with the other Metrogate Condominiums shall collectively comprise (and shall hereinafter be collectively referred to as) the **"Metrogate Condominium Community"**;
- m) the **"Metrogate Group"** shall mean Metrogate and Ventus At Metrogate Inc., as well as any and all other companies that are now or hereafter related, associated or affiliated with either of Metrogate or Ventus At Metrogate Inc., and that is also the registered owner of any lands comprising part of the Metrogate Site;
- n) the **"Phase I Common Walkways & Landscaped Areas"** shall mean the common walkways and outdoor landscaped areas intended to be shared by the Two Avani Condominiums, and comprising that part of the common elements of the Phase I Condominium more particularly designated as **Parts 7, 11, 12 and 13 on Reference Plan 66R-28701**, registered in the Land Titles Division of the Toronto Registry Office (No. 66);
- o) the **"Phase I Recreation Centre Unit"** shall mean shall mean the recreation centre designated as unit 1 on level 1 in the Phase I Condominium (portions of which are physically situate on, and correspondingly accessible from, each of levels 1, 2 and 3 respectively) and comprising or containing:
 - i) a lobby/lounge, a concierge station, a mail room, a storage room, and a dog spa, all of which amenities and facilities are situate on level 1 of the Phase I Condominium;
 - ii) a property management office [containing an administration area, a kitchenette and ancillary office rooms, to be used as the office of the property manager retained to assist in the management and administration of the Two-Way Shared Facilities (as hereinafter defined) and each of the Two Avani Condominiums], situate on level 2 of the Phase I Condominium;
 - iii) a multi-purpose/party room with a private dining room/boardroom, a preparation kitchen and bar, an exercise room with his and her change rooms, a men's steam room, a women's steam room, and a billiards room, all of which amenities and facilities are situate on level 3 of the Phase I Condominium; and
 - iv) an outdoor landscaped podium or amenity area (with hard and soft landscaping features), together with an outdoor natural gas barbeque, all of which is situate on level 3 of the Phase I Condominium;

together with all of the equipment, facilities and furnishings respectively contained within the aforementioned recreation centre areas from time to time, and which are (or may at any time hereafter be) used in connection with the operation, enjoyment and/or maintenance thereof, and which recreational facilities and amenities are intended to be used and enjoyed by the Declarant and the owners, residents and tenants of the respective dwelling units in each of the Two Avani Condominiums, and their respective invitees, exclusively;

- p) the **"Phase I Shared Garage Drivelanes & Walkways"** shall mean the parking garage drivelanes and walkways intended to be shared by the Two Avani Condominiums, and comprising that part of the common elements of the Phase I Condominium more particularly designated as **Parts 5, 8, 9 and 10 on Reference Plan 66R-28701**, registered in the Land Titles Division of the Toronto Registry Office (No. 66);
- q) the **"Phase I Shared Visitor Parking Areas"** shall mean the visitor parking areas intended to be shared by the Two Avani Condominiums, and comprising that part of the common elements of the Phase I Condominium more particularly designated as **Parts 5 and 6 on Reference Plan 66R-28701**, registered in the Land Titles Division of the Toronto Registry Office (No. 66);
- r) the **"Phase II Escrow Date"** shall mean the date of the first escrow or interim-occupancy closing taking place in the Phase II Condominium, between the Declarant and any purchaser of a dwelling unit in the Phase II Condominium;
- s) the **"Phase II Recreation Centre Unit"** shall mean the indoor recreation centre to be designated as a unit in the Phase II Condominium, and to include a superintendent suite (to be used exclusively as the residence for the building superintendent employed from time to time by or on behalf of the Two Avani Condominiums, who will assist in the general maintenance and repair of the common elements of each of the Two Avani Condominiums), a yoga or exercise room (with the possibility of weight equipment), two guest suites (comprising two single bedroom suites, with each guest suite having a three piece washroom and a closet, but with no cooking facilities, as well as an ancillary laundry service facility, and with such guest suites to be used exclusively for the overnight accommodation of the visitors or guests of the respective dwelling unit owners and/or residents within each of the Two Avani Condominiums), together with a theatre room (with a large screen or projector, and associated seating), a media room, a multi-purpose/party room, and possibly an outdoor landscaped amenity area, along with all of the equipment, facilities and furnishings to be respectively located within the Phase II Recreation Centre Unit from time to time, and which may at any time hereafter be used in connection with the operation, enjoyment and/or maintenance thereof, and which recreational facilities and amenities are intended to be used and enjoyed by the Declarant and the owners, residents and tenants of the respective dwelling units in each of the Two Avani Condominiums, and their respective invitees, exclusively;
- t) the **"Phase II Shared Garage Drivelanes & Walkways"** shall mean the parking garage drivelanes and walkways intended to be shared by the Two Avani Condominiums, and to comprise that part of the common elements of the Phase II Condominium more particularly designated as **Part 15 on Reference Plan 66R-28701**, registered in the Land Titles Division of the Toronto Registry Office (No. 66);
- u) the **"Phase II Shared Visitor Parking Areas"** shall mean the visitor parking areas intended to be shared by the Two Avani Condominiums, and to comprise that part of the common elements of the Phase II Condominium more particularly designated as **Parts 15 and 16 on Reference Plan 66R-28701**, registered in the Land Titles Division of the Toronto Registry Office (No. 66);
- v) the **"Proportionate Two-Way Interest"** or the **"Proportionate Two-Way Share"** of each of the Two Avani Condominiums, with respect to both the ownership of the Two-Way Shared Units (as hereinafter defined), and with respect to the allocation or apportionment of the Two-Way Shared Facilities Costs (as hereinafter defined) between them, shall mean that percentage or proportion attributable to each of the Two Avani Condominiums, derived by dividing each condominium's respective number of registered dwelling units, by the total number of registered dwelling units in each of the Two Avani Condominiums collectively (and with the respective interest or share of each of the Two Avani Condominiums, as so determined, being sometimes hereinafter individually referred to as its **"Proportionate Two-Way Interest"** or its **"Proportionate Two-Way Share"**, and with the respective interests or shares of the Two Avani Condominiums being hereinafter collectively referred to as their respective **"Proportionate Two-Way Interests"** or their respective **"Proportionate Two-Way Shares"**);
- w) the term **"repair"** when used or referred to in this Agreement with respect to any item, matter or component, shall expressly include the obligation to repair and replace the item, matter or component (as the case may be) after 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;

- x) the **"Servicing, Maintenance & Repair Easements"** shall mean those easements more particularly described in section 8.01 of this Agreement, which enable or facilitate the installation, maintenance, operation, alteration, repair, replacement, inspection and/or monitoring of all pipes, wires, cables, conduits, watermain, valves, meters, equipment and any other appurtenant utility and/or servicing installations (and which enable or facilitate the supply and receipt of water, gas, electricity and storm and/or sanitary sewer services, and/or the discharge/drainage of storm and/or sanitary sewer effluents, as well as the supply of telephone, telecommunication, cable television and/or other services) in, on, over, along, upon, across and through various portions of the Avani Site, and which also specifically enable or facilitate the maintenance and/or repair of any part of the buildings, structures, installations, improvements and/or services located within (or servicing) either of the Two Avani Condominiums, from any portion of the lands of the other of the Two Avani Condominiums;
- y) the **"Servient Owners"** shall mean the owner(s) of the servient tenement(s) in respect of the Easements who are subject to the burden of same, provided however that for the purposes of giving and receiving notice(s), procuring or giving consents, and/or for the purposes of carrying out any Work (as that term is hereinafter defined) or repairing and/or restoring any damage or alterations, all as contemplated in Article 9.00 hereof, the term **"Servient Owners"** shall only mean the condominium corporation(s) (for and on behalf of the respective unit owners thereof) that is now or hereafter developed and created upon (or which correspondingly encompasses) all or any portion of the aforementioned servient tenement(s);
- z) the **"Shared Easement Areas"** shall mean the Phase I Common Walkways & Landscaped Areas, the Phase I Shared Garage Driveways & Walkways, the Phase I Shared Visitor Parking Areas, the Phase II Shared Garage Driveways & Walkways, and the Phase II Shared Visitor Parking Areas, and the term **"Shared Easement Area"** shall mean any one of the aforementioned easement areas;
- aa) the **"Shared Service Room Units"** shall mean mean or include those designated units situate within the Phase I Condominium and comprising the shared transformer room unit designated as unit 2 on level 1, the shared gas meter room unit designated as unit 3 on level 1, the shared electrical room unit designated as unit 55 on level 2, the shared mechanical room unit designated as unit 56 on level 2, the shared amenity electrical room unit designated as unit 57 on level 2, the shared amenity mechanical room unit designated as unit 58 on level 2, the shared emergency generator room designated as unit 10 on level 3, and the shared mechanical room designated as unit 136 on level A, each of which contains (or will contain) various mechanical, electrical, utility, plumbing, security and/or servicing equipment, fixtures, installations and/or facilities (and any appurtenances thereto) now or hereafter utilized in connection with the operation and/or maintenance of any portion of the Two-Way Shared Facilities (as hereinafter defined) and/or any portion of the Two-Way Shared Servicing Systems (as hereinafter defined), but expressly excluding any of the Exclusive Phase I Condominium Equipment and/or any of the Exclusive Phase II Condominium Equipment;
- bb) the **"Support Easements"** shall mean those easements more particularly described in section 8.01 of this Agreement, which provide for a right of support by, from or in respect of any of the Support Structures (as hereinafter defined);
- cc) the **"Support Structures"** shall mean those portions of the structural members, columns, footings, structural walls, ceiling slabs, floor slabs, and any other component(s) of any building(s), structure(s), installation(s), improvement(s), and/or soil now or hereafter comprising part of the Avani Site, upon which either of the Two Avani Condominiums may now or hereafter rely upon for the purposes of support;
- dd) the **"Transfer Date"** shall mean the earlier of the following three dates, namely:
 - i) not more than sixty (60) days following the date that all the dwelling units in each of the Two Avani Condominiums have been sold, conveyed and transferred to each of the respective unit purchasers thereof, or such lesser number of dwelling units as the Declarant may determine or designate in its sole, unfettered and unchallenged discretion;
 - ii) ten (10) years following the date of registration of the Phase I Condominium (namely by January 13th, 2027); or

- iii) such earlier date as the Declarant may determine or designate in its sole, unfettered and unchallenged discretion;
- ee) the **"Two Recreation Centres"** shall mean the Phase I Recreation Centre Unit and the Phase II Recreation Centre Unit collectively, together with all of the amenities, facilities, services, equipment and furnishings respectively situate therein, or operated from or within any portion thereof, from time to time;
- ff) the **"Two-Way Shared Facilities"** shall mean or include the Shared Easement Areas, including all shared municipal watermain service connections and/or sewer service connections situate within the public road allowance and the private manholes at or near the property line of the Phase I Lands and/or the Phase II Lands, together with all of the shared visitor parking spaces situate within the confines of either of the Two Avani Condominiums, as well as all outdoor landscaping treatments and features, and all retaining walls and exterior perimeter fences erected along the boundaries of each of the Two Avani Condominiums or any portion thereof, and expressly including the Two-Way Shared Servicing Systems (as hereinafter defined), the Two-Way Shared Units (as hereinafter defined) and the Two-Way Shared Underground Garage (as hereinafter defined), as well as all garage ramps leading to and from the Two-Way Shared Underground Garage, along with the Avani Crash Wall/Berm and a shared lobby and concierge station all of which are intended to be used, enjoyed and shared by and amongst the Declarant and each of the Two Avani Condominiums, and by the respective unit owners, residents and tenants of each of the Two Avani Condominiums from time to time, and all of their respective invitees [save and except for the Two Recreation Centres (and all of the amenities, facilities, equipment and services situate therein or operated therefrom) to which the operator of the daycare centre unit in the Phase II Condominium (and its representatives and employees, together with all children attending the daycare centre and their respective parents and invitees) shall be permanently precluded and prohibited from accessing, using and/or enjoying, in whole or in part];
- gg) the **"Two-Way Shared Facilities Budget"** shall mean the budget, prepared not less than once annually following the execution of this Agreement, outlining the projected Two-Way Shared Facilities Costs (as hereinafter defined) to be incurred for the ensuing 12 month period immediately following the preparation and submission of same (and initially submitted to the Phase I Condominium, and to the Declarant on behalf of the Phase II Condominium, and ultimately submitted on an annual basis to each of the Two Avani Condominiums), and which budget(s) shall be formulated in accordance with the terms and provisions of this Agreement;
- hh) the **"Two-Way Shared Facilities Committee"** shall mean the committee formed or established from and after the Transfer Date, in accordance with the provisions of Article 7.00 of this Agreement, for the purposes of assisting in the preparation of the Two-Way Shared Facilities Budgets from time to time, and administering, governing, managing, controlling and/or operating the Two-Way Shared Facilities on behalf of each of the Two Avani Condominiums;
- ii) the **"Two-Way Shared Facilities Costs"** shall mean the aggregate of all costs and expenses incurred in connection with the operation, administration, staffing, insurance, maintenance and repair of the Two-Way Shared Facilities (or any portion thereof), all as set out in the Two-Way Shared Facilities Budget(s) from time-to-time, and which costs shall, subject to the overriding provisions of section 6.01 hereof, be shared [initially between the Phase I Condominium and the Declarant, and ultimately between the Two Avani Condominiums from and after the registration of the Phase II Condominium] pursuant to the provisions of the respective declarations of each of the Two Avani Condominiums and in accordance with the provisions of this Agreement, including without limitation, the costs and expenses incurred in connection with the following, namely:
 - i) the illumination, maintenance and repair of the Shared Easement Areas, including all appurtenant walkway lighting, cleaning, landscape irrigation and/or landscape maintenance services and systems (such as drains, pipes, cables, etc. located within or beneath the outdoor walkways and/or landscaped areas), as well as the periodic cleaning and removal of all garbage and debris from the Two-Way Shared Underground Garage, and the illumination, maintenance and repair of all driveways and walkways situate therein), together with the cost of procuring all requisite fire, property damage and public liability insurance coverage for each of the Two Avani Condominiums, with respect to damage and/or injury occasioned to persons and/or property upon or within the Shared Easement Areas and the Two-Way Shared Underground Garage (or any portion thereof), providing a minimum coverage of \$5 million dollars per occurrence, together with all fees paid or payable to any insurance trustee which may be appointed or retained to administer said insurance proceeds;

- ii) the operation, illumination, maintenance and repair of the Two Recreation Centres, and all electronic, computer, electrical, plumbing, lighting, heating, cooling, utility and/or mechanical equipment, fixtures and systems (and all appurtenances thereto) comprising part of (or servicing exclusively) the Two Recreation Centres or any portion thereof, including the cost of providing and maintaining utility services, equipment, staff and/or recreational programs for same, together with the cost of operating, maintaining and repairing the guest suites and the superintendent suite to be situate within the Phase II Condominium, along with the cost of retaining personnel to monitor and administer the shared concierge station, together with the cost of procuring all requisite fire, property damage and public liability insurance coverage for each of the Two Avani Condominiums with respect to damage and/or injury occasioned to persons and/or property upon or within the Two Recreation Centres or any portion thereof (providing a minimum coverage of \$5 million dollars per occurrence), including all common expenses, realty taxes, utility charges and telephone and cable television charges relating to the use or operation of the Two Recreation Centres (or any portion thereof), or otherwise assessed against same or attributable thereto (in whole or in part);
 - iii) the operation, illumination, maintenance and/or repair of the Two-Way Shared Underground Garage (as hereinafter defined), the Two-Way Shared Units (as hereinafter defined) and the Two-Way Shared Servicing Systems (as hereinafter defined) respectively, including without limitation, the cost of maintaining and repairing all lighting and ventilation systems, garage driveways and walkways, and all mechanical systems and/or underground garage services (such as drains, pipes, cables, etc.) located within (or comprising part of) the Two-Way Shared Underground Garage and exclusively serving same, together with the cost of maintaining and repairing all electronic, computer, electrical, utility and/or mechanical equipment, fixtures and/or systems (and all appurtenances thereto) comprising part of the Two-Way Shared Servicing Systems or ancillary thereto;
 - iv) all common expenses assessed against (or otherwise attributable to) each of the Two-Way Shared Units, together with all realty taxes assessed against (or attributable to) any of the Two-Way Shared Units (including all realty taxes payable by the Declarant for any period of time prior to the transfer and conveyance of any of the Two-Way Shared Units to each of the Two Avani Condominiums), as well as the cost of all utilities (ie. hot water, electricity, gas and thermal energy, as applicable) consumed by each of the Two-Way Shared Units, and all insurance premiums payable with respect to same; and
 - v) all costs and expenses incurred from time to time in connection with keeping and maintaining the Avani Crash Wall/Berm in good condition and in a good state of repair, in perpetuity, including the cost of procuring and maintaining adequate replacement cost insurance for the Avani Crash Wall/Berm in the event same is damaged and needs to be repaired or replaced (in whole or in part), as well as the cost of continuing and maintaining all noise and vibration mitigation measures implemented by the Declarant in connection with the Avani Crash Wall/Berm, all to the satisfaction of the Canadian Pacific Railway Company and/or the City of Toronto from time to time;
- jj) the "Two-Way Shared Servicing Systems" shall mean all servicing pipes, wires, cables, conduits and/or systems serving (or providing any service to) the Two Avani Condominiums together, and/or the Two-Way Shared Units (as hereinafter defined) or to any portion thereof, and/or to any portion of the Two-Way Shared Facilities, including without limitation, all pertinent portions of the hydro electric, water, storm and sanitary sewer systems, gas systems, emergency systems, electrical systems, mechanical systems, plumbing systems, heating and cooling systems, computer controlled access systems, security/fire alarm systems, telephone and cable television systems, and fire protection systems (as well as pertinent portions of various ancillary computer software and/or mechanical, electronic and/or electrical fixtures and equipment appurtenant thereto), which provide power, drainage, emergency service, electrical, mechanical, plumbing, heating/cooling, telephone and/or cable television service to the Two Avani Condominiums together, and/or to the Two-Way Shared Units or to any portion thereof, but expressly excluding all pipes, wires, cables, conduits and/or systems serving or benefitting only one of the Two Avani Condominiums (save and except for any portion of the Two-Way Shared Units) exclusively, and the term "Two-Way Shared Servicing System" shall mean that particular servicing system or portion of the Two-Way Shared Servicing Systems as dictated by the context in which said term is used;
- kk) the "Two-Way Shared Underground Garage" shall mean the entire underground (and above ground) parking garage structure comprising (or intended to comprise) part of the common elements of each of the Two Avani Condominiums, and intended to be shared by the Two Avani Condominiums exclusively, including without limitation, all driveway entrance and exit ramps,

all garage roof slabs, all expansion joints situate within the confines of the underground (and above ground) garage, and all driveways and walkways located within said garage structure, but expressly excluding all parking units, locker units, bicycle storage/locker units, shared service room units and any other units situate within the said garage, and any structural components, features or members that are situate directly beneath or within the building tower envelope of either of the Two Avani Condominiums and that primarily support either of the two condominium tower structures (for example, that portion of the horizontal concrete slab situate directly beneath or within the tower structure of either of the Two Avani Condominiums, and that also connects or extends to other portions of the shared parking garage situate beyond the building tower envelope, shall be excluded from the Two-Way Shared Facilities, because it is integral to the condominium tower and its structural support, regardless of the fact that it may also support part of the adjoining shared garage), and also excluding any stairwells and/or service rooms (whether ultimately unitized or not) which are intended to service or benefit either one of the Two Avani Condominiums exclusively; and

- II) the "Two-Way Shared Units" shall mean the Phase I Recreation Centre Unit, the Phase II Recreation Centre Unit and the Shared Service Room Units, collectively.

ARTICLE 3.00 - OWNERSHIP OF THE TWO-WAY SHARED UNITS

- 3.01 Ownership of the Two-Way Shared Units shall ultimately be shared by each of the Two Avani Condominiums as tenants-in-common, on a pro-rata basis, in accordance with their respective Proportionate Two-Way Interests. Since the Phase I Condominium comprises 363 registered dwelling units, and the Phase II Condominium is also currently intended to comprise 363 registered dwelling units, the **Phase I Condominium's** proportionate ownership share of (or tenancy-in-common interest in) the Two-Way Shared Units will amount to 50%, and the **Phase II Condominium's** proportionate ownership share of (or tenancy-in-common interest in) the Two-Way Shared Units will amount to 50%, provided however that such proportionate shares may have to be adjusted depending upon the final number of registered dwelling units within the Phase II Condominium, once same is registered under the Act.
- 3.02 The actual transfer of ownership of the Two-Way Shared Units by the Declarant to each of the Two Avani Condominiums (as tenants-in-common, in accordance with their Proportionate Two-Way Interests or Proportionate Two-Way Shares), shall occur no later than 60 days after the Transfer Date, provided however that if the Phase II Condominium is not registered by the Transfer Date, then such transfer shall occur as soon as reasonably possible after the Phase II Condominium is duly registered under the Act (but no later than the first meeting of the board of directors of the Phase II Condominium convened following its turnover meeting held in accordance with the provisions of section 43 of the Act).
- 3.03 Once ownership of the Two-Way Shared Units has been transferred by the Declarant to each of the Two Avani Condominiums as tenants-in-common, as hereinbefore provided or contemplated, then any further sale, transfer, conveyance or encumbrance of any or all of the Two-Way Shared Units (and the creation or execution of any instrument purporting to affect, convey, charge or otherwise encumber the registered and/or beneficial ownership of the Two-Way Shared Units, or any portion thereof) shall be expressly prohibited, unless any such sale, transfer, conveyance or encumbrance is made exclusively to (or in favour of) either of the Two Avani Condominiums.
- 3.04 Any instrument or other document purporting to sell, transfer, convey, mortgage, charge or encumber the ownership interest(s) of either of the Two Avani Condominiums in the Two-Way Shared Units (or any portion thereof), in contravention of the foregoing provisions, shall be null and void, and of no force or effect whatsoever.

ARTICLE 4.00 - OPERATION OF (AND BUDGETING FOR) THE TWO-WAY SHARED FACILITIES

- 4.01 Until the Transfer Date, and continuing thereafter until such time as the Two-Way Shared Facilities Committee has been established in accordance with the provisions hereinafter set forth, the manner in which the Two-Way Shared Facilities are utilized, operated, staffed, maintained and/or repaired (including the budgeting of the Two-Way Shared Facilities Costs) shall be determined, governed and controlled solely by the Declarant. Without limiting the generality of the foregoing, the Declarant shall have the unilateral right, in its sole, unfettered and unchallenged discretion, to establish (and impose restrictions or limitations on) the hours of use, as well as designated or restricted areas of use, with respect to the Phase I Recreation Centre Unit and/or the Phase II Recreation Centre Unit [or any portion(s) thereof] and any of the other Two-Way Shared Facilities [or any portion(s) thereof], in order to best co-ordinate the operation and use of same with the Declarant's marketing, sales, customer service and/or construction operations or programs implemented in connection with each of the Two Avani Condominiums [and in connection with the marketing and sale of units in any of the other condominiums comprising part of the Metrogate Condominium Community].

- 4.02 From and after the date of execution of this Agreement, to and until the Transfer Date and the establishment of the Two-Way Shared Facilities Committee in accordance with the provisions hereinafter set forth, the Declarant shall prepare and submit the Two-Way Shared Facilities Budget (outlining the Two-Way Shared Facilities Costs estimated to be incurred for each ensuing year) to each of the Two Avani Condominiums, not less than once annually, and said budget(s) shall be incorporated as part of, and/or integrated with, the respective overall annual budget(s) of each of the Two Avani Condominiums. Each of the Two Avani Condominiums shall adopt, and be bound by, the Two-Way Shared Facilities Budget(s), and by the decisions of the Declarant on (and its determination of) the Two-Way Shared Facilities Costs, as well as the Declarant's arrangements with respect to all maintenance and/or repair work pertaining to the Two-Way Shared Facilities or any portion thereof (and with respect to all services, operations and any other matters involving the Two-Way Shared Facilities), all without any qualification or amendment thereto whatsoever.
- 4.03 Once the Two-Way Shared Facilities Committee has been established or created, then at all times thereafter, the manner in which the Two-Way Shared Facilities are utilized, operated, staffed, maintained and/or repaired, as well as the preparation and submission of the Two-Way Shared Facilities Budget(s), shall, subject to the terms and provisions of this Agreement, be governed and controlled solely by the Two-Way Shared Facilities Committee on behalf of the Two Avani Condominiums.
- 4.04 Both before and after the Transfer Date, each of the Two-Way Shared Facilities Budgets prepared from time to time shall include or reflect a reserve fund that is being maintained on behalf of the Two Avani Condominiums jointly, exclusively for the major repair and replacement of the Two-Way Shared Facilities (or any portion thereof then in existence).

ARTICLE 5.00 - USE OF THE TWO-WAY SHARED FACILITIES

5.01 General Use of the Two-Way Shared Facilities

- a) Subject to the overriding provisions of the Act, the use of the Two-Way Shared Facilities by the Declarant, and by the unit owners within each of the Two Avani Condominiums (and their respective residents, tenants and invitees), shall at all times be subject to (and be governed and regulated by) the provisions of the respective declarations of the Two Avani Condominiums and this Agreement (hereinafter collectively referred to as the "Two-Way Governing Documents"), and in the event of any conflict or inconsistency between the provisions of either or both of said declarations and this Agreement (insofar as the operation and use of the Two-Way Shared Facilities, and the budgeting and payment of the Two-Way Shared Facilities Costs, are concerned), then the provisions of this Agreement shall prevail and supersede in such circumstances.
- b) Notwithstanding that the transfer of ownership of the Two-Way Shared Units to each of the Two Avani Condominiums (as tenants-in-common, in accordance with their respective Proportionate Two-Way Interests) may not yet have occurred, the Declarant and the respective dwelling unit owners within each of the Two Avani Condominiums, and their respective residents, tenants and invitees from time to time [as well as all persons residing within the proposed Phase II Condominium (or any portion thereof) prior to its registration as a condominium corporation under the Act, with the consent or concurrence of the Declarant, and all of their respective invitees], shall be entitled to use (and/or enjoy the benefits or services provided by) the Two-Way Shared Units, in accordance with their intended purposes as hereinafter set forth, as soon as same have been completed and are operational, provided however that:
 - i) such use and enjoyment shall nevertheless be subject to any restrictions and/or limitations set forth in the Two-Way Governing Documents, and specifically subject to the overriding provisions and restrictions regarding the Two Recreation Centres set forth in section 5.02 (g) hereof; and
 - ii) the owner from time to time of the daycare centre unit in the Phase II Condominium (and its tenants and employees, including the daycare centre operator and its respective representatives and employees, together with all children attending the daycare centre and their respective parents and invitees) shall be permanently precluded and prohibited from accessing, using and/or enjoying any portion of the Two Recreation Centres (including any and all of the amenities, facilities, equipment and/or services situate therein or operated therefrom, from time to time).
- c) Pursuant to (and in accordance with) the noise, vibration and/or safety impact mitigation measures (if any) imposed or required from time to time by the Canadian Pacific Railway Company and/or the City of Toronto regarding the Avani Crash Wall/Berm, the Two-Way Shared Facilities Committee, acting for and on behalf of each of the Two Avani Condominiums, shall be obliged to:

- i) keep and maintain the Avani Crash Wall/Berm in good condition and repair, in perpetuity, and the estimated annual cost of doing so, including the cost of procuring and maintaining adequate replacement cost insurance for the Avani Crash Wall/Berm in the event same is damaged and needs to be repaired or replaced, shall be included within the Two-Way Shared Facilities Costs that will ultimately be apportioned between (and correspondingly paid and contributed by) each of the Two Avani Condominiums in accordance with their respective Proportionate Two-Way Shares;
- ii) make no alteration(s) whatsoever to the existing grading and drainage patterns of the Phase I Lands and/or the Phase II Lands which might adversely effect the Canadian Pacific Railway lands situate adjacent to the north of the Two Avani Condominiums, without receiving the prior written concurrence of the Canadian Pacific Railway Company thereto; and
- iii) not tamper with, nor alter, any portion of the security and/or acoustic fencing and noise mitigation measures, and the vibration isolation or mitigation measures, installed or implemented by the Declarant between the northerly perimeter of the Phase I Lands and the adjacent Canadian Pacific Railway lands, and shall be obliged to maintain all such acoustic fencing and noise mitigation measures, and such vibration isolation or mitigation measures, to the satisfaction of the Canadian Pacific Railway Company and/or the City of Toronto.

5.02 Specified Use of the Two-Way Shared Facilities

- a) Subject to the overriding provisions set out in section 5.02 (g) hereof, each of the Two Recreation Centres shall be used and enjoyed only by the Declarant, and by the respective dwelling unit owners within each of the Two Avani Condominiums from time to time, and their respective residents, tenants and invitees [and by all persons residing within the proposed Phase II Condominium (or any portion thereof) prior to its registration as a condominium corporation under the Act, with the consent or concurrence of the Declarant, and by all of their respective invitees], for general recreational purposes, for meetings convened to conduct the business and affairs of either or both of the Two Avani Condominiums, and for such other uses as are consistent with the equipment, facilities and/or amenities situate within (or comprising part of) the Two Recreation Centres, in accordance with all applicable by-laws and regulations of the Governmental Authorities. Without limiting the generality of the foregoing, it is hereby understood and agreed that the management office situate within the Phase I Recreation Centre Unit shall only be used for general property management purposes pertaining to the ongoing operation and administration of each of the Two Avani Condominiums and the Two-Way Shared Facilities.
- b) The multi-purpose/party room situate within the Phase I Recreation Centre Unit shall be used and enjoyed only by the Declarant, and by the owners of the dwelling units in each of the Two Avani Condominiums from time to time, together with their respective residents, tenants and invitees, for parties and general social and/or recreational purposes, and for meetings convened to conduct the business and affairs of either or both of the Two Avani Condominiums, in accordance with all applicable by-laws and regulations of the Governmental Authorities. The multi-purpose/party room may also be used for meetings of the Two-Way Shared Facilities Committee (and for meetings of the Shared Roadway Committee and/or the Daycare Centre Committee, as such terms are defined in the declaration of the Phase I Condominium). A minimal damage/security deposit, together with a service/cleaning charge (as well as a security charge covering the cost of retaining temporary security personnel to monitor the access and egress of the guests invited to any parties or meetings held within the multi-purpose/party room) may be levied or charged by or on behalf of the Declarant prior to the Transfer Date (and thereafter by the Two-Way Shared Facilities Committee on behalf of the Two Avani Condominiums), in their respective sole, unfettered and unchallenged discretion. However, no damage deposit, service/cleaning charge or security charge shall be required to be paid or posted by the Declarant (while owning any dwelling unit within either of the Two Avani Condominiums) under any circumstances whatsoever, nor shall same be payable with respect to any meeting(s) of the board of directors (or of the owners) of either of the Two Avani Condominiums, convened for the purpose of formerly conducting the business and affairs of either of the Two Avani Condominiums, nor for any meeting(s) convened by the Two-Way Shared Facilities Committee, the Shared Roadway Committee and/or the Daycare Centre Committee, from time to time.
- c) The two guest suites to be situate within the Phase II Recreation Centre Unit sometime hereafter, shall only be used to provide overnight accommodation exclusively for the guests of the owners, residents and/or tenants of the dwelling units in each of the Two Avani Condominiums from

time to time [and for the guests of those persons residing within the proposed Phase II Condominium (or any portion thereof) prior to its registration as a condominium corporation under the Act, with the consent or concurrence of the Declarant], and a damage/security deposit, together with a service/cleaning charge, shall be paid in advance for each night of occupancy of a guest suite, in such amount, and upon such terms and conditions, as the Declarant may establish from time to time in connection therewith prior to the Transfer Date (and thereafter as the Two-Way Shared Facilities Committee may establish from time to time in connection therewith, on behalf of the Two Avani Condominiums), each in their respective sole, unfettered and unchallenged discretion. The use of the guest suites shall be subject to the provisions of all applicable by-laws and regulations of the Governmental Authorities, and also subject to the provisions of any agreement(s) entered into by the Declarant, or by or on behalf of the Two-Way Shared Facilities Committee, with any management/cleaning firm pertaining to same, and shall also be governed by the provisions of this Agreement and any rules and regulations imposed by the Declarant with respect to same prior to the Transfer Date (and thereafter imposed by the Two-Way Shared Facilities Committee) in connection therewith.

- d) The designated superintendent suite to be situate within the Phase II Condominium for the resident building superintendent shall (when completed and ready for occupation) comprise part of the Two-Way Shared Facilities, and shall be used and occupied exclusively as the residence for the building superintendent employed from time to time by or on behalf of the Two Avani Condominiums, who will assist in the general maintenance and repair of the common elements of each of the Two Avani Condominiums, as and when needed.
- e) The Shared Service Room Units (which comprise part of the Two-Way Shared Units, and correspondingly comprise part of the Two-Way Shared Facilities) shall be used for the purposes of housing or containing any mechanical, electrical, plumbing, utility and/or servicing equipment, fixtures and/or facilities (and any appurtenances thereto) utilized in connection with the operation, maintenance and/or repair of any portion of the Two-Way Shared Facilities and/or any portion of the Two-Way Shared Servicing Systems, exclusively. Access to any of the Shared Service Room Units shall be restricted to the authorized agents, employees, contractors and/or tradesmen retained by or on behalf of the Declarant, the Two Avani Condominiums and/or the Two-Way Shared Facilities Committee (as the case may be), and to any designated board member(s) of either of the Two Avani Condominiums, and/or any member(s) of the Two-Way Shared Facilities Committee.
- f) Notwithstanding that the costs of operating, maintaining and/or repairing the Two-Way Shared Underground Garage shall be shared between the Two Avani Condominiums (and shall correspondingly comprise part of the Two-Way Shared Facilities Costs), the use of any portion of the Two-Way Shared Underground Garage situate within the boundaries and condominium description plan of either of the Two Avani Condominiums shall [subject to any specific easement(s) created by (or referred to in) the respective declarations of the Two Avani Condominiums, or by any specific transfer(s) of easement to or in favour of either of the Two Avani Condominiums (or otherwise referred to in this Agreement) which purport(s) to provide any additional rights of use, or enlarged areas of use, over or through the Two-Way Shared Underground Garage, or any portion thereof] be restricted to only the owners of units within that condominium which so encompasses said portion of the Two-Way Shared Underground Garage, and their respective residents, tenants and invitees.
- g) It is expressly understood and agreed that no provision contained in any of the by-laws or rules of the Phase I Condominium shall restrict the access to, egress from and/or use of the Phase I Recreation Centre Unit by the Declarant and the Phase II Condominium and any of the dwelling unit owners thereof, and/or their respective residents, tenants and invitees, provided however that such access, egress and/or use shall at all times be subject to the reasonable and customary restrictions imposed or implemented by the personnel operating the shared concierge station, and said access and egress shall be effected only through the use of a computerized security card entry system (or similar security system). Likewise, no provision contained in any of the by-laws or rules of the Phase II Condominium shall restrict the access to, egress from and/or use of the Phase II Recreation Centre Unit by the Declarant and the Phase I Condominium and any of the dwelling unit owners thereof, and/or their respective residents, tenants and invitees, provided however that such access, egress and/or use shall at all times be subject to the reasonable and customary restrictions imposed or implemented by the personnel operating the shared concierge station, and said access and egress shall be effected only through the use of a computerized security card entry system (or similar security system). Notwithstanding anything hereinbefore or hereinafter provided to the contrary, it is expressly acknowledged and agreed that until ownership of the Two Recreation Centres has been conveyed by the Declarant to each of the Two Avani Condominiums as hereinbefore provided or contemplated, the Declarant (and any of the other companies within the Metrogate Group) shall be entitled to use and occupy any portion of the Two Recreation Centres exclusively, for the marketing, sales, construction and/or customer service programs of the Declarant implemented in connection with either or both of

the Two Avani Condominiums [and/or in connection with the marketing and sale of any units (or proposed units) in any of the other condominiums comprising part of the Metrogate Condominium Community by any of the Metrogate Group], and to correspondingly install, erect or maintain one or more sales, construction and/or customer service offices therein (as well as temporary model suites) at such locations within any portion or portions of either or both of the Two Recreation Centres as the Declarant may determine or select, in its sole, unfettered and unchallenged discretion, until such time as all of the dwelling units in each of the condominiums comprising the Metrogate Condominium Community (or such lesser number as the Declarant may determine or designate in its sole, unfettered and unchallenged discretion) have been sold and transferred to the respective unit purchasers thereof. The cost of erecting, maintaining and ultimately dismantling any such marketing, sales, construction and/or customer service office(s), as well as any such model suites, shall be borne solely by the Declarant, but the Declarant shall not, under any circumstances, be charged for the use of the space so occupied within any portion of the Two Recreation Centres, nor for any utility services (or other usual or customary services) supplied thereto or consumed thereby, nor shall either of the Two Avani Condominiums (nor anyone else acting on behalf of either or both of the Two Avani Condominiums) prevent, limit or interfere with the provision of said utility services (and such other usual or customary services) to the aforementioned marketing, sales, construction and/or customer service office(s), and to the said model suites. Each of the Two Avani Condominiums shall also be obliged to ensure that no actions, steps or measures are taken by anyone which would prohibit, limit, restrict or interrupt the access and egress over the respective common element areas of each of the Two Avani Condominiums by the Declarant and its respective employees, agents, representatives, retained contractors or subcontractors, invitees and/or licensees, to and from the aforementioned marketing, sales, construction and/or customer service offices, and the said model suites, at all times during the opening hours of the said offices and model suites (as determined by the Declarant in its sole, unfettered and unchallenged discretion), subject however to such reasonable and customary restrictions on access thereto as may be implemented by the personnel operating the shared concierge station and retained by or on behalf of the Two Avani Condominiums. The Declarant shall also be entitled to erect, affix and maintain signs for marketing and/or sales purposes upon (or within) any portion or portions of the Two Recreation Centres, and within or outside any unsold units within either of the Two Avani Condominiums, pursuant to the ongoing marketing program of the Declarant in respect of each of the Two Avani Condominiums and/or pursuant to the marketing program(s) of any of the Metrogate Group involving or pertaining to any of the other Metrogate Condominiums, at such locations and having such dimensions and designs as the Declarant may determine in its sole, unfettered and unchallenged discretion, until such time as all of the dwelling units in each of the condominiums comprising the Metrogate Condominium Community (or such lesser number as the Declarant may determine or designate in its sole, unfettered and unchallenged discretion) have been sold and transferred by the Declarant (and/or by any of the others within the Metrogate Group) to each of the respective unit purchasers thereof, all at no charge or cost to the Declarant (or to any of the others within the Metrogate Group) whatsoever. Until the Transfer Date and the establishment of the Two-Way Shared Facilities Committee (as hereinafter provided or contemplated), the Declarant shall exclusively control and govern all matters relating to the operation, maintenance and repair of each of the Two Recreation Centres, and the budgeting of all costs and expenses related thereto which ultimately comprise part of the Two-Way Shared Facilities Costs, including without limitation, the establishment of the appropriate level of services in respect of each of the Two Recreation Centres and the standard of maintenance and/or repair thereof, as well as the establishment of hours of use or operation in respect of each of the Two Recreation Centres, with the corresponding power and authority of the Declarant to unilaterally designate and/or restrict certain areas of use within any portion of either or both of the Two Recreation Centres, including the right to restrict the use of any particular amenities, services and/or equipment located within any portion of either or both of the Two Recreation Centres (in order to best co-ordinate the operation and use of same with the marketing, sales, customer service and/or construction operations or programs implemented from time to time by the Declarant in respect of each of the Two Avani Condominiums and/or the marketing program of any of the Metrogate Group with respect to any of the other Metrogate Condominiums), to which the Two Avani Condominiums and all of the dwelling unit owners thereof (and their respective residents, tenants and invitees) shall be subject. From and after the Transfer Date and the establishment of the Two-Way Shared Facilities Committee, the use and enjoyment of the Two Recreation Centres, as well as the budgeting of the Two-Way Shared Facilities Costs related thereto, shall be governed by the Two-Way Shared Facilities Committee on behalf of the Two Avani Condominiums, provided however that nothing recommended, endorsed, passed or enacted by or on behalf of the Two-Way Shared Facilities Committee or by the Two Avani Condominiums shall be construed (or be carried out) in a manner which may interfere with [or which may diminish or restrict the right of the Declarant (or any others within the Metrogate Group) to maintain] any of the aforementioned model suites and/or marketing, sales, construction and/or customer service office(s) as hereinbefore provided, until such time as all of the dwelling units in each of the condominiums comprising the Metrogate Condominium

Community (or such lesser number as the Declarant may determine or designate in its sole, unfettered and unchallenged discretion) have been sold and transferred by the Declarant (and/or by any of the others in the Metrogate Group) to each of the respective unit purchasers thereof. The Declarant shall be entitled at any time, and from time to time, to remove all of the furnishings, fixtures, chattels and equipment located in any model suites and/or in any marketing, sales, construction and/or customer service office(s) situate within each of the Two Recreation Centres (or any portion thereof), or may (at the Declarant's sole option) leave any or all of same therein to or for the benefit of the Two Avani Condominiums jointly, as determined by the Declarant in its sole, unfettered and unchallenged discretion.

5.03

Use of the Visitor Parking Comprising Part of the Two-Way Shared Facilities

- a) Each of the visitor parking spaces situate within the confines of either of the Two Avani Condominiums shall be used only by the visitors and guests of the respective owners, residents and tenants of the dwelling units in each of the Two Avani Condominiums from time to time, and by the Declarant's agents, representatives, contractors and invitees from time to time [and with each of such visitor parking spaces to be clearly designated for "**residential visitor parking only**"]. Only one motor vehicle shall be permitted to park (on a temporary basis only) within each visitor parking space, and each such space shall be individually so designated by means of clearly visible signs. For the purposes of this Agreement, the term "motor vehicle", when used in the context of visitor parking, shall be restricted to a private passenger automobile, motorcycle, station wagon, minivan or commercial vehicle or truck, not exceeding 1.9 meters in height, and shall exclude any trailer, recreational vehicle, motor-home, boat and/or snowmobile (and such other vehicles as the Two-Way Shared Facilities Committee may hereafter wish to exclude from the property, from time to time), but shall nevertheless specifically include any construction, servicing and/or loading vehicles used by the Declarant and/or any of its employees, agents, representatives, contractors and/or sub-contractors in the course of constructing, completing, servicing and/or maintaining each of the Two Avani Condominiums or any portion thereof, as well as any service vehicles utilized in connection with the maintenance and/or repair of the units and/or common elements within each of the Two Avani Condominiums.
- b) Notwithstanding anything provided in this Agreement to the contrary, it is expressly understood and agreed that:
 - i) the Declarant, its marketing/sales staff, its authorized personnel or agents, and any prospective unit purchasers shall together have the right to use any of the residential visitor parking spaces (either individually or as a block of visitor parking spaces, with any such block to comprise no less than ten (10) visitor parking spaces, and to be designated by the Declarant in its sole, unfettered and unchallenged discretion), which right shall cease forthwith upon the sale of all dwelling units owned by the Declarant (and/or by any others within the Metrogate Group) in each of the condominiums comprising part of the Metrogate Condominium Community;
 - ii) none of the visitor parking spaces shall be assigned, leased or sold to any unit owner(s) or to any other party or parties, nor otherwise conveyed or encumbered, nor shall any of the visitor parking spaces ever be used by any unit owner(s), nor be made, converted to or considered part of any exclusive use portions of the common elements;
 - iii) where any visitor parking space(s) is/are also designated for handicapped parking, then such visitor handicapped parking space(s) may only be used by a disabled or handicapped visitor to either of the Two Avani Condominiums, provided that he or she holds a valid disabled parking permit that is appropriately displayed or visible in their vehicle; and
 - iv) the use and operation of the visitor parking spaces situate within the confines of each of the Two Avani Condominiums shall be monitored and controlled by the concierge personnel retained by or on behalf of the Two Avani Condominiums.

ARTICLE 6.00 - PAYMENT OF THE TWO-WAY SHARED FACILITIES COSTS

6.01 Notwithstanding anything hereinbefore or hereinafter provided to the contrary, it is understood and agreed by the parties hereto that the Two-Way Shared Facilities Costs shall be allocated and paid for as follows:

- a) From and after the date of registration of the Phase I Condominium, to and until the Phase II Escrow Date, the Phase I Condominium shall pay (on a monthly basis) and be solely responsible for 75% of the Two-Way Shared Facilities Costs, and the Declarant shall pay (on a monthly basis) and be solely responsible for the remaining 25% thereof, provided however that if the Phase II Escrow Date

does not occur or arise before the 2nd anniversary of the date of registration of the Phase I Condominium, then from and after the 2nd anniversary of the date of registration of the Phase I Condominium, to and until the Phase II Escrow Date, the Phase I Condominium shall be obliged to pay (and be solely responsible for) 100% of the Two-Way Shared Facilities Costs;

- b) Once the Phase II Escrow Date has occurred (at any time either before or after the 2nd anniversary of the date of registration of the Phase I Condominium), then from and after the Phase II Escrow Date, to and until the date of registration of the Phase II Condominium, the Phase I Condominium shall pay and be solely responsible for its Proportionate Two-Way Share of the Two-Way Shared Facilities Costs (based on the number of registered dwelling units within the Phase I Condominium and the number of proposed dwelling units in the Phase II Condominium as at the Phase II Escrow Date), and the Declarant shall pay and be solely responsible for the remaining share of the Two-Way Shared Facilities Costs that would otherwise be attributable to the Phase II Condominium; and
- c) Upon the registration of the Phase II Condominium, the Phase II Condominium shall automatically assume and be solely responsible for paying its Proportionate Two-Way Share of the Two-Way Shared Facilities Costs, and the Declarant shall thereupon be automatically released, relieved and fully discharged from any further obligation or liability whatsoever to pay any portion of the Two-Way Shared Facilities Costs.

- 6.02 Forthwith upon the request of the Declarant made at any time following registration of the Phase II Condominium, each of the Two Avani Condominiums shall execute a formal release of the Declarant in order to evidence and confirm the foregoing cessation of the Declarant's liability for any further portion of the Two-Way Shared Facilities Costs, together with such further documents and/or assurances as the Declarant may reasonably require in this regard.
- 6.03 There shall be no retroactive readjustment whatsoever (relative to any period of time prior to the registration of the Phase II Condominium) for any portion of the Two-Way Shared Facilities Costs paid for by either the Phase I Condominium or the Declarant, in the event that (or as a result of) the total registered dwelling unit count of the Phase II Condominium varying from the estimated dwelling unit count thereof as at the date of this Agreement, or as at the Phase II Escrow Date (as the case may be).

ARTICLE 7.00 - THE TWO-WAY SHARED FACILITIES COMMITTEE

- 7.01 The Two-Way Shared Facilities Committee shall consist of four (4) members, two (2) of which shall be appointed by (and be members of) the board of directors of each of the Two Avani Condominiums. The appointment of the members to the Two-Way Shared Facilities Committee shall take place as soon as reasonably possible after the Transfer Date, and all such appointments to the Two-Way Shared Facilities Committee shall be for a period of one year each (unless such appointment is terminated earlier by the appointment of a replacement member).
- 7.02 In the event that the Phase II Condominium is not registered by the Transfer Date, then the Declarant shall be entitled to appoint two nominees to the Two-Way Shared Facilities Committee who shall be entitled to participate on such committee until their respective resignation following the registration of the Phase II Condominium. The members of the Two-Way Shared Facilities Committee so appointed by the Declarant shall resign (and be concurrently replaced) as soon as reasonably possible after the registration of the Phase II Condominium in respect of which they were initially appointed (and in no event later than the first meeting of directors held after the turnover meeting of the Phase II Condominium, convened pursuant to section 43 of the Act).
- 7.03 At least one representative of each of the Two Avani Condominiums (or of the Declarant, in respect of the unregistered Phase II Condominium as aforesaid) must be present, in person or by proxy, in order to constitute a quorum for any meeting held or convened by the Two-Way Shared Facilities Committee, and all decisions of the Two-Way Shared Facilities Committee shall be determined, effected and evidenced by the unanimous vote of all members who are present (or represented by proxy) at any such meeting(s), and the chairman of such meeting(s) shall not have a casting or deciding vote.
- 7.04 Any meeting(s) of the Two-Way Shared Facilities Committee may be held or convened by way of teleconference, or any other form of communication system that allows all of the members of the Two-Way Shared Facilities 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 Two-Way Shared Facilities 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 Two-Way Shared Facilities Committee may, by written resolution signed by all of them, provide their collective consent, in advance, to have any or all meetings of the Two-Way Shared Facilities 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 Two-Way Shared Facilities Committee by any member of a written notice revoking his or her consent to such resolution.

7.05 Once the Two-Way Shared Facilities Committee has been established following the Transfer Date, the Two-Way Shared Facilities Committee shall, inter alia, be responsible for the following:

- a) implementing rules, procedures, protocols and/or policies with respect to the use, operation, staffing, illumination, maintenance and/or repair of the Two-Way Shared Facilities, and the manner in which all maintenance and/or repair work with respect to the Two-Way Shared Facilities (or any portion thereof) shall be carried out;
- b) making arrangements for the illumination, maintenance and/or repair of the Two-Way Shared Facilities, including all equipment and fixtures utilized in connection with the ongoing operation, maintenance and repair of same, and procuring all requisite fire, property damage and public liability insurance coverage for each of the Two Avani Condominiums (with respect to damage and/or injury occasioned to persons and/or property upon or within any portion of the Two-Way Shared Facilities, providing a minimum coverage of \$5 million dollars per occurrence), together with all necessary arrangements to retain an insurance trustee to administer said insurance proceeds;
- c) making arrangements for the provision of all requisite utilities (eg. heat, water and electricity services), security services, computer monitoring services, equipment, staff and/or programs for the operation of the Two-Way Shared Facilities, including without limitation, arranging the retention of personnel to monitor and administer the shared concierge station (and also retaining a building superintendent that will reside within the designated superintendent suite to be situated within the Phase II Condominium, who will assist in maintaining the common elements within each of the Two Avani Condominiums), as well as arranging for the installation, maintenance and reading of separate consumption or check meters measuring the consumption of utilities supplied to the Two-Way Shared Facilities (if same are not already separately metered or sub-metered and invoiced directly by the relevant utility authorities or providers);
- d) making arrangements for the insurance, maintenance and repair of the Avani Crash Wall/Berm, as well as the maintenance of all noise and vibration mitigation measures implemented by the Declarant in connection therewith (if any) in accordance with the noise, vibration and/or safety impact mitigation measures, if any, imposed or required from time to time by the Canadian Pacific Railway Company and/or the City of Toronto; and
- e) preparing and submitting the Two-Way Shared Facilities Budget(s) to each of the Two Avani Condominiums, not less than once annually, outlining the Two-Way Shared Facilities Costs [inclusive of the costs of the matters listed in subparagraphs (a), (b), (c) and (d) above], for incorporation by each of the Two Avani Condominiums as part of their respective overall annual budgets, in accordance with the foregoing provisions hereof.

7.06 Each of the Two Avani Condominiums shall be bound by (and shall correspondingly abide by and comply with) the decisions of the Two-Way Shared Facilities Committee with respect to the operation, illumination, insurance, maintenance and/or repair of the Two-Way Shared Facilities (and all of the equipment, fixtures and/or installations comprising part of same) which serve or benefit the Two Avani Condominiums (excluding however any of the Exclusive Phase I Condominium Equipment and/or the Exclusive Phase II Condominium Equipment respectively), and the manner in which any maintenance and/or repair work with respect to the Two-Way Shared Facilities (or any portion thereof) shall be carried out, as well as the budgeting of the Two-Way Shared Facilities Costs [subject, however, to any dispute(s) regarding same being hereafter submitted to (and ultimately resolved by) binding arbitration, pursuant to the arbitration provisions hereinafter set forth], without requiring anything further whatsoever from the Phase I Condominium or the Phase II Condominium, and accordingly it is understood and agreed that any and all decisions made by the Two-Way Shared Facilities 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 either of the Two Avani Condominiums before or after (or as a prerequisite to) same being effective, operative, binding and enforceable.

ARTICLE 8.00 - THE EASEMENTS

8.01 Confirmation of 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) portions of the Phase I Lands and the Phase II Lands respectively, by virtue of the declaration of the Phase I Condominium or pursuant to one or more specific grants or transfers of easement consented to by the Committee of Adjustment for the City of Toronto and made or exchanged between the Declarant and the Phase I Condominium (before and/or after the registration of the Phase I

Condominium), the parties hereto hereby acknowledge and agree that the Phase I Lands and the Phase II Lands shall be subject to (and shall have the corresponding benefit of) the following easements [excluding however any reference to those easements pertaining to the Shared Roadway (comprising Parts 2 and 3 on Reference Plan 66R-28701 and Part 1 on Reference Plan 66R-29020) which will be governed by the Shared Roadway Agreement], namely:

Vehicular and/or Pedestrian Access Easements Intended to Benefit the Phase I Condominium

- a) an easement, right of way or right in the nature of an easement, in favour of the Phase I Condominium and the unit owners thereof, and their respective residents, tenants, invitees and licensees, over, along, upon and across that portion of the Phase II Lands more particularly designated as **Part 15 on Reference Plan 66R-28701** (hereinafter referred to as the "**Phase II Shared Garage Drivelanes & Walkway Areas**"), for the purposes of attaining pedestrian and vehicular access to, egress from and/or use of the drivelanes and walkway areas situate within the Phase II Shared Garage Drivelanes & Walkway Areas, provided however that such access, egress and/or use shall be subject to any reasonable restrictions imposed by the concierge personnel operating the shared concierge station on behalf of the Two Avani Condominiums, as set out in Instrument No. AT-4458663;
- b) an easement, right of way or right in the nature of an easement, in favour of the visitors of the Phase I Condominium, and the visitors of the unit owners, residents and/or tenants of the dwelling units within the Phase I Condominium, over, along, upon and across that portion of the Phase II Lands more particularly designated as **Parts 15 and 16 on Reference Plan 66R-28701** (hereinafter referred to as the "**Phase II Shared Visitor Parking Areas**"), for the purposes of attaining vehicular and pedestrian access to and egress from the Phase II Shared Visitor Parking Areas, together with the temporary use of the visitor parking spaces located within the Phase II Shared Visitor Parking Areas by the private passenger motor vehicles of the visitors or invitees of the Phase I Condominium, as well as the visitors or invitees of the unit owners, residents and/or tenants of the Phase I Condominium, provided however that such access, egress and/or use shall be subject to any reasonable restrictions imposed by the concierge personnel operating the shared concierge station on behalf of the Two Avani Condominiums, as set out in Instrument No. AT-4458663;

Vehicular and/or Pedestrian Access Easements Intended to Benefit the Phase II Condominium

- c) an easement, right of way or right in the nature of an easement, in favour of the Phase II Condominium and the unit owners thereof, and their respective residents, tenants, invitees and licensees, over, along, upon and across that portion of the Phase I Lands more particularly designated as **Parts 7, 11, 12 and 13 on Reference Plan 66R-28701** (hereinafter collectively referred to as the "**Phase I Common Walkways & Landscaped Areas**"), for the purposes of attaining pedestrian access to, egress from and/or use of the outdoor pedestrian walkways and/or landscaped areas situate within the Phase I Common Walkways & Landscaped Areas, provided however that such access, egress and/or use shall be subject to any reasonable restrictions imposed by the concierge personnel operating the shared concierge station on behalf of the Two Avani Condominiums, as set out in Instrument No. AT-4458663;
- d) an easement, right of way or right in the nature of an easement, in favour of the Phase II Condominium and the unit owners thereof, and their respective residents, tenants, invitees and licensees, over, along, upon and across that portion of the Phase I Lands more particularly designated as **Parts 5, 8, 9 and 10 on Reference Plan 66R-28701** (hereinafter collectively referred to as the "**Phase I Shared Garage Drivelanes & Walkways Areas**"), for the purposes of attaining pedestrian and vehicular access to, egress from and/or use of the garage drivelanes and walkway areas situate within the Phase I Shared Garage Drivelanes & Walkway Areas, to and from the parking units, locker units, bicycle storage/locker units and/or common element areas within each of levels 1, 2, A, B and C of the Phase I Condominium, provided however that such access, egress and/or use shall be subject to any reasonable restrictions imposed by the concierge personnel operating the shared concierge station on behalf of the Two Avani Condominiums, as set out in Instrument No. AT-4458663;
- e) an easement, right of way or right in the nature of an easement, in favour of the visitors of the Phase II Condominium, and the visitors or invitees of the respective unit owners, residents and/or tenants of the dwelling units within the Phase II Condominium, over, along, upon and across that portion of the Phase I Lands more particularly designated as **Parts 5 and 6 on Reference Plan 66R-28701** (hereinafter referred to as the "**Phase I Shared Visitor Parking Areas**"), for the purposes of attaining vehicular and pedestrian access to and egress from the Phase I Shared Visitor Parking Areas, together with the temporary use of the visitor parking spaces located within the Phase I Shared Visitor Parking Areas by the private passenger motor vehicles of the visitors of the Phase II Condominium, as well as the visitors or invitees of the respective unit owners, residents and/or tenants of the dwelling units in the Phase II Condominium, provided however that such access,

egress and/or use shall be subject to any reasonable restrictions imposed by the concierge personnel operating the shared concierge station on behalf of the Two Avani Condominiums, as set out in Instrument No. AT-4458663;

Servicing, Maintenance & Repair Easements Intended to Benefit the Phase II Condominium

- f) an easement, right of way or right in the nature of an easement, in favour of the Phase II Condominium and its authorized agents, employees, representatives, contractors and sub-contractors from time to time in, over, under, across, along, upon and through those portions of the common elements of the Phase I Condominium which are situate on levels 1, 2, A, B and C of the Phase I Condominium (hereinafter collectively referred to as the "Phase I Servicing Areas"), for the purposes of:
- A) enabling, facilitating and/or expediting the installation, operation, alteration, inspection, maintenance and/or repair of all pipes, wires, cables, conduits, watermains, valves and/or meters (including the supply and receipt of utility, storm and sanitary sewer services, and the discharge/drainage of storm and sanitary sewer effluents through same), in order to provide gas, telephone, telecommunication, cable television, water, hydro-electricity, storm and/or sanitary sewer services to the Phase II Lands and/or the Phase II Condominium (or any portion thereof); and
 - B) providing pedestrian and vehicular access and egress to the Phase II Condominium's authorized service personnel (and their respective service vehicles, where feasible or reasonably practical or appropriate, due to the existence of roadways or driveways that have already been physically constructed), together with any equipment, materials and/or machinery utilized in connection with the maintenance, repair and/or inspection of any part of the buildings, structures, installations, improvements and/or services located upon the Phase II Lands [or situate upon any portion of the Phase I Lands but servicing or benefitting the Phase II Lands and/or the Phase II Condominium (or any portion thereof)];

and which easement, right-of-way or right in the nature of an easement shall include, without limitation, the right to penetrate, cross, drill through, affix to, bore into or travel through, upon, along or under any floor slab(s), ceiling(s), concrete block or masonry wall(s), drywall enclosure(s), or similar installation(s) located within the Phase I Servicing Areas for any of the foregoing purposes, provided however that such easement or right of way shall not impair or diminish the load-bearing capacity or structural integrity of the Phase I Servicing Areas or any portion thereof, nor any support that same may provide to any portion of the buildings, structures, installations or improvements located on or within any portion of the Phase I Lands from time to time, nor shall the use or exercise of such easement or right-of-way:

- i) damage, impair or deleteriously affect any of the pipes, wires, cables, conduits, equipment, fixtures, systems and/or installations (or any portion thereof) situate within any portion of the Phase I Condominium and which service (or provide any utility or benefit to) any of the units or common element areas within the Phase I Condominium; and/or
- ii) unreasonably interfere with the use and/or enjoyment of any of the units or common element areas within the Phase I Condominium (or any portion thereof) by the respective unit owners and residents thereof;

and provided further that the foregoing easement shall at all times be used, exercised and/or enjoyed so that, to the extent reasonably possible, such use, exercise and/or enjoyment causes the least amount of interference, inconvenience and/or disruption to the respective owners and residents of the Phase I Condominium, as set out in Instrument No. AT-4458663;

Servient Easement Affecting the Phase I Condominium - the Declarant's Construction Easement

- g) a temporary and non-exclusive servient easement, right-of-way or right in the nature of an easement, in favour of:
- i) the owner or owners from time to time of the Phase II Lands (and their respective successors and assigns) and their respective authorized agents, employees, representatives, contractors and/or sub-contractors from time to time; and
 - ii) the owner or owners from time to time of the Selene Lands (as such term is defined in the Phase I Condominium's declaration), and their respective successors and assigns, and their respective authorized agents, employees, representatives, contractors and/or sub-contractors from time to time;

in, on, over, along, across, upon, under and through the common elements on all levels of the Phase I Condominium (hereinafter referred to as the "Avani Phase I Working Areas"), for the purposes of enabling, facilitating and/or expediting:

- A. vehicular and pedestrian access and egress over the Avani Phase I Working Areas;
- B. the temporary storage and retention of construction equipment and/or materials thereon and/or therein; and
- C. the excavation, backfilling, removal and/or replacement of fill and topsoil, and/or any ancillary undertaking or work with respect thereto;

in order to facilitate and/or expedite the development and construction of:

- 1. the Phase II Condominium upon the Phase II Lands, and to facilitate the integration of same with the buildings, structures, installations and/or services now or hereafter constructed or installed upon the Phase I Lands; and
- 2. the Selene Condominium (as such term is defined in the Phase I Condominium's declaration) upon the Selene Lands, and to facilitate the integration of same with the buildings, structures, installations and/or services now or hereafter constructed or installed upon the Phase I Lands

and which easement or right of way shall include, without limitation, the right to penetrate, cross, drill through, affix to, bore into or travel through, upon, along or under any floor slab(s), ceiling(s), concrete block or masonry wall(s), drywall enclosure(s) or similar installation(s) located within the Avani Phase I Working Areas for any of the foregoing purposes, provided that such easement or right of way shall not impair or diminish the load-bearing capacity or structural integrity of same, or any support that same may provide to any portion of the buildings, structures, installations or improvements located on or within any portion of the Phase I Condominium or the Phase I Lands from time to time, nor shall such easement or right of way unreasonably interfere with the use and enjoyment of the units within the Phase I Condominium by the unit owners thereof and their respective tenants, residents and/or invitees, and provided further that this easement or right of way shall automatically terminate (and be of no further force or effect) on the earlier of:

- a) the date that is 180 days after the date that both the Phase II Condominium and the Selene Condominium have been registered; or
- b) 10 years after the registration of the Phase I Condominium;

as set out in Instrument No. AT-4458663;

Servient Easement Affecting the Phase I Condominium - Air Crane Access Rights and At-Grade and Below-Grade Access/Encroachment Rights for Shoring

- h) a temporary and non-exclusive servient easement, right-of-way or right in the nature of an easement, that will endure no longer than 10 years after the date of registration of the Phase I Condominium, in favour of:
 - i) the owner or owners from time to time of the Phase II Lands (and their respective successors and assigns) and their respective authorized agents, employees, representatives, contractors and/or sub-contractors from time to time; and
 - ii) the owner or owners from time to time of the Selene Lands (as such term is defined in the Phase I Condominium's declaration), and their respective successors and assigns, and their respective authorized agents, employees, representatives, contractors and/or sub-contractors from time to time;
 - A. over, above and across the common elements of the Phase I Condominium for airspace access thereto, therein and thereover (hereinafter referred to as the "Air Access Encroachment Area"), for the purposes of providing unlimited and unrestricted air crane access above, within and through the Air Access Encroachment Area, so as to permit overhead cranes to be operated (and to swing) within and through the Air Access Encroachment Area, in order to facilitate the development, construction and completion of the Phase II Condominium on the Phase II Lands, and the development, construction and completion of the Selene Condominium (as such term is defined in the Phase I Condominium's declaration) on the Selene Lands, respectively; and

- B. over, upon, below, along, across, beneath and through the common elements of the Phase I Condominium for at-grade and below-grade access thereto and therein (hereinafter collectively referred to as the "**At Grade & Below Grade Access/Encroachment Area**"), for the purposes of allowing the installation (and permanent encroachment) of tiebacks, anchors, caisson walls, and other related shoring materials and equipment, and the corresponding access thereto by vehicles and workmen working within the At Grade & Below Grade Access/Encroachment Area, in order to facilitate and/or expedite the development, construction and completion of the foundation and underground parking garage of the Phase II Condominium on the Phase II Lands, and the development, construction and completion of the foundation and underground parking garage of the Selene Condominium on the Selene Lands respectively, on the express understanding that there shall be no obligation whatsoever on the part of the owner or owners of either of the dominant tenements [namely the owner(s) of the Phase II Lands and the owner(s) of the Selene Lands] to remove, at any time hereafter, any or all of the below grade tiebacks, anchors and/or other related shoring materials so installed and permanently encroaching within and/or beneath the Phase I Lands;

as set out in Instrument No. AT-4458663;

Support Easements Affecting the Phase I Condominium and Intended to Benefit the Phase II Condominium and the Selene Condominium

- i) an easement for support, or a right of support, in favour of :
- i) the owner or owners from time to time (and their respective successors and assigns) of the Phase II Lands, including the Phase II Condominium and the unit owners thereof from time to time, and their respective residents, tenants, invitees and licensees from time to time; and
 - ii) the owner or owners from time to time (and their respective successors and assigns) of the Selene Lands (as such term is defined in the Phase I Condominium's declaration), including the Selene Condominium (as such term is defined in the Phase I Condominium's declaration) and the unit owners thereof from time to time, and their respective residents, tenants, invitees and licensees from time to time;

in, on, over, across, along, upon and through those portions of the Phase I Lands comprising the common elements of the Phase I Condominium which are situate on levels 1, 2, 3, A, B and C respectively (hereinafter referred to as the "**Avani Phase I Support Areas**"), for the purposes of providing support to or for:

- A. the building(s), structures(s), improvement(s) and/or installation(s) now or hereafter erected on the Phase II Lands and/or comprising part of the Phase II Condominium;
- B. the building(s), structures(s), improvement(s) and/or installation(s) now or hereafter erected on the Selene Lands and/or comprising part of the Selene Condominium; and
- C. the Shared Roadway benefitting the Phase II Lands and/or the Phase II Condominium, as well as the Selene Lands and/or the Selene Condominium;

from and by all structural members, columns, walls, ceilings, floor slabs and/or any other building or structural components (including the soil) located upon, within or beneath the Phase I Support Areas, as set out in Instrument No. AT-4458663;

8.02 Invalidity of Easements

In the event that any of the Easements hereinbefore 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 Easement 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 Easements

- a) The use and enjoyment of the Easements by the Benefitting Owners shall be subject to the provisions and restrictions hereinafter set forth.

- b) Subject to the provisions of sections 8.04, 8.05 and 8.06 hereof which pertain to the use or exercise of specific Easements, it is understood and agreed that:
- i) 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, so as to minimize (insofar as is reasonably possible) any interference with (and/or any inconvenience occasioned to) the Servient Owners;
 - ii) each of the Two Avani Condominiums shall have the right to partially obstruct (on a temporary basis only) any Easement Area (or alternatively the right to temporarily suspend the benefit of any Easement relating thereto) within its respective lands or boundaries, in order to maintain and/or repair any buildings, structures, installations and/or services that each of said condominiums has a duty to maintain and repair under the Act, upon giving ten (10) days prior written notice of such intended partial obstruction or temporary suspension (as the case may be) to the Benefitting Owners, provided however that in the event that such maintenance and repair work involves or pertains to any part of the Two-Way Shared Facilities, then such maintenance and repair work shall only be carried out and completed in accordance with (and pursuant to) the provisions of Article 9.00 hereof; and
 - iii) there shall be no partial obstruction of an Easement Area (nor any right to temporarily suspend the benefit of any Easement relating thereto) for any purpose other than those specifically provided or contemplated in this Agreement, without the consent of the Benefitting Owners, unless alternate arrangements with respect to the use and enjoyment of the subject Easement and/or Easement Area are provided or implemented to the satisfaction of the Benefitting Owners, acting reasonably.
- c) Notwithstanding any provision contained in this Agreement to the contrary, it is understood and agreed by the parties hereto that the Two-Way Shared Facilities Committee shall be entitled to arrange for the partial obstruction (on a temporary basis only) of any Easement Area, and/or the temporary suspension of the benefit of any Easement(s) relating thereto, provided any such suspension and/or obstruction is necessary or desired to facilitate or expedite the inspection, maintenance and/or repair of all or any portion of the Two-Way Shared Facilities, and provided further that in each such instance, five (5) days prior written notice of the temporary suspension or partial obstruction shall be given to the Benefitting Owners by or on behalf of the Two-Way Shared Facilities Committee.
- d) The temporary suspension of an Easement and/or the partial obstruction of an Easement Area 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 Use of Vehicular & Pedestrian Access Easements

Subject to the overriding provisions of section 8.03(c) hereof, there shall be no partial or temporary obstruction of any of the Shared Easement Areas, nor the Two-Way Shared Underground Garage, or any portion thereof (nor any temporary suspension of the benefits of any Easement(s) providing for the use and enjoyment of same), unless and until alternative arrangements for access thereto (and egress therefrom), and alternate visitor parking areas (if so required because of the partial or temporary obstruction of any shared visitor parking areas), have been provided by (or implemented to the satisfaction of) the Two-Way Shared Facilities Committee.

8.05 Use of Servicing, Maintenance & Repair Easements

- a) Subject to the overriding provisions of section 8.03(c) hereof, there shall be no obstruction or suspension (whether partial, temporary or otherwise) of the Servicing, Maintenance & Repair Easements (or any portion thereof) which gives rise to (or results in) the interruption of any utility or other service(s) to any one or more of the Benefitting Owners for a period of more than three (3) hours, unless and until the consent of the Benefitting Owners thereto has first been obtained.
- b) Except in the case of an Emergency, no entry shall be made upon the lands of the Servient Owners (or any portion thereof) pursuant to the use or exercise of the Servicing, Maintenance & Repair Easements, unless and until forty-eight (48) hours prior written notice of any such intention to enter is given to the Servient Owners, and such notice shall specify both the anticipated time of commencement and the estimated time of completion of the work so intended to be carried out.
- c) Any work to be conducted in connection with the Servicing, Maintenance & Repair Easements shall be carried out in accordance with the provisions of Article 9.00 hereof.

8.06 Use of the Declarant's Construction Easement, and the Air Crane Access Rights and At-Grade and Below-Grade Access/Encroachment Rights for Shoring

- a) The benefit of the Declarant's Construction Easement, and the benefit of the air crane access rights and the at-grade and below-grade access/encroachment rights for shoring in favour of the Declarant, shall not be partially obstructed or temporarily suspended without the Declarant's prior written consent thereto.
- b) In the event that any buildings, structures, improvements and/or services situate within the Phase I Lands are damaged, destroyed or materially altered by the Declarant, or by the Declarant's workmen, agents, representatives, contractors and/or sub-contractors (or by anyone else for whom the Declarant is, in law, vicariously liable or responsible) in the course of using or exercising the Declarant's Construction Easement, or in the course of exercising the aforementioned air crane access rights and the at-grade and below-grade access/encroachment rights for shoring, then the Declarant shall be responsible for repairing and restoring same to substantially the same condition as existed prior to the occurrence of such damage, destruction or material alteration (as the case may be).

8.07 Use of Support Easements

There shall be no partial obstruction (on a temporary basis or otherwise) of any Support Structures, nor any suspension (on a temporary basis or otherwise) of any Support Easements, unless and until sufficient alternate measures which provide for the support of all buildings, structures, installations and/or improvements of the Benefitting Owners have been provided or implemented to the satisfaction of the Benefitting Owners, acting reasonably.

8.08 Relocation of Easements

- a) The Declarant shall have the unilateral right to relocate any of the Easement Areas situate within the Phase II Lands (which relocated easement areas shall hereinafter be collectively referred to as the "Relocated Easement Areas"), as well as the unilateral right to amend any of the Easements relating thereto, so that same ultimately reflect or accord with the Relocated Easement Areas (which amended Easements shall hereinafter be collectively referred to as the "Relocated Easements"), in order to re-align any of the Easement Areas with the as-built location/condition of any buildings, structures, installations, services and/or improvements hereafter erected or installed upon or within the Phase II Lands (or any portion thereof) and/or intended to be used in connection with any of the Easements, or to rectify any encroachment of a building, structure, installation, service and/or improvement that was not intended to be part of any of the Easement Areas, provided however that:
 - i) the relocation of any Easement Area and/or the amendment of any Easement as hereinbefore contemplated shall not diminish the benefit of the subject Easement to such an extent that it would no longer be adequate for the purposes intended;
 - ii) the Declarant shall cause a reference plan of survey delineating the Relocated Easement Area(s) to be prepared and registered in the Land Titles Division of the Toronto Registry Office (No. 66), at the Declarant's sole cost and expense; and
 - iii) the Declarant shall be responsible for procuring all consents from the Governmental Authorities which may be required in connection with the relocation of any Easements (including any requisite consents from the Committee of Adjustment), on the express understanding that the Phase I Condominium shall assist (and co-operate with) the Declarant in satisfying any conditions imposed with respect thereto.
- b) Each of the Phase I Condominium and the Phase II Condominium shall provide and execute all such releases of (or reconveyances with respect to) any easements created or granted in its favour (and/or in favour of the Phase I Lands or the Phase II Lands, as the case may be) over portions of the Avani Site, and shall correspondingly provide and execute all such transfers or conveyances with respect to any Relocated Easements over portions of the common elements of the Phase I Condominium and/or the Phase II Condominium, as may be required or desired from time to time in order to create, evidence and/or confirm any of the Relocated Easements and/or any of the Relocated Easement Areas for the purposes hereinbefore described in section 8.08(a) hereof, and each of the Phase I Condominium and the Phase II Condominium shall accordingly convene all requisite meetings, and use their respective best efforts to obtain or procure all requisite votes, and execute and provide all such further documents and assurances (and do or suffer any acts necessary) to give effect to the foregoing, on the express understanding that there shall be no fee, price, charge or other consideration payable by any of the parties hereto (nor by the Phase II Condominium) with respect to any of the foregoing releases or reconveyances of any Easements and/or any transfers or

conveyances of any Relocated Easements, provided however that the preparation and registration of all of the aforesaid documentation shall be undertaken by or on behalf of the Declarant, all at its sole cost and expense.

8.09 Omitted Easements

In the event that any of the Benefitting Owners (hereinafter referred to in this section 8.09 as the "Dominant Owner") at any time and from time to time shall deliver written notice to any of the other parties hereto (hereinafter referred to in this section 8.09 as the "Servient Owner") within ten (10) years following the date of this Agreement that any easement, right or right in the nature of an easement in, on, over, across, through, above, under, or otherwise pertaining to such Servient Owner's lands as servient tenement, in favour of the Dominant Owner's lands which is, in its opinion, acting reasonably, required for the proper and efficient functioning of the Dominant Owner's condominium, has not been created for any reason, then the Servient Owner shall grant, transfer and convey such easement, right, or right in the nature of an easement to the Dominant Owner for nil consideration (but shall nevertheless be reimbursed for all reasonable legal fees and disbursements incurred in connection therewith), whereupon the provisions of this Article 8.00 shall apply to such newly-created easement(s), *mutatis mutandis*, and the Dominant Owner shall be responsible for all costs and expenses incurred in connection with the procurement of any requisite consent(s) to the Committee of Adjustment and satisfying all conditions imposed in connection therewith. Without limiting the generality of the foregoing, the Dominant Owner shall deliver to the Servient Owner, along with its request for any such easement, a draft reference plan of survey prepared by an Ontario Land Surveyor obtained at the sole cost and expense of the Dominant Owner, depicting thereon those portions of the Servient Owner's lands which are intended to be made subject to the said easement, together with written reasons explaining why such an easement is required. In the event that the Servient Owner shall dispute the requirement for such an easement, then such dispute shall be resolved pursuant to the arbitration provisions contained in this Agreement, based on the criteria for such an easement set forth above. Provided that the Dominant Owner obtains the necessary consent(s) of the Committee of Adjustment to the granting or creation of said easement, thirty (30) days following the later of the date upon which such consent(s) becomes final, binding and incapable of further appeal, the Servient Owner shall grant, transfer and convey the said easement to the Dominant Owner, and the preparation and registration of the requisite documentation in connection therewith shall be performed by the Dominant Owner, all at its sole cost and expense. The obligation to grant, transfer and convey any easement pursuant to this section shall be stayed pending the decision of the arbitration panel with respect to any arbitration initiated with reference to this section.

ARTICLE 9.00 - MAINTENANCE AND REPAIR WORK

- 9.01 The inspection, maintenance and/or repair of any building, structure, installation, service and/or improvement undertaken in connection with (or conducted in the course of using or exercising) the Servicing, Maintenance & Repair Easements, 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 following conditions, provisions and restrictions, namely:
- a) any Work relating to the Two-Way Shared Facilities (hereinafter referred to as the "Shared Work") undertaken (or required to be undertaken) prior to the Transfer Date, shall be carried out and completed under the direction and control of the Declarant, while any Shared Work undertaken (or required to be undertaken) after the Transfer Date shall be the sole responsibility of the Two-Way Shared Facilities Committee acting on behalf of the Two Avani Condominiums, and shall be carried out and completed under the direction and control of the Two-Way Shared Facilities Committee, and in either case, the cost of undertaking and completing the Shared Work shall comprise part of the Two-Way Shared Facilities Costs; and
 - b) any Work that does not involve or directly relate to any of the Two-Way Shared Facilities (hereinafter collectively referred to as the "Exclusive Work"), shall be the sole responsibility of the Benefitting Owners, and shall be carried out and completed under the direction and control of the Benefitting Owners, all at their sole cost and expense.
- 9.02 The Shared Work shall be carried out as soon as reasonably possible, having due regard to weather conditions and the availability of labour, materials and equipment.
- 9.03 In the event that any building, structure, installation, service and/or improvement now or hereafter erected or installed upon or within the Avani Site (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:
- a) the Declarant, if such restoration and/or repair work is being undertaken prior to the Transfer Date, and by the Two-Way Shared Facilities Committee if such restoration and/or repair work is being undertaken after the Transfer Date, provided that any such damage and/or alteration arose with

respect to any Shared Work, on the express understanding and agreement that the cost of restoring and/or repairing any such damage or alteration shall comprise part of the Two-Way Shared Facilities Costs; or

- b) the Benefitting Owners, if said damage and/or alteration arose pursuant to any Exclusive Work (or pursuant to any Shared Work carried out solely at the direction or control of the Benefitting Owners pursuant to Article 10.00 hereof), on the understanding that the cost of restoring and/or repairing any such damage or alteration shall be borne by (and be the sole responsibility of) the Benefitting Owners.

ARTICLE 10.00 - SELF-HELP REMEDY WITH RESPECT TO SHARED 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 Two Avani Condominiums shall be entitled to carry out and complete the Shared Work (in lieu of waiting for the Two-Way Shared Facilities Committee to direct and complete same), provided however that in such circumstances each of the Two Avani Condominiums shall make reasonable efforts to give prior notice of the nature of the Emergency (and of the nature and scope of the Shared Work necessary to be undertaken in light of the Emergency) to the Two-Way Shared Facilities Committee, prior to undertaking the Shared Work;
- b) In the event that:
 - i) the Two-Way Shared Facilities Committee fails to implement, carry out and/or complete any Shared Work that either of the Two Avani 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 Two-Way Shared Facilities Committee (as the case may be) fails to obtain and maintain the Two-Way Shared Facilities Insurance (as hereinafter defined) which it is obliged to obtain and maintain pursuant to the provisions of Article 12.00 hereof; or
 - iii) either of the Two Avani Condominiums fails to enter into the Shared Insurance Trust Agreement (as hereinafter defined) in accordance with the provisions of Article 13.00 hereof;

(and for the purposes of this Agreement, the party failing to carry out the Shared Work, or to obtain and maintain the Two-Way Shared Facilities Insurance and/or to enter into the Shared Insurance Trust Agreement, as the case may be, shall hereinafter be referred to as the "Defaulting Party", and the party intending to carry out the Shared Work, or to obtain and maintain the Two-Way Shared Facilities Insurance and/or to enter into the Shared Insurance Trust Agreement (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:

- i) 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
- ii) 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 Shared Work (in accordance with, and subject to, the provisions of Section 9.02 and 9.03 hereof), or to obtain and maintain the Two-Way Shared Facilities Insurance and/or enter into the Shared Insurance Trust Agreement 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 Two-Way Shared Facilities 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 Shared Work by or on behalf of the Two-Way Shared Facilities Committee shall be evidenced by either its institution of a tendering process with respect to the Shared 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 any of the parties hereto, nor by the Phase II Condominium or the Two-Way Shared Facilities 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 Phase I Condominium hereby covenants and agrees to forthwith repair and/or replace any landscaping, equipment or other property (both realty and personalty) within the Phase II Condominium and/or the Phase II Lands which is altered, damaged or destroyed by any of the respective unit owners within the Phase I Condominium from time to time, and/or by any of their respective residents, tenants, invitees and/or licensees, or by the Phase I Condominium's employees, agents, representatives, contractors and/or subcontractors, or by anyone else for whom the Phase I Condominium is, in law, vicariously liable or responsible, in the course of using (or enjoying the benefits of) the Two-Way Shared Facilities or any portion thereof.
- 11.02 The Declarant, on its own behalf and on behalf of the Phase II Condominium to be registered sometime hereafter, hereby covenants and agrees to forthwith repair and/or replace any landscaping, equipment or other property (both realty and personalty) within the Phase I Condominium and/or the Phase I Lands which is altered, damaged or destroyed by the Declarant's employees, agents, representatives, contractors and/or subcontractors, or by any unit purchasers (or by any other permitted occupants, and/or their respective invitees or licensees) in the Phase II Condominium who have taken possession of their respective units, with the consent or concurrence of the Declarant, prior to the registration of the Phase II Condominium, or by anyone else for whom the Declarant is, in law, vicariously liable or responsible, in the course of using (or enjoying the benefits of) the Two-Way Shared Facilities or any portion thereof.
- 11.03 Notwithstanding anything provided in section 11.02 hereof to the contrary, it is expressly understood and agreed by the parties hereto that once the Phase II Condominium is registered as a separate condominium corporation under the Act, then:
- a) the Phase II Condominium shall thereafter be exclusively obliged to forthwith repair and/or replace any landscaping, equipment or other property (both realty and personalty) within the Phase I Condominium and/or the Phase I Lands which is altered, damaged or destroyed by any of the respective unit owners within the Phase II Condominium from time to time, and/or by any of their respective residents, tenants, invitees and/or licensees, or by the Phase II Condominium's employees, agents, representatives, contractors and/or subcontractors, or by anyone else for whom the Phase II Condominium is, in law, vicariously liable or responsible, in the course of using (or enjoying the benefits of) the Two-Way Shared Facilities or any portion thereof; and
 - b) the Declarant shall thereupon be automatically relieved and fully released and discharged of its obligations and liabilities towards the Phase I Condominium arising under section 11.02 hereof.
- 11.04 Subject to the foregoing provisions of this Article, each of the Two Avani Condominiums shall hereafter indemnify and save the other harmless, from and against all costs, claims, damages and/or liabilities which either of the Two Avani Condominiums may hereafter suffer or incur as a result of (or in connection with) the use, operation, maintenance and/or repair of the Two-Way Shared Facilities (or any portion thereof) by the other of the Two Avani Condominiums (or by those for whom the other of the Two Avani Condominiums is or may be vicariously liable, at law or in equity), provided however that neither condominium corporation shall be indemnified for its own acts or instances of gross negligence or wilful misconduct (nor for the gross negligence or wilful misconduct committed by anyone else for whom either of the Two Avani Condominiums so seeking indemnification may be vicariously liable).

ARTICLE 12.00 - INSURANCE

- 12.01 Until the Transfer Date and the creation thereafter of the Two-Way Shared Facilities Committee, each of the Two Avani Condominiums, or the Declarant on behalf of the Phase II Condominium until it is registered (with each of said parties being hereinbefore and hereinafter individually referred to as a **"Responsible Party"** and with both of said parties being hereinbefore and hereinafter collectively referred to as the **"Responsible Parties"**) shall obtain and maintain the following insurance coverage, in accordance with the provisions of the Act and the provisions hereinafter set forth (hereinbefore and hereinafter collectively referred to as the **"Two-Way Shared Facilities Insurance"**) with respect to those portions of the Two-Way Shared Facilities and/or the Support Structures which are contained within (or situate upon) their respective lands or boundaries (with such portions of the Two-Way Shared Facilities and the Support Structures being hereinafter referred to as their **"Respective Portions"**), namely:
- a) comprehensive general liability insurance with respect to incidents or occurrences happening upon their Respective Portions, providing a minimum coverage of \$5,000,000.00 per occurrence;
 - b) fire and property damage insurance sufficient to fully cover the repair and/or replacement cost of all damaged property (both realty and personalty) situate within (or comprising part of) their Respective Portions; and

- c) boiler, machinery and pressure vessel insurance, providing coverage for an amount not less than the aggregate amount of the property damage insurance coverage so obtained, and which insurance shall specifically contain or include a "disputed loss agreement" between the property loss insurer(s) and the boiler and machinery insurer(s).

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

- a) name each of the Responsible Parties as a named insured (or co-insured) and shall not contain any co-insurance clause;
- b) contain a provision obliging the insurer not to cancel or alter (or refuse to renew) such insurance policy prior to its expiration date, except after giving not less than thirty (30) days prior written notice to each of the named insured parties thereunder;
- c) be procured from (and maintained with) the same insurer, and prior to the Transfer Date, said insurer shall be selected by the Declarant in its sole, unfettered and unchallenged discretion, and thereafter same shall be chosen by the Two-Way Shared Facilities Committee on behalf of the Two Avani Condominiums; and
- d) contain waivers of subrogation which cover, at a minimum, the Responsible Parties and the Insurance Trustee (as hereinafter defined), as well as each of the directors, officers, managers, agents, employees and designated representatives of each of the Two Avani Condominiums and the Declarant, save and except for arson, fraud, vandalism or wilful misconduct.

12.03 Any proceeds arising from the Two-Way Shared Facilities Insurance shall be payable as follows:

- a) to the Insurance Trustee, with respect to any loss occasioned to any of the Respective Portions comprising part of (or encompassed within) the registered condominium description plan of the Phase I Condominium or the Phase II Condominium; and
- b) to the Declarant, with respect to any loss occasioned to any of the Respective Portions not yet contained (nor encompassed within) the registered condominium description plan of the Phase II Condominium;

for the purposes of carrying out any Shared Work due to (or in connection with) the damage which gave rise to the aforementioned insurance proceeds, in accordance with the provisions of Article 9.00 hereof. In the event that there are any surplus proceeds remaining after the completion of such Shared Work, then the Responsible Party whose Respective Portions have been repaired and/or restored (as the case may be) shall be entitled to receive and retain said surplus proceeds.

12.04 Nothing contained in this Agreement shall be construed to prohibit either of the Two Avani Condominiums (or the Declarant on behalf of the Phase II Condominium which is not yet registered) from arranging or procuring additional insurance above and beyond the insurance coverage contemplated herein, provided however that any premiums payable with respect to same shall be borne by the party obtaining such additional insurance coverage.

12.05 From and after the Transfer Date, the responsibility for procuring the Two-Way Shared Facilities Insurance shall devolve upon the Two-Way Shared Facilities Committee, which shall obtain and maintain such insurance coverage for and on behalf of each of the Two Avani Condominiums, on the express understanding that all premiums payable with respect thereto, and any deductible(s) payable in connection therewith, shall be deemed to comprise or constitute part of the Two-Way Shared Facilities Costs, and shall accordingly be borne or apportioned in accordance with (and be paid pursuant to) the provisions of Article 6.00 hereof.

12.06 Prior to the Transfer Date, each of the Responsible Parties shall obtain (and thereafter the Two-Way Shared Facilities Committee shall obtain) an appraisal from one or more independent and qualified appraisers, in order to ascertain the full replacement cost of their Respective Portions (or in the case of the Two-Way Shared Facilities Committee, an appraisal of the full replacement cost of all of the Two-Way Shared Facilities) whenever such an appraisal is necessary, but in any event not less than once in every three (3) years, and the cost of said appraisal(s) shall constitute part of the Two-Way Shared Facilities Costs.

12.07 For the purposes of greater certainty and clarity, there shall be no obligation on any party to obtain insurance coverage with respect to any portion of the Two-Way Shared Facilities that have not been fully constructed and completed from time to time, nor with respect to any boilers, machinery or pressure vessels not yet installed or operating within any building(s) constructed upon or within the Avani Site.

ARTICLE 13.00 - INSURANCE TRUSTEE

- 13.01 As and when each of the Two Avani Condominiums is registered as a separate condominium corporation, each of them shall forthwith retain the services of the same insurance trustee (hereinbefore and hereinafter referred to as the "**Insurance Trustee**"), and shall concomitantly enter into (and keep in good standing, and comply with the terms and provisions of) an insurance trust agreement between the Two Avani Condominiums and the Insurance Trustee [or alternatively a counterpart thereof, pursuant to which only the Insurance Trustee and any one (but not both) of the Two Avani Condominiums are parties or signatories thereto] dealing with (or pertaining to) to the Two-Way Shared Facilities Insurance (hereinbefore and hereinafter referred to as the "**Insurance Trust Agreement**").
- 13.02 The Insurance Trust Agreement shall contain provisions regarding the use and/or distribution of any insurance proceeds arising from (or under) the Two-Way Shared Facilities Insurance, which reflect the foregoing terms and provisions of this Agreement, and may contain any other provisions which are not inconsistent with the foregoing terms and provisions hereof that may be agreed upon from time to time, on the express understanding that in the event of a conflict or inconsistency between the terms and provisions of the Insurance Trust Agreement and this Agreement, then the terms and provisions of this Agreement shall govern and prevail.
- 13.03 Each of the Two Avani Condominiums shall fully comply with the provisions of the Insurance Trust Agreement (or any separate insurance trust agreement that each of the Two Avani Condominiums may enter into separately with the Insurance Trustee in respect of the Two-Way Shared Facilities or any portion thereof).

ARTICLE 14.00 - DAMAGE TO THE TWO-WAY SHARED FACILITIES

- 14.01 In the event that there is any damage occasioned to the Two-Way Shared Facilities or any portion thereof, then same shall be repaired and restored in accordance with the provisions of Article 9.00 hereof.
- 14.02 In the event that it is necessary to relocate any of the Easement Areas within the Avani Site and/or to amend any of the Easements relating thereto, as a result of the repair and/or restoration of any damage occasioned to the Two-Way Shared Facilities or any portion thereof, in order to re-align the Easement Areas with the as-built condition/location of any building, structure, installation, service and/or facility intended to be used pursuant to (or in connection with) any of the Easements relating thereto, or to rectify any encroachment of any building, structure, installation, service and/or facility that was not intended to be part of the Easement Area, then the provisions of section 8.08 hereof shall apply, *mutatis mutandis*, to the relocation and/or amendment of said Easement Areas and/or Easements, provided however that in such circumstances, the obligations imposed upon the Declarant in section 8.08 hereof shall be deemed and construed to be the corresponding obligations of the Responsible Parties or the Two-Way Shared Facilities Committee (as the case may be).

ARTICLE 15.00 - TERMINATION OF ANY CONDOMINIUM

- 15.01 The respective obligations and responsibilities of each of the Two Avani Condominiums set forth in this Agreement (including without limitation, the obligation to repair after damage set out in Article 14.00 hereof) shall apply notwithstanding that either or both of the Two Avani Condominiums may hereafter elect to terminate the government of its lands under the Act (or is hereafter ordered to be terminated by a court of competent jurisdiction), and in the event of such termination, each of the unit owners of such terminated condominium (who are hereby acknowledged to become the owners of the lands which were formerly encompassed within the condominium, as tenants in common) shall be bound by the terms and provisions of this Agreement as if each of them were original parties/signatories hereto, and shall correspondingly be jointly and severally liable to comply with all of the covenants and obligations set forth in this Agreement, and shall also be obliged to execute and provide such further documents and assurances as may be required or desired by the other registered condominium created upon the Avani Site (or any portion thereof), and/or by the Declarant (on behalf of the Phase II Condominium, until such time as same is registered as a separate condominium), in order to give full force and effect to the provisions of this Agreement.
- 15.02 For the purposes of section 122, section 123 and section 127(1) of the Act, the obligations arising under this Agreement (including without limitation, the obligations contained herein to undertake and complete the Repair and Restoration Work) shall be deemed to constitute:
- a) an encumbrance against each unit (and its appurtenant common interest) within the Phase I Condominium, created after the registration of the declaration and description of the Phase I Condominium; and
 - b) an encumbrance against the Phase II Lands, and all interests appurtenant thereto, as well as an encumbrance against each unit (and its appurtenant common interest) within the Phase II

Condominium, created before the registration of the declaration and description of the Phase II Condominium.

ARTICLE 16.00 - THE EASEMENT CHARGE

- 16.01 In the event that any of the parties hereto (or in the event that the Phase II Condominium, following its registration under the Act) shall fail to pay or contribute any monies required to be paid or contributed in accordance with the foregoing provisions of this Agreement (including without limitation, any portion of the Two-Way Shared Facilities 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 the other party hereto (or from the Phase II Condominium following its registration, provided it is not then in default of its obligations hereunder) or from the Two-Way Shared Facilities Committee (hereinafter referred to as the "**Non-Delinquent Party**") requesting such monies to be paid or contributed, then the Non-Delinquent Party shall be entitled to pay or contribute those monies which the Delinquent Party should have paid or contributed, and all monies so expended by the Non-Delinquent Party shall, until repaid by the Delinquent Party, bear interest at the rate of **24% per annum**, calculated and compounded monthly on such amount as is from time to time unpaid, and until so paid, such outstanding amount (together with all interest accruing thereon as aforesaid) shall, to the extent thereof, be and constitute a lien and charge against the Delinquent Party's lands or common elements, as the case may be (hereinafter referred to as the "**Easement Charge**").
- 16.02 Subject to the overriding provisions of section 16.04 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 by the parties hereto that if either of the Two Avani Condominiums is the Delinquent Party as hereinbefore contemplated, then the Easement Charge shall then be deemed and construed, for all purposes, to be a corresponding charge and encumbrance against each of the units within such condominium, 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.
- 16.03 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 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*.
- 16.04 The Easement Charge need not be registered against the title to the Delinquent Party's lands, 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 Delinquent Party's lands, common elements and/or units, 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 Delinquent Party's lands, common elements and/or units (as the case may be) in priority to the registration of the Easement Charge (with all such prior liens, mortgages, charges, interests and/or encumbrances being 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 17.00 - DUTY TO MAINTAIN & REPAIR THE NON-SHARED COMPONENTS
OF THE AVANI SITE**

- 17.01 Each of the Two Avani Condominiums covenants and agrees to maintain and repair, at its sole cost and expense, and keep in a good state of repair and condition, all existing structures, buildings and installations (and any future structures and installations to be constructed hereafter) within its respective lands or common elements (including all Support Structures forming part of its respective lands or common elements which provide support to the other of the Two Avani Condominiums), all in accordance with a "first class" standard of building maintenance and repair practices and procedures prevailing in the City of Toronto for (or applicable to) buildings, structures and/or installations that are similar or comparable in type, design, composition, quality and age to that of the Two Avani Condominiums.
- 17.02 Each of the Two Avani Condominiums shall make every reasonable effort not to do anything that will diminish or reduce (or that may likely diminish or reduce) the load-bearing and support capacity of the Support Structures forming part of its lands or common elements (as the case may be), so as to not result in a reduction or diminution of such Support Structure's ability or capacity to lend direct or indirect support to the buildings and installations of the other of the Two Avani Condominiums, and to obviate any significant increase in the cost or expense of maintaining, repairing and/or replacing any building(s) or installation(s) which require(s) support from such Support Structures.
- 17.03 Each of the Two Avani Condominiums covenants and agrees that if so requested by the other of the Two Avani Condominiums, it shall undertake a joint inspection of the Support Structures forming part of its lands or common elements [including without limitation, the columns, load points, roof slab(s) and water proofing membrane(s), walls and other support installations comprising same]. The other of the Two Avani Condominiums shall be permitted to request said joint inspection, and the parties undertaking such joint inspection, together with their agents, employees, representatives, engineers and consultants, shall be permitted to accompany (and confer with) one another during such inspection. Where such joint inspection reveals that maintenance and repairs are necessary to the Support Structures so inspected, in order to provide the support capacity contemplated by the Support Easements, then the condominium corporation which is the owner of the common elements within which the Support Structures are situate, shall, at its sole cost and expense, attend to such maintenance and repairs in accordance with the "first class" standard of building maintenance and repair practices and procedures prevailing in the City of Toronto for (or applicable to) buildings, structures and/or installations that are similar or comparable in type, design, composition, quality and age to that of the Two Avani Condominiums. Each of the Two Avani Condominiums acknowledges and agrees that in the course of conducting such joint inspection, it shall use reasonable efforts to minimize the disruption of the usual or customary use and enjoyment by any owner(s), tenant(s) and/or occupant(s) of the lands being inspected.
- 17.04 Each of the Two Avani Condominiums covenants and agrees to indemnify and save the other harmless, from and against any and all demands, claims, enforcement actions, costs, expenses and losses, including reasonable legal fees (hereinafter individually referred to as a "Claim" and collectively referred to as the "Claims") suffered or incurred by such other of the Two Avani Condominiums which may result from, or arise out of (or in relation to) the following:
- a) the failure to maintain and repair all existing structures, buildings and installations (and any future structures and installations to be constructed hereafter) within its lands or common elements (including any Support Structures) in accordance with the terms of this Agreement; or
 - b) the performance of any repair work and/or restoration work (including any demolition, excavation, building, construction and/or clean-up activities in connection therewith) and/or arising from any construction lien claim(s) and related court proceedings; or
 - c) the existence of any Hazardous Substance (as hereinafter defined) in or upon any common element areas prior to the date of this Agreement, and/or any Hazardous Substance currently (or in the future) located in, on, or upon the common elements and/or the placement of any Hazardous Substance in or upon any portion of the common elements after the date of this Agreement. For the purposes of this Article 17.00, the term "Hazardous Substance" shall mean any petroleum product, asbestos product, lead, lead paint, mold or mold conditions, or any other material, substance or waste that is recognized as being hazardous or dangerous to health or to the environment by any federal, provincial or local agency having environmental protection jurisdiction over the Avani Site;
- save and except to the extent that any of the Claims arise by virtue of the negligence and/or wilful neglect or misconduct of the party seeking such indemnity, or by virtue of the negligence and/or wilful neglect or misconduct of those for whom the party so seeking indemnity is vicariously liable or responsible, including without limitation, any of its contractors, employees, agents, or representatives.
- 17.05 Each of the indemnified parties shall give written notice to the indemnifying parties of any demand or potential demand for indemnification under this Article 17.00, whether as a result of a Claim by a third party

or otherwise, stating the nature and basis of the demand or potential demand, and all details in respect thereof which are known (and the amount thereof, to the extent known), within ten (10) business days immediately following the date upon which such Claim or other basis for the indemnification becomes known to the indemnified party.

- 17.06 If any action, suit, application or proceeding is brought against the indemnified party with respect to which the indemnifying party may have liability under this Article 17.00, then the action, suit or proceeding, at its election, may be defended (including all proceedings on appeal or for review, which counsel for the defendant shall deem appropriate) by the indemnifying party upon its written agreement that it is obligated to indemnify the indemnified party to the extent provided in this Article 17.00 in respect of such action, suit or claim. Moreover, the indemnified party shall have the right to be represented by advisory counsel and accountants, at its own expense, and shall be kept fully informed of such action, application, suit or proceeding at all stages thereof, whether or not so represented; and the indemnifying party shall make available to the indemnified party and its representatives all books, records or other documents relating to such proceedings, application or litigation and each party hereto shall render to the other such assistance as the other may reasonably require in order to ensure the proper and adequate defense of any action, application, suit or proceeding.
- 17.07 Each of the Two Avani Condominiums hereby covenants and agrees that in the event that any Hazardous Substance is hereafter located in, on or upon its common elements, then it shall promptly remove such Hazardous Substance, and forthwith thereafter remediate its common elements to the full extent required by applicable law.
- 17.08 Where damage or destruction occurs to any portion of either of the Two Avani Condominiums (but not to any portion of the Two-Way Shared Facilities), then the condominium corporation who has suffered such damage or destruction shall, at its sole cost and expense, repair, restore or rebuild the damaged portion of any building(s) or structure(s) located within its own lands or common elements, to substantially the same condition they were in immediately prior to such damage or destruction having occurred (hereinafter collectively referred to as the "Restoration Work"). Any party hereto required to carry out the Restoration Work shall commence same at the earliest reasonable opportunity, and shall perform and complete the Restoration Work with due diligence, in a good and workmanlike manner, in accordance with applicable law and in conformity with the approved building permit plans and specifications for the Restoration Work. The Restoration Work shall be completed as diligently, efficiently and as quickly as reasonably possible, so as to cause the least amount of disruption, disturbance and inconvenience to the other condominium corporation as is possible under the circumstances, and to repair or replace the damaged or destroyed property in the same location (and with the same design, colours, materials, specifications and components) as originally constructed, in order to replicate (as close as reasonably possible) the physical condition of the condominium that had suffered such damage or destruction as it existed immediately following its registration as a condominium.
- 17.09 In the event of any disagreement or dispute regarding the extent of the damage or destruction to either of the Two Avani Condominiums (or any portion thereof), or with respect to any aspect of the Restoration Work, then the disagreement or dispute shall be resolved by arbitration in accordance with arbitration provisions hereinafter set forth.

ARTICLE 18.00 - MANDATORY MEDIATION & ARBITRATION

- 18.01 Any dispute, difference, issue or question arising between or amongst the parties hereto (or between either of the Two Avani Condominiums) 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 the Phase II Condominium), or with respect to any matter(s) arising out of (or connected with) this Agreement, shall:
- a) in the first instance, be attempted to be resolved by the disputing parties through good faith negotiations conducted at a meeting of such parties, with the assistance and presence of legal counsel representing each of the disputing parties, all acting with a view to secure an amicable resolution of the question, matter or issue in dispute without further proceedings;
 - b) in the second instance (on the presumption that the questions, matters or issues in dispute have not been satisfactorily resolved through good faith negotiations as hereinbefore outlined), be attempted to be resolved by submitting the dispute to mediation, as expressly contemplated by section 132 (2) 2. of the Act, with each of the disputing parties attempting to jointly select and agree-upon a mediator within 60 days of submitting the dispute to mediation [on the understanding that the qualified mediator so selected shall confer with each of the disputing parties in an effort to mediate their differences and shall endeavour to obtain a settlement of all outstanding disagreements or disputes so submitted to mediation, with all costs of the mediator to be shared equally by all of the disputing parties, and with the mediator making a written record of the settlement which shall form part of the agreement or matter that was the subject of the mediation]; and

- c) in the third and final instance (and on the presumption that the questions, matters or issues in dispute have not been satisfactorily resolved through either of the aforementioned processes outlined above), and specifically where the parties have been unable to jointly select or agree upon a mediator within 60 days after having submitted the disagreement to mediation, or where the mediator so selected has not been able to obtain a settlement of the dispute within 30 days after his or her selection or appointment, the outstanding questions, matters and/or issues in dispute shall then be referred to (and be resolved by) binding arbitration pursuant to the *Arbitration Act 1991, S.O. 1991, as amended*, in accordance with the overriding provisions set out hereafter in this Article. The substantive rules of law applicable to the dispute being arbitrated pursuant to the provisions hereof shall be those of the Province of Ontario, and the arbitration decision so rendered shall be binding upon the parties hereto, and their respective successors and assigns (including their respective unit owners from time to time), and shall not be subject to appeal under any circumstances (whether with respect to a question of law, a question of fact, a question of mixed fact and law, or otherwise). For greater certainty, it is acknowledged and agreed that the provisions of subsection 7(2) of the *Arbitration Act 1991, S.O. 1991, as amended* shall not apply to an arbitration conducted under or pursuant to this Article 18.00.

18.02 Subject to the provisions of section 18.03 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 18.06 hereof.

18.03 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 18.06 hereof, or if the amount in dispute exceeds \$150,000.00.

18.04 Any arbitrator appointed pursuant to the provisions of this Article shall either be appointed by a judge of the Ontario Superior Court of Justice pursuant to the application of either of the disputing parties (and if both parties have filed such an application, then the first of such applications shall prevail), or alternatively, the arbitrator selected by the disputing parties on their own 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 Arbitration and Mediation Institute of Ontario, or someone who has successfully completed the Arbitration II course at the University of Toronto, or an equivalent course of study focussing 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 18.15(b) hereof), or if acting as the third arbitrator/chairperson [ie selected by the other two arbitrators appointed by the disputing parties, or selected or appointed by the Ontario Superior Court of Justice, as the case may be].

18.05 Any notice or document desired or required to be served or given in connection with the arbitration proceedings conducted in accordance with the provisions hereof shall be in writing, and shall be delivered to the intended party by bonded courier, or sent by telefax, in the manner (and via the telefax number) set out in Article 20.00 hereof.

18.06 Any party hereto (including the Phase II Condominium) 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 18.04 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 1991, 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 18.04 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 1991, S.O. 1991, as amended*, on notice to the other parties hereto.

- 18.07 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.
- 18.08 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.
- 18.09 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.
- 18.10 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.
- 18.11 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 1991, 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 1991, 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 1991, S.O. 1991, as amended*.
- 18.12 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 section 50(1) of the *Arbitration Act 1991, S.O. 1991, as amended*, and correspondingly enforceable in accordance with the provisions of the *Condominium Act 1998, S.O. 1998, as amended*, and shall be binding upon the parties hereto, and their respective successors and assigns, and shall not be subject to appeal under any

circumstances (whether with respect to a question of law, a question of fact, a question of mixed fact and law, or otherwise).

- 18.13 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 1991, S.O. 1991, as amended*.
- 18.14 Unless otherwise provided in the arbitral decision to the contrary, each disputing party shall bear (and be solely responsible for) the costs of its own legal counsel and witnesses, and if the arbitral tribunal comprises three arbitrators, each disputing party shall bear (and be solely responsible for) the costs of the arbitrator that such party has appointed, and if the arbitration proceedings are conducted by a sole arbitrator, then each disputing party shall bear (and be solely responsible for) an equal share of the costs of such sole arbitrator. Notwithstanding the foregoing to the contrary, the chairperson of the arbitration tribunal or sole arbitrator shall, upon hearing brief oral submissions requested to be made with respect to an award of costs, have the power and discretion to award any scale of costs [ie. party and party scale (or partial indemnity scale), solicitor and client scale (or substantial indemnity scale) , etc.], or to fix costs between or amongst the disputing parties, in such amounts (and in such proportions) as the chairperson or sole arbitrator may deem appropriate, provided however that:
- a) no prejudgment or 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.

18.15 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 18.02 and section 18.06 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 18.06 hereof, then the arbitrator appointed by the Initiating Party may proceed alone to determine the matter(s) or issue(s) in dispute, as the sole arbitrator;

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

ARTICLE 19.00 - RELEASE OF THE DECLARANT

- 19.01 Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that upon the registration of the Phase II Condominium, the Declarant shall be automatically released, relieved and fully discharged from any further obligations or liabilities to pay any portion of the Two-Way Shared Facilities Costs for or on behalf of the Phase II Condominium, whether arising under the respective declarations of the Two Avani Condominiums and/or this Agreement, and forthwith upon the request of the Declarant, each of the Two Avani Condominiums shall execute and provide such further documents and/or assurances as the Declarant may reasonably require in order to evidence and confirm the foregoing.

ARTICLE 20.00 - NOTICES

- 20.01 All notices required or desired to be given to any of the parties hereto (including the Phase II Condominium) in connection with this Agreement, or arising herefrom, shall be in writing, and shall be hand delivered to an officer or director of the intended party at the following address, or be delivered by registered mail to the intended party at the following address, or alternatively same may be given by electronic mail or telefax to the intended party, by e-mailing or telefaxing same to the intended party's email address or telefax number

(as the case may be) set out below (or to the e-mail address or fax number provided at any time hereafter by the intended party):

- a) to the Phase I Condominium - c/o its property manager Del Property Management Inc. 4800 Dufferin Street, Suite 109, North York, Ontario, M3H 5S9, Attention: Mr. Saul York, with a copy delivered to the president or secretary of the Phase I Condominium;
- b) to the Phase II Condominium (when ultimately registered under the Act) - c/o its property manager Del Property Management Inc. 4800 Dufferin Street, Suite 109, North York, Ontario, M3H 5S9, Attention: Mr. Saul York, with a copy delivered to the president or secretary of the Phase II Condominium;
- c) to the Declarant - 4800 Dufferin Street, Suite 200, North York, Ontario, M3H 5S9, Attention: Mr. Dino Carmel, with a copy delivered to its solicitors, namely DelZotto, Zorzi LLP at 4810 Dufferin Street, Suite D, North York, Ontario, M3H 5S9; and
- d) to the Two-Way Shared Facilities Committee (when established or created) - by giving same to at least two (2) committee members (who are not representatives or nominees of the same condominium corporation), either personally or by registered mail, addressed to the respective dwelling units of such members.

20.02 Any notice delivered by registered mail shall be deemed to have been delivered, received and effective on the 3rd day (excluding Saturdays, Sundays and statutory holidays) following the day on which such notice was posted or mailed. Any notice delivered by hand or by courier shall be deemed to have been received on the same day that it has been so delivered. Any notice delivered by email or telefax shall be deemed to have been received on the same day that it was so transmitted, provided (and so long as) an email or telefax receipt is maintained by the transmitting party which indicates or confirms that the transmission of such emailed or telefaxed notice was successful.

20.03 Any party hereto (including the Phase II Condominium) may, from time to time, by written notice to the other parties hereto delivered in accordance with the foregoing provisions hereof, change the mailing address, email address or telefax number to which its notices are to be delivered.

ARTICLE 21.00 - REGISTRATION OF THIS AGREEMENT

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

21.02 The Declarant further covenants and agrees that as and when the Phase II Condominium is registered, it shall cause the Phase II Condominium to:

- a) enter into an agreement with the Phase I Condominium (with or without the Declarant as a party or signatory thereto) that is substantially similar (both in content and substance) to this Agreement, and as more particularly described in section 27.01(a) hereof (hereinafter referred to as the **"Supplementary Two-Way Shared Facilities Agreement"**) or alternatively cause the Phase II Condominium to execute a counterpart to this Agreement with the Declarant as a party or signatory thereto (with or without the Phase I Condominium as a party or signatory thereto), as more particularly described in section 27.01(b) hereof (hereinafter referred to as the **"Counterpart to the Two-Way Agreement"**), which shall evidence and confirm:
 - i) the formal assumption by the Phase II Condominium of the Declarant's obligations under this Agreement, insofar as same affect, pertain or relate to the Phase II Condominium or the Phase II Lands (or any portion thereof), including without limitation, the obligation to pay the Phase II Condominium's Proportionate Two-Way Share of the Two-Way Shared Facilities Costs;
 - ii) the Phase II Condominium's commitment to be bound by all of the terms and provisions of this Agreement, to the same extent as if the Phase II Condominium had been an original party hereto in the place and stead of the Declarant, insofar as same affects, pertains or relates to the Phase II Condominium or the Phase II Lands or any portion thereof, as well as the express acknowledgement and agreement of the Phase II Condominium that the Phase I Condominium may enforce said terms and provisions against the Phase II Condominium directly, even though the Phase I Condominium may not be a party or signatory to the Counterpart to the Two-Way Agreement; and

- iii) the release of the Declarant from any further obligations or liabilities arising under this Agreement, insofar as the Phase II Condominium and/or the Phase II Lands are concerned; and
- b) enter into an Insurance Trust Agreement with the Insurance Trustee in respect of any portion of the Two-Way Shared Facilities comprising part of the Phase II Condominium, or a counterpart to the Insurance Trust Agreement that is only entered into between the Phase II Condominium and the Insurance Trustee (but without the Phase I Condominium and/or the Declarant being parties or signatories thereto).

21.03 Each of the parties hereto hereby consents to the registration of the Supplementary Two-Way Shared Facilities Agreement or the Counterpart to the Two-Way Agreement against the title to all of the units within the Phase I Condominium and the Phase II Condominium respectively, and further acknowledges, confirms and agrees that same shall be deemed and construed to run with the title to each of the Phase I Lands and the Phase II Lands respectively.

ARTICLE 22.00 - CERTIFICATE OF COMPLIANCE

22.01 Each of the Two Avani Condominiums (and the Declarant on behalf of the Phase II 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 (or compliance with) this Agreement (hereinafter called the "Requesting Party"), execute and deliver to the Requesting Party a certificate (hereinafter called the "Certificate") confirming:

- a) whether or not this Agreement has been modified, and if so, the nature of such modification, and confirming that this Agreement (as may be amended by any subsequent amending agreement with respect thereto, or as may be supplemented by the Supplementary Two-Way Shared Facilities Agreement, or as may be confirmed by the Counterpart to the Two-Way 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 either of the Two Avani Condominiums, the Declarant and/or the Two-Way Shared Facilities Committee, as well as the nature and extent of the default so alleged; and
- c) whether or not any Work (including any Shared Work) has been (or is presently being) performed by or on behalf of either of the Two Avani Condominiums, the Declarant and/or the Two-Way Shared Facilities Committee, for which the cost of same is (or may be) claimed or charged against the Declarant or either of the Two Avani Condominiums, pursuant to the foregoing provisions of this Agreement.

22.02 Notwithstanding any provision contained herein to the contrary, it is expressly understood and agreed that nothing shall be charged to (nor be levied against) the Declarant if and when it requests (or any solicitor or authorized agent or representative of the Declarant ever requests) the Certificate from either of the Two Avani Condominiums from time to time, pursuant to the preceding provisions hereof.

22.03 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.

22.04 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 either of the Two Avani Condominiums, the Declarant and/or the Two-Way Shared Facilities Committee, as at the date of the Receiving Party's receipt of the Certificate Request (and the Receiving Party shall accordingly be forever estopped and barred 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 (and no Shared Work) has been (or is presently being) performed by or on behalf of either of the Two Avani Condominiums, the Declarant and/or the Two-Way Shared Facilities Committee, for which the cost of same is (or may be) claimed or charged against the Declarant or either of the Two Avani Condominiums, pursuant to the foregoing provisions of this Agreement.

ARTICLE 23.00 - RECIPROCAL BENEFIT AND BURDEN

- 23.01 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 certain portions of the Two Avani Condominiums (including without limitation, the Two-Way Shared Facilities), which are intended to be used, enjoyed and/or shared by each of the Two Avani Condominiums and the respective unit owners thereof from time to time (and their respective residents, tenants and invitees) to varying degrees. As an integral and material consideration for the continuing right of each of the Two Avani 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 the Supplementary Two-Way Shared Facilities Agreement or alternatively confirmed by the Counterpart to the Two-Way Agreement), each of the parties hereto (and each of the Two Avani Condominiums) 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 Phase I Lands and the Phase II Lands respectively, and shall accordingly bind and correspondingly enure to the benefit of the respective successors in title thereof once this Agreement, or notice thereof (or the Counterpart to the Two-Way Agreement, or notice thereof) has been registered against the title to same.

ARTICLE 24.00 - PERPETUITIES

- 24.01 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 25.00 - VACATING CONSTRUCTION LIENS

- 25.01 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 a supply of materials and/or the provision of services contracted for by it, or otherwise contracted on its behalf) which encumbers any other party's lands, common elements or units (as the case may be), by no later than thirty (30) days after the receipt of a written request to do so delivered by the other party (including the Declarant on behalf of the Phase II Condominium prior to its registration), failing which the party requesting such lien removal (or the Declarant making such request on behalf of the Phase II Condominium prior to its registration) 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 26.00 - SUCCESSORS AND ASSIGNS

- 26.01 This Agreement shall enure to the benefit of, and be correspondingly binding upon, each of the parties hereto and their respective successors and assigns, and specifically binding against all successors in title to any portion of the Phase I Lands and/or the Phase II Lands respectively.
- 26.02 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 Phase I Condominium in this Agreement, where the context pertains to the use or enjoyment of an easement (or some other right, benefit or interest), shall be deemed to include the 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 and invitees from time to time;
 - b) any reference to the Phase II Condominium in this Agreement, where the context pertains to the use or enjoyment of an easement (or some other right, benefit or interest), shall be deemed to include the 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 and invitees from time to time;

- c) any reference to the Declarant in this Agreement, where the context pertains to the use or enjoyment of an easement (or some other right, benefit or interest), shall specifically include the Declarant and its duly authorized agents, representatives, employees, contractors and/or subcontractors, together with its invitees and/or licensees; and
- d) any reference to the Two-Way Shared Facilities Committee (in those circumstances where same has not yet been created or established) shall, unless the context provides otherwise, mean the Declarant, provided however that any obligations imposed upon the Two-Way Shared Facilities Committee (including without limitation, the obligation to carry out and/or pay for the Shared Work) shall apply to the Declarant only insofar as any applicable insurance proceeds are available for use by the Declarant, and/or the appropriate contributions towards the Two-Way Shared Facilities Costs have been made or advanced by the Phase I Condominium (and by the Declarant on behalf of the Phase II Condominium prior to its registration) from time to time (in accordance with the foregoing provisions hereof), in order to fund the payment and/or completion of the Shared Work by the Declarant.

ARTICLE 27.00 - FURTHER ASSURANCES

- 27.01 The parties hereto hereby covenant and agree to forthwith execute and/or provide all further documents, instruments and/or assurances as may be necessary or required in order to carry out (and give full effect to) the true intent of these presents, and to register this Agreement (or notice thereof) against the title to the Phase I Lands (or against all of the units within the Phase I Condominium), and against the title to the Phase II Lands (or against all of the units within the Phase II Condominium) respectively.
- 27.02 Without limiting the generality of the foregoing, the parties hereto hereby covenant and agree to execute and deliver (for nil consideration) all such further documents, instruments and agreements (including any transfers of easement in registrable form) as may be required from time to time in order to realign the boundaries of any easement areas, if necessary, so that same align more accurately with the final location (or as-built condition) thereof, as finally constructed. In addition, each of the Two Avani Condominiums shall be obliged to accept the grant and conveyance (for nil consideration) of any additional appurtenant easements desired or required over any portion of the other of the Two Avani Condominiums, in order to reflect (and to better accommodate) the as-built condition of the Avani Site or any portion thereof.
- 27.03 If so desired or recommended by the Declarant following the registration of the Phase II Condominium, each of the Two Avani Condominiums shall forthwith upon the request of the Declarant enter into a supplementary agreement (with or without the Declarant as a party or signatory thereto), pertaining to (and generally confirming) those matters and details more particularly set out in this Agreement, and containing such additional provisions as the Declarant may deem necessary or desirable in order to more accurately reflect the Easements created (or to be created) and/or the final location or as-built condition of the Two-Way Shared Facilities, but in no case derogating in any material respect from the overall content, nature and intent of this Agreement.
- 27.04 Notwithstanding anything hereinbefore provided to the contrary, it is expressly understood and agreed by the parties hereto that when the Counterpart to the Two-Way Agreement is duly executed by the Phase II Condominium (shortly after the registration of the Phase II Condominium), with or without the Phase I Condominium as a party or signatory thereto (and which counterpart agreement incorporates all material terms and provisions of this Agreement, by reference, and which confirms the assumption by the Phase II Condominium of all obligations of the Declarant set out in this Agreement, insofar as the Phase II Condominium and/or the Phase II Lands are concerned, but which is not executed by the Phase I Condominium itself), then the Phase I Condominium shall nevertheless be entitled to enforce all of the terms and provisions of the Counterpart to the Two-Way Agreement (as well as all of the terms, provisions and obligations of this Agreement which correspondingly become binding upon the Phase II Condominium by virtue of the Phase II Condominium's execution of the Counterpart to the Two-Way Agreement) directly against the Phase II Condominium, even though the Phase I Condominium may not be a party or signatory to the Counterpart to the Two-Way Agreement, and conversely, the Phase II Condominium shall (following its execution of the Counterpart to the Two-Way Agreement, and the delivery of a copy of same to the Phase I Condominium) thereafter be entitled to enforce all of the terms and provisions of this Agreement against the Phase I Condominium.

ARTICLE 28.00 - MISCELLANEOUS PROVISIONS


- 28.01 This Agreement is subject to compliance with the subdivision and part-lot control provisions of the *Planning Act R.S.O. 1990, as amended*.
- 28.02 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 the Phase I Lands and/or the Phase II Lands (or against any or all of the units within each of the Two Avani Condominiums) 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.

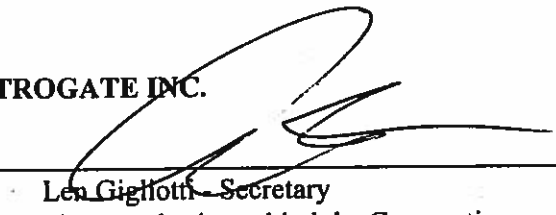
- 28.03 The headings used throughout the body of this Agreement form no part hereof, but shall be deemed to be inserted for convenience of reference only.
- 28.04 This Agreement shall be read and construed with all changes in gender and/or number as may be required by the context.
- 28.05 Time shall be of the essence with respect to the performance and fulfilment of all provisions and obligations herein set out.
- 28.06 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.
- 28.07 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.
- 28.08 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.
- 28.09 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 Zoffranieri - President
 I have authority to bind the Corporation

METROGATE INC.

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