

Office Schedule

AT 4458663
CERTIFICATE OF RECEIPT
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TORONTO (66)

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LAND REGISTRAR

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DECLARATION

CONDOMINIUM ACT, 1998

TORONTO STANDARD CONDOMINIUM PLAN NO.

2566

NEW PROPERTY IDENTIFIERS BLOCK

76566

RECENTLY : PART OF PIN 06164-0475

DECLARANT : METROGATE INC.

SOLICITOR : HARRY HERSKOWITZ

FIRM: MESSERS, DELZOTTO, ZORZI LLP.

ADDRESS : 4810 DUFFERIN STREET, SUITE D, TORONTO, ON. M3H-5S8

Phone : 416-665-5555

Fax : 416-665-9653

No. OF UNITS 976

FEES : 976 UNITS X \$5.00 = \$4880. + \$73.90 = \$4953.90

NOTARIAL CERTIFICATE

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CANADA
PROVINCE OF ONTARIO

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TO ALL WHOM THESE PRESENTS
MAY COME, BE SEEN, OR KNOWN

I, **HARRY HERSKOWITZ**

a Notary Public, in and for the Province of Ontario, by Royal Authority duly appointed, residing at the City of Vaughan, in the Regional Municipality of York

DO CERTIFY AND ATTEST that the paper-writing hereto annexed is a true photocopy of a document produced before me and purporting to be:

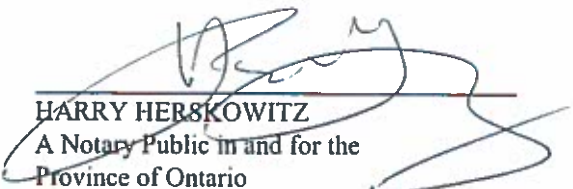
The declaration of Toronto Standard Condominium Corporation No. 2566 registered on January 13th, 2017, as Instrument No. AT-4458663

the said copy of the above-noted document having been compared by me with the said original document, an act whereof being requested I have granted under my Notarial Form and Seal of Office to serve and avail as occasion shall or may require.

IN TESTIMONY WHEREOF I have hereunto subscribed my name, and affixed my Notarial Seal of Office, at the City of Toronto

this 24th day of January, 2017.




HARRY HERSKOWITZ
A Notary Public in and for the
Province of Ontario

MADE PURSUANT TO THE CONDOMINIUM ACT

THIS declaration (hereinafter referred to as this or the "declaration") is made and executed pursuant to the provisions of the *Condominium Act 1998 S.O. 1998, c 19*, as amended from time to time, and the regulations made thereunder (all of which are hereinafter collectively referred to as the "Act"), by:

METROGATE INC.

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

WHEREAS the Declarant is the owner in fee simple of certain lands and premises situate in the City of Toronto, and being more particularly described in Schedule "A" annexed hereto, and in the description submitted concurrently herewith by the Declarant for registration in accordance with the Act (hereinafter referred to as the "description"), and which lands are sometimes hereinafter referred to as the "Real Property" or the "Avani Phase I Lands";

AND WHEREAS the Declarant has constructed a building upon the Real Property comprising 363 dwelling units (with no designated superintendent's suite within the confines of this Condominium), 395 parking units, 86 locker units, 122 bicycle storage/locker units, 8 shared service room units, 1 recreation centre unit and 1 communication control unit;

AND WHEREAS the Declarant intends that the Real Property, together with the building constructed thereon, shall be governed by the Act, and that the registration of this declaration and the description will create a freehold standard condominium corporation;

NOW THEREFORE THE DECLARANT HEREBY DECLARES AS FOLLOWS:

PART I - INTRODUCTION

Section 1 - Definitions

In addition to those words, terms or phrases specifically defined elsewhere in this declaration, the words, terms or phrases used in this declaration shall have the meanings ascribed to them in the Act, unless this declaration specifies otherwise, or unless the context otherwise requires, and in particular, the words, terms or phrases set out below shall have the meanings respectively ascribed to them as follows:

- a) the "AAI Agreement" shall mean the agreement that may be entered into by this Condominium with any owner desiring to make any addition, alteration or improvement to the common elements (or to an installation upon the common elements), pursuant to the provisions of Section 98 of the Act, and which agreement shall, amongst other things, specify who will have ownership of the proposed addition, alteration or improvement to the common elements under subsection 98(2) of the Act, allocate the cost of undertaking or implementing the proposed addition, alteration or improvement between this Condominium and the owner, establish and confirm the respective duties and responsibilities regarding the proposed addition, alteration or improvement (including without limitation, the responsibility for the cost of repair after damage, maintenance and insurance with respect to same), and shall address or set out any other matters that may be prescribed from time to time by the regulations to the Act;
- b) the "Adjacent Condominium" or the "Avani Phase II Condominium" shall mean the residential high-rise condominium to comprise approximately 363 dwelling units, together with a daycare centre unit, and various parking units, locker units, and other ancillary units, being developed by the Declarant on those lands and premises situate immediately adjacent to the west of this Condominium, and 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), and municipally known as 275 Village Green Square, Toronto (hereinafter referred to as the "Avani Phase II Lands");
- c) 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 (as hereinafter defined) from the adjacent Canadian Pacific railway line to the north thereof, portions of which crash wall and berm comprise that part of the common elements of this Condominium more particularly designated as Part 4 on Reference Plan 66R-28701, registered in the Land Titles Division of the Toronto Registry Office (No. 66), 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;

- d) the "bicycle storage areas" shall mean the designated resident bicycle storage rooms or areas situate on levels A, B, and C respectively and comprising part of the common elements, having a total resident bicycle storage capacity of approximately 65 bicycles in the aggregate, together with the designated visitor bicycle storage room or area situate on level 1 and comprising part of the common elements having a total visitor bicycle storage capacity of approximately 40 bicycles in the aggregate, and all bicycle spaces within any such resident and/or visitor bicycle storage areas shall be assigned and allocated on a "first come, first served" basis, by this Condominium (as hereinafter defined) or its property manager, and to be used or occupied solely in accordance with the provisions of section 18 of this declaration;
- e) the "bicycle storage/locker units" shall mean units 10 to 12 inclusive, 24, 62, 66 and 80 on level 4, units 46 to 54 inclusive on level 2, units 114, 115, 121 to 126 inclusive, 132, 133 and 135 on level A, units 120, 121 and 127 to 172 inclusive on level B, and units 123, 124, 130 to 138 inclusive and 140 to 175 inclusive on level C, and intended to be owned, used and/or occupied only in accordance with the provisions of sections 43 and 48 of this declaration;
- f) the "board" shall mean the board of directors of this Condominium (as hereinafter defined) from time to time;
- g) the "common elements" shall mean all the property (as hereinafter defined), except the units;
- h) the "common interest" shall mean the interest in the common elements appurtenant to a unit;
- i) the "communication control unit" shall mean unit 1 on level 36 situate on the rooftop of this Condominium (as hereinafter defined), and intended to be used for the purposes of broadcasting, distributing, transmitting, re-transmitting and receiving radio, television, telephone, microwave data, radio data, paging and/or satellite transmissions and signals (or for any other electronic or communication purpose ancillary thereto), as more particularly set out in section 49 of this declaration;
- j) the "Corporation", or "this Corporation", or the "Condominium", or "this Condominium" or the "Avani Phase I Condominium" shall mean the standard condominium corporation created by the registration of this declaration, and the description filed concurrently herewith, pursuant to the provisions of the Act;
- k) the "Daycare Centres" shall mean the two separate daycare centres to be constructed, finished, furnished and equipped by the Declarant in accordance with the requirements of the City of Toronto, as part of the development of the overall Metrogate Condominium Community (as hereinafter defined), pursuant to the provisions of an outstanding Section 37 Density Bonus/Development Agreement entered into between the Declarant and the City of Toronto, and registered in the Land Titles Division of the Toronto Registry Office (No. 66) on September 30th, 2008 as Instrument No. AT-1911924, as subsequently amended by Instrument No. AT-2384462 (which agreement, as so amended, and as may be further amended hereafter from time to time, shall hereinafter be collectively referred to as the "Section 37 Agreement", and which agreement has totally replaced and superceded an earlier agreement between the same parties which was registered on July 12th, 2007 as Instrument No. AT-1505281), together with all parking spaces required for each of the Daycare Centres under or pursuant to the applicable zoning by-law, for the sole and exclusive use of the employees of each of the Daycare Centres (and with one parking space to be accessible to persons with disabilities, and complying with the City of Toronto's accessibility guidelines), and which Section 37 Agreement provides, amongst other things, for:
 - i) each of the Daycare Centres to be operated as a non-profit daycare centre, available to care for children from the general public, but with priority placement being given to the children of the residents of each of the Metrogate Condominiums (as hereinafter defined) and the children of the employees of the businesses and/or offices located on (or operated within) the Metrogate Site (as hereinafter defined);
 - ii) the first of the two Daycare Centres to be developed (hereinafter referred to as the "South Daycare Centre") is required to be incorporated within that part of the overall Metrogate Condominium Community that includes the 500th dwelling unit, and accordingly the South Daycare Centre shall comprise part of (and has been designated as unit 2 on level 1 within) the Solaris Phase II Condominium (as hereinafter defined), now registered as Toronto Standard Condominium Corporation No. 2166, municipally located at 135 Village Green Square, Toronto;
 - iii) the second of the two Daycare Centres to be developed (hereinafter referred to as the "North Daycare Centre") shall be incorporated within the development of the westerly half of Block 7 on Registered Plan 66M-2460, and shall be designated as a unit within the Avani Phase II Condominium, municipally located at 275 Village Green Square;
 - iv) each of the Daycare Centres will be sufficiently commodious or spacious to accommodate a minimum of 52 children to a maximum of approximately 62 children (including infants, toddlers, pre-schoolers and school-aged children) together with the necessary staff, and shall be comprised of not less than 532 square meters of interior space and not less than 290 square meters of contiguous exterior space (ie. for an exclusive outdoor playground area), being the minimum size facility for 52 children;
 - v) each of the Daycare Centres shall ultimately be owned by the Metrogate Condominiums (as hereinafter defined) as tenants-in-common, in accordance with their respective Proportionate Daycare Centre Interests (as hereinafter defined) [and pursuant to the Daycare Centre Agreement (as hereinafter defined), the Declarant shall hold registered title thereto as a bare trustee and nominee for each of the Metrogate Condominiums so registered from time to time, until such time as the last of the Metrogate Condominiums is duly registered and the turnover meeting for such condominium has been convened, at which time the Declarant will convey title to the Daycare Centres, for nil consideration, to each of the Metrogate Condominiums as tenants in common, in accordance with their respective Proportionate Daycare Centre Interests]; and

- vi) the Daycare Centre Costs (as hereinafter defined), arising from (or in connection with) the ownership, operation, maintenance and repair of each of the Daycare Centres, shall ultimately be borne and paid for by each of the registered Metrogate Condominiums, in accordance with their respective Proportionate Daycare Centre Shares (as hereinafter defined), all as more particularly outlined or provided in the Daycare Centre Budget(s) (as hereinafter defined) issued from time to time, provided however that each of the Metrogate Condominiums so registered shall nevertheless be jointly and severally liable to the Daycare Centre Operator (as hereinafter defined) for all obligations arising under the Section 37 Agreement in connection with the ownership, operation, maintenance and repair of each of the Daycare Centres, including without limitation, the payment of the Daycare Centre Costs (as hereinafter defined);
- l) the "Daycare Centre Agreement" shall mean the co-ownership and cost-sharing agreement initially entered into by the Solaris Phase I Condominium (as hereinafter defined) now registered as Toronto Standard Condominium Corporation No. 2151, and the Solaris Phase II Condominium (as hereinafter defined) now registered as Toronto Standard Condominium Corporation No. 2166 (hereinafter collectively referred to as the "Two Solaris Condominiums"), along with the Declarant and Ventus At Metrogate Inc. [with the Declarant entering into same for and on behalf of this Condominium and the Avani Phase II Condominium, as well as each of the other Metrogate Condominiums (as hereinafter defined) to be developed and registered on the balance of the Metrogate Site(as hereinafter defined)], and which agreement was registered on July 14th, 2011 in the Land Titles Division of the Toronto Registry Office (No. 66) as Instrument No. AT-2752994, and which agreement provides, amongst other things, for the co-ownership, operation, insurance, maintenance and repair of the Daycare Centres, and the corresponding allocation, sharing and payment of the Daycare Centre Costs (as hereinafter defined) and the Public Park & Art Costs (as hereinafter defined) between or amongst each of the Metrogate Condominiums so registered from time to time, in accordance with their respective Proportionate Daycare Centre Shares (as hereinafter defined). For the purposes of this declaration, the term "Daycare Centre Agreement" shall be deemed to include any and all supplementary agreements or counterpart agreements that are entered into by each of the subsequently-created Metrogate Condominiums (shortly after their respective registration under the Act, at any time after the registration of the Solaris Phase II Condominium), with or without the Declarant as a party or signatory thereto (and with or without any of the other previously registered Metrogate Condominiums as a party or signatory thereto, but nevertheless in favour of all of the previously registered Metrogate Condominiums), and which supplementary agreements or counterpart agreements shall evidence and confirm, amongst other things, the formal assumption by each Metrogate Condominium (as hereinafter defined) of its obligations and liabilities arising under the initial Daycare Centre Agreement in respect of the co-ownership, operation, insurance, maintenance and repair of each of the Daycare Centres, together with each Metrogate Condominium's formal agreement to pay and contribute its Proportionate Daycare Centre Share of the Daycare Centre Costs and the Public Park & Art Costs respectively, and an acknowledgement that any such supplementary or counterpart agreement may be enforced against such newly-registered Metrogate Condominium directly by each or all of the previously-registered Metrogate Condominiums [and by the City of Toronto and the Daycare Centre Operator (as hereinafter defined)], even though they may not be a party or signatory thereto;
- m) the "Daycare Centre Budget" shall mean the budget, prepared not less than once annually following the registration of the Solaris Phase II Condominium (as hereinafter defined) and the corresponding execution of the Daycare Centre Agreement; outlining the projected Daycare Centre Costs (as hereinafter defined) and the Public Park & Art Costs (as hereinafter defined) to be incurred for the ensuing 12 month period immediately following the preparation and submission of said budget [and initially submitted to each of the Two Solaris Condominiums following the registration of the Solaris Phase II Condominium, and thereafter submitted on an annual basis to each of the Metrogate Condominiums then in existence], and which budget(s) shall be formulated in accordance with the terms and provisions of the Daycare Centre Agreement, having due regard to the provisions and requirements of the Section 37 Agreement (as hereinbefore defined) and the Subdivision Agreement (as hereinafter defined);
- n) the "Daycare Centre Committee" shall mean the committee initially composed of six members, two of which shall be members of the board of directors of each of the Two Solaris Condominiums, and the remaining two members of which shall be representatives of the Declarant, on the express understanding that as and when each of the other Metrogate Condominiums (as hereinafter defined) are respectively developed and registered as a separate condominium under the Act at any time after the Solaris Phase II Condominium (as hereinafter defined) has been registered, then the composition of the committee shall be increased by two additional members per registered condominium corporation (and which members shall also correspondingly be members of the board of directors of their respective condominiums), provided however that once the last of the Metrogate Condominiums is registered and its turnover meeting has been convened, then the two nominees of the Declarant shall immediately thereafter permanently resign from said committee; and said committee shall be formed or established no later than 6 months following the registration of the Solaris Phase II Condominium, for the purposes of assisting in the preparation of the Daycare Centre Budgets from time to time, and in the administration, management, operation, maintenance and repair of each of the Daycare Centres, as well as the operation, maintenance and repair of the Public Park and the Public Art throughout the 10 Year Maintenance Period (as hereinafter defined), on behalf of all of the Metrogate Condominiums in existence from time to time, and correspondingly reporting to (and making recommendations to) each of the Metrogate Condominiums from time to time in connection with any joint by-laws or rules (respecting each of the Daycare Centres, the Public Park and/or the Public Art) enacted in accordance with the provisions of section 59 of the Act;
- o) the "Daycare Centre Costs" shall mean all of the costs and expenses associated with the physical operation, illumination, ventilation, insurance, heating, cooling, maintenance and repair of each of the Daycare Centres, in accordance with the requirements, standards and specifications of the City of Toronto from time to time, all as more particularly outlined in the Section 37 Agreement, including without limitation, the cost of providing water, electricity and gas services to each of the Daycare Centres, as well as all costs incurred with respect to the following, namely:
 - i) the ongoing maintenance and repair of all heating, plumbing, ventilation and air-conditioning systems serving each of the Daycare Centres, as well as the building structures comprising, containing or incorporating each of the Daycare Centres (in whole or in part), together with the outdoor playground areas associated with each of the

Daycare Centres, and all appurtenant services and systems (such as drains, pipes, cables, etc. located within, beside, beneath or above the boundaries of each of the Daycare Centres, or any portion thereof, and which exclusively service or benefit each of the Daycare Centres);

- ii) all landscape maintenance and irrigation services with respect to all hard and soft landscaping features and areas situate within the confines of each of the daycare centre units;
 - iii) the pickup and removal (from a central depository) of all garbage and debris emanating from each of the Daycare Centres (including waste disposal services which will collect diapers and organic waste);
 - iv) obtaining and maintaining at all times fire, property damage and comprehensive general liability insurance coverage, against claims for property damage, personal injury and/or death, resulting from any act, omission or occurrence (in a form and with limits satisfactory to the City of Toronto), in an amount not less than \$5 million dollars per occurrence [naming the City of Toronto and each of the Metrogate Condominiums (as hereinafter defined) in existence from time to time, as additional insured parties];
 - v) all realty taxes assessed against each of the Daycare Centres;
 - vi) all costs and expenses of (and charges by) the manager of those Metrogate Condominiums (as hereinafter defined) which contain or incorporate each of the Daycare Centres, provided such costs, expenses and/or charges relate or pertain to either or both of the Daycare Centres;
 - vii) establishing a reserve fund for the major repair and replacement of each of the Daycare Centres; and
 - viii) the maintenance, repair and/or replacement of all meters or check meters for water, electricity, thermal energy and gas (where applicable) which service each of the Daycare Centres;
- p) the "Daycare Centre Units" shall mean unit 2 on level 1 in the Solaris Phase II Condominium heretofore registered as Toronto Standard Condominium Corporation No. 2166 (sometimes referred to in this declaration as the "South Daycare Centre"), which is comprised of two non-contiguous areas on level 1, namely Area B [which includes or incorporates 9 indoor parking spaces on level 1] and Area A [which incorporates the balance of the Daycare Centre Unit, including an outdoor playground area (along with all of the playground equipment and facilities heretofore or hereafter installed within the aforementioned outdoor playground area, or used in connection therewith), together with 2 outdoor storage areas and an outdoor walkway], as well as a daycare centre (on two levels) to be designated as a unit within the Avani Phase II Condominium (sometimes referred to in this declaration as the "North Daycare Centre") which will include or incorporate parking spaces for the exclusive use of the daycare centre operator and its employees, together with two outdoor playground areas, and both of the Daycare Centre Units shall be owned, operated, maintained and repaired in accordance with the provisions of the Daycare Centre Agreement, and in accordance with the provisions of the respective daycare centre leases entered into (or to be entered into) by Metrogate Inc. as the landlord, a daycare centre operator approved by the City of Toronto as the tenant, and with the City of Toronto as a party thereto (sometimes hereinafter collectively referred to as the "Daycare Centre Leases");
- q) the "dwelling units" shall mean units 1 to 4 inclusive on level 2, units 1 to 9 inclusive on levels 3 and 4, and units 1 to 11 inclusive on levels 5 to 35 both inclusive, and intended to be used solely for the purposes set out in section 45 of this declaration;
- r) the "Electrical Parking Unit" shall mean or include any parking unit in this Condominium that has been completed and equipped with a standard electrical outlet as an appurtenance thereto, in order to accommodate (and to correspondingly service or charge) any electrical vehicle that is parked therein from time to time, in which case a separate electricity check meter shall also be installed as an appurtenance to said unit, in order to measure and confirm the cost of the electricity consumed or utilized by any electric vehicle parked therein from time to time, on a periodic basis, and the owner of any such Electrical Parking Unit shall accordingly be responsible for the cost of such electricity consumption, in addition to the common expenses attributable to (or assessed against) such owner's Electrical Parking Unit;
- s) the "Exclusive Avani 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 this Condominium or within the confines of the Avani Phase II Condominium, and which are intended, earmarked and/or designated for the ongoing operation, servicing, maintenance and/or repair of this Condominium (or any portion thereof) exclusively, and the entire cost of operating, maintaining, repairing and insuring the Exclusive Avani I Condominium Equipment (or any portion thereof) shall comprise part of the common expenses of this Condominium and be correspondingly borne and paid for by this Condominium, and shall not comprise part of the Two-Way Shared Facilities Costs (as hereinafter defined);
- t) the "Exclusive Avani 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 this Condominium or within the confines of the Avani Phase II Condominium, and which are intended, earmarked and/or designated for the ongoing operation, servicing, maintenance and/or repair of the Avani Phase II Condominium (or any portion thereof) exclusively, and the entire cost of operating, maintaining, repairing and insuring the Exclusive Avani II Condominium Equipment (or any portion thereof) shall comprise part of the common expenses of the Avani Phase II Condominium and be correspondingly borne and paid for by the Avani Phase II Condominium, and shall not comprise part of the Two-Way Shared Facilities Costs (as hereinafter defined);
- u) the "Governmental Authorities" shall mean the City of Toronto, and all other governmental authorities or agencies having jurisdiction over the development of the Real Property;

- v) the "Ground Water Filtration System" shall mean or include the permanent ground water drainage and filtration system (including all pipes, drains, filters, screens, and all other equipment appurtenant thereto) which has been installed by the Declarant within the confines of this Condominium, for the purposes of cleaning and filtering the ground water that emanates from or through this Condominium's building foundation (and appurtenant drainage system) and which services or benefits this Condominium, and to be used or operated in accordance with the provisions set out in section 21 of this declaration, on the express understanding that: (i) this Condominium shall enter into (and shall abide by and comply with) an assignment/assumption agreement with the Declarant and the City of Toronto evidencing this Condominium's assumption of all obligations of the Declarant arising under a prior storm sewer discharge of ground water agreement entered into by the Declarant with the City of Toronto (hereinafter referred to as the "Ground Water Discharge Assumption Agreement"), shortly after the registration of this Condominium, pursuant to which the ground water emanating from the lands upon which this Condominium has been developed shall be filtered and cleansed (by and through the permanent ground water filtration and drainage system so installed by the Declarant), before same is drained into the City of Toronto's storm sewer system, together with the requirement that the ground water be tested periodically to ensure that same is clean filtered water, or water that meets the City of Toronto's tolerance levels or standards; and (ii) the performance and fulfilment of all ground water discharge obligations arising under the Ground Water Discharge Assumption Agreement (hereinafter collectively referred to as the "Ground Water Discharge Obligations"), including all periodic testing, monitoring and/or reporting charges (payable to the water quality consultant or engineering firm retained to carry out the water quality testing and monitoring work required or contemplated by the Ground Water Discharge Assumption Agreement), and all costs incurred in connection with the operation, maintenance and/or repair of the Ground Water Filtration System, as well as all costs and expenses incurred in connection with (or arising from) the indemnity of the City of Toronto and/or the Declarant in respect of (or by reason of) any contravention of the City of Toronto's requirements applicable to foundation drainage and/or ground water discharge into the City of Toronto's storm sewer system outlined in (or prescribed by) the City of Toronto's *Municipal Code, Chapter 681, as amended*, or by reason of any damage or injury occasioned to (or in connection with) the Ground Water Filtration System (or any portion thereof), together with all costs incurred in connection with (or arising from) the Ground Water Discharge Assumption Agreement (all of which costs are hereinafter collectively referred to as the "Ground Water Discharge Costs"), shall be undertaken and coordinated by the board of directors of this Condominium or this Condominium's property manager, and all Ground Water Discharge Costs shall correspondingly comprise part of the common expenses of this Condominium;
- w) the "locker units" shall mean units 13 to 23 inclusive, 25 to 61 inclusive, 63 to 65 inclusive and 67 to 79 inclusive on level 4, units 116 to 120 inclusive, 127 to 131 inclusive and 134 on level A, units 122 to 126 inclusive on level B, and units 125 to 129 inclusive and 139 on level C, and intended to be owned, used and/or occupied only in accordance with the provisions of sections 43 and 47 of this declaration;
- x) the "Metrogate Condominiums" shall mean and include all of the high-rise, mid-rise and/or low-rise condominium projects (including residential, mixed-use and/or commercial/office condominiums) now or hereafter developed by any of the Metrogate Group (as hereinafter defined) on those lands and premises bounded by Highway 401 to the south, the Canadian Pacific Railway line to the north, and the Metrolinx/Go Transit/Canadian National Railway line to the east, and situate east of Kennedy Road, and which lands and premises are more particularly designated as Blocks 1, 2, 4, 5, 6, 7 and 8 on registered Plan 66M-2460, as well as Part 2 on Reference Plan 66R-23565 (all of which lands are hereinbefore and hereinafter collectively referred to as the "Metrogate Site"), each of which condominiums may or may not also contain ground floor commercial/retail units (and each of which is hereinafter individually referred to as a "Metrogate Condominium"), and all of the Metrogate Condominiums to be developed upon or within the Metrogate Site shall sometimes hereinafter be collectively referred to as the "Metrogate Condominium Community", on the express understanding that:
 - i) the Metrogate Condominium Community is presently intended to consist of eight (8) separate condominium corporations, namely:
 - A) the mixed-use condominium municipally located at 125 Village Green Square, comprising part of Block 1 on registered Plan 66M- 2460 and Part 2 on Reference Plan 66R-23565 (hereinafter collectively referred to as the "Solaris Phase I Lands"), containing 435 dwelling units and 3 commercial/retail units, and heretofore registered as Toronto Standard Condominium Corporation No. 2151 (hereinafter referred to as the "Solaris Phase I Condominium" or the "Phase I Condominium");
 - B) the residential high-rise condominium municipally located at 135 Village Green Square, comprising part of Block 1 on registered Plan 66M- 2460 (hereinafter referred to as the "Solaris Phase II Lands"), containing 453 dwelling units and 1 daycare centre unit, namely the South Daycare Centre, and heretofore registered as Toronto Standard Condominium Corporation No. 2166 (hereinafter referred to as the "Solaris Phase II Condominium" or the "Phase II Condominium");
 - C) the residential townhouse condominium project municipally located at 290, 295, 310, 315 and 330 Village Green Square, comprising all of Blocks 4 and 5 on registered Plan 66M-2460 (hereinafter referred to as the "Metrogate Townhouse Lands"), being a phased condominium developed under Part XI of the Act, and presently containing 76 townhouse dwelling units within the initial condominium phase so registered as Toronto Standard Condominium Corporation No. 2175, and with approximately 16 townhouse dwelling units to be included in the expansion phase, if and when same is ultimately developed and registered as part of TSCC No. 2175 (hereinafter referred to as the "Metrogate Townhouse Condominium" or the "Phase III Condominium");
 - D) the residential high-rise condominium municipally located at 151 Village Green Square, comprising the south half of Block 2 on registered Plan 66M- 2460 (hereinafter referred to as the "Ventus Phase I Lands"), containing 288 dwelling units, and heretofore registered as Toronto Standard Condominium Corporation No. 2259 (hereinafter referred to as the "Ventus Phase I Condominium" or the "Phase IV Condominium");

- E) the residential highrise condominium municipally located at 181 Village Green Square, comprising the north half of Block 2 on registered Plan 66M-2460 (hereinafter referred to as the "Ventus Phase II Lands"), containing 314 dwelling units, and heretofore registered as **Toronto Standard Condominium Corporation No. 2281** (hereinafter referred to as the "Ventus Phase II Condominium", or the "Phase V Condominium");
 - F) the residential highrise condominium being developed on the lands municipally located at 275 Village Green Square, comprising the westerly portion of Block 7 on registered Plan 66M-2460, situate to the south of the Canadian Pacific Railway line (hereinafter referred to as the "Avani Phase II Lands"), and which condominium shall contain approximately 363 dwelling units (plus a designated superintendent suite comprising part of the recreation centre unit), together with a daycare centre which will be designated as a separate unit in said condominium (namely the **North Daycare Centre**), and which proposed dwelling unit count may hereafter be increased or decreased either way, depending on market conditions and the zoning/municipal approvals hereafter procured in connection therewith (hereinafter referred to as the "Avani Phase II Condominium" or the "Phase VI Condominium");
 - G) this Condominium (also hereinafter referred to as the "Avani Phase I Condominium" or the "Phase VII Condominium" or this or the "Condominium" or the "Condominium Corporation" or the "Corporation"), being a residential highrise condominium containing 363 dwelling units, and developed on those lands and premises municipally located at 255 Village Green Square, comprising the easterly portion of Block 7 on registered Plan 66M-2460, situate to the south of the Canadian Pacific Railway line (hereinafter referred to as the "Avani Phase I Lands" or the "Real Property"); and
 - H) a residential highrise condominium project to be developed on those lands and premises municipally located at 225 Village Green Square, comprising Block 8 on registered Plan 66M-2460, situate to the south of the Canadian Pacific Railway line, west of the proposed future TTC facility, and east of the Phase VII Condominium (hereinafter referred to as the "Phase VIII Lands"), and which residential condominium is presently intended to contain approximately 296 dwelling units, plus a designated superintendent suite comprising part of the common elements (hereinafter referred to as the "Phase VIII Condominium" or the "Selene Condominium"), on the express understanding that the exclusively-residential condominium comprising the Phase VIII Condominium is intended to replace and supercede what was previously intended to be developed on the Phase VIII Lands, namely a highrise commercial office project comprising approximately 400,000 square feet of gross floor area, and therefore the Phase VIII Condominium's Proportionate Daycare Centre Share (as hereinafter defined) will not be predicated on a "deemed dwelling unit count", derived from converting the formerly-intended commercial office space into an equivalent residential dwelling unit count, but rather shall be based on the Phase VIII Condominium's final registered dwelling unit count, and the Proportionate Daycare Centre Shares attributable to each of the Metrogate Condominiums shall be adjusted accordingly;
- ii) each of the Metrogate Condominiums (and their respective unit owners, residents and tenants from time to time) will be sharing (together with the general public) the use and enjoyment of each of the Daycare Centres, and the Public Park and the Public Art (as such terms are respectively hereinafter defined) as and when each of the Metrogate Condominiums is respectively developed and occupied, provided however that such use and enjoyment shall not occur until after the date that the Solaris Phase II Condominium has been duly registered, and the daycare centre unit situate therein, namely the **South Daycare Centre** (which is the first of the two Daycare Centres to be developed) is fully operational;
 - iii) each of the Metrogate Condominiums so registered as a separate condominium corporation under the Act will be correspondingly obliged to share and contribute payment towards the Daycare Centre Costs, from and after the date of registration of the Solaris Phase II Condominium, and shall also be obliged to contribute towards the Public Park & Art Costs, from and after the date that the Public Park has been completed and is ready for use by the residents of the Metrogate Condominium Community and the general public, as and when each of such Metrogate Condominiums is duly registered under the Act, notwithstanding the fact that the general public will also be entitled to have their children enrolled with (and will benefit from the use of) the Daycare Centres (and will also be entitled to use the Public Park), but without any corresponding obligation or requirement for the general public to contribute towards the Daycare Centre Costs and/or the Public Park & Art Costs, and without any contribution towards the Daycare Centre Costs being derived or emanating from any of the Governmental Authorities whatsoever; and
 - iv) the Daycare Centre Costs and the Public Park & Art Costs shall be apportioned or allocated between or amongst each of the Metrogate Condominiums so registered, on a pro-rata basis, predicated on their respective registered dwelling unit and commercial/retail unit count, in accordance with their respective Proportionate Daycare Centre Shares (as hereinafter defined);
- y) the "Metrogate Group" shall mean the Declarant 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 the Declarant or Ventus At Metrogate Inc., and that is also the registered owner of any lands comprising part of the Metrogate Site;
 - z) the "multi-purpose/party room" shall mean the room situate within (and comprising part of) the Phase I Recreation Centre Unit (as hereinafter defined), containing a food servery, a bar and seating areas with tables, together with all of the equipment, facilities and furnishings respectively contained therein from time to time, and intended to be used solely in the manner or for the purposes set out in section 27(b) of this declaration;

- aa) an "owner" shall mean the owner or owners of the freehold estate in a unit and its appurtenant common interests [and save as otherwise hereinafter expressly provided to the contrary, the term "owner" includes the Declarant with respect to any units in this Condominium which the Declarant has retained ownership, and that have not yet been transferred and conveyed by the Declarant to another person, corporation or other legal entity], but does not include a mortgagee unless in possession;
- bb) the "parking units" shall mean units 5 to 45 inclusive on level 2, units 1 to 113 inclusive on level A, units 1 to 119 inclusive on level B, and units 1 to 122 inclusive on level C, and intended to be owned, used and/or occupied only in accordance with the provisions of sections 43 and 46 of this declaration;
- cc) the "Phase I Recreation Centre Unit" shall mean the recreation centre designated as unit 1 on level 1 in this 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 this 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 (as hereinafter defined)], all of which amenities and facilities are situate on level 2 of this 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 this 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 this 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 (as hereinafter defined), and their respective invitees, exclusively, in accordance with the provisions of sections 27(g) and 50 of this declaration;
- dd) the "Phase II Escrow Date" shall mean the date of the first escrow or interim-occupancy closing taking place in the Avani Phase II Condominium, between the Declarant and any purchaser of a proposed dwelling unit in the Avani Phase II Condominium;
- ee) the "Phase II Recreation Centre Unit" shall mean the indoor recreation centre to be designated as a unit in the Avani 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, as hereinafter defined, 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 (as hereinafter defined), and their respective invitees, exclusively;
- ff) the "property" shall mean the Real Property (including all buildings situate thereon) and the interests appurtenant thereto described in the description (and more particularly set out in Schedule "A" annexed hereto), and shall include any lands and interests appurtenant thereto that are added to the common elements after the registration of this declaration;
- gg) the "Proportionate Daycare Centre Interests" or the "Proportionate Daycare Centre Shares" of each of the Metrogate Condominiums, with respect to both the ownership of the Daycare Centres, and with respect to the allocation or apportionment of the Daycare Centre Costs and the Public Park & Art Costs (as hereinafter defined) between and amongst them, shall mean that percentage or proportion attributable to each of the Metrogate Condominiums, derived by dividing each condominium's respective number of registered dwelling units and commercial/retail units, by the total number of registered dwelling units and commercial/retail units in all of the Metrogate Condominiums so registered at any point in time, collectively [and with the respective interest or share of each of the Metrogate Condominiums, as so determined, being sometimes hereinafter individually referred to as its "Proportionate Daycare Centre Interest" or its "Proportionate Daycare Centre Share", and with the interests or shares of all of the Metrogate Condominiums being hereinafter collectively referred to as their "Proportionate Daycare Centre Interests" or their "Proportionate Daycare Centre Shares"], on the express understanding that since the Phase VIII Condominium is intended to replace and supercede what was previously intended to be developed on the Phase VIII Lands, namely a highrise commercial office project comprising approximately 400,000 square feet of gross floor area, therefore the Phase VIII Condominium's Proportionate Daycare Centre Share will not be predicated on a "deemed dwelling unit count" derived from converting the formerly-intended commercial office space into an equivalent residential dwelling unit count, but rather shall be based on the Phase VIII Condominium's final registered dwelling unit count, and the Proportionate Daycare Centre Shares attributable to each of the other Metrogate Condominiums shall be adjusted accordingly;

- hh) the **"Proportionate Three-Way Share"** of each of the Avani Phase I Condominium, the Avani Phase II Condominium and the Selene Condominium (hereinafter collectively referred to as the **"Three Condominiums"**) with respect to the allocation or apportionment of the Shared Roadway Costs (as hereinafter defined) between any two of them or amongst all three of them, shall mean that percentage or proportion attributable to each of the Three 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 Three Condominiums so registered from time to time, collectively (and with the respective share of each of the Three Condominiums, as so determined, being sometimes hereinafter individually referred to as its **"Proportionate Three-Way Share"**, and with the respective shares of the Three Condominiums being hereinafter collectively referred to as their respective **"Proportionate Three-Way Shares"**);

- ii) the **"Proportionate Two-Way Interest"** or the **"Proportionate Two-Way Share"** of each of the Two Avani Condominiums (as hereinafter defined), 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"**);

- jj) the **"Public Art"** shall mean the sculptured art work (including without limitation, any sculptured landscaping features, statues, patterned paving stones, etc.) that has been installed by or on behalf of the Declarant within the Public Park (as hereinafter defined), or along the public boulevards within the Metrogate Site and/or within the private landscaped open spaces associated with any of Blocks 1, 2, 4, 5, 7 and/or 8 on registered Plan 66M-2460 comprising part of the Metrogate Site, and which art has been designed and created by (or in collaboration with) an artist selected by the City of Toronto's Chief Planner and approved by the Council of the City of Toronto, pursuant to the provisions of the Section 37 Agreement, and intended to be freely enjoyed and accessible by the general public, in addition to the owners, residents and occupants of each of the Metrogate Condominiums;

- kk) the **"Public Park"** shall mean the outdoor park (and all related or ancillary hard and/or soft landscaping features or elements) that have been installed by or on behalf of the Declarant within Block 3 on registered Plan 66M-2460 and Part 1 on Reference Plan 66R-23565, including all park benches and/or ancillary playground equipment, as well as all outdoor lighting fixtures (if any) so placed, erected or installed thereon or therein, and created pursuant to the provisions of the outstanding subdivision agreement entered into between the Declarant and the City of Toronto in connection with the development of the Metrogate Site and registered in the Land Titles Division of the Toronto Registry Office (No. 66) on October 6th, 2008 as Instrument No. AT-1917108 (hereinafter referred to as the **"Subdivision Agreement"**), and correspondingly intended to be freely used, enjoyed and accessible by the general public, in addition to the owners, residents and occupants of each of the Metrogate Condominiums, and which Public Park shall ultimately be owned and maintained by the City of Toronto sometime after the expiration of 10 years following April 26th, 2012, which last-mentioned date is the date that the landscape architect so retained by the Declarant in connection with the development and construction of the Public Park issued a formal certificate of completion in connection therewith to the City of Toronto, pursuant to the provisions of the Subdivision Agreement (hereinafter referred to as the **"Public Park Completion Date"**);

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

- mm) the term **"repair"** when used or referred to in this declaration 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 declaration provides otherwise;

- nn) the **"rules"** shall mean the rules passed by the board of directors of this Condominium (hereinafter called the **"board"**), and becoming effective in accordance with the provisions of section 58 of the Act;

- oo) the **"Shared Roadway"** shall mean the shared private internal roadway, and any shared municipal watermain service connections and/or sewer service connections situate within the public road allowance, as well as any private manholes at or near the property line of the Avani Phase I Lands [together with all sidewalks, boulevards and/or street landscaping elements (if any) developed in conjunction therewith, along either side of the travelled portion of said roadway] leading from the north side of Village Green Square along the easterly perimeter of the Avani Phase I Condominium, and comprising that part of the common elements of the Avani Phase I Condominium more particularly designated as Parts 2 and 3 on Reference Plan 66R-28701, registered in the Land Titles Division of the Land Registry Office (No. 66), and also traversing along the

south westerly perimeter of the Selene Condominium and comprising that part of the common elements of the Selene Condominium more particularly designated as Part I on Reference Plan 66R-29020, and which private internal roadway is intended to be utilized for pedestrian and vehicular access and egress purposes by each of the Three Condominiums, and their respective unit owners, residents and invitees [and which private internal roadway shall ultimately lead into the underground parking garage of each of the Avani Phase I Condominium and the Selene Condominium, and shall also lead to the outdoor service/loading area at the rear of the Avani Phase I Condominium serving each of the Three Condominiums (ie. for service vehicles, municipal garbage and fire trucks, and deliveries, move-ins, etc.)], all as more particularly set out in sections 30 to 34 inclusive of this declaration;

- pp) the **"Shared Roadway Agreement"** shall mean the easement and cost-sharing agreement or reciprocal agreement entered into between this Condominium and the Declarant (with the Declarant entering into same for and on behalf of each of the Avani Phase II Condominium and the Selene Condominium) shortly after the registration of this Condominium, and which agreement shall provide, amongst other things, for the shared use, maintenance and repair of the Shared Roadway, and the corresponding sharing, allocation and payment of the Shared Roadway Costs (as hereinafter defined) between any two of (or amongst all three of) the Three Condominiums;
- qq) the **"Shared Roadway Budget"** shall mean the budget, prepared not less than once annually following the registration of this Condominium and the corresponding execution of the Shared Roadway Agreement, outlining the projected Shared Roadway Costs (as hereinafter defined) to be incurred for the ensuing 12 month period immediately following the registration of this Condominium [and which budget shall be prepared or approved by the Shared Roadway Committee (as hereinafter defined) and initially submitted to each of this Condominium and the Declarant on an annual basis, and following the registration of the Avani Phase II Condominium same shall be submitted to each of the Two Avani Condominiums and the Declarant on an annual basis, and following the registration of the Selene Condominium same shall be submitted to each of the Three Condominiums on an annual basis], and the Shared Roadway Budget(s) shall:
 - i) specifically contain or reflect a separate reserve fund to cover the major repair and replacement of the Shared Roadway;
 - ii) be formulated in accordance with the terms and provisions of the Shared Roadway Agreement; and
 - iii) be incorporated as part of the overall annual budget of each of the Three Condominiums, as and when each of same is registered;
- rr) the **"Shared Roadway Committee"** shall mean the committee established sometime following the turnover meeting of this Condominium convened pursuant to section 43 of the Act, but in no event later than the first anniversary of the registration of this Condominium, and shall be composed of six (6) members in the aggregate, two (2) members of which shall be representatives or nominees of the board of directors of this Condominium and four (4) members of which shall initially be representatives or nominees of the Declarant, pending the registration of the Avani Phase II Condominium and the Selene Condominium respectively, on the express understanding that as and when the Avani Phase II Condominium is registered, two (2) of the Declarant's nominees or representatives on this committee shall resign and be simultaneously replaced by two (2) nominees or representatives of the board of directors of the Avani Phase II Condominium, and that as and when the Selene Condominium is registered, the remaining two (2) nominees or representatives of the Declarant on this committee shall resign and be simultaneously replaced by two (2) nominees or representatives of the board of directors of the Selene Condominium, and the Shared Roadway Committee shall coordinate, oversee and assist in the operation and/or administration of the Shared Roadway (as well as the insurance, maintenance and/or repair of the Shared Roadway), and shall participate in the preparation and approval of the Shared Roadway Budget(s) from time to time, and all decisions of the Shared Roadway Committee shall be determined, evidenced and reflected by a majority vote of all members thereof at any given point in time;
- ss) the **"Shared Roadway Costs"** shall mean the aggregate of all costs and expenses incurred in connection with the insurance, operation, maintenance and/or repair of the Shared Roadway (or any portion thereof), including all sidewalks and street landscaping elements comprising part of (or contained within) the Shared Roadway, all as more particularly set out in the Shared Roadway Budget(s) issued from time-to-time, but in no case less than annually from and after the date of registration of this Condominium, on the express understanding that 100% of the Shared Roadway Costs shall initially be borne and paid for solely by this Condominium pending the registration of the Avani Phase II Condominium, and thereafter the Shared Roadway Costs shall be shared between (and be borne and paid for by) each of the Two Avani Condominiums on an equal or 50/50 basis pending the registration of the Selene Condominium, and from and after the date of registration of the Selene Condominium the Shared Roadway Costs shall be shared by and amongst (and be correspondingly paid for by) each of the Three Condominiums in accordance with their respective Proportionate Three-Way Shares, pursuant to the provisions of the Shared Roadway Agreement;
- tt) the **"Shared Service Room Units"** shall mean or include 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 a shared mechanical room designated as unit 136 on level A of this Condominium, 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), all as more particularly set out in section 51 of this declaration, but expressly excluding any of the Exclusive Avani I Condominium Equipment and/or any of the Exclusive Avani II Condominium Equipment;

- uu) the "Terrace Landscaping" shall mean the trees, shrubs, plantings, hard landscaped finishes and features, fences, screens, stonework, planter boxes and/or any other similar items or materials installed or planted by the Declarant (in its sole, unfettered and unchallenged discretion) within the exclusive use outdoor terrace areas appurtenant to (or allocated to) certain dwelling units in this Condominium, pursuant to the provisions of Schedule "F" to this declaration, and which shall be maintained and repaired by the respective owners of said dwelling units in accordance with the provisions of section 57(c)(v) of this declaration (but nevertheless subject to the overriding provisions of section 57(c)(vi) of this declaration);
- vv) 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 (as hereinafter defined) have been sold, conveyed and transferred by the Declarant 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 this Condominium; or
 - iii) such earlier date as the Declarant may determine or designate in its sole, unfettered and unchallenged discretion;
- ww) the "Two Avani Condominiums" shall mean this Condominium and the Avani Phase II Condominium, collectively;
- xx) 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 from time to time or operated therefrom (or within any portion thereof from time to time);
- yy) the "Two-Way Shared Facilities" shall mean or include the shared garage ramp leading into and/or out of the shared underground (and above ground) parking garage serving the Two Avani Condominiums, including all of the visitor parking spaces situate within the confines of either of the Two Avani Condominiums, as well as all outdoor pedestrian walkways and landscaped areas comprising part of the respective non-exclusive use common element areas of each of the Two Avani Condominiums (including all outdoor landscaping treatments and features, as well as 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 Units (as hereinafter defined), the Two-Way Shared Servicing Systems (as hereinafter defined) and the Two-Way Shared Underground Garage (as hereinafter defined), along with the Avani Crash Wall/Berm, inclusive of the shared lobby and concierge station (as well as the on-site concierge personnel), but expressly excluding any of the Exclusive Avani I Condominium Equipment and any of the Exclusive Avani II Condominium Equipment, on the express understanding that the Two-Way Shared Facilities are intended to be used, enjoyed and shared by and amongst the Declarant, the Two Avani Condominiums, and 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 and services situate therein or operated therefrom) to which the owner of the daycare centre situate within the Avani Phase II Condominium (and its tenants, subtenants, employees, and all of the children being cared for therein, and their respective parents) shall be permanently precluded and prohibited from accessing, using and/or enjoying, in whole or in part];
- zz) the "Two-Way Shared Facilities Agreement" shall mean the easement and cost-sharing agreement or reciprocal agreement between this Condominium and the Declarant (with the latter entering into same for and on behalf of the Avani Phase II Condominium), entered into shortly after the registration of this Condominium, and which agreement shall provide, amongst other things, for the operation, maintenance and repair of the Two-Way Shared Facilities, and the corresponding allocation, sharing and payment of the Two-Way Shared Facilities Costs (as hereinafter defined) between the Two Avani Condominiums, in accordance with their respective Proportionate Two-Way Shares. For the purposes of this declaration, the term "Two-Way Shared Facilities Agreement" shall be deemed to include any counterpart agreement that is subsequently entered into by the Avani Phase II Condominium (shortly after its registration under the Act), and with or without the Declarant and/or this Condominium as a party or signatory thereto, and which counterpart agreement shall evidence and confirm, amongst other things, the formal assumption by the Avani Phase II Condominium of the Declarant's obligations under the original Two-Way Shared Facilities Agreement entered into with this Condominium, insofar as same effects or relates to the Avani Phase II Condominium and/or the Avani Phase II Lands or any portion thereof (including without limitation, the obligation to pay the Avani Phase II Condominium's Proportionate Two-Way Share of the Two-Way Shared Facilities Costs), and the corresponding release of the Declarant from any further obligations or liabilities thereunder, and which counterpart agreement shall be expressly enforceable by this Condominium directly against the Avani Phase II Condominium even though this Condominium may not be a party or signatory thereto;
- aaa) the "Two-Way Shared Facilities Budget" shall mean the budget, prepared not less than once annually following the registration of this Condominium and the corresponding execution of the Two-Way Shared Facilities 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 this Condominium, and to the Declarant on behalf of the Avani Phase II Condominium, and thereafter 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 the Two-Way Shared Facilities Agreement;
- bbb) the "Two-Way Shared Facilities Committee" shall mean the committee composed of four members, two of which shall be members of the board of directors of each of the Two Avani Condominiums, and which committee shall be formed or established from and after the Transfer Date, for the purposes of assisting in the preparation of the Two-Way Shared Facilities Budgets from time to time, and assisting in the administration, operation, maintenance and/or repair of the Two-Way Shared Facilities on behalf of each of the Two Avani Condominiums;
- ccc) 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/or repair of the Two-Way Shared Facilities (or any

portion thereof), all as set out in the Two-Way Shared Facilities Budget(s) issued from time-to-time, and which costs shall be shared [initially between this Condominium and the Declarant, and ultimately between the Two Avani Condominiums from and after the registration of the Avani Phase II Condominium] pursuant to the provisions of this declaration and the Two-Way Shared Facilities Agreement, including without limitation, the costs and expenses incurred in connection with the following, namely:

- i) the illumination, maintenance and repair of the garage ramp leading into and/or out of the shared underground parking garage serving the Two Avani Condominiums, including the maintenance and repair of all visitor parking spaces situate within the confines of either of the Two Avani Condominiums, as well as the maintenance and repair of all outdoor pedestrian walkways and landscaped areas comprising part of the respective non-exclusive use common element areas of each of the Two Avani Condominiums, including all appurtenant lighting, cleaning, landscape irrigation, drainage and/or maintenance services and systems, as well as the periodic cleaning and removal of all garbage and debris from the Two-Way Shared Underground Garage (as hereinafter defined), and 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 aforementioned walkways and/or outdoor landscaped areas (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 retaining and remunerating the building superintendent that will be residing within the shared superintendent suite situate within the Avani Phase II Condominium (as and when such unit has been completed and is ready to be occupied), together with the cost of operating, maintaining and repairing the two guest suites (and any ancillary laundry facility) to be situate within the Phase II Recreation Centre Unit, along with the cost of retaining on-site concierge personnel to monitor and administer the shared lobby and 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 and the shared superintendent suite (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, plumbing, drainage 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. water, electricity and thermal energy) consumed by 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, 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, including the cost of procuring and maintaining adequate replacement cost insurance for the Avani Crash Wall/Berm (ie. in the event same is damaged and needs to be repaired or replaced);
- ddd) 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 to 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, ventilation 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, ventilation, 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;

- eee) 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, whether presently existing or constructed after the registration of this declaration, and intended to be shared by the Two Avani Condominiums exclusively, including without limitation, all garage 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 underground (and above ground) garage structure, but expressly excluding all parking units, locker units, service units and any other units situate within the said underground (and above ground) 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 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 designed or intended to service or benefit either one of the Two Avani Condominiums exclusively;
- fff) 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;
- ggg) a "unit" shall mean a part of the lands included in the description and designated as a unit by the description, and shall comprise the space enclosed by its boundaries and all the material parts of the said lands within such space, in accordance with this declaration and the description, and shall expressly include or exclude (as the case may be) those pipes, wires, cables, conduits, ducts, equipment and/or mechanical or similar apparatus as are more particularly described in section 5 of this declaration. For greater certainty, the definition of a "unit", insofar as it relates to the duty to maintain (pursuant to section 90 of the Act) and the duty to repair (pursuant to section 89 of the Act) as provided or stipulated in this declaration, shall extend to all building components, finishes, fixtures and features installed within any unit by the Declarant in accordance with the architectural and/or structural plans pertaining to this Condominium, notwithstanding that such installations (or any portion thereof) may have occurred after the registration of this declaration, provided that same are described in the schedule delivered by the Declarant to the Corporation pursuant to section 43(5)(h) of the Act, or alternatively included within the description of the standard unit (for the class of unit to which each unit belongs) as described in a by-law hereafter enacted by the Corporation under section 56(1)(h) of the Act; and
- hhh) the "Visitor Parking Spaces" shall mean the 62 visitor parking spaces located on levels 1 and 2, comprising part of the common elements of this Condominium, and which spaces are designated by the letter "V" on the condominium description plan filed concurrently herewith, and are intended to be used exclusively 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 employees, agents, representatives, contractors, sub-contractors and invitees from time to time), all in accordance with the provisions of section 19 of this declaration.

Section 2 - Statement Confirming the Act Governs the Lands

The lands described in Schedule "A" annexed hereto, and in the description filed concurrently herewith, together with all interests appurtenant thereto, shall be governed by the Act.

Section 3 - Statement Confirming the Type of Condominium Created

The registration of this declaration, and the description filed concurrently herewith, will create a freehold condominium corporation that constitutes a standard condominium corporation.

Section 4 - Consent of Outstanding Mortgagees

The consent of every person having a registered mortgage or charge against the Real Property (or any interests appurtenant thereto) is contained in Schedule "B" annexed hereto.

Section 5 - Inclusions/Exclusions from Units

It is expressly stipulated and declared that the following items, matters or things are respectively included within or excluded from (as the case may be) each of the units described below, namely:

- a) each dwelling unit shall include all pipes, wires, cables, conduits, ducts, and mechanical or similar apparatus that supply any service(s) to that particular unit only, and that lie within or beyond the unit boundaries thereof as more particularly set out in Schedule "C" annexed hereto, and shall specifically include:
 - i) the complete individual fan coil unit or system (and all equipment and fixtures appurtenant thereto, including the fan, coils, valves and controls, together with the supply and return branch pipes extending from the common vertical pipe risers, which carry or conduct either hot water or chilled water to any such unit) which provides both heating and cooling services to the unit exclusively (regardless of whether same is/are installed or located within or beyond the boundaries of said unit);
 - ii) all electrical receptacles, one-way intercom and alarm controls (save and except for the cable(s) servicing such controls and save and except for any in-suite heat detector and/or fire alarm that is connected to (or which

ultimately links to) this Condominium's main fire annunciation or alarm panel, which shall accordingly comprise part of the common elements], ventilation fan units, light fixtures lying within suspended ceilings and similar apparatus that supply any service to any such unit only (regardless of whether same are installed or located within or beyond the boundaries of said unit); and

- iii) any water and/or other branch piping extending to the common pipe risers, but expressly excluding any common pipe risers;
- b) **each dwelling unit shall exclude:**
 - i) all concrete, concrete block or masonry portions of load bearing walls or columns located within the boundaries of said unit;
 - ii) all pipes, wires, cables, conduits, ducts, flues, and mechanical or similar apparatus that supply any service to more than one unit, or to the common elements, or that may lie within the boundaries of any such unit but which do not service that particular unit;
 - iii) all the branch pipes, riser pipes and sprinkler heads that comprise part of the emergency fire protection system of the Condominium;
 - iv) any insulation or other similar material used for insulation on the underside of the concrete ceiling slab; and
 - v) all exterior door and exterior window hardware (such as door and/or window handles, locks, hinges and peep holes);
- c) **each parking unit shall exclude** all fans, pipes, wires, cables, conduits, ducts, flues or similar apparatus (whether used for water drainage, power or otherwise) that supply any service to any unit and/or to the common elements, together with any heating or air-conditioning equipment, ducts, flues, shafts, etc. and/or controls of same (whether located within or beyond any walls or floors which may comprise part of the boundaries of any parking unit), and shall also exclude:
 - i) any concrete columns, concrete walls or load bearing walls which may be located within (or comprise part of) the boundaries of any parking unit, together with any fire hose cabinets and steel guard rails abutting (or affixed to, or hanging from) any such columns or walls; and
 - ii) any water proofing membrane, asphalt traffic topping or any other protective coating or substance affixed to, or installed upon, the unit side face of the concrete floor slab beneath such parking unit;
- d) **each locker unit shall exclude** all fans, pipes, wires, cables, conduits, ducts, flues or similar apparatus (whether used for water drainage, power or otherwise) that supply any service to any unit and/or to the common elements, together with any heating or air-conditioning equipment, ducts, flues, shafts, etc. and/or controls of same (whether located within or beyond any walls or floors which may comprise part of the boundaries of any locker unit), and shall also exclude any concrete columns, concrete walls or load bearing walls which may be located within (or comprise part of) the boundaries of any locker unit, together with any fire hose cabinets abutting (or affixed to, or hanging from) any such columns or walls;
- e) **each bicycle storage/locker units shall exclude** all fans, pipes, wires, cables, conduits, ducts, flues or similar apparatus (whether used for water drainage, power or otherwise) that supply any service to any unit and/or to the common elements, together with any heating or air-conditioning equipment, ducts, flues, shafts, etc. and/or controls of same (whether located within or beyond any walls or floors which may comprise part of the boundaries of any bicycle storage/locker unit), and shall also exclude any concrete columns, concrete walls or load bearing walls which may be located within (or comprise part of) the boundaries of any bicycle storage/locker unit, together with any fire hose cabinets abutting (or affixed to, or hanging from) any such columns or walls;
- f) **the communication control unit shall include** each of the electrical rooms and/or electrical closets situate on each level throughout this Condominium, and all wires, cables and cable conduits emanating from the communication control unit and extending beyond the boundaries thereof from each of the aforementioned electrical rooms and/or electrical closets and leading to (and ultimately connecting to or with) each of the dwelling units in this Condominium (and to each of the Phase I Recreation Centre Unit and the communication control unit in this Condominium), and shall expressly include:
 - i) any branch conduits extending to any conduit risers, as well as the riser conduits and all junction or pull boxes, together with all wires, cables, cable television termination closets, cable receptacles, ports, jacks, electrical grounding apparatus and all other mechanical or similar apparatus and equipment leading or emanating from (or otherwise connected to) the communication control unit which may now or hereafter be used in connection with the supply of cable television, telephone, data, internet, radio, wireless and/or any other telecommunication services heretofore or hereafter provided to any of the dwelling units in this Condominium, and to the Phase I Recreation Centre Unit and to designated portions of the common elements, regardless of whether any or all of such wires, cables, closets, receptacles, ports, jacks, apparatus and/or equipment are situate within or beyond the boundaries of the communication control unit as outlined in Schedule "C" annexed hereto and/or as delineated on any condominium description plan sheet(s) filed concurrently with this declaration; and

- ii) all pipes, wires, cables, conduits, ducts and mechanical or similar apparatus that supply any service and/or utility (or which facilitates the supply of any service and/or utility) exclusively to the communication control unit [including without limitation, the electrical grounding of the CCU Equipment (as such term is hereinafter defined)], regardless of whether such pipes, wires, cables, conduits, ducts and apparatus are situate within or beyond the boundaries of the communication control unit as outlined in Schedule "C" annexed hereto and/or as delineated on any condominium description plan sheet(s) filed concurrently with this declaration; and
- g) the communication control unit shall exclude all catwalks or walkways situate within the boundaries of the communication control unit, and all pipes, wires, cables, ducts, flues, and mechanical or similar apparatus and equipment that supply any service [other than cable television, telephone, data, internet, radio, wireless and/or any other telecommunication service(s)] to any other unit(s) and/or to the common elements, regardless of whether same may be situate within the boundaries of the communication control unit.
- h) the Phase I Recreation Centre Unit and each of the Shared Service Room Units shall respectively include all pipes, wires, cables, conduits, ducts, and mechanical or similar apparatus that supply any service(s) to any such unit only, and that lie within or beyond the unit boundaries thereof as more particularly set out in Schedule "C" annexed hereto, and shall specifically include:
 - i) all equipment, fixtures and installations appurtenant to any such unit, and which provide any electrical, mechanical, plumbing, drainage, ventilation, security, heating and/or cooling services to any such unit exclusively (regardless of whether same is/are installed or located within or beyond the boundaries of said unit), but nevertheless not any of the equipment, fixtures and/or installations which comprise all or part of the Exclusive Avani I Condominium Equipment or the Exclusive Avani II Condominium Equipment;
 - ii) all electrical receptacles, one-way intercom and alarm controls [save and except for the cable(s) servicing such controls, and save and except for any in-suite heat detector and/or fire alarm that is connected to (or which ultimately links to) the Condominium's main fire annunciation or alarm panel, which shall accordingly comprise part of the common elements], ventilation fan units, light fixtures lying within suspended ceilings and similar apparatus that supply any service(s) to any such unit only (regardless of whether same are installed or located within or beyond the boundaries thereof);
 - iii) all exterior door and exterior window hardware (such as door and/or window handles, locks, hinges and peepholes); and
 - iii) the Phase I Recreation Centre Unit shall specifically include all concrete, concrete block or masonry portions of load-bearing walls or columns located within the Phase I Recreation Centre Unit, as well as all other structural or load-bearing columns or beams located within the Phase I Recreation Centre Unit; and
- i) the Phase I Recreation Centre Unit and each of the Shared Service Room Units shall respectively exclude:
 - i) all concrete, concrete block or masonry portions of load-bearing walls or columns located within any of the Shared Service Room Units, as well as all other structural or load-bearing columns or beams located within any of the Shared Service Room Units;
 - ii) all pipes, wires, cables, conduits, ducts, flues, and mechanical or similar apparatus that supply any service to more than one unit, or to the common elements, or that may lie within the boundaries of any such unit but which do not service that particular unit;
 - iii) all the branch pipes, riser pipes and sprinkler heads that comprise part of the emergency fire protection system of the Condominium; and
 - iv) any insulation or other similar material used for insulation on the underside of the concrete ceiling slab of any such unit.

Section 6 - Common Interest and Common Expense Allocation

Each owner shall have an undivided interest in the common elements as a tenant-in-common with all other owners, and shall correspondingly be obliged to contribute to the common expenses, in the proportions set forth opposite each unit number in Schedule "D" annexed hereto. The total of the proportions of the common interests and of the common expenses shall each be one hundred (100%) percent.

Section 7 - Address for Service, Municipal Address and Mailing Address of the Corporation

The Corporation's address for service shall be:

4800 Dufferin Street
Toronto, Ontario
M3H 5S9

or such other address as the Corporation may determine by resolution of the board.

The Corporation's municipal address and mailing address shall be:

255 Village Green Square
Toronto, Ontario
M1S 0L7

Section 8 - Exclusive Use Common Elements

The owners of the units listed in Schedule "F" annexed hereto shall have the exclusive use and enjoyment of those portions of the common elements more particularly described in said Schedule "F" which are respectively allocated or appurtenant to said units, subject however to such use and enjoyment being regulated by the provisions of the Act, this declaration and the by-laws and rules of the Corporation.

Section 9 - Conditions of the Approval Authority

There are no conditions that the approval authority [as defined in section 1(1) of the Act] requires this declaration to mention or include, save and except for the following, namely:

- a) Visitor parking spaces will be clearly delineated on the condominium plan to be registered, and the declaration shall contain a clause clearly specifying that visitors' parking shall form part of the common elements, and neither be used by nor sold to any unit owners, nor be considered part of the exclusive use portions of the common elements;
- b) Non-disabled unit owners and/or occupants of any non-visitor handicapped parking units shall be obligated, upon notification by the condominium corporation, to exchange, at no cost to the disabled driver, the use of the handicapped parking unit with a disabled driver's non-handicapped parking unit. Alternatively, non-visitor handicapped parking spaces can be made part of the common elements, however all condominium documents, including the declaration and description, must state that the condominium corporation will retain control over the spaces and that they cannot be made exclusive use portions of the common elements. All non-visitor handicapped parking spaces must conform to one of the alternatives identified above;
- c) All unit purchasers and lessees are hereby advised about the following warning clauses that the Canadian Pacific Railway wishes to bring to their attention, namely:
 - i) "Warning: Canadian Pacific Railway or its assigns or successors in interest has or have a right-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the rail facilities on such right-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and the individual dwelling(s). CPR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid right-of-way.";
 - ii) "Warning: Any berm fencing or vibration isolation features implemented are not to be tampered with or altered, and the Owner/Declarant (and ultimately the Condominium Corporation) shall have the sole responsibility for and shall maintain these features."; and
 - iii) "Warning: Canadian Pacific Railway or its assigns or successors in interest has or have a railway classification yard located within 1,000 metres from the land the subject hereof; that its operations are conducted 24 hours a day, 7 days a week, which includes the shunting of trains and the idling of locomotives. There may be alterations to or expansions of the railway yard operations in the future, which alterations or expansions may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and the individual dwelling(s), and the Canadian Pacific Railway will not be responsible for complaints or claims arising from the use of its facilities and/or its operations.";
- d) This declaration shall contain the necessary wording to grant rights-of-way to provide for access to and use of the shared facilities with 275 Village Green Square, such as driveways, loading facilities, etc.; and
- e) This declaration shall contain wording that discloses the obligations in respect of the discharge of ground water to the City's storm sewer, pursuant to Toronto Municipal Code Chapter 681, to the satisfaction of the Executive Director, Engineering & Construction.

Section 10 - Certificate(s) of Architect and/or Engineer(s)

The certificate(s) of the Declarant's architect(s) and/or engineer(s), confirming that the building on the Real Property comprising the Condominium has been constructed in accordance with the regulations made under the Act, is/are contained in Schedule "G" annexed hereto.

Section 11 - Composition of First Board of Directors

Pursuant to the provisions of section 42(4) of the Act, it is hereby declared that the first board of directors of this Condominium shall consist of five (5) persons, and such composition of the board shall continue until a by-law increasing or decreasing said number has been duly enacted at any time following the turnover meeting (convened in accordance with the provisions of section 43 of the Act) in respect of this Condominium.

PART 2 - COMMON EXPENSES

Section 12 - Specification of Common Expenses

The common expenses shall comprise the expenses of the performance of the objects and duties of the Corporation, and such other costs and expenses incurred by or on behalf of the Corporation that are specifically designated as (or collectible as) common expenses pursuant to the provisions of the Act and/or this declaration, including without limitation, those specific expenses which are listed in Schedule "E" annexed hereto. Notwithstanding anything provided in Schedule "E" to the contrary, in an effort to ensure that the Corporation does not incur large unfunded financial obligations (or a large indebtedness) without the specific consent of the owners, the common expenses shall exclude monies required to be raised:

- a) to pay for any undertaking which costs more than \$25,000.00 and which is not required or contemplated by law, or the Act, or by any provision in this declaration or in any of the by-laws of the Corporation (hereinafter individually referred to as a "by-law", and collectively referred to as the "by-laws"), or in any agreement(s) binding on the Corporation that is expressly authorized or ratified by any by-law; or
- b) to pay (or repay) the cost of any borrowing of money for or on behalf of the Corporation which is in excess of \$25,000.00, or that increases the outstanding indebtedness of the Corporation to more than \$25,000.00, and which is not required or contemplated by any provision in this declaration or in any by-law, or in any agreement(s) binding on the Corporation that is expressly authorized or ratified by any by-law;

unless such undertaking and its cost, or such borrowing and its cost (as the case may be) have received specific approval by a majority of the owners who are present (in person or by proxy) at a meeting duly called for the purpose of obtaining such approval.

Section 13 - Payment of Common Expenses

Each owner shall pay to the Corporation his or her proportionate share of the common expenses, and the assessment and collection of the contributions toward the common expenses may be regulated by the board pursuant to the by-laws of the Corporation. In addition to the foregoing, any losses, costs or damages incurred by the Corporation by reason of a breach of any provision in this declaration or in any by-laws or rules of the Corporation in force from time to time (or a breach of any provision in any agreement(s) binding on the Corporation that is expressly authorized or ratified by any by-law) committed by any unit owner (and/or by members of his or her family, or by anyone residing in the owner's unit with the permission or knowledge of the owner, and/or their respective tenants, invitees or licensees), including without limitation, the cost of any increase in the Corporation's insurance premiums (and any deductible amount) as contemplated in section 16(a) below caused by any unit owner (or by those for whose acts such owner is responsible, at law or in equity) shall be borne and paid for by such owner, and may be recovered by the Corporation against such owner in the same manner as common expenses (and with corresponding lien rights in favour of the Corporation similar to the case of common expense arrears).

Section 14 - Reserve Fund

- a) The Corporation shall establish and maintain one or more reserve funds, and shall collect from the owners, as part of their respective contributions towards the common expenses, all amounts that are reasonably expected to provide sufficient funds for the major repair and replacement of the common elements and assets of the Corporation, all in accordance with the provisions of the Act.
- b) No part of any reserve fund shall be used except for the purposes for which such fund was established. The amount in all reserve funds so contributed by or on behalf of this Condominium (together with all interest earned or accrued thereon) shall constitute an asset of the Corporation, and shall not be distributed to any unit owner(s) except upon the termination of the Corporation, in accordance with the provisions of the Act.
- c) Without limiting the generality of the foregoing, it is hereby declared and stipulated that the Corporation:
 - i) shall at all times maintain a separate reserve fund to cover the major repair and replacement of the common elements and assets of this Condominium, exclusive of the Two-Way Shared Facilities or any portion thereof, and

exclusive of any reserve fund monies earmarked for the major repair and replacement of the Daycare Centres or any portion thereof, and exclusive of any reserve fund monies earmarked for the major repair and replacement of the Shared Roadway (or any portion thereof);

- ii) shall, in conjunction with the Declarant prior to the registration of the Avani Phase II Condominium (and thereafter in conjunction with the Avani Phase II Condominium), jointly maintain a separate reserve fund exclusively for the major repair and replacement of the Two-Way Shared Facilities;
- iii) shall, in conjunction with the Declarant and each of the other Metrogate Condominiums heretofore and hereafter created and registered from time to time, jointly maintain a separate reserve fund exclusively for the major repair and replacement of each of the two Daycare Centres; and
- iv) shall, in conjunction with the Declarant prior to the registration of the Avani Phase II Condominium and the Selene Condominium (and thereafter in conjunction with the Avani Phase II Condominium and the Selene Condominium), jointly maintain a separate reserve fund exclusively for the major repair and replacement of the Shared Roadway.

Section 15 - Status Certificate

The Corporation shall provide a status certificate to any requesting party who has paid the fees charged by the Corporation for same, in accordance with the provisions of section 76 of the Act, together with all requisite accompanying documents, statements and information prescribed by the Act in connection therewith. The Corporation shall forthwith provide the Declarant (and/or any purchaser, transferee or mortgagee of a unit from the Declarant) with a status certificate (and all such accompanying documentation, statements and information) as may be requested from time to time by or on behalf of the Declarant (or by any such purchaser, transferee or mortgagee) in connection with the Declarant's sale, transfer or mortgage of any unit(s), all at no charge or fee to the Declarant whatsoever.

PART 3 - OCCUPATION, USE AND MODIFICATION OF THE COMMON ELEMENTS

Section 16 - General Use of the Common Element Areas

- a) Save as otherwise provided in this declaration to the contrary, each owner may make reasonable use of (and has the right to enjoy) the whole or any part of the common elements, including those exclusive use common element areas allocated or appurtenant to his or her unit in Schedule "F" annexed hereto, subject to any applicable conditions or restrictions set out in the Act, this declaration, the by-laws and rules of the Corporation, and any agreement(s) binding on the Corporation and expressly authorized or ratified by any by-law. However, save and except as expressly provided or contemplated in this declaration to the contrary, no condition shall be permitted to exist, and no activity shall be carried on, within any unit or upon any portion of the common elements that:
 - i) will result in a contravention of any term or provision set out in the Act, this declaration, the by-laws and rules of the Corporation, and in any agreement(s) binding on the Corporation and expressly authorized or ratified by any by-law;
 - ii) is likely to damage the property of the Condominium, injure any person, or impair the structural integrity of any unit or common element area;
 - iii) will unreasonably interfere with the use and enjoyment by the other owners of the common elements and/or their respective units; or
 - iv) may result in the cancellation (or threatened cancellation) of any policy of insurance obtained or maintained by the Corporation, or that may significantly increase any applicable insurance premium(s) with respect thereto, or any deductible portion in respect of such policy.

In the event that the use of the common elements or any portion thereof by any owner (or by the occupants of any dwelling unit residing therein with the consent or knowledge of the owner of said unit, or by anyone else for whose acts or omissions said unit owner is responsible or liable, either at law or in equity) contravenes any of the foregoing provisions, then such owner shall indemnify and save the Corporation harmless from and against any and all costs, damages, expenses and/or liabilities that the Corporation may suffer or incur as a result of said contravention, and/or as a result of the cancellation of any such insurance policy of the Corporation arising therefrom (including without limitation, any costs incurred to redress, rectify and/or relieve said contravention), and such owner shall also be personally liable to pay and/or fully reimburse the Corporation for any increased insurance premiums (as well as the entire deductible amount with respect to any insurance policy or policies of the Corporation) paid or payable by the Corporation as a result thereof, and all such costs and expenses may be recovered by the Corporation against such owner in the same manner as common expenses (and with corresponding

lien rights in favour of the Corporation against such owner's unit, similar to the case of common expense arrears). However, none of the foregoing provisions shall be construed so as to prohibit or restrict (nor shall same be applied in any manner which prohibits or restricts) the transient residential rental accommodation arrangements made (or to be made from time to time) by or on behalf of the Declarant and/or any other dwelling unit owner(s), and the aforementioned indemnity and reimbursement provisions with respect to any increased insurance premiums and/or deductible amount(s) regarding the Corporation's insurance shall not apply with respect to the transient residential rental accommodation arrangements made (or to be made from time to time) by or on behalf of the Declarant and/or any other dwelling unit owner(s).

- b) No one shall, by any conduct or activity undertaken in or upon any part of the common elements, impede, hinder or obstruct any right, privilege, easement or benefit given to any party, person or other entity pursuant to (or by virtue of) this declaration, any by-law and/or any agreement(s) binding on the Corporation that is expressly authorized or ratified by any by-law, including without limitation, the Two-Way Shared Facilities Agreement.
- c) Save as otherwise provided in this declaration or in the Two-Way Shared Facilities Agreement to the contrary, no owner shall make any change or alteration to an installation upon the common elements, or maintain, decorate, alter or repair any part of the common elements (except for maintaining those parts of the common elements which he or she has a duty to maintain, in accordance with the provisions hereinafter set forth), without obtaining the prior approval of the Corporation thereto in accordance with the provisions of the Act.

Section 17 - Declarant's Use of the Common Element Areas

Notwithstanding anything provided in this declaration to the contrary, and notwithstanding any rules or by-laws of the Corporation hereafter passed or enacted to the contrary, it is expressly stipulated and declared that:

- a) the Declarant and its authorized agents, representatives and/or invitees shall have free and uninterrupted access to and egress from the common elements, for the purposes of implementing, operating and/or administering the Declarant's marketing, sale, construction and/or customer-service program(s) with respect to any unsold units in this Condominium or in any of the other Metrogate Condominiums developed (or intended to be developed) on any portion of the Metrogate Site, from time to time;
- b) the Declarant and its authorized agents or representatives shall be entitled to erect and maintain signs and displays for marketing/sale purposes, as well as model suites and one or more offices for marketing, sales, construction and/or customer-service purposes, upon any portion of the common elements, and within or outside any unsold units, at such locations and having such dimensions as the Declarant may determine in its sole, unfettered and unchallenged discretion, all without any charge to the Declarant for the use of the space(s) so occupied, nor for any utility services (or any other usual or customary services) supplied thereto or consumed thereby, nor shall the Corporation (or any one else acting on behalf of the Corporation) prevent or interfere with the provision of utility services (or any other usual or customary services) to the Declarant's marketing/sales/construction/customer-service office(s) and said model suites; and
- c) the Corporation shall ensure that no actions or steps are taken by anyone which would prohibit, limit or restrict the access and egress of the Declarant and its authorized agents, representative and/or invitees over the common element areas of this Condominium, to and from the aforementioned sales/marketing office, construction office, customer service office and/or the temporary model suites, at all times during the opening hours of such offices and/or model suites, subject however to such reasonable and customary restrictions on access thereto as may be implemented or imposed by the security concierge or security personnel initially retained by or on behalf of this Condominium, and ultimately retained by or on behalf of the Two Avani Condominiums;

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, conveyed and transferred by the Declarant to each of the respective unit purchasers thereof, whereupon the Declarant shall be entitled to remove all of the furnishings, chattels and equipment located in the aforementioned marketing/sales/construction/customer-service office(s), or may (at the Declarant's sole option) leave all fixtures or attached furnishings maintained therein to or for the benefit of the Two Avani Condominiums jointly, as determined by the Declarant in its sole, unfettered and unchallenged discretion.

Section 18 - Use of the Bicycle Storage Areas

The designated bicycle storage area for visitors situate on level 1, comprising part of the common elements of this Condominium and having a total visitor bicycle storage capacity of approximately 40 bicycles in the aggregate, shall be used only for the temporary

storage of the bicycles of visitors to either of the Two Avani Condominiums, and shall be used on a "first come, first served" basis. The designated bicycle storage areas exclusively for the residents of this Condominium, situate on levels A, B and C respectively, comprising part of the common elements of this Condominium and having a total resident bicycle storage capacity of approximately 65 bicycles in the aggregate, shall be used only for the temporary storage of the bicycles of those dwelling unit owners in this Condominium (and/or their respective residents and tenants) who have been assigned an available bicycle space by the Corporation or its property manager on a "first come, first served" basis. The use of each of said bicycle storage areas shall be subject to the terms and provisions of any applicable by-laws and regulations of the Governmental Authorities, and shall also be governed by the rules and regulations of the Corporation in force from time to time.

Section 19 - Use of the Visitor Parking Spaces

- a) Save as hereinafter otherwise provided to the contrary, it is expressly declared and stipulated that each of the visitor parking spaces, which are situate on levels 1 and 2 within the parking garage, and correspondingly comprise part of the common elements of this Condominium, 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, for the purposes of parking thereon (on a temporary basis only) only one motor vehicle per space, and each such space shall be designated for "visitor parking only" by means of a clearly visible sign.
- b) Notwithstanding anything provided in this declaration to the contrary, it is expressly declared and stipulated 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 all 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; and
 - 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.
- c) For the purposes of this declaration, 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 vehicle(s) 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.
- d) The use and operation of the visitor parking spaces situate within the confines of this Condominium shall be monitored and controlled by the on-site concierge personnel initially retained by or on behalf of this Condominium, and ultimately retained by or on behalf of the Two Avani Condominiums.

Section 20 - Use of the Residential Garbage Collection & Holding Room

- a) The owners, residents and tenants of the dwelling units in this Condominium will have access to, and use of, a central garbage collection and holding room equipped with an automated re-cycling and waste sorting system (ie. tri-sorter type), situate on level 1 and comprising part of the common elements of this Condominium, and intended to be used solely for the purposes of temporarily sorting and storing the garbage refuse emanating from the respective dwelling units and common element areas in this Condominium.
- b) Municipal garbage pick-up service will be available to this Condominium for the collection and removal of the residential garbage emanating from the dwelling units (and from the common element areas of this Condominium), on designated or

scheduled municipal garbage pickup days. Accordingly, on designated municipal garbage collection and pick-up days only, the Corporation shall arrange for this Condominium's residential garbage container bins to be moved from the residential garbage storage/recycling room to a reinforced exterior concrete storage/collection pad.

- c) The Corporation shall arrange for a trained person to be present at all times during the removal of the residential garbage and refuse from this Condominium, in order to properly manoeuvre the residential garbage containers to the exterior concrete storage/collection pad, and onto the municipal garbage collection vehicles, and to act as a flagperson when such vehicles are reversing.
- d) All costs and expenses associated with the municipality's provision of containerized residential garbage collection services for this Condominium shall comprise part of the common expenses.

Section 21 - The Use & Operation of the Ground Water Filtration System

The Ground Water Filtration System (including all pipes, drains, filters, screens, and all other equipment appurtenant thereto) which has been installed by the Declarant within the confines of this Condominium, comprises part of the common elements of this Condominium situate on level B, and is designed and intended to cleanse and filter the ground water that emanates from or through this Condominium's building foundation (and its appurtenant drainage system), and that is ultimately discharged into the City of Toronto's storm sewer system. The Ground Water Filtration System (which serves or benefits this Condominium exclusively) shall at all times be maintained in good working condition by this Condominium, in compliance with the ground water control, treatment and discharge requirements of the City of Toronto (pursuant to the City of Toronto's Municipal Code Chapter 681, as amended from time to time), and in compliance with the provisions of the Ground Water Discharge Assumption Agreement, including without limitation, the provisions that mandate periodic testing and monitoring of the ground water, and the submission of periodic reports to the City of Toronto's water department.

Section 22 - Restricted Access and/or Use of Certain Common Element Areas

- a) Save as otherwise specifically provided elsewhere in this declaration to the contrary, it is hereby declared and stipulated that without the prior written consent of the board, no one other than the Declarant or the Corporation (and the respective authorized agents or representatives of the Declarant or the Corporation) shall have any right of access to any part of the common elements designated or used from time to time as a superintendent suite, utilities area, service room, equipment room, electrical or mechanical room, building maintenance or storage area, building manager's office, the Declarant's marketing, sales, construction and/or customer-service office(s), any area used by the Declarant as a temporary model suite, any area used for operating or storing the machinery of the Corporation, any portion of the roof comprising part of the common elements of this Condominium (save and except for the owner of the communication control unit and its authorized agents, tenants and/or representatives), or any other parts of the common elements used for the care, maintenance or repair of the Condominium's property generally. Save for the Declarant and the owner of the communication control unit and their authorized agents, tenants and/or representatives from time to time, no one shall be entitled to place or affix any matter or thing directly on top of any rooftop structure which encloses or houses any mechanical or electrical equipment, or any heating or cooling equipment, as well as any elevator shafts, stairwells, catwalks, cooling towers, boiler rooms and/or fresh air ducts. The foregoing restrictions on access shall not apply to any mortgagee having a registered first mortgage or charge that encumbers at least twenty-five (25%) percent of the dwelling units in this Condominium, if such mortgagee is exercising a right of access for purposes of inspection, upon giving 48 hours prior written notice thereof to the Corporation or its property manager.
- b) None of the owners or tenants of the daycare centre unit to be situate within the Avani Phase II Condominium, nor the daycare centre operator and any of its respective employees or representatives (nor any of the children attending the daycare centre, or their respective parents) shall have any right of access to, nor any use or enjoyment of, any portion of the Two Recreation Centres, nor any of the equipment, facilities or amenities contained therein or operated therefrom whatsoever.
- c) In light of the fact that the parking units, locker units and/or bicycle storage/locker units within this Condominium may, subject to the overriding provision of section 43 hereof, be owned, leased and/or otherwise occupied by the owners and tenants of the dwelling units within the Avani Phase II Condominium, and *vice-versa*, it is hereby declared and stipulated that to the extent permitted by law, any owner of a parking unit, locker unit and/or bicycle storage/locker unit in this Condominium (or any tenant, licensee or permitted occupant thereof) who is not also coincidentally an owner, tenant,

licensee or permitted occupant of a dwelling unit in this Condominium, shall only have the right to use and enjoy those portions of the common elements of this Condominium (namely those walkways, roadways, ramps, driveways, hallways, corridors and stairwells) as are necessary to allow access to and egress from such parking unit, locker unit and/or bicycle storage/locker unit (as the case may be), and shall correspondingly not access nor use or enjoy any of the common elements situate above level 4 of this Condominium.

Section 23 - Modification of Common Elements, Assets and Services

a) General Prohibition

Save as otherwise specifically provided in this declaration to the contrary, no owner shall make any change or alteration to the common elements (or to an installation upon the common elements), nor alter, decorate, renovate, maintain or repair any part of the common elements (except for maintaining or repairing those parts of the common elements that he or she has a duty to maintain or repair in accordance with the provisions of this declaration), without obtaining the prior written approval of the Corporation in accordance with the Act, and correspondingly entering into an AAI Agreement with the Corporation in respect of any proposed addition, alteration or improvement to the common elements in accordance with the provisions of section 98 of the Act. Without limiting the generality of the foregoing, and save and except for the Declarant, no owner of a dwelling unit shall erect or install any type of balcony, patio or terrace enclosure or privacy screen/fence upon any portion of the common elements (whether exclusive use or otherwise), without having the construction, erection or installation of same, as well as the specific design, size, colour, specifications and location of same (together with all financial commitments by any such owner with respect to the future maintenance, repair and insurance costs of same) first approved in writing by the board, and ultimately confirmed by the provisions of an AAI Agreement entered into with the Corporation.

b) Substantial Additions, Alterations or Improvements

The Corporation may make any substantial addition, alteration or improvement to (or renovation of) the common elements or any portion thereof, or any substantial change in the assets of the Corporation, or any substantial change(s) in any service(s) that the Corporation provides to the owners, only upon obtaining the affirmative vote of owners thereto who own at least sixty-six and two-thirds (66 2/3%) percent of the units, at a meeting duly called for such purpose, in accordance with the provisions of subsections 97(4) and (5) of the Act.

c) Non-Substantial Additions, Alterations or Improvements

The Corporation may make any non-substantial addition, alteration or improvement to (or renovation of) the common elements or any portion thereof, or may make any non-substantial change to the assets of the Corporation, or any non-substantial change(s) in any service(s) that the Corporation provides to the owners, in accordance with the provisions of subsections 97(2) and (3) of the Act.

d) Determining Whether any Addition, Alteration or Improvement is Substantial

Whether any addition, alteration or improvement to (or renovation of) the common elements, or any change in the assets of the Corporation, or any change in any service provided by the Corporation to the owners, is to be considered substantial or not, shall be determined or confirmed in accordance with the provisions of subsection 97(6) of the Act. The cost of any addition, alteration, improvement or change that the Corporation makes (whether substantial or otherwise) shall form part of the common expenses.

e) As-Built Drawings

A copy of the complete set of "as-built" architectural and structural plans and specifications for the building comprising this Condominium and situate on the Real Property, including copies of all plans and specifications with respect to any addition(s), alteration(s), improvement(s) or renovation(s) made from time to time to the common elements or any portion thereof [or to any unit(s)] which require the prior written approval of the board, shall be maintained in the office of the Corporation or of its property manager at all times, or at such other place as the board shall from time to time determine by resolution, for the use of the Corporation in rebuilding or repairing any damage to the building, any of the units and/or the common elements (or any portion thereof), and for the use of any owner or mortgagee of a unit in rebuilding or repairing any damage to any unit and/or any exclusive use common element area appurtenant thereto.

PART 4 - THE TWO-WAY SHARED FACILITIES

Section 24 - Co-Ownership of the Two-Way Shared Units

- a) 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 Avani Phase I Condominium comprises 363 registered dwelling units, and the Avani Phase II Condominium is intended to comprise 363 registered dwelling units, the Avani 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 Avani 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 Avani Phase II Condominium, once same is registered under the Act sometime hereafter.
- b) 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 Avani Phase II Condominium is not registered by the Transfer Date, then such transfer shall occur as soon as reasonably possible after the Avani Phase II Condominium is duly registered under the Act (but no later than the first meeting of the board of directors of the Avani Phase II Condominium convened following its turnover meeting held in accordance with the provisions of section 43 of the Act).
- c) 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.
- d) 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.

Section 25 - Operation of (and Budgeting for) The Two-Way Shared Facilities

- a) 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, subject to the terms and provisions of the Two-Way Shared Facilities Agreement, be 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 any units (or proposed units) in any of the other condominiums comprising part of the Metrogate Condominium Community by any of the Metrogate Group].
- b) 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 following the registration of this Condominium) 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 overall annual budget(s) of each of the Two Avani Condominiums. This Condominium shall adopt, and be bound by, the Two-Way Shared Facilities Budget(s), and by the decisions of the Declarant on (and 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 other matters involving the Two-Way Shared Facilities), all without any qualification or amendment thereto whatsoever, and subject to the overriding provisions of section 28 of this declaration, this Condominium

shall pay, and be solely responsible for, its Proportionate Two-Way Share of the Two-Way Shared Facilities Costs, in accordance with the provisions of this declaration and the Two-Way Shared Facilities Agreement, and as more particularly outlined in the Two-Way Shared Facilities Budget(s) submitted from time to time.

- c) Once the Two-Way Shared Facilities Committee has been established or created following the Transfer Date, 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 the Two-Way Shared Facilities Agreement, be governed and controlled solely by the Two-Way Shared Facilities Committee on behalf of the Two Avani Condominiums.
- d) 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).

Section 26 - 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 the Two-Way Shared Facilities 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 the Two-Way Shared Facilities 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 the Two-Way Shared Facilities 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 from time to time, and each of their respective residents, tenants and invitees from time to time, 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 27(g) hereof; and
 - ii) the owner from time to time of the daycare centre unit in the Avani Phase II Condominium [and its tenants and employees, including the daycare centre operator, together with all children being cared for and their respective parents] 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 and/or services situate therein or operated therefrom, from time to time).
- c) The Two-Way Shared Facilities Committee shall, for and on behalf of each of the Two Avani Condominiums:
 - i) keep and maintain the Avani Crash Wall/Berm in good condition and repair, in perpetuity, 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 the estimated annual cost of doing so, including the cost of procuring and maintaining adequate replacement cost insurance for the Avani Crash Wall/Berm (ie. 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 any portion of the Avani Phase I Lands and/or the Avani Phase II Lands which might adversely affect 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 acoustic fencing and the noise mitigation measures, nor the vibration isolation or mitigation measures, so installed and/or implemented by the Declarant between the northerly perimeter of the Avani Phase I Lands and the adjacent Canadian Pacific Railway lands, and shall maintain (and comply with) all 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.

Section 27 - Specific Use of the Two-Way Shared Facilities

- a) Subject to the overriding provisions set out in section 27(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, 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 declared and stipulated 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, to discuss any matters pertaining to the Two-Way Shared Facilities, for meetings of the Shared Roadway Committee to discuss any matters pertaining to the Shared Roadway, and for meetings of the Daycare Centre Committee to discuss any matters pertaining to the two Daycare Centres. 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 or both of the Two Avani Condominiums, convened for the purpose of formerly conducting the business and affairs of either or both 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 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 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 the Two-Way Shared Facilities Agreement and the rules and regulations imposed by the Declarant 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 Avani 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 the Two-Way Shared Facilities 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 declared and stipulated that no provision contained in any of the by-laws or rules of this Condominium shall restrict the access to, egress from and/or use of the Avani Phase I Recreation Centre Unit by the Declarant and the Avani 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 concierge 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 Avani Phase II Condominium shall restrict the access to, egress from and/or use of the Avani Phase II Recreation Centre Unit by the Declarant and this 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 hereby expressly declared and stipulated 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 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.

Section 28 - Responsibility for Paying the Two-Way Shared Facilities Costs

Notwithstanding anything hereinbefore or hereinafter provided to the contrary, it is expressly declared and stipulated that:

- a) From and after the date of registration of this Condominium, to and until the Phase II Escrow Date, this 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 this Condominium, then from and after the 2nd anniversary of the date of registration of this Condominium, to and until the Phase II Escrow Date, this 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 this Condominium), then from and after the Phase II Escrow Date, to and until the date of registration of the Avani Phase II Condominium, this 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 this Condominium and the number of proposed dwelling units in the Avani 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 Avani Phase II Condominium;
- c) Upon the registration of the Avani Phase II Condominium, the Avani Phase II Condominium shall 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;
- d) Forthwith upon the request of the Declarant made at any time following registration of the Avani 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; and
- e) There shall be no retroactive readjustment whatsoever (relative to any period of time prior to the registration of the Avani Phase II Condominium) for any portion of the Two-Way Shared Facilities Costs paid for by either this Condominium or the Declarant, in the event that (or as a result of) the total registered dwelling unit count of the Avani Phase II Condominium varying from the estimated dwelling unit count thereof as at the date of registration of this declaration, or as at the Phase II Escrow Date (as the case may be).

Section 29 - The Two-Way Shared Facilities Committee

- a) 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). In the event that the Avani Phase II Condominium is not registered by the Transfer Date, then notwithstanding anything hereinbefore provided to the contrary, the Declarant shall be entitled in such circumstances to appoint two (2) nominees or members to the Two-Way Shared Facilities Committee, who shall resign [and be concurrently replaced by two (2) members of the board of directors of the Avani Phase II Condominium] as soon as reasonably possible after the registration of the Avani Phase II Condominium, and in no event later than the first meeting of the directors of the Avani Phase II Condominium convened after its turnover meeting has been held pursuant to section 43 of the Act.
- b) At least one representative of each of the Two Avani Condominiums (or of the Declarant, in respect of the unregistered Avani 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 or recommendations 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.
- c) Any meeting(s) of the Two-Way Shared Facilities Committee may be held or convened by way of teleconference, or by any other form of communication system that allows all of the members of the 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.

- d) Once the Two-Way Shared Facilities Committee has been established following the Transfer Date, the Two-Way Shared Facilities Committee shall, inter alia, thereafter be responsible for the following:
- i) 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;
 - ii) 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;
 - iii) 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 situate within the Avani 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);
 - iv) 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
 - v) 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 (i), (ii), (iii) and (iv) 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.
- e) 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 this Condominium and the Avani Phase II Condominium (excluding however any of the Exclusive Avani I Condominium Equipment and/or the Exclusive Avani II Condominium Equipment respectively), and the manner in which any maintenance and/or repair work with respect to same shall be carried out, as well as the budgeting of the 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 set forth in the Two-Way Shared Facilities Agreement], without requiring anything further whatsoever from this Condominium or the Avani Phase II Condominium, and accordingly it is expressly declared and stipulated 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.

PART 5 - THE SHARED ROADWAY

Section 30 - The Operation of (and Budgeting for) The Shared Roadway

- a) Notwithstanding anything hereinbefore or hereinafter provided to the contrary, it is expressly declared and stipulated that the Shared Roadway shall at all times be maintained in good condition and in a good state of repair, and shall be kept free and clear of snow, ice and debris to the extent reasonably possible.
- b) Each of the Three Condominiums shall ultimately be obliged to share and contribute towards the ongoing costs of operating, insuring, maintaining and repairing the Shared Roadway, in accordance with their respective Proportionate Three-Way Shares of the Shared Roadway Costs, predicated on their respective or relative registered dwelling unit count.
- c) Until the establishment of the Shared Roadway Committee in accordance with the provisions hereinafter set forth, the budget for the Avani Phase I Condominium shall incorporate the Shared Roadway Budget prepared or approved by the Declarant

(outlining the Shared Roadway Costs estimated to be incurred for each ensuing 12 month period immediately following the registration of the Avani Phase I Condominium). Once the Shared Roadway Committee has been established, then at all times thereafter, the manner in which the Shared Roadway is insured, utilized, operated, maintained and/or repaired, as well as the preparation and submission of the Shared Roadway Budget(s) shall, subject to the overriding terms and provisions of the Shared Roadway Agreement, be governed and controlled solely by the Shared Roadway Committee on behalf of the Three Condominiums.

- d) Once the Shared Roadway Committee has been established, the Shared Roadway Budget shall be prepared and approved by the Shared Roadway Committee and shall correspondingly be submitted to each of the Avani Phase I Condominium and the Declarant on an annual basis, pending the registration of the Avani Phase II Condominium. Once the Avani Phase II Condominium has been registered, the Shared Roadway Budget shall thereafter be submitted by the Shared Roadway Committee to each of the Two Avani Condominiums and the Declarant on an annual basis, pending the registration of the Selene Condominium. Once the Selene Condominium has been registered, the Shared Roadway Budget shall thereafter be submitted by the Shared Roadway Committee to each of the Three Condominiums on an annual basis.
- e) Each of the Three Condominiums shall adopt, and be bound by, the Shared Roadway Budget(s), and by the decisions of the Shared Roadway Committee on (and its determination of) the Shared Roadway Costs, as well as the Shared Roadway Committee's arrangements with respect to all maintenance and/or repair work pertaining to the Shared Roadway or any portion thereof (and with respect to all services, operations and other matters involving the Shared Roadway), all without any qualification or amendment thereto whatsoever, and subject to the overriding provisions of section 33 hereof, each of the Three Condominiums shall pay (and be solely responsible for) its Proportionate Three-Way Share of the Shared Roadway Costs, in accordance with the provisions of the Shared Roadway Agreement, and as more particularly outlined in the Shared Roadway Budget(s) submitted from time to time.
- f) Notwithstanding anything contained in this declaration to the contrary, it is expressly declared and stipulated that any and all disputes regarding the manner in which the Shared Roadway (or any portion thereof) is utilized, operated, maintained and/or repaired, as well as any and all disputes regarding the Shared Roadway Budget(s) and/or the Shared Roadway Costs (or any portion thereof), shall be submitted to (and ultimately be resolved by) binding arbitration, pursuant to the arbitration provisions set forth in the Shared Roadway Agreement.
- g) Each of the Shared Roadway Budgets prepared from time to time shall include or reflect a reserve fund that is being maintained on behalf of all Three Condominiums jointly, exclusively for the major repair and replacement of the Shared Roadway. Each of the Three Condominiums shall accordingly be obliged to make periodic contributions to the reserve fund for the Shared Roadway, as and when such contributions are due or required by the Shared Roadway Budget(s), or as may otherwise be directed by the Shared Roadway Committee.

Section 31 - General Use of the Shared Roadway

The use of the Shared Roadway by the Declarant, by each of the Three Condominiums, and by each of their respective authorized agents, representatives, contractors and/or sub-contractors from time to time, and by the unit owners, residents and/or tenants of the respective dwelling units within each of the Three Condominiums and their respective invitees, shall at all times be subject to (and be governed and regulated by) the provisions of this declaration applicable thereto, and by the Shared Roadway Agreement, and in the event of any conflict or inconsistency between the provisions of this declaration and the Shared Roadway Agreement (insofar as the operation, use, maintenance and/or repair of the Shared Roadway, and the budgeting and payment of the Shared Roadway Costs, are concerned), then the provisions of the Shared Roadway Agreement shall prevail and supersede in such circumstances.

Section 32 - Specific Use of the Shared Roadway and the Shared Roadway Insurance

- a) The Shared Roadway shall be used for the purposes of providing pedestrian and vehicular access and egress thereover, to and from each of the Avani Phase I Condominium and the Selene Condominium, and specifically to and from:
 - i) the underground parking garage serving both the Avani Phase I Condominium and the Avani Phase II Condominium;
 - ii) the underground parking garage of the Selene Condominium; and
 - iii) the outdoor service/loading area at the rear of the Avani Phase I Condominium, which serves and benefits each of the Three Condominiums, and is intended to be utilized by service vehicles, municipal garbage vehicles, fire trucks, ambulances, deliveries, move-ins, etc.

- b) Insurance shall be obtained and maintained by the Shared Roadway Committee, on behalf of each of the Three Condominiums in existence from time to time, providing both damage and replacement cost insurance coverage for (or in respect of) the Shared Roadway, and comprehensive property damage and public liability insurance coverage for any damage or injury occasioned to any persons or property upon or within the Shared Roadway, providing a minimum coverage of \$5 million dollars per occurrence, noting the interests of each of the Three Condominiums in existence from time to time (as well as the interests of the Declarant, in respect of any of the Three Condominiums not yet registered) as co-insured parties, with such insurance coverage to contain cross-liability and severability of interest endorsements, and a waiver of subrogation, and providing for thirty (30) days advance written notice to each of the insured condominium corporations in the event of a cancellation or material change to such insurance coverage (hereinafter referred to as the "Shared Roadway Insurance").
- c) All costs and expenses incurred in connection with the maintenance and repair of the Shared Roadway, and with respect to the Shared Roadway Insurance, shall comprise part of the Shared Roadway Costs.

Section 33 - Responsibility for Paying the Shared Roadway Costs

- a) Despite any other provision contained in this declaration to the contrary, it is hereby expressly declared and stipulated that:
 - i) from and after the date of registration of this Condominium, to and until the date of registration of the Avani Phase II Condominium, this Condominium shall pay and be solely responsible for 100% of the Shared Roadway Costs;
 - ii) from and after the date of registration of the Avani Phase II Condominium, to and until the date of registration of the Selene Condominium, the Avani Phase I Condominiums shall pay and be solely responsible for 50% of the Shared Roadway Costs, and the Avani Phase II Condominiums shall pay and be solely responsible for the remaining 50% of the Shared Roadway Costs; and
 - iii) from and after the date of registration of the Selene Condominium, each of the Three Condominiums shall pay and be solely responsible for their Proportionate Three-Way Share of the Shared Roadway Costs. In light of the fact that the Avani Phase I Condominium comprises 363 dwelling units, the Avani Phase II Condominium is intended to comprise 363 dwelling units, and the Selene Condominium is intended to comprise 296 dwelling units, the Avani Phase I Condominium's Proportionate Three-Way Share of the Shared Roadway Costs will correspondingly amount to 35.52%, the Avani Phase II Condominium's Proportionate Three-Way Share of the Shared Roadway Costs will amount to 35.52%, and the Selene Condominium's Proportionate Three-Way Share of the Shared Roadway Costs will amount to 28.96%, on the express understanding that the foregoing percentages are subject to minor revisions, depending on the final registered dwelling unit count of each of the Avani Phase II Condominium and the Selene Condominium, but once the Selene Condominium has been registered the resulting Proportionate Three-Way Shares attributable to each of the Three Condominiums shall thereupon be fixed and crystalized, and shall not be subject to further change or adjustment.
- b) Notwithstanding anything hereinbefore or hereinafter provided to the contrary, it is expressly declared and stipulated that there shall be no retroactive readjustment whatsoever (relative to any period of time prior to the registration of the Selene Condominium) for any portion of the Shared Roadway Costs paid for by the Avani Phase I Condominium and/or the Avani Phase II Condominium, in the event of (or as a result of) the total registered dwelling unit count of the Selene Condominium varying from the estimated dwelling unit count thereof as at the date of the registration of the Avani Phase I Condominium, nor shall the Avani Phase I Condominium and/or the Avani Phase II Condominium be entitled to seek or obtain any reimbursement from the Selene Condominium (nor from the Declarant or any other party) for any portion of the Shared Roadway Costs so paid by the Avani Phase I Condominium and/or the Avani Phase II Condominium prior to the registration of the Selene Condominium.
- c) This Condominium's Proportionate Three-Way Share of the Shared Roadway Costs [including this Condominium's initial 100% payment or contribution towards the Shared Roadway Costs (pending the registration of the Avani Phase II Condominium), along with this Condominium's subsequent 50% payment or contribution towards the Shared Roadway Costs (following the registration of the Avani Phase II Condominium and pending the registration of the Selene Condominium)], shall comprise part of the common expenses of this Condominium, and shall correspondingly be reflected in the annual operating budget(s) of this Condominium.

Section 34 - The Shared Roadway Committee

- a) The Shared Roadway Committee shall be established sometime following the turnover meeting of this Condominium convened pursuant to section 43 of the Act, but in no event later than the first anniversary of the registration of this Condominium.
- b) The Shared Roadway Committee shall be composed of six (6) members in the aggregate, two (2) members of which shall be representatives or nominees of the board of directors of this Condominium and four (4) members of which shall initially be representatives or nominees of the Declarant, pending the registration of the Avani Phase II Condominium and the Selene Condominium respectively, on the express understanding that as and when the Avani Phase II Condominium is registered, two (2) of the Declarant's nominees or representatives on the Shared Roadway Committee shall resign and be simultaneously replaced by two (2) nominees or representatives of the Avani Phase II Condominium who are also members of the board of directors of the Avani Phase II Condominium, and that as and when the Selene Condominium is registered, the remaining two (2) nominees or representatives of the Declarant on the Shared Roadway Committee shall resign and be simultaneously replaced by two (2) nominees or representatives of the Selene Condominium who are also members of the board of directors of the Selene Condominium.
- c) All appointments of members to the Shared Roadway Committee shall be for a period of one year each (unless such appointment is terminated earlier by the appointment of a replacement member).
- d) From and after the date of registration of this Condominium, to and until the date of registration of the Avani Phase II Condominium, at least one representative of this Condominium and one representative of the Declarant must be present, in person or represented by proxy, in order to constitute a quorum for any meeting held or convened by the Shared Roadway Committee, and all decisions or recommendations of the Shared Roadway Committee shall be determined, effected and evidenced by a majority vote of all members who are present (or represented by proxy) at any such meeting(s), and the chairman of such meeting(s) shall not have a casting or deciding vote.
- e) From and after the date of registration of the Avani Phase II Condominium, to and until the date of registration of the Selene Condominium, at least one representative of each of the Two Avani Condominiums and one representative of the Declarant must be present, in person or represented by proxy, in order to constitute a quorum for any meeting held or convened by the Shared Roadway Committee, and all decisions or recommendations of the Shared Roadway Committee shall be determined, effected and evidenced by a majority vote of all members who are present (or represented by proxy) at any such meeting(s), and the chairman of such meeting(s) shall not have a casting or deciding vote.
- f) From and after the date of registration of the Selene Condominium, at least one representative of each of the Three Condominiums must be present, in person or represented by proxy, in order to constitute a quorum for any meeting held or convened by the Shared Roadway Committee, and all decisions or recommendations of the Shared Roadway Committee shall be determined, effected and evidenced by a majority vote of all members who are present (or represented by proxy) at any such meeting(s), and the chairman of such meeting(s) shall not have a casting or deciding vote.
- g) Any meeting(s) of the Shared Roadway Committee may be held or convened by way of teleconference, or by any other form of communication system that allows all of the members of the Shared Roadway Committee (or their respective proxies) to participate concurrently, and to communicate with each other simultaneously and instantaneously, provided that all of the members of the Shared Roadway Committee participating in a meeting held or convened by such means have consented thereto, and a member (or his or her proxy) so participating in any such meeting held or convened by such means shall be deemed for all purposes to be present at such meeting. All of the members of the Shared Roadway Committee may, by written resolution signed by all of them, provide their collective consent, in advance, to have any or all meetings of the Shared Roadway Committee conducted in the manner contemplated herein, without the necessity of requiring new consents prior to each and every meeting, provided that such resolution (and the standing consent referred to therein) shall be automatically rendered ineffective from and after (but not prior to) the delivery to the Shared Roadway Committee by any member of a written notice revoking his or her consent to such resolution.
- h) Once the Shared Roadway Committee has been established, the Shared Roadway Committee shall, inter alia, thereafter be responsible for the following:
 - i) making arrangements for the Shared Roadway Insurance, and for the maintenance and/or repair of the Shared Roadway, including arrangements to keep the Shared Roadway free and clear of snow, ice and debris;
 - ii) approving any desired or required maintenance or repair work to the Shared Roadway, as well as approving the timing/scheduling, the materials to be utilized and the manner in which all such maintenance and/or repair work shall be carried out, in an effort to minimize any disruption or inconvenience to the respective owners and residents of each of the Three Condominiums;

- iii) preparing and submitting the Shared Roadway Budget(s) to each of the Three Condominiums, not less than once annually, outlining the Shared Roadway Costs anticipated to be incurred or expended in the ensuing year [inclusive of the costs of the matters listed in subparagraphs (i) and (ii) above], for incorporation by each of them as part of their respective overall annual budgets, in accordance with the foregoing provisions hereof; and
- iv) deciding all other matters in connection with the use and enjoyment of the Shared Roadway (or any portion thereof).
- i) Each of the Three Condominiums shall be bound by (and shall correspondingly abide by and comply with) the decisions of the Shared Roadway Committee with respect to the operation, insurance, maintenance and/or repair of the Shared Roadway, and the manner in which any maintenance and/or repair work with respect to same shall be carried out, as well as the budgeting of the Shared Roadway Costs [subject, however, to any dispute(s) regarding same being hereafter submitted to (and ultimately resolved by) binding arbitration, pursuant to the arbitration provisions set forth in the Shared Roadway Agreement], without requiring anything further whatsoever from any of the Three Condominiums, and accordingly it is expressly declared and stipulated that any and all decisions made by the Shared Roadway Committee from time to time regarding any of the foregoing matters need not be formally adopted, ratified or confirmed by the board of directors of any of the Three Condominiums, before or after (or as a prerequisite to) same being effective, operative, binding and enforceable.

PART 6 - THE DAYCARE CENTRES

Section 35 - The Development and Operation of the Daycare Centres

- a) Each of the Daycare Centres shall be constructed, finished, furnished and equipped by the Declarant in accordance with the requirements of the City of Toronto, as part of the development of the overall Metrogate Condominium Community, pursuant to the provisions of the Section 37 Agreement. In addition, all parking spaces required for each of the Daycare Centres under or pursuant to the applicable zoning by-law, must be set aside for the exclusive use of the daycare centre operator and/or its employees (with one of the parking spaces to be accessible to persons with disabilities, and complying with the City of Toronto's accessibility guidelines).
- b) Each of the Daycare Centres shall be operated as a non-profit daycare centre, available to care for children from the general public, but with priority placement being given to the children of the residents of each of the Metrogate Condominiums and the children of the employees of the businesses and/or offices located on (or operated within) the Metrogate Site.
- c) Pursuant to the provisions of the Section 37 Agreement, the first of the two Daycare Centres to be developed (hereinafter referred to as the "South Daycare Centre") shall be incorporated within that part of the overall Metrogate Condominium Community that includes the 500th dwelling unit, and accordingly the South Daycare Centre (along with the requisite parking spaces associated therewith, for the exclusive use of the daycare centre operator and/or its employees) has now been fully completed and is operational, and is designated as unit 2 on level 1 in the Solaris Phase II Condominium. The second of the two Daycare Centres to be developed sometime hereafter (hereinafter referred to as the "North Daycare Centre") shall be incorporated within (and designated as a unit in) the Avani Phase II Condominium.
- d) Each of the Daycare Centres shall be sufficiently commodious or spacious to accommodate a minimum of 52 children to a maximum of approximately 62 children (including infants, toddlers, pre-schoolers and school-aged children) together with the necessary staff, and shall be comprised of not less than 532 square meters of interior space and not less than 290 square meters of contiguous exterior space (ie. for an exclusive outdoor playground area).
- e) Each of the Daycare Centres shall be operated by a daycare centre operator approved by the City of Toronto, that is either an agency of a community college or of the City of Toronto, or a corporation without share capital incorporated and organized by the Declarant and/or the Metrogate Condominiums for the sole purpose of being a permitted operator of the Daycare Centres (hereinafter referred to as the "Daycare Centre Operator"), for an initial term of 25 years following their respective dates of commencing operations, and may, at the direction of the City of Toronto, be renewed for additional terms of 25 years, 25 years and 24 years respectively (for a total duration of not more than 99 years in the aggregate), provided that the City is satisfied with the manner in which the Daycare Centres are being operated, and is also satisfied with the continued need for the Daycare Centres, having due regard to the existing and future anticipated demand for such facilities.
- f) With respect to each of the Daycare Centres that has been constructed, finished, furnished and equipped by the Declarant in accordance with the requirements of the City of Toronto (as outlined in the Section 37 Agreement), and that has been open

for business by the Daycare Centre Operator, neither the Declarant nor any of the Metrogate Condominiums shall have any further obligation to replace any supplies required for the daily operation of such daycare centre, nor any obligation to maintain, repair or replace any of the fixtures, furnishings, appliances and/or equipment initially provided or installed by the Declarant.

Section 36 - The Co-ownership of the Daycare Centres

- a) Each of the Daycare Centres shall ultimately be owned by all of the registered Metrogate Condominiums jointly, as tenants in common, in accordance with their respective Proportionate Daycare Centre Interests, with Metrogate Inc. holding registered title thereto as a bare trustee and nominee for all of the Metrogate Condominiums so registered from time to time, until the last of the Metrogate Condominiums (namely the Phase VIII Condominium) has been duly registered, at or shortly after which Metrogate Inc. shall convey title to the Daycare Centres, for nil consideration, to each of the registered Metrogate Condominiums as tenants in common, in accordance with their respective Proportionate Daycare Centre Interests, on the express understanding that title thereto shall be free and clear of all registered liens, mortgages and charges, but shall be expressly subject to any outstanding leases (and any and all amendments thereto) heretofore or hereafter entered into by the Declarant with any permitted Daycare Centre Operator and/or the City of Toronto, and the Metrogate Condominiums shall correspondingly assume all such leases (and any and all amendments thereto), without any question, requisition or objection thereto, and shall perform, fulfil and be bound by all of the obligations, covenants and commitments made or given thereunder by the Declarant in its capacity as the landlord/lessor thereunder. For purposes of addressing any land transfer tax issues on the ultimate conveyance of the Daycare Centres to each of the Metrogate Condominiums as aforesaid, the aforementioned trust arrangements with respect to the Daycare Centres were evidenced and confirmed by a separate trust agreement dated June 24th, 2011, executed on or shortly after the registration of the Solaris Phase II Condominium (by the Declarant as the trustee, and by each of the Two Solaris Condominiums as the only beneficial owners thereof then in existence), and as and when each of the other Metrogate Condominiums are respectively registered subsequent to the registration of the Solaris Phase II Condominium, the Declarant shall enter into a counterpart to the aforementioned trust agreement (or a supplemental trust agreement) with each of the newly-registered Metrogate Condominiums.
- b) None of the Metrogate Condominiums shall demand that registered title to their respective Proportionate Daycare Centre Interests be conveyed by the Declarant to them, unless and until all of the Metrogate Condominiums that are contemplated to comprise the Metrogate Condominium Community have been duly registered under the Act, and the Declarant is in a position to convey title to each of the Daycare Centres to each of the Metrogate Condominiums as tenants in common, at one time.
- c) As at the date of registration of this Condominium, it is anticipated that the Proportionate Daycare Centre Interest attributable to each of the Metrogate Condominiums will be as follows:
- | | | |
|-------|--|----------------|
| i) | the Solaris Phase I Condominium registered as TSCC 2151 (the Phase I Condominium)
[435 dwelling units + 3 commercial/retail units = 438 units] | 16.90% |
| ii) | the Solaris Phase II Condominium registered as TSCC 2166 (the Phase II Condominium)
[453 dwelling units] | 17.48% |
| iii) | the Metrogate Townhouses (the Phase III Condominium) *
[76 dwelling units] *reflecting only the number of dwelling units in the Phase III Condominium at the time of its initial registration, and subject to re-adjustment when, and if, the expansion phase of this project is ultimately developed and registered. | 2.93% |
| iv) | the Ventus Phase I Condominium (the Phase IV Condominium)
[288 dwelling units] | 11.12% |
| v) | the Ventus Phase II Condominium (the Phase V Condominium)
[314 dwelling units] | 12.12% |
| vi) | the Avani Phase I Condominium (the Phase VII Condominium)
[363 dwelling units] | 14.01% |
| vii) | the Avani Phase II Condominium (the Phase VI Condominium)
[363 dwelling units] | 14.01% |
| viii) | the Selene Condominium (the Phase VIII Condominium)
[296 dwelling units] | <u>11.43%</u> |
| | | <u>100.00%</u> |

The Proportionate Daycare Centre Interest attributable to each of the Metrogate Condominiums shall hereafter be adjusted, depending upon the final number of registered dwelling units and commercial/retail units within each of the Metrogate Condominiums so developed and registered from time to time, including the final number of registered dwelling units within each of the Avani Phase II Condominium and the Selene Condominium (being the Phase VIII Condominium) that will be registered sometime hereafter. The Proportionate Daycare Centre Interests attributable to each of the Metrogate Condominiums shall accordingly be fixed and crystalized only after the last of the Metrogate Condominiums (namely the Phase VIII Condominium) has been duly registered under the Act.

- d) Once ownership of the Daycare Centres has been transferred by Metrogate Inc. to each of the registered Metrogate Condominiums as hereinbefore provided or contemplated, then any subsequent or further sale, transfer, mortgage, charge or other conveyance or encumbrance affecting the registered and/or beneficial ownership of the Daycare Centres (or any portion thereof) shall be expressly prohibited, without the prior written consent of the City of Toronto thereto and of all the other co-owners or co-tenants of the Daycare Centres, together with the prior approval of two-thirds of the unit owners within the condominium corporation(s) purporting to so sell, transfer, mortgage, charge or encumber its/their respective ownership interest therein (with such unit owner approval being procured from owners who are present, in person or by proxy, at a meeting duly called for such purpose). Pursuant to the provisions of the Section 37 Agreement, once title to the Daycare Centres has been conveyed by the Declarant to each of the registered Metrogate Condominiums, they shall thereafter be precluded from divesting their respective ownership interests in the Daycare Centres, without the consent of the City of Toronto thereto, and such restriction has been (or will be) enforced by means of a restriction or restrictive covenant registered against the title to each of the Daycare Centres pursuant to section 118 of the *Land Titles Act R.S.O. 1990, as amended* (registered in favour of, and correspondingly enforceable by, the City of Toronto). Notwithstanding the foregoing to the contrary, it is hereby expressly declared and stipulated that the Declarant shall have the right to transfer title to each of the Daycare Centres (or any Proportionate Daycare Centre Interests therein or thereto) to each of the Metrogate Condominiums so registered from time to time, as and when the Metrogate Site is being developed.
- e) Any instrument or other document purporting to sell, transfer, convey, mortgage, charge or encumber the ownership interest(s) of any of the Metrogate Condominiums in and to the Daycare Centres (or any portion thereof), in contravention of the foregoing provisions, shall be null and void, and of no force or effect whatsoever.

Section 37 - The Operation of (and Budgeting for) the Daycare Centres

- a) Notwithstanding anything hereinbefore or hereinafter provided to the contrary, it is expressly declared and stipulated that each of the Daycare Centres shall be owned, operated, maintained and repaired in accordance with the requirements, standards and specifications of the City of Toronto, and in conformity with the terms and provisions of the Section 37 Agreement (all as mandated by the City of Toronto as part of the development approval process in respect of each of the Two Solaris Condominiums).
- b) Despite the fact that each of the Daycare Centres will be available and operated to care for children from the general public (with priority placement being given to the children of the residents of the Metrogate Condominiums and the children of the employees of the businesses and/or offices located within the Metrogate Site), the Daycare Centre Costs arising from (or incurred in connection with) the ownership, operation, maintenance and repair of each of the Daycare Centres, shall be borne and paid for exclusively by each of the Metrogate Condominiums so registered from time to time, in accordance with their respective Proportionate Daycare Centre Shares, all as more particularly outlined or provided in the Daycare Centre Budget(s) issued from time to time, without any contribution towards such costs being made by the City of Toronto nor derived or emanating from any of the other Governmental Authorities (nor from any other sources or parties whatsoever).
- c) The Daycare Centre Agreement expressly provides, amongst other things, for the co-ownership, operation, insurance, maintenance and repair of the Daycare Centres, and the corresponding allocation, sharing and payment of the Daycare Centre Costs (as well as the allocation, sharing and payment of the Public Park & Art Costs) between or amongst each of the Metrogate Condominiums so registered from time to time, in accordance with their respective Proportionate Daycare Centre Shares. For the purposes of this declaration, the term "Daycare Centre Agreement" shall be deemed to include any and all supplementary agreements or counterpart agreements that are entered into by each of the subsequently-created Metrogate Condominiums (shortly after their respective registration under the Act, at any time after the registration of the Solaris Phase

II Condominium), with or without the Declarant and Ventus At Metrogate Inc. as a party or signatory thereto (and with or without any of the other previously registered Metrogate Condominiums as a party or signatory thereto, but nevertheless in favour of all of the previously registered Metrogate Condominiums), and which supplementary agreements or counterpart agreements shall evidence and confirm, amongst other things, the formal assumption by each newly-registered Metrogate Condominium of its obligations and liabilities arising under the Daycare Centre Agreement in respect of the co-ownership, operation, insurance, maintenance and repair of each of the Daycare Centres, and specifically the obligation to pay and contribute its Proportionate Daycare Centre Share of the Daycare Centre Costs and the Public Park & Art Costs respectively, and an acknowledgement that any such supplementary or counterpart agreement may be enforced against such newly-registered Metrogate Condominium directly by the Declarant and each or all of the previously-registered Metrogate Condominiums (and by the City of Toronto and/or the Daycare Centre Operator), even though they may not be a party or signatory thereto. Accordingly, this Condominium will be executing a counterpart to the Daycare Centre Agreement shortly after the registration of this declaration, and likewise each of the Metrogate Condominiums so developed and registered after this Condominium shall correspondingly be obliged to execute a supplementary agreement or counterpart agreement to the Daycare Centre Agreement, as soon as reasonably possible after their respective registration under the Act, and which supplementary or counterpart agreement shall be correspondingly registered against the title to their respective units and common elements, and shall evidence and confirm their respective formal assumption of the obligations and liabilities arising under the Daycare Centre Agreement, and their concomitant agreement to pay and contribute their respective Proportionate Daycare Centre Share of the Daycare Centre Costs and the Public Park & Art Costs respectively.

- d) Once the Daycare Centre Committee has been established or created in accordance with the provisions hereinafter provided, then at all times thereafter, the manner in which the Daycare Centres are co-owned, operated, illuminated, insured, maintained and/or repaired, and the manner in which the Public Park and the Public Art is maintained and/or repaired during and throughout the 10 Year Maintenance Period [including such matters as the grass cutting, trimming, fertilizing, weed control, watering and lighting/illumination of the Public Park, as well as the maintenance, repair and illumination of the Public Art, including the periodic removal of garbage and debris from the Public Park and the procurement of public liability insurance (with a coverage of not less than \$2 million dollars per occurrence) with respect to damage and/or injuries occasioned to persons and/or property within the confines of the Public Park], as well as the preparation and submission of the Daycare Centre Budget(s) from time to time, shall be administered and governed by the Daycare Centre Committee, on behalf of each of the Metrogate Condominiums so registered from time to time. Without limiting the generality of the foregoing, it is expressly understood and agreed that the preparation and submission of the Daycare Centre Budget(s) outlining the Daycare Centre Costs estimated to be incurred for each ensuing year following the registration of the Solaris Phase II Condominium, and outlining the Public Park & Art Costs estimated to be incurred for each ensuing year following the Public Park Completion Date throughout the 10 Year Maintenance Period, shall be conducted by (or under the auspices and guidance of) the Daycare Centre Committee. The Daycare Centre Budget(s) shall be submitted to each of the Metrogate Condominiums so registered from time to time, not less than once annually following the registration of the Solaris Phase II Condominium, and said budget(s) shall be incorporated as part of, and/or integrated with, the respective overall annual budget(s) of each of the Metrogate Condominiums so registered from time to time. Each of the Metrogate Condominiums so registered shall adopt, and be bound by, the Daycare Centre Budget(s) so submitted from time to time, and by the Daycare Centre Committee's determination of the Daycare Centre Costs and the Public Park & Art Costs respectively, and by the Daycare Centre Committee's decisions regarding the operation, illumination, insurance, maintenance and repair of each of the Daycare Centres, and regarding the maintenance and repair of the Public Park (as well as the maintenance, repair and insurance of the Public Art), and the Metrogate Condominiums so registered from time to time shall approve and accept (and be bound by) all arrangements and decisions made by or on behalf of the Daycare Centre Committee with respect to any maintenance and/or repair work involving the Daycare Centres or any portion thereof, and/or involving the Public Park and the Public Art (and with respect to all services, facilities, works, operations and other matters involving the Daycare Centres and/or the Public Park and the Public Art) for which the Metrogate Condominiums so registered from time to time are (or shall be) liable under the provisions of the Section 37 Agreement and the Subdivision Agreement respectively, as well as the Daycare Centre Agreement and the provisions of sections 40, 41 and 42 of this declaration (including all decisions involving the leasing of each of the Daycare Centres to the Daycare Centre Operator or to the City of Toronto, as the case may be).

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

Section 38 - Responsibility for Paying the Daycare Centre Costs & the Public Park & Art Costs

- a) From and after the date of registration of the Solaris Phase II Condominium, the Daycare Centre Costs shall be allocated and apportioned between or amongst each of the Metrogate Condominiums so registered, on a pro-rata basis, in accordance with their respective Proportionate Daycare Centre Shares. In addition, from and after the Public Park Completion Date, to and until the expiration of the 10 Year Maintenance Period, the Public Park & Art Costs shall be allocated and apportioned between or amongst each of the Metrogate Condominiums so registered, on a pro-rata basis, in accordance with their respective Proportionate Daycare Centre Shares.
- b) As at the date of registration of this Condominium, all of the proposed Metrogate Condominiums have been duly completed and registered, save and except for the Avani Phase II Condominium and the Selene Condominium comprising the Phase VIII Condominium, and accordingly, from and after the date of registration of this Condominium, to and until the date that the Avani Phase II Condominium is developed and registered hereafter, the Proportionate Daycare Centre Share attributable to each of the registered Metrogate Condominiums (and reflecting their respective shares of the Daycare Centre Costs and the Public Park & Art Costs so payable by each of them on a monthly basis) shall be as follows:
- | | | |
|------|--|----------------|
| i) | the Solaris Phase I Condominium registered as TSCC 2151 (the Phase I Condominium) -
[435 dwelling units + 3 commercial/retail units = 438 units] | 22.67% |
| ii) | the Solaris Phase II Condominium registered as TSCC 2166 (the Phase II Condominium) -
[453 dwelling units] | 23.45% |
| iii) | the Metrogate Townhouses (the Phase III Condominium) - *
[76 dwelling units] *reflecting only the number of dwelling units in the Phase III
Condominium at the time of its initial registration, and subject to re-adjustment when,
and if, the expansion phase of this project is ultimately developed and registered. | 3.93% |
| iv) | the Ventus Phase I Condominium (the Phase IV Condominium) -
[288 dwelling units] | 14.91% |
| v) | the Ventus Phase II Condominium (the Phase V Condominium) -
[314 dwelling units] | 16.25% |
| vi) | the Avani Phase I Condominium (the Phase VII Condominium)-
[363 dwelling units] | <u>18.79%</u> |
| | | <u>100.00%</u> |
- c) As and when the each of the other Metrogate Condominiums (namely the Avani Phase II Condominium and the Selene Condominium comprising the Phase VIII Condominium) is hereafter registered as a separate condominium corporation under the Act, the Daycare Centre Costs and the Public Park & Art Costs shall be re-apportioned or re-allocated amongst each of the registered Metrogate Condominiums then in existence, in accordance with their respective Proportionate Daycare Centre Shares, without any adjustment (nor any re-adjustment or back charge) for any portion of the Daycare Centre Costs and/or the Public Park & Art Costs arising, incurred and/or paid prior to the respective registration of each of these two last remaining Metrogate Condominiums.
- d) Each of the Metrogate Condominiums so registered shall be obliged to pay its Proportionate Daycare Centre Share of the Daycare Centre Costs (ie. associated with the ownership, operation, maintenance and repair of each of the Daycare Centres), forthwith when same is due and payable, in accordance with the terms and provisions of the Daycare Centre Agreement. However, notwithstanding the foregoing, it is hereby declared and stipulated that pursuant to the provisions of the Section 37 Agreement, each of the Metrogate Condominiums so registered shall be jointly and severally liable for the obligations of the Declarant (as the landlord of each of the Daycare Centres) owed to the Daycare Centre Operator and/or the City of Toronto under or pursuant to any applicable lease in respect of each of the Daycare Centres, so that in the event of a default by any of the registered Metrogate Condominiums in paying their Proportionate Daycare Centre Share of the Daycare Centre Costs as and when due, or in the event of any other default or breach so committed on the part of the landlord under either or both of the applicable daycare centre leases, the Daycare Centre Operator and/or the City of Toronto will not be required to seek recourse only against Metrogate Inc. or the defaulting Metrogate Condominium, but rather the non-defaulting

Metrogate Condominiums shall be required to remedy such default and seek recourse against (and indemnification from) the defaulting Metrogate Condominium(s).

Section 39 - The Daycare Centre Committee

- a) Immediately prior to the registration of this Condominium, the Daycare Centre Committee shall be composed of twelve members, two of which shall be members of the board of directors of each of the Two Solaris Condominiums, two of which shall be members of the board of directors of the Metrogate Townhouses - Phase III Condominium, two of which shall be members of the board of directors of each of the Ventus Phase I Condominium and the Ventus Phase II Condominium, while the remaining two members of said committee shall be the designated nominees or representatives of the Declarant, on the express understanding that shortly after the registration of this Condominium, the composition of the committee shall be increased by two additional members (who are also members of the board of directors of this Condominium). Moreover, as and when each of the other remaining two Metrogate Condominiums is respectively developed and registered as a separate condominium corporation under the Act at any time hereafter, then the composition of the committee shall likewise be increased by two additional members per registered condominium (and which members shall also correspondingly be members of the board of directors of their respective condominiums), provided however that once the last of the Metrogate Condominiums (namely the Phase VIII Condominium) is registered and its turnover meeting has been convened, then the two nominees or representatives of the Declarant shall permanently resign from said committee, and be replaced by the two members of the board of directors of the Phase VIII Condominium.
- b) The Daycare Centre Committee was formed or established sometime following the registration of the Solaris Phase II Condominium, and shall be responsible for overseeing the preparation of the Daycare Centre Budgets from time to time, and for administering, governing and managing the:
 - i) co-ownership, operation, maintenance and repair of each of the Daycare Centres on behalf of the Metrogate Condominiums, including without limitation, retaining a property manager to assist the committee in managing the overall operation and state of repair of the Daycare Centres, determining, quantifying, budgeting and collecting the Daycare Centre Costs from each of the Metrogate Condominiums so registered from time to time, and making decisions with respect to any maintenance and/or repair work involving the Daycare Centres or any portion thereof (and with respect to all services, facilities, works, operations and other matters involving the Daycare Centres) for which the Metrogate Condominiums are liable under the provisions of the Section 37 Agreement, as well as the Daycare Centre Agreement and the provisions of sections 40, 41 and 42 of this declaration (including all decisions involving the leasing of each of the Daycare Centres to the Daycare Centre Operator or to the City of Toronto, as the case may be), and reporting to (and making recommendations to) each of the Metrogate Condominiums from time to time in connection with any joint by-laws or rules respecting the Daycare Centres, enacted in accordance with the provisions of section 59 of the Act; and
 - ii) the Public Park and the Public Art, including such matters as the grass cutting, trimming, fertilizing, weed control, watering and lighting/illumination of the Public Park, as well as the maintenance, repair and illumination of the Public Art, including the periodic removal of garbage and debris from the Public Park and the procurement of public liability insurance (with a coverage of not less than \$2 million dollars per occurrence) with respect to damage and/or injuries occasioned to persons and/or property within the confines of the Public Park, all in accordance with the provisions of the Subdivision Agreement and the Daycare Centre Agreement, and reporting to (and making recommendations to) each of the Metrogate Condominiums from time to time in connection with any joint by-laws or rules respecting the Public Park and the Public Art.
- c) All such appointments to the Daycare Centre Committee shall be for a period of one year each (unless such appointment is terminated earlier by the appointment of a replacement member). At least one representative of each of the registered Metrogate Condominiums (and at least one representative or nominee of the Declarant, until the date that the last of the Metrogate Condominiums, namely the Phase VIII Condominium, is registered) must be present, in person or represented by proxy, in order to constitute a quorum for any meeting held or convened by the Daycare Centre Committee, and all decisions or recommendations of the Daycare Centre Committee shall be determined, effected and evidenced by a vote of the majority of all members who are present (or represented by proxy) at any such meeting(s), and in the event of a tie vote or deadlock situation, the chairman of such meeting(s) shall have a casting or deciding vote. The chairman shall be selected by a majority vote of all members of the committee who are present (or represented by proxy) at any such meeting(s), and the chairman shall decide all procedural matters relating to the conduct of the committee meetings. In addition, with respect to any documents or instruments proposed to be signed by or on behalf of the Daycare Centre Committee (and which are intended to be binding upon each of the Metrogate Condominiums), the signature of two members of the committee (who do not represent the same condominium corporation) shall be required on any such document(s) or instrument(s).

- d) Any meeting(s) of the Daycare Centre Committee may be held or convened by way of teleconference, or any other form of communication system that allows all of the members of the Daycare Centre Committee (or their respective proxies) to participate concurrently, and to communicate with each other simultaneously and instantaneously, provided that all of the members of the Daycare Centre Committee participating in a meeting held or convened by such means have consented thereto, and a member (or his or her proxy) so participating in any such meeting held or convened by such means shall be deemed for all purposes to be present at such meeting. All of the members of the Daycare Centre Committee may, by written resolution signed by all of them, provide their collective consent, in advance, to have any or all meetings of the Daycare Centre Committee conducted in the manner contemplated herein, without the necessity of requiring new consents prior to each and every meeting, provided that such resolution (and the standing consent referred to therein) shall be automatically rendered ineffective from and after (but not prior to) the delivery to the Daycare Centre Committee by any member of a written notice revoking his or her consent to such resolution.
- e) Without limiting the generality of the foregoing, the Daycare Centre Committee shall, inter alia, be responsible for the following:
- i) administering the co-ownership arrangements in respect of the Daycare Centres, and dealing with the Daycare Centre Operator in respect of each of the Daycare Centres, on the express understanding that pursuant to the provisions of the Section 37 Agreement, the Daycare Centre Committee shall be obliged to appoint and designate one person who will act as the single contact person (ie. for the Daycare Centre Committee and all of the Metrogate Condominiums collectively), who will be responsible for communicating and dealing directly with the Daycare Centre Operator of each of the Daycare Centres, and with the City of Toronto, in respect of any matters arising from the terms of the Section 37 Agreement and/or the terms and provisions of the Daycare Centre Lease (as hereinafter defined) in respect of each of the Daycare Centres;
 - ii) making recommendations to each of the registered Metrogate Condominiums from time to time regarding any requirements, suggestions or procedures to be implemented with respect to the use, operation, illumination, maintenance and/or repair of the Daycare Centres, and the manner in which all maintenance and/or repair work with respect to same shall be carried out, subject however to the overriding requirements, standards and specifications of the City of Toronto from time to time in connection therewith;
 - iii) making arrangements for the illumination, maintenance and/or repair of the Daycare Centres, including all landscape maintenance and irrigation services with respect to all hard and soft landscaping features and areas situate within the confines of each of the daycare centre units, including arrangements for the pickup and removal (from a central depository) of all garbage and debris emanating from each of the Daycare Centres, and for the payment of all realty taxes assessed against each of the Daycare Centres and for all charges of the condominium property manager relating or pertaining to each of the Daycare Centres, and procuring all requisite fire, property damage and comprehensive general liability insurance coverage, against claims for property damage, personal injury and/or death, resulting from any act, omission or occurrence (in a form and with limits satisfactory to the City of Toronto), in an amount not less than \$5 million dollars per occurrence [naming the City of Toronto and each of the Metrogate Condominiums as additional insured parties];
 - iv) making arrangements for the provision of all requisite utilities (eg. water, electricity and gas services, where applicable) in respect of the use or operation of each of the Daycare Centres, including without limitation, the maintenance, repair, replacement and reading of separate meters or consumption meters which will measure the consumption of water, electricity and gas (as the case may be) supplied to (and consumed by) each of the Daycare Centres;
 - v) making arrangements for the maintenance and/or repair of the Public Park, and the maintenance, repair and insurance of the Public Art, including the grass cutting, trimming, fertilizing, weed control, watering and lighting/illumination of the Public Park, as well as the maintenance, repair and illumination of the Public Art, including the periodic removal of garbage and debris from the Public Park and the procurement of public liability insurance (with a coverage of not less than \$2 million dollars) with respect to damage and/or injuries occasioned to persons and/or property within the confines of the Public Park; and
 - vi) preparing and submitting the Daycare Centre Budget(s) to each of the registered Metrogate Condominiums, not less than once annually following the registration of this Condominium, outlining the Daycare Centre Costs [inclusive of the costs of the matters listed in subparagraphs (i), (ii), (iii), (iv) and (v) above], for incorporation by each of the registered Metrogate Condominiums as part of their respective overall annual budgets, in accordance with the foregoing provisions hereof.
- f) All recommendations made (and all actions taken) by the Daycare Centre Committee shall, as soon as reasonably possible thereafter, be submitted and/or considered for acceptance, ratification and confirmation by the board of directors of each of the Metrogate Condominiums so registered from time to time, and where deemed necessary or appropriate, for ratification and approval by the respective owners of each of the Metrogate Condominiums at a joint owners' meeting, or alternatively at separate owners' meetings, duly called for that purpose. In addition, the respective boards of directors of the Metrogate Condominiums shall jointly determine such other provisions relating to the conduct, activities and operation of the Daycare Centre Committee as may be consistent with the provisions of the Act, the provisions of their respective declarations, the

provisions of the Daycare Centre Agreement, the provisions of each Daycare Centre Lease (as hereinafter defined), and the provisions of the Section 37 Agreement respectively, in accordance with the procedures governing the making, amending or repealing of joint by-laws or rules set forth in section 59 of the Act.

Section 40 - Leasing Each of the Daycare Centres to the Daycare Centre Operator

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

- a) The initial term of the Daycare Centre Lease shall be 25 years, beginning on the Lease Commencement Date which, if required by the City of Toronto (sometimes hereinafter referred to as the "City"), may be renewed for additional terms of 25 years, 25 years and 24 years respectively (for an aggregate duration of no greater than 99 years), provided that:
 - i) the City and all of the Metrogate Condominiums so registered, both acting reasonably, are satisfied with the manner in which the Daycare Centre Operator has carried on the operation of the Daycare Centre, including, but not limited to, whether the Daycare Centre Operator has had a history of being in default; and
 - ii) the City, acting reasonably, is satisfied with the continued need for the Daycare Centre, having regard to the existing and future anticipated demand for such facilities, and other relevant considerations.
- b) Rent for the Daycare Centre so leased, including all equipment and furnishings supplied to the Daycare Centre by the Lessor/Declarant, shall be \$2.00 for the initial term and all renewal terms.
- c) All fixtures, furnishings, systems and equipment installed in the Daycare Centre by the Lessor/Declarant shall continue to be owned by the Lessor/Declarant (for and on behalf of all of the existing and future Metrogate Condominiums) and shall not be removed by the Daycare Centre Operator. All appliances, furnishings or equipment installed at the expense of the Daycare Centre Operator shall remain the property of (and shall be owned by) the Daycare Centre Operator. Any such appliances, furnishings or equipment may only be installed after the Daycare Centre Operator has provided the Lessor/Declarant (and possibly the Daycare Centre Committee) with sufficient information so as to permit the Lessor/Declarant or the Daycare Centre Committee (as the case may be) to provide its approval thereto, such approval not to be unreasonably withheld.
- d) The leasehold interest created by the Daycare Centre Lease shall have appurtenant to it such rights of access as are satisfactory to the City's solicitor to provide the Daycare Centre Operator, its officers and employees, the children enrolled in the Daycare Centre, and their parents or others having custody of them, with a legal means of ingress to and egress from the Daycare Centre, as well as passage over or through that part of the Metrogate Site as is appropriate in the circumstances.
- e) For each of the Daycare Centres, the Lessor/Declarant, at its own expense and without charge, shall provide (in a location convenient to each of the Daycare Centres and approved by the City) any and all parking spaces as required for each of the Daycare Centres under or pursuant to the applicable zoning by-law, for the sole and exclusive use of the employees of each of the Daycare Centres (and with one parking space to be accessible to persons with disabilities, and complying with the City's accessibility guidelines. The provision of such parking spaces shall not in any way make the Lessor/Declarant liable for same.
- f) For each of the Daycare Centres, the Lessor/Declarant, at its own expense and without charge, shall provide a location convenient to the Daycare Centre to facilitate vehicles picking up and dropping off children thereto, to the satisfaction of the City acting reasonably, including appropriate signage for drop-off and/or pick-up. The provision of such an amenity shall not in any way make the Lessor/Declarant liable for same.
- g) The Daycare Centre Lease shall oblige the Lessor/Declarant (on behalf of the Metrogate Condominiums so registered from time to time) to be responsible for the maintenance and repair of the Daycare Centre so leased, in accordance with the following standards (hereinafter referred to as the "Acceptable Standards"), namely:

- i) with respect to any fixture, furniture, appliance, equipment, device, apparatus or system: efficient and safe operating capability for its intended purpose, in accordance with the standards specified by its manufacturer/supplier and prescribed by all applicable laws, regulations and by-laws at the time any such fixture, furniture, appliance, equipment, device, apparatus or system was provided or installed;
 - ii) with respect to any structural or other non-operating element, part or component: good repair, having regard to the standards maintained by a prudent owner of a comparable building of comparable age; and
 - iii) with respect to any landscaped area: appearing to be properly cultivated and tended, suitable for its intended purpose and in compliance with all applicable laws, regulations and by-laws at the time when such landscaped area was provided or installed.
- h) Without limiting the generality of the foregoing provisions of subsection 40(g) hereof, the Metrogate Condominiums so registered from time to time shall be responsible for:
 - i) the ongoing repairs and maintenance of the heating, ventilation and air-conditioning systems, the building structure and outdoor spaces associated with each of the Daycare Centres (including the outdoor playground spaces appurtenant thereto); and
 - ii) the provision of all necessary property management and reasonable caretaking/cleaning services, including waste disposal services which will collect diapers and organic waste, subject however to the overriding obligations of the Daycare Centre Operator outlined in subsection 40(k) hereof.
- i) The Daycare Centre Operator, at its sole cost and expense, shall be responsible for maintaining, repairing and replacing all fixtures, furnishings, appliances and equipment associated with the Daycare Centre so leased to it (including those initially installed or supplied by the Lessor/Declarant), in accordance with the Acceptable Standards.
- j) The Daycare Centre Lease shall require the Daycare Centre Operator to exercise due care with respect to the operation and use of the Daycare Centre so leased to it (and all associated fixtures, furnishings, appliances, systems and equipment, including all heating, ventilation and air-conditioning systems, the building structure, the outdoor spaces associated with the Daycare Centre and all appurtenant outdoor playground spaces). The Daycare Centre Operator shall reimburse the Metrogate Condominiums for any expenses incurred by them related to any damage to the foregoing occasioned wholly or in part by the negligent act(s) or omission(s) of the Daycare Centre Operator, provided that:
 - i) such obligation shall not result in any liability being imposed on the City; and
 - ii) the obligations imposed by the Section 37 Agreement on the Lessor/Declarant and the Metrogate Condominiums so registered from time to time, are not otherwise thereby reduced.
- k) The Daycare Centre Operator shall be responsible for the daily cleaning of the Daycare Centre so leased to it, and for waste removal associated with food preparations and any other daycare centre activities. The Daycare Centre Operator shall be responsible for maintaining the Daycare Centre in a state of cleanliness, in accordance with all applicable laws and regulations, and shall adhere to and abide by all reasonable waste removal standards established by the Daycare Centre Committee, and all applicable standards and regulations. For greater certainty, the Daycare Centre Operator shall ensure that all garbage and any other waste emanating from the Daycare Centre is brought to a location or locations designated by the Lessor/Declarant (or possibly the Daycare Centre Committee), from time to time.
- l) The Daycare Centre Operator, at its sole cost and expense and from time to time, may install partitions, lighting, plumbing and mechanical improvements and equipment within the boundaries of the Daycare Centre so leased to it, subject to the prior approval of the Lessor/ Declarant (or possibly the Daycare Centre Committee), which approval shall not be unreasonably withheld or delayed. The Daycare Centre Operator shall provide sufficient information, including but not limited to plans and product specifications, to the Lessor/Declarant (or possibly the Daycare Centre Committee) prior to the latter having to provide its consent.
- m) The Metrogate Condominiums so registered from time to time shall, at their sole cost and expense, be responsible for:
 - i) supplying each of the Daycare Centres with all necessary heating, air conditioning, electricity, water, gas and other utilities;
 - ii) all costs relating to the repair and maintenance of each of the Daycare Centres and associated heating, ventilation and air-conditioning systems, the building structure, outdoor spaces associated with each of the Daycare Centres and all appurtenant outdoor playground spaces;
 - iii) the cost of all utilities and municipal services supplied to each of the Daycare Centres, and all realty taxes and local improvement charges assessed against same;
 - iv) the cost of procuring and maintaining property damage and liability insurance in respect of each of the Daycare Centres, in a form and with limits satisfactory to the City, acting reasonably;

- v) all costs and expenses of (and charges by) the condominium property manager relating to each of the Daycare Centres;
 - vi) all costs associated with establishing a reserve fund for the major repair and/or replacement of each of the Daycare Centres; and
 - vii) all other expenses relating to the repair, maintenance and physical operation of each of the Daycare Centres.
- n) Each of the Daycare Centres shall be operated on a non-profit basis, and the Daycare Centre Operator shall, at its sole cost and expense, be responsible for:
- i) the day-to-day operating costs of the Daycare Centre so leased to it, including but not limited to, all costs relating to the employment of qualified staff for the Daycare Centre;
 - ii) telephone, internet and cable television service costs;
 - iii) all costs relating to the maintenance, repair and replacement of all fixtures, furnishings, appliances and equipment associated with the Daycare Centre, in accordance with the Acceptable Standards;
 - iv) the cost of procuring and maintaining property damage and liability insurance, to the satisfaction of the Daycare Centre Committee and the City acting reasonably, with such property damage insurance covering all fixtures, furnishings, appliances and equipment associated with the Daycare Centre (including all outdoor playground equipment), and with such comprehensive general liability insurance covering all claims for personal injury, death, property damage and child abuse, resulting from any act, omission or occurrence, with such insurance coverage naming the City, the Lessor/Declarant and each of the Metrogate Condominiums so registered as additional insured parties, arising out of the operations of the Daycare Centre Operator; and
 - v) all supplies for the daily operation of the Daycare Centre, including but not limited to, food, first aid supplies, and arts and crafts supplies.
- o) The Daycare Centre Operator shall provide proof of insurance to the City and the Lessor/Declarant (and possibly to the Daycare Centre Committee) on or before the Lease Commencement Date, and shall within 30 days prior to the expiry of the insurance coverage, provide each of them with proof of renewed insurance. The failure to provide original proof of insurance, and/or proof of any renewed insurance coverage, shall be grounds for termination of the Daycare Centre Lease.
- p) The Daycare Centre Operator shall ensure that the daily operation of the Daycare Centre so leased to it is in compliance with all applicable municipal and provincial legislation, regulations and guidelines. The Lessor/Declarant and the Metrogate Condominiums so registered from time to time shall perform their respective obligations under the Section 37 Agreement in conformity with all applicable provincial legislation, regulations and guidelines.
- q) Pursuant to the provisions of the Section 37 Agreement, the City of Toronto has been granted an option to lease each of the Daycare Centres (and all associated fixtures, furnishings, appliances, systems and equipment) on the terms and conditions more particularly set out in section 2.10 of the Section 37 Agreement (hereinafter referred to as the "City's Option to Lease the Daycare Centre"), and the Daycare Centre Operator shall be obliged to formally acknowledge the City's Option to Lease the Daycare Centre, and shall agree to comply with (and be bound by) the terms of such option.
- r) The Daycare Centre Operator shall permit the City, its employees and representatives, at all reasonable times after 24 hours prior notice, to enter on the leased premises for the purpose of determining whether there is compliance with the provisions of the Section 37 Agreement and the Daycare Centre Lease, and for the purpose of determining whether the City's Option to Lease the Daycare Centre has been triggered pursuant to the provisions of section 2.10 of the Section 37 Agreement.
- s) In the event that the City exercises the City's Option to Lease the Daycare Centre, the Daycare Centre Operator shall execute (or cause to be executed) all documents necessary to give effect to the City's rights, as may be reasonably required by the City's solicitor, all without any charge or expense to the City therefor.
- t) The Lessor/Declarant (in its capacity as the lessor of the Daycare Centre on behalf of all of the existing and future Metrogate Condominiums) shall be entitled to exercise all remedies available to it under the Daycare Centre Lease, including without limitation, the right to terminate the Daycare Centre Lease (subject to approval by the City, acting reasonably), if the Daycare Centre Operator defaults or commits a breach of covenant under the Daycare Centre Lease, and fails to rectify such default or breach within:
- i) 20 days after the date on which written notice of the default or breach is given by the Lessor/Declarant to the Daycare Centre Operator, if the Lessor/Declarant determines, acting reasonably, that the Daycare Centre Operator's default or breach of covenant has endangered (or may endanger) the safety or health of the children attending the Daycare Centre, the employees of the Daycare Centre or any other person within the leased premises; or
 - ii) 60 days after the date on which written notice of the default or breach is given to the Daycare Centre Operator, in any other case.

- u) If the Daycare Centre Lease is terminated for any reason, then the Lessor/Declarant (in its capacity as the lessor of the Daycare Centre on behalf of all of the existing and future Metrogate Condominiums) shall conduct a selection process in consultation with the City, and shall choose another permitted Daycare Centre Operator (subject to approval by the City, acting reasonably, expeditiously and in accordance with the selection process) and shall thereafter enter into a new lease with such new Daycare Centre Operator (in the form of lease approved by the City), for and on behalf of all of the existing and future Metrogate Condominiums, for a term equal to the balance of the unexpired term of the original Daycare Centre Lease.
- v) Not later than each anniversary of the date which is six months after the Lease Commencement Date, the Daycare Centre Operator shall send to each of the Lessor/Declarant and the City its financial statements relating to the operation of the Daycare Centre so leased to it, which statements shall be in a form (and with the content) as may be required or approved by the Lessor/Declarant and the City, acting reasonably, to confirm that the Daycare Centre is being operated on a non-profit basis. From time to time, and acting reasonably, the Lessor/Declarant may request a copy of the most up to date financial statements and proof of compliance by the Daycare Centre Operator with all applicable laws and regulations, including but not limited to proof of all necessary permits and licenses.

Section 41 - The Daycare Advisory Committee

Forthwith after the Lease Commencement Date in respect of each of the Daycare Centres, a volunteer advisory committee (hereinafter referred to as the "Advisory Committee") shall be established by the Lessor/Declarant to review the operating policies and procedures which shall govern the operation of the Daycare Centre so leased to the Daycare Centre Operator, to discuss all issues relevant to the operation of the Daycare Centre, and to make recommendations regarding same to the Daycare Centre Operator. Notwithstanding the foregoing, the hiring, supervision and disciplining of the staff of the Daycare Centre shall be the sole responsibility of the Daycare Centre Operator. The Advisory Committee shall be comprised of seven volunteer members (or such greater number as the Daycare Centre Operator considers appropriate). The members of the Advisory Committee shall include a representative of the City (if so requested by the City), a corporate officer or representative of the Lessor/Declarant, and at least five parents whose children are enrolled in the Daycare Centre so leased to the Daycare Centre Operator during their term on the Advisory Committee.

Section 42 - The City's Option to Lease the Daycare Centre

- a) With respect to each of the Daycare Centres developed within the Metrogate Site, the City shall be entitled to exercise the City's Option to Lease the Daycare Centre by giving written notice to the Lessor/Declarant and to the Daycare Centre Operator at any time after the occurrence of any one of the following events, namely:
 - i) if the Lessor/Declarant fails to select a permitted Daycare Centre Operator (or fails to incorporate and organize a daycare corporation) on or before that date which is three months prior to the Lease Commencement Date;
 - ii) if the Lessor/Declarant fails to enter into the Daycare Centre Lease with the Daycare Centre Operator on or before that date which is three months prior to the Lease Commencement Date;
 - iii) if any selected Daycare Centre Operator ceases to operate the Daycare Centre so leased to it, or terminates the Daycare Centre Lease, or surrenders its leasehold interest in the Daycare Centre and, within three months of such event, the Lessor/Declarant has not arranged for the assignment of the Daycare Centre Lease to (or the execution of a new Daycare Centre Lease with) another permitted Daycare Centre Operator approved by the City, acting reasonably, in the form (and with the content) approved by the City in consultation with the City's solicitor, for the balance of the unexpired portion of the term of the initial Daycare Centre Lease [including any renewals contemplated by section 2.3.1 of the Section 37 Agreement];
 - iv) if, after the expiry of a start-up period of three months following the Lease Commencement Date, the Daycare Centre so leased is not used for the purposes of a daycare centre for any period of 60 consecutive business days, unless the Lessor/Declarant has entered into a new Daycare Centre Lease, in the form (and with the content) approved by the City in consultation with the City's solicitor, to another permitted Daycare Centre Operator approved by the City, acting reasonably, for the balance of the unexpired portion of the term of the initial Daycare Centre Lease [including any renewals contemplated by section 2.3.1 of the Section 37 Agreement];
 - v) if, within three months after the date on which each of the Daycare Centres is complete and ready for occupancy, it is not used for the purposes of a daycare centre;
 - vi) if, at any time after six months following the Lease Commencement Date, the Daycare Centre is used for the purposes of a daycare centre but does not have an enrolment of at least 26 children for any period of six consecutive months following the expiry of such initial six month start-up period, provided the City determines, acting reasonably and having regard to market forces, that the Daycare Centre Operator is not using its best efforts at all times to use the Daycare Centre for a daycare centre at its licensed capacity; or

- vii) if an amendment to the Daycare Centre Lease is made without the prior approval of the City.
- b) The lease to the City of the Daycare Centre (hereinafter referred to as the "City Lease"), resulting from the exercise of the City's Option to Lease the Daycare Centre, shall contain the same terms and provisions as the Daycare Centre Lease to a permitted Daycare Centre Operator, mutatis mutandis, subject however to the following overriding provisions, namely:
 - i) the term of the City Lease shall commence 10 business days after the date of the City's exercise of the City's Option to Lease the Daycare Centre, and shall correspondingly terminate on the day which is the earlier of:
 - A. the day upon which the City, acting reasonably (and after considering the factors in section 2.3.2 and 2.7.1 of the Section 37 Agreement), determines that the Lessor/Declarant is no longer required to provide the Daycare Centre;
 - B. the end of a term or of all terms (as more particularly outlined in section 2.3.1 of the Section 37 Agreement), should they be validly renewed or exercised by the City in accordance with the provisions of section 2.3 of the Section 37 Agreement; and
 - C. the day upon which the Daycare Centre has been leased to another permitted Daycare Centre Operator with the consent of the City, and provided the Lessor/Declarant has entered into a new Daycare Centre Lease, in the form and content approved by the City (in consultation with the City's Solicitor), with another permitted Daycare Centre Operator approved by the City, acting reasonably; and
 - ii) the City Lease shall not impose a greater financial burden on the Lessor/Declarant (and/or the Metrogate Condominiums so registered from time to time) than that which would have been imposed by a lease of the Daycare Centre to a permitted Daycare Centre Operator pursuant to the provisions of the Daycare Centre Lease as outlined in section 2 of the Section 37 Agreement.

PART 7 - OWNERSHIP OF UNITS

Section 43 - Restrictions on Parking, Locker and Bicycle Storage/Locker Units

- a) Notwithstanding anything hereinbefore or hereinafter provided to the contrary, it is expressly stipulated and declared that save and except for any parking unit(s), locker unit(s) and/or bicycle storage/locker unit(s) owned by the Declarant or the Corporation, the ownership, sale, leasing, charging, assignment, transfer or other conveyance or encumbrance of any parking unit(s), locker unit(s) and/or bicycle storage/locker unit(s) [hereinafter collectively referred to as the "Restricted Units" and individually referred to as a "Restricted Unit"] shall be subject to the following restrictions and limitations, namely:
 - i) a Restricted Unit shall only be owned by the Declarant, or by either or both of the Two Avani Condominiums, or by an owner of a dwelling unit in either of the Two Avani Condominiums, and shall only be used or occupied by the Declarant, or by either or both of the Two Avani Condominiums, or by an owner, resident or tenant of a dwelling unit in either of the Two Avani Condominiums;
 - ii) no one (other than the Declarant, or either or both of the Two Avani Condominiums) shall retain ownership of any Restricted Unit after he or she has sold and conveyed title to his or her dwelling unit in either of the Two Avani Condominiums;
 - iii) any sale, transfer, assignment or other conveyance of any Restricted Unit shall be made only to the Declarant, or to either or both of the Two Avani Condominiums, or to any owner of a dwelling unit in either of the Two Avani Condominiums;
 - iv) any lease of any Restricted Unit shall be made only to the Declarant, or to either or both of the Two Avani Condominiums, or to any owner or tenant of a dwelling unit in either of the Two Avani Condominiums, provided however that if any Restricted Unit is so leased to a tenant of a dwelling unit, then the term of such lease shall not extend beyond the term of the tenancy in respect of such dwelling unit;
 - v) where any Restricted Unit is leased to an owner of a dwelling unit in either of the Two Avani Condominiums, then upon the sale, transfer, assignment or other conveyance of the lessee's dwelling unit, the lease in respect of such Restricted Unit shall also be assigned by the said lessee to the transferee or new owner of such dwelling unit, within thirty (30) days of the registration of the transfer of title to such dwelling unit, failing which the lease of the Restricted Unit shall be automatically terminated and be of no further force or effect, and the Restricted Unit which is subject to such lease shall thereupon revert to the lessor thereof; and
 - vi) where the lessee of a Restricted Unit is an owner of a dwelling unit in either of the Two Avani Condominiums, and such lessee is deprived of possession and/or ownership of his or her dwelling unit, through any legal action, by any party holding or claiming a registered mortgage, charge, execution, lien or other encumbrance against said dwelling unit, then the lease in respect of the Restricted Unit shall be deemed to have been in default, and shall thereupon be automatically terminated and of no further force or effect, whereupon the Restricted Unit which is subject to such lease shall automatically revert to the lessor thereof.

- b) Any instrument or other document purporting to effect a sale, lease, mortgage, transfer, assignment or other conveyance of any Restricted Unit, in contravention of any of the foregoing provisions in subparagraph (a) hereof, shall be automatically null and void, and of no force or effect whatsoever, and any lease of any Restricted Unit shall automatically be deemed and construed to be amended in order to accord with the foregoing provisions hereof.

PART 8 - OCCUPATION AND USE OF UNITS

Section 44 - General Use

- a) No unit shall be occupied or used by any owner, or by anyone else, in such a manner as is likely to damage or injure any person or property (including any other units or any portion of the common elements), nor in any manner that will unreasonably interfere with the use or enjoyment by other owners of the common elements or their respective units, nor in any manner which might affect the structural integrity of any unit and/or the common elements, or that may result in the cancellation (or threat of cancellation) of any insurance policy obtained or maintained by the Corporation or otherwise referred to in this declaration, or that may significantly increase any insurance premium(s) or deductible amount with respect to any insurance policy of the Corporation, nor in such a manner as to lead to a breach by any owner (or by the Corporation) of any provision of this declaration, the by-laws or rules of this Condominium, and/or any agreement(s) binding on the Corporation and expressly authorized or ratified by any by-law. In the event that the use of a unit made by any owner (and/or by such owner's residents, tenants, employees, invitees or licensees), or by anyone else for whose actions such owner is responsible at law or in equity, causes injury to any person, or causes damage to such owner's unit and/or to any other unit(s) or to any part of the common elements, or results in the premium of any insurance policy obtained or maintained by the Corporation being significantly increased, or results in the payment of a deductible amount (or an increase in any deductible amount) with respect to any insurance policy of the Corporation, or results in any such policy being cancelled, then such owner shall fully indemnify and save the Corporation harmless from and against all costs, claims, damages and/or liabilities that the Corporation may suffer or incur as a consequence thereof, and such owner shall also be personally liable to pay and/or fully reimburse the Corporation for all costs and expenses incurred to fully redress or rectify any such injury or damage [including without limitation, all deductible amounts and increased insurance premiums (if any), together with all legal fees and disbursements incurred by the Corporation in the collection of any of the aforementioned costs, on a solicitor and client basis], on the express understanding that all such costs, expenses, legal fees and disbursements may be recovered by the Corporation against such owner in the same manner, and to the same extent, as common expenses (and with corresponding lien rights in favour of the Corporation against such owner's unit, similar to the case of common expense arrears). The foregoing provisions of this subparagraph shall not, however, be construed so as to prohibit or restrict (nor shall same be applied in any manner which prohibits or restricts) the transient residential rental accommodation arrangements made (or to be made from time to time) by or on behalf of the Declarant and/or any other dwelling unit owner(s), and the aforementioned indemnity and reimbursement provisions with respect to any increased insurance premiums and/or deductible amounts regarding the Corporation's insurance shall not apply with respect to the transient residential rental accommodation arrangements made (or to be made from time to time), by or on behalf of the Declarant and/or any other dwelling unit owner(s).
- b) The owner of each unit shall comply (and shall require all residents, tenants, invitees and/or licensees of his or her unit to comply) with the provisions of the Act, this declaration, the by-laws and rules of this Condominium, the provisions of the Two-Way Shared Facilities Agreement and the Shared Roadway Agreement respectively, and any other agreement(s) binding on the Corporation or expressly authorized or ratified by any by-law(s) of the Corporation.
- c) Save as otherwise expressly provided elsewhere in this declaration to the contrary, no one other than the Declarant shall make any structural change, renovation, alteration or addition whatsoever to his or her unit, without the prior written consent of the Corporation, on the express understanding that such consent shall be in the sole and unfettered discretion of the board, and may be subject to such terms and conditions as the board may determine or impose from time to time. When requesting such consent, the owner shall provide to the board a copy of the plans relating to the proposed structural change, renovation, alteration or addition, and such other information as may be required by the board. The board, or its authorized agent, shall review such plans and information for the purpose of confirming that the proposed structural change, renovation, alteration or addition will not:

- i) adversely affect the structural integrity of the unit or any other unit(s);
 - ii) detract from or unreasonably interfere with the use or enjoyment of any other unit(s) by the respective owner(s) or occupant(s) of same;
 - iii) negatively impact the aesthetic appearance of this Condominium or any portion thereof;
 - iv) increase the insurance premiums relating to any policy of insurance maintained by the Corporation;
 - v) obstruct access to any utility easement(s) or public service(s);
 - vi) encroach upon the common elements (except in a minor way, if at all), nor upon or with respect to any other unit(s);
 - vii) alter the grading or slope of the Real Property (or any portion thereof), nor obstruct or interfere with any drainage pattern(s) in respect of the Real Property; and
 - viii) violate any provisions of any by-law(s) or ordinance(s) of any of the Governmental Authorities, or any provisions of any agreement(s) or restriction(s) binding on the Corporation.
- d) Without limiting the generality of the foregoing, no change shall be made or permitted to the colour of any exterior glass, window, door, screen or other installation(s) appurtenant to (or associated with) any unit, except with the prior written consent of the board, and each owner shall ensure that nothing is affixed, attached to, hung, displayed or otherwise placed on any portion of the exterior walls (including awnings and/or storm shutters), and/or the exterior doors or windows of this Condominium, except with the prior written consent of the board, or save and except as may otherwise be permitted by any other provision(s) of this declaration.
- e) No sign, advertisement or notice of any type, size or kind shall be inscribed, painted, affixed, attached, hung or displayed on any part of any unit (whether within the interior or exterior of any unit, and whether temporary or otherwise), without the express written consent of the board. This restriction shall not, however, apply to the Declarant under any circumstances whatsoever.
- f) No boundary, load-bearing or demising wall(s) in respect of any unit, nor any portion of the floor (excluding the floor finish) or ceiling (excluding the ceiling finish) of any unit, nor the door of any unit leading directly to any common element hallway or corridor, or to any outdoor common element area, nor any portion of the Condominium's heating, cooling, plumbing, mechanical and/or electrical installations or systems (and/or any appurtenant fixtures and equipment) contained in (or forming part of) any unit, shall be removed, extended or otherwise altered without the prior written consent of the board, but the provisions of this subparagraph shall not require any owner to obtain the consent of the board for the purpose of painting or decorating the interior surface of any wall, floor, ceiling or door of any unit which is not visible from the exterior of said unit.
- g) Save as may otherwise be expressly provided elsewhere in this declaration to the contrary, no owner shall install any fencing, privacy screen or enclosure, nor any deck, planter boxes or other landscaping treatments or features, within the confines of his or her unit (nor within any exclusive use common element areas appurtenant thereto) without the prior written consent of the board. In order to maintain a uniform appearance and/or an aesthetically pleasing and compatible appearance throughout this Condominium, and to ensure compliance with all applicable municipal building and zoning restrictions, the board shall have the right to prescribe the height, type, size, design and colour of all fencing, privacy screens, enclosures, decks, planter boxes and/or other landscaping treatments or features proposed to be constructed or installed by any owner as an appurtenance to his or her unit (or with respect to any exclusive use common element areas appurtenant thereto).

Section 45 - Use of the Dwelling Units

(Being units 1 to 4 inclusive on level 2, units 1 to 9 inclusive on levels 3 and 4, and units 1 to 11 inclusive on levels 5 to 35 both inclusive)

- a) Each dwelling unit shall be occupied and used only for residential purposes, and/or for the business of providing transient residential rental accommodation on a furnished and/or unfurnished suite basis (with or without ancillary maid, cleaning and/or laundry services), through short term or long term license/lease arrangements, in accordance with the provisions of the applicable zoning by-law(s) of the Governmental Authorities, as may be amended from time to time, and for no other purpose whatsoever, provided however that the foregoing shall not prevent or in any way restrict:
- i) the Declarant from completing the building situate on the Real Property and all improvements thereto, nor shall the foregoing prevent the Declarant, while owning and seeking to sell any of the dwelling units in this Condominium or within any of the other existing or future Metrogate Condominiums to be developed within the

Metrogate Site (or any mortgagee who has a registered mortgage or charge against not less than twenty-five (25%) percent of the dwelling units in this Condominium, and who seeks to sell the dwelling units so encumbered by said mortgage or charge) from utilizing any of such dwelling units for the purposes of creating and/or maintaining therein one or more marketing, sales, construction and/or customer-service office(s), as well as advertising signs and temporary model suites for display purposes (at such locations and having such dimensions and designs as the Declarant or such mortgagee may determine in their respective 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 or any such mortgagee may determine in their respective sole, unfettered, and unchallenged discretion) have been sold and transferred by the Declarant or such mortgagee to each of the respective unit purchasers thereof; and

- ii) any unit owner, or any property manager acting on behalf of any unit owner or group of unit owners, from leasing or renting any dwelling unit(s) in this Condominium from time to time, for any duration and on any number of occasions, and whether in a furnished or unfurnished state, with or without ancillary maid, cleaning and/or laundry services.
- b) No tinted, coloured, mirrored or foil-lined interior window treatments or coverings shall be placed, installed or otherwise affixed to (or near) the interior surface of any window pane(s) so as to be visible from the exterior of the Condominium. For greater clarity, only white or off-white window linings, backings or coverings (or only white; or off-white window blinds or shutters) that are visible from the exterior of the Condominium may be placed, installed or otherwise affixed to (or near) the interior surface of any window pane(s)
- c) Water, electricity and gas service to the non-exclusive use common element areas of this Condominium, will be bulk-metered, and shall correspondingly comprise part of the common expenses. However, this Condominium has been designed so that each of the dwelling units shall be:
 - i) serviced by (and equipped with) an in-suite two-pipe fan coil unit or system, complete with an integrated energy recovery ventilator [and also serviced by central high-efficiency boilers and heating/cooling circulation pumps situate on the roof of (or elsewhere within) this Condominium], which will provide domestic hot water, heating and cooling services thereto;
 - ii) individually check metered for their respective hot water and electricity consumption, so that the cost of each dwelling unit owner's hot water and electricity consumption (reflecting the hot water and electricity respectively utilized or consumed by each owner's dwelling unit and any exclusive use common element area appurtenant thereto) shall not comprise part of the common expenses [provided however that the cost of cold water supplied to, and consumed by each of the dwelling units (and any exclusive use common element areas appurtenant thereto) shall comprise part of the common expenses, since the cold water consumption for the entire Condominium is bulk-metered]; and
 - iii) individually check metered by way of a thermal check meter installed as an appurtenance to each fan coil unit or system situate within each dwelling unit, that is designed to measure the volume of water coursing through (and utilized by) each in-suite fan coil heating and cooling system servicing each dwelling unit, as well as measuring the respective water temperatures correspondingly entering and leaving the said fan coil system, in order to calculate the total amount of thermal energy utilized by (or in connection with) each dwelling unit's fan coil system(s), so that the cost of heating and cooling each unit owner's dwelling unit shall not comprise part of the common expenses.
- d) The Corporation shall retain the services of a third party utility contractor or monitor (hereinafter referred to as the "Utility Monitor") who shall receive the bulk invoices for the water, gas and electricity services utilized or consumed by all of the units and common elements as a whole, for and on behalf of this Condominium (as the latter's agent and designated representative) from the local water, natural gas and electricity authorities or providers respectively, pursuant to readings taken by such authorities or providers on a bulk meter basis (hereinafter referred to as the "Bulk Utility Bills"). The Utility Monitor shall, at first instance, pay the Bulk Utility Bills in full on behalf of this Condominium, as and when due. However, in an effort to promote energy and hot water conservation, the Declarant has installed separate check or consumption meters for hot water and electricity service appurtenant to each of the dwelling units in this Condominium (for the purposes of measuring and gauging the hot water and electricity consumed by each owner's dwelling unit, and by any exclusive use common element areas appurtenant thereto), as well as one or more separate thermal check meters installed as an appurtenance to the fan coil unit or system within each dwelling unit in this Condominium (for the purpose of measuring and gauging the amount of thermal energy utilized to heat and cool each dwelling unit, and the corresponding cost of same relative to each dwelling unit), together with an electricity check meter appurtenant to each of the Electrical Parking Units [for the purpose of measuring the amount of electricity consumed by any electrical vehicle charged from the electrical outlet and/or charging station within (or appurtenant to) the Electrical Parking Unit]. The Utility Monitor shall read the thermal check meter(s) and the respective check meters for hot water and electricity appurtenant to each of the dwelling units (as well as the electricity check meter appurtenant to each of the Electrical Parking Units), on a periodic basis, and shall

correspondingly issue invoices periodically to each of the respective dwelling unit owners for the cost of heating and cooling their respective dwelling units, and for the cost of their respective consumption of hot water and electricity, determined in accordance with the Utility Monitor's sub-meter readings. In turn, the Corporation shall pay the Utility Monitor the difference between the Bulk Utility Bills (on the one hand), and the aggregate of all utility charges attributable to the respective dwelling units and the Electrical Parking Units (on the other hand), based on the Utility Monitor's reading of the check or consumption meters appurtenant to each of the dwelling units and Electrical Parking Units [and which amount is referred to in the utility monitoring agreement entered into between the Corporation and the Utility Monitor as the **"Corporation's Share"**]. The servicing agreement entered into between this Condominium and the Utility Monitor (hereinafter referred to as the **"Utility Monitoring Agreement"**) shall make the Utility Monitor responsible for attending to the maintenance, repair and/or replacement, as and when necessary, of the thermal check meter(s) and the hot water and electricity check meters appurtenant to each of the dwelling units (as well as the electricity check meter appurtenant to each of the Electrical Parking Units), in order to ensure that each check or consumption meter operates properly, subject however to the overriding obligation of the Corporation to fully pay for (or to forthwith fully reimburse the Utility Monitor for) all costs and expenses incurred in connection with such maintenance or repair work and/or replacement (all of which costs so incurred by the Corporation shall comprise part of the common expenses). In turn, the Utility Monitor shall be entitled to charge a monthly administration fee directly to each of the dwelling unit owners (incorporated as part of each dwelling unit owner's respective periodic invoice for the cost of heating and cooling his or her dwelling unit, and for the cost of the hot water and electricity service so consumed), as compensation for the Utility Monitor's reading and invoicing services. The Utility Monitor's monthly administration fee or charge may also be subject to increase, on an annual basis, to reflect the proportionate increase (if any) in the Consumer Price Index, on each anniversary of the date of registration of this Condominium. Accordingly, forthwith following the Corporation's receipt of each of the Bulk Utility Bills, the Corporation shall cause the Utility Monitor to read the thermal check meter(s) and each of the hot water and electricity check meters appurtenant to each of the dwelling units, as well as the electricity check meter appurtenant to each of the Electrical Parking Units (either by a direct visual reading or by remote electronic/computerized means, or by any other method, provided same is reasonably reliable and accurate), and the Utility Monitor shall thereafter issue and submit its own separate invoice(s) to each of the dwelling unit owners (as agent for and on behalf of the Corporation), reflecting the cost of heating and cooling each of the dwelling units and for their respective hot water and electricity consumption [with the cost of heating and cooling each of the dwelling units, as well as the cost of the hot water and electricity so consumed by each of the dwelling units (and any exclusive use common element areas respectively appurtenant thereto), together with the cost of the electricity consumed by any Electrical Parking Unit so owned by any dwelling unit owner, if applicable, being hereinafter collectively referred to as each dwelling unit owner's **"Proportionate Share of Residential Utility Consumption"** or **"P.S.R.U.C."**]. Each dwelling unit owner shall be obliged to pay to the Utility Monitor (as agent for the Corporation) his or her P.S.R.U.C. on or before the sixteenth (16th) day following the receipt of an invoice for same from the Utility Monitor (hereinafter referred to as the **"Due Date"**). In the event that any owner of a dwelling unit fails to pay to the Utility Monitor his or her P.S.R.U.C. on or before the Due Date, then in addition to any other rights, remedies or powers available to the Corporation at common law, by statute, or in equity, the Corporation shall be entitled to:

- A. charge and levy interest against such owner (hereinafter referred to as the **"Defaulting Residential Owner"**) on such unpaid P.S.R.U.C. amount, and on all costs and expenses incurred by the Corporation (or the Utility Monitor on behalf of the Corporation) in collecting (or attempting to collect) same, including all legal expenses incurred by the Corporation (or by the Utility Monitor on behalf of the Corporation) on a solicitor-and-client basis or substantial-indemnity scale, at a rate equal to 24% per annum, calculated monthly not in advance, with interest on the unpaid P.S.R.U.C. amount commencing to accrue from and after the Due Date, and with interest on all of the expenses incurred in collecting (or attempting to collect) same commencing to accrue from and after the respective dates that the Corporation (or the Utility Monitor, on behalf of the Corporation) incurred or expended same, and all such interest shall continue to accrue at the aforesaid rate until the date that all of the foregoing amounts are fully paid;
- B. add, to the extent permitted by law, the outstanding amount owing by the Defaulting Residential Owner for such unpaid P.S.R.U.C. amount, together with all outstanding interest accrued thereon as aforesaid, to the common expenses that are otherwise due and owing or payable by such Defaulting Residential Owner to the Corporation, and to recover same from the Defaulting Residential Owner in the same manner as common expenses (and with corresponding lien rights in favour of the Corporation as apply to common expense arrears); and/or
- C. maintain and enforce a lien against the Defaulting Residential Owner's dwelling unit, as security for the payment of his or her P.S.R.U.C. amount, and for all costs and expenses incurred by the Corporation (or by the Utility Monitor, on behalf of the Corporation) in collecting (or attempting to collect) same, together with all outstanding

interest accruing thereon as aforesaid (hereinafter referred to as the "Residential Utility Lien"), and it is hereby declared and stipulated that the Residential Utility Lien shall be enforceable by the Corporation in the same manner, and to the same extent, as a real property mortgage or charge, and with all the rights, remedies and powers inherent in (or available to) a mortgagee or chargee when a mortgage or charge of real estate 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, and in the event that the Land Titles Registrar requires the Corporation (as a prerequisite to the registration and/or enforcement of the Residential Utility Lien) to apply to a court of competent jurisdiction for any order, direction, advice or authorization, then the Corporation shall be entitled to forthwith apply to such court for same, and the Defaulting Residential Owner shall, for all purposes, be deemed to have consented to any such application by the Corporation.

- e) Any monies received by the Corporation arising from the sale of the Defaulting Residential Owner's dwelling unit pursuant to the Corporation's enforcement of the Residential Utility Lien shall be applied by the Corporation in the following order of priority, namely:
 - i) firstly, to pay and fully satisfy all outstanding charges or similar encumbrances, if any, registered against the Defaulting Residential Owner's dwelling unit which, at law, have priority over the Residential Utility Lien;
 - ii) secondly, to pay or reimburse the Corporation for all costs and expenses incurred in connection with its enforcement of the Residential Utility Lien, and the ultimate sale of the Defaulting Residential Owner's dwelling unit thereby or thereunder, including without limitation, all legal, accounting, advertising, brokerage and other related fees, expenses and disbursements, together with all monies paid to prior encumbrancers in respect of such dwelling unit;
 - iii) thirdly, to pay or reimburse the Corporation for (or in respect of) the Defaulting Residential Owner's P.S.R.U.C. amount, or such portion thereof as remains unpaid, together with all outstanding interest charges accrued thereon, as well as interest accrued on the Corporation's expenses (or the Utility Monitor's expenses, as the case may be) incurred in collecting (or attempting to collect) same, all at the aforesaid rate of 24% per annum, calculated monthly, not in advance;
 - iv) fourthly, to pay and attempt to satisfy the claims of any subsequently registered lienholders, chargees or other encumbrancers (registered against such Defaulting Residential Owner's dwelling unit after the registration of the Corporation's Residential Utility Lien), in accordance with their respective priorities pursuant to the provisions of the *Land Titles Act R.S.O. 1990, as amended*, and any applicable provisions of the Act; and
 - v) fifthly, the surplus or residue, if any, shall thereafter be paid to the Defaulting Residential Owner, or to his or her heirs, estate trustees, successors or assigns.
- f) The execution by the Corporation of a certificate confirming that the Corporation does, or does not, maintain or claim the Residential Utility Lien against a particular dwelling unit, pursuant to the foregoing provisions of this section, shall constitute irrefutable evidence and proof of same, and the Corporation shall be obliged to execute such a certificate forthwith upon its receipt of a written request for same from the Declarant, any prospective purchaser or mortgagee of any such dwelling unit, the then current registered owner thereof, or from any other party interested in such information, at a charge, fee or expense to the party so requesting same not exceeding \$100 plus HST (but at no charge, fee or expense whatsoever to the Declarant requesting same). Any registered mortgagee, or any purchaser or prospective mortgagee of the Defaulting Residential Owner's dwelling unit shall, upon payment to the Corporation of the full amount secured by the Residential Utility Lien so maintained by the Corporation pursuant to the foregoing provisions of this section, have the right to receive a full and complete discharge or an absolute assignment thereof, provided that such party must first deliver written notice to the Corporation requesting such discharge or assignment, setting forth a date and time for the delivery of such discharge or assignment [which date shall not be less than ten (10) days, nor more than thirty (30) days following the delivery of such notice], and with the exchange of such discharge or assignment for the monies owing to the Corporation therefor to take place and/or be governed by the following: since electronic registration is now mandatory in the Land Titles Division of the Toronto Registry Office (No. 66), the exchange of such discharge or assignment for the monies owing to the Corporation shall be undertaken pursuant to (and in accordance with) the provisions of a document registration agreement [in the form adopted by the Joint LSUC - CBAO Committee On Electronic Registration Of Title Documents on March 29th, 2004 (and posted onto the Law Society's website on April 8th, 2004), or any successor version thereof], and upon the Corporation's receipt of the full amount secured by the Residential Utility Lien, the Corporation shall direct its solicitor to electronically execute and release for registration the discharge or assignment of the Residential Utility Lien to the other party's solicitor.
- g) In light of the fact that the Corporation has retained (or will shortly hereafter be retaining) the services of the Utility Monitor to read the thermal check meter(s) and each of the hot water and electricity check meters appurtenant to each of the dwelling units (as well as the electricity check meter appurtenant to each of the Electrical Parking Units), and to correspondingly issue invoices to each of the respective dwelling unit owners for the cost of heating and cooling their respective dwelling units