

By-Law No. 1



**CONDOMINIUM ACT, 1998
CERTIFICATE IN RESPECT OF A BY-LAW**

(under Section 56(9) of the Condominium Act, 1998, S.O. 1998, c.19)

York Region Standard Condominium Corporation No. ● (known as the “**Corporation**”) certifies that:

1. The copy of By-Law Number 1, attached as Schedule “A”, is a true copy of the By-Law.
2. The By-Law was made in accordance with the *Condominium Act, 1998*, S.O. 1998, c.19.
3. The Owners of a majority of the Dwelling Units of the Corporation have voted in favour of confirming the By-Law.

DATED in Markham, the ● day of ● 201●.

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

Per: _____
Name:
Title: President

Per: _____
Name:
Title: Secretary

We have authority to bind the Corporation.

SCHEDULE “A” TO CERTIFICATE IN RESPECT OF A BY-LAW

YORK REGION CONDOMINIUM CORPORATION NO. ●

BY-LAW NO. 1

BE IT ENACTED as a by-law of York Region Standard Condominium Corporation No. ● (hereinafter referred to as this, the "**Corporation**" or the "**Condominium**") as follows:

ARTICLE 1 DEFINITIONS

- 1.1 The terms used herein shall have ascribed to them the definitions contained in the *Condominium Act 1998*, S.O. 1998, c.19, as amended, and the regulations made thereunder from time to time (all of which are hereinafter referred to as the "**Act**"), and in the declaration of the Corporation (the "**Declaration**"). If there is any discrepancy in the definition of a word between the Act and the Declaration, the definition in the Declaration shall prevail. All section references utilized herein, unless the contrary is expressed, shall refer to sections of the Act.

ARTICLE 2 SEAL

- 2.1 The Seal of the Corporation shall be in the form impressed in the space immediately below this paragraph.

Notwithstanding that the Corporation has a seal, any documents or instruments executed by or on behalf of the Corporation, and intended to bind the Corporation (including any documents or instruments that would ordinarily require the seal of the Corporation to be affixed thereto) need not be executed under seal, provided the statement "I/We have the authority to bind the Corporation" is noted below the signature(s) of the person(s) duly authorized to sign any such documents or instruments for and on behalf of the Corporation, and such documents or instruments shall accordingly have the same force and effect (for all purposes) as if same had been executed under the seal of the Corporation.

ARTICLE 3 RECORDS

- 3.1 The Corporation shall maintain, electronically or in paper form, the following lists, items, records, and other documents (collectively referred to as the "**Records**"):
 - (a) the financial records of the Corporation for at least six (6) years from the end of the last fiscal period to which they relate, in addition to satisfying the requirements of any taxing authority in Ontario, the government of Canada or any other jurisdiction to which the Corporation is subject;
 - (b) a copy of the budget for the Corporation for the current fiscal year, together with the last annual audited financial statements and auditor's report on such statements;
 - (c) a minute book containing the minutes of Owners' meetings and the minutes of the board of directors of the Corporation's (hereinafter called the "**Board**") meetings;
 - (d) a copy of the registered Declaration, registered By-Laws and current Rules, including a copy of all applications made under Section 109 of the Act to amend the Declaration (if applicable) for which the court has not made an order as contemplated in subsection 76(1)(g) of the Act;
 - (e) the seal of the Corporation;
 - (f) copies of all agreements entered into by the Corporation or the Declarant or the Declarant's representatives on behalf of the Corporation, including, without limitation, management contracts, deeds, leases, licences, easements, cost sharing

agreements, and any agreements entered into pursuant to Section 98 of the Act which affect any Units;

- (g) copies of all policies of insurance and the related certificates or memoranda of insurance and all Insurance Trust Agreements (if any);
- (h) bills of sale or transfers for all items that are assets of the Corporation but not part of the Lands;
- (i) the names and addresses for service of each Owner and mortgagee that the Corporation receives from Owners and mortgagees in writing in accordance with Section 47(1) of the Act;
- (j) notices received from an Owner that his or her Unit has been leased together with the lessee's name, the Owner's address, a copy of that lease or renewal or a summary of same, pursuant to Section 83(1) of the Act;
- (k) notices received from an Owner that a lease of the Owner's Unit has terminated and was not renewed pursuant to Section 83(2) of the Act;
- (l) all records that the Corporation has related to the Units or to employees of the Corporation;
- (m) the existing warranties and guarantees for all equipment, fixtures and chattels included in the sale of either the Units or Common Elements that are not protected by warranties and guarantees given directly to a Unit purchaser;
- (n) the as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;
- (o) all existing plans for underground site services, site grading, drainage and landscaping, utilities, and television, radio, or other communication services;
- (p) all other existing plans and information that are relevant to the repair or maintenance of the Lands;
- (q) if the Lands of the Corporation is subject to the *Ontario New Home Warranties Plan Act*; R.S.O. 1990, c.31, as amended (the "ONHWPA"), an executed copy of Form 3 of Ontario Regulation 49/01 to the ONHWPA, and a copy of all final reports on inspections that the Corporation, within the meaning of the ONHWPA, requires be carried out on the Common Elements;
- (r) a table delivered by the Declarant pursuant to Section 43(5)(g) of the Act setting out the responsibilities for repair after damage and maintenance and indicating whether the Corporation or the Owners are responsible;
- (s) all reserve fund studies and plans to increase the reserve fund under Section 94(8) of the Act;
- (t) a copy of the most current Disclosure Statement delivered to a purchaser of a Unit prior the Turnover Meeting (as hereinafter defined);
- (u) a copy of the written performance audit report received by the Corporation under Section 44(8);
- (v) a copy of any order appointing an inspector or administrator, if any, pursuant to Section 130 or Section 131 of the Act, and a copy of any report the Corporation receives from an inspector pursuant to Section 130(4) of the Act;
- (w) a copy of all status certificates issued by the Corporation pursuant to Section 76 of the Act, including copies of all notices issued by the Corporation which accompany or are referred to in such status certificates, including all notices issued under Section 94(9) and Section 109 of the Act, within the previous 10 years;
- (x) a copy of all notices of meetings of Owners sent by or on behalf of the Corporation, specifying the nature of the business to be presented at each meeting, or having respectively appended to them an agenda of the matters to be considered at each meeting within the previous 10 years;

- (y) a copy of all notices of liens issued by the Corporation to defaulting Owners pursuant to Section 85(4) of the Act, in respect of which the certificates of lien have not been discharged or vacated;
- (z) a copy of all notices sent on behalf of the Corporation within the previous 10 years;
- (aa) proxies, for not more than 90 days from the date of the meeting at which the proxies were utilized pursuant to Section 52(7) of the Act;
- (bb) copy of all minutes of settlement and/or written decisions made by any mediator or arbitrator appointed pursuant to section 132 of the Act, regarding any issue(s) in dispute involving the Corporation (or to which the Corporation is a party), together with copies of all court orders issued in those circumstances where the Corporation was a party to the proceeding or otherwise directly affected thereby;
- (cc) records relating to actual or pending litigation (or insurance investigations) involving the Corporation, together with copies of all outstanding judgments against the Corporation;
- (dd) any other records as may be required to be maintained by the Corporation pursuant to any By-Laws, agreements entered into by the Corporation or by the Declarant or the Declarant's representatives on behalf of the Corporation, and all documents received by the Corporation from the Declarant after the Turnover Meeting (as hereinafter defined); and
- (ee) a copy of all periodic information certificate, information certificate update and new owner information certificates as set out in Section 26.3 of the Act, and all other certificates required in the Act.

ARTICLE 4 MEETING OF OWNERS

- 4.1 **Annual Meetings:** The annual meeting of the Owners shall take place within six (6) months following the Corporation's fiscal year end, and shall be held at such place and at such time and on such day in each year as the Board may from time to time determine, for the purpose of hearing and receiving the reports and statements required by the Act and the By-Laws of the Corporation to be laid before the Owners at an annual meeting, and for the purposes of electing directors, confirming By-Laws passed by directors, appointing an auditor and fixing or authorizing the Board to fix his remuneration, and for the transaction of such other business as may be properly brought before the meeting. The Board shall lay before each annual meeting of Owners a financial statement made in accordance with Canadian accounting standards for not-for-profit organizations, as well as the report of the auditor to the Owners, and such further information respecting the financial position of the Corporation as the By-Laws from time to time may require.
- 4.2 **First Annual General Meeting:** Pursuant to Section 45(2) of the Act, the Board shall hold the first annual general meeting of owners not more than three (3) months after the registration of the Declaration and Description, and subsequently within six (6) months of the end of each fiscal year of the Corporation. The Owners shall, at such first meeting, appoint one or more auditors to hold office until the close of the next annual meeting, and if the Owners fail to do so, the Board shall forthwith make such appointment. The remuneration of an auditor shall be fixed by the Owners (if the auditor is appointed by the Owners), or fixed by the Board (if authorized to do so by the Owners, or if the auditor is appointed directly by the Board). The Corporation shall then give notice in writing to an auditor of his or her appointment forthwith after such appointment is made.
- 4.3 **Special Meetings:** A requisition for a meeting of Owners (an "**Owners' Requisition**") may be made by Owners who, at the time the Board received the requisition, together own not less than 15% percent of the Dwelling Units, are listed in the Record, are entitled to vote, and have no contributions to the common expenses payable for their Units that have been in arrears for 30 days or more. The Owners' Requisition shall be in writing, signed by requisitionists, state the nature of the business to be presented at the meeting, and be delivered personally or by registered mail to the President or Secretary of the Board, or deposited at the address for service of the Corporation. The meeting of the Owners shall

be called and held within 40 days of the receipt of the requisition or if the requisitionists so request in the requisition or consent in writing, add the business to be presented at the requisitioned meeting to the agenda for the next annual general meeting. If the meeting is not called and held within 35 days of receipt of the requisition, any of the requisitionists may call the meeting, which meeting shall be held within 45 days of the day on which the meeting is called. The Board may at any time call a special meeting of the Owners for the transaction of any business, the nature of which shall be specified in the notice calling the meeting.

- 4.4 **Turnover Meeting**: The Board, elected at a time when the Declarant owns a majority of the Dwelling Units shall, not more than 21 days after the Declarant ceases to be the registered owner of a majority of the Dwelling Units, call a meeting of the Owners to elect a new Board (the “**Turnover Meeting**”). If the Turnover Meeting is not called within such time, any Owner or any mortgagee entitled to vote may call the meeting.
- (a) At the Turnover Meeting, the Declarant or its agents shall give to the new Board elected at that meeting the Corporation's seal and all the books, agreements, insurance policies, bills of sale, records and documents required to be transferred pursuant to subsection 43(4) of the Act.
 - (b) Within 30 days after the Turnover Meeting, the Declarant shall deliver to the Board all of the warranties, plans, specifications, reports, tables, schedules, records, studies, statements and documents required to be transferred pursuant to subsection 43(5) of the Act, on the express understanding that the items described in subsections 43(5)(j) and 43(5)(k) of the Act shall be procured at the sole expense of the Corporation.
 - (c) Within 60 days after the Turnover Meeting, the Declarant shall deliver to the Board audited financial statements of the Corporation prepared by the auditor, on behalf of the Owners and at the expense of the Corporation, as of the last day of the month in which the Turnover Meeting was held.
- 4.5 **Notices**: Before the Board sends out a notice to call a meeting of Owners, it shall send a preliminary notice to the Owners in accordance with Section 45.1 of the Act. The preliminary notice shall be in writing, and given at least twenty (20) days before the subsequent notice of meeting of owners described in Section 45.1 of the Act to the Owners, and to the mortgagees whose names, five (5) days before the day the notice is given, appeared in the Record. Notice of every meeting of Owners shall be in writing, and specify the place, date, hour, nature of business to be presented, proposed changes to any condominium documents, a copy of requisition (if any) and other prescribed material. The notice shall be given at least 15 days before the day of the meeting to the auditor of the Corporation, and at least 20 days before the day of the meeting to each Owner and mortgagee who is entered on the record (the “**Register**”) of names and addresses of Owners and mortgagees required to be maintained pursuant to Section 47 of the Act. The Corporation shall not be obliged to give any notice to any Owner who has not notified the Corporation that he has become an Owner (nor to any Owner who has not provided an address for service to the Corporation), nor to any mortgagee who has not notified the Corporation of his address for service, and that he has become a mortgagee and has been authorized or empowered in his mortgage to exercise the right of the mortgagor to vote. Each notice of meeting, as hereinbefore required, shall include an agenda of the matters to be considered at such meeting. In the case of a notice to Owners that is not a notice of meeting of Owners, such notice shall be given to those persons whose names appeared in the Register five (5) days before the day the notice is given. Any Owner or mortgagee who attends a meeting of Owners, or who is represented by proxy at any such meeting, shall be deemed to have waived the right to object to a failure by the Corporation to give the required notice of any such meeting, unless such Owner or mortgagee or his or her proxy (as the case may be) expressly objects to such failure at such meeting.
- 4.6 **Reports and Financial Statements**: The Corporation shall attach to any notice of an annual meeting a copy of the financial statements (as required under Subsection 66(2)) and auditors report of the Corporation (as required under Subsection 67(1)) for the previous fiscal year of the Corporation. A copy of the minutes of the meetings of Owners and of the

Board shall, within 30 days of such meeting, be furnished to each Owner or mortgagee who has, in writing, requested same, upon payment to the Corporation of a reasonable charge for photocopying.

- 4.7 **Persons Entitled to be Present:** The only persons entitled to attend a meeting of Owners shall be the Owners and mortgagees entered on the Register, any person entitled to vote at the meeting, the auditor of the Corporation, the directors and officers of the Corporation, a representative of the Corporation's property manager and any others who, although not entitled to vote, are entitled or required under the provisions of the Act or the By-Laws of the Corporation to be present at the meeting. Any other person may be admitted only on the invitation of the chairperson of the meeting or with the consent of the majority of those present at the meeting.
- 4.8 **Quorum:** At any meeting of Owners, a quorum shall be constituted when Owners entitled to vote and entitled to receive notice of the meeting in respect of not less than 25% percent of the Dwelling Units are present in person or represented by proxy at such meeting. If 30 minutes after the time appointed for the holding of any meeting of Owners has elapsed and a quorum is not present, the meeting shall stand adjourned and if the meeting was an annual general meeting, the Board shall call a further meeting of the Owners in accordance with the Act.
- 4.9 **Right to Vote:** No vote shall be taken at a meeting of Owners on any matter other than routine procedure unless that matter was clearly disclosed in the notice of the meeting. At each meeting of Owners, and subject to the restrictions in paragraphs 4.11 and 4.13 hereof, every Owner of a Dwelling Unit shall be entitled to vote, if he is currently entered on the Register as an Owner or has given notice to the Corporation in a form satisfactory to the chairperson of the meeting that he is an Owner. If a Dwelling Unit has been mortgaged, and the person who mortgaged such Unit (or his proxy) has expressly authorized or empowered the mortgagee to vote and exercise the right of the Owner to vote in respect of such Dwelling Unit and such mortgagee has, at least four (4) days before the date of the meeting as specified in the notice of meeting, notified the Owner and the Corporation of his intention to exercise such right, such mortgagee shall be entitled to vote upon filing with the Secretary of the meeting sufficient proof of same. If a Dwelling Unit is subject to more than one mortgage for which the mortgagee has the right to vote, only the mortgagee who has priority may exercise the right. If the mortgagee with priority fails to vote, the mortgagee next in priority may exercise the right. If none of the mortgagees exercise the right to vote, the Owner has the right to vote at a meeting of Owners or to consent in writing, as long as the Owner was entitled to receive notice of and vote at the meeting. Any dispute over the right to vote shall be resolved by the chairperson of the meeting upon such evidence as he may deem sufficient. The vote of each such Owner or mortgagee shall be on the basis of one vote per Dwelling Unit, and where two or more persons entitled to vote in respect of one Dwelling Unit disagree on their vote, the vote in respect of that Dwelling Unit shall not be counted.
- 4.10 **Conduct of Meetings and Method of Voting:** At any general or special meeting of the Owners, the President of the Corporation (or to whomever he may delegate the responsibility) or failing him, the Vice-President, or failing him, some other person appointed by the Board or failing such appointment, such other person elected at the meeting shall act as chairperson of the meeting and the Secretary of the Corporation shall act as secretary of the meeting or, failing him, the chairperson shall appoint a secretary. Any question shall be decided by a show of hands unless a poll is required by the chairperson or is demanded by an Owner or mortgagee present in person or by proxy and entitled to vote, and unless a poll is so required or demanded, a declaration by the chairperson that the vote upon the question has been carried, or carried by a particular majority, or not carried, is prima facie proof of the fact without proof of the number of votes recorded in favour of or against such question; provided, however, that voting for the election of directors shall be by ballot only, other than in the case of acclamation. A demand for a poll may be withdrawn. If a poll is so required or demanded and the demand is not withdrawn, a poll upon the question shall be taken in such manner as the chairperson shall direct.

- 4.11 **Representatives**: An estate trustee, guardian or trustee of an Owner or mortgagee, or the committee of a mentally incompetent Owner or mortgagee (and where a corporation acts in such capacity, any person duly appointed as proxy for such corporation) upon filing with the secretary of the meeting sufficient proof of his appointment, shall represent the Owner or mortgagee at all meetings of the Owners of the Corporation, and may exercise the Owners or mortgagee's vote in the same manner and to the same extent as such Owner or mortgagee. If there be more than one estate trustee, committee, guardian or trustee, the provisions of paragraph 4.13 shall apply.
- 4.12 **Proxies**: Every Owner or mortgagee entitled to vote at meetings of Owners may, by instrument in writing, appoint a proxy, who need not be an Owner or mortgagee, to attend and act at the meeting in the same manner, to the same extent, and with the same powers as if the Owner or mortgagee were present himself. The instrument appointing a proxy shall be in writing and signed by the appointer or his attorney authorized in writing and shall be effective for a particular meeting only, shall comply with the regulations and be in the prescribed form. An instrument appointing a proxy for the election or removal of a director shall state the name of the directors for and against whom the proxy is to vote. The instrument appointing a proxy shall be deposited with the secretary of the meeting before any vote is cast under its authority. All instruments appointing a proxy shall be retained by the Corporation for 90 days following the date of the meeting in respect of which the Instrument appointing a proxy was issued.
- 4.13 **Co-Owners**: If two or more persons own a Dwelling Unit, in respect of which a right to vote is exercisable, any one of the Owners, as the case may be, may in the absence of the other Owner(s) vote, but if more than one of them are present or are represented by proxy, then they shall vote in agreement with each other, failing which the vote for such Dwelling Unit shall not be counted.
- 4.14 **Multiple Unit Mortgages**: If a Unit is subject to more than one mortgage for which the mortgagee has the right to vote at a meeting of Owners in the place and stead of the Owner/mortgagor, then the mortgagee who has priority may exercise that right, and in such case no other mortgagee may exercise that right. If, however, a mortgagee who has priority fails to exercise that right, then the mortgagee who is next in priority may exercise that right, and in such case no other mortgagee may exercise that right. If none of the mortgagees who have the right to vote or consent on behalf of the Owner/mortgagor exercises that right, then the Owner/mortgagor shall have the right to vote at a meeting of Owners, provided such owner is otherwise entitled to vote in accordance with the provisions of sections 4.12 and 4.19 hereof.
- 4.15 **Votes to Govern**: At all meetings of Owners, every question shall, unless otherwise required by the Act, the Declaration or the By-Laws of the Corporation, be decided by a majority of the votes cast on the question by the Owners or mortgagees entitled to vote that are present at the meeting in person or by proxy, provided there is a quorum at the meeting.
- 4.16 **Entitlement to Vote**: Except where, under the Act or the By-Laws of the Corporation, a unanimous vote of all Owners is required, an Owner is not entitled to vote at any meeting if any Common Expense or other monetary contribution payable in respect of his Unit are in arrears for more than 30 days prior to the meeting, provided that such an Owner may vote if the Corporation receives payment, by certified funds, of the arrears and all other costs and expenses owing before the meeting is held.

ARTICLE 5 BOARD OF DIRECTORS

- 5.1 **Overall Function**: The affairs of the Corporation shall be managed by the Board.
- 5.2 **Number and Quorum**: Until and unless changed by the enactment of another By-Law, or as otherwise permitted in the Act, the number of directors shall be five (5) of whom three (3) shall constitute a quorum for the transaction of business at any meeting of the Board. Notwithstanding vacancies on the Board, the remaining directors may exercise all the powers of the Board so long as a quorum of the Board remains in office. In no event shall the quorum be increased past a simple majority of the number of directors of the Board.

- 5.3 **Qualifications**: Each director and each officer of the Corporation, pursuant to or in addition to the requirements listed under Section 29 of the Act, shall be a natural person who is 18 or more years of age and owns a Dwelling Unit in the Condominium, save and except that any person designated by the Declarant, so long as the Declarant owns one or more Dwelling Units in the Condominium, shall be eligible to be a director or officer of the Corporation. For greater certainty, a tenant who resides in a Dwelling Unit but does not own such Dwelling Unit shall be ineligible to be a director or officer of the Corporation.

No two or more persons who either own, rent or reside in the same Dwelling Unit in the Condominium shall be permitted to serve on the Board at the same time. In the event that two or more persons residing in the same Dwelling Unit are nominated (and subsequently elected) at the same meeting, then the person(s) receiving the lesser amount of votes shall resign immediately. In the event of a tie vote, the two or more persons so nominated and elected shall then determine, between or amongst themselves, which of them shall become a director, and the other(s) shall resign immediately.

- 5.4 **Disqualification**: A director or officer immediately ceases to be a director (or officer, as the case may be), if such person:
- (a) is or becomes an undischarged bankrupt or is mentally incompetent within the meaning of the *Substitute Decisions Act*, 1992, as amended;
 - (b) is a party to litigation, mediation, and/or arbitration against or with the Corporation;
 - (c) subject to the regulations, the person has been found to be incapable by any court in Canada or elsewhere;
 - (d) has not complied with the prescribed disclosure obligations within the prescribed time;
 - (e) has registered against his Unit a Certificate of Lien and the person does not obtain a discharge of the Lien within 90 days of the registration of the Lien;
 - (f) is a director and fails to attend three (3) Board meetings in any given year and is unable to provide an explanation for his absence that is satisfactory to the Board, acting reasonably; or
 - (g) ceases to own a Dwelling Unit in the Condominium.

- 5.5 **Election and Term**: The directors of the Corporation shall be elected in rotation and shall be eligible for re-election. At the Turnover Meeting held pursuant to Section 43 of the Act, two (2) directors shall be elected to hold office for a term of one (1) year; two (2) directors shall be elected to hold office for a term of two (2) years; and one director shall be elected to hold office for a term of three (3) years. Each such directors may, however, continue to act until the earlier of when its successors are elected or the first annual general meeting following expiry of such director's term. If more than one of such directors whose terms are not of equal duration shall resign from the Board prior to the expiration of their respective terms, and shall be replaced at a meeting of Owners called for that purpose, the director or directors receiving the greater number of votes shall complete the longest remaining terms of the resigning directors. At each annual meeting thereafter a number of directors equal to the number of directors retiring in such year shall be elected for a term of three (3) years.

- 5.6 **Owner-Occupied Dwelling Units**: If at least 15% of the Dwelling Units are non-leased voting units (a unit that is not subject to a lease within the 60 day period before) on or after the time at which the Board is required to call the Turnover Meeting pursuant to Section 43 of the Act, no persons other than the Owners of owner-occupied Units (as defined in Section 51(5) of the Act) may elect a person to or remove a person from one of the positions on the Board (the "**Owner-Occupied Director**"). The Owner-Occupied Director shall be the director for the three-year term, and thereafter when that position becomes vacant, the director for that position shall be voted upon only by the Owners of owner-occupied Units. If the number of owner-occupied Units does not exceed 15% percent at the Turnover Meeting, but in any subsequent year more than 15% of the Dwelling Units become owner-occupied, the position of a director whose term expires in that year shall be designated the

director to be elected by owners of owner-occupied Units, and thereafter when that position becomes vacant, the director for that position shall be voted upon only by the Owners of owner-occupied Units and shall be elected to hold office for a term of three (3) years.

- 5.7 **Consent**: No election or appointment of a person as a director shall be effective unless:
- (a) he consents in writing to act as a director before his election or appointment or within 10 days thereafter; or
 - (b) he was present at the meeting when he was elected or appointed and did not refuse at that meeting to act as a director.
- 5.8 **Removal of Directors**: A director, other than a director on the first Board, may be removed before the expiration of his term by a vote of Owners at a meeting duly called for that purpose in accordance with Section 46, who together own a majority of the Dwelling Units, and the Owners may elect at any annual or special meeting any qualified person in place of any director who has been so removed, or who has died or resigned, for the remainder of his term. The Owner-Occupied Director may only be removed at a meeting duly called for that purpose, by a vote of a majority of the Owners of the owner-occupied Units.
- 5.9 **Filling of Vacancies**: If a vacancy in the membership of the Board occurs, other than by way of removal by a vote of Owners or as a result of the number of directors being increased, the majority of the remaining members of the Board may appoint any person qualified to be a member of the Board to fill such vacancy until the next annual meeting, at which time the vacancy shall be filled by election by the Owners. However, when there is not a quorum of directors in office, the directors then in office shall forthwith call a meeting of Owners to fill all the vacancies, and in default thereof, or if there are no directors in office, the meeting may be called by any Owner.
- 5.10 **Calling of Meetings of the Board of Directors**: Meetings of the Board shall be held from time to time at such place and at such time and on such day as the President and any other director may determine; and the Secretary shall call meetings when directly authorized by the President and any other director to do so. Unless otherwise provided in the By-Laws of the Corporation to the contrary, notice of any meeting so called shall include the time and place of the meeting and the general nature of the business to be discussed at the meeting and shall be given personally, by courier delivery, by prepaid mail, by telefax or by electronic communication addressed to each director at the address for service given by each director to the Corporation (or if no such address for service has been given, then to his last known place of residence) at least ten (10) days before the day of the meeting, save that no notice of a meeting shall be necessary if all the directors are present and consent to the holding of such meeting, or if those absent have waived notice of the meeting or otherwise signified in writing their consent to the holding of such meeting. A director who attends a meeting shall be deemed to have waived the right to object to a failure to give the required notice unless the director expressly objects to such failure at the meeting. If any notice of a director's meeting is mailed, telefaxed or couriered as aforesaid, then same shall be deemed to have been received and to be effective on the fourth (4th) business day following the date on which same was mailed, or if telefaxed or electronically communicated after 5:00pm, or couriered, then the same date as the date of sending, or if sent by telefax or electronic communication after 5:00pm, on the first (1st) business day following the date on which same was sent by telefax, electronic communication.
- 5.11 **Board Meetings by Teleconference**: A meeting of the Board may be held or convened by way of teleconference, or any other form of communication system that allows all of the directors to participate concurrently and to communicate with each other simultaneously and instantaneously, provided that all of the directors participating in a meeting held or convened by such means have consented thereto, and a director so participating in any such meeting held or convened by such means shall be deemed (for the purposes of Section 35(5) of the Act and this By-Law) to be present at such meeting.
- 5.12 **Regular Meetings**: The Board may appoint a day or days in any month or months for regular meetings at a place and hour to be named. A copy of any resolution of the Board

fixing a place and time of regular meetings of the Board shall be sent to each forthwith after being passed, but no other notice shall be required for any such regular meeting.

- 5.13 **Waiving Notice of a Meeting of the Board:** Notwithstanding the foregoing provisions of paragraph 5.10 hereof to the contrary, no notice of a meeting of directors shall be necessary if all the directors are present and consent to the holding of such meeting, or if those absent have formally waived notice of the meeting in writing, or have otherwise signified in writing their consent to the holding of such meeting. A director who attends a meeting shall be deemed to have waived the right to object to a failure to give the required notice, unless such director expressly objects to such failure at the meeting.
- 5.14 **First Meeting of New Board:** The Board may, without notice, hold its first meeting for the purpose of organization, and for the election and appointment of officers, immediately following the meeting of the Owners during which time the directors of the board were elected, provided that a quorum of directors is present.
- 5.15 **Disclosure by Directors of Interest in Contracts:** Every director of the Corporation who has, directly or indirectly, any material interest in any material contract or transaction, to which the Corporation is or will be a party (other than one in which his interest is limited to remuneration as a director, officer or employee), or any material interest in a proposed contract or transaction to which the Corporation will be a party, shall declare his interest in such contract or transaction, at a meeting of the directors of the Corporation and shall, at that time, disclose in writing the nature and extent of such interest. Such director shall not be present during discussion at a meeting, shall refrain from voting and shall not, in respect of such contract or transaction, be counted in the quorum, unless the director's interest in it is or would be limited solely to the insurance described in Section 39 of the Act or his remuneration as a director, officer or employee of the Corporation, or unless the director's interest arises or would arise solely because the director is a director, officer or employee of the Declarant, if the director has been appointed to the first Board by the Declarant under Section 42(1) of the Act. A general notice to the Board by a director declaring that he is a director or officer of, or has a material interest in, any company or other entity that is a party to a contract or proposed contract with the Corporation is a sufficient declaration of his interest in relation to any contract so made. If a director has complied with the requirements of the Act contemplated in this section, then such director, if he was acting honestly and in good faith at the time the contract or transaction was or is entered into, is not, by reason only of holding the office of director, accountable to the Corporation or to any Owners for any profit or gain realized from such contract or transaction, and such contract or transaction is not voidable by reason only of the director's interest therein. Even if such a director has not fully complied with the requirements of Section 40 of the Act, provided such director was acting honestly and in good faith at the time the contract or transaction was or is entered into, such director shall not, by reason only of holding the position of director, be accountable to the Corporation or to any Owners for any profit or gain realized from such contract or transaction (and such contract or transaction shall not be voidable by reason only of the director's interest therein) if the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a meeting of Owners duly called for that purpose, and the nature and extent of the director's interest are declared and disclosed in reasonable detail in the notice calling the meeting.
- 5.16 **Disclosure by Officers of Interest in Contracts:** Every officer who is not a director who has, directly or indirectly, a material interest in any contract of transaction to which the Corporation is or is to be a party, shall disclose his/her interest in such contract or transaction at the first meeting of the Board held after the officer becomes aware of the contract or transaction or the proposed contract or transaction. The Board shall enter the disclosure made by an officer in the minutes of the meeting of the Board at which the disclosure was made.
- 5.17 **Standard of Care:** Every director and officer shall exercise the powers and discharge the duties of his office honestly and in good faith, and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

5.18 **Protection of Directors and Officers**: No director or officer shall be liable for the acts, neglect or default of any other director or officer, or for any loss or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by resolution or order of the Board for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in, or upon which, any of the monies of the Corporation shall be invested (provided, however, that such investment was made in compliance with the requirements of the Act), or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any of the monies, securities or effects of the Corporation shall be deposited, or for any loss occasioned by an error of judgment or oversight on his part, or for any other loss, damage or misfortune which might happen in the execution of the duties of his office or in relation thereto, unless the same shall happen through or in connection with his own dishonest or fraudulent act or acts or breach of his duty to act honestly and in good faith.

5.19 **Indemnity of Directors and Officers**: Every director and officer of the Corporation and their respective heirs, estate trustees, successors, and other legal personal representatives shall at all times be indemnified and saved harmless by the Corporation from and against:

- (a) any liability and all costs, charges and expenses that the director or officer sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him for or in respect of anything done, permitted to be done by him, or omitted to be done by him 'in respect of the execution of the duties of his office; and
- (b) all other costs, charges and expenses which such director or officer sustains or incurs in respect of the affairs of the Corporation,

excluding however all costs, charges and expenses incurred directly or indirectly as a result of (or in connection with) such director's or officer's own dishonest or fraudulent act or acts, or through or by such director's or officer's gross negligence, recklessness, wilful blindness or intentional misconduct (with all of the liabilities and costs for which each director and officer shall be indemnified being hereinafter collectively referred to as the "Liabilities"), unless the Act or the By-Laws of the Corporation provide otherwise, on the express understanding that:

- (i) no director or officer shall be indemnified by the Corporation in respect of any liabilities, costs, charges and/or expenses that he sustains or incurs arising from (or in connection with) any action, suit or other proceeding in which such director or officer is adjudged to be in breach of his or her duty to act honestly and in good faith;
- (ii) the Corporation is advised of any such action, suit or other proceeding (and of all liabilities, costs, charges and expenses in connection therewith) forthwith after the director or officer receives notice thereof or otherwise becomes aware of same; and
- (iii) the Corporation is given the right to join in the defense of any such action, suit or proceeding.

5.20 **Indemnity Insurance**: Subject to any limitations contained in the Act, the Corporation shall purchase and maintain insurance for the benefit of every director and officer of the Corporation in order to indemnify them against the Liabilities.

ARTICLE 6 OFFICERS

6.1 **Elected President**: At the first meeting of the Board, and after each election of the directors, the Board shall elect from among its members a President. In default of such election, the then incumbent, if a member of the Board, shall hold office until his successor is elected. A vacancy occurring from time to time in such office of the President may be filled by the Board from among its members.

- 6.2 **Appointed Officers**: From time to time the Board shall appoint a Secretary, and may appoint one or more Vice-Presidents, a General Manager, a Treasurer and such other officers as the Board may determine, including one or more assistants to any of the officers so appointed. The officer so appointed may, but need not be, a member of the Board, but must be an Owner of a Dwelling Unit in the Condominium. One person may hold more than one office, and if the same person holds both the office of the Secretary and the office of Treasurer, he may be known as the Secretary-Treasurer.
- 6.3 **Term of Office**: Subject to the provisions of any written agreement to the contrary, the Board may remove at its pleasure any officer of the Corporation.
- 6.4 **President**: The President shall, when present, preside at all meetings of the Owners and of the Board, and shall be charged with the general supervision of the business affairs of the Corporation including without limitation dealing with the Corporation's property manager and the Corporation's solicitor and shall direct the enforcement of the Act, the Declaration, By-Laws and rules of the Corporation.
- 6.5 **Vice-President**: During the absence of the President, his duties may be performed and his powers may be exercised by the Vice-president, or if there are more than one, by the Vice-Presidents in order of seniority (as determined by the Board), save that no Vice-president shall preside at a meeting at the Board or at a meeting of Owners who is not qualified to attend such meeting as a director or Owner, as the case maybe. If a Vice-president exercises any such duty or power, the absence of the President shall be presumed with reference thereto. A Vice-President shall also perform such duties and exercise such powers as the Board may prescribe from time to time.
- 6.6 **Secretary**: The Secretary shall give or cause to be given all notices required to be given to the Owners, directors, auditors, mortgagees and all others entitled thereto. The Secretary shall attend all meetings of the directors and of the Owners and shall enter or cause to be entered in books kept for that purpose, minutes of all proceedings at such meetings. The Secretary shall be the custodian of all books, papers, records, documents and other instruments belonging to the Corporation and he shall perform such other duties as may from time to time be prescribed by the Board.
- 6.7 **Treasurer**: The Treasurer shall keep or cause to be kept full and accurate books of account in which shall be recorded all receipts and disbursements of the Corporation and, under the direction of the Board, the Treasurer shall control the deposit of the money, the safekeeping of securities and the disbursement of funds of the Corporation. The Treasurer shall render to the Board at any meeting thereof, or whenever required of the Treasurer, an account of all his transactions as Treasurer and of the financial position of the Corporation, and he shall perform such other duties as may from time to time be prescribed by the Board. The offices of Secretary and Treasurer may be combined.
- 6.8 **Other Officers**: The duties of all other officers of the Corporation shall be such as the terms of their engagement call for, or as the Board may require of them. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant unless the Board otherwise directs.
- 6.9 **Agents and Attorneys**: The Board shall have the power to appoint, from time to time, agents or attorneys of the Corporation who shall have such powers of management or otherwise (including the power to sub-delegate) as the Board may think fit in its sole discretion.
- 6.10 **Committees**: In order to assist the Board in managing the affairs of the Corporation, the Board may from time to time establish or constitute such advisor committees to advise and make recommendations to the Board in connection with any activities undertaken (or under consideration) by the Board, including those related to management, budgets, rules and/or any other matters related to the Common Elements or any facilities, services or amenities (or any portion thereof). The members of such committees shall be appointed by the Board to hold office, and may be removed at any time by resolution of the Board.

ARTICLE 7 BANKING ARRANGEMENTS AND CONTRACTS

- 7.1 **Banking Arrangements**: The banking business of the Corporation or any part thereof shall be transacted with such bank or trust company as the Board may designate or authorize from time to time by resolution, and all such banking business, or any part thereof, shall be transacted on the Corporation's behalf by any one or more officers, or other persons, as the Board may designate or authorize from time to time by resolution, and to the extent therein provided, including, without restricting the generality of the foregoing, the operation of the Corporation's accounts, the making, signing, drawing, accepting, endorsing, negotiating, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders relating to any property of the Corporation; the execution of any agreement relating to any such banking business, and the defining of the rights and powers of the parties thereto; and the authorizing of any officer of such bank or trust company to do any act or thing on the Corporation's behalf to facilitate such banking business.
- 7.2 **Execution of Instruments**: Subject to the provisions of the Act and subject to the foregoing and the provisions of any other By-Law(s) of the Corporation specifically designating the person or persons authorized to execute any type or class of documents on behalf of the Corporation, all deeds, transfers, assignments, contracts and obligations on behalf of the Corporation may be signed by the President or the Vice-President, together with the Secretary or any other director. Any contract or obligation within the scope of any management agreement entered into by the Corporation may be executed on behalf of the Corporation in accordance with the provisions of such management agreement. Notwithstanding any provisions to the contrary contained herein, the Board may, subject to the provisions of the Act, at any time and from time to time, direct the manner in which, and the person or persons by whom any particular deed, transfer, contract or obligation or any class of deeds, transfers, contracts or obligations of the Corporation may or shall be signed.
- 7.3 **No Seal**: Despite anything contained in this By-Law to the contrary, any type or class of document, contract, or other writing otherwise requiring a seal need not be executed under seal by any person nor duly witnessed, provided that the name of the signatory, his office in the Corporation, and the phrase "I/We have the authority to bind the Corporation" is clearly set out below the signature(s), and such a document, contract, or other writing has the same effect for all purposes as if executed under seal.
- 7.4 **Execution of the Status Certificate**: Status certificates may be signed by any officer or director of the Corporation, provided that the Board may, by resolution, direct the manner in which, and the person(s) by whom, such certificates may or shall be signed.

ARTICLE 8 FINANCIAL YEAR-END

- 8.1 Unless otherwise determined by resolution of the Board, the financial year of the Corporation shall end in each year on the last day of the month in which the Declaration and Description creating the Corporation were registered.

ARTICLE 9 THE CORPORATION

- 9.1 **Duties of the Corporation**: In addition to the duties and obligations set forth in the Declaration of the Corporation, the duties of the Corporation shall include, but shall not be limited to, the following:
- (a) operating, maintaining, controlling, managing and administering the Common Elements and assets of the Corporation in accordance with the provisions of the Declaration;
 - (b) assume and take all actions reasonably necessary to comply with and ensure compliance by the Owners and an Owner's Responsible Parties including, but not limited to their tenants with any agreements, leases or licenses entered into by the Corporation, or by the Declarant for or on behalf of the Corporation;

- (c) arranging for the supply of all requisite private or public utility services to the Common Elements and to the Units (unless separately metered), except where the Corporation is prevented from carrying out such duty by reason of any event beyond the reasonable control of the Corporation. Should any apparatus or equipment used in effecting the supply of any requisite utility service(s) become incapable, at any time, of fulfilling its function, or is damaged or destroyed, then the Corporation shall have a reasonable time within which to repair or replace such apparatus or equipment. The Corporation shall not be liable for any indirect or consequential damages, or for damages for personal discomfort or illness by reason of the breach of such duty;
- (d) monitoring all public or private service companies which enter upon the Common Elements for the purpose of supplying, installing, replacing and/or servicing their respective systems and/or equipment, or any systems or equipment within, or appurtenant to, any Unit(s), in an effort to ensure that any such work or service does not cause any damage to the Common Elements, nor to any other Unit(s), and causes the least amount of inconvenience and disruption to the residents of the Condominium as is reasonably possible under the circumstances;
- (e) obtaining and maintaining such insurance for damage to the Units, assets and Common Elements (save for insurance for damage to improvements made to a Dwelling Unit), as may be required by the Act, the Declaration or the By-Laws, and procuring any appraisals of the full replacement cost of the Common Elements and assets of the Corporation that may be required by the Act, the Declaration or the By-Laws of the Corporation for the purposes of determining the amount of insurance to be effected, on the express understanding that the question of what shall constitute an improvement made to any Unit shall be determined by reference to a standard Unit for the class of unit to which such Unit belongs, and in this regard, the standard Unit for the class of Units to which the Dwelling Units in this Condominium belong, shall be the standard Unit described in Appendix "A" to this By-Law;
- (f) obtaining and maintaining insurance for the benefit of all directors and officers of the Corporation against the matters described in Sections 31(a) and (b) of the Act, provided such insurance is reasonably available, but expressly excluding insurance against a liability, cost, charge or expense incurred as a result of a breach of their duty to act honestly and in good faith;
- (g) repairing after damage and restoring the Units and the Common Elements in accordance with the provision of the Act, the Declaration and the By-Laws;
- (h) obtaining and maintaining fidelity bonds where obtainable, in such amounts as the Board may deem reasonable, for such officers and directors or employees as are authorized to receive or disburse any funds on behalf of the Corporation;
- (i) preparing a yearly budget statement and causing audits to be made after every year-end and making financial statements available to the Owners and mortgagees in accordance with the Act and the By-Laws;
- (j) effecting compliance by the Owners, the Owner's Responsible Parties, residents, tenants, licencees, employees, and invitees with the Act, the Declaration, the By-Laws and the Rules;
- (k) providing status certificates, information certificates and such statements and information as may be prescribed by the Act;
- (l) investing the monies of or monies held by the Corporation in accordance with the Act;
- (m) establishing and maintaining one or more reserve funds that adequately provide for the major repairs and replacement of Common Elements and assets of the Corporation;
- (n) taking all reasonable steps to settle, adjust and/or refer to mediation and/or arbitration (in accordance with the provisions of the Act and By-Laws of the Corporation), any claim asserted against the Corporation, or any claim asserted by or on behalf of the Corporation;

- (o) taking all reasonable steps to collect from each Owner his proportionate share of the common expenses, and to maintain and enforce the Corporation's lien arising pursuant to Section 85(1) of the Act against each Unit in respect of which the Owner has defaulted in the payment of Common Expenses retaining and instructing legal counsel and/or the Corporation's property manager to prepare and register all certificates of lien for arrears of Common Expenses, and to ultimately discharge said liens following payment of the respective amounts owing; and
- (p) keeping and maintaining adequate records as set out in the Act and the By-Laws from time to time, including without limitation, those records set out in Article 3 hereof.

9.2 **Powers of the Corporation:** The powers of the Corporation shall include, but shall not be limited to, the following:

- (a) employing and dismissing personnel necessary or desirable for the maintenance and operation of the Common Elements;
- (b) adopting and amending the Rules of the Corporation concerning the operation and use of the Lands;
- (c) entering into an agreement with and/or employing a building manager or management company at a compensation to be determined by the Board, to perform such duties and services as the Board shall authorize;
- (d) investing monies held in the reserve fund(s) by the Corporation, provided that such investments shall be those permitted by the Act;
- (e) settling, adjusting, compromising or referring to mediation or arbitration any claim or claims which may be made against or asserted on behalf of the Corporation;
- (f) the borrowing of such amounts in any fiscal year as the Board determines are necessary or desirable in order to protect, maintain, preserve or ensure the due and continued operation of the Lands in accordance with the Act, the Declaration and the By-Laws of the Corporation and the securing of any loan of any amount by mortgage, pledge or charge of any asset (other than the reserve fund) of the Corporation, subject in each case to approval of each such borrowing loan or security by a majority vote of the Owners at a meeting duly called for that purpose or as required by the Act provided however the Board may maintain overdraft protection in its general account in an amount not exceeding one-twelfth of the Corporation's current budget without approval of the Owners.
- (g) retaining any securities or other real or personal property received by the Corporation, whether or not the same is authorized by any law (present or future) for the investment of trust funds;
- (h) selling, conveying, exchanging, assigning or otherwise dealing with any real or personal property at any time owned by the Corporation, at any price, on such terms, and in such manner as the Board may in its sole discretion deem advisable, and to do all things and execute all documents required to give effect to the foregoing;
- (i) leasing any part of the non-exclusive use Common Elements, or granting any easement, right-of-way or license over, upon, under or through (or otherwise affecting) any part or parts of the non-exclusive use Common Elements, and/or releasing and abandoning any appurtenant easement(s) or right(s)-of-way heretofore or hereafter granted to (or created in favour of) the Corporation in respect of any servient tenement burdened or encumbered thereby. To the extent that Section 21(1) of the Act requires a by-law to authorize such a lease, licence, easement or right of

way, or such a release and abandonment of easement, then this By-Law shall accordingly be deemed and construed for all such purposes to be (and constitute) the By-Law providing the Board with the requisite authority to enter into any such lease, licence, easement or right of way, or any such release and abandonment of easement, and any such lease, license, easement, right of way or release of easement may be executed on behalf of the Corporation by the authorized signing officer(s) of the Corporation, with or without the seal of the Corporation affixed thereto, and same shall be valid and binding on the Corporation without requiring the consent or concurrence of (or the written authorization or signature of) any Unit Owner(s) thereto;

- (j) the power and authority to assume or enter into (and bind the Corporation to the terms and provisions of) the following agreements namely:
 - (i) a management agreement with Times Property Management Inc., in respect of the Units and Common Elements of this Condominium;
 - (ii) an Insurance Trust Agreement with an insurance trustee as permitted by the Act;
 - (iii) a cost sharing agreement with respect to any shared facilities, amenities or services including without limiting the generality of the foregoing, a Reciprocal Agreement with adjoining land owners;
 - (iv) agreement(s) with utilities providers and/or metering companies with respect to the supply of and metering of water and electricity use within each Unit and related services;
 - (v) an assumption agreement with the Declarant in which the Condominium agrees to assume the obligations of the Declarant under all outstanding and ongoing obligations and liabilities of the Declarant with respect to any agreements entered into by the Declarant with the City of Markham or Regional Municipality of York, or neighbouring landowners;
 - (vi) an addition, alteration and/or improvement agreement, as contemplated in Section 98 of the Act, with the Owner of any Unit desiring to implement any addition, alteration or improvement thereto (or to any Exclusive Use Common Element area appurtenant to such Owner's Unit), on terms and conditions satisfactory to the Board;
 - (vii) any agreement pursuant to the Declaration, including but not limited to, an agreement to purchase the Guest Unit from the Declarant, Municipal Agreement, cable and telecommunications agreements, recreational facility management agreement, any agreement pertaining to the operation of the Public Library, any agreements with an operator for the operation of the parcel delivery room, any agreements with any other third party service providers providing a service to the Condominium; and
 - (viii) any other agreements which may be permitted by the Act and which are deemed advisable, desirable or necessary by the Board from time to time.

ARTICLE 10 NOTICE

- 10.1 **Method of Giving Notices:** Except as otherwise specifically provided in the Act, the Declaration, this By-Law, or any other By-Law(s) of the Corporation hereafter enacted,

any notice(s), communication(s) or other document(s), including budgets and notices of assessment required to be given or served shall be sufficiently given or served if given in accordance with the following:

- (a) to an Owner, who has notified the Corporation of his interest in any Unit and his address for service, by giving same to him, (or to any director or officer of the Owner if the Owner is a corporation) either:
 - (i) personally, by courier or by ordinary mail postage prepaid, addressed to him at the address for service given by such Owner to the Corporation; or
 - (ii) facsimile transmission, electronic mail, or any other method of electronic communication if the Owner agrees in writing that the party giving the notice may give the notice in this manner; or
 - (iii) delivered at the Owner's Dwelling Unit or at the mail box for the Dwelling Unit unless,
 - (1) the party giving the notice has received a written request from the Owner that the notice not be given in this manner, or
 - (2) the address for service that appears in the Register is not the address of the Unit of the Owner.
 - (b) **to a mortgagee**, who has notified the Corporation of his interest in any Unit and his address for service, and has confirmed that it has under the terms of the mortgage the right to vote at a meeting of Owners in the place of the Unit Owner (or to consent in writing in the place of the Unit Owner), by giving same to him, or to any director or officer of the mortgagee, either:
 - (i) personally, by courier, or by ordinary mail, postage prepaid, addressed to such mortgagee at the address for service given by such mortgagee to the Corporation; or
 - (ii) by facsimile transmission, electronic mail, or any other method of electronic communication if the owner agrees in writing that the party giving the notice may give the notice in this manner.
 - (c) **to the Corporation**, by giving same personally to any director or officer of the Corporation, or by courier or by registered mail, postage prepaid, addressed to the Corporation at its address for service as set out in the Declaration, or as changed in accordance with the requirements of the Act.
- 10.2 **Receipt of Notice**: If any notice is mailed as aforesaid, such notice shall be deemed to have been received (and to be effective) on the third (3rd) business day following the day on which same was mailed, or on the first (1st) business day following the date on which same was telefaxed, or couriered (or sent by electronic mail, or any other method of electronic communication, if previously agreed to by the Owner or mortgagee).
- 10.3 **Omissions and Errors**: The accidental omission to give any notice to anyone entitled thereto, or the non-receipt of such notice, or any error in any notice not affecting the substance thereof, shall not invalidate any action taken at any meeting of Owners or directors held pursuant to such notice or otherwise founded thereon.

ARTICLE 11 ASSESSMENT AND COLLECTION OF COMMON EXPENSES

- 11.1 **Duties of the Board Concerning Common Expenses:** The Common Expenses, as provided for in the Act and in the Declaration, shall be assessed by the Board and levied against the Owners in the proportions in which they are required to contribute thereto pursuant to the provisions of the Declaration. The Board shall, from time to time, and at least once annually, prepare the budget for the Lands and determine, by estimate, the amount of Common Expenses for the next ensuing fiscal year or remainder of the current fiscal year, as the case may be.
- 11.2 **Duties of the Board Concerning Reserve Fund:** In addition to the foregoing, the Corporation shall establish and maintain such reserve funds in accordance with the requirements of the Act, and shall collect from the Owners as part of their contribution towards the Common Expenses, amounts that the Board determines sufficient for such major repair and replacement, calculated on the basis of expected repair and replacement costs and life expectancy of the Common Elements and assets of the Corporation. Moreover, the Board shall conduct a reserve fund study within the first year following registration (irrespective of whether the Turnover Meeting has occurred within said time frame), shall conduct subsequent reserve fund studies or updates thereof (at the times prescribed by the Act or the regulations thereto), shall notify the Owners and the auditor, and shall implement the plan for future funding of the reserve, in order to make sufficient provision for a reserve fund in the annual budget.
- 11.3 **Notice of Common Expenses to Owners:** The Board shall advise each Owner promptly in writing of the total amount of Common Expenses payable by each Owner respectively, and shall give copies of all budgets on which such Common Expenses are based to all Owners and mortgagees entered on the Register, in accordance with the provisions of the By-Laws of the Corporation.
- 11.4 **Owners Obligations:** Each Owner shall be obliged to pay to the Corporation the amount of Common Expenses assessed against such Owner's Unit, in equal monthly installments due and payable on the first day of each and every month throughout the twelve-month period (or other period of time) to which such assessment relates or is otherwise applicable, until such time as a new budget or assessment is given to such Owner. If the Board so directs, each Owner shall forward to the Corporation forthwith a series of post-dated cheques covering the monthly Common Expenses payable during the period to which such assessment relates. In addition to the foregoing, any losses, costs or damages incurred by the Corporation by reason of a by members of his family and/or their tenants, residents, employees, invitees or breach of any rules of the Corporation in force from time to time by any Unit Owner, or licensees, shall be borne and/or paid for by such Owner, and may be recovered by the Corporation against such Owner in the same manner as Common Expenses.
- 11.5 **Extraordinary Expenditures:** Extraordinary expenditures not contemplated in the foregoing budget for which the Board shall not have sufficient funds, and funds required to establish reserves for contingencies and deficits, may be assessed at any time during the year in addition to the annual assessment, by the Board serving notice(s) of such further assessment(s), on all Owners. The notice shall include a written statement setting out the reasons for the extraordinary assessment and shall be payable by each Owner within 10 days from the date of the receipt of such notice, or within such further period of time and in such installments as the Board may otherwise determine.
- 11.6 **Default in Payment of Assessment:**
- (a) Arrears of payments required to be made under the provisions of this Article 11 shall bear interest at the rate of 24% per annum, calculated and compounded monthly, not in advance, until paid, and shall be deemed to constitute a reasonable charge incurred by the Corporation in collecting the unpaid amounts within the meaning of the Act;
 - (b) In addition to any remedies or liens provided by the Act, if any Owner is in default of payment of a Common Expense assessment levied against him for a period of 15 days, then the Board may bring legal action for and on behalf of the Corporation to

enforce collection thereof and there shall be added to any amount found due, all costs of such action, including cost on a solicitor-and-client basis; and

- (c) The Board when giving notice of default in payment of common expenses or any other default to the Owner of the Unit, shall concurrently send a copy of such notice to each mortgagee of such Unit who has requested that such notices be sent to him or her.

ARTICLE 12 LIABILITY FOR COSTS

12.1 **Abatement and Restraint of Violations by Unit Owners and Liability for Costs:**

The Owner of a Unit is responsible for any cost incurred to repair:

- (a) damage to the Common Elements or other Units that may have been caused by either the Owner's use or the use by the Owner's Responsible Parties; and
- (b) damage to the Common Elements that has been caused by the deliberate or negligent conduct of any Owner, or the Owner's Responsible Parties.

In those cases where it has been determined that the responsibility for payment of the cost to repair is that of the Owner, or where an Owner requests to repair a Common Element himself, the Board shall approve the selection of the contractor and/or the method of repair. This decision, at the discretion of the Board, shall be based on a minimum of two (2) bids, the method of repair, the meeting of standards of uniformity and consideration of the convenience of the Owner(s) involved.

12.2 **Additional Rights of Corporation:** The violation of any provisions of the Act, the Declaration, the By-Laws, and/or the Rules adopted by the Board, shall give the Board the right, in addition to any other rights set forth in the By-Laws and in accordance with the Act:

- (a) to enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove at the expense of the defaulting Owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions hereof and the Board shall not thereby be deemed guilty in any manner of trespass; or
- (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity the continuance of any such breach, including without limiting the generality of the foregoing, an application for an order for compliance pursuant to Section 134 of the Act.

12.3 **Insurance Deductible:** In accordance with Section 105(2) and Section 105(3) of the Act, where an Owner, or an Owner's Responsible Parties with the permission or knowledge of the Owner, through an act or omission causes damage to the Owner's Unit and/or to any portion of the Common Elements or to any other Units then the Owner of such Unit shall be responsible for the aggregate cost of repairing all of the damage so incurred, up to a maximum of the insurance deductible maintained by the Corporation with respect to its insurance policies from time to time and said amount plus all costs and expenses incurred by the Corporation directly or indirectly in relation to the damage caused by such Owner or Owner's Responsible Parties shall be added to the Common Expenses payable for the Owner's Unit.

12.4 **Indemnity of the Corporation:** Each Owner shall indemnify and save the Corporation harmless from and against all costs, claims, damages and/or liabilities (including the Corporation's insurance deductible and its legal costs and any other costs and expenses incurred by the Corporation) which the Corporation may suffer or incur as a result of, or in connection with, any act or omission of such Owner that causes (either directly or

indirectly) any damage or injury to the Owner's Unit and/or to the Common Elements (or any portion thereof) and/or to any other Units, except for any loss, cost, damage, injury or liability that is insured against by the Corporation, subject to any insurance deductible. All payments to be made by any Owner pursuant to the provisions of this Section 12.4 of the Act shall be deemed to be Common Expenses payable by such Owner, and shall be recoverable from such Owner by the Corporation in the same manner (and upon the same terms) as unpaid Common Expenses.

ARTICLE 13 RULES GOVERNING THE USE OF UNITS AND COMMON ELEMENTS

- 13.1 The Board may make, amend, and repeal Rules respecting the use of the Common Elements, Units, and assets of the Corporation, in order to promote the safety security and welfare of the Owners and of the Lands, or for the purpose of preventing unreasonable interference with the use and enjoyment of the Common Elements, the Units, and/or the assets of the Corporation. Every Rule made, amended or repealed by the Board shall be effective 30 days after notice thereof has been given to each Owner, unless the Board is in receipt of a written requisition requiring a meeting of the Owners to consider one or more of such Rules or unless the Rule or an amendment to a Rule has substantially the same purpose or effect as a Rule that the Owners have previously amended or repealed within the preceding two (2) years, in which case such rule or amendment is not effective until the Owners approve it, with or without amendment, at a meeting duly called for that purpose. If such a meeting of Owners is requisitioned or otherwise called, then those Rules which are the subject matter of, said requisition or meeting shall become effective only upon the approval of a majority of the Owners (represented in person or by proxy) at such meeting.
- 13.2 The Rules shall be complied with and enforced in the same manner as the By-Laws, but the Owners may, at any time, amend or repeal a Rule at a meeting of Owners duly called for that purpose, and for greater certainty, the Rules shall be observed by the Owners, the Owner's Responsible Parties and all other residents, tenants, invitees or licensees of the Units.

ARTICLE 14 MISCELLANEOUS

- 14.1 **Invalidity**: The invalidity of any part or parts of this By-Law shall not impair or affect in any manner the validity and enforceability of the balance thereof.
- 14.2 **Gender**: The use of the masculine gender in this By-Law shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include plural wherever the context so requires.
- 14.3 **Waiver**: No restriction, condition, obligation or provision contained in this By-Law shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches thereof which may occur.
- 14.4 **Headings**: The headings in the body of this By-Law form no part hereof, but shall be deemed to be inserted for convenience of reference only.
- 14.5 **Statutory References**: Any references to a section or sections of the Act in this By-Law (or in any By-Laws or Rules hereafter enacted by the Corporation) shall be read and construed as a reference to the identical or similarly appropriate section or sections (as the case may be) of any successor legislation to the Act.
- 14.6 **Conflicts**: In the event of a conflict or inconsistency between the provisions of the Act, and any provision in the Declaration, By-Laws or Rules of the Corporation, the Act shall prevail. In the case of a conflict or inconsistency between the provisions in the Declaration, and any provision in the By-Laws or Rules of the Corporation, the Declaration shall prevail. In the event that the Act and the Declaration are silent regarding the matter or issue addressed by any of the By-Laws, then the provisions of the By-Laws shall prevail.

York Region Standard Condominium Corporation No. ● hereby enacts and passes the foregoing By-Law No. 1, having been duly approved by all of the directors of the Corporation and confirmed

without variation to the provisions herein, as evidenced by all of the respective signatures hereto of all the directors.

DATED in Markham, the ● day of ●, 201●.

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

Per: _____
Name:
Title: Director

Per: _____
Name:
Title: Director

Per: _____
Name:
Title: Director

Per: _____
Name:
Title: Director

Per: _____
Name:
Title: Director

We have authority to bind the Corporation.

The foregoing By-Law No. 1 is hereby approved and confirmed by the sole Owner of the Units as evidenced by the signature of its duly authorized officer in that behalf.

DATED in Markham, the ● day of ●, 201●.

Times 4502 Inc.

Per: _____
Name:
Title:

I have authority to bind the Corporation.

APPENDIX “A” TO BY-LAW #1

Pavilia Towers A & B

Definition of Standard Dwelling Unit

The specifications constituting a standard dwelling unit are as follows:

Type of Specification	Nature of Specifications
Suite Features	<ul style="list-style-type: none"> • 5¼" Wood baseboard and 2¾" casings (paint finish) except in laundry room, bathrooms and storage areas that will have tile baseboard • All woodwork and trim are painted with white low VOC semi-gloss paint • Interior doors with modern lever hardware • Interior walls are painted in one colour low Volatile Organic Compound (VOC) latex paint • Pure white stippled ceiling in all areas except kitchen, bathrooms and laundry room • Smooth ceilings with white semi-gloss paint in the kitchen, bathrooms and laundry room • Mirrored sliding door for suite entry closet (Indicates as per suite plan) • Solid-core suite entry door with wood surround and modern lever hardware • Window covering for windows and sliding doors (excluding patio, terrace and balcony doors) • Engineered quartz stone window sills • Insulated door, or sliding door with screen, to patio, terrace, balcony • Thermally insulated, energy efficient, Low-E and Argon Gas filled, double-glazed, architecturally designed windows
Floor Finishes	<ul style="list-style-type: none"> • No floor coverings whatsoever (whether originally installed by or on behalf of the Declarant or otherwise) will be included within the standard unit, and accordingly the only flooring that will be insured by the Corporation’s master insurance policy will be the concrete floor slab of each unit. • Each unit owner will therefore be responsible for fully insuring his or her own flooring (whether constituting marble, granite, limestone, ceramic tile, hardwood, broadloom, porcelain tile, or any other type of tiling, carpeting, natural or artificial wood, or other floor covering whatsoever, in whole or in part) that has been installed within each owner’s suite, all at each owner’s sole cost and expense.
Kitchens	<ul style="list-style-type: none"> • Ceramic tile kitchen backsplash • Custom-designed with contemporary kitchen cabinetry • Deep upper cabinet over refrigerator for extra storage space • Extended upper kitchen cabinets • Under-mount stainless steel sink with single lever pull-out spray faucet • No kitchen countertop, no appliances whatsoever (whether originally installed by or on behalf of the Declarant, or otherwise), will be included within the standard unit, and accordingly each unit owner will therefore be responsible for fully insuring his or her own kitchen countertop and appliances that have been installed within each owner’s suite all at each owner’s sole cost and expense.
Bathrooms	<ul style="list-style-type: none"> • Acrylic Shower Base for shower stall • Bathroom accessories included in all bathrooms (chrome towel bar or ring, toilet paper holder, soap dish in shower/bathtub) • Bathtub or clear glass shower stall with ceiling light • Ceramic wall tile surround for bathtub/shower • Mirrored medicine cabinet over basin • Painted with white low VOC semi-gloss paint • Showerhead faucets in all bathrooms • Under-mount basin with single-lever chrome faucet • Vanity cabinetry • Wall sconce light fixture

Safety & Security	<ul style="list-style-type: none"> • 24-hour executive concierge, monitors live closed-circuit cameras throughout the garage area • Community access system with direct two-way communication with push call buttons from parking and entry areas • In-suite fire alarm and speaker connected to fire annunciation panel • Key fob for access at selected secure building entrance points and amenity areas • Main garage door operated by remote control • Personally encoded suite intrusion alarm system, with suite door contact and keypad connected to concierge desk for total security • Sprinkler system and smoke alarms throughout building and individual suites
Comfort Systems & Metering	<ul style="list-style-type: none"> • Continuous fresh air provided directly to occupied suites • For energy conservation purposes, each suite is equipped with an "occupancy switch" ("kill switch") • Individually controlled central heating and cooling using 2-pipe fan coil system • Suites are individually metered for hydro, hot water and cold water
Laundry	<ul style="list-style-type: none"> • Dedicated electrical outlet • No appliances whatsoever (whether originally installed by or on behalf of the Declarant, or otherwise), will be included within the standard unit, and accordingly each unit owner will therefore be responsible for fully insuring his or her own appliances that have been installed within each owner's suite all at each owner's sole cost and expense.
Electrical Services & Fixtures	<ul style="list-style-type: none"> • Ceiling light fixture in kitchen, foyer, hallways, bedrooms, den and walk-in closets • Individual service panel with circuit breakers • Outdoor duplex outlet for suites with patio, terrace or balcony • Internet, telephone, cable television outlets in bedrooms, living room and den • White Decora receptacle and switch throughout • Switch-controlled split outlets in living room

By-Law No. 2



CONDOMINIUM ACT, 1998
CERTIFICATE IN RESPECT OF A BY-LAW

(under Section 56(9) of the Condominium Act, 1998, S.O. 1998, c.19)

York Region Standard Condominium Corporation No. ● (known as the “**Corporation**”)
certifies that;

1. The copy of By-Law Number 2, attached as Schedule “A”, is a true copy of the By-Law.
2. The By-Law was made in accordance with the *Condominium Act, 1998*, S.O. 1998, c.19.
3. The Owners of a majority of the Residential Units of the Corporation have voted in favour of confirming the By-Law.

DATED at Markham, the ● day of ● 201●.

YORK REGION STANDARD
CONDOMINIUM CORPORATION NO. ●

Per:

Name:

Title: President

Per:

Name:

Title: Secretary

We have authority to bind the Corporation.

SCHEDULE “A” TO CERTIFICATE IN RESPECT OF A BY-LAW

**YORK REGION STANDARD CONDOMINIUM CORPORATION NO. ●
BY-LAW NO. 2**

BE IT ENACTED as a by-law of York Region Standard Condominium Corporation No. ● (hereinafter referred to as this, the “**Corporation**” or the “**Condominium**”) as follows:

1. The Corporation hereby ratifies, assumes and acknowledges the obligations of the reciprocal agreement entered into by the declarant, Time 4503 Inc. on its own behalf and on behalf of the York Region Standard Condominium Corporation No., and Times 4502 Inc. on behalf of the Corporation.
2. The executed assumption agreement attached hereto is hereby ratified, confirmed and approved by the board of directors together with any further amendments or other related documents.

York Region Standard Condominium Corporation No. ● hereby enacts and passes the foregoing by-law, having been duly approved by all of the Directors of the Corporation and confirmed without variation to the provisions herein, as evidenced by all of the respective signatures hereto of all the directors.

DATED at Markham, the ● day of ●, 201●.

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

Per: _____
Name:
Title: Director

Per: _____
Name:
Title: Director

Per: _____
Name:
Title: Director

Per: _____
Name:
Title: Director

Per: _____
Name:
Title: Director

We have authority to bind the Corporation.

The foregoing By-Law No. 2 is hereby approved and confirmed by the sole Owner of the Units as evidenced by the signature of its duly authorized officer in that behalf.

DATED at Markham, the ● day of ●, 201●.

Times 4502 Inc.

Per: _____

Name:

Title:

I have authority to bind the Corporation.

EXHIBIT “1”**APPENDIX “A” – ASSUMPTION AGREEMENT**

THIS AGREEMENT made this ● day of ●, 20●.

BETWEEN:

Times 4502 Inc.
(hereinafter called “**Times 4502**”)

OF THE FIRST PART

- and -

YORK REGION STANDARD CONDOMINIUM CORPORATION NO. ●
(hereinafter called “**YRSCC ●**”)

OF THE SECOND PART

WHEREAS Times 4502 has entered into a cost sharing agreement (hereinafter referred to as the “**Reciprocal Agreement**”) attached hereto as Appendix “A”, with the owners of the lands legally described as: (1) ● (the “**Townhouse Owner**”) and (2) ● (the “**Commercial Development Owner**”), wherein each of the Townhouse Owner and the Commercial Development Owner agree to share on the terms and conditions set out in the Reciprocal Agreement the costs and expenses incurred by Times 4502 for the maintenance, inspection, replacement and repair costs related to certain lands owned by Times 4502 and legally described in the Reciprocal Agreement as ● (the “**Driveway**”);

WHEREAS pursuant to the provisions of the Declaration, By-laws and Reciprocal Agreement, YRSCC ● is required to assume the obligations of Times under the Reciprocal Agreement;

NOW THEREFORE in consideration of \$2.00 and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto covenant and agree as follows:

1. YRSCC ● hereby ratifies, confirms, assumes, and acknowledges all terms, provisions, conditions and obligations set out in the Reciprocal Agreement, including all those made by or on behalf of the Corporation by Times 4502 as the owner of the Pavilia Towers Lands (as such term is defined the Reciprocal Agreement), and hereby covenants and agrees with Times 4502 to assume the obligations of Times 4502 under the Reciprocal Agreement and to be bound by all of the provisions, obligations, covenants and agreements contained in the Reciprocal Agreement with respect to the Condominium and the Lands as if YRSCC ● was originally named as a party in the Reciprocal Agreement.
2. YRSCC ● covenants and agrees to indemnify and save harmless Times 4502 from and against costs, expenses, actions, suits, legal proceedings, liabilities, debts and obligations of any kind and nature incurred or suffered by Times 4502 arising out of, from or in connection with the Reciprocal Agreement from and including the date that YRSCC ● was created pursuant to the provisions of the *Condominium Act*, 1998, S.O. 1998, C. 19.
3. YRSCC ● covenants and agrees to forthwith execute and deliver any further documentation (including conveyances) as may be required to give effect to this Assumption Agreement.
4. This Assumption Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

DATED THIS ● day of ●, ●.

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

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.

Times 4502 Inc.

Per: _____
Name:
Title:

I have authority to bind the Corporation.

Appendix "A"
RECIPROCAL AGREEMENT

THIS AGREEMENT made this ● day of ●, 20●●.

BETWEEN:

Times 4502 Inc.,
(hereinafter referred to as "**Times 4502**")
(for and on behalf of the Pavilia Towers Condominium (as hereinafter defined))

-and-

●
(hereinafter referred to as the "**Commercial Development Owner**")

-and-

Times 4503 Inc.,
(hereinafter referred to as "**Times 4503**" or the "**Townhouse Owner**")

WHEREAS the Times 4502 is the declarant of the condominium which will be created by the registration of a declaration and description in accordance with the provisions of the Act on the lands legally described as ● (the "**Pavilia Towers Lands**"), and will consist of two (2) high-rise residential towers connected by a central podium, of which one tower is intended to be 37 storeys and the other is intended to be 34 storeys (collectively, the "**Pavilia Towers Condominium**");

AND WHEREAS the Commercial Development Owner owns the lands and premises legally described as ● (the "**Commercial Development**") on which there will be an office building;

AND WHEREAS the Townhouse Owner owns the lands and premises legally described as ● (the "**Pavilia Park Towns Condominium**"), on which there will be built a total of 134 Dwelling Units and common elements;

AND WHEREAS the Pavilia Towers Condominium together with the Pavilia Park Towns Condominium will share the use of certain Shared Facilities (as hereinafter defined);

AND WHEREAS the Commercial Development Owner may elect to share in the use of certain Shared Facilities;

AND WHEREAS it is intended that the Pavilia Towers Condominium together with the Pavilia Park Towns Condominium, and the Commercial Development (if it so elects pursuant to the terms of this Agreement), shall share the costs relating to the construction, maintenance, operation, repair, and replacement of the Shared Facilities and shall provide for certain matters of common interest relating to the Shared Facilities;

AND WHEREAS to accommodate the use of the Shared Facilities it will be necessary to create certain easements and rights of way over parts of the Pavilia Towers Condominium;

AND WHEREAS the parties wish to have the benefits and obligations provided for in this Agreement be appurtenant to the units and their appurtenant common interest in the Pavilia

Towers Condominium, the units and common elements of the Pavilia Park Towns Condominium and if applicable, the Commercial Development;

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

ARTICLE 1 DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions

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

- (a) **“Act”** means the *Condominium Act*, 1998, S.O. 1998, c.19 and any amendments and regulations thereto, together with any successor legislation intended to replace or supercede same;
- (b) **“Agreement”** means this Agreement including all of the schedules, which are attached hereto, any subsequent amendments and any documents which are related to and stipulated to form a part of this Agreement;
- (c) **“Arbitration”** means the mediation and arbitration procedures set out in ARTICLE 11 of this Agreement and as stipulated in the Act;
- (d) **“Arbitration Notice”** has the meaning ascribed thereto in Section 11.2(a)(i) hereof;
- (e) **“Benefitting Owners”** means those owners of the dominant tenements with respect to the Easements that are entitled to the benefit of the Easements and who are parties to this Agreement;
- (f) **“Block 45 Development”** mean the Pavilia Towers Condominium, the Pavilia Park Towns Condominium and the Commercial Development;
- (g) **“Building Code”** means the building code defined under the *Building Code Act*, 1992, S.O. 1992, c.23 as amended from time to time;
- (h) **“Commercial Lands”** means those lands legally described as ●;
- (i) **“Declaration”** means the condominium declaration registered by Times 4502 in the Land Registry Office for the Land Titles Division of York Region on ●, as Instrument No.● to register the Pavilia Towers Condominium, and any amendments thereto and all schedules referred in therein;
- (j) **“Defaulting Party”** means a party that fails to pay any amounts due under this Agreement, including but not limited to Section 5.5, Section 7.5 and Section 12.1;
- (k) **“Driveway”** means the drive lanes, roadway areas and walkways situated within the Pavilia Towers Lands which are necessary to allow ingress and egress to and from the Pavilia Park Towns Condominium and Commercial Development, legally described as Part ● on Reference Plan ● and depicted in Schedule “●”;

- (l) **“Easements”** means those easements, rights-of-way, and rights in nature of easements attached to this Agreement as Schedule “●”, and described generally in Section 2.1;
- (m) **“Easement Areas”** means collectively those portions of the Pavilia Towers Lands which are subject to the Easements;
- (n) **“Force Majeure”** means war, other catastrophe, fire, storm, flood, earthquake, explosion, accident, energy shortage, sabotage, riot or insurrection, strike, lock-out, or labour disturbance, inability to obtain materials, goods, equipment, services or utilities required, or inability to obtain any permission or authority required to be obtained;
- (o) **“Governmental Authorities”** means the City of Markham and all other government, governmental agencies, Crown corporations or quasi-governmental authorities having jurisdiction over the Pavilia Towers Lands, the Commercial Development or the Pavilia Park Towns Condominium;
- (p) **“Liability Insurance”** means the insurance described and referred to in Section 7.2;
- (q) **“Major Change”** means any structural alteration, structural addition, structural change or structural improvement to the Shared Facilities, or the demolition or partial demolition of the Shared Facilities, or any part thereof, or any alteration, addition, change or improvement (other than minor changes) which affect or relate to the of the Shared Facilities (except for signage, and canopies (but excluding masonry cladding and pillars)), the Easements, provided that restoration or repair following damage or destruction (where the original plans and specifications are substantially re-utilized) shall not constitute a Major Change within the meaning of ARTICLE 9 hereof;
- (r) **“Mediator”** means the mediator selected pursuant to Section 11.1(c);
- (s) **“Parties”** means the Pavilia Towers Owner, the Townhouse Owner, the Commercial Development Owner if applicable, and any other party to this Agreement; **“Party”** shall have a corresponding singular meaning;
- (t) **“Pavilia Towers Owner”** means Times 4502 with respect to the period of time prior to the registration of the description and declaration of the Pavilia Towers Condominium; and with respect to the period of time after the registration of the description and declaration of Pavilia Towers Condominium, shall mean the condominium corporation;
- (u) **“Pavilia Park Towns Condominium”** means those lands legally described as ●;
- (v) **“Proportionate Share”** in respect of the Shared Facilities Costs shall be calculated as follows:
 - (i) 17.5% for the Pavilia Park Towns Condominium
 - (ii) 66.0% for the Pavilia Towers Condominium
 - (iii) 16.5% for the Commercial Development Owner
- (w) **“Receiving Party”** has the meaning ascribed thereto in Section 11.2;
- (x) **“Referring Party”** has the meaning ascribed thereto in Section 11.2;
- (y) **“Replacement Value”** means the cost of repairing, replacing or restoring the Shared Facilities or any portion thereof or property therein, with materials of like kind and quality on the same or a similar site without deduction for physical deterioration or any

other depreciation, and including differences made necessary by Building Code requirements;

- (z) **“Shared Facilities”** means the facilities listed in Section 3.1;
- (aa) **“Shared Facilities Budget”** has the meaning ascribed thereto in Section 5.1 hereof;
- (bb) **“Shared Facilities Committee”** has the meaning ascribed thereto in Section 4.1;
- (cc) **“Shared Facilities Cost”** means the aggregate of all costs and expenses incurred in connection with the Shared Facilities and shall include without limitation, the costs and expenses incurred in connection with the construction, governing, supply to, ownership, control, renovation, operation, maintenance, repair, replacement, improvement, insurance or administration of the Shared Facilities and any other costs relating to the Shared Facilities all set out from time to time in the Shared Facilities Budget;
- (dd) **“Structure”** means any structures located in, on or under the Driveway;
- (ee) **“Termination”** means termination in accordance with Part VIII of the Act or the application of Part VIII of the Act to the Condominium or the Pavilia Towers Condominium;
- (ff) **“Visitor Parking Spaces”** means the designated visitor parking spaces, which is intended to be used by visitors of the invitees, visitors, and guests of the Pavilia Towers Condominium, the Pavilia Park Towns Condominium and the Commercial Development.

Section 1.2 Schedules

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

Schedule “●” – ●

Schedule “●” – ●

Schedule “●” – ●

Section 1.3 Headings

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

Section 1.4 Partial Invalidity

Any term, covenant or condition of this agreement or the application thereof to any person or circumstance shall, to any extent, to invalid or unenforceable, in the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

Section 1.5 Number and Gender

All word and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties referred to in each case required and the verb shall be construed as agreeing with the required word and pronoun.

Section 1.6 Entire Agreement

This Agreement and any subsequent amendment hereto constitutes the entire agreement between the Parties hereto and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties hereto, and there are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof except as contained in this Agreement. No amendment, supplement, modification or termination of this Agreement shall be binding unless executed in writing by the Parties, save and except for any termination of this Agreement that arises under the express terms hereof. No waiver of any of the provisions of this Agreement shall be binding unless executed in writing by the Parties, save and except for any termination of this Agreement that arises under the express terms hereof. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver. Failure on the part of one Party to complain of any act or failure to act of another Party or to declare another Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

Section 1.7 Parties to this Agreement & Option by Commercial Development Owner

Notwithstanding anything to the contrary in this Agreement, the parties agree that the Commercial Development shall have the option, exercisable in its sole, absolute and unfettered discretion, to elect to become a party to this Agreement, by providing notice in writing to the other parties hereto, no later than one (1) month after the registration of the Pavilia Park Towns Condominium, failing which the Commercial Development Owner shall not be a party to this Agreement, and the Proportionate Share allocated to the Commercial Development Owner shall instead be allocated proportionately to each of Pavilia Park Towns Condominium and the Pavilia Towers Condominium.

ARTICLE 2 EASEMENTS

Section 2.1 Easements

The Townhouse Owner agrees to grant easements described below and in Schedule “●” attached hereto in favour of the Pavilia Towers Condominium and the Commercial Development. The Parties hereto hereby expressly confirm, ratify and accept the easements attached to this Agreement as Schedule “●” and described generally below (the “**Easements**”):

- a) easements in the nature of a right of way over parts of the Driveway in favour of the Pavilia Towers Condominium, Commercial Development for ingress and egress, utilities, services, maintenance and repair, and construction and for the use of the Visitor Parking Spaces by the invitees, visitors, and guests of the Pavilia Towers Condominium and the Commercial Development; and
- b) in the sole, absolute and unfettered discretion of the Townhouse Owner, any other easements related to matters which may not have been foreseen or considered at the time of or which may arise after, the execution this Agreement.

Notwithstanding that the Parties have attempted to set out all of the Easements, generally in this Section 2.1 and listed in Schedule “●”, it is understood and agreed that the Parties shall create all such easements that are reasonably required to allow the each of the Pavilia Park Towns Condominium, Pavilia Towers Condominium, and the Commercial Development to function as designed and to permit their ongoing access, maintenance and repair.

Section 2.2 Regulation and General Use of Easements

- a) The use and enjoyment of the Easements by the Benefitting Owners, shall be subject to the overriding provisions and/or restrictions set forth in this Agreement, the Declaration of the

Pavilia Towers Condominium, the declaration of the Pavilia Park Towns Condominium and, if applicable the declaration of the Commercial Development.

- b) In exercising its rights to the Easements, a Benefitting Owner shall act in a prudent and reasonable manner so as to minimize the interference occasioned to any other Benefitting Owner or the owner of the property which has granted and conveyed an Easement.
- c) The Parties shall not obstruct, prevent or interfere with the Easements save and except that the Townhouse Owner shall have the right to partially obstruct (on a temporary basis only) an Easement Area (or alternatively, temporarily suspend the benefit of the Easement), in order to maintain and/or repair any buildings, installations, structures and/or services that the Townhouse Owner has a duty to maintain and repair under the Act or that must be maintained or repaired by the Townhouse Owner, acting in a prudent and bona fide fashion, upon five (5) days' prior written notice of such partial obstruction or temporary suspension (as the case may be), being given to the Benefitting Owners. Otherwise no obstructions of an Easement Area or suspension of the benefit of an Easement shall take place without the consent of the Benefitting Owners.
- d) The Townhouse Owner covenants and undertakes with the Pavilia Towers Condominium Owner and the Commercial Development Owner that no other easement will be granted over the Pavilia Towers Lands which interfere with the Easements prior to the registration of the Easements.

Section 2.3 Obligations to Restore

In the event that damage or inconvenience is caused to all or part of the Shared Facilities, the Party that caused or is responsible for the damage or inconvenience shall repair the damage or remedy the cause of the inconvenience forthwith, and such repair shall include any redecoration necessary to restore the damaged Shared Facilities to its previous condition.

Section 2.4 Invalidity of Easements

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

ARTICLE 3 SHARED FACILITIES

Section 3.1 Shared Facilities

The composition and location of the Shared Facilities (as defined below) shall include the following, described generally:

- a) The Driveway and as designated by the Pavilia Towers Owner, the Visitor Parking Spaces located on the Driveway; and
- b) such other areas as may be determined by Times 4503,

(the "**Shared Facilities**").

Section 3.2 Shared Use

The parties hereto hereby acknowledge, confirm and agree that the use of the Shared Facilities shall be shared amongst the Parties subject to the terms of the Act and this Agreement. Until the registration of the declaration and description of the Pavilia Towers Condominium, the

Townhouse Owner shall have the unilateral right to establish hours of use and designated areas of use in respect of the Shared Facilities. Following registration of the declaration and description of the Pavilia Towers Condominium, the Shared Facilities Committee shall establish the hours of use and designated use of the Shared Facilities subject to the following paragraph.

Except as otherwise provided in this Agreement and the Declaration as first registered, no future provisions contained in any of the declarations, by-laws or rules of Pavilia Park Towns Condominium, the Pavilia Towers Condominium and if applicable, the Commercial Development, shall restrict the access to, egress from or use of the Shared Facilities by Times 4502 or Times 4503 save for any reasonable controls or restrictions imposed for health and safety reasons.

Section 3.3 Maintenance, Repair and Replacement of Shared Facilities

The Pavilia Park Towns Condominium shall provide for the maintenance, repair and replacement of the Shared Facilities consistent with Acceptable Standards and in a first class manner, including without limitation, keeping such portions clean and tidy, providing all necessary services and utilities, promptly removing from the Shared Facilities all garbage and refuse and providing all necessary security, subject, however, to the obligation of the other Parties to contribute towards such costs in accordance with this Agreement.

ARTICLE 4 SHARED FACILITIES COMMITTEE

Section 4.1 Composition of Shared Facilities Committee

The use of the Shared Facilities, as well as the preparation of the Shared Facilities Budget shall be governed by a committee comprised of members appointed by the Pavilia Park Towns Condominium, the Pavilia Towers Condominium, and the Commercial Development Owner (the “**Shared Facilities Committee**”).

Forthwith following the registration of the Pavilia Towers Condominium, the Pavilia Park Towns Condominium shall appoint and nominate two members, the Pavilia Towers Condominium shall nominate and appoint two members, and the Commercial Development Owner shall appoint and nominate one member (collectively, the “**Members**” and individually a “**Member**”) to sit on the Shared Facilities Committee. Except as hereinafter provided, each member of the Shared Facilities Committee shall serve for a period of two years, unless earlier removed by a resolution of the Board of Directors of the Party that appointed such Member. Any compensation to be paid to any Member shall be paid by the Party that appointed such Member.

Section 4.2 Meetings

The Shared Facilities Committee shall hold a meeting not less than annually for the purposes hereinafter set out. Any of the Pavilia Park Towns Condominium, Pavilia Towers Condominium or the Commercial Development Owner may in addition, call a meeting of the Shared Facilities Committee on at least seven (7) business days’ written notice to the Members, such notice to be given by the Secretary (as hereinafter defined) of the Shared Facilities Committee.

Section 4.3 Officers

At the first meeting of the Shared Facilities Committee, it shall elect from its own members, the following officers:

- (a) A chairman who shall preside when present at all meetings and who shall be responsible for the general management and supervision of the affairs of the Shared Facilities Committee (the “**Chairman**”); and
- (b) A secretary who shall give all notices required to be given to the members of the Shared Facilities Committee and who shall be responsible for keeping and maintaining proper

records of proceedings at all meetings of the Shared Facilities Committee (the “Secretary”).

Section 4.4 Quorum

At least three Members must be present, in person or by proxy, in order to constitute a quorum for any meeting held or convened by the Shared Facilities Committee, and all decisions of the Shared Facilities Committee shall be determined, effected and evidenced by the majority vote of the Members present at the meeting of the Shared Facilities Committee.

Section 4.5 Responsibilities of the Shared Facilities Committee

The Shared Facilities Committee shall, inter alia, be responsible for the following:

- (a) establishing rules and procedures with respect to the insurance, use, operation, maintenance and/or repair of the Shared Facilities, and determining the manner in which all maintenance and/or repair work with respect to same shall be carried out by the Pavilia Park Towns Condominium; and
- (b) submitting the Shared Facilities Budget to each of the Pavilia Park Towns Condominium, Pavilia Towers Condominium and Commercial Development Owner not less than once annually and no later than ● of each year.

Section 4.6 Common Property Manager

The Parties acknowledge that it is in the best interests of the Pavilia Park Towns Condominium, the Pavilia Towers Condominium and the Commercial Development Owner to have common property management where possible, for reasons of economies of scale and a desire to ensure continuous and consistent high quality standards of maintenance, repair, renovation and replacement throughout the Block 45 Development as would be expected in a high quality development. The Parties agree to retain a common property manager for the Pavilia Park Towns Condominium, the Pavilia Towers Condominium and, if applicable, the Commercial Development.

Section 4.7 Prior to Creation of Shared Facilities Committee

Notwithstanding anything to the contrary, prior to the creation of the Shared Facilities Committee, the manner in which the Shared Facilities will be utilized, operated, staffed, maintained, repaired, as well as the budgets prepared in respect of the Shared Costs shall be governed and controlled by the Declarant.

ARTICLE 5 BUDGET AND SHARING OF COSTS

Section 5.1 Budget

Prior to the registration of the Pavilia Park Towns Condominium and the formation of the Shared Facilities Committee, the Townhouse Owner shall prepare a budget setting out the Shared Facilities Costs incurred by the Townhouse Owner.

Following the formation of the Shared Facilities Committee, the Pavilia Park Towns Condominium shall prepare for each calendar year a proposed budget for any of the costs which it will be incurring and which are to be shared, setting out the amount and type of each expenses incurred in relation to the Shared Facilities, and shall submit the proposed budget to the Shared Facilities Committee. The Shared Facilities Committee shall review the submitted budget and if acceptable, submit to the Pavilia Park Towns Condominium, the Pavilia Towers Condominium and the Commercial Development Owner for incorporation as part of its respective overall annual budget, a separate budget outlining the Shared Facilities Costs (the “**Shared Facilities Budget**”).

Section 5.2 Budget Contents

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

Section 5.3 Invoices and Records

The Townhouse Owner and the Pavilia Park Towns Condominium shall be required to keep all bills, invoices and receipts relating to the Shared Facilities Costs and submit copies to the Shared Facilities Committee. Each of the Pavilia Towers Condominium and the Commercial Development Owner shall be entitled to review all bills, invoices and receipts relating to any Shared Facilities Costs for which it is being asked to contribute. The Shared Facilities Committee shall keep or cause to be kept at the Pavilia Park Towns Condominium's office in Markham (or in such other location in the Greater Toronto Area) for a period of five (5) years, copies of financial and other business records regarding the operation, maintenance, repair and replacement of the Shared Facilities.

Section 5.4 Responsibility to Pay Shared Facilities Costs

Commencing on the date of construction of the Shared Facilities, each of Pavilia Park Towns Condominium, Pavilia Towers Condominium and the Commercial Development Owner shall be responsible for paying their respective Proportionate Share of the Shared Facilities Cost. Provided however that the Pavilia Park Town Condominium and the Pavilia Towers Condominium shall not be required to make payments of its respective Proportionate Share of the Shared Facilities Costs until after the date of registration of the declaration under the Act, creating the Pavilia Park Town Condominium and the Pavilia Towers Condominium.

Section 5.5 Prompt Payment of Shared Facilities Costs

Each of the Parties shall promptly pay its Proportionate Share of the Shared Facilities Costs monthly but not later than thirty (30) days from the receipt of an invoice from: (i) the Townhouse Owner, prior to the registration of the Pavilia Park Towns Condominium; (ii) the Pavilia Park Towns Condominium following its registration and prior to the formation of the Shared Facilities Committee, and (iii) after the formation of the Shared Facilities Committee, the Secretary of the Shared Facilities Committee or (iv) from a request made by any of the Parties pursuant to this Agreement, and any cost or expense incurred in the collection of such costs, including all legal expenses incurred on a solicitor and his client basis, shall be the sole liability of a Defaulting Party which has omitted or neglected to pay same promptly when requested, and in addition, such Defaulting Party shall be solely liable for any interest or penalty charges incurred as a result of it not remitting any payment or charge promptly when due. All payments of Shared Facilities Costs shall be paid into a separate bank account to be established by the Townhouse Owner or the Pavilia Park Towns Condominium or the Shared Facilities Committee solely for the Shared Facilities, unless otherwise agreed.

Section 5.6 Damage to Shared Facilities

The cost of any repair or replacement necessitated by damage caused by the willful or negligent act or omission of any Party or any of such Party's residents, occupants, employees, agents, contractors, licensees or invitees shall be paid by such Party and shall not form part of the Shared Facilities Costs.

ARTICLE 6 COMPLIANCE WITH AGREEMENT

Section 6.1 By Parties Hereto

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

Section 6.2 Compliance with Laws

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

Section 6.3 Compliance by the Pavilia Park Towns Condominium, the Pavilia Towers Condominiums and the Commercial Development Owner

The Pavilia Park Towns Condominium, the Pavilia Towers Condominium and the Commercial Development Owner agree that they shall insofar as possible, compel the observance and/or compliance by all owners of units, residents, tenants and/or invitees, with all of the terms and provisions contained in this Agreement including the obligation of the Pavilia Park Towns Condominium, the Pavilia Towers Condominium and the Commercial Development Owner to pay all amounts required to be paid by it under this Agreement.

ARTICLE 7 INSURANCE

Section 7.1 All Risk Insurance

The Pavilia Park Towns Condominium, shall at all times keep the Shared Facilities insured in accordance with the Act and as would be carried by a prudent owner of a similar structure in the City of Markham, including without limitation: building insurance against damage from fire and all other perils from time to time customarily included in a property damage insurance policy on an “all risk” coverage basis (as that term is commonly understood in the insurance industry) including, without limitation, coverage against damage by fire, flood, explosion, collapse, earthquake, hail, windstorm, lightning, impact by vehicles or aircraft, riots, vandalism or malicious acts, smoke and leakage from fire protection equipment. The Pavilia Park Towns Condominium shall maintain insurance coverage in an amount equal to the Replacement Value of the Shared Facilities.

Section 7.2 Liability Insurance

Each of the Pavilia Park Towns Condominium, Pavilia Towers Condominium and the Commercial Development Owner, shall at all times, maintain separate policies of comprehensive general liability insurance against claims for personal injury, death or property damage or loss in an amount of not less than \$5,000,000.00 Canadian Dollars in respect of any one accident or occurrence (“**Liability Insurance**”) relating to the use of the Shared Facilities. The Pavilia Park Towns Condominium, shall be an additional named insureds under the liability policies of the Pavilia Towers Condominium and the Commercial Development Owner with respect to their use of the Shared Facilities.

Section 7.3 General

- (a) Policies of insurance to be obtained under Section 7.1 hereof shall name as parties insured:
- (i) the Pavilia Park Towns Condominium, the Pavilia Towers Condominium, and the Commercial Development Owner, as their interests may appear;
 - (ii) any registered mortgagee of the Pavilia Park Towns Condominium, and registered mortgagee of the Pavilia Towers Condominium requiring to be named and any registered mortgagee of the Commercial Development requiring to be named; and
 - (iii) any mortgagee in possession of any part the Pavilia Park Towns Condominium.

- (b) All policies of insurance shall provide for thirty (30) days prior notice of cancellation and any Party receiving such a notice shall immediately notify the other Parties (including chargees of the lands of such other Parties).
- (c) All policies of insurance required hereunder shall further provide:
 - (i) a waiver of any rights of subrogation; and
 - (ii) that no breach of conditions in the policy by any insured will affect the insurer's obligation to pay under the policy.
- (d) The insurance maintained in accordance with this Agreement shall comply with the provisions of the Act, the Declaration and the declaration of the Pavilia Towers Condominium, and the declaration of the Commercial Development if any, and shall contain such other provisions as would be included by prudent owners, or condominium corporations in comparable buildings in the City of Markham.
- (e) Nothing in this Agreement shall be construed to prohibit any of the Parties from obtaining any other insurance coverage, and the premium therefor shall be the sole responsibility of the Party who has obtained further coverage.

Section 7.4 Premiums

Other than for the insurance premiums payable for the insurance required under Section 7.1 hereof which shall be a Shared Facilities Cost each of the Pavilia Park Towns Condominium, Pavilia Towers Condominium and Commercial Development Owner shall pay the insurance premiums for its separate insurance policies as required under Section 7.2 hereof which shall not form part of the Shared Facilities Cost.

Section 7.5 Failure to Pay Premiums or Maintain Insurance

If a Party shall fail to maintain insurance or to pay its premiums or its portion of any premium, for a policy required by this ARTICLE 7 when due, and which such Party is obligated to pay pursuant to this ARTICLE 7 or otherwise, then such other Party or Parties to this Agreement insured by such policy may, after ten (10) days written notice to the Defaulting Party, pay such insurance premium or portion of the insurance premium or obtain such insurance at the expense of the Defaulting Party. The Defaulting Party shall upon demand, reimburse the Party or Parties obtaining such insurance or making such payment for the amount thereof and for all costs and expenses incurred in connection therewith.

Section 7.6 Application of Insurance Proceeds

Any monies payable as a result of damage to the Shared Facilities or any part thereof shall first be utilized to satisfy the obligations under ARTICLE 8 of the Pavilia Park Towns Condominium and thereafter distributed as their interest any appear in accordance with the apportionment mutually agreed upon by the Parties hereto failing which it shall be determined by Mediation or Arbitration in accordance with ARTICLE 11. In the event that the monies are insufficient to complete any required work, the Parties shall fund any deficiencies within thirty (30) days of receipt of the monies paid. The amount to be funded by each Party shall be subject to mutual agreement of the affected Parties failing which the apportionment shall be determined by Mediation or Arbitration in accordance with ARTICLE 11.

ARTICLE 8 DAMAGE

Section 8.1 Repairs

The Pavilia Park Towns Condominium shall, from time to time, make all repairs to the Shared Facilities as may be required or necessary to ensure the continuity of the Easements and the Shared Facilities.

If under this Agreement or pursuant to the Act the Pavilia Park Towns Condominium is required to make repairs and does not in fact repair or commence repairs within a reasonable time, then the Pavilia Towers Condominium and the Commercial Development Owner may upon 7 days' written notice to the Pavilia Park Towns Condominium, effect such repairs of the Shared Facilities as they deem necessary for the continued use, operation and enjoyment of the Shared Facilities. Any costs of the Pavilia Towers Condominium and the Commercial Development Owner for actions taken hereunder shall be recoverable from the Pavilia Park Towns Condominium pursuant to ARTICLE 11 of this Agreement.

Section 8.2 Damage

In the event there is damage to or the destruction to the Shared Facilities or any portion thereof by any cause whatsoever for which the cost of repair of the Shared Facilities is estimated to be less than 25% of the Replacement Value of the Shared Facilities, then Pavilia Park Towns Condominium shall forthwith proceed to repair, restore and reconstruct or otherwise provide the Shared Facilities, that it is obligated to maintain, so that the use, benefit and enjoyment thereof will not be adversely affected in any material way.

In the event of damage to or the destruction to the Shared Facilities or any portion thereof by any cause whatsoever for which the cost of repair is estimated to be equal or exceed 25% of the Replacement Value of the Pavilia Park Towns Condominium, then the Pavilia Park Towns Condominium shall elect whether to rebuild, restore and repair same and:

- (i) in the event that the Pavilia Park Towns Condominium elects to restore, rebuild and repair, then it shall expeditiously and diligently rebuild, restore and repair the damage and its sole cost and expense in a good and workmanlike manner and in accordance with all applicable laws, building codes, by-laws and regulations; and
- (ii) in the event the Pavilia Park Towns Condominium elects not to restore, rebuild and repair, then the Pavilia Park Towns Condominium shall nevertheless diligently and expeditiously restore, rebuild and repair the portion of the Shared Facilities to such an extent so as not to materially and adversely affect the use and enjoyment of the Easements and Shared Facilities by the other Parties, unless otherwise agreed to in writing.

Section 8.3 No Insurance Proceeds

To the extent that insurance proceeds are not available therefor, the cost of repairs, restoration and reconstruction of the Shared Facilities shall be borne by the Parties in their Proportionate Share. To the extent there is a deductible under the applicable insurance policy such deductible shall be a Share Facilities Cost to be borne by the Parties in their Proportionate Share.

Section 8.4 Commencement and Completion

All repairs, replacements, restoration, or reconstruction pursuant to this ARTICLE 8 shall be commenced as expeditiously as possible under the circumstances, and shall be carried out continuously and expeditiously in order to be completed as soon as reasonably possible, and in a good and workmanlike manner.

Section 8.5 New Easements

After repairs are completed to the Shared Facilities, if required, the Pavilia Park Towns Condominium shall grant amended or new easements where it is reasonably able to do so to the other Party whose property benefits from the Shared Facilities, as will enable the other Party to enjoy all of the benefits intended to be granted by the Easements.

Section 8.6 Section 127(1) and (2) of the Act

For Purposes of Section 127(1) and (2) of the Act, the obligations created by this ARTICLE 8 shall be deemed to be encumbrances against each unit to the Pavilia Park Towns Condominium, Pavilia Towers Condominium and if applicable, the Commercial Development.

Section 8.7 Original Plans

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

ARTICLE 9 MAJOR CHANGES

Section 9.1 Right to Make Major Changes

The Pavilia Park Towns Condominium may, at any time, at its sole cost and expense, make a Major Change to the Shared Facilities and in connection therewith may relocate any Easement within the Shared Facilities that has been granted to the other Parties pursuant to this Agreement or otherwise, provided however that such Major Change or such relocation of any Easement shall not, without the written consent of the other Parties, increase the costs including the Shared Facilities Costs of the other Parties.

Section 9.2 Plans and Specifications

If at any time the Pavilia Park Towns Condominium proposes to make a Major Change, then, before commencing such Major Change, the Pavilia Park Towns Condominium shall give to the other Parties the copy of the plans and specifications showing in reasonable detail the proposed Major Change. If the other Parties, within ten (10) days after delivery of such plans and specifications, shall not give to the Pavilia Park Towns Condominium a written notice specifying the aspect in which the proposed Major Change will violate the provisions of Section 9.1 or any other rights of such Parties under this Agreement, then such other Parties shall conclusively be deemed to have agreed that such Major Change does not constitute such a violation, so long as such Major Change actually made is, in all material respects, as shown on the plans and specifications furnished by the Pavilia Park Towns Condominium. If the other Parties gives a written notice as aforesaid, then the Pavilia Park Towns Condominium shall not commence any Major Change until the Parties have agreed to a resolution of the question or issue raised in such notice, or until the disagreement has been resolved by Mediation or Arbitration in accordance with this Agreement.

Section 9.3 Implementing the Major Changes

The Pavilia Park Towns Condominium shall make Major Changes in compliance with all laws, by-laws, rules, orders, ordinances, regulations and requirements of any Governmental Authority or any Board, body or agency thereof having jurisdiction over the Shared Facilities and in accordance with this Agreement. The Pavilia Park Towns Condominium shall, to the extent reasonably practicable, make Major Changes in such a manner as to reasonably minimize noise, vibration and other interference with the use or enjoyment of the Shared Facilities by the Pavilia Towers Condominium and Commercial Development Owner and during time periods which will not cause inconvenience or nuisance to the Pavilia Towers Condominium and the Commercial Development Owner.

Section 9.4 Insurance

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

Section 9.5 Dispute

A dispute or disagreement relating to a proposed Major Change shall be referred to Mediation or Arbitration.

ARTICLE 10 FORCE MAJEURE

Section 10.1 Force Majeure

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

ARTICLE 11 MEDIATION/ARBITRATION

Section 11.1 Mediation

- (a) Any Party may refer any matter of disagreement respecting this Agreement, to mediation pursuant to the Act and otherwise in accordance with the following procedures.
- (b) The Mediator has no authority to render a binding decision or force the Parties to accept a settlement.
- (c)
 - (i) The Parties shall co-operate to select a mediator (the “**Mediator**”), who shall be an impartial third party.
 - (ii) No person shall serve as a Mediator in any dispute in which he or she has any financial or personal interest in the result of the mediation.
 - (iii) Prior to accepting an appointment, the prospective Mediator shall disclose any circumstances likely to create a presumption of bias or interest in the outcome of the proceedings, or prevent a prompt meeting with the Parties.
- (d)
 - (i) Upon appointment, the Parties shall enter into a written agreement with the Mediator.
 - (ii) The agreement shall include the time and location of the mediation session. The Parties and the Mediator may schedule additional mediation sessions.
 - (iii) If the Parties are unable to reach a settlement the Mediator shall not act as an arbitrator.
 - (iv) The Mediator or any member of the Mediator’s firm or company will not act for any of the Parties individually in relation to the subject matter of the mediation in any capacity during the currency of the mediation or at any time thereafter.

- (e) (i) At the first session, the Parties will produce all information the Mediator reasonably requires to understand the issues including, any written materials; a description of any witnesses and what they each could testify to; or, the Mediator may ask the Parties for written materials or information in advance of the mediation session.
- (ii) At the mediation session(s), the Mediator will conduct an orderly settlement negotiation. The Parties shall be represented by a person with authority to settle the case. The Mediator will be impartial in such proceedings and has no authority to force the parties to agree to a settlement. The Mediator may conduct separate meetings (caucuses) with each Party to improve the Mediator's understanding of the respective positions of each Party.
- (f) (i) The Parties recognize that mediation proceedings are settlement negotiations and that all offers, promises, conduct and statements, whether written or oral made in the course of the proceedings are inadmissible in any litigation or arbitration of their dispute, to the extent the law allows.
- (ii) The Parties agree not to subpoena or otherwise require the Mediator to testify or produce records, notes or work product in any future proceedings and no recording or stenographic record will be made of any mediation session. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in a mediation session.
- (iii) In the event the Parties do reach a settlement that is made into a written agreement, the agreement will be admissible in a court or arbitration proceedings to enforce it, unless the Parties otherwise agree.
- (iv) Any information disclosed to the Mediator in a private caucus shall remain confidential unless the Party disclosing the information agrees that the Mediator may disclose it.
- (g) If one or more of the Parties has a substantial need for discovery to prepare for the mediation session, the Parties shall attempt to agree on a plan for such necessary discovery. Should they fail to reach an agreement, the Parties will present the matter to the Mediator for a non-binding recommendation.
- (h) All Parties agree that the Mediator:
 - (i) is not acting as legal advisor or legal representation for any of the Parties;
 - (ii) has no duty to assert, analyze or protect any legal right or obligation including lien rights, statute of limitation or any other time limit or claim requirement;
 - (iii) has no duty to make an independent expert analysis of the situation or raise issues the Parties do not raise or determine that additional or necessary parties should participate in the mediation; and
 - (iv) cannot guarantee that the mediation will result in a settlement.
- (i) The Parties may be represented by a lawyer at any stage of the mediation process and are encouraged to consult legal counsel concerning the proceedings or any proposed settlement agreement.
- (j) The Mediator shall not be a party to any proceedings to enforce a settlement agreement.
- (k) The mediation shall be terminated in any of the following circumstances:
 - (i) by the execution of a settlement agreement by the Parties;
 - (ii) by a declaration by the Mediator to the effect that, in the judgment of the Mediator, further efforts at mediation are no longer worthwhile; or
 - (iii) by a declaration by any Party to the effect that the mediation proceedings are terminated.

- (l) The Parties undertake not to take any further steps in any legal proceedings regarding the issues being mediated while the mediation is in progress unless the same is required to preserve rights.
- (m) Each Party shall pay the share of the Mediator's fees and expenses that the settlement specifies, if a settlement is obtained; or that the Mediator specifies in the notice that the mediation has failed, if the mediation fails.
- (n) Each Party will bear its own costs and expenses of its participation in the mediation, unless otherwise agreed.
- (o) The Mediator shall not be liable to the Parties for any act or omission in connection with the service provided by him or her in, or in relation to, the mediation, unless the act or omission is fraudulent or involves willful misconduct.

Section 11.2 Arbitration

- (a) Any Party (the "**Referring Party**") may refer any matter of disagreement respecting this Agreement, including its validity, interpretation, application or implementation to arbitration pursuant to the Act and the *Arbitrations Act (Ontario)* in accordance with the following procedure:
 - (i) the Referring Party shall give notice in writing (the "**Arbitration Notice**") to the other of the Parties (the "**Receiving Party**") specifying the matter being referred in reasonable detail and nominating and appointing an arbitrator;
 - (ii) the arbitrator or arbitrators selected to act hereunder shall be qualified by education and training to make decisions upon the particular question or dispute;
 - (iii) within 10 days after the giving of an Arbitration Notice, the Party receiving the Arbitration Notice shall either accept or decline the arbitrator appointed by the Referring Party and shall notify the Referring Party in writing thereof;
 - (iv) if the Parties cannot agree upon a mutually acceptable arbitrator within the said 10 day period, then the arbitrator shall be appointed by the Superior Court of Ontario, pursuant to the Arbitrations Act;
 - (v) if the Parties receiving the Arbitration Notice fail within the said 10 days to accept or decline the arbitrator appointed by the Referring Party, then the arbitrator appointed by the Referring Party shall be deemed to be a mutually-agreed-on sole arbitrator;
- (b) Any arbitration carried out pursuant to Section 11.1(a) hereof shall take place in the City of Markham or City of Toronto at the time and place fixed by the arbitrator appointed by the arbitrators to act as chairman, in the following manner:
 - (i) the arbitrator shall be sworn faithfully and fairly before the others to determine the matter of difference in issue;
 - (ii) the arbitrator shall hear such evidence and representations as the Parties may present, with cross-examination of witnesses permitted;
 - (iii) the arbitrator shall proceed with all possible speed (but no later than 60 days after the appointment of the arbitrator) to make its decision in writing and shall give a signed copy thereof to each of the Parties;
 - (iv) the conduct and procedure during the arbitration shall be in accordance with the rules of natural justice;
 - (v) the costs of the arbitrator, if not determined by the arbitrator, shall be deemed to be part of the Shared Facilities Costs; and
 - (vi) a written decision of the arbitrator shall be final and binding upon the Parties as to any question or questions referred to arbitration and shall not be subject to appeal. The Parties shall be bound by any such decision and shall perform the terms and conditions thereof.

ARTICLE 12 LIENS, COVENANTS, ETC.

Section 12.1 Charge and Lien

If at any time a Party (the “**Defaulting Party**”) shall fail to perform any terms of conditions required to be performed by it pursuant to this Agreement, or shall fail to pay to any other Party (the “**Creditor Party**”) any sum of money payable to the Creditor Party pursuant to the provisions of this Agreement, within ten (10) days after receipt of written notice from the Creditor Party or the Shared Facilities Committee requiring payment and/or performance (the “**Default Notice**”), then, in addition to any other rights which the Creditor Party may have by operation of law, the Creditor Party shall (unless otherwise specifically provided herein) have a charge and lien (collectively, the “**Charge**”), to secure the payment of such sum of money and/or the performance of such terms and conditions, together with all costs and interest accruing thereon pursuant to Section 12.7 hereof, against the property of the Defaulting Party. Such lien shall arise automatically ten (10) days after the day of the receipt or deemed receipt of the Default Notice by the Defaulting Party. From and after the date upon which such Charge arises, the Creditor Party shall be entitled to file a caution or such other notice of such Charge as may be permitted by the provisions of the *Land Titles Act* or any amendments thereto or by such other legislation that may be applicable to the title of the property of the Defaulting Party from time to time.

Section 12.2 Enforcement of Lien and Other Rights

- (a) If a Charge shall arise under Section 12.1 hereof, such lien shall be enforceable in addition to the remedy otherwise available in law or at equity by enforcement in the same manner as a mortgage in default.
- (b) The Charge need not be registered against title to the Defaulting Party's property, assets or appurtenant interests (nor registered elsewhere) in order to enable or to entitle the Non-Defaulting Party to maintain or pursue action against the Defaulting Party for breach of this Agreement.

Section 12.3 Land Registrar

In the event that the Land Registrar requires the Non-Defaulting Party to apply to a court of competent jurisdiction for any order, direction, advice or authorization prior to such Land Registrar allowing the registered title of the Defaulting Party's lands or common elements to be formally encumbered by the Charge, or to otherwise allow the enforcement of the Charge, then the Non-Defaulting Party shall be entitled to forthwith apply to such court for any required order, direction, advice or authorization and the Defaulting Party shall for all purposes be deemed to have consented to any such application so being made for this purpose and the Defaulting Party shall be forever barred and estopped from bringing or instituting any action, suit, claim or other proceeding to defend, defeat, hinder or delay any such application by the Non-Defaulting Party, or its enforcement of the Charge (save for the institution of arbitration proceedings pursuant to the provisions of this Agreement, in order to dispute any alleged default). Alternatively, if the Land Registrar permits, the Charge may be enforced by the filing of a caution, a certificate of pending litigation, or any restriction or notice as may be permitted by the provisions of the *Land Titles Act* R.S.O. 1990, as amended.

Section 12.4 Charges Survive Termination of Agreement

Notwithstanding any termination of this Agreement, any Charge which shall have arisen prior to such termination pursuant to Section 12.1 hereof shall remain in full force and effect until the amount secured thereby shall be paid in full or satisfied, together with the costs and interest provided for in Section 12.7 hereof.

Section 12.5 Charge as Encumbrance

For the purposes of Sections 123 to 128 of the Act, a Charge against the Pavilia Park Towns Condominium shall be deemed to be an encumbrance against each unit and its appurtenant common interest therein and a Charge against the Pavilia Towers Condominium shall be deemed to be an encumbrance against each unit and its appurtenant common interest, and if the Commercial Development is a condominium, then against each unit and its appurtenant common interest.

Section 12.6 Charges Survive Conveyance

No conveyance or other divestiture of title shall in any way affect or diminish any Charge arising pursuant to Section 12.1 hereof, and any Charge which would have arisen pursuant to Section 12.1 had there been no conveyance or divestiture of title shall not be defeated, or otherwise diminished or affected, by reason of such conveyance or divestiture of title.

Section 12.7 Interest and Costs

In each instance when a Party shall be obligated to pay any sum of money to another Party hereunder, interest shall accrue thereon and be payable hereunder at 24% per annum, from the date such sum first became due, calculated and compounded monthly, not in advance. If any legal action, demand or proceeding is brought, instituted or taken by a Party, or if a Party shall cure a default of the other Party, the Party in default shall pay to the other Party all expenses incurred therefor, including solicitor's fees, unless a court shall otherwise award.

Section 12.8 Mortgagee's Right to Assignment of Charge

Any mortgagee holding a mortgage upon the Pavilia Park Towns Condominium or any unit in the Pavilia Park Towns Condominium, the Pavilia Towers Condominium or any unit in the Pavilia Towers Condominium, the Commercial Development or any units in the Commercial Development if it is a condominium shall have the right to receive an assignment or obtain a discharge of any Charge affecting such property arising pursuant to Section 12.1 hereof upon payment, in the case of a lien against a property, of the amount secured by such lien or, in the case of a unit, upon payment of a portion of the lien in an amount determined by the proportion specified in the Declaration or the declaration of the Pavilia Towers Condominium, or if applicable, the declaration for the Commercial Development for sharing common interest in accordance with the provisions hereinafter set forth in this paragraph. Such mortgagee shall give to the person asserting the Charge a written notice offering to purchase by way of assignment, or to obtain a partial discharge of same, which notice shall set forth a date and time of closing which shall be not less than 10 days nor more than 30 days after the giving of such notice, and the place of closing in the City of Markham. On the date of closing, the person asserting the Charge shall deliver to such mortgagee an instrument in registrable form discharging or assigning the Charge, together with the debt secured thereby, or partially discharging and assigning the Charge for any unit and its appurtenant common interest to such mortgagee, upon payment by such mortgagee of the full amount secured by the lien, including interest, or that amount, including interest, to obtain a partial discharge of a Charge affecting a unit.

ARTICLE 13 TERMINATION OF AGREEMENT

Section 13.1 Termination of Agreement

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

Section 13.2 No Termination of Shared Facilities and Easements

Notwithstanding Section 13.1, unless the written consent referred to therein including a mutual and specific surrender of the rights and obligations relating to the Shared Facilities and the Easements by the Parties, the termination of this Agreement pursuant to and to the extent provided in Section 13.1 hereof shall not be deemed to terminate with respect to:

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

Section 13.3 Debts and Charges Survive

Notwithstanding the termination of this Agreement, if at the time of such termination, any Party shall be obligated to pay any sum of money pursuant to the provisions hereof, such obligation shall not be extinguished until such sum of money, together with any interest accruing thereon, shall be paid, and any Charge securing the payment of such sum of money shall, as provided in Section 12.4 hereof remain in full force and effect and continue to secure the payment and any interest which shall accrue thereon

Section 13.4 Continuity

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

Section 13.5 Termination of the Pavilia Park Towns Condominium, Pavilia Towers Condominium and/or Commercial Development (if applicable)

- (a) Notwithstanding Termination of the government of the Pavilia Park Towns Condominium, Pavilia Towers Condominium and/or Commercial Development (if the Commercial Development is a condominium governed by the Act) by the Act, the respective units, the respective unit owners, from time to time and their respective interests in the Shared Facilities, Pavilia Park Towns Lands, Pavilia Towers Lands and Commercial Lands will continue after Termination to be bound by the provisions of this Agreement as if they were original signatories to this Agreement.
- (b) For the purpose of greater certainty and clarity, after Termination, every reference in this Agreement to the Pavilia Park Towns Condominium, Pavilia Towers Condominium and/or the Commercial Development (if the Commercial Development is a condominium governed by the Act) shall mean and be deemed to refer to the respective unit owners from time to time as tenants in common of the Pavilia Park Towns Lands, Pavilia Towers Lands and Commercial Lands.
- (c) Notwithstanding anything contained in this Agreement to the contrary, any claim against the Pavilia Park Towns Lands, Pavilia Towers Lands and Commercial Lands and any judgment by a court with respect to such claim shall be deemed to be a claim or judgment, as the case may be, against each respective unit owner of the Pavilia Park Towns Condominium, the Pavilia Towers Condominium and Commercial Development to the extent of each unit owner's proportionate common interest as specified in the declaration to the respective condominium.
- (d) If Termination occurs, the condominium so terminated, shall forthwith give notice thereof to the other Parties to this Agreement.

ARTICLE 14 SELF HELP

Section 14.1 Self Help

Subject to Section 8.1, if any Party fails to perform any of its obligations under the Agreement, then in addition to the other rights or privileges specifically provided for in this Agreement, any other Party (the “**Requesting Party**”) may give the Defaulting Party written notice outlining the nature of the default and requesting the Defaulting Party to perform its obligation.

If, without reasonable cause, the Defaulting Party has not, within 72 hours of receipt of such notice, commenced and thereafter is not taking all reasonable steps necessary to cure the default set out in such notice, then the Requesting Party may take all reasonable steps necessary to cure the default outlined in such notice, including, without limitation, the payment of any cost or expense required to be made by the Defaulting Party, the performance of maintenance, repair or replacement work, the hiring of contractors, entry onto the property of the Defaulting Party, the exercise of any right of access of such Defaulting Party, the payment of any sum secured by Charge or lien and/or the filing of a bond to discharge a lien and the Defaulting Party hereby grants and conveys an easement to and in favour of the Non-Defaulting Party for such purposes. The Defaulting Party agrees to pay directly to the Requesting Party any cost or expense actually paid or incurred by the Requesting Party in performing the obligations of the Defaulting Party pursuant to this Agreement together with interest at the rate equal to 24% per annum, from the date such payment is made by the Requesting Party until reimbursement is made to the Requesting Party. Provided, however, that any amount expended or incurred by the Requesting Party as can clearly be demonstrated to be substantially in excess of the reasonable costs or expenses which would properly have been paid to cure the default is not recoverable from the Defaulting Party.

ARTICLE 15 STATUS CERTIFICATE

Section 15.1 Status Certificate

Each Party within 5 days after receipt of a written request by any person (the “**Requesting Party**”) and the payment of a reasonable fee established by such Party to whom the request has been sent, shall execute, acknowledge and make available to the Requesting Party, a certificate stating:

- (a) whether or not this Agreement has been modified and if this Agreement has been modified, the certificate shall identify the nature of the modifications;
- (b) whether or not this Agreement has been terminated in accordance with Section 13.1 or Section 13.5 hereof;
- (c) whether or not a Charge in accordance with Section 12.1 has arisen and is then outstanding in favour of or against the Party executing the certificate, and if a Charge has so arisen and is then outstanding, stating the amount and subject matter of the Charge and the property that is affected by the Charge; and
- (d) whether or not the Party executing the certificate has given or received a notice in accordance with Section 14.1; and if such notice has been either given or received, stating the nature of the default set out in the notice and whether or not such Defaulting Party has taken or commenced all reasonable steps to cure such default, whether or not the Requesting Party (as defined in Section 14.1) has elected to take steps to cure such default, and if so, the amount of the costs and expenses actually or anticipated to be paid or incurred by the Requesting Party in curing such default.

Section 15.2 Estoppel Defence

The status certificate referred to in Section 15.1 may be pleaded and shall be a complete defence by the Requesting Party to any action brought on a claim that is inconsistent with the facts stated in such certificate.

ARTICLE 16 GENERAL PROVISIONS

Section 16.1 Notices

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

- (a) York Region Standard Condominium Corp. No. ●
c/o Times Property Management Inc.
330 Hwy 7 East, Suite 300
Richmond Hill, ON L4B 3P8
- (b) **Pavilia Towers Condominium Owner**
c/o 3985 Highway 7 East, Suite 202,
Markham, Ontario L3R 2A2
- (c) **Commercial Development Owner**
c/o 3985 Highway 7 East, Suite 202,
Markham, Ontario L3R 2A2

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

Section 16.2 Provisions Run With the Land

- (a) Each of the Parties covenant and agree that they shall not interfere with, hinder, impede, or disturb the enjoyment of any of the Easements and all other rights, benefits and privileges conferred on the other Party in this Agreement except as expressly provide in this Agreement.
- (b) The Parties hereby acknowledge and agree that the Easements, rights and provisions as set forth in this Agreement establish a basis for mutual and reciprocal use and enjoyment of such Easements, rights and provisions and as an integral and material consideration for the continuing right to such use and enjoyment, each Party does hereby accept, agree to assume the burden of, and to be bound by each and every of the covenants entered into by them in this Agreement.
- (c) Without limiting the operation of the provisions of Section 16.2(b) hereof, the Pavilia Park Towns Condominium, the Pavilia Towers Condominium, and the Commercial Development (provided that the Commercial Development is a condominium governed by the Act), hereby expressly acknowledge and agree that the obligations and liabilities hereunder for Shared Facilities Costs are and shall be treated as common expenses of each condominium.
- (d) Each of the Pavilia Park Towns Condominium, Pavilia Towers Condominium and Commercial Development Owner consent to the registration of this Agreement against title to each of its respective properties, namely the Pavilia Park Towns Lands, Pavilia Towers Lands and the Commercial Lands and hereby acknowledge that the provisions of this Agreement are intended to run with the real property benefitted and burdened thereby and except as may otherwise be specifically provided shall bind and enure to the benefit of the respective Parties and their respective successors and assigns.

- (e) The Commercial Development Owner covenants that it shall not transfer or otherwise dispose of any freehold interest in all or part of the Commercial Lands without entering into an assumption agreement with the proposed transferee in which the transferee agrees to take an assignment of all of the rights of the Commercial Development Owner and assume all of the obligations of the Commercial Development Owner under this Agreement. This covenant shall run with the lands and shall bind and enure to the benefit of the successors and assigns of the Commercial Development Owner.
- (f) Upon the sale, transfer or conveyance by any owner of a unit in the Pavilia Park Towns Condominium, or an owner of a unit in the Pavilia Towers Condominium or an owner of any interest in the Commercial Development (if the Commercial Development is a condominium governed by the Act), then such owner shall be automatically released and discharged pro tanto from any of the liabilities and obligations it would bear hereunder as the owner of such units or interest sold, transferred or conveyed and shall no longer be liable to any other owners for any breach of this Agreement caused or occurring subsequent to the date of such sale, transfer or conveyance relating to such unit or interest sold; correspondingly, any subsequent unit or interest owner shall assume pro tanto to such liabilities and obligations insofar as the burden of such liabilities are capable of passing to such person by operation of law.

Section 16.3 Compliance with Law

The Parties, in performing their respective obligations and exercising their respective rights under this Agreement, covenant and agree to comply with all rules, laws, by-laws, orders, ordinances, regulations and requirements of the City of Markham, Province of Ontario, and any Governmental Authority having jurisdiction over the Shared Facilities.

Section 16.4 Performance of Work and Maintenance Standards

All work required to be performed pursuant to this Agreement shall be performed in a manner equivalent to standards from time to time maintained in other first-class buildings in the City of Markham, of comparable age and size. In connection with any equipment, device, apparatus or system, same shall be operated, maintained and repaired in an efficient and safe operating manner for its intended purposes, in accordance with the standards specified by its manufacturer/supplier and prescribed by all applicable laws, regulations and by-laws.

Section 16.5 Construction and Other Liens

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

Section 16.6 The Planning Act

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

Section 16.7 Time of the Essence

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

Section 16.8 No Partnership or Agency

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

Section 16.9 Further Assurances

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

Section 16.10 Severability

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

IN WITNESS WHEREOF the parties hereto in all of their respective capacities have executed this Agreement on this day ● of ●, 20●●.

Times 4502 Inc.

Per: _____
Name:
Title:
I have authority to bind the Corporation.

●

Per: _____
Name:
Title:
I have authority to bind the Corporation.

●

Per: _____
Name:
Title:
I have authority to bind the Corporation.

By-Law No. 3



CONDOMINIUM ACT, 1998

CERTIFICATE IN RESPECT OF A BY-LAW

(under Section 56(9) of the Condominium Act, 1998, S.O. 1998, c.19)

York Region Standard Condominium Corporation No. ● (known as the “**Corporation**”) certifies that;

1. The copy of By-Law Number 3, attached as Schedule “A”, is a true copy of the By-Law.
2. The By-Law was made in accordance with the *Condominium Act, 1998*, S.O. 1998, c.19.
3. The Owners of a majority of the Residential Units of the Corporation have voted in favour of confirming the By-Law.

DATED at Markham, the ● day of ● 20●.

YORK REGION STANDARD CONDOMINIUM CORPORATION NO. ●

Per: _____
Name:
Title: President

Per: _____
Name:
Title: Secretary
We have authority to bind the Corporation.

SCHEDULE “A” TO CERTIFICATE IN RESPECT OF A BY-LAW

YORK REGION STANDARD CONDOMINIUM CORPORATION NO. ●

BY-LAW NO. 3

BE IT ENACTED as a by-law of York Region Standard Condominium Corporation No.● (hereinafter referred to as this, the “**Corporation**” or the “**Condominium**”) as follows:

1. The directors of the Corporation shall cause the Corporation to enter into an agreement with Times 4502 Inc. (the “**Declarant**”) in the form attached hereto as Exhibit “1” (the “**Warranty Agreement**”) that shall provide:
 - (a) the Corporation shall have no rights against the Declarant beyond those that are specifically granted to the Corporation under the *Condominium Act*, s.o. 1998, c 19, as amended (the “**Act**”), the *Ontario New Home Warranties Plan Act*, r.s.o. 1990, c. o. 31, as amended (the “**ONHWPA**”) and by Tarion Warranty Corporation;
 - (b) the Declarant shall not have any liability to the Corporation for and of any outstanding, incomplete or deficient construction items and any other related matters pertaining to the Condominium unless such liability is established through the process established for and administered by Tarion Warranty Corporation and the Corporation’s only recourse against the Declarant for a final and binding resolution, for and of any outstanding, incomplete or deficient construction items and any other related matters relating to the Condominium including without limitation the Common Elements, Exclusive Use Common Elements and Dwelling Units (as such terms are defined in the Warranty Agreement) shall be through the process established for and administered by Tarion Warranty Corporation;
 - (c) the Corporation, together with the Declarant, shall appoint Tarion Warranty Corporation as the sole and final arbiter of all such matters;
 - (d) the Corporation shall indemnify and save harmless the Declarant from all actions, causes of actions, claims, and demands for damages or loss which are brought by the Corporation in contravention of the said Agreement;
 - (e) this Agreement shall neither be terminated nor terminable by the Corporation following the Turnover Meeting (as such term is defined in the Act); and
 - (f) this Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

[Signature Lines are on the Next Page]

York Region Standard Condominium Corporation No. ● hereby enacts and passes the foregoing By-Law, having been duly approved by all of the Directors of the Corporation and confirmed without variation to the provisions herein, as evidenced by all of the respective signatures hereto of all the directors.

DATED at Markham, the ● day of ●, 20●.

YORK REGION STANDARD CONDOMINIUM CORPORATION NO. ●

Per: _____
Name:
Title: Director

Per: _____
Name:
Title: Director

Per: _____
Name:
Title: Director

Per: _____
Name:
Title: Director

The foregoing By-Law No. 3 is hereby approved and confirmed by the sole Owner of the Units as evidenced by the signature of its duly authorized officer in that behalf.

DATED at Markham, the ● day of ●, 20●.

Times 4502 Inc.

Per: _____
Name:
Title:

I have authority to bind the Corporation.

EXHIBIT "1"**WARRANTY AGREEMENT**

THIS AGREEMENT made this ● day of ●, 20●●.

BETWEEN:

Times 4502 Inc.,
a corporation incorporated under the laws of the Province of Ontario
(the "**Declarant**")

-and-

**YORK REGION STANDARD CONDOMINIUM
CORPORATION NO. ●,**
(hereinafter the "**Corporation**")

WHEREAS by registration of the Declaration (as hereinafter defined) the Condominium was created, which declaration and description has been registered in the Land Titles Division of the York Region Registry Office relating to the land and any interest appurtenant to the land described in the Description located at ●, Ontario (the "**Land**").

AND WHEREAS the Corporation has agreed to enter into an Agreement with the Declarant made effective as of the date first mentioned above, being the registration date of the Corporation, with respect to any outstanding, in complete or deficient construction items and any other related matters relating to the Condominium including without limitation the common elements, in accordance with the terms and conditions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of Two (\$2.00) Dollars, the premises and the mutual covenants and agreements herein contained and other valuable consideration, the parties hereto covenant and agree with one another as of the date hereof, being the registration date of the Corporation, as follows:

1. Definitions:
 - (a) "**Common Elements**" or "**common elements**" means all the Lands, except the Units;
 - (b) "**Exclusive Use Common Elements**" means Common Element areas for the exclusive use of the Owner of the Dwelling Unit appurtenant to the Common Element area (as described more specifically in the Declaration);
 - (c) "**Dwelling Unit**" means the part or parts designated as a unit by the description of the Condominium and comprises the space enclosed by its boundaries and all material parts of the land within such space, in accordance with the declaration and the description of the Condominium;
 - (d) "**Turnover Meeting**" has the meaning ascribed to it in the Act.
2. The Declarant shall not have any liability to the Corporation for and of any outstanding, incomplete or deficient construction items and any other related matters pertaining to the Corporation unless such liability is established through the process established for and administered by Tarion Warranty Corporation.
3. The Corporation shall have no rights against the Declarant beyond those that are specifically granted to the Corporation under the Act, the ONHWPA and by the Tarion Warranty Corporation.
4. The Corporation's only recourse against the Declarant for a final and binding resolution of any outstanding, incomplete or deficient construction items and any other related matters relating to the Corporation including without limitation, the Common Elements, Exclusive Use Common Elements and the Dwelling Units shall be through the process established and administered under the Tarion Warranty Corporation.
5. The Corporation and the Declarant hereby appoint and constitute the Tarion Warranty Corporation as the sole and final arbiter of all such matters set out in Paragraph 4 above.

6. The Corporation agrees to indemnify and save the Declarant harmless from all actions, causes of actions, claims and demands for damages or loss which are brought by the Corporation in contravention of this Agreement.
7. This Agreement shall neither be terminated nor terminable by the Corporation following the Turnover Meeting.
8. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement this ● day of ●, 20●.

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

Per: _____
Name:
Title: President

Per: _____
Name:
Title: Secretary

We have authority to bind the Corporation.

Times 4502 Inc.

Per: _____
Name:
Title:

I have authority to bind the Corporation.