

Court File No. CV15-10843-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,  
R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.  
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**FOURTH REPORT OF THE TRUSTEE**

**September 25, 2015**

## INTRODUCTION AND PURPOSE OF THE FOURTH REPORT

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 22, 2015 (the “**Appointment Order**”), Collins Barrow Toronto Limited was appointed *Construction Lien Act* (Ontario) trustee (the “**Trustee**”) with respect to certain lands and premises owned by 144 Park Ltd. (“**144**”) and known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario, and legally described in Schedule “A” to the Appointment Order (the “**Property**”). A copy of the Appointment Order is attached hereto and marked as **Appendix “A”**.
  
2. The purpose of this Fourth Report of the Trustee (the “**Fourth Report**”) is to:
  - (a) report to, and seek the advice and direction of, the Court with respect to the Trustee’s ability, if necessary, to terminate agreements of purchase and sale due to there being insufficient parking units at the 144 Park Project (as defined below);  
and
  - (b) request that the Court grant an order vesting in One 55 Mady Ltd. (“**One 55**”) all of 144’s right, title, and interest in and to lands bearing PINs 22417-0135 and 22417-0153, free and clear of all claims and encumbrances.

## TERMS OF REFERENCE

3. In preparing this Fourth Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of 144, discussions with management and employees of 144 and other companies within the MADY group of

companies (“**MADY Group**”), and information received from third-party sources (collectively, the “**Information**”). Certain of the information contained in this Fourth Report may refer to, or is based on, the Information. As the Information has been provided by 144 or other parties, the Trustee has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of the Information.

#### **THE PROPERTY**

4. At the time of the Trustee’s appointment, the Property was comprised of lands bearing PINs 22417-0134 and 22417-0135. 144 was the registered owner of the lands. The lands were acquired by 144 from Allen Street Holdings Inc. on September 1, 2011 pursuant to a Transfer registered against title to the Property as instrument number WR639367.
5. The Property was acquired for the purpose of developing and constructing a 19 story residential condominium tower. 144 was the developer of the condominium project prior to becoming the registered owner of the Property in September 2011.
6. The Trustee has been informed by Harris Sheaffer LLP (“**Harris Sheaffer**”) that, following the registration of the Declaration (as defined below), the land bearing PIN 22417-0134 was ultimately converted into:

- (a) 461 separate PINs that constitute all of the units in the registered condominium project (the “**144 Park Project**”);<sup>1</sup> and
  - (b) land bearing PIN 22417-0153.
7. Attached as **Appendix “B”** is a copy of a Service Ontario Property Index Map that shows the 144 Park Project and the lands surrounding the project.
8. The Region of Waterloo required, as a condition to approving the Declaration, that the Trustee agree to transfer certain lands (collectively, the “**Excess Lands**”) to One 55, a company in the MADY Group that owns the lands immediately east of the Property and known municipally as 155 Caroline Street, Waterloo, Ontario (the “**155 Caroline Lands**”). Attached as **Appendix “C”** is a copy of an undertaking dated January 26, 2015 (the “**Undertaking**”).
9. The Trustee understands that the Excess Lands are lands owned by 144 and bearing PINs 22417-0135 and 22417-0153. Attached collectively as **Appendix “D”** are copies of the parcel registers for the Excess Lands.
10. The Trustee further understands that the Excess Lands do not form part of the 144 Park Project and are to be used as rights of way, easements and pedestrian and vehicular ingress and egress between the 144 Park Project and the 155 Uptown Project (as defined below), if/when constructed.

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<sup>1</sup> As a result of the registration, PIN 22417-0134 was divided into PINs 22417-0152 and 22417-0153. PIN 22417-0152 was then replaced with 461 separate parcel registers bearing PINS 23591-0001 to 2359-0461.

11. As a result, the Excess Lands are not available for use as parking for the 144 Park Project.
12. In accordance with the Undertaking, the Trustee is requesting that the Court grant an order vesting the Excess Land in One 55, free and clear of all claims and encumbrances.

### **THE 144 PARK PROJECT**

13. 144 began selling residential units for the proposed condominium project in the spring of 2009.
14. In 2011 and 2012, the 155 Caroline Lands were acquired by One 55. One 55 acquired the 155 Caroline Lands with the intention, as referenced in 144's Supplemental Disclosure Statement dated November 1, 2014 (the "**Supplemental Disclosure Statement**"), to develop a second residential condominium tower (the "**155 Uptown Project**"). A copy of the Supplemental Disclosure Statement is attached hereto and marked as **Appendix "E"**.
15. The Supplemental Disclosure Statement indicates that the parking garages for the 144 Park Project and the 155 Uptown Project would be joined and there would be a single shared access into the parking structure. The Supplemental Disclosure Statement included as a schedule a draft declaration for the 144 Park Project, which states that:
  - (a) the 144 Park Project would have 148 residential units and 149 parking units (132 permanent parking units and 17 visitor parking units); and

- (b) there would be certain facilities shared by the 144 Park Project and the 155 Uptown Project, such as visitor parking units, a car wash unit, and a rooftop terrace unit.

#### **UNITS IN THE 144 PARK PROJECT**

- 16. 144 was not in a position to register the condominium Declaration prior to the Trustee's appointment. One of the primary reasons that 144 sought the appointment of the Trustee was so that the Trustee could take all necessary steps to get the Declaration registered.
- 17. On May 25, 2015, the Declaration for the 144 Park Project was registered against title to the Property pursuant to the provisions of the *Condominium Act* (Ontario) as instrument number WR882241 (the "**Declaration**"). A copy of the Declaration is attached hereto as **Appendix "F"**.
- 18. As a result of the registration of the Declaration, the 144 Park Project is comprised of 461 separate PINs for the following units:
  - (a) 148 residential units;
  - (b) one guest suite unit, which, under the Declaration, is to be transferred by 144 to the condominium corporation and paid for by way of vendor-take-back mortgage;
  - (c) 150 storage units;
  - (d) 149 parking units;
  - (e) eight 'Knock-out Panel/Drive Aisle Units', two 'Drive Aisle Units', and two 'Knock-out Panel Units' (collectively, the "**Shared Units**"); and

- (f) one rooftop terrace unit.
19. The 148 residential units are comprised of:
- (a) eight townhouse units located on level 1;
  - (b) nine apartment style units located on level 4;
  - (c) ten apartment style units located on each of levels 5 to 10 and 12 to 14;
  - (d) nine apartment style units located on level 11;
  - (e) seven apartment style units located on each of levels 15 to 18 (with the units on level 18 known as 'penthouse units'); and
  - (f) four 'greater penthouse units' located on level 19.
20. The Shared Units represent land located in the 144 Park Project parking garage. Pursuant to the Declaration, such units are to be shared and used by the condominium corporations for the 144 Park Project and the 155 Uptown Project, if/once built, and title to the Shared Units cannot be transferred to any other party. The Declaration goes on to state that:
- (a) the eight Knock-out Panel/Drive Aisle Units are portions of the walls of the parking garage and portions of the drive aisle in the parking garage that can be removed to allow for access to the adjoining garage that is to be constructed for the 155 Uptown Project. Until the adjoining garage is built, 144 is entitled to use the eight units as parking units;

- (b) the two Drive Aisle Units are portions of the drive aisle in the parking garage that are to eventually be used to access the 155 Uptown Project. Until the lands are developed, 144 is entitled to use the two units as parking units; and
  - (c) the two Knock-out Panel Units are portions of the walls of the parking garage that can be removed to allow for access to the adjoining garage that is to be constructed. The Declaration does not allow for these two units to be used as parking units.
21. As is discussed below, the eight Knock-out Panel/Drive Aisle Units and the two Drive Aisle Units (collectively, the “**Temporary Parking Units**”) have been used as temporary parking units by purchasers in the 144 Park Project.

#### **SALES OF RESIDENTIAL UNITS**

22. 144 began entering into agreements of purchase and sale with purchasers in April 2009. Attached hereto and marked as **Appendix “G”** is a copy of the standard form of agreement of purchase and sale that was used by 144 (the “**APS**”).
23. Pursuant to the preamble to the APS, a purchaser is agreeing to purchase a specific residential unit, together with:

“● Parking Unit(s) and ● Locker Unit(s), all of which shall be allocated by the Vendor in its sole discretion...”

24. Pursuant to section 15 of the APS:

“The Purchaser covenants and agrees that this Agreement is subordinate to and postponed to any mortgages arranged by the Vendor and any advances thereunder from time to time, and to any



easement, license or other agreement concerning the Condominium and Condominium Documents...”

25. Pursuant to section 16 of the APS:

“The Purchaser acknowledges that notwithstanding any rule of law to the contrary, that by executing this Agreement, it has not acquired any equitable or legal interest in the Unit or the Property. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement of a caution, certificate of pending litigation, Purchaser’s Lien, or any other document providing evidence of this Agreement against title to the Property, Unit or the Condominium., and further agrees not to give, register or permit to be registered any encumbrance against the Property, Unit or the Condominium...”

26. As has been previously reported to the Court, 128 of the 148 residential units were subject to APSs, and 20 residential units remain unsold.<sup>2</sup>

#### **OVERSELLING PARKING UNITS**

27. Attached hereto as **Appendix “H”** is a chart that sets out the date of each APS for the 128 pre-sold residential units, and the number of parking units that each purchaser had agreed to purchase from 144.
28. As set out in the chart, 144 agreed to convey in total 154 parking units to purchasers of the 128 pre-sold units, including twenty five (25) purchasers who agreed to purchase two parking units for a single residential unit and/or are of the view that their residential unit came with two parking units (collectively, the **“Two Parking Unit Purchasers”**).

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<sup>2</sup> 144 had actually entered into agreements of purchase and sale for 129 residential units. One agreement was entered into by 144 with a construction lien claimant for no cash consideration. This agreement was terminated by the Trustee in accordance with the Order of Mr. Justice McEwen dated April 30, 2015.

29. As noted above, the Supplemental Disclosure Statement indicated that, of the 149 parking units in the 144 Park Project, there would be 132 permanent parking units and 17 visitor parking units.
30. To increase the number of permanent parking units that could ultimately be conveyed to purchasers on closing, the Trustee took steps in spring 2015 to convert the 17 visitor parking units for use as permanent parking units.
31. In addition to there being insufficient parking units for the 128 purchasers of pre-sold units, there was no parking available for purchasers of the 20 unsold units.
32. Based on its discussions with Harris Sheaffer and representatives of the MADY Group, the Trustee understands it was intended that parking units in the 155 Uptown Project would be available to be transferred to residents in the 144 Park Project on closing.
33. The issue of the overselling of parking units in the 144 Park Project was previously reported to the Court by the Trustee in its First Report to the Court dated April 17, 2015 (the "**First Report**"), and its Second Report of the Trustee dated June 23, 2015 (the "**Second Report**"). Copies of the First Report and the Second Report (without appendices) are respectively attached hereto as **Appendices "I" and "J"**.<sup>3</sup>
34. In paragraphs 35-37 of the First Report, the Trustee reported that it had agreed to purchase 35 parking units to be located in the 155 Uptown Project from One 55, so that

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<sup>3</sup> In paragraph 32 of the First Report and paragraph 53 of the Second Report there are references to 144 agreeing to sell 156 parking units in connection with the pre-sold residential units, such that there was a deficit of 7 parking units. It was determined after the date of those reports that this was in fact an error and the correct number was 154, as the reference to 156 parking units included two parking units that had been allocated by 144 to an unsold unit.

such units, once built, could be conveyed to purchasers in 144 Park Project. The Trustee initially sought Court approval of this purchase transaction.

35. As set out in its Supplement to the First Report of the Trustee dated April 29, 2015 (the “**Supplemental Report**”), a mortgagee of the 155 Caroline Lands opposed this transaction. As a result, the Trustee did not pursue Court approval of the transaction and sought alternative solutions. A copy of the Supplemental Report is attached hereto and **Appendix “K”**.

#### **NEED TO RE-ALLOCATE PARKING UNITS**

36. Following its appointment, it was brought to the Trustee’s attention that 144 had allocated the 154 parking units it had agreed to sell to the 128 purchasers of pre-sold units in the following manner:
- (a) 144 of the 149 permanent parking units had been allocated to purchasers on a temporary basis, and five (5) permanent parking units had yet to be allocated (collectively, the “**Unallocated Parking Units**”); and
  - (b) all 10 of the Temporary Parking Units had been allocated to purchasers on a temporary basis.
37. Following the registration of the Declaration on May 25, 2015, the Trustee focused on closing sale transactions for residential units, as such closings would be for the benefit of all of 144’s stakeholders, including:
- (a) purchasers that were in interim occupancy, as closing the sale transactions would result in title being transferred to the purchasers; and

- (b) mortgagees and construction lien claimants, as closing the sale transactions would result in the Trustee receiving the net sale proceeds from the Property, for eventual distribution pursuant to Court order.
38. However, as 144 had allocated the Temporary Parking Units to 10 purchasers for use in interim occupancy, it was necessary for the Trustee to take steps to re-allocate parking units so that these 10 purchasers could receive a permanent parking unit on closing. Additionally, the Trustee was not in a position to close all of the 128 sale transactions, as there are only 149 permanent parking units, whereas the purchasers had agreed to purchase 154 permanent parking units, and the 20 unsold units had no parking.
39. As previously reported to the Court in the Second Report, on June 16, 2016, Harris Sheaffer wrote to counsel to each of the Two Parking Unit Purchasers to advise them of the Trustee's inability to convey the contracted number of parking units. Attached hereto and marked as **Appendix "L"** is a redacted copy of such letter sent to the purchasers.
40. As set out in the letter, the Trustee requested that the purchasers agree to amend their APS to delete the second parking unit and reduce the purchase price by \$33,900 (inclusive of HST), which is the amount payable by the purchasers for the second parking unit and is the value attributed by 144 for a single parking unit. The letter goes on to note that if the purchasers were not agreeable to such an amendment, the Trustee may need to seek a Court order terminating their APSs.

## **SALE TRANSACTIONS**

41. In its Second Report, which was filed in connection with the Trustee's motion returnable on June 26, 2015, the Trustee requested that the Court grant a form of vesting order to be

used by the Trustee to complete sales of certain of the 128 pre-sold units. Pursuant to the Order of Mr. Justice Newbould dated June 26, 2015 (the “**June 26<sup>th</sup> Order**”), the Court granted the Trustee’s request. Attached hereto as **Appendix “M”** is a copy of the June 26<sup>th</sup> Order.

42. Following the issuance of the June 26<sup>th</sup> Order, the Trustee and its counsel took steps to obtain vesting orders for sale transactions that the Trustee was in a position to close.

Closings: July 7 – 30, 2015

43. Between July 7 to 30, 2015, the Trustee completed sale transactions for 67 of the 128 pre-sold residential units, which resulted in 68 of the 149 parking units being transferred to purchasers. Of these 67 sale transactions:
- (a) one (1) transaction, the sale of unit 1104, included a transfer of two parking units. Unit 1104 is the result of the combination of two units, being the original units 1104 and 1105, into a single large unit. As a result of the combination, two units were reduced to one large unit, and the purchaser acquired one parking unit for each of the two combined units;
  - (b) all but one of the transactions involved the purchasers receiving a conveyance of parking units that had previously been allocated to them on a temporary basis. One purchaser received, on closing, one of the Unallocated Parking Units. The parking unit that was temporarily allocated to this purchaser was an accessible parking unit that could be used to close another sale transaction with a purchaser that required an accessible parking unit; and

- (c) two (2) transactions were with purchasers that had originally agreed to purchase two parking units and had accepted the Trustee's request to close with only one parking unit each.

Closings: August 10 – 12, 2015

- 44. In its Third Report to the Court dated July 30, 2015 (the "**Third Report**"), which was filed in connection with the Trustee's motion returnable on August 5, 2015 (the "**August 5<sup>th</sup> Order**"), the Trustee requested that the Court grant a form of vesting order to be used by the Trustee to complete the sale of the pre-sold units that were not covered by the June 26<sup>th</sup> Order. Pursuant to the Order of Mr. Justice Newbould dated August 5, 2015, the Court granted the Trustee's request. Attached hereto respectively as **Appendices "N"** and **"O"** are copies of the Third Report (without appendices) and the August 5<sup>th</sup> Order.
- 45. Between August 10 to 12, 2015, the Trustee completed sale transactions for an additional eight (8) of the 128 pre-sold residential units, which resulted in an additional 8 of the 149 parking units being transferred to purchasers. All of these transactions involved purchasers receiving a conveyance of parking units that had previously been allocated to them on a temporary basis. The 8 sale transactions included four (4) transactions with purchasers that had originally agreed to purchase two parking units and had accepted the Trustee's request to close with only one parking unit.

Closings: September 8 – 24, 2015

- 46. From September 8 to 24, 2015, the Trustee completed sale transactions for an additional twenty two (22) of the 128 pre-sold residential units, which resulted in 22 of the 149 parking units being transferred to purchasers. Of these 22 sale transactions:

- (a) seven (7) transactions involved purchasers receiving parking units conveyed to them that were originally allocated to them on a temporary basis. Of those, six (6) of the transactions involved purchasers that had agreed to relinquish one of the two parking units that they had originally agreed to purchase from 144;
- (b) 6 transactions involved purchasers, who were originally allocated a Temporary Parking Unit, receiving on closing a parking unit that had been relinquished to the Trustee by a purchaser that originally had agreed to purchase two parking units;
- (c) three (3) transactions involved purchasers, who were originally allocated a Temporary Parking Unit, receiving on closing an Unallocated Parking Unit; and
- (d) 6 transactions involved purchasers, which were originally allocated a Level 1 Parking Unit (as defined below), receiving on closing a parking unit that had been relinquished to the Trustee by a purchaser that originally had agreed to buy two parking units.

Summary

- 47. As of the date of this Fourth Report, the Trustee has closed the sale of 97 of the 128 pre-sale transactions, and 98 of the 149 permanent parking units have been transferred to purchasers.
- 48. As a result, there are 31 pre-sale transactions that have not closed to date, which can be broken down as follows:
  - (a) 13 of the 25 Two Parking Unit Purchasers (the **“Remaining Two Parking Unit Purchasers”**);

- (b) two transactions with the same purchaser, who has commenced an application to terminate his APSs;
- (c) one transaction where the Trustee continues to complete work in the unit that was left unfinished by 144. The Trustee is hopeful that such work can be completed by the beginning of October. Once the work is finished, the purchaser will be completing the remainder of the unfinished unit on his own. At this time it is unclear when this sale transaction will be in a position to be closed;
- (d) one transaction where the Trustee has provided extensions of time to the purchaser and the sale is scheduled to close on September 30, 2015;
- (e) two transactions where the APSs have been terminated as a result of purchaser defaults (the “**Terminated Sale Transactions**”);
- (f) one transaction where the Trustee has been working with the purchaser to address accessibility issues. The parties are discussing a revised closing date;
- (g) one transaction where the purchaser was originally allocated a Temporary Parking Unit, is set to receive the last Unallocated Parking Unit on closing, and the parties are discussing a revised closing date; and
- (h) ten transactions where the purchasers were originally allocated a Level 1 Parking Unit on a temporary basis.



49. If all of the 29 remaining transactions listed above close (which excludes the Terminated Sale Transactions), it will require 42 of the remaining 51 permanent parking units to be transferred to the purchasers.
50. As of the date of this Fourth Report, none of the parking units originally or subsequently allocated on a temporary basis to the Remaining Two Parking Unit Purchasers have been transferred to purchasers that have closed sale transactions with the Trustee.

### **LEVEL 1 PARKING UNITS**

51. In or around June 2015, the Trustee was informed by representatives of the MADY Group that One 55 was insolvent and would not be in a position to complete the development of the 155 Uptown Project. As a result, the only possibility for the 155 Uptown Project to be completed was for One 55 to sell the 155 Caroline Lands to a developer.
52. The Trustee was also informed by MarshallZehr Group Inc. (“**MarshallZehr**”), a mortgagee of both the Property and the 155 Caroline Lands, that there was only one potential developer interested in acquiring the 155 Caroline Lands and developing the 155 Uptown Project.
53. This developer originally expressed a desire to have the ability to acquire parking units 14, 15 and 29 to 45 inclusive on level 1 of the parking garage for 144 Park Project (collectively, the “**Level 1 Parking Units**”) from purchasers for its own use, in exchange for parking units to be located in the adjoining parking garage for the 155 Uptown Project once it was completed.

54. The Trustee was of the view that it would be beneficial to the purchasers of units / residents in the 144 Park Project to have the 155 Uptown Project developed and completed, as it would result in visitor parking and other amenities, as previously discussed herein, being available to 144 Park Project residents.
  
55. The Trustee informed counsel to purchasers that had been allocated one of the Level 1 Parking Units that the Trustee intended to reallocate their parking units and find new parking units for the purchasers on a temporary basis prior to closing. Attached hereto and marked as **Appendix "P"** is a copy of such a letter.
  
56. As a result of the re-allocation, there was a switch of parking units between purchasers that had been previously allocated Level 1 Parking Units, and the Remaining Two Parking Unit Purchasers, such that:
  - (a) substantially all of the 13 Remaining Two Parking Unit Purchasers have now been allocated a Level 1 Parking Unit; and
  
  - (b) there are 10 purchasers that have been allocated a parking unit that was originally one of the two parking units that had been allocated to certain of the Remaining Two Parking Unit Purchasers.
  
57. The Trustee has recently been informed by Chaitons that is has received confirmation from counsel to the purchaser of the 155 Caroline Lands that it no longer wishes to acquire the Level 1 Parking Units.

## NEED FOR PARKING UNITS FOR THE UNSOLD UNITS

58. As noted above, there are no parking units for the 20 unsold units. In August 2015, the Trustee asked Mint Realty Inc. Brokerage (“**Mint Realty**”) to provide its view as to the estimated realizable value of the 20 unsold units with and without parking. Mint Realty has also been retained by the Trustee, in accordance with the August 5<sup>th</sup> Order, to market and sell the 20 unsold units. Attached hereto as **Appendix “Q”** is a copy of Mint Realty’s *curriculum vitae*.
59. Mint Realty has provided to the Trustee its report dated August 17, 2015, a copy of which is attached hereto as **Appendix “R”**. As set out on the cover page of the report, Mint Realty was asked to provide a market price evaluation of the 20 unsold units, with a comparison between the market price without parking units, and the market price if one parking unit was allocated to each of the 20 unsold units.
60. The Mint Realty report states that:

“... there is no commercial evidence to support that these Condominiums are and will be salable in the Kitchener/Waterloo market without Parking. The Kitchener/Waterloo market is conservative in nature and generally unwilling to take unnecessary risk. It should be further noted that the majority of the market values without Parking have been derived using a rental cash flow analysis and actual market values achievable on the resale market could be substantially lower. We are also of the belief that although the three Brownstone units (102, 106, 107) and two Grand Penthouse Units (1903, 1904) have been valued to reflect a reasonable discount when Parking is not included, these Condominiums are likely “not saleable” given the end user nature of the product, reduced utility and appeal among the target market and the cost to carry for an investor given the higher municipal taxes and condominium fees.”

61. As set out in the report, notwithstanding its view that it will be difficult to sell the 20 unsold units without parking, Mint Realty estimated that the best case scenario would be that total market value of the 20 unsold units without parking units would be approximately \$3.78 million less than the estimated total market value of the 20 unsold units if each unsold unit received one parking unit.

#### **MEETING WITH PURCHASERS AND PARKING OPTIONS**

62. In an effort to resolve the parking shortage with impacted purchasers in an open fashion, the Trustee wrote to the Two Parking Unit Purchasers on August 12, 2015 and informed them that the Trustee was calling a “town hall” meeting on August 17, 2015 to discuss parking matters. A copy of the letter dated August 12, 2015 is attached hereto as **Appendix “S”**.
63. The meeting proceeded on August 17, 2015. Twelve (12) of the Two Parking Unit Purchasers were in attendance, along with representatives from the Trustee, Chaitons and Harris Sheaffer.
64. A number of potential options and solutions were discussed at the meeting. One option was for the Trustee to write to each purchaser that had closed a sale transaction with a single parking unit to inquire whether the purchaser would be interested in selling or renting its parking unit. The Trustee sent out a letter dated August 19, 2015, a copy of which is attached as **Appendix “T”**.
65. To date the Trustee has received one response to the letter, in which one unit owner has indicated her willingness to rent her parking unit after September 30, 2015.

66. Another option was to confirm whether any of 155 Caroline Lands could be used as temporary parking units. Chaitons has informed the Trustee that it has been informed by the MADY Group that, as One 55 is in the process of negotiating a sale of the 155 Caroline Lands, it is not in a position to permit the lands to be used for temporary parking.
67. Another option discussed is that the Temporary Parking Units be made available to the Remaining Two Parking Unit Purchasers for lease until such time as such parking units can no longer be used as a result of the development of the 155 Uptown Project. Once completed, parking units in the 155 Uptown Project may be made available by the developer for purchase by residents of the 144 Park Project.
68. Following the meeting, the Trustee was contacted by Mr. Oliver Romaniuk, a purchaser of a residential unit in 144 Park Project who has assigned his APS to a third party, and asked to investigate whether it would be possible to have angled parking stalls along Allen Street. The Trustee discussed this idea with a representative of the City of Waterloo and was informed that, after considering the proposal, it was deemed to be unfeasible due to size restrictions.
69. Mr. Romaniuk met with counsel to the Trustee and put forward an auction proposal with respect to the parking units in the 144 Park Project. The auction proposal requires the Trustee to purchase parking units from purchasers and residents. The Trustee understands that Mr. Romaniuk will be filing materials in connection with the upcoming motion, and likely will be describing the proposed auction for the Court.

70. The Trustee intends to serve and file a supplementary report to provide its view on the auction proposal as described by Mr. Romaniuk in his materials.
71. With respect to potential parking units being available in the 155 Uptown Project if completed, the Trustee has been informed by Mint Realty, which is involved with the potential sale of the 155 Caroline Lands, that it is intended there will be a number of parking units available for sale in the 155 Uptown Project for purchasers of units in the 144 Park Project.

### **RECOMMENDATION**

72. The Trustee has expended significant time and energy in an attempt to find a solution for the parking situation at the 144 Park Project. Unfortunately, there appears to be no solution that is acceptable to all affected parties.
73. As of September 24, 2015, 98 of the 149 parking units will have been transferred to purchasers, leaving 51 parking units remaining for 51 residential units.
74. If all 29 of the outstanding sale transactions are completed, 42 parking units would be transferred to the purchasers. As noted above, 98 parking units have been transferred to purchasers in connection with closed sale transactions. As a result, 140 of the 149 parking units in the 144 Park Project would be accounted for, and there would only be 9 parking units available to be allocated to the 20 unsold condominium units and the two units that are the subject of the Terminated Sale Transactions.
75. The Trustee is of the view that this is not a commercially reasonable solution, given that:

- (a) Mint Realty, an experienced real estate broker in the Kitchener/Waterloo area, has provided its opinion that it would be extremely difficult to sell the 20 unsold units without parking, and even in a best case scenario where the 20 unsold units could be sold without parking, it is expected there would be a material reduction in the realizable value of the unsold units in excess of \$3.0 million to the detriment of the mortgagees of the 144 Park Project; and
- (b) MarshallZehr and Laurentian Bank of Canada, mortgagees of the 144 Park Project, do not support the Trustee taking steps to sell the 20 unsold units without each unit having a parking unit.

- 76. In the circumstances, the Trustee is of the view that the only viable option is that the Trustee to be granted the authority by the Court to, if necessary, terminate the APSs with the Remaining Two Parking Unit Purchasers.
- 77. If the Trustee is able to close the sale transactions with the Remaining Two Parking Unit Purchasers with each purchaser having one parking unit each, there will be 149 parking units available for the 148 units in the building, which will allow for each of the 20 unsold units and the two units that are the subject of the Terminated Sale Transactions to have one parking unit each.
- 78. Before taking any steps to terminate agreements, the Trustee would confirm whether the Remaining Two Parking Unit Purchasers would be prepared to close the sale transaction with one parking unit. The Trustee would also enquire of the Remaining Two Parking Unit Purchasers whether they have an interest in leasing a Temporary Parking Unit until such time as the Temporary Parking Units are no longer available due to the construction

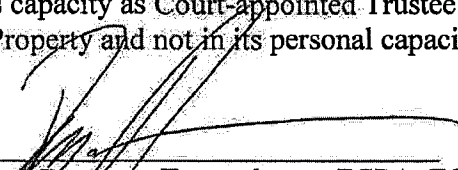
of the 155 Uptown Project. Based on the information that the Trustee has received to date, it understands that there will be sufficient Temporary Parking Units available to provide a second parking unit to all purchasers that have need to park two vehicles in the 144 Park Project.

79. The Trustee would also put such purchasers in contact with Mint Realty regarding discussing the possibility of purchasing a parking unit in the 155 Uptown Project from the developer. If the 155 Uptown Project does not proceed, the Temporary Parking Units may be converted to permanent parking units by amending the Declaration to provide for this change. In this event, these parking units would be sold to interested purchasers.
80. In the event that APSs are terminated by the Trustee, with or without consent of the purchasers, the purchasers would receive from Harris Sheaffer any deposit or upgrade monies that are still being held in trust by Harris Sheaffer. Additionally, the purchasers would have the ability to make a claim for any monies that were released into the 144 Park Project and are secured by the bond provided by Aviva Insurance Company of Canada (“Aviva”). The Trustee understands that Aviva would look to recover any amounts it has to pay out to purchasers from funds being held by Harris Sheaffer and/or net sale proceeds on account of its mortgage over the 144 Park Project.
81. The Trustee understands that certain purchasers also paid monies directly to 144, and such funds were used by 144. The Trustee understands that the purchasers would be unable to recover such funds, as their claims would be unsecured claims against 144.
82. In the circumstances, the Trustee recommends to the Court that it be authorized to, if necessary, take steps to terminate APSs.



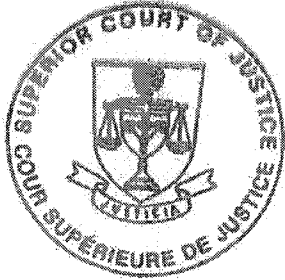
All of which is respectfully submitted to this Court as of this 25<sup>th</sup> day of September, 2015.

**COLLINS BARROW TORONTO LIMITED,**  
in its capacity as Court-appointed Trustee of  
the Property and not in its personal capacity

Per:   
Name: Bryan A. Tannenbaum, FCPA, FCA, FCIRP  
Title: President

I have the authority to bind the corporation

# **APPENDIX “A”**



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR.

)

THURSDAY, THE 22<sup>nd</sup> DAY

)

JUSTICE PENNY

)

OF JANUARY, 2015

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,  
R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.  
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**ORDER**

(appointing trustee)

**THIS APPLICATION** made by the Applicant, 144 Park Ltd., for an Order pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "CLA") appointing Collins Barrow Toronto Limited as trustee (the "Trustee") of the Property (as defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Greg Puklicz sworn January 16, 2015 (the "Puklicz Affidavit") and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and counsel for those other parties listed on the Counsel Slip, no one else appearing although

duly served as appears from the affidavit of service of Sam Rappos sworn January 20, 2015, and on reading the consent of Collins Barrow Toronto Limited to act as the Trustee,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 68(1) of the CLA, Collins Barrow Toronto Limited is hereby appointed Trustee, without security, of the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario, legally described in **Schedule "A"** attached hereto, and comprised of, among other things, 149 residential condominium units (the "**Property**").

### **TRUSTEE'S POWERS**

3. **THIS COURT ORDERS** that the Trustee is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Trustee is hereby expressly empowered and authorized to do any of the following where the Trustee considers it necessary or desirable:

- (a) to act as receiver and manager of the Property;
- (b) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property,

including, without limitation, the Occupancy Funds (as defined in the Puklicz Affidavit);

- (c) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the engaging of independent security personnel, and the placement of such insurance coverage as may be necessary or desirable;
- (d) to engage consultants, agents, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Trustee's powers and duties, including without limitation those conferred by this Order;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Applicant in respect of the Property, including, without limitation, all occupancy fees, and to exercise all remedies of the Applicant in collecting such monies, including, without limitation, to enforce any security held by the Applicant;
- (f) to settle, extend or compromise any indebtedness owing to the Applicant;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of the Property, whether in the Trustee's name or in the name and on behalf of the Applicant, for any purpose pursuant to this Order;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Applicant, the Property or the Trustee, and to settle or compromise any such

proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (i) complete and register the condominium declaration and final Plan of Condominium 30CDM-13406, and any related documents, on title to the Property, and do whatever else is necessary in order to cause the registration of the proposed condominium thereon. For clarity, the foregoing shall include, without limitation:

- (A) finalizing all outstanding draft plan conditions, including all required documentation, to the extent applicable;

- (B) submitting the declaration and plan of condominium (i.e. the description) to the applicable approval authorities for final approval;

- (C) executing the declaration and the plan of condominium (mylar) and cause same to be registered in the appropriate Land Registry Office (the "LRO"); and

- (D) arranging for delivery of architectural and structural plans to the LRO;

- (j) Upon the registration of the condominium and creation of the resultant condominium corporation (the "Condominium Corporation"), the Trustee is authorized to operate the Condominium Corporation in accordance with and

subject to the provisions of the *Condominium Act, 1998* (Ontario) (the “**Condominium Act**”), including, without limitation:

- (A) appointing a board of directors and auditor;
- (B) opening the appropriate bank accounts;
- (C) collecting common expenses;
- (D) obtaining and maintaining the appropriate insurance;
- (E) preparing the record of unit owners required under Section 47 of the *Condominium Act* and other records as required by the Act;
- (F) ratifying and registering the proposed by-law(s) of the Condominium Corporation;
- (G) ratifying the proposed rules;
- (H) ratifying and entering into an assignment agreement of the Shared Facilities Agreement;
- (I) ratifying and entering into any necessary service and maintenance agreements as may be required; and
- (J) turning over control of the condominium at the appropriate time and in the manner as prescribed by the *Condominium Act*;

- (k) to complete the existing agreements of purchase and sale for the 129 pre-sold condominium units and related lockers and parking spaces that form part of the Property (collectively, the "Sold Units");
- (l) to apply for any vesting order or other orders necessary to convey title to the Sold Units or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Trustee deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Trustee deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to the Property;
- (o) to apply for any permits, licences, approvals, declarations, or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Trustee, in the name of the Applicant; and
- (p) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Trustee takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Applicant, and without interference from any other Person.



4. **THIS COURT ORDERS** that the Trustee shall take all steps necessary to complete the registration of the Condominium, those steps being more particularly set out in **Schedule "B"** attached hereto, and to accomplish that purpose, all lien claims, mortgages and other encumbrances are hereby subordinated to any utility easements and any municipal development or warnings agreements that may be required.

5. **THIS COURT ORDERS** that the Trustee, as soon as practical following the sale of at least 65 of the Sold Units, shall bring a motion for interim distribution of the net proceeds.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE TRUSTEE**

6. **THIS COURT ORDERS** that (i) the Applicant, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall grant immediate and continued access to the Property to the Trustee.

7. **THIS COURT ORDERS** that all Persons shall forthwith advise the Trustee of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Applicant, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Trustee or permit the Trustee to make, retain and take away copies thereof and grant to the Trustee unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 7 or in paragraph 8 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Trustee due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Trustee for the purpose of allowing the Trustee to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Trustee in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Trustee. Further, for the purposes of this paragraph, all Persons shall provide the Trustee with all such assistance in gaining immediate access to the information in the Records as the Trustee may in its discretion require including providing the Trustee with instructions on the use of any computer or other system and providing the Trustee with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE TRUSTEE**

9. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Trustee except with the written consent of the Trustee or with leave of this Court.

**NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

10. **THIS COURT ORDERS** that, subject to the provisions of paragraph 11, no Proceeding against or in respect of the Applicant or the Property, including without limitation any Proceeding commenced under the CLA against the Applicant or mortgagees of the Property, shall be commenced or continued except with the written consent of the Trustee or with leave of this Court and any and all such Proceedings currently under way are hereby stayed and suspended pending further Order of this Court. Any request for particulars with respect to outstanding encumbrances, including, without limitation, requests made pursuant to the CLA, shall be directed to, and responded by, the Trustee.

**NO EXERCISE OF RIGHTS OR REMEDIES**

11. **THIS COURT ORDERS** that all rights and remedies against the Applicant, the Trustee, or affecting the Property, are hereby stayed and suspended, save and except the issuance of statements of claim and registration of certificates of action by existing lien claimants, or except with the written consent of the Trustee or leave of this Court, provided that nothing in this paragraph shall (i) empower the Trustee or the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, or (ii) exempt the Trustee or the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment.

**NO INTERFERENCE WITH THE TRUSTEE**

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, without written consent of the Trustee or leave of this Court.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

13. **THIS COURT ORDERS** that, until June 30, 2015 or such other date as the Court may hereafter order, no Proceeding may be commenced or continued against any of the former or current directors, officers or management of the Applicant, and any person, including an employee or agent of the Applicant, who had effective control of the Applicant or its relevant activities, with respect to any claim against such persons that arose before the date hereof and whereby such persons are alleged under any law to be liable, including the CLA, except with the prior written consent of the Trustee or leave of this Court. The foregoing does not apply to proceedings bearing Court File No. CV-14-5608-00 commenced in Brampton, Ontario.

### **CONTINUATION OF SERVICES**

14. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, equipment, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Applicant are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Trustee, and that the Trustee shall be entitled to the continued use of the Applicant's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Trustee in accordance with arrangements as may be agreed upon by the supplier or service provider and the Trustee, or as may be ordered by this Court.

**TRUSTEE TO HOLD FUNDS**

15. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Trustee from and after the making of this Order from any source whatsoever, including without limitation the sale(s) of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Trustee (the "Post Trusteeship Accounts") and the monies standing to the credit of such Post Trusteeship Accounts from time to time, net of any disbursements provided for herein, shall be held by the Trustee to be paid in accordance with the terms of this Order or any further Order of this Court.

**EMPLOYEES**

16. **THIS COURT ORDERS** that all employees of the Applicant shall remain the employees of the Applicant until such time as the Trustee, on the Applicant's behalf, may terminate the employment of such employees. The Trustee shall not be liable for any employee-related liabilities, including any successor employer liabilities, other than such amounts as the Trustee may specifically agree in writing to pay.

**PIPEDA**

17. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Trustee shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such

information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Trustee, or in the alternative destroy all such information. The purchaser of any part of the Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Trustee, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

18. **THIS COURT ORDERS** that nothing herein contained shall require the Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Trustee shall not, as a result of this Order or anything done in pursuance of the Trustee's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

**LIMITATION ON THE TRUSTEE'S LIABILITY**

19. **THIS COURT ORDERS** that the Trustee shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Trustee by any applicable legislation.

**ACCOUNTS**

20. **THIS COURT ORDERS** that the Trustee, counsel to the Trustee and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Trustee, counsel to the Trustee and counsel to the Applicant shall be entitled to and are hereby granted a charge (the "**Administration Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Administration Charge shall form a first charge on the Property in priority to all any and all existing and future security interests (whether contractual, statutory, or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, construction liens, encumbrances, claims of secured creditors (whether contractual, statutory or otherwise), executions, or charges, whether or not they have attached or been perfected, registered or filed (collectively, the "**Claims**") in favour of any Person.

21. **THIS COURT ORDERS** that the Trustee and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Trustee and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. **THIS COURT ORDERS** that the Trustee shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Trustee, its counsel, or counsel to the Applicant, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **BORROWING POWERS**

23. **THIS COURT ORDERS** that the Trustee be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Trustee by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Trustee's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all Claims in favour of any Person, but subordinate in priority to the Administration Charge.

24. **THIS COURT ORDERS** that neither the Trustee's Borrowings Charge nor any other security granted by the Trustee in connection with its borrowings under this Order shall be enforced without leave of this Court.



25. **THIS COURT ORDERS** that the Trustee is at liberty and authorized to issue certificates substantially in the form of **Schedule "C"** attached hereto (the "**Trustee's Certificates**") for any amount borrowed by it pursuant to this Order.

26. **THIS COURT ORDERS** that the monies from time to time borrowed by the Trustee pursuant to this Order or any further order of this Court and any and all Trustee's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Trustee's Certificates.

#### **RETENTION OF LAWYERS**

27. **THIS COURT ORDERS** that the Trustee may retain solicitors to represent and advise the Trustee in connection with the exercise of the Trustee's powers and duties, including without limitation those conferred by this Order. Such solicitors may include Chaitons LLP, solicitors for the Applicant herein, in respect of any matter where there is no conflict of interest. The Trustee shall, however, retain independent solicitors in respect of any legal advice or services where a conflict exists, or may exist.

#### **SERVICE AND NOTICE**

28. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of

documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://www.collinsbarrow.com/en/toronto-ontario/144-park>.

29. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Trustee is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

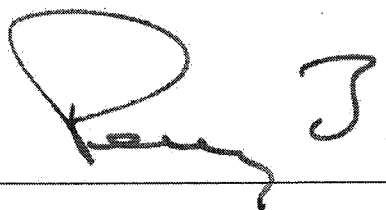
30. **THIS COURT ORDERS** that the Applicant, the Trustee and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

**GENERAL**

31. **THIS COURT ORDERS** that the Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

32. **THIS COURT ORDERS** that nothing in this Order shall prevent the Trustee from acting as receiver or trustee in bankruptcy of the Applicant.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Trustee and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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ENTRÉ EN REGISTRE À TORONTO  
ON / REGISTRADO  
LE / DATE LE REGISTRE NO.

JAN 23 2015



**SCHEDULE "A"**

PIN 22417-0135 (LT)  
LRO # 58

Property Description: Part of Lots 217, 218, 219 & 267 Plan 385, Being Part 1 on 58R-17836; Subject to an easement as in WR666363; City of Waterloo

PIN 22417-0134 (LT)  
LRO # 58

Property Description: Lots 2 & 3, Part of Lots 1, 4, 5, & 6 Plan 186, Being Part 2 on 58R-17836; Subject to an easement as in WR666363; City of Waterloo

**SCHEDULE "B"**

<b>Task</b>	<b>Notes</b>	<b>Timing to Completion</b>
Registration of Waterloo North Hydro Easement	Requires postponements from lenders and priority over lien claimants	
Update of Condominium Plan and Schedule A to the Declaration	Requires registration of the easement	Few days after registration of easement
Submit Declaration and Condominium Plan for Pre-approval	Requires update of plan and schedule A	
LRO to complete pre-approval review		LRO has 10 business days to complete their review
Update Declaration and Condominium Plan based on LRO comments		Few days after completion of LRO pre-approval review
Obtain signed consents (schedule "B" to Declaration) from lenders		
Publish notice of intent to register condominium		Must be published not less than 5 days and not more than 15 days before Condo Plan is submitted to City for signing
Declarant to sign Condominium Plan and submit to City to sign		5 days after notice of intention is published
Declarant to sign Declaration and submit Declaration with registration fee to LRO		Upon completion of update
Satisfy all Region/City conditions		
Registration of Region of Waterloo Development Agreement (re noise)	Requires postponements from lenders and priority over lien claimants	

<b>Task</b>	<b>Notes</b>	<b>Timing to Completion</b>
Registration of City of Waterloo Warning Agreement	Requires postponements from lenders and priority over lien claimants	
Submit as built architectural and as built structural plans to LRO		
Registration	Notice of final closing to be sent to purchasers lawyers day after registration	Couple of days after LRO receives all the following: final plan, declaration, architectural plans and structural plans.
Release of new PINs by LRO		10 business days after registration
Delivery of closing documents and statement of adjustments	Purchaser's lenders require statement of adjustment to finalize mortgage financing	Approximately 5 business days after PINs are released
Final Closing		Approximately 20 business days (30 calendar days) from date of registration.

**SCHEDULE "C"**

**TRUSTEE CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Collins Barrow Toronto Limited, the trustee (the "Trustee") of the Property appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 22<sup>nd</sup> day of January, 2015 (the "Order") made in an application having Court file number \_\_\_-CL-\_\_\_\_\_, has received as such Trustee from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Trustee is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Trustee pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the Claims (as defined in the Order) of any other person, but subject to the priority of the charges set out in the Order, and the right of the Trustee to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Trustee to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Trustee to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Trustee does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**COLLINS BARROW TORONTO LIMITED,**  
solely in its capacity as Trustee of the Property,  
and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:



IN THE MATTER OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED  
AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE  
UNDER SECTION 68(1) OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED

Court File No. CV15-10843-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**ORDER**  
(appointment of a trustee)

**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

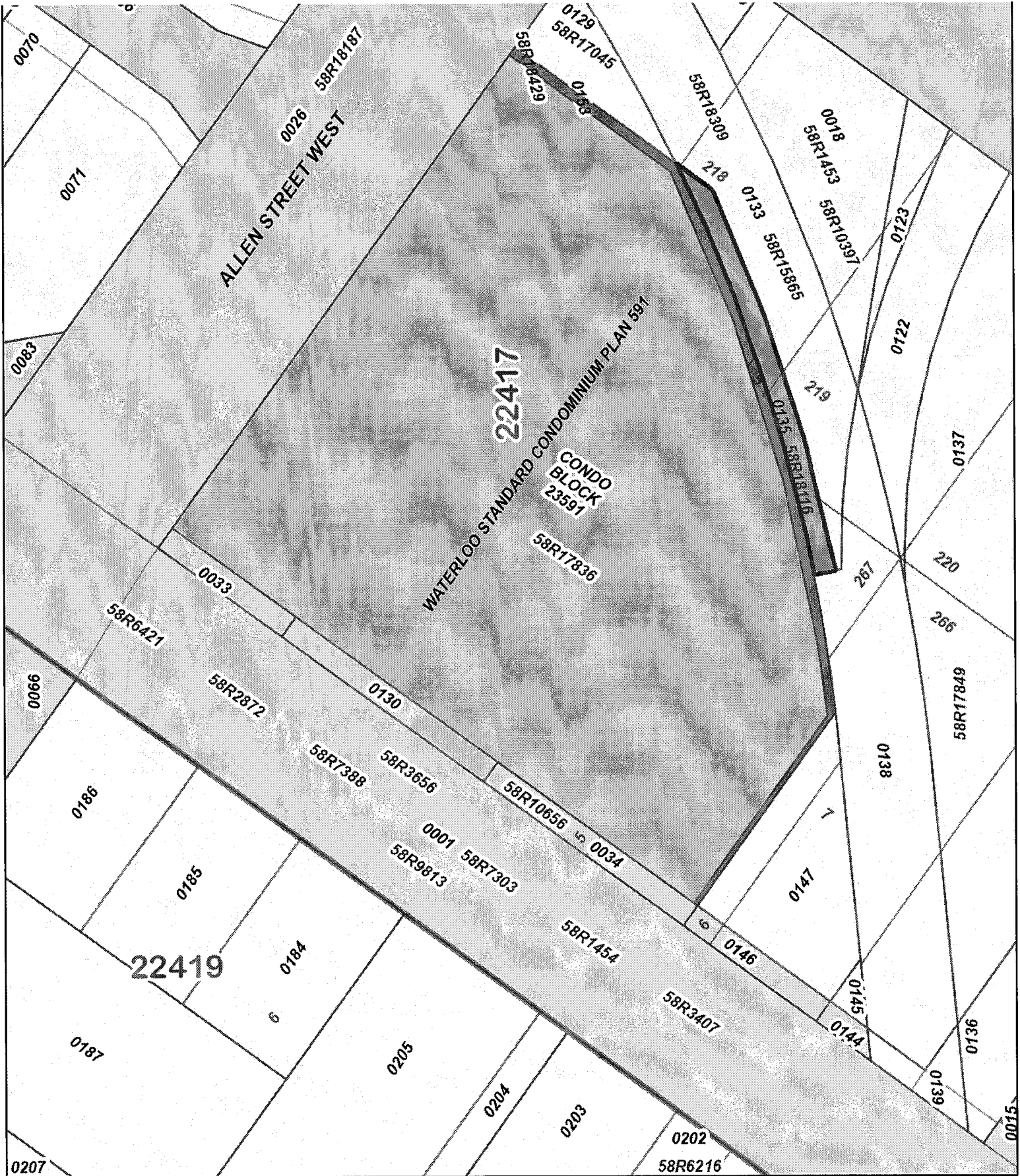
Harvey Chaiton (LSUC #21592F)  
Tel: (416) 218-1129  
Fax: (416) 218-1849  
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Stephen Schwartz (LSUC #25980A)  
Tel: (416) 218-1132  
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Sam Rappos (LSUC #51399S)  
Tel: (416) 218-1137  
Fax: (416) 218-1837  
E-mail: samr@chaitons.com

Lawyers for the Applicant, 144 Park Ltd.

# **APPENDIX “B”**



**ServiceOntario**

PRINTED ON 24 SEP, 2015 AT 14:26:41  
FOR ARIKATZ01

**SCALE**

0 20

**LEGEND**

- FREEHOLD PROPERTY
- LEASEHOLD PROPERTY
- LIMITED INTEREST PROPERTY
- CONDOMINIUM PROPERTY
- RETIRED PIN (MAP UPDATE PENDING)
- PROPERTY NUMBER
- BLOCK NUMBER



0449

**08050**

**NOTES**

**REVIEW THE TITLE RECORDS FOR COMPLETE PROPERTY INFORMATION AS THIS MAP MAY NOT REFLECT RECENT REGISTRATIONS**

THIS MAP WAS COMPILED FROM PLANS AND DOCUMENTS RECORDED IN THE LAND REGISTRATION SYSTEM AND HAS BEEN PREPARED FOR PROPERTY INDEXING PURPOSES ONLY

FOR DIMENSIONS OF PROPERTIES BOUNDARIES SEE RECORDED PLANS AND DOCUMENTS

# **APPENDIX “C”**

**UNDERTAKING**

**TO:** REGION OF WATERLOO

**RE:** 144 Park Ltd. - Proposed Standard Condominium Project  
144 Park Street, Waterloo Ontario  
Notice of Decision for Draft Approval – Plan of Condominium (File No. 30CDM-13406)  
Satisfaction of Condition No. 15

---

In consideration of the above referenced matter and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the undersigned hereby undertakes to direct its solicitors, Harris, Sheaffer LLP, to transfer the portion of the lands owned by 144 Park Ltd and municipally known as 144 Park Street (the “144 Park Street Lands”) which does not form part of the Plan of Condominium 30CDM-13406 (the “Excess Lands”) to One 55 Mady Ltd., being the owner of the adjoining lands municipally known as 155 Caroline Street South, immediately following the registration of said Plan of Condominium on the 144 Park Street Lands.

**DATED** as of the 26<sup>th</sup> day of January, 2015.

**144 PARK LTD.**  
**by its court-appointed trustee, COLLINS**  
**BARROW TORONTO LIMITED**

Per: \_\_\_\_\_

Name: **Bryan A. Tannenbaum**  
Title: **President**

I have the authority to bind the Corporation.

# **APPENDIX “D”**

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION: PART OF LOTS 217, 218, 219 & 267 PLAN 385, BEING PART 1 ON S8R-17636; T/M AN EASEMENT OVER ALL OF THE COMMON ELEMENTS OF WATERLOO STANDARD CONDOMINIUM PLAN NO. 591 FOR INGRESS AND EGRESS, MAINTENANCE REPAIR, ACCESS, CONSTRUCTION AS IN WR892241; SUBJECT TO AN EASEMENT AS IN WR66363; CITY OF WATERLOO

PROPERTY REMARKS: PLANNING ACT CONSENT IN DOCUMENT WR611292, FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2012/06/13. INSTRUMENT NR759234.

RECEIVED:  
 RE-ENTRY FROM 22417-0132  
 2013/06/13

ESTATE/QUANTIFIER: RECEIVED:  
 FEE SIMPLE RE-ENTRY FROM 22417-0132  
 LT ABSOLUTE PLUS CHERLITY SHARE  
 OWNER'S NAMES: ROWN

REG. NOM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHGD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
WR611290	2011/05/02	NOTICE	\$5	ALLEN STREET HOLDINGS INC.	ALLEN STREET HOLDINGS INC. 2184038 ONTARIO INC. 144 PARK LTD. COB GP INC.	C
WR625222	2011/07/07	NOTICE	\$2	THE CORPORATION OF THE CITY OF WATERLOO	ALLEN STREET HOLDINGS INC.	C
WR639367	2011/09/01	TRANSFER	\$2,200,000	ALLEN STREET HOLDINGS INC.	144 PARK LTD.	C
REMARKS: PLANNING ACT STATEMENTS						
WR639368	2011/09/01	CHARGE	\$8,500,000	144 PARK LTD.	AVIVA INSURANCE COMPANY OF CANADA	C
WR639369	2011/09/01	CHARGE	\$3,000,000	144 PARK LTD.	ALLEN STREET HOLDINGS INC.	C
WR655113	2011/12/17	NOTICE		THE CORPORATION OF THE CITY OF WATERLOO	144 PARK LTD.	C
WR660361	2011/12/13	CHARGE	\$2,887,696	144 PARK LTD.	MARSHALZEHR GROUP INC.	C
WR666363	2012/01/18	TRANSFER EASEMENT	\$2	144 PARK LTD.	ROGERS CABLE COMMUNICATIONS INC.	C
WR690395	2012/05/25	CHARGE	\$90,000,000	144 PARK LTD.	LAURENTIAN BANK OF CANADA	C
WR690396	2012/05/25	NO ASSGN RENT GEN		144 PARK LTD.	LAURENTIAN BANK OF CANADA	C
REMARKS: WR690395.						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
 NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

22417-0135 (LT)

LAND  
 REGISTRY  
 OFFICE #56

• CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT • SUBJECT TO RESERVATIONS IN CROWN GRANT •



REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ C/CD
WR690416	2012/05/25	POSTPONEMENT		ALLEN STREET HOLDINGS INC.	LAURENTIAN BANK OF CANADA	C
	REMARKS: WR639359 TO WR690395					
WR690422	2012/05/25	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	LAURENTIAN BANK OF CANADA	C
	REMARKS: WR639358 TO WR690395					
WR690423	2012/05/25	POSTPONEMENT		MARSHALLZEHR GROUP INC.	LAURENTIAN BANK OF CANADA	C
	REMARKS: WR660361 TO WR690395					
58R17836	2013/06/13	PLAN REFERENCE				C
WR759234	2013/06/13	APL ABSOLUTE TITLE		144 PARK LTD.		C
58R16116	2014/02/07	PLAN REFERENCE				C
WR847447	2014/10/24	CONSTRUCTION LIEN	\$301,592	GLOBAL FIRE PROTECTION LTD.		C
WR849030	2014/10/31	CONSTRUCTION LIEN	\$88,883	694643 ONTARIO LIMITED		C
WR854810	2014/12/01	CONSTRUCTION LIEN	\$537,286	J & I CANADA CONSTRUCTION LIMITED		C
WR856169	2014/12/08	NOTICE		THE CORPORATION OF THE CITY OF WATERLOO	144 PARK LTD.	C
WR856621	2014/12/10	CERTIFICATE		GLOBAL FIRE PROTECTION LTD.	144 PARK LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS LTD. LAURENTIAN BANK OF CANADA MARSHALLZEHR GROUP INC.	C
	REMARKS: WR847447					
WR856756	2014/12/11	CONSTRUCTION LIEN	\$328,260	FRENDEL KITCHENS LIMITED		C
WR857239	2014/12/12	CONSTRUCTION LIEN	\$436,314	T.I.C. CONTRACTING LTD.		C
WR857322	2014/12/15	CONSTRUCTION LIEN	\$188,393	GLOBAL PRECAST INC.		C
WR857462	2014/12/15	CONSTRUCTION LIEN	\$110,716	2050491 ONTARIO INC. O/A THE DOWNSVIEW GROUP		C
WR857468	2014/12/15	CONSTRUCTION LIEN	\$104,009	SM TORTOLA ENTERPRISES INC.		C

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REG. NO.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CHG/CHD
WR057793	2014/12/16	CONSTRUCTION LIEN	\$15,070	CBS CONTRACTORS RENTAL SUPPLY GENERAL PARTNER INC.		C
WR057850	2014/12/16	CONSTRUCTION LIEN	\$93,436	ADLERS MAIN TILE & CARPET CO. LTD.		C
WR058473	2014/12/19	CONSTRUCTION LIEN	\$30,851	TURNER FLEISCHER ARCHITECTS INC.		C
WR058748	2014/12/19	CONSTRUCTION LIEN	\$46,043	HAMPERSCHLAG & JOFFE INC.		C
WR058991	2014/12/22	CONSTRUCTION LIEN	\$345,952	SEREN PAINTING LTD.		C
WR059188	2014/12/23	CONSTRUCTION LIEN	\$176,771	WESTON FLOORING LIMITED		C
WR059941	2014/12/30	CONSTRUCTION LIEN	\$32,381	GREAT PYRAMID ALUMINUM LTD.		C
WR060225	2015/01/05	CONSTRUCTION LIEN	\$139,287	ADLERS MAIN TILE & CARPET CO. LTD.		C
WR060757	2015/01/06	CERTIFICATE		FRENDEL KITCHENS LIMITED	144 PARK LTD. MADY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION (2009) LTD. MADY CONTRACT DIVISION LTD. D. MADY INVESTMENTS INC. MARSHALLZEH GROUP INC. ALLEN STREET HOLDINGS INC. AVIVA INSURANCE COMPANY OF CANADA LAURENTIAN BANK OF CANADA	C
WR062054	2015/01/14	CERTIFICATE		J & I GAMEDA CONSTRUCTION LIMITED		C
WR062055	2015/01/14	CERTIFICATE		GLOBAL FIRE PROTECTION LTD.	144 PARK LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS LTD. LAURENTIAN BANK OF CANADA MARSHALLZEH GROUP INC.	C
WR062500	2015/01/16	CERTIFICATE		694643 ONTARIO LIMITED		C

REMARKS: CERTIFICATE OF ACTION WR058756  
 REMARKS: WR054810  
 REMARKS: WR047417  
 REMARKS: WR049030  
 NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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REQ. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHD
WR863268	2015/01/21	CERTIFICATE		TURNER FLEISCHER ARCHITECTS INC.	MADY CONTRACT DIVISION LTD. MADY CONTRACT DIVISION (2009) LTD. MADY DEVELOPMENT CORPORATION 144 PARK LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS INC. MARSHALLZEH GROUP INC. LAURENTIAN BANK OF CANADA	C
	REMARKS: WR858473					
WR863291	2015/01/21	CONSTRUCTION LIEN	\$113,328	BRODY HALL SYSTEM LTD.		C
WR863296	2015/01/21	CERTIFICATE		T.I.C. CONTRACTING LTD.		C
	REMARKS: WR857239					
WR863658	2015/01/23	CONSTRUCTION LIEN	\$4,258	SKYWAY CANADA LIMITED		C
WR863884	2015/01/23	CONSTRUCTION LIEN	\$210,190	DKS STONE FABRICATION & DESIGN INC.		C
WR863828	2015/01/23	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)	COLLINS BARRON TORONTO LIMITED	C
WR864339	2015/01/28	CONSTRUCTION LIEN	\$752,632	CLONARD GROUP INC.		C
WR864365	2015/01/28	CERTIFICATE		HAMMERSCHLAG & JOFFE INC.	ONTARIO SUPERIOR COURT OF JUSTICE	C
	REMARKS: RE: WR858748					
WR864653	2015/01/29	CONSTRUCTION LIEN	\$260,447	ALUMINUM WINDOW DESIGN INSTALLATIONS INC.		C
WR865440	2015/02/02	CERTIFICATE		GREY PYRAMID ALUMINUM LTD.	144 PARK LTD.	C
	REMARKS: CERTIFICATE OF ACTION - WR859841					
WR865713	2015/02/04	CERTIFICATE		GLOBAL PRECAST INC.	144 PARK LTD. MADY CONTRACT DIVISION (2009) LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS LTD. MARSHALLZEH GROUP INC. LAURENTIAN BANK OF CANADA	C
	REMARKS: WR857322					
WR865936	2015/02/05	CERTIFICATE		ADLERS MAIN TILS & CAREET CO. LTD.		C
	REMARKS: CERTIFICATE OF ACTION WR860525 AND WR857850					

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22417-0135 (LT)

CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT - SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHRD
WR866373	2015/02/09	CERTIFICATE		2050493 ONTARIO INC.	144 PARK LTD. MADY CONTRACT DIVISION (2009) LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS LTD. MARSHALZEHR GROUP INC. LAURENTIAN BANK OF CANADA	C
		REMARKS: CERTIFICATE OF ACTION WR857462				
WR867197	2015/02/13	CERTIFICATE		WESTON FLOORING LIMITED		C
		REMARKS: CERTIFICATE OF ACTION WR859188				
WR867757	2015/02/19	CERTIFICATE		SERREEN PAINTING LTD.		C
		REMARKS: WR858921				
WR868712	2015/02/26	CERTIFICATE		SAM TORTOLA ENTERPRISES INC.		C
		REMARKS: CERTIFICATE OF ACTION WR857468				
WR870655	2015/03/11	CERTIFICATE		ALUMINUM WINDOW DESIGN INSTALLATIONS INC.		C
		REMARKS: WR864625				
WR870768	2015/03/12	CERTIFICATE		CLS CONTRACTORS RENTAL SUPPLY GENERAL PARTNER INC.		C
		REMARKS: WR857793				
WR870844	2015/03/12	CERTIFICATE		BRODY WALL SYSTEM LTD.	144 PARK LTD.	C
		REMARKS: WR863291				
WR874856	2015/04/08	CERTIFICATE		DKS STONE FABRICATION & DESIGN INC.	144 PARK LTD. MADY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION (2009) LTD. MADY CONTRACT DIVISION LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS INC. MARSHALZEHR GROUP INC. LAURENTIAN BANK OF CANADA	C
		REMARKS: WR863814				
WR875105	2015/04/10	CERTIFICATE		SKYWAY CANADA LIMITED	144 PARK LTD.	C
		REMARKS: WR861658				
WR876062	2015/04/16	NOTICE	\$2	144 PARK LTD.	ONE 55 MADY LTD.	C

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LAND REGISTRY OFFICE #58

23417-0153 (LT)

PAGE 1 OF 6  
PREPARED FOR LyndaLee1  
ON 2015/09/24 AT 15:21:18

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PROPERTY DESCRIPTION: LOTS 2 & 3, PART OF LOTS 1, 4, 5, & 6 PLAN 186, BEING PART 2 ON SBR-17836, SAVE & EXCEPT WATERLOO STANDARD CONDOMINIUM PLAN NO. 591; SUBJECT TO AN EASEMENT AS IN WR666363; CITY OF WATERLOO

PROPERTY REMARKS: PLANNING ACT CONSENT IN 1156494. FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2013/06/13, INSTRUMENT WR75234. RECENTLY: DIVISION FROM 22417-0134

ESTATE/QUALIFIER: CAPACITY SHARE  
FOR SIMPLE: ROTH  
LT ABSOLUTE PLUS  
OWNERS' NAMES: 144 PARK LTD.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHGD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
WR611290	2011/05/02	NOTICE	\$5	ALLEN STREET HOLDINGS INC.	ALLEN STREET HOLDINGS INC. 2184038 ONTARIO INC. 144 PARK LTD. COB GP INC.	C
WR625222	2011/07/07	NOTICE	\$2	THE CORPORATION OF THE CITY OF WATERLOO	ALLEN STREET HOLDINGS INC.	C
WR619367	2011/09/01	TRANSFER	\$2,200,000	ALLEN STREET HOLDINGS INC.	144 PARK LTD.	C
REMARKS: PLANNING ACT STATEMENTS						
WR619368	2011/09/01	CHARGE	\$9,500,000	144 PARK LTD.	AVIVA INSURANCE COMPANY OF CANADA	C
WR619369	2011/09/01	CHARGE	\$1,000,000	144 PARK LTD.	ALLEN STREET HOLDINGS INC.	C
WR655113	2011/11/17	NOTICE		THE CORPORATION OF THE CITY OF WATERLOO	144 PARK LTD.	C
WR660381	2011/12/13	CHARGE	\$2,887,696	144 PARK LTD.	MARSHALLZERR GROUP INC.	C
WR666363	2012/01/18	TRANSFER EASEMENT	\$2	144 PARK LTD.	ROGERS CABLE COMMUNICATIONS INC.	C
WR690395	2012/05/25	CHARGE	\$40,000,000	144 PARK LTD.	LAURENTIAN BANK OF CANADA	C
WR690396	2012/05/25	NO ASSIGN RENT GEN		144 PARK LTD.	LAURENTIAN BANK OF CANADA	C
REMARKS: WR690395.						

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 6  
PREPARED FOR LynnLee1  
ON 2015/09/24 AT 15:21:18

22417-0153 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHD
WR890416	2012/05/25	POSTPONEMENT REMARKS: WR639369 TO WR690395		ALLEN STREET HOLDINGS INC.	LAURENTIAN BANK OF CANADA	C
WR890422	2012/05/25	POSTPONEMENT REMARKS: WR639368 TO WR690395		AVIVA INSURANCE COMPANY OF CANADA	LAURENTIAN BANK OF CANADA	C
WR890423	2012/05/25	POSTPONEMENT REMARKS: WR660371 TO WR690395		MARSHALLZEHR GROUP INC.	LAURENTIAN BANK OF CANADA	C
58817836	2013/06/13	PLAN REFERENCE				C
WR759234	2013/06/13	APL ABSOLUTE TITLE		144 PARK LTD.		C
58818116	2014/02/07	PLAN REFERENCE				C
WR847447	2014/10/24	CONSTRUCTION LIEN	\$301,592	GLOBAL FIRE PROTECTION LTD.		C
WR849030	2014/10/31	CONSTRUCTION LIEN	\$88,863	694643 ONTARIO LIMITED		C
58818629	2014/11/27	PLAN REFERENCE				C
WR854010	2014/12/01	CONSTRUCTION LIEN	\$537,266	J & J GAMBOA CONSTRUCTION LIMITED		C
WR854978	2014/12/02	CONSTRUCTION LIEN	\$26,889	EAST HOME COMFORT INC.		C
WR856368	2014/12/08	NOTICE		THE CORPORATION OF THE CITY OF WATERLOO	144 PARK LTD.	C
WR856621	2014/12/30	CERTIFICATE		GLOBAL FIRE PROTECTION LTD.	144 PARK LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS LTD. LAURENTIAN BANK OF CANADA MARSHALLZEHR GROUP INC.	C
WR856756	2014/12/11	CONSTRUCTION LIEN	\$328,260	FRENDEL KITCHENS LIMITED		C
WR857239	2014/12/12	CONSTRUCTION LIEN	\$436,314	T.I.C. CONTRACTING LTD.		C
WR857322	2014/12/15	CONSTRUCTION LIEN	\$380,393	GLOBAL PRECAST INC.		C

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 3 OF 6  
PREPARED FOR LynnLee1  
ON 2015/09/24 AT 15:21:18

22417-0153 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT - SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHRD
WR857462	2014/12/15	CONSTRUCTION LIEN	\$130,716	2850491 ONTARIO INC. O/A THE DONNSVIERM GROUP		C
WR857468	2014/12/15	CONSTRUCTION LIEN	\$104,009	SAM TORTOLA ENTERPRISES INC.		C
WR857793	2014/12/16	CONSTRUCTION LIEN	\$15,870	CRS CONTRACTORS RENTAL SUPPLY GENERAL PARTNER INC.		C
WR857850	2014/12/16	CONSTRUCTION LIEN	\$83,436	ADLERS MAIN TILE & CARPET CO. LTD.		C
WR858473	2014/12/19	CONSTRUCTION LIEN	\$30,851	TURNER FLEISCHER ARCHITECTS INC.		C
WR858748	2014/12/19	CONSTRUCTION LIEN	\$46,843	INNMERSCHLAG & JOFFE INC.		C
WR858991	2014/12/22	CONSTRUCTION LIEN	\$145,952	SCREEN PAINTING LTD.		C
WR859188	2014/12/23	CONSTRUCTION LIEN	\$176,771	WESTON FLOORING LIMITED		C
WR859941	2014/12/30	CONSTRUCTION LIEN	\$12,381	GREAT PYRAMID ALUMINUM LTD.		C
WR860525	2015/01/08	CONSTRUCTION LIEN	\$139,287	ADLERS MAIN TILE & CARPET CO. LTD.		C
WR860757	2015/01/06	CERTIFICATE		PRENDEL KITCHENS LIMITED	144 PARK LTD. MADY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION (2009) LTD. MADY CONTRACT DIVISION LTD. D. MADY INVESTMENTS INC. MARSHALLER GROUP INC. ALLEN STREET HOLDINGS INC. AVIVA INSURANCE COMPANY OF CANADA LAURENTIAN BANK OF CANADA	C
WR861891	2015/01/13	CERTIFICATE		BAST HOME COMFORT INC.		C
WR862054	2015/01/14	CERTIFICATE		J & I GAMEDA CONSTRUCTION LIMITED		C
WR862055	2015/01/14	CERTIFICATE		GLOBAL FIRE PROTECTION LTD.	144 PARK LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS LTD. LAURENTIAN BANK OF CANADA	C

REMARKS: CERTIFICATE OF ACTION WR855756

REMARKS: CERTIFICATE OF ACTION RE WR854978

REMARKS: WR854970

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 4 OF 6  
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ON 2015/09/24 AT 15:21:18

22417-0153 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
WR862500	2015/01/16	CERTIFICATE		694643 ONTARIO LIMITED	MARSHALLZEHR GROUP INC.	C
WR863268	2015/01/21	CERTIFICATE		TURNER FLEISCHER ARCHITECTS INC.	MADY CONTRACT DIVISION LTD. MADY CONTRACT DIVISION (2009) LTD. MADY DEVELOPMENT CORPORATION 144 PARK LTD.	C
WR863291	2015/01/21	CONSTRUCTION LIEN	\$113,320	BRODY WALL SYSTEM LTD.	AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS INC. MARSHALLZEHR GROUP INC. LAURENTIAN BANK OF CANADA	C
WR863296	2015/01/21	CERTIFICATE		T.I.C. CONTRACTING LTD.		C
WR863458	2015/01/23	CONSTRUCTION LIEN	\$4,258	SKYWAY CANADA LIMITED		C
WR863814	2015/01/23	CONSTRUCTION LIEN	\$210,190	DVS STONE FABRICATION & DESIGN INC.		C
WR863820	2015/01/23	A/E COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)	COLLINS BARROW TORONTO LIMITED	C
WR864319	2015/01/28	CONSTRUCTION LIEN	\$752,632	CLOWARD GROUP INC.		C
WR864365	2015/01/28	CERTIFICATE		HAMPERSCHLAG & JOFFE INC.	ONTARIO SUPERIOR COURT OF JUSTICE	C
WR864508	2015/01/29	TRANSFER EASEMENT	\$2	144 PARK LTD.	WATERLOO NORTH HYDRO INC.	C
WR864655	2015/01/29	CONSTRUCTION LIEN	\$260,447	ALUMINUM WINDOW DESIGN INSTALLATIONS INC.		C
WR865440	2015/02/02	CERTIFICATE		GREAT PYRAMID ALUMINUM LTD.	144 PARK LTD.	C
WR865713	2015/02/04	CERTIFICATE		GLOBAL PRECAST INC.	144 PARK LTD. MADY CONTRACT DIVISION (2009) LTD.	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



LAND  
REGISTRY  
OFFICE #58

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 5 OF 6

PREPARED FOR LynnLee1  
ON 2015/09/24 AT 15:21:18

22417-0153 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHRD
		REMARKS: WR857322				
WR865936	2015/02/05	CERTIFICATE		ADLERS MAIN TILE & CARPET CO. LTD.	AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS LTD. MARSHALLZEH GROUP INC. LAURENTIAN BANK OF CANADA	C
		REMARKS: CERTIFICATE OF ACTION WR860525 AND WR857850				
WR866373	2015/02/09	CERTIFICATE		2050491 ONTARIO INC.	144 PARK LTD. MADY CONTRACT DIVISION (2009) LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS LTD. MARSHALLZEH GROUP INC. LAURENTIAN BANK OF CANADA	C
		REMARKS: CERTIFICATE OF ACTION WR857462				
WR867197	2015/02/13	CERTIFICATE		WESTON FLOORING LIMITED		C
		REMARKS: CERTIFICATE OF ACTION WR854188				
WR867313	2015/02/17	NOTICE	\$2	THE REGIONAL MUNICIPALITY OF WATERLOO		C
		REMARKS: WR858991				
WR867757	2015/02/19	CERTIFICATE		SERREEN PAINTING LTD.		C
		REMARKS: WR858991				
WR868712	2015/02/26	CERTIFICATE		SMM TORTOLA ENTERPRISES INC.		C
		REMARKS: CERTIFICATE OF ACTION WR857468				
WR870665	2015/03/11	CERTIFICATE		ALUMINUM WINDOW DESIGN INSTALLATIONS INC.		C
		REMARKS: WR864655				
WR870768	2015/03/12	CERTIFICATE		CLS CONTRACTORS NENTAL SUPPLY GENERAL PARTNER INC.		C
		REMARKS: WR857783				
WR870844	2015/03/12	CERTIFICATE		BRODY WALL SYSTEM LTD.	144 PARK LTD.	C
		REMARKS: WR863291				
WR874856	2015/04/08	CERTIFICATE		DKS STONE FABRICATION & DESIGN INC.	144 PARK LTD. MADY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION (2009) LTD. MADY CONTRACT DIVISION LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS INC.	C

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\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHCD
MR875305	2015/04/10	CERTIFICATE		SKYWAY CANADA LIMITED	MARSHALZEHR GROUP INC. LAURENTIAN BANK OF CANADA	C
MR876052	2015/04/16	NOTICE	\$2	144 PARK LTD.	144 PARK LTD. ONE 55 MADY LTD.	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
 NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

# **APPENDIX “E”**

## SUPPLEMENTAL DISCLOSURE STATEMENT

### 144 PARK – UPTOWN WATERLOO

November 1, 2014

#### I. GENERAL BACKGROUND

The Declarant issued a Disclosure Statement on April 27, 2009 and a Supplemental Disclosure Statement dated April 1, 2010 for the “144 Park – Uptown Waterloo” proposed condominium (collectively, the “Disclosure Statement”).

The Disclosure Statement provided that the Declarant or a subsidiary body corporate, holding body corporate or affiliated body corporate of the Declarant does not own lands adjacent to the lands described in the description of the Condominium.

The Declarant advised purchasers in letters dated May 26, 2011 and July 21, 2011 that the adjoining lands had been acquired with the intention that a second tower would be constructed on the adjoining lands.

#### II. DEFINITIONS

The terms used in this Supplemental Disclosure Statement shall have the same meanings associated to them as in the Original Disclosure Statement and/or in the *Condominium Act, 1998* as applicable.

#### III. ADJOINING LANDS

It is the current intentions of the Declarant and the owner of the adjoining lands (being a subsidiary body corporate, holding body corporate or affiliated body corporate of the Declarant) to create development composed of two (2) standard condominium towers containing approximately three hundred and twenty six (326) residential condominium units in the aggregate. Presently, the intention is to register each of the two (2) towers as two (2) separate and distinct condominiums. Purchasers should note that the actual location of driveways, streets, buildings and other structures and improvements to be developed within the site may be altered and/or revised to comply with the decisions of phasing, final site plan and other approvals from the Municipality and other appropriate governmental authorities. Subject to the foregoing it is generally presently anticipated that the two (2) towers will consist of the following:

(i) Tower I

The Condominium (sometimes referred to as “**Tower I**”) will consist of a nineteen (19) storey building containing approximately one hundred forty-eight (148) residential condominium dwelling units, together with various other units to be designated for parking, recreational, amenity and other purposes, and one (1) below grade level of parking and three (3) above grade levels of parking.

(ii) Tower II

The condominium to be constructed on the adjacent lands to the north and east of the Condominium (sometimes referred to as “**Tower II**”) is intended to consist of a nineteen (19) storey building containing approximately one hundred seventy-eight (178) residential condominium dwelling units, together with various other units to be designated for parking and other purposes, and one (1) below grade level of parking and three (3) above grade levels of parking.

The parking structure forming part of Tower I and the parking structure forming part of Tower II will be physically joined and there shall be a single shared access into the parking structure. Purchasers are also advised that, depending on market conditions and approvals yet to be obtained, the total number of residential dwelling units in Tower II as well as the number of stories of Tower II may be increased or decreased.

The interior surface road system used by Tower I and Tower II, together with sidewalks, and portions of the underground garages, including the ramps and driving aisles therein (herein referred to as the “**Common Interior Roadway**”) may be designated as parts on a reference plan registered in the Land Registry Office with mutual rights of access, ingress and egress in favour of both of Tower I and Tower II to be established over and upon the Common Interior Roadway leading to and from the respective condominium corporations.

The owners of residential units in Tower I and Tower II will be obligated to contribute towards the costs associated with maintenance, operation and repair of the shared facilities as generally outlined under the enclosed draft form of Declaration and enclosed draft form of Shared Facilities Agreement. However, purchasers are advised that these shared costs represent costs that were already included in the Budget Statement and that the owners of residential units in Tower I will remain responsible for these costs until such time as the Tower II condominium is registered. Therefore, the development of Tower II on the adjoining lands and the sharing of certain costs will not change or financially impact the Budget Statement for the first year of operation of the Condominium.

**IV. RAMIFICATIONS OF THE FOREGOING**

**A. Legal Description**

The legal description for the Condominium remains unchanged.

**B. Budget**

Enclosed with this Supplemental Disclosure Statement are a revised Budget Statement and Schedule of Monthly Common Expense Fees. The total budgeted amount has been updated to reflect inflationary increases. As noted above, the development of Tower II on the adjoining lands and the sharing of certain costs will not change or financially impact the Budget Statement or Schedule of Monthly Common Expense Fees for the first year of operation of the Condominium.

**V. ENCLOSURES**

A. Draft Declaration for Tower I.

B. Draft Shared Facilities Agreement.

C. Updated Budget Statement and Schedule of Monthly Common Expenses for the first year of operation of the Condominium.

**THIS DECLARATION** (hereinafter called the “**Declaration**”) is made and executed pursuant to the provisions of the *Condominium Act, 1998*, S.O. 1998, C.19, and the regulations made thereunder, as amended from time to time (all of which are hereinafter collectively referred to as the “**Act**”), by:

**144 PARK LTD.**  
(hereinafter called the “**Declarant**”)

**WHEREAS:**

- A. The Declarant is the owner in fee simple of certain lands and premises situate in the City of Waterloo, in the Province of Ontario and being more particularly described in Schedule “A” annexed hereto and in the description submitted herewith by the Declarant (hereinafter called the “**Description**”) for registration in accordance with the Act and which lands are sometimes referred to as the “**Lands**” or the “**Property**”;
- B. The Declarant has constructed a building upon the Property containing various units as more particularly described in this Declaration; and
- C. The Declarant intends that the Property together with the building constructed thereon shall be governed by the Act and that the registration of this Declaration and the Description will create a freehold condominium corporation that constitutes a standard condominium corporation.

**NOW THEREFORE THE DECLARANT HEREBY DECLARES AS FOLLOWS:**

**ARTICLE I.**

**INTRODUCTORY**

1.1. Definitions

The terms used in the Declaration shall have the meanings ascribed to them in the Act unless this Declaration specifies otherwise or unless the context otherwise requires and in particular:

- (a) “**Applicable Zoning By-laws**” means the Zoning By-laws, rules or regulations (as amended from time to time) of the City of Waterloo or any governmental authority having jurisdiction;
- (b) “**Barrier Free Parking Units**” means those Parking Units being Units 10 to 15, inclusive, and Unit 18 on Level A, and Unit 18 on Level 3;
- (c) “**Board**” means the Corporation’s Board of Directors;
- (d) “**By-Laws**” means the by-laws of the Corporation enacted from time to time;
- (e) “**Car Wash Unit**” means the Unit designated as such in the Declaration of the Tower II Condominium;
- (f) “**Common Elements**” means all the Property, except the Units;
- (g) “**Common Interior Roadway**” means all of the roads, curbs, driveways, sidewalks, walkways and all street lighting therealong, the garage ramps and portions of the driveway aisles on the Lands or any portions thereof which are used for pedestrian and vehicular ingress and/or egress to and from any of the Two Condominiums;
- (h) “**Condominium**” or “**Tower I Condominium**” means the freehold condominium that is a standard condominium that is created by the registration of this Declaration and the “**Corporation**” means the condominium corporation created upon the registration of the Condominium;
- (i) “**Drive Aisle Units**” means Unit 116 on Level 2 and Unit 54 on Level 3;
- (j) “**Guest Suite Unit**” means Unit 36, Level 3;
- (k) “**Knock-out Panel/Drive Aisle Units**” means Units 98 to 101 inclusive on Level A; Units 117 and 118 on Level 2; and Units 55 and 56 on Level 3;
- (l) “**Knock-out Panel Units**” means Unit 115 on Level 2 and Unit 53 on Level 3

- (m) **“Owner”** means the Owner or Owners of the freehold estate(s) in a Unit, but does not include a mortgagee unless in possession;
- (n) **“Parking Units”** means Units 1 to 65 inclusive, on Level A; Units 9 to 15 inclusive, on Level 1; Units 1 to 25 inclusive, on Level 2; Units 1 to 35 inclusive, on Level 3;
- (o) **“Registration Date”** means the date of the registration of this Declaration;
- (p) **“Residential Units”** means Units 1 to 8 inclusive on Level 1, Units 1 to 9 inclusive, on Level 4; Units 1 to 10 inclusive on Levels 5 to 10 inclusive; Units 1 to 9 inclusive, on Level 11; Units 1 to 10 inclusive on Levels 12 to 14 inclusive; Units 1 to 7 inclusive on Levels 15 to 18 inclusive; Units 1 to 4, inclusive on Level 19;
- (q) **“Rooftop Terrace Units”** means Unit 10 on Level 4 as well as any other unit designated as such in the declaration of the Tower II Condominium;
- (r) **“Rules”** means the Rules passed by the Board;
- (s) **“Shared Facilities”** means certain facilities shared by the Condominium and Tower II, including the Shared Units, Common Interior Roadway, other shared roadways, exhaust fan(s) in underground garage, life safety systems and any other items more particularly set out in the Shared Facilities Agreement;
- (t) **“Shared Facilities Agreement”** or **“SFA”** means the mutual easement and cost-sharing agreement to be entered into between the Condominium and the Tower II Declarant and providing, amongst other things, for the mutual use, maintenance and cost-sharing of the Shared Facilities. The term **“Shared Facilities Agreement”** shall also be deemed to include, in its definition, any supplementary agreement(s) or counterpart agreement(s) which affirms, amends and/or supersedes the original Shared Facilities Agreement between the aforementioned parties and/or their respective successors and assigns;
- (u) **“Shared Facilities Costs”** means the aggregate of all costs and expenses incurred in connection with the Shared Facilities, all as provided in the Shared Facilities Agreement and shall include without limitation, the costs and expenses incurred in connection with the maintenance, repair and operation of the Shared Facilities, including without limitation, the cost of maintaining and repairing all electrical and mechanical equipment, fixtures and installations comprising same or appurtenant thereto, together with the amount of any municipal, provincial or federal taxes and/or common expenses assessments attributable to the Shared Facilities (or any portion thereof);
- (v) **“Shared Units”** means the Car Wash Unit, Rooftop Terrace Units, Visitor Parking Units, Knock-out Panel/Drive Aisle Units, Knock-out Panel Units and Drive Aisle Units which shall ultimately be shared and used by or on behalf of the Two Condominiums for pedestrian and vehicular access and egress and for the maintenance and operation of all mechanical, electrical, utility, site servicing and/or ancillary system(s), serving both of the Two Condominiums, including, without limitation, the Shared Facilities, in accordance with this Declaration and the Shared Facilities Agreement, the ownership of which shall be ultimately conveyed by the Declarant to the Two Condominiums as tenants-in-common;
- (w) **“Storage Units”** means Units 66 to 97 inclusive, on Level A; Units 16 to 28 inclusive, on Level 1; Units 26 to 114 inclusive, on Level 2; Units 37 to 52 inclusive, on Level 3;
- (x) **“Tower II”** or the **“Tower II Condominium”** means the residential condominium being developed by One 55 Mady Ltd. (the **“Tower II Declarant”**) on the lands to the east of the Tower I Condominium and the **“Tower II Corporation”** means the condominium corporation created upon the registration of the Tower II Condominium;
- (y) **“Tower II Lands”** means the lands included in the Tower II Condominium to be described in the declaration of the Tower II Condominium;
- (z) **“Transfer Date”** means the earlier of:
  - (i) the date upon which all residential units in the Condominium and the Tower II Condominium have been sold and conveyed by the Declarant; and
  - (ii) such earlier date at the Declarant may determine in its sole and unfettered discretion;

- (aa) **“Two Condominiums”** or **“the Project”** means the comprehensive development comprised of the Tower I Condominium and the Tower II Condominium, collectively;
- (bb) **“Two Corporations”** means Tower I Corporation and the Tower II Corporation, collectively;
- (b) **“Units”** means all portions of the Condominium designated as a unit, collectively, as the context may require;
- (cc) **“Visitor Parking Units”** means Units 29 to 45 inclusive on Level 1 and any other units designated as such in the Declaration of the Tower II Condominium.

1.2. Act Governs the Lands

The Lands described in Schedule “A” annexed hereto and in the Description together with all interests appurtenant to the Lands are governed by the Act.

1.3. Standard Condominium

The registration of this Declaration and the Description will create a freehold condominium corporation that constitutes a standard condominium corporation.

1.4. Consent of Encumbrancers

The consent of every person having a registered mortgage against the Property or interests appurtenant thereto is contained in Schedule “B” attached hereto.

1.5. Inclusions/Exclusions of Units

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

- (a) Each Residential Unit and Guest Suite Unit **shall include** all pipes, wires, cables, conduits and ducts that supply any service to that particular Unit only, and that lie within or beyond the unit boundaries thereof as more particularly set out in Schedule “C” annexed hereto, and shall specifically include;
  - (i) All electrical receptacles, intercom and alarm controls (excluding only the cable servicing such controls), ventilation fan units, light fixtures lying within suspended ceilings and similar apparatus that supply any service to that particular Unit only, regardless of whether same are installed or located within or beyond the boundaries of said Units; and
  - (ii) Any branch piping extending to the common pipe risers, but excluding only the common pipe risers;
- (b) Each Residential Unit and Guest Suite Unit **shall exclude:**
  - (i) All mechanical heating and cooling systems and appurtenant equipment providing heating and/or cooling to the Residential Units, Guest Suite Unit and common elements;
  - (ii) All concrete, concrete block or masonry portions of load bearing walls or columns located within any of the Units;
  - (iii) All pipes, wires, cables, conduits, ducts, flues, and mechanical or similar apparatus that supply any services to more than one Unit, or to the Common Elements, or that may lie within the boundaries of any particular Residential Unit but which do not service that particular Unit;
  - (iv) All the branch pipes, riser pipes and sprinkler heads that comprise part of the emergency fire protection system within the Building; and
  - (v) All exterior door and window hardware (such as door and/or window handles, locks, hinges and peep holes).
- (c) Each Parking Unit **shall exclude** all fan, pipes, wires, cables, conduits, ducts, flues or similar apparatus (whether used for water drainage, power or otherwise) that supply any service to any Unit or to the Common Elements, together with any heating or air-

conditioning equipment, ducts, flues, shafts, etc. and/or controls of same (whether located within or beyond any walls or floors which may comprise part of the boundaries of any Parking Unit), and shall also exclude any concrete columns, concrete walls or load bearing walls which may be located within or comprise part of the boundaries of any Parking Unit, together with any fire hose cabinets and steel guard rails abutting or affixed to, or hanging from any such columns or walls;

- (d) Each Storage Unit *shall exclude* all fans, pipes, wires, cables, conduits, ducts, flues or similar apparatus (whether used for water drainage, power or otherwise) that supply any service to any Unit or to the Common Elements, together with any heating or air-conditioning equipment, ducts, flues, shafts, etc. and/or controls of same (whether located within or beyond any walls or floors which may comprise part of the boundaries of any Storage Unit), and shall also exclude any concrete columns, concrete walls or load bearing walls which may be located within or comprise part of the boundaries of any Storage Unit, together with any fire hose cabinets abutting or affixed to, or hanging from any such columns or walls;

1.6. Common Interest and Common Expenses

Each Owner shall have an undivided interest in the Common Elements as a tenant in common with all other Owners in the proportions set forth opposite each Unit number in Schedule "D" attached hereto and shall contribute to the common expenses in the proportion set forth opposite each Unit number in Schedule "D" attached hereto. The total of the proportions of the common interests and proportionate contribution to common expenses shall each be one hundred (100%) percent.

1.7. Address for Service, Municipal Address and Mailing Address of the Corporation

The Corporation's address for service shall be 8791 Woodbine Avenue, Suite 100, Markham, Ontario, L3R 0P4 or such, other address as the Corporation may by resolution of the Board determine and the Corporation's mailing address shall be 8791 Woodbine Avenue, Suite 100, Markham, Ontario, L3R 0P4. The Corporation's municipal address is 144 Park Street, Waterloo, Ontario.

1.8. Approval Authority Requirements

The following provisions are required by the approval authority to be included in this Declaration:

- (a) The rights and obligations for Common Elements, including but not limited to access lanes, sanitary, storm and water services, and open space/amenity areas, are set out in this Declaration and specifically in Article III and Article V, paragraph 5.3 herein.
- (b) Owners and occupants are advised of the following:
  - (i) Due to its proximity to King Street (Regional Road No. 15), Allen Street, and Park Street, projected noise levels on this property exceed the noise level objectives approved by the Regional Municipality of Waterloo and may cause concern to some individuals. Moreover, the Residential Units have been fitted with a forced air-ducted heating system suitably sized and designed to permit the future installation of a central air conditioning system by the occupants.
  - (ii) Due to the proximity of the adjacent industry and commercial uses (e.g., commercial/residential buildings on the Bauer Building site, the Brick Brewery site, and the Tower II Condominium site), sound levels from these facilities may at times be audible.
  - (iii) Due to the proximity to the nearby brewery located at 181 King Street South, projected odour levels on this property may occasionally cause concern to some individuals
- (c) The Corporation is subject to the cost sharing arrangements and easements contained in the Shared Facilities Agreement in accordance with the provisions of this Declaration and specifically Article IX herein.
- (d) The Shared Units shall only be transferred in accordance with paragraph 4.12(a) herein.



- (e) The Drive Aisle Units, the Knock-out Panel/Drive Aisle Units and the Knock-out Panel Units shall only be transferred in accordance with paragraph 4.12(a) herein.
- (f) The transfer of the Excess Lands (as defined in Schedule "A" attached hereto) to the Tower II Declarant will be at no cost to the Corporation.
- (g) Until the completion of Tower II, the Declarant shall be required to lease a sufficient number of Visitor Parking Units to Owners and occupants of Residential Units in the Condominium so that there are a sufficient number of parking spaces in the Condominium available for use by owners and residents of Residential Units in the Condominium, in accordance with paragraph 4.10(b) herein.
- (h) The Corporation shall maintain and repair the hardscape/landscape design in front of the main entrance of the Condominium as set out in paragraph 5.3 herein.
- (i) The Corporation shall maintain the public art adjacent to the Property in accordance with paragraph 5.3 herein.
- (j) The Corporation shall maintain all sidewalks, stairs, ramps, driveways, access routes and parking areas on the Property and on public lands between the Property and adjoining public roads in a clear, safe and snow free condition in accordance with paragraph 5.3.
- (k) The Corporation shall be responsible for signage for visitor and barrier free parking if such spaces are owned by the Corporation and used for such purposes, and the visitor parking spaces must not be transferred or leased except at no cost to the Corporation or the Tower II Corporation.

1.9. Architect/Engineer Certificates

The certificate(s) of the architect and/or engineer(s) that all buildings on the Property have been constructed in accordance with the regulations made under the Act is/are contained in Schedule "G" attached hereto.

## ARTICLE II.

### COMMON EXPENSES

2.1. Specification of Common Expenses

The common expenses shall comprise the expenses of the performance of the objects and duties of the Corporation and such other expenses, costs and sums of money incurred by or on behalf of the Corporation that are specifically designated as (or collectible as) common expenses pursuant to the provisions of the Act and/or this Declaration and without limiting the generality of the foregoing, shall include the specific expenses set out in Schedule "E" attached hereto.

2.2. Payment of Common Expenses

Each Owner shall pay to the Corporation his or her proportionate share of the common expenses and the assessment and collection of contributions toward common expenses may be regulated by the Board pursuant to the By-Laws. In addition to the foregoing, any losses, costs or damages incurred by the Corporation by reason of a breach of any provision of this Declaration, or in any By-Laws or Rules in force from time to time by any Owner, or by members of his or her family and/or their respective tenants, invitees or licensees shall be borne and paid for by such Owner and may be recovered by the Corporation against such Owner in the same manner as common expenses.

2.3. Reserve Fund

- (a) The Corporation shall establish and maintain one or more Reserve Funds and shall collect from the Owners as part of their contribution towards the common expenses, all amounts that are reasonably expected to provide sufficient funds for major repair and replacement of Common Elements and assets of the Corporation all in accordance with the provisions of the Act.
- (b) No part of any Reserve Fund shall be used except for the purpose for which the fund was established. The Reserve Fund(s) shall constitute an asset of the Corporation and shall not be distributed to any Owner(s) except on termination of the Corporation in accordance with the provisions of the Act.

- (c) However, for the purposes of the Act, this Declaration and/or the Shared Facilities Agreement, any and all portions of the Shared Facilities, not comprising part of the registered description plan of this Condominium shall be deemed to be an "asset" of the Corporation for the purposes of utilizing any of its Reserve Fund(s) in connection with this Corporation's responsibility to share in the cost of repairing and/or replacing the Shared Facilities.

2.4. Status Certificate

The Corporation shall provide a status certificate to any requesting party who has paid (in advance) the applicable fees charged by the Corporation for providing same, in accordance with the provisions of the Act, together with all accompanying documentation and information prescribed by the Act. The Corporation shall forthwith provide the Declarant (and/or any purchaser, transferee or mortgagee of a Unit from the Declarant) with a status certificate and all such accompanying documentation and information, as may be requested from time to time by or on behalf of the Declarant (or by any such purchaser, transferee or mortgagee), all at no charge or fee to the Declarant or the person requesting same on behalf of the Declarant.

ARTICLE III.

COMMON ELEMENTS

3.1. Use of Common Elements

Subject to the provisions of the Act, this Declaration, the By-Laws and any Rules, each Owner has the full use, occupancy and enjoyment of the whole or any parts of the Common Elements, except as herein otherwise provided.

However, save and except as expressly provided or contemplated in this Declaration to the contrary, no condition shall be permitted to exist, and no activity shall be carried on, within any unit or upon any portion of the Common Elements that:

- (a) will result in a contravention of any term or provision set out in the Act, this Declaration, the By-Laws and Rules of the Corporation;
- (b) is likely to damage the property of the Corporation, injure any person, or impair the structural integrity of any Unit or the Common Elements;
- (c) will unreasonably interfere with the use and enjoyment by the other Owners of the Common Elements and/or their respective Units;
- (d) may result in the cancellation (or threatened cancellation) of any policy of insurance obtained or maintained by the Corporation, or that may significantly increase any applicable insurance premium(s) with respect thereto, or any deductible portion in respect of such policy; or
- (e) would lead to a contravention by the Corporation or by other owners of the Applicable Zoning By-laws or of any terms or provisions of any agreements with any municipal or other governmental authority and which are registered on title to the Property or which otherwise affect the Property ("**Development Agreements**") or which would require obtaining the consent or approval of any person pursuant to the terms of the Development Agreements.

No one shall, by any conduct or activity undertaken in or upon any part of the Common Elements, impede, hinder or obstruct any right, privilege, easement or benefit given to any party, person or other entity pursuant to this Declaration, any By-laws and/or the Rules.

No sign, advertisement or notice of any type shall be inscribed, painted, affixed or displayed on the Common Elements except for signs marketing or other services by the Declarant and/or its related companies.

3.2. Exclusive Use Common Elements

Subject to the provisions of and compliance with the Act, this Declaration, the By-Laws and the Rules, the Owners of Unit(s) listed in Schedule "F" attached hereto shall have the exclusive use and enjoyment of those parts of the Common Elements more particularly described in Schedule "F" which are respectively allocated to the Unit(s).

Each Owner, upon the Corporation's request, shall provide to the Corporation or to any of its authorized workmen, servants, agents or contractors access to and use of the exclusive use Common Elements for the purpose of facilitating the maintenance and repair of any other part of the Common Elements, any other Unit or any other part of the building and, in particular, and without limiting the generality of the foregoing, for the purpose of installing or operating window washing equipment.

### 3.3. Restricted Access

- (a) Without the consent in writing of the Board, no Owner shall have the right of access to those parts of the Common Elements used from time to time for the care, maintenance or operation of the Property or any part thereof as designated by the Board, from time to time.
- (b) No one shall be entitled to place or affix any matter or thing directly on top of any rooftop structure which encloses or houses the mechanical and chiller room, the elevator shafts, the stairwells, the Communication Unit(s), the catwalks, the cooling tower, the boiler room and/or the fresh air ducts.
- (c) This paragraph shall not apply to any mortgagee holding mortgages on at least thirty percent (30%) of the Units who shall have a right of access for inspection upon forty-eight (48) hours notice to the Corporation or its property manager.

### 3.4. Modifications of Common Elements, Assets and Services

#### (a) General Prohibition

No Owner shall make any change or alteration to the Common Elements whatsoever, including any installation(s) thereon, nor alter, decorate, renovate, maintain or repair any part of the Common Elements (except for maintaining those parts of the Common Elements which he or she has a duty to maintain in accordance with the provisions of this Declaration) without obtaining the prior written approval of the Board and having entered into an agreement with the Corporation in accordance with Section 98 of the Act.

#### (b) Non-Substantial Additions, Alterations and Improvements by the Corporation

The Corporation may make a non-substantial addition, alteration, or improvement to the Common Elements, a non-substantial change in the assets of the Corporation or a non-substantial change in a service that the Corporation provides to the Owners in accordance with subsections 97(2) and (3) of the Act.

#### (c) Substantial Additions, Alterations and Improvements by the Corporation

The Corporation may, by a vote of Owners who own at least sixty-six and two thirds (66 $\frac{2}{3}$ %) percent of the Units, make a substantial addition, alteration or improvement to the Common Elements, a substantial change in the assets of the Corporation or a substantial change in a service the Corporation provides to the Owners in accordance with subsections 97 (4), (5) and (6) of the Act.

### 3.5. Declarant Rights

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

- (a) the Declarant or a subsidiary body corporate, holding body corporate or affiliated body corporate of the Declarant (including, without limitation, the Tower II Declarant) and their respective authorized agents, representatives and/or invitees shall have free and uninterrupted access to and egress from the Common Elements, including the Shared Units for the purposes of implementing, operating and/or administering the Declarant's marketing, sale, construction and/or customer-service program(s) with respect to any Units in the Condominium or in the Tower II Condominium or any other condominiums hereinafter marketed by the Declarant or any of its subsidiaries or affiliates from locations within the Property, from time to time;
- (b) the Declarant or a subsidiary body corporate, holding body corporate or affiliated body corporate of the Declarant (including, without limitation, the Tower II Declarant) and their respective authorized agents or representatives shall be entitled to erect and maintain

signs and displays for marketing/sale purposes, as well as model suites and one or more offices for marketing, sales, construction and/or customer-service purposes, upon any portion of the Common Elements and within or outside any unsold Units, within the Shared Units, and within and at such other locations and having such dimensions as either the Declarant or the Tower II Declarant may determine in its sole and unfettered discretion, all without any charge to the Declarant or the Tower II Declarant for the use of the space(s) so occupied, nor for any utility services (or any other usual or customary services) supplied thereto or consumed thereby, nor shall the Corporation (or any one else acting on behalf of the Corporation) prevent or interfere with the provision of utility services (or any other usual or customary services) to the marketing/sales/construction/customer-service office(s) of the Declarant or the Tower II Declarant and said model suites; and

- (c) the Corporation shall ensure that no actions or steps are taken by anyone which would prohibit, limit or restrict the access and egress of the Declarant or a subsidiary body corporate, holding body corporate or affiliated body corporate of the Declarant (including, without limitation, the Tower II Declarant) and their respective authorized agents, representative and/or invitees in and to the Shared Units and over the Common Elements of the Corporation;

until one year after the date that all Residential Units in the Condominium and the Tower II Condominium have been transferred by the Declarant or the Tower II Declarant or the relevant subsidiary or affiliate.

### 3.6. Pets

No animal, livestock or fowl, other than those household domestic pets as permitted pursuant to Article IV of this Declaration are permitted to be on or about the Common Elements, including the exclusive use Common Elements, except for ingress to and egress from a Unit. All dogs and cats must be kept under personal supervision and control and held by leash at all times during ingress and egress from a Unit and while on the Common Elements. Notwithstanding the generality of the foregoing, no pet deemed by the Board, in their sole and absolute discretion, to be a danger to the residents of the Condominium is permitted to be on or about the Common Elements.

## ARTICLE IV.

### UNITS

#### 4.1. General Restrictions

The occupation and use of the Units shall be in accordance with the following restrictions and stipulations:

- (a) No Unit shall be occupied or used by an Owner or anyone else, in such a manner as is likely to damage or injure any person or property (including any other Units or any portion of the Common Elements) or in a manner that will impair the structural integrity, either patently or latently, of the Units and/or Common Elements, or in a manner that will unreasonably interfere with the use or enjoyment by other owners of the Common Elements or their respective Units, or that may result in the cancellation or threat of cancellation of any insurance policy referred to in this Declaration, or that may increase any insurance premiums with respect thereto, or in such a manner as to lead to a breach by an Owner or by the Corporation of any provisions of this Declaration, the By-Laws, and/or any agreement authorized by By-Law. If the use made by an Owner of a Unit, other than the Declarant (except as is contemplated in this Declaration or in the By-Laws, or in any agreement authorized by By-Law) causes injury to any person or causes latent or patent damage to any Unit or to any part of the Common Elements or results in the premiums of any insurance policy obtained or maintained by the Corporation being increased, or results in such policy being canceled, then such Owner shall be personally liable to pay and/or fully reimburse the Corporation for all costs incurred in the rectification of the aforesaid damages, and for such increased portion of the insurance premiums so payable by the Corporation (as a result of such Owner's use) and such Owner shall also be liable to pay and/or fully reimburse the Corporation for all other costs, expenses and liabilities suffered or incurred by the Corporation as a result of such owner's breach of the foregoing provisions of this subparagraph and such Owner shall pay with his or her next monthly contribution towards the common expenses after receipt

of a notice from the Corporation, all increases in premiums in respect of such policy or policies of insurance. All payments pursuant to this clause are deemed to be additional contributions towards common expenses and recoverable as such.

- (b) Each Owner shall comply, and shall require all members of his or her family, occupants, tenants, invitees, servants, agents, contractors and licensees of his or her Unit to comply with the Act, the Declaration, the By-Laws, and all agreements authorized by By-law and the Rules.
- (c) No change shall be made in the colour of any exterior glass, window, door or screen of any Unit except with the prior written consent of the Board. Each Owner shall ensure that nothing is affixed, attached to, hung, displayed or placed on the exterior walls, including awnings and/or storm shutters, doors or windows of the building, nor shall an Owner grow any type of plant, shrubbery, flower, vine or grass outside his Unit, except with the prior written consent of the Board, and further, when approved, subject to the Rules. All shades or other window coverings shall be white or off white when visible from the outside and all draperies shall be lined in white or off white to present a uniform appearance to the exterior of the building. No clothesline or similar device shall be allowed on any portion of the Property nor shall clothes or other laundry be hung anywhere on the Property.
- (d) No exterior aerial, antenna or satellite dish shall be placed on the Property, including Units and Common Elements. Notwithstanding the foregoing, the Corporation shall be permitted to place one or more satellite dishes on the roof of the building if required to provide communication and television service to Units in the Condominium.
- (e) No sign, advertisement or notice of any type shall be inscribed, painted, affixed or displayed on any part of the outside of any Residential Unit, except for signs marketing condominiums by the Declarant and/or its related companies.

#### 4.2. Residential Units

- (a) Each Residential Unit shall be occupied and used in accordance with the applicable zoning by-laws pertaining to the Property and for no other purpose whatsoever. The number of individuals who may occupy a Residential Unit shall be the same as the number permitted by the local municipal by-laws from time to time. The foregoing shall not prevent the Declarant from completing the buildings and all improvements to the Property, maintaining Units as models for display and sale purposes, and otherwise maintaining offices, displays and signs for marketing/sales/leasing/customer service purposes upon the Common Elements, and within or outside any Unit to which the Declarant still holds title, until one year following the date that all Units in the Condominium (or in any other condominium marketed by the Declarant or any of its subsidiaries or affiliates from the Property) have been conveyed by the Declarant, the Tower II Declarant or their respective related companies.
- (b) No animal, livestock or fowl of any kind other than general household, domestic pets defined as being not more than two (2) of the following: dogs; cats; canaries, budgies or other small caged birds; or an aquarium of goldfish or tropical fish; or small caged animals usually considered to be a domestic pet shall be kept or allowed in any Unit. No pet which is deemed by the Board or the property manager, in their absolute discretion, to be a nuisance shall be kept by any Owner in any Unit. Such Owner shall, within two (2) weeks of receipt of a written notice from the Board requesting the removal of such pet, permanently remove such pet from the Property. Notwithstanding the generality of the foregoing, no pet deemed by the Board in its sole and absolute discretion, to be a danger to the residents of the Condominium shall be permitted in any Unit. No breeding of animals for sale shall be carried on, in or around any Unit. For the purpose of this Declaration the term "general household pet" shall mean a dog, domestic cat, caged bird or fish, or any other animal that the Board may designate as a common household pet in its sole and absolute discretion, from time to time. Notwithstanding the foregoing, no pet classified as an "attack dog" by the Corporation, in its sole and unfettered discretion, shall be permitted to be kept in any Unit and/or on the Common Elements of the Condominium at any time.
- (c) In the event the Board determines, in its sole discretion, acting reasonably, that any noise, odour or offensive action is being transmitted to another Unit or the common elements and that such noise, odour or offensive action is an annoyance and/or a nuisance and/or disruptive (regardless of whether that Unit is adjacent to or wherever situated in relation to the offending Unit), then the Owner of such Unit shall at his or her own expense take

such steps as shall be necessary to abate such noise, odour or offensive action to the satisfaction of the Board. In the event the Owner of such Unit fails to abate the noise, odour or offensive action, the Board shall take such steps as shall be necessary to abate the noise, odour or offensive action and the Owner shall be liable to the Corporation for all expenses incurred by the Corporation in abating the noise, odour or offensive action, which expenses are to include reasonable solicitor's fees on a substantial indemnity basis, which shall be deemed to be additional contributions to common expenses and are recoverable as such.

- (d) No Owner of a Unit shall make any change, addition, modification or alteration, except for any change, addition modification or alteration which is solely decorative in nature, in or to his Residential Unit or make any change, addition, modification or alteration to an installation upon the Common Elements, or maintain, decorate, alter or repair any part of the Common Elements, except for maintenance of those parts of the Common Elements which he has the duty to maintain, without the prior written consent of the Board, which consent shall be in the sole and unfettered discretion of the Board and may be subject to such conditions as may be determined by the Board;
- (e) (i) For the purpose of this subparagraph, "Vertical/Horizontal Party Wall" means a vertical or horizontal wall constructed along the boundary between two (2) Residential Units shown in the Description as a vertical plane. Where and to the extent that concrete, concrete block or masonry portions of walls/floors/ceilings or columns located within the Residential Unit are not load-bearing walls or columns, and contain no service conduits that service any other Unit or the Common Elements, an Owner may, upon executing an agreement pursuant to Section 98 of the Act, and with prior written consent of the Board which may attach any reasonable condition to its consent, including obtaining the approval of the insurer of the Property and the Owner's written agreement to indemnify and save the Corporation harmless from and against any and all costs, expenses, damages, claims, and/or liabilities which the Corporation may suffer or incur as a result of or in connection with such work:
- A. erect, remove or alter any internal walls or partitions within his or her Residential Unit; or
- B. where he/she is the Owner of two (2) or more adjoining Residential Units, erect, remove or alter along all or part of those portions of the vertical or horizontal boundaries of each of such adjoining Residential Units shown in the Description as a line or plane, any Vertical/Horizontal Party Wall between his or her Residential Unit and such adjoining Residential Unit, or any soundproofing or insulating material on his or her Residential Unit side of such Vertical/Horizontal Party Wall.
- (ii) Prior to performing any work which an Owner is entitled to perform pursuant to subparagraph (i) above, the Owner shall lodge with the Board the drawings and specifications detailing the location, materials and method of construction and installation of such work, together with a certificate addressed to the Corporation from a duly qualified architect and/or structural engineer certifying that if the work is carried out in accordance with the drawings and data so lodged with the Board, the structural integrity of the Common Elements will not be impaired and such work will not interfere with or impair any structure where there is functioning or operating machinery and equipment which is part of the Common Elements.
- (iii) All work performed under subparagraph (i) above will be carried out in accordance with, the provisions of all relevant municipal and other governmental by-laws, rules, regulations or ordinances and the provisions of the By-Laws of the Corporation and the conditions, if any, of approval by the Board and the drawings, specifications and data lodged with the Board.
- (iv) Forthwith following the completion of any work which an Owner is entitled to perform pursuant to subparagraph (i) above, the Owner shall deliver a further certificate from the said architect and/or engineer, or such other architect and/or engineer as may be acceptable to the Board, certifying that the work has in fact been completed in accordance with the drawings and data previously lodged with the Board, the structural integrity of the Common Elements has not been impaired, and that such work has not interfered with or impaired any structure or

the functioning or operation of any machinery and equipment which is part of the Common Elements; or failing such certifications, specifying in reasonable detail the reasons why such certification cannot be made.

- (v) Notwithstanding the removal of the whole or any portion of any demising or partition wall or floor/ceiling as aforesaid, the adjoining Residential Units thereto shall still constitute two separate Residential Units, as illustrated in the Description and all rights and obligations of the Owner(s) of the said two adjoining Residential Units, whether arising under the Act, the Declaration, the By-Laws or the Rules of the Corporation, shall remain unchanged.
- (f) No boundary, load-bearing or partition wall, floor, door or window, toilet, bath tub, wash basin, sink, heating, plumbing or electrical installation contained in or forming part of a Unit shall be installed, removed, extended or otherwise altered without the prior written consent of the Board, but the provisions of this subparagraph shall not require any Owner to obtain the consent of the Corporation for the purpose of painting or decorating the surface of any wall, floor or ceiling which is within any Unit.

#### 4.3. Storage Units

- (a) Each Storage Unit may only be used for the storage of non-hazardous materials which materials shall not constitute a danger or nuisance to the residents of the Condominium, the Units or the Common Elements.
- (b) The Declarant, at its option, shall have the right to use and allow its sales staff, authorized personnel or any prospective purchaser or tenant to use any unsold Storage Units which right shall continue until such time as all the Residential Units in this Corporation have been transferred.
- (c) Any or all of the Storage Units may at any time be sold, leased, charged, transferred or otherwise conveyed, either separately or in combination with any other Units, provided however, any sale, transfer, assignment or other conveyance of any Storage Unit shall be made only to the Declarant, to the Corporation, or to any Owner of a Residential Unit in the Condominium. Storage Units may be leased to tenants in actual occupation of Residential Units in this Condominium. Any instrument or other document purporting to affect a sale, transfer, assignment or other conveyance of any Storage Unit, in contravention of any of the foregoing provisions, shall be deemed to be null and void and of no force and effect whatsoever.
- (d) No Owner, other than the Declarant or an entity related to the Declarant, shall retain ownership of a Storage Unit after such Owner has sold or conveyed title to all of his or her Residential Units.
- (e) Any instrument or other document purporting to affect a sale, transfer, assignment or other conveyance of any Storage Unit, in contravention of any of the foregoing provisions, shall be deemed to be null and void and of no force and effect whatsoever.

#### 4.4. Parking Units

- (a) Each Parking Unit shall be used and occupied only for the parking of motor vehicles as may be from time to time defined in the Rules of the Corporation. It shall be the responsibility of the Owners to ensure that their vehicles can be properly operated and/or parked in the parking structure within the Property. The Owners of Parking Units shall not permit any portion of any motor vehicle parked within a Parking Unit to protrude beyond the boundaries of the Parking Unit and encroach upon any portion of the Common Elements or upon any other Unit. Each Owner shall maintain his or her Parking Unit in a clean and sightly condition, notwithstanding that the Corporation may make provision in its annual budget for cleaning of Parking Units.
- (b) The Declarant, at its option, shall have the right to use and allow its customer service staff, sales staff, authorized personnel or any prospective purchaser or tenant to use any unsold Parking Units which right shall continue until one year following such time as all the Residential Units in this Condominium and in the Tower II Condominium have been transferred.
- (c) Subject to the requirements of any applicable governing authority, any or all of the Parking Units may at any time be sold, leased, charged, transferred or otherwise conveyed, either separately or in combination with any other Units, provided however,

any sale, transfer, assignment or other conveyance of any Parking Unit shall be made only to the Declarant, to the Corporation, to the Corporation, or to any Owner of a Residential Unit in the Condominium or in the Tower II Condominium. Parking Units may be leased to tenants in actual occupation of Residential Units in this Condominium or in the Tower II Condominium. Any instrument or other document purporting to affect a sale, transfer, assignment or other conveyance of any Parking Unit, in contravention of any of the foregoing provisions, shall be deemed to be null and void and of no force and effect whatsoever.

- (d) No Owner, other than the Declarant or an entity related to the Declarant, shall retain ownership of a Parking Unit after such Owner has sold or conveyed title to all of his or her Residential Units.
- (e) Notwithstanding the provisions of this paragraph, in the event the Corporation becomes the Owner of any of the Parking Units the Board may, from time to time, designate the said Units for alternate uses, provided that such alternate use is in accordance with the requirements and the by-laws of the City of Waterloo and approved by the requisite number of Owners at a meeting duly called for that purpose.
- (f) Any instrument or other document purporting to affect a sale, transfer, assignment or other conveyance of any Parking Unit, in contravention of any of the foregoing provisions, shall be deemed to be null and void and of no force and effect whatsoever.
- (g) The Barrier Free Parking Units shall be subject to the following:
  - (i) In the event that a "disabled driver", as defined in the regulations promulgated pursuant to the *Highway Traffic Act*, R.S.O. 1990, c.H.8, as amended from time to time, including a driver whose licence plate incorporates the international symbol for the disabled, purchases or leases a Residential Unit and a Parking Unit which is not a Barrier Free Parking Unit, the owner or any person occupying the Barrier Free Parking Unit shall (if not disabled), upon notice from the Corporation and at the request of the disabled driver, exchange the right to occupy the Barrier Free Parking Unit with the disabled driver for the Parking Unit which was purchased or leased by the disabled driver, said exchange of the right to occupy said space to continue for the full period of the disabled driver's residence in the building.
  - (ii) When a disabled driver requests an exchange of occupancy rights for the Barrier Free Parking Unit, the Corporation shall forthwith notify the Owner of and any person occupying the Barrier Free Parking Unit and the Owner and/or occupant shall complete the exchange of use immediately upon delivery of the notice provided said Owner or occupant is not a disabled driver.
  - (iii) No rent, charges, fees or costs whatsoever shall be charged by the owner, occupant or the Corporation in connection with the exchange of the right to occupy.
  - (iv) Notwithstanding the provisions of paragraph 4.4(c) hereof, the Barrier Free Parking Units may only be transferred to owners of Residential Units in this Condominium.

#### 4.5. Guest Suite Unit

The Guest Suite Unit shall only be used to provide overnight accommodation for the guests of the owners and tenants of the Residential Units in the Condominium and a service/cleaning charge will have to be paid, in advance for each night of occupancy thereof, in accordance with the rules and regulations passed by the Board from time to time in connection therewith. The use of Guest Suite Unit shall be subject to the terms and provisions of all applicable municipal by-laws and regulations pertaining to the Property, and any agreement(s) entered into by the Corporation with any management/cleaning firm pertaining to same, and shall also be governed by the rules and regulations of the Corporation in force from time to time. The Corporation shall purchase the Guest Suite Unit from the Declarant for a purchase price of One Hundred and Sixteen Thousand (\$116,000.00) plus HST, and exclusive of Land Transfer Tax and registration fees. The Corporation shall give and the Declarant (or such entity as directed by the Declarant) shall take back a mortgage (the "**Mortgage**") for the full purchase price. The Mortgage shall bear no interest for the first year of the term and thereafter, for the balance of the term, shall bear interest at a fixed rate of interest being four (4.0%) percent over the Government of Canada Ten Bond Yield in effect on the Registration Date for ten year bonds, calculated semi-annually, not in



advance. The Mortgage shall have a term of eleven (11) years commencing on the Registration Date. Blended monthly instalments on account of principal and interest shall be computed based on an amortization period of ten (10) years and shall be payable commencing on the thirteenth month following the date of registration of this Declaration.

4.6. Knock-out Panel/Drive Aisle Units

The Knock-out Panel/Drive Aisle Units shall comprise portions of the walls of the garage constructed as part of the Condominium as well as portions of the drive aisle in the garage of the Condominium. Provided that it is satisfied that same will not negatively impact the structural integrity of the building constructed on the Property, the Owner of the Knock-out Panel/Drive Aisle Units shall have the right in its sole and absolute discretion and at any time or times to remove the knock-out panels within the Knock-out Panel/Drive Aisle Units in conjunction with the construction and development of the Tower II Lands and the garage(s) to be constructed thereon in order to allow for access through the garage within the Condominium to the garage constructed (or to be constructed) on the Tower II Lands. Title to the Knock-out Panel/Drive Aisle Units may not be transferred to any other person, firm, corporation or entity other than as set out in paragraph 4.12 hereof. Until the Tower II Lands are developed and the Knock-out Panel/Drive Aisle Unit is used for access by the Tower II Lands, the Knock-out Panel/Drive Aisle Unit may be used in the same manner as Parking Units or as visitor parking spaces. It shall be a continuing duty of the Corporation to ensure that no actions or steps are taken by or on behalf of the Corporation, or by any Owner which would limit, hinder or interfere with the Owner of the Knock-out Panel/Drive Aisle Units' right and ability to use the Knock-out Panel/Drive Aisle Units for the purposes as set out herein. All Owners within the Condominium and the Tower II Condominium shall have the right to access over the Knock-out Panel/Drive Aisle Units as necessary to access parking units, Storage Units or the common elements within the Condominium and the Tower II Condominium.

4.7. Knock-out Panel Units

The Knock-out Panel Units shall comprise portions of the walls of the garage constructed as part of the Condominium. Provided that it is satisfied that same will not negatively impact the structural integrity of the building constructed on the Property, the Owner of the Knock-out Panel Units shall have the right in its sole and absolute discretion and at any time or times to remove the knock-out panels within the Knock-out Panel Units in conjunction with the construction and development of the Tower II Lands and the garage(s) to be constructed thereon in order to allow for access through the garage within the Condominium to the garage constructed (or to be constructed) on the Tower II Lands. Title to the Knock-out Panel Units may not be transferred to any other person, firm, corporation or entity other than as set out in paragraph 4.12 hereof. It shall be a continuing duty of the Corporation to ensure that no actions or steps are taken by or on behalf of the Corporation, or by any Owner which would limit, hinder or interfere with the Owner of the Knock-out Panel Units' right and ability to use the Knock-out Panel Units for the purposes as set out herein. All Owners within the Condominium and the Tower II Condominium shall have the right to access over the Knock-out Panel Units as necessary to access parking units, Storage Units or the common elements within the Condominium and the Tower II Condominium.

4.8. Drive Aisle Units

The Drive Aisle Units shall comprise portions of the drive aisle in the garage of the Condominium. Title to the Drive Aisle Units may not be transferred to any other person, firm, corporation or entity other than as set out in paragraph 4.12 hereof. Until the Tower II Lands are developed and the Drive Aisle Unit is used for access by the Tower II Lands, the Drive Aisle Unit may be used in the same manner as Parking Units or as visitor parking spaces. It shall be a continuing duty of the Corporation to ensure that no actions or steps are taken by or on behalf of the Corporation, or by any Owner which would limit, hinder or interfere with the Owner of the Drive Aisle Units' right and ability to use the Drive Aisle Units for the purposes as set out herein. All Owners within the Condominium and the Tower II Condominium shall have the right to access over Drive Aisle Units as necessary to access parking units, Storage Units or the common elements within the Condominium and the Tower II Condominium.

4.9. Rooftop Terrace Unit

- (a) The Rooftop Terrace Unit may be used by Owners during any part of the year when there is no snow on the roof. The Rooftop Terrace Unit may also be used by visitors to the Condominium and to the Tower II Condominium. The Rooftop Terrace Unit may not be leased or sold to any Owner or otherwise assigned. The Rooftop Terrace Unit shall be maintained by the Corporation and the Tower II Corporation pursuant to the Shared Facilities Agreement.

- (b) Nothing shall be brought onto or located on the Rooftop Terrace Unit unless approved by the Board in writing or permitted under the rules and regulation of the Condominium set by the Board from time to time.
- (c) Notwithstanding any other provision hereof and notwithstanding any Bylaw or Rule of the Corporation, the Declarant and any related person, firm or Corporation shall, until the Transfer Date, be entitled to use all or any portion of the Rooftop Terrace Unit as a staging area for the construction of Tower II, and the Declarant shall maintain the Rooftop Terrace Unit while the Declarant is using the Rooftop Terrace Unit as such staging area.

#### 4.10. Visitor Parking Units

- (a) The parking spaces within the Visitor Parking Units shall be for use by visitors to the Condominium and to the Tower II Condominium. The Visitor Parking Units may not be leased or sold to any Owner or otherwise assigned. The Visitor Parking Units shall be maintained by the Corporation and the Tower II Corporation pursuant to the Shared Facilities Agreement and shall be used by visitors to the Property for the parking of their motor vehicles and shall not be used by Owners or for any other purpose whatsoever. The parking spaces within the Visitor Parking Units shall be designated as visitor parking by means of clearly visible signs. The Declarant, its sales and management personnel, agents, sub-trades, invitees and prospective purchasers, may park motor vehicles within the Visitor Parking Units until such time as title to all Residential Units in the Condominium and in the Tower II Condominium has been conveyed by the Declarant.
- (b) Notwithstanding the foregoing provisions of this Section 4.10, until the completion of Tower II, the Declarant shall be permitted to lease Visitor Parking Units to Owners or occupants of Residential Units in the Condominium and shall be required to lease a sufficient number of Visitor Parking Units to Owners and occupants of Residential Units in the Condominium so that there are a sufficient number of parking spaces in the Condominium available for use by owners and residents of Residential Units in the Condominium.

#### 4.11. Shared Units

- (a) Ownership of the Shared Units shall be shared between the Two Condominiums as referenced in the Shared Facilities Agreement. The actual transfer of ownership of an undivided interest in the Shared Units by the Declarant to the respective condominium corporations shall occur within one hundred and twenty (120) days after the Transfer Date.

#### 4.12. Division of Shared Units

- (a) The Shared Units shall only be transferred to the Corporation or the Tower II Condominium, as tenants in common, at no charge.
- (b) Ownership of the Shared Units shall be shared between the Two Corporations with each of the Two Corporations owing a fraction of such units, the numerator of which is the number of residential condominium dwelling units in that Condominium and the denominator of which is the total number of residential condominium dwelling units in the Two Condominiums.
- (c) Once ownership of the Shared Units has been transferred to the Two Corporations by the Declarant as aforesaid, any further sale, transfer, mortgage, charge, encumbrances or other conveyance of the whole or any portion of the Shared Units (including any sale, transfer, mortgage, charge, encumbrance or other conveyance of the beneficial ownership or interest in the Shared Units) shall require (in addition to any other approvals which may be required pursuant to the provisions of the Act, this Declaration and/or the Shared Facilities Agreement) the prior written consent of the other co-tenant(s) of the Shared Units purported to be so sold, mortgaged, charged or encumbered, together with the prior approval of two-thirds of the Owners if the Corporation is purporting to so sell, transfer, mortgage, charge or encumber its interest in the Shared Units (with such Unit Owners' approvals being procured from Owners who are present, in person or by proxy, at a meeting duly called for the purpose of obtaining such approval). In addition, every new owner, mortgagee, chargee or encumbrancer of the Shared Units shall be required to execute (by way of counterpart or otherwise) an agreement in favour of the co-tenant(s) of the Shared Units, covenanting to be bound by all of the terms and provisions of the

Declaration and the Shared Facilities Agreement to the same extent and effect as if it had been an original party thereto.

- (d) Any instrument or other document purporting to sell, transfer, convey, mortgage, charge or encumber an owner's undivided interests as tenants-in-common in the Shared Units, without the requisite consents being given, or without the new agreement or counterpart being executed and delivered (as the case may be) as required in the immediately preceding subparagraph, shall be null and void and of no force or effect whatsoever.

#### 4.13. Leasing of Units

- (a) Where an Owner leases his/her Unit, the Owner shall within thirty (30) days of entering into a lease or a renewal thereof:
  - (i) notify the Corporation that the Unit is leased;
  - (ii) provide the Corporation with the lessee's name, the Owner's address and a copy of the lease or renewal or a summary of it in accordance with Form 5 as prescribed by Section 40 of Regulation 49/01; and
  - (iii) provide the lessee with a copy of the Declaration, By-Laws and rules of the Corporation.
- (b) If a lease of the Unit is terminated and not renewed, the Owner shall notify the Corporation in writing.
- (c) No tenant shall be liable for the payment of common expenses unless notified by the Corporation that the Owner is in default of payment of common expenses, in which case the tenant shall deduct, from the rent payable to the Owner, the Owner's share of the common expenses and shall pay the same to the Corporation.
- (d) Any Owner leasing his/her Unit shall not be relieved thereby from any of his/her obligations with respect to the Unit, which shall be joint and several with his/her tenant.
- (e) The term of any lease of a Parking Unit shall terminate immediately upon the tenant ceasing to reside in a Residential Unit in the Condominium or in the Tower II Condominium.
- (f) The term of any lease of a Storage Unit shall terminate immediately upon the tenant ceasing to reside in a Residential Unit in the Condominium.
- (g) No Owner shall be permitted to lease a Residential Unit in the Condominium for periods of less than six (6) months.

### ARTICLE V.

#### MAINTENANCE AND REPAIRS

##### 5.1. Repairs and Maintenance by Owner

- (a) Each Owner shall maintain his or her Unit, and subject to the provisions of this Declaration, each Owner shall repair his or her Unit after damage, all at his or her own expense. Without limiting the generality of the foregoing, each Owner shall maintain and repair:
  - (i) the interior surface of doors which provide the means of ingress and egress from his or her Residential Unit and repair damage to those doors caused by the negligence of the Owner, residents, family members, guests, visitors, tenants, licensees or invitees to his or her Unit;
  - (ii) the interior surface of all windows in Residential Units and interior and exterior surfaces of all windows and window sills contiguous to his or her Unit and which are accessible by the terrace, balcony or patio; and shall be responsible for the costs incurred by the Corporation to repair damage to those windows caused by the negligence of the Owner, residents, family members, guests, visitors, tenants, licensees or invitees to the Unit;
  - (iii) all pipes, wires, cables, conduits, ducts and mechanical or similar apparatus, that supplies any service to his or her Unit only;

- (iv) all exhaust fans and fan motors located in the kitchen and bathroom areas of the Unit or adjacent Common Elements and services the Unit;
  - (v) his/her Parking Unit and/or Storage Unit in a clean and sightly condition, notwithstanding that the Corporation may make provision in its annual budget for the cleaning of the Parking Units and/or Storage Units;
  - (vi) the terrace, balcony or patio to which the Unit has direct access (if such Owner's Unit has been allocated an exclusive use terrace, balcony or patio) in a clean and sightly condition;
  - (vii) with respect to Units 1 to 8, inclusive on Level 1, each Owner with a Unit containing an elevator shall be responsible for maintaining, repairing and replacing, the elevating device within their respective Unit; and
  - (viii) gas fireplaces, if any, within the Unit, provided that only persons certified to repair gas appliances shall be allowed to perform such services;
- (b) The Corporation shall make any repairs that an Owner is obliged to make pursuant to paragraph 5.1 and that the Owner does not make within a reasonable time and in such an event, an Owner shall be deemed to have consented to having said repairs done by the Corporation, and an Owner shall reimburse the Corporation in full for the cost of such repairs, including any legal or collection costs incurred by the Corporation to collect the costs of such repairs, and all such sums of money shall bear interest at the rate of eighteen (18%) per cent per annum. The Corporation may collect all such sums of money in such instalments as the Board may decide upon. The instalments shall form part of the monthly contributions towards the common expenses of such Owner, after the Corporation has given written notice thereof. All such payments are deemed to be additional contributions towards the common expenses and recoverable as such.

#### 5.2. Responsibility of Owner for Damage

Each Owner shall be responsible for all damage to any and all other Units and to the Common Elements, which is caused by the failure of the Owner, to so maintain and repair his or her Unit and such parts of the Common Elements for which he/she is responsible, or caused by the negligence or wilful misconduct of the Owner, his or her residents, tenants, licensees, or invitees, save and except for any such damage for which the cost of repairing same may be recovered under any policy of insurance held by the Corporation.

#### 5.3. Repair and Maintenance by Corporation

- (a) Save as otherwise specifically provided in this Declaration to the contrary, the Corporation shall maintain, and repair after damage, the Common Elements and the Shared Units (whether or not title to same have been transferred to the Corporation), and other facilities shared with the Tower II Condominium pursuant to the Shared Facilities Agreement (provided the Corporation shall maintain and repair any portion of the Shared Facilities which the Tower II Corporation has failed to maintain and repair, in accordance with the provisions of the Shared Facilities Agreement), other than any improvements to (and/or any facilities, services or amenities installed by any unit Owner upon) any common element areas set aside for the exclusive use of any Owner. In order to maintain a uniformity of appearance throughout the Condominium, the Corporation's duty to maintain and repair shall extend to all exterior surfaces of doors which provide access to the units, exterior door frames, exterior window frames and all exterior window surfaces, and any exterior perimeter fences erected by the Declarant along the boundaries of the Property. The Corporation shall:
- (i) maintain and repair the hardscape/landscape design in front of the main entrance of the Condominium;
  - (ii) maintain all sidewalks, stairs, ramps, driveways, access routes and parking areas on the Property and on public lands between the Property and adjoining public roads in a clear, safe and snow free condition; and
  - (iii) maintain the public art adjacent to the Property.
- (b) The Corporation shall maintain, repair and replace the heating, air conditioning and ventilation equipment, including thermostatic controls contained within and servicing the Unit and such maintenance to include regularly scheduled inspections of all such

equipment. Such periodic maintenance shall include the cleaning and replacement of air filters. The Corporation may make provision in its annual budget for the maintenance and repair of the heating system, servicing each Unit, including the replacement of air filters, whereupon such costs shall be allocated as part of the Common Expenses. The Corporation shall ensure compliance common industry practice with regard for the manufacturers' recommended maintenance program. The Corporation shall not be responsible for damage which arises as a result of premature failure, improper functioning and/or inadequate repair. Each Owner shall be liable for any damage to the Unit and/or Common Elements due to the malfunction of such equipment caused by the act or omission of an Owner, his servants, agents, tenants, family or guests. No Owner shall make any change, alteration or addition in or to such equipment without the prior written consent of the Board.

- (c) The Corporation shall maintain and repair the Parking Units and the Storage Units and the Common Elements at its own expense and shall be responsible for the maintenance and repair of exclusive use Common Elements, except to the extent that the aforesaid Units and Common Elements which are required to be maintained and repaired by the Owners pursuant to paragraph 5.1. The Corporation shall be responsible for the maintenance and repair of the Rooftop Terrace Unit, except to the extent that the Rooftop Terrace Unit is required to be maintained and repaired by the Declarant pursuant to paragraph 4.9(c).
- (d) Notwithstanding anything provided in paragraph 5.3(a) hereof to the contrary, it is understood and agreed that each Owner of a Residential Unit shall be responsible for the maintenance of all interior door and window surfaces within his or her Residential Unit.
- (e) Every Owner shall forthwith reimburse the Corporation for repairs to windows and doors serving his or her Unit, following damage to same caused by such Owner's negligence, or the negligence of his or her residents, tenants, invitees or licensees.

#### ARTICLE VI.

##### INDEMNIFICATION

- 6.1. Each Owner shall indemnify and save harmless the Corporation from and against any loss, costs, damage, injury or liability whatsoever which the Corporation may suffer or incur resulting from or caused by an act or omission of such Owner, his family, guests, visitors or tenants to or with respect to the Common Elements and/or all other Units, except for any loss, costs, damages, injury or liability caused by an insured (as defined in any policy or policies of insurance) and insured against by the Corporation. All payments to be made by an Owner pursuant to this Article shall be deemed to be additional contributions toward common expenses payable by such Owner and shall be recoverable as such.

#### ARTICLE VII.

##### INSURANCE

##### 7.1. By the Corporation

The Corporation shall obtain and maintain to the extent obtainable, at reasonable cost, the following insurance, in one or more policies:

- (a) "All Risk" Insurance

Insurance against "all risks" (including fire and major perils as defined in the Act) as is generally available from commercial insurers in a standard "all risks" insurance policy and insurance against such other perils or events as the Board may from time to time deem advisable, insuring:

- (i) the Property and building, but excluding improvements made or acquired by an Owner; and
- (ii) all assets of the Corporation, but not including furnishings, furniture, or other personal property supplied or installed by the Owners;

in an amount equal to the full replacement cost of such real and personal property, and of the units and Common Elements, without deduction for depreciation. This insurance may be subject to a loss deductible clause as determined by the Board from time to time, and

which deductible shall be the responsibility of the Corporation in the event of a claim with respect to the units and/or the Common Elements (or any portion thereof), provided however that if an owner, tenant or other person residing in the unit with the knowledge or permission of the owner, through an act or omission causes damage to such owner's unit, or to any other unit(s), or to any portion of the Common Elements, in those circumstances where such damage was not caused or contributed by any act or omission of the Corporation (or any of its directors, officers, agents or employees), then the amount which is equivalent to the lesser of the cost of repairing the damage and the deductible limit of the Corporation's insurance policy shall be added to the common expenses payable in respect of such Owner's unit.

(b) Policy Provisions

Every policy of insurance shall insure the interests of the Corporation and the Owners from time to time, as their respective interests may appear (with all mortgagee endorsements subject to the provisions of the Act, this Declaration and the Insurance Trust Agreement, if any) and shall contain the following provisions:

- (i) waivers of subrogation against the Corporation, its directors, officers, manager, agents, employees and servants and against the Owners, and the Owners' respective residents, tenants, invitees or licensees, except for damage arising from arson, fraud, vehicle impact, vandalism or malicious mischief caused by any one of the above;
- (ii) such policy or policies of insurance shall not be terminated or substantially modified without at least sixty (60) days prior written notice to the Corporation and to the Insurance Trustee;
- (iii) waivers of the insurer's obligation to repair, rebuild or replace the damaged property in the event that after damage the government of the Property is terminated pursuant to the Act;
- (iv) waivers of any defence based on co-insurance (other than a stated amount co-insurance clause); and
- (v) waivers of any defence based on any invalidity arising from the conduct or act or omission of or breach of a statutory condition by any insured person.

(c) Public Liability Insurance

Public liability and property damage insurance, and insurance against the Corporation's liability resulting from breach of duty as occupier of the Common Elements insuring the liability of the Corporation and the Owners from time to time, with limits to be determined by the Board, but not less than FIVE MILLION (\$5,000,000.00) DOLLARS per occurrence and without right of subrogation as against the Corporation, its directors, officers, manager, agents, employees and servants, and as against the Owners and any member of the household or guests of any Owner or occupant of a Unit.

(d) Boiler, Machinery and Pressure Vessel Insurance

Insurance against the Corporation's liability arising from the ownership, use or occupation, by or on its behalf of boilers, machinery, pressure vessels and motor vehicles to the extent required as the Board may from time to time deem advisable.

7.2. General Provisions

- (a) The Corporation, its Board and its officers shall have the exclusive right, on behalf of itself and as agents for the Owners, to adjust any loss and settle any claims with respect to all insurance placed by the Corporation, and to give such releases as are required, and any claimant, including the Owner of a damaged Unit, shall be bound by such adjustment. Provided, however, that the Board may in writing, authorize any Owner, in writing, to adjust any loss to his or her Unit;
- (b) Every mortgagee shall be deemed to have agreed to waive any right to have proceeds of any insurance applied on account of the mortgage where such application would prevent application of the insurance proceeds in satisfaction of an obligation to repair. This subparagraph 7.2(b) shall be read without prejudice to the right of any mortgagee to

exercise the right of an Owner to vote or to consent if the mortgage itself contains a provision giving the mortgagee that right;

- (c) A certificate or memorandum of all insurance policies, and endorsements thereto, shall be issued as soon as possible to each Owner, and a duplicate original or certified copy of the policy to each mortgagee who has notified the Corporation of its interest in any Unit. Renewal certificates or certificates of new insurance policies shall be furnished to each Owner and to each mortgagee noted on the Record of the Corporation who have requested same. The master policy for any insurance coverage shall be kept by the Corporation in its offices, available for inspection by any Owner or mortgagee on reasonable notice to the Corporation;
- (d) No insured, other than the Corporation, shall be entitled to amend any policy or policies of insurance obtained and maintained by the Corporation. No insured shall be entitled to direct that the loss shall be payable in any manner other than as provided in the Declaration and the Act;
- (e) Where insurance proceeds are received by the Corporation or any other person rather than the Insurance Trustee, they shall be held in trust and applied for the same purposes as are specified otherwise in Article VII; and
- (f) Prior to obtaining any new policy or policies of insurance and at such other time as the Board may deem advisable and also upon the request of a mortgagee or mortgagees holding mortgages on fifty (50%) per cent or more of the Units and in any event, at least every three (3) years, the Board shall obtain an appraisal from an independent qualified appraiser of the full replacement cost of the assets for the purpose of determining the amount of insurance to be effected and the cost of such appraisal shall be a common expense.

#### 7.3. By the Owner

- (a) It is acknowledged that the foregoing insurance is the only insurance required to be obtained and maintained by the Corporation and that the following insurance, must be obtained and maintained by each Owner at such Owner's own expense:
  - (i) Insurance on any improvements to a Unit to the extent same are not covered as part of the standard unit by the insurance obtained and maintained by the Corporation and for furnishings, fixtures, equipment, decorating and personal property and chattels of the Owner contained within the Unit and the personal property and chattels stored elsewhere on the Property, including automobiles, and for loss of use and occupancy of the Unit in the event of damage. Every such policy of insurance shall contain waiver of subrogation against the Corporation, its manager, agents, employees and servants, and against the other Owners and any members of their household or guests except for any damage arising from arson, fraud, vehicle impact, vandalism or malicious mischief caused or contributed by any of the aforementioned parties;
  - (ii) Public liability insurance covering any liability of any Owner or any resident, tenant, invitee or licensee of such Owner, to the extent not covered by any public liability and property damage insurance obtained and maintained by the Corporation; and
  - (iii) Insurance covering the deductible on the Corporation's master insurance policy for which an owner may be responsible.
- (b) Owners are recommended to obtain, although it is not mandatory, insurance covering:
  - (i) additional living expenses incurred by an Owner if forced to leave his or her Residential Unit by one of the hazards protected against under the Corporation's policy; and
  - (ii) special assessments levied by the Corporation and contingent insurance coverage in the event the Corporation's insurance is inadequate.

#### 7.4. Indemnity Insurance for Directors and Officers of the Corporation

The Corporation shall obtain and maintain insurance for the benefit of all of the directors and officers of the Corporation, if such insurance is reasonably available, in order to indemnify them against the matters described in the Act, including any liability, cost, charge or expense incurred

by them in the execution of their respective duties (hereinafter collectively referred to as the "Liabilities"), provided however that such insurance shall not indemnify any of the directors or officers against any of the Liabilities respectively incurred by them as a result of a breach of their duty to act honestly and in good faith, or in contravention of the provisions of the Act.

## ARTICLE VIII.

### INSURANCE TRUSTEE AND PROCEEDS OF INSURANCE

- 8.1. The Corporation may enter into an agreement with an Insurance Trustee which shall be a Trust Company registered under the *Loan and Trust Corporations Act*, or shall be a Chartered Bank, which agreement shall, without limiting its generality, provide the following:
- (a) the receipt by the Insurance Trustee of any proceeds of insurance in excess of fifteen (15%) percent of the replacement costs of the property covered by the insurance policy;
  - (b) the holding of such proceeds in trust for those entitled thereto pursuant to the provisions of the Act, this Declaration, and any amendments thereto;
  - (c) the disbursement of such proceeds in accordance with the provisions of the Insurance Trust Agreement; and
  - (d) the notification by the Insurance Trustee to the mortgagees of any insurance monies received by it.

If the Corporation is unable to enter into such agreement with such Trust Company or such Chartered Bank, by reason of its refusal to act, the Corporation may enter into such agreement with such other Corporation authorized to act as a Trustee, as the Owners may approve by By-law at a meeting called for that purpose. The Corporation shall pay the fees and disbursements of any Insurance Trustee and any fees and disbursements shall constitute a common expense.

- 8.2. In the event that the Corporation enters into an agreement with an Insurance Trustee and:
- (a) the Corporation is obligated to repair or replace the Common Elements, any Unit, or any asset insured in accordance with the provisions of the Act, the Insurance Trustee shall hold all proceeds for the Corporation and shall disburse same in accordance with the provisions of the Insurance Trust Agreement in order to satisfy the obligation of the Corporation to make such repairs;
  - (b) there is no obligation by the Corporation to repair or replace, and if there is termination in accordance with the provisions of the Act, or otherwise, the Insurance Trustee shall hold all proceeds for the Owners in the proportion of their respective interests in the Common Elements and shall pay such proceeds to the Owners in such proportions upon registration of a notice of termination by the Corporation. Notwithstanding the foregoing, any proceeds payable as aforesaid shall be subject to payment in favour of any mortgagee or mortgagees to whom such loss is payable in any policy of insurance and in satisfaction of the amount due under a Certificate of Lien registered by the Corporation against such Unit, in accordance with the priorities thereof;
  - (c) the Board, in accordance with the provisions of the Act, determines that:
    - (i) there has not been substantial damage to twenty-five (25%) per cent of the building; or
    - (ii) there has been substantial damage to twenty-five (25%) per cent of the building and within sixty (60) days thereafter the Owners who own eighty (80%) per cent of the Units do not vote for termination,

the Insurance Trustee shall hold all proceeds for the Corporation and Owners whose Units have been damaged as their respective interests may appear and shall disburse same in accordance with the provisions of this Declaration and the Insurance Trust Agreement in order to satisfy their respective obligations to make repairs pursuant to the provisions of this Declaration and the Act.

## ARTICLE IX.

### SHARED FACILITIES

- 9.1. The Control, Operations, Budgeting and Cost-Sharing of the Shared Facilities



- (a) Save as otherwise provided in this Declaration to the contrary and without limiting any easement that the Corporation enjoys or is subject to, the Shared Facilities shall be used only by the Declarant and the Owners in the Corporation, and by their respective, residents, tenants and invitees, and by the owners in the Tower II Condominium (to the extent they are entitled to use same) and by their respective tenants and invitees in accordance with the terms of the Shared Facilities Agreement. Save as otherwise provided in this Declaration to the contrary, no provision contained in any of the By-laws or Rules of this Corporation shall restrict the access to, egress from and/or use of the Shared Facilities by the persons entitled thereto, save for any reasonable controls or restrictions imposed on access thereto by the Board (and the Declarant, prior to the Transfer Date).
- (b) The Corporation's share of the Shared Facilities Costs shall be calculated and paid as provided in the Shared Facilities Agreement. The budget for the Corporation shall incorporate any budget for the same period for Shared Facilities Costs prepared in accordance with the Shared Facilities Agreement by or on behalf of the Owners or parties for the time being to the Shared Facilities Agreement.

## ARTICLE X.

### DUTIES OF THE CORPORATION

- 10.1. In addition to any other duties or obligations of the Corporation set out in the Act, elsewhere in this Declaration and/or specified in the By-Laws of the Corporation, the Corporation shall have the following duties, namely:
- (a) To assume and to observe and comply (and insofar as possible, compel the observance and/or compliance by all Owners, residents and their respective tenants and/or invitees) with all terms and provisions set forth in the Act, and all of the terms and provisions set forth in this Declaration and By-Laws of this Corporation.
  - (b) To not interfere with the supply of (and insofar as the requisite services are supplied from the Corporation's property, to cause) heat, hydro, water, gas and all other requisite utility services so that same are fully functional and operable during normal or customary hours of use.
  - (c) To ensure that no actions or steps are taken by or on behalf of the Corporation or by any Owner which would in any way prohibit, restrict, limit, hinder or interfere with the Declarant's access and egress over any portion of the Property so as to enable the Declarant to construct and complete the Condominium.
  - (d) To ensure that no actions or steps are taken by or on behalf of the Corporation, or by any Owner or their respective tenants or invitees which would prohibit, restrict, limit, hinder or interfere with the ability of the Declarant and/or its subsidiaries and affiliates to utilize the recreational and amenity areas and portions of the Common Elements for its marketing/sale/construction programs, as more particularly set out in the foregoing provisions of this Declaration.
  - (e) To enter into, abide by and comply with, the terms and provisions of any outstanding subdivision, condominium, site plan, development or similar agreements (as well enter into a formal assumption agreement with the City of Waterloo or other Governmental Authorities relating thereto, if so required by the City of Waterloo or other Governmental Authorities).
  - (f) When the Corporation formally retains an independent consultant (who holds a certificate of authorization within the meaning of the *Professional Engineers Act*, R.S.O. 1990, as amended or replaced, or alternatively a certificate of practice within the meaning of the *Architects Act*, R.S.O. 1990, as amended or replaced) to conduct a performance audit of the Common Elements on behalf of the Corporation, in accordance with the provisions of section 44 of the Act and section 12 of O.Reg.48/01 (hereinafter referred to as the "**Performance Audit**"), then the Corporation shall have a duty to:
    - (i) permit the Declarant and its authorized employees, agents and representatives to accompany (and confer with) the consultant(s) retained to carry out the Performance Audit for the Corporation (hereinafter referred to as the "**Performance Auditor**") while same is being conducted, and to provide the

Declarant with at least fifteen (15) days written notice prior to the commencement of the Performance Audit; and

- (ii) permit the Declarant and its authorized employees, agents and representatives to carry out any repair or remedial work identified or recommended by the Performance Auditor in connection with the Performance Audit (if the Declarant chooses to do so);

for the purposes of facilitating and expediting the rectification and audit process (and bringing all matters requiring rectification to the immediate attention of the Declarant, so that same may be promptly dealt with), and affording the Declarant the opportunity to verify, clarify and/or explain any potential matters of dispute to the Performance Auditor, prior to the completion of the Performance Audit and the concomitant submission of the Performance Auditor's report to the Board and/or the Tarion Warranty Program pursuant to section 44(9) of the Act.

- (g) To take all reasonable steps to collect from each Owner his or her proportionate share of the common expenses and to maintain and enforce the Corporation's lien arising pursuant to the Act, against each Unit in respect of which the Owner has defaulted in the payment of common expenses.
- (h) To grant, immediately after registration of this Declaration, if required, an easement in perpetuity in favour of utility suppliers or telephone or television operators, over, under, upon, across and through the Common Elements, for the purposes of facilitating the construction, installation, operation, maintenance and/or repair of utility or telephone or television lines or equipment (and all necessary appurtenances thereto) in order to facilitate the supply of utilities and telephone and television service to each of the Units and if so requested by the grantees of such easements, to enter into (and abide by the terms and provisions of) an agreement with the utility and/or telephone and television suppliers pertaining to the provision of their services to the Property and for such purposes shall enact such by-laws or resolutions as may be required to sanction the foregoing.
- (i) To accept and register within thirty (30) days of being requested by the Declarant, a transfer/deed of land of any Parking Units and/or Storage Units not sold by the Declarant;
- (j) To execute any such documentation as may reasonably be required by the Declarant to ratify and assume any contract and/or lease agreement entered into by the Declarant with respect to the HVAC equipment, including but not limited to the following: the primary boiler, roof-top heating and air-conditioning unit for the common areas, domestic water heaters, and heating and air-conditioning units contained in the Residential Units.
- (k) To accept and register the transfer/deed from the Declarant of the Guest Suite Unit, to complete and execute all requisite documentation and affidavits necessary to effect the registration of such conveyance, and to complete, execute and register the mortgage of the Guest Suite Unit, all without cost to the Declarant; and
- (l) To take all actions reasonably necessary as may be required to fulfill any of the Corporation's duties and obligations pursuant to this Declaration.

## ARTICLE XI.

### GENERAL MATTERS AND ADMINISTRATION

#### 11.1. Rights of Entry to the Unit

- (a) The Corporation or any insurer of the Property or any part thereof, their respective agents, or any other person authorized by the Board, shall be entitled to enter any Unit or any part of the Common Elements over which any Owner has the exclusive use, at all reasonable times and upon giving reasonable notice, to perform the objects and duties of the Corporation, and, without limiting the generality of the foregoing, for the purpose of making inspections, adjusting losses, making repairs, correcting any condition which violates the provisions of any insurance policy and remedying any condition which might result in damage to the Property or any part thereof or carrying out any duty imposed upon the Corporation. In addition, the Corporation, its agents or any other person

authorized by the Board shall be entitled to enter where necessary, any Unit or any part of the Common Elements over which the owners of such units have the exclusive use at such reasonable time(s) to facilitate window washing. Owners shall not obstruct nor impede access to window washing anchors located within exclusive use Common Elements.

- (b) In case of an emergency, an agent of the Corporation may enter a Unit at any time and this provision constitutes notice to enter the Unit in accordance with the Act for the purpose of repairing the Unit, Common Elements, including any part of the Common Elements over which any Owner has the exclusive use, or for the purpose of correcting any condition which might result in damage or loss to the Property. The Corporation or anyone authorized by it may determine whether an emergency exists.
- (c) If an Owner shall not be personally present to grant entry to his Unit, the Corporation or its agents may enter upon such Unit without rendering it, or them, liable to any claim or cause of action for damages by reason thereof provided that they exercise reasonable care.
- (d) The Corporation shall retain a master key to all locks controlling entry into each Residential Unit. No Owner (other than an Owner whose Unit is located at ground floor) shall change any lock, or place any additional locks on the door(s) leading directly into his or her Residential Unit (nor on any doors within said Residential Unit), nor with respect to any door(s) leading to any part of the exclusive use common element areas appurtenant to such owner's Residential Unit, without the prior written consent of the Board. Where such consent has been granted by the Board, said owner shall forthwith provide the Corporation with keys to all new locks (as well as keys to all additional locks) so installed, and all such new or additional locks shall be keyed to the Corporation's master key entry system.
- (e) The rights and authority hereby reserved to the Corporation, its agents, or any insurer or its agents, do not impose any responsibility or liability whatever for the care or supervision of any Unit except as specifically provided in this Declaration or the By-Laws.

#### 11.2. Invalidity

Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

#### 11.3. Waiver

The failure to take action to enforce any provision contained in the Act, this Declaration, the By-Laws or any other rules and regulations of the Corporation, irrespective of the number of violations or breaches which may occur, shall not constitute a waiver of the right to do so thereafter, nor be deemed to abrogate or waive any such provision.

#### 11.4. Interpretation of Declaration

This Declaration shall be read with all changes of number and gender required by the context.

#### 11.5. Headings

The headings in the body of this Declaration form no part of the Declaration but shall be deemed to be inserted for convenience of reference only.

**IN WITNESS WHEREOF** the Declarant has hereunto affixed its corporate seal under the hands of its proper officer duly authorized in that behalf.

**DATED** at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2014.

**144 PARK LTD.**

Per: \_\_\_\_\_ c/s

Name:

Title:

I have authority to bind the Corporation

**SCHEDULE "A"**

In the City of Waterloo, in the Regional Municipality of Waterloo, being of all of Lots 2 and 3 and part of Lots 1, 4, 5 and 6, Plan 186, designated as Part 2, Plan 58R-18116, being part of P.I.N. 22417-0134 (LT).

Subject to an easement over Part 2, Plan 58R-18116 as in WR666363.

**RESERVING** rights-of-way or rights in the nature of easements in favour of the owners, their successors and assigns of part of Lots 217, 218, 219 and 267, Plan 385 designated as Part 1, Plan 58R-18116, being P.I.N. 22417-0135 (LT) and part of Lots 1, 5 and 6, Plan 186, designated as Part 3, Plan 58R-18116, being part of P.I.N. 22417-0134 (LT) (hereinafter collectively referred to as the "**Excess Lands**") which rights-of-way or rights in the nature of easements are as follows:

- a) in, over, along and through the driveways and ramps situate within the Common Elements of this Condominium on Levels 1, 2, 3 and A for the purposes of providing vehicular and pedestrian ingress and egress including, but not limited to, garbage, maintenance, delivery and removal vehicles, necessary to the operation of the Excess Lands;
- b) in and through the Common Elements of this Condominium, for the access of persons, materials, vehicles and equipment necessary for the maintenance, repair, operation, installation and reconstruction of any electrical apparatus, installation or equipment including, but not limited to, electrical cables, wires, conduits or ducts, all of which are necessary to the operation of the building to be situate within the Excess Lands;
- c) in and through the Common Elements of this Condominium for the access of persons, vehicles, materials and equipment necessary for the maintenance, repair, operation, construction and reconstruction of the building situate within the Excess Lands;
- d) a temporary right-of-way or right in the nature of an easement in and through the Common Elements exterior to the building of this Condominium, for the purposes of providing passage for an overhead crane swing, which said temporary right-of-way or right in the nature of an easement will terminate upon the completion of construction of all buildings to be constructed on the Excess Lands; and
- e) a temporary right-of-way or right in the nature of an easement in, over, along and upon the Common Elements of this Condominium for construction purposes, including, but not limited to, the erection of hoarding, scaffolding and the placement of equipment and construction materials necessary for the construction of any buildings on the Excess Lands, which said temporary right-of-way or right in the nature of an easement shall terminate upon the completion of construction of such building.

**RESERVING** rights-of-way or rights in the nature of easements in favour of the owners, their successors and assigns of part of Lots 219, 265 to 267, inclusive, Plan 385, designated as Part 11, Plan 58R-17849, City of Waterloo being P.I.N. 22417-0138 (LT); part Lot 1, Plan 186, designated as Part 5, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0129 (LT); part Lots 217, 218, 219 and 267, Plan 385, designated as Part 6, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0133 (LT); part Lot 217, Plan 385, designated as Part 7, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0019; part Lot 217 to 219, inclusive, Plan 385, designated as Part 8, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0018; part of Lot 218 and 219, Plan 385, designated as Part 9, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0123 (LT); part Lots 218, 219, 220 and 266, Plan 385, designated as Part 10, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0122 (LT); part Lots 219, 220, 221, 265 and 266, Plan 385, designated as Part 17, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0137 (LT); part Lot 6 and 7, Plan 186, designated as Parts 3 and 4, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0023 (LT) and part Lot 7, Plan 186, designated as Parts 1 and 2, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0024 (LT) (hereinafter collectively referred to as the "**Phase 2 Lands**"), which rights-of-way or rights in the nature of easements are as follows:

- a) in, over, along and through the driveways and ramps situate within the Common Elements of this Condominium on Levels 1, 2, 3 and A for the purposes of providing vehicular and pedestrian ingress and egress including, but not limited to, garbage, maintenance, delivery and removal vehicles, necessary to the operation of the Phase 2 Lands;
- b) in and through the Common Elements of this Condominium, for the access of persons, materials, vehicles and equipment necessary for the maintenance, repair, operation, installation and reconstruction of any electrical apparatus, installation or equipment including, but not limited to, electrical cables, wires, conduits or ducts, all of which are necessary to the operation of the building to be situate within the Phase 2 Lands;

- c) in and through the Common Elements of this Condominium for the access of persons, vehicles, materials and equipment necessary for the maintenance, repair, operation, construction and reconstruction of the building situate within the Phase 2 Lands; and
- d) a temporary right-of-way or right in the nature of an easement in and through the Common Elements exterior to the building of this Condominium, for the purposes of providing passage for an overhead crane swing, which said temporary right-of-way or right in the nature of an easement will terminate upon the completion of construction of all buildings to be constructed on the Phase 2 Lands.
- e) a temporary right-of-way or right in the nature of an easement in, over, along and upon the Common Elements of this Condominium for construction purposes, including, but not limited to, the erection of hoarding, scaffolding and the placement of equipment and construction materials necessary for the construction of any buildings on the Phase 2 Lands, which said temporary right-of-way or right in the nature of an easement shall terminate upon the completion of construction of such building.

(The abovementioned easements are created pursuant to Subsection 20(2) of the *Condominium Act, 1998*.)

In my opinion, based on the parcel register and the plans and documents recorded in them, the legal description is correct, the described easements will exist in law upon the registration of the declaration and the description and the declarant is the registered owner of the property and appurtenant interests.

HARRIS, SHEAFFER, LLP,  
duly authorized representatives for  
**144 PARK LTD.**

\_\_\_\_\_  
Dated

Per: \_\_\_\_\_  
Mark Karoly

**SCHEDULE "B"**

**CONSENT**

(under clause 7(2)(b) of the *Condominium Act, 1998*)

1. AVIVA INSURANCE COMPANY OF CANADA has a registered mortgage within the meaning of clause 7(2)(b) of the *Condominium Act, 1998* registered as Number WR639368 in the Land Titles Division of the Waterloo Registry Office (No. 58).
2. AVIVA INSURANCE COMPANY OF CANADA consents to the registration of this declaration, pursuant to the Act, against the land or the interests appurtenant to the land, as the land and the interests are described in the description.
3. AVIVA INSURANCE COMPANY OF CANADA postpones the mortgage and the interests under it to the declaration and the easements described in Schedule "A" to the Declaration.
4. AVIVA INSURANCE COMPANY OF CANADA is entitled by law to grant this consent and postponement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**AVIVA INSURANCE COMPANY OF CANADA**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have the authority to bind the Corporation.

**SCHEDULE "B"**

**CONSENT**

(under clause 7(2)(b) of the *Condominium Act, 1998*)

1. ALLEN STREET HOLDINGS INC. has a registered mortgage within the meaning of clause 7(2)(b) of the *Condominium Act, 1998* registered as Number WR639369 in the Land Titles Division of the Waterloo Registry Office (No. 58).
2. ALLEN STREET HOLDINGS INC. consents to the registration of this declaration, pursuant to the Act, against the land or the interests appurtenant to the land, as the land and the interests are described in the description.
3. ALLEN STREET HOLDINGS INC. postpones the mortgage and the interests under it to the declaration and the easements described in Schedule "A" to the Declaration.
4. ALLEN STREET HOLDINGS INC. is entitled by law to grant this consent and postponement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**ALLEN STREET HOLDINGS INC.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have the authority to bind the Corporation.



**SCHEDULE "B"**

**CONSENT**

(under clause 7(2)(b) of the *Condominium Act, 1998*)

1. MARSHALLZEHR GROUP INC. has a registered mortgage within the meaning of clause 7(2)(b) of the *Condominium Act, 1998* registered as Number WR660381 in the Land Titles Division of the Waterloo Registry Office (No. 58).
2. MARSHALLZEHR GROUP INC. consents to the registration of this declaration, pursuant to the Act, against the land or the interests appurtenant to the land, as the land and the interests are described in the description.
3. MARSHALLZEHR GROUP INC. postpones the mortgage and the interests under it to the declaration and the easements described in Schedule "A" to the Declaration.
4. MARSHALLZEHR GROUP INC. is entitled by law to grant this consent and postponement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**MARSHALLZEHR GROUP INC.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have the authority to bind the Corporation.

**SCHEDULE "B"**

**CONSENT**

(under clause 7(2)(b) of the *Condominium Act, 1998*)

1. LAURENTIAN BANK OF CANADA has a registered mortgage within the meaning of clause 7(2)(b) of the *Condominium Act, 1998* registered as Number WR690395 in the Land Titles Division of the Waterloo Registry Office (No. 58).
2. LAURENTIAN BANK OF CANADA consents to the registration of this declaration, pursuant to the Act, against the land or the interests appurtenant to the land, as the land and the interests are described in the description.
3. LAURENTIAN BANK OF CANADA postpones the mortgage and the interests under it to the declaration and the easements described in Schedule "A" to the Declaration.
4. LAURENTIAN BANK OF CANADA is entitled by law to grant this consent and postponement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**LAURENTIAN BANK OF CANADA**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have the authority to bind the Corporation.

**SCHEDULE 'C'**  
**UNIT BOUNDARIES**

Each Residential Unit, Guest Suite Unit, Parking Unit and Storage Unit shall comprise the area within the heavy lines shown on Part 1, Sheets 1, 2, 3, 4 and 5 of the Description with respect to the unit numbers indicated thereon. The monuments controlling the extent of the Residential Units, Guest Suite Unit, Parking Units and Locker Units are the physical surfaces and planes referred to below, and are illustrated on Part 1, Sheets 1, 2, 3, 4 and 5 of the Description, and all dimensions shall have reference to them.

Without limiting the generalities of the foregoing, the boundaries of each Unit are as follows:

1. **BOUNDARIES OF THE RESIDENTIAL UNITS**

(being Units 1 to 8 (inclusive) on Level 1, Units 1 to 9 (inclusive) on Level 4, Units 1 to 10 (inclusive) on Levels 5 to 10 (inclusive), Units 1 to 9 (inclusive) on Level 11, Units 1 to 10 (inclusive) on Levels 12 to 14 (inclusive), Units 1 to 7 (inclusive) on Levels 15 to 18 (inclusive) and Units 1 to 4 inclusive on Level 19)

**BOUNDARIES OF THE GUEST SUITE UNIT**

(being Unit 36 on Level 3)

- a) Each Residential Unit and Guest Suite Unit shall be bounded vertically by:
- i) the upper surface and plane of the concrete floor slab and/or the production thereof.
  - a) the lower surface and plane of the concrete ceiling slab and/or the production thereof.
- b) Each Residential Unit and Guest Suite Unit shall be bounded horizontally by:
- i) the backside face of the drywall sheathing and production thereof on all exterior walls or walls separating a unit from the common elements.
  - ii) the unfinished unit side surface and plane of the exterior doors (said doors and windows being in a closed position), door and window frames and the unit side surface of all glass or acrylic panels located therein.
  - iii) in the vicinity of suspended ceilings, bulkheads, ducts, pipe spaces and concrete columns, the unit boundaries are the backside face of the drywall sheathing enclosing said suspended ceilings, bulkheads, ducts, pipe spaces and masonry structural columns and walls.

2. **BOUNDARIES OF THE PARKING UNITS**

(being Units 1 to 65 (inclusive) on Level A, Units 9 to 15 (inclusive) and Units 29 to 45 (inclusive) on Level 1, Units 1 to 25 (inclusive) on Level 2 and Units 1 to 35 (inclusive) on Level 3)

- a) Each Parking Unit shall be bounded vertically by one or a combination of:
- i) the upper surface and plane of the concrete floor slab and/or the production thereof.
  - ii) the plane established 2.00 metres perpendicularly distant above and parallel to the upper finished surface of the concrete floor slab.
- b) Each Parking Unit shall be bounded horizontally by one or a combination of:
- i) the vertical plane established by measurements.
  - ii) the surface and plane of the masonry wall and/or the production thereof.
  - iii) the vertical plane established by the line and face of the columns and/or the production thereof.
  - iv) the vertical plane established by measurements and perpendicular to the masonry wall.

3. **BOUNDARIES OF THE STORAGE UNITS**

(being Units 66 to 97 (inclusive) on Level A, Units 16 to 28 (inclusive) on Level 1, Units 26 to 114 (inclusive) on Level 2 and Units 37 to 52 (inclusive) on Level 3)

- a) Each Storage Unit shall be bounded vertically by one or a combination of:
- i) the upper surface and plane of the concrete floor slab and/or the production thereof.
  - ii) the interior surface and plane of the steel wire mesh.
- b) Each Storage Unit shall be bounded horizontally by one or a combination of:
- i) the backside face of the drywall sheathing and production thereof.
  - ii) the unfinished unit side surface and plane of the frame and door frames and the wire mesh screening contained therein, the said doors being in a closed position.
  - iii) the surface and plane of the masonry wall and/or the production thereof.

- iv) the interior surface and plane of the steel wire mesh.

4. BOUNDARIES OF THE DRIVE AISLE UNITS

(being Units 116 on Level 2 and Unit 54 on Level 3)

- a) Each Drive Aisle Unit shall be bounded vertically by one or a combination of:
  - i) the upper surface and plane of the concrete floor slab and/or the production thereof.
  - ii) the plane established 2.00 metres perpendicularly distant above and parallel to the upper finished surface of the concrete floor slab.
- b) Each Drive Aisle Unit shall be bounded horizontally by one or a combination of:
  - i) the vertical plane established by measurements.
  - ii) the surface and plane of the masonry wall and/or the production thereof.
  - iii) the vertical plane established by the line and face of the columns and/or the production thereof.
  - iv) the vertical plane established by measurements and perpendicular to the masonry wall.

5. BOUNDARIES OF THE KNOCK-OUT PANEL/DRIVE AISLE UNITS

(being Units 98 to 101 (inclusive) on Level A; Units 117 and 118 on Level 2; and Units 55 and 56 on Level 3)

- a) Each Knock-out Panel/Drive Aisle Unit shall be bounded vertically by one or a combination of:
  - i) the upper surface and plane of the concrete floor slab and/or the production thereof.
  - ii) the plane established 2.00 metres perpendicularly distant above and parallel to the upper finished surface of the concrete floor slab.
- b) Each Knock-out Panel/Drive Aisle Unit shall be bounded horizontally by one or a combination of:
  - i) the vertical plane established by measurements.
  - ii) the surface and plane of the masonry wall and/or the production thereof.
  - iii) the vertical plane established by the line and face of the columns and/or the production thereof.
  - iv) the vertical plane established by measurements and perpendicular to the masonry wall.

6. BOUNDARIES OF THE KNOCK-OUT PANEL UNITS

(being Unit 115 on Level 2 and Unit 53 on Level 3)

- a) Each Knock-out Panel Unit shall be bounded vertically by one or a combination of:
  - i) the upper surface and plane of the concrete floor slab and/or the production thereof.
  - ii) the plane established 2.00 metres perpendicularly distant above and parallel to the upper finished surface of the concrete floor slab.
- b) Each Knock-out Panel Unit shall be bounded horizontally by one or a combination of:
  - i) the surface and plane of the masonry wall and/or the production thereof.

7. BOUNDARIES OF THE ROOFTOP TERRACE UNIT

(being Unit 10 on Level 4)

- a) The Rooftop Terrace Unit shall be bounded vertically by one or a combination of:
  - i) the upper surface and plane of the concrete floor slab and/or the unit side surface and plane of all roof membranes and/or the production thereof.
  - ii) the plane established 3.00 metres perpendicularly distant above and parallel to the upper finished surface of the concrete floor slab.
- b) The Rooftop Terrace Unit shall be bounded horizontally by one or a combination of:
  - i) the vertical plane established by the unit side surface of the parapet wall and/or production.
  - ii) the vertical plane established by the unit side surface of the concrete planter and/or production.
  - iii) the surface and plane of the masonry wall and/or the production thereof.

I hereby certify that the written description of the monuments and boundaries of the Units contained herein accurately corresponds with the diagrams of the Units shown on Part 1, Sheets 1, 2, 3, 4, 5 and 6 of the Description.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Brian Coad, Ontario Land Surveyor  
Verhaegen•Stubberfield•Hartley•Brewer•Bezaire Inc.

Reference should be made to the provisions of the Declaration itself, in order to determine the maintenance and repair responsibilities for any Unit, and whether specific physical components (such as any wires, pipes, cables, conduits, equipment, fixtures, structural components and/or any other appurtenances) are included or excluded from the Unit, regardless of whether same are located within or beyond the boundaries established for such Unit.

4-24901.X15  
24, 2014

## SCHEDULE "E"

### SPECIFICATION OF COMMON EXPENSES

Common Expenses, without limiting the definition ascribed thereto, shall include the following:

- (a) all sums of money paid or payable by the Corporation in connection with the performance of any of its objects, duties and powers whether such objects, duties and powers are imposed by the Act or this Declaration and By-laws of the Corporation or other law or by agreement;
- (b) all sums of money properly paid by the Corporation on account of any and all public and private suppliers to the Corporation of insurance coverage, utilities and services including, without limiting the generality of the foregoing, levies or charges payable on account of:
  - i) insurance premiums;
  - ii) water, sewage, electricity and geothermal heating and cooling respecting common elements and units, as applicable;
  - iii) waste disposal and garbage collection for Residential Units;
  - iv) maintenance materials, tools and supplies;
  - v) snow removal and landscaping;
  - vi) fuel, including gas, oil and hydro electricity unless metered separately for each Unit;
  - (vii) the amenities, including the Guest Suite Unit
- (c) all sums of money paid or payable by the Corporation pursuant to any management contract which may be entered into between the Corporation and a manager;
- (d) all sums of money required by the Corporation for the acquisition or retention of real property for the use and enjoyment of the property or for the acquisition, repair, maintenance or replacement of personal property for the use and enjoyment in or about the common elements;
- (e) all sums of money paid or payable by the Corporation to any and all persons, firms, or companies engaged or retained by the Corporation, its duly authorized agents, servants and employees for the purpose of performing any or all of the objects, duties and powers of the Corporation including, without limitation, legal, engineering, accounting, auditing, expert appraising, advising, maintenance, managerial, secretarial or other professional advice and service required by the Corporation;
- (f) the cost of furnishings and equipment for use in and about the Common Elements including the repair, maintenance or replacement thereof;
- (g) the cost of borrowing money for the carrying out of the objects, duties and powers of the Corporation;
- (h) the fees and disbursements of the Insurance Trustee, if any, and of obtaining insurance appraisals;
- (i) the cost of maintaining fidelity bonds as provided by By-law;
- (j) all sums required to be paid to the reserve or contingency fund as required by the Declaration or in accordance with the agreed upon annual budget of the Corporation; and
- (k) all sums of money payable under the Shared Facilities Agreement.

**SCHEDULE "F"**

**EXCLUSIVE USE PORTIONS OF THE COMMON ELEMENTS**

Subject to the provisions of the Declaration, the By-laws and Rules and Regulations of the Corporation and the right of entry in favour of the Corporation thereto and thereon, for the purposes of facilitating any requisite maintenance and/or repair work, or to give access to the utility and service areas appurtenant thereto:

- a) The owner(s) of a Residential Unit on Level 1 and Levels 4 to 19 (inclusive) shall have exclusive use to that that portion of the common elements, being a **Balcony and/or Terrace**, to which their Unit provides sole and direct access.
- b) The owner(s) of a Residential Unit on Level 1 shall have the exclusive use of that portion of the common elements designated as **Patio**, which is numbered the same as the Unit with the prefix 'P' and is illustrated in heavy outline on Sheet 1, Part 2 of the Description.
- c) The owner(s) of a Residential Unit on Level 4 shall have the exclusive use of that portion of the common elements designated as **Terrace**, being illustrated in heavy outline on Sheet 1, Part 2 of the Description and designated by the letter 'T' and are assigned as below.

UNIT NO.	LEVEL	TERRACE NO.
1	4	T1
2	4	T2
8	4	T3
9	4	T4

Notwithstanding the foregoing, any fixture, outlet, sign, apparatus or structure located within the limits of any exclusive use portion of the common elements shall not form part thereof.

**SCHEDULE "G"**

**CERTIFICATE OF ARCHITECT OR ENGINEER  
(SCHEDULE G TO DECLARATION FOR A  
STANDARD OR LEASE HOLD CONDOMINIUM CORPORATION)**

(under clause 8(1)(e) of the *Condominium Act, 1998*)

I certify that:

Each building on the property has been constructed in accordance with the regulations made under the *Condominium Act, 1998* with respect to the following matters:

(Check whichever boxes are applicable)

1.  The exterior building envelope, including roofing assembly, exterior wall cladding, doors and windows, caulking and sealants, is weather resistant if required by the construction documents and has been completed in general conformity with the construction documents.
2.  Except as otherwise specified in the regulations, floor assemblies are constructed to the sub-floor.
3.  Except as otherwise specified in the regulations, walls and ceilings of the common elements, excluding interior structural walls and columns in a unit, are completed to the drywall (including taping and sanding), plaster or other final covering.
4.  All underground garages have walls and floor assemblies in place.  
OR  
 There are no underground garages.
5.  All elevating devices as defined in the *Elevating Devices Act* are licensed under that Act if it requires a licence, except for elevating devices contained wholly in a unit and designed for use only within the unit.  
OR  
 There are no elevating devices as defined in the *Elevating Devices Act*, except for elevating devices contained wholly in a unit and designed for use only within the unit.
6.  All installations with respect to the provision of water and sewage services are in place.
7.  All installations with respect to the provision of heat and ventilation are in place and heat and ventilation can be provided.
8.  All installations with respect to the provision of air conditioning are in place.  
OR  
 There are no installations with respect to the provision of air conditioning.
9.  All installations with respect to the provision of electricity are in place.
10.  All indoor and outdoor swimming pools are roughed in to the extent that they are ready to receive finishes, equipment and accessories.  
OR  
 There are no indoor or outdoor swimming pools.
11.  Except as otherwise specified in the regulations, the boundaries of the units are completed to the drywall (not including taping and sanding), plaster or other final covering, and perimeter doors are in place.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Name:  
Title: Architect or Engineer



**SHARED FACILITIES AGREEMENT**

**THIS AGREEMENT MADE** as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**B E T W E E N :**

**144 PARK LTD.**

a corporation incorporated pursuant to the laws of the Province of Ontario, in its capacity as owner of the Tower I Lands and on behalf of the Tower I Condominium, once same is registered

(hereinafter referred to as the “**Declarant**”)

- and -

**ONE 55 MADY LTD.**

a corporation incorporated pursuant to the laws of the Province of Ontario, in its capacity as owner of the Tower II Lands and on behalf of the Tower II Condominium, once same is registered

(hereinafter referred to as the “**Tower II Declarant**”)

**WHEREAS** the Declarant is the registered owner of the Tower I Lands (as that term is hereinafter defined) on which lands, municipally known as 144 Park Street, Waterloo, Ontario, the Declarant intends to develop the Tower I Condominium (as that term is hereinafter defined);

**AND WHEREAS** the Tower II Declarant is the registered owner of the Tower II Lands (as that term is hereinafter defined) on which lands the Declarant intends to develop the Tower II Condominium (as that term is hereinafter defined);

**AND WHEREAS** the parties acknowledge that a portion of the Tower I Lands will not form part of the Tower I Condominium, and that portion of the Tower I Lands will be conveyed by the Declarant to the Tower II Declarant following registration of the Tower I Condominium;

**AND WHEREAS** the Declarant (in its capacity as owner of the Tower I Lands) and the Tower II Declarant (in its capacity as owner of the Tower II Lands) have entered into this Agreement in order to provide for the mutual use, maintenance, cost-sharing and other matters relating to the Shared Facilities (as that term is hereinafter defined) as well as to regulate and govern the use and enjoyment of various easements over and/or benefiting all or various portions of the Total Site (as that term is hereinafter defined);

**AND WHEREAS** it is acknowledged and agreed that the Declarant is entering into this Agreement for and on behalf of the Tower I Condominium Corporation, and on the express understanding that as and when the same is registered as a separate condominium corporation, it shall assume all covenants and obligations of the Declarant relating thereto as set forth herein, and correspondingly the Declarant shall thereupon be automatically released, relieved and forever discharged from said obligations and/or liabilities;

**AND WHEREAS** it is acknowledged and agreed that the Tower II Declarant is entering into this Agreement for and on behalf of the Tower II Condominium Corporation, and on the express understanding that as and when the same is registered as a separate condominium corporation, it shall assume all covenants and obligations of the Tower II Declarant relating thereto as set forth herein, and correspondingly the Tower II Declarant shall thereupon be automatically released, relieved and forever discharged from said obligations and/or liabilities;

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

**ARTICLE I. - RECITALS**

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

## ARTICLE II. - DEFINITIONS

### 2.1. General Terms

The terms "common elements", "units", "common expenses", "common interest", "board of directors", "description", "by-laws" and "rules" shall have the same meanings as are ascribed to such terms pursuant to the Act (as hereinafter defined), and their use herein shall have specific reference to the Two Condominium Corporations.

### 2.2. Specific Terms

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

- (a) **"Acceptable Standards"** shall mean:
  - (i) with respect to any equipment, device, apparatus or system: efficient and safe operating capability for its intended purpose(s) in accordance with the standards specified by its manufacturer(s)/supplier(s) and prescribed by all applicable laws, regulations and by-laws;
  - (ii) with respect to any landscaped/grassed area: appearing to be properly cultivated/tended, suitable for its intended purpose(s) and in compliance with all applicable laws, regulations and by-laws; and
  - (iii) with respect to any structural or other non-operating element, part or component: good repair, having regard to the standards maintained by a prudent owner of a comparable building of comparable age;
- (b) the **"Act"** shall mean the *Condominium Act, 1998*, S.O. 1998, as amended, together with any successor legislation intended to replace or supersede same;
- (c) **"Agreement"** shall mean the within agreement and all written amendments hereto and all schedules referred to herein;
- (d) the **"Benefitting Owners"** shall mean those owners of the dominant tenement with respect to the Easements (as that term is hereinafter defined) that are entitled to the benefit of same, provided however, that for the purposes of giving and receiving notice(s), procuring consents and for the purposes of carrying out any Work (as that term is hereinafter defined) or repairing and/or restoring any damage or alterations, all as contemplated in Article VII hereof, "Benefitting Owners" shall mean the condominium corporation(s) (for and on behalf of the unit owners therein) created over all or any portion of the aforesaid dominant tenement;
- (e) the **"Buildings"** shall mean the building(s) constructed on the Total Site;
- (f) the **"Car Wash Unit"** shall mean the Unit designated as such in the Declaration of the Tower II Condominium;
- (g) the **"Common Interior Roadway"** shall mean all of the roads, curbs, driveways, sidewalks, walkways and all street lighting therealong, the garage ramps and portions of the driveway aisles on the Lands or any portions thereof which are used for pedestrian and vehicular ingress and/or egress to and from any of the Two Condominiums;
- (h) the **"Declarants"** shall mean the Declarant and the Tower II Declarant, and their respective successors and assigns;
- (i) the **"Declarants' Construction Easements"** shall mean their respective specific Easement (as hereinafter defined) in favour of the Declarant and/or the Tower II Declarant created upon the registration of any Declaration, providing for access over, under or through various portions of the Total Site (including the Shared Facilities) to permit the construction and development of the Tower I Condominium and the Tower II Condominium;
- (j) the **"Declarations"** shall mean the declarations of the Two Condominium Corporations (as hereinafter defined) whether same have been registered as of the date of this Agreement or are registered at any time thereafter and the term **"Declaration"** shall mean

the specific declaration of the particular condominium (comprising one of the Two Condominium Corporations) dictated by the context in which said term is used;

- (k) the **“Drive Aisle Units”** shall mean Unit 116 on Level 2 and Unit 54 on Level 3 in the Tower I Condominium;
- (l) the **“Easements”** shall mean, collectively, the easements, rights, and rights in the nature of easements over, under or through the Shared Facilities as described in Schedule “A” to the Declaration of the Tower I Condominium Corporation and to be hereinafter described in the Declaration of the Tower II Condominium Corporation, including without limitation, the Declarants’ Construction Easements, the Servicing and Maintenance and Repair Easements, the Vehicular and Pedestrian Access Easements (as those latter easements are hereinafter defined) and shall also include the Relocated Easements (as that term is hereinafter defined), the Omitted Easements (as described in paragraph 6.8 hereof) and any other easements, rights and rights in the nature of an easement hereafter created between any one or both of the Two Condominium Corporations and/or the owners of the lands intended to comprise same, and relating to the Shared Facilities, and the term **“Easement”** shall mean any particular portion of the Easements as dictated by the context in which said term is used;
- (m) the **“Easement Areas”** shall mean collectively those portions of the Total Site which are subject to the Easements, and shall also include any Relocated Easement Areas (as described in paragraph 6.7 hereof) and the term **“Easement Area”** shall mean any particular portion of the Easement Areas as dictated by the context in which said term is used;
- (n) **“Emergency”** shall mean any circumstance(s) or event(s) involving danger to, or the safety of, persons, danger of property damage or loss and/or the suspension of any utility or service to any one or both of the Two Condominium Corporations whether actually occurring or imminent;
- (o) the **“Governing Documents”** shall mean the Declarations and this Agreement, collectively;
- (p) the **“Governmental Authorities”** shall mean the City of Waterloo, and all other governmental authorities or agencies having jurisdiction over the Total Site;
- (q) the **“Knock-out Panel/Drive Aisle Units”** shall mean Units 98 to 101 inclusive on Level A, Units 117 and 118 on Level 2, and Units 55 and 56 on Level 3 in the Tower I Condominium;
- (r) the **“Knock-out Panel Units”** means Unit 115 on Level 2 and Unit 53 on Level 3 in the Tower I Condominium;
- (s) **“Owner”** shall mean with respect to the Tower I Lands, the Tower I Condominium Corporation, and with respect to the Tower II Lands, the Tower II Condominium, including their respective successors, in title;
- (t) the **“Proportionate Share”** shall mean the share of the Shared Facilities Costs to be borne by each of the Two Condominium Corporations and which Proportionate Share shall be determined as set out in Article III hereof;
- (u) the **“Rooftop Terrace Units”** shall mean Unit 10 on Level 4 in the Tower I Condominium as well as any other unit designated as such in the declaration of the Tower II Condominium;
- (v) the **“Servicing and Maintenance and Repair Easements”** shall mean the Easements created upon the registration of any Declaration and/or pursuant to the terms of this Agreement, providing for the installation, maintenance, operation, alteration, repair, replacement, inspection and monitoring of various utility services in, on, over, along, upon, across and through the Easement Areas;
- (w) the **“Servient Owners”** shall mean those owners of the servient tenement(s) in respect of the Easements who are subject to the burden of same, provided however, that for the purposes of giving and receiving notice(s), and for the purposes of carrying out any Work or repairing and/or restoring any damage or alterations, all as contemplated in Article VII hereof, the term **“Servient Owners”** shall mean the condominium corporation(s) (for and

on behalf of the unit owners thereof) created over all or any portion of the aforesaid servient tenement(s);

- (x) the “**Shared Facilities**” shall mean certain facilities shared by the Condominium and Tower II, including the Shared Units, Common Interior Roadway, other shared roadways, exhaust fan(s) in underground garage, life safety systems and any other items more particularly set out herein;
- (y) the “**Shared Facilities Budget**” shall mean the budget outlining the projected Shared Facilities Costs for the 12 month period immediately following the preparation and submission of same to the Two Condominium Corporations, which is prepared in accordance with the terms and provisions of this Agreement;
- (z) the “**Shared Facilities Committee**” shall mean the committee formed in accordance with the provisions of Article IX of this Agreement that will manage, control and/or operate the Shared Facilities;
- (aa) the “**Shared Facilities Costs**” shall mean 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 maintenance, repair and operation of the Shared Facilities, including without limitation, the cost of maintaining and repairing all electrical and mechanical equipment, fixtures and installations comprising same or appurtenant thereto, together with the amount of any municipal, provincial or federal taxes and/or common expenses assessments attributable to the Shared Facilities (or any portion thereof);
- (bb) the “**Shared Units**” shall mean the Car Wash Unit, Rooftop Terrace Units, Visitor Parking Units, Knock-out Panel/Drive Aisle Units, Knock-out Panel Units and Drive Aisle Units which shall ultimately be shared and used by or on behalf of the Two Condominiums for pedestrian and vehicular access and egress and for the maintenance and operation of all mechanical, electrical, utility, site servicing and/or ancillary system(s), serving both of the Two Condominiums, including, without limitation, the Shared Facilities, in accordance with the Declaration and this Shared Facilities Agreement, the ownership of which shall be ultimately conveyed by the Declarant and the Tower II Declarant to the Two Condominiums as tenants-in-common;
- (cc) the “**Total Project**” shall mean all of the buildings, structures, improvements and installations intended to be constructed upon the Total Site and contained (or to be contained) within the descriptions for the Two Condominium Corporations;
- (dd) the “**Total Site**” shall mean the Tower I Lands and the Tower II Lands, collectively;
- (ee) the “**Tower I Condominium**” shall mean the residential condominium being developed by the Declarant and to be created upon those lands and premises situate in the City of Waterloo, in the Regional Municipality of Waterloo, being of all of Lots 2 and 3 and part of Lots 1, 4, 5 and 6, Plan 186, designated as Part 2, Plan 58R-18116, being part of P.I.N. 22417-0134 (LT) (which lands are hereinafter referred to as the “**Tower I Lands**”);
- (ff) “**Tower II**” or the “**Tower II Condominium**” shall mean the residential condominium being developed by the Tower II Declarant on the lands to the east of the Tower I Condominium and the “**Tower II Corporation**” means the condominium corporation created upon the registration of the Tower II Condominium
- (gg) the “**Tower II Condominium Corporation**” shall mean the condominium corporation created upon the registration of the Tower II Condominium;
- (hh) “**Tower II Lands**” shall mean the lands included in the Tower II Condominium to be described in the declaration of the Tower II Condominium;
- (ii) the “**Transfer Date**” shall mean the earlier of:
  - (i) the date upon which the last of the Two Condominium Corporations has been registered as a separate condominium pursuant to the provisions of the Act by the Tower II Declarant and all residential units therein have been sold and conveyed by the Tower II Declarant; and
  - (ii) such earlier date at the Tower II Declarant may determine in its sole and unfettered discretion;

- (jj) “**Two Condominiums**” or “**the Project**” shall mean the comprehensive development comprised of the Tower I Condominium and the Tower II Condominium, collectively;
- (kk) “**Two Corporations**” shall mean Tower I Corporation and the Tower II Corporation, collectively;
- (ll) the “**Vehicular and Pedestrian Access Easements**” shall mean the vehicular and pedestrian access easements created upon the registration of any Declaration and/or pursuant to the terms of this Agreement, that provide for vehicular and/or pedestrian access and egress to and from various portions of the Total Site;
- (mm) the “**Visitor Parking Units**” means Units 29 to 45 inclusive on Level 1 of the Tower I Condominium and any other units designated as such in the Declaration of the Tower II Condominium.

### ARTICLE III. - RESPONSIBILITY FOR PAYING THE SHARED FACILITIES COSTS

- 3.1. It is understood and agreed that the Shared Facilities Costs shall be allocated and paid on the basis that the Proportionate Share of each of the Two Condominium Corporations from time to time shall be the proportion that the total number of residential units in each condominium plan bears to the total number of residential units in the registered condominium plans within the Total Project at that time. For greater certainty, it is understood and agreed that the Declarant and/or the Tower II Declarant shall not pay nor be responsible for any portion of the Shared Facilities Costs for or in respect of the Condominiums while not yet registered and for which such Corporation, if registered, would otherwise be responsible.
- 3.2. The cost of any services necessitated by the wilful or negligent act or omission of any party hereto or of any of its occupants, employees, agents, contractors, licensees or invitees shall be paid by that party and not included in the Shared Facilities Costs that are allocated and paid by the parties hereto in the manner set forth in paragraph 3.1 hereof.

### ARTICLE IV. - OWNERSHIP OF THE SHARED UNITS

- 4.1. Ownership of the Shared Units shall ultimately be shared by the Two Condominium Corporations as tenants-in-common. Each of the condominiums comprising the Two Condominium Corporations shall receive a proportionate tenancy-in-common interest in the Shared Units equivalent to the proportion that the number of residential units within that particular condominium bears to the total number of residential units ultimately contained in both of the Two Condominium Corporations.
- 4.2. The actual transfer of ownership of the Shared Units by the Declarant and the Tower II Declarant to the Two Condominium Corporations, as tenants-in-common in accordance with their respective Proportionate Interest shall occur no later than 60 days after the Transfer Date, provided however, that in the event that the Tower II Condominium is not registered by the Transfer Date, then such transfer to the Tower II Condominium shall occur no later than the turnover meeting convened in connection with the Tower II Condominium (as and when same is duly registered).
- 4.3. Once ownership of the Shared Units has been transferred by the Declarant and the Tower II Declarant to one or more of the Two Condominium Corporations as aforesaid, any further sale, transfer, mortgage, charge, encumbrance or other conveyance of registered and/or beneficial title to same shall require [in addition to any other approvals required pursuant to the provisions of the Act and/or the Declaration(s)] the prior written consent of the other co-tenants of the Shared Units, together with the prior approval of two-thirds of the unit owners in the condominium corporation(s) purporting to sell, transfer, mortgage, charge or encumber its/their ownership interest therein (with such unit owner(s) approval being procured from owners who are present, in person or by proxy, at a meeting duly called for the purpose of obtaining such approval).
- 4.4. Any instrument or other document purporting to sell, transfer, convey, mortgage, charge or encumber the ownership interest(s) of any of the Two Condominium Corporations in the Shared Units, in contravention of the foregoing provisions, shall be null and void and of no force and effect.

### ARTICLE V. - USE OF THE SHARED FACILITIES

#### 5.1. General Use of the Shared Facilities

- (a) Subject to the Act, the use of the Shared Facilities by the Two Condominium Corporations and by the owners, residents and tenants (as well as the invitees of said

owners, residents and tenants) of units therein shall, at all times, be subject to and in accordance with the applicable provisions of the Governing Documents.

- (b) Notwithstanding that the transfer of ownership of the Shared Units to any of the Two Condominium Corporations (as tenants-in-common, in accordance with their Proportionate Interest) may not yet have occurred, each of the Two Condominium Corporations and the owners, residents and tenants (as well as the invitees of the said owners, residents and tenants) shall be entitled to use the Shared Units in accordance with their intended purposes as set out in the Declarations and this Agreement, provided however that said use shall be subject to restrictions and/or limitations contained therein and herein.
- (c) Notwithstanding that the costs of maintaining, repairing and/or replacing the Parking Garage shall be shared between the Two Condominium Corporations (and shall correspondingly comprise part of the Shared Facilities Costs), the use of those portions of the Parking Garage located within any one of the Two Condominium Corporations shall (subject to any express easements contained in the Governing Documents providing additional rights of use over the Parking Garage to any additional parties and the other terms of the Governing Documents), be restricted to owners of unit(s) within the condominium that encompass(es) said portion(s) of the Parking Garage.
- (d) The Declarant and the Tower II Declarant (and its affiliates and subsidiaries) shall be entitled to the use of the Easement Areas and the Shared Units for the purposes of implementing its construction, customer service, marketing and sales program with respect to any units in the Two Condominium Corporations and any other project being marketed from locations within the Total Site and shall be entitled to erect and maintain signs for marketing/sale purposes upon any portion of same until such time as all the units in the Two Condominium Corporations or in any other project being marketed from locations within the Total Site have been sold, conveyed and transferred to each of the respective unit purchasers thereof.

**5.2. Use of the Visitor Parking Units**

Subject to any provisions in the Declarations to the contrary, the parking spaces within the Visitor Parking Units shall only be used by visitors to the Tower I Condominium and the Tower II Condominium.

**5.3. Use of the Rooftop Terrace Units**

The Rooftop Terrace Units shall only be used by owners of residential units in the Tower I Condominium and Tower II Condominium and their visitors.

**ARTICLE VI. - THE EASEMENTS**

**6.1. Confirmation of Easements**

The parties hereto hereby acknowledge and agree that the Easements, created or reserved pursuant to the provisions of Section 40(1) of the *Land Titles Act*, R.S.O. 1990, as amended, or otherwise referred to in any of the Declarations, whether currently in existence or to be created subsequent to the date of this agreement, are hereby expressly confirmed, ratified and agreed to.

**6.2. 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. Furthermore, if any of the Easements are not validly created until the registration of the Tower II Condominium, such Easement shall be deemed to constitute a licence in favour of those parties and for those specific purposes, as set out herein until the registration of the Tower II Condominium.

**6.3. 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 the Declarations and this Agreement.

- (b) Subject to the provisions set out in paragraphs 6.4 and 6.5 of this Agreement with respect to the use of specific Easements:
- (i) the Benefitting Owners, in exercising their rights under the Easements, shall act (and cause any other persons using the Easements to act) in a prudent and reasonable manner and in accordance with all applicable laws so as to minimize (insofar as is reasonably possible) the interference and inconvenience occasioned thereby to the owner(s) of the Easement Areas;
  - (ii) each of the Two Condominium Corporations shall have the right to partially obstruct (on a temporary basis only) an Easement Area (or alternatively, temporarily suspend the benefit of the Easement relating thereto) within its respective lands, in order to maintain and/or repair any buildings, installations, structures and/or services that said condominium has a duty to maintain and repair under the Act, upon ten (10) days prior written notice of such partial obstruction or temporary suspension (as the case may be), being given to the Benefitting Owners, provided however, that in the event said maintenance and repair work involves any part of the Shared Facilities, such maintenance and repair work shall only be carried out in accordance with and pursuant to the provisions of Article VII hereof;
  - (iii) subject to paragraphs 6.4 and 6.5 hereof, there shall be no partial obstruction of an Easement Area (or temporary suspension of the Easements relating thereto) for any purpose other than those specifically set out in this paragraph 6.3, without the consent of the Benefitting Owners, unless alternate arrangements with respect to the use and enjoyment of an Easement Area, satisfactory to the Benefitting Owners, acting reasonably, are implemented.
- (c) Notwithstanding any provisions contained herein to the contrary, the Shared Facilities Committee shall be entitled to partially obstruct (on a temporary basis) an Easement Area and/or temporarily suspend an Easement if the suspension and/or obstruction is necessary or convenient for the purposes of inspecting, maintaining and/or repairing all or any portion of the Shared Facilities provided, however, that five (5) days prior written notice of the temporary suspension or partial obstruction shall be given to the Benefitting Owners.
- (d) The temporary suspension of an Easement and/or the partial obstruction of an Easement Area shall be carried out in a reasonable and/or prudent manner so as to minimize the interference or inconvenience occasioned thereby to the Benefitting Owners.

**6.4. Use of Vehicular and Pedestrian Access Easement**

Subject only to the provisions of paragraph hereof, there shall be no partial obstruction of the Common Interior Roadway (or any temporary suspension of the Easement(s) providing for the use and enjoyment of same) unless and until alternative arrangements for both access and egress to the Two Condominium Corporations satisfactory to the Shared Facilities Committee have been implemented.

**6.5. Use of Servicing and Maintenance and Repair Easements**

- (a) Subject to paragraph 6.3(c) hereof, there shall be no obstruction or suspension (partial, temporary or otherwise) of the Servicing and Maintenance and Repair Easements if same would result in the interruption of utilities and/or services to any one or more of the Benefitting Owners for a period of more than three (3) hours without the consent of the Benefitting Owners.
- (b) Except in the case of an emergency, no entry pursuant to the Servicing and Maintenance and Repair Easement shall be made unless and until forty-eight (48) hours prior written notice of the intention to enter is given to the Servient Owners, which notice shall specify the intended time of commencement and completion of the Work intended to be carried out.
- (c) Any work to be conducted pursuant to the Servicing and Maintenance and Repair Easements shall be carried out in accordance with the provisions of Article VII hereof.

**6.6. Use of Declarants' Construction Easements**

- (a) The benefit of the Declarants' Construction Easements shall not be partially obstructed or temporarily suspended without the Tower II Declarant's prior written consent thereto.
- (b) In the event that any buildings, soil, structures or other improvements are damaged, destroyed or materially altered by the Tower II Declarant or by its workmen, agents, representatives and/or retained contractors or consultants or by anyone else for whom the Tower II Declarant is in law liable or responsible in the course of the exercise of the Declarants' Construction Easements, the Tower II Declarant shall be responsible for repairing and restoring same to substantially the same condition as existed prior to such damage, destruction or material alteration.

**6.7. Relocation of Easements**

- (a) The Tower II Declarant shall have the unilateral right to relocate any of the Easement Areas within the Tower II Lands (which relocated easements areas shall be hereinafter referred to as the "**Relocated Easement Areas**") as well as amend the Easements relating thereto so that same reflect the Relocated Easement Areas (which amended Easements shall be hereinafter referred to as the "**Relocated Easements**") in order to re-align the Easement Areas with the as-built location of any building, structure, facility and/or improvements intended to be used pursuant to the Easement or to rectify any encroachment of a building, structure, facility and/or improvement that was not intended to be part of the Easement Area, provided however that:
  - (i) any relocation of an Easement Area and/or amendment of an Easement does not diminish the benefit of the Easement to such an extent that it would no longer be adequate for the purposes intended;
  - (ii) the Tower II Declarant shall prepare a reference plan delineating the Relocated Easement Areas; and
  - (iii) the Tower II Declarant shall be responsible for procuring any and all consents from the Governmental Authorities required in connection with the relocation of the Easements, on the understanding that all necessary parties hereto shall co-operate with the Tower II Declarant in satisfying any conditions imposed with respect thereto.
- (b) The parties hereto shall use their best efforts to procure any such releases and reconveyances as may be required from time to time in order to evidence and confirm the Relocated Easements and/or Relocated Easement Areas, as hereinbefore contemplated, and shall execute any and all documentation and do and suffer any act necessary to give effect to same, and there shall be no additional consideration payable by the parties with respect to the aforesaid release and reconveyance of the relevant Easements, and the transfer, grant and conveyance of the Relocated Easements, provided that the preparation and registration of all of the aforesaid documentation shall be performed by the Tower II Declarant, all at its sole cost and expense.

**6.8. Omitted Easements**

In the event that a party hereto (in this paragraph, the "**Dominant Owner**") at any time and from time to time shall deliver written notice to any other party hereto (in this paragraph, the "**Servient Owner**") that any easement, right and right in the nature of an easement in, on, over, across, through, above, under, or otherwise pertaining to such Servient Owner's Lands as servient tenement, in favour of the Dominant Owner's Lands which is, in its opinion, acting reasonably, required for the proper and efficient functioning of the Dominant Owner's project, has not been created for any reason, the Servient Owner shall grant, transfer and convey such easement, right, and right in the nature of an easement in accordance with the following provisions of this paragraph and shall co-operate with the Dominant Owner in satisfying any conditions imposed to obtain all necessary consents with respect thereto. The Dominant Owner shall deliver to the Servient Owner with its request for any such an easement a draft reference plan prepared by an Ontario Land Surveyor engaged at the sole cost and expense of the Dominant Owner, depicting thereon those portions of the Servient Owner's Lands which are intended to be made subject to the said easement, together with written reasons explaining why such easement is required. In the event that the Servient Owner shall dispute the requirement for such an easement, such dispute shall be resolved pursuant to the arbitration provisions contained in this Agreement based on the criteria for such an easement set forth above in this paragraph. Provided that the Dominant Owner obtains the necessary consent(s) (if required by operation of law) of the Committee of



Adjustment, thirty (30) days following the later of the date upon which such consent(s) becomes final, binding and incapable of further appeal the Servient Owner shall grant, transfer and convey the said easement to the Dominant Owner. The form of any transfers of easement required to give effect to the aforesaid grant, transfer and conveyance of the said easement, shall be mutually agreed upon by the parties, failing which the form of such transfer of easement shall be decided pursuant to arbitration as provided for by this Agreement. There shall be no additional consideration payable by the parties with respect to the transfer, grant and conveyance of the said easement, provided that the preparation and registration of all of the aforesaid documentation shall be performed by the Dominant Owner all at its sole cost and expense. The obligation to grant, transfer and convey any easement pursuant to this paragraph shall be stayed pending the decision of the arbitration panel with respect to any arbitration initiated pursuant to this paragraph.

#### ARTICLE VII. - MAINTENANCE AND REPAIR WORK

- 7.1. The inspection, maintenance, repair and/or replacement of any buildings, installations, structures, improvements and/or services pursuant to the Servicing and Maintenance and Repair Easements or otherwise including any repair after damage (hereinafter collectively referred to as the “**Work**”) shall be carried out in accordance with the following conditions, provisions and restrictions:
- (a) any Work relating to the Shared Facilities (hereinafter referred to as the “**Shared Work**”) undertaken (or required to be undertaken) prior to the creation of the Shared Facilities Committee, shall be carried out and completed under the direction and control of the Tower II Declarant, while any Shared Work undertaken (or required to be undertaken) after the creation of the Shared Facilities Committee shall be the sole responsibility of the Shared Facilities Committee and be carried out and completed under the direction and control of the Shared Facilities Committee, and in either case, the cost of undertaking and completing the Shared Work shall comprise part of the Shared Facilities Costs; and
  - (b) any Work that does not relate to the Shared Facilities (the “**Exclusive Work**”) shall be the responsibility of and carried out under the direction and control of the Benefitting Owners, all at their sole cost and expense.
- 7.2. The Shared Work shall be carried out as soon as reasonably possible, having due regard, to weather conditions and the availability of labour, materials and equipment.
- 7.3. In the event any buildings, soil or structures or other improvements situate within the applicable property (ie. the Tower I Lands and/or the Tower II Lands) encompassing the Easement Areas are physically altered or damaged in the course of carrying out the Work, then such alteration or damage shall be forthwith restored and/or repaired (as the case may be) to substantially the same condition as existed prior to such physical alteration or damage having occurred or arisen by:
- (a) the Shared Facilities Committee if said damage and/or alteration arose pursuant to any Shared Work; or alternatively
  - (b) the Benefitting Owners if said damage and/or alteration arose pursuant to any Exclusive Work, or pursuant to any Shared Work carried out by the Benefitting Owners pursuant to Article VIII of this Agreement.

#### ARTICLE VIII. - SELF-HELP REMEDIES

- 8.1. Notwithstanding anything hereinafter provided to the contrary, it is expressly understood and agreed that in the event that:
- (a) the Shared Facilities Committee has failed to implement, carry out and/or complete any Shared Work that any one or more of the Two Condominium Corporations would otherwise have a duty to implement, carry out and/or complete under the Act, the Declarations or the by-laws of the Two Condominium Corporations; or
  - (b) any of the Responsible Parties (as hereinafter defined) or the Shared Facilities Committee (as the case may be) fails to obtain and maintain the Shared Facilities Insurance (as that term is hereinafter defined) it is obliged to obtain and maintain pursuant to Article XI hereof;

(for the purposes of this section the party failing to carry out the Shared Work, obtain and maintain the Shared Facilities Insurance and/or enter into its Shared Trust Agreement, as the case may be, shall be hereinafter referred to as a “**Defaulting Party**” and the party intending to carry

out the Shared Work, obtain and maintain the Shared Facilities Insurance and/or enter into the Shared Trust Agreement, as the case may be, for and on behalf of the Defaulting Party shall be hereinafter referred to as the “**Non-Defaulting Party**”) then provided:

- (i) written notice has been delivered to the Defaulting Party; and
- (ii) the default set out in the aforesaid written notice has not been rectified within fourteen (14) days of the Defaulting Party’s receipt of said notice;

the Non-Defaulting Party shall be entitled to carry out the Shared Work (provided however that the provisions of paragraphs 7.2 and 7.3 hereof shall apply *mutatis mutandis* to said Shared Work) and/or obtain and maintain the Shared Facilities Insurance for and on behalf of the Defaulting Party and the cost incurred by the Non-Defaulting Party in connection with any of the foregoing provisions shall, for all purposes, constitute Shared Facilities Costs to be shared and paid for in accordance with the provisions of Article III hereof.

- 8.2. For the purposes of this Article VIII, the commencement of any Shared Work by the Shared Facilities Committee shall be evidenced by either its institution of a tendering process in respect of the Shared Work, or by the actual implementation or utilization of physical labour and/or materials with respect thereto.
- 8.3. Notwithstanding anything hereinbefore provided to the contrary, each of the Two Condominium Corporations shall be entitled to carry out the Shared Work without notice in the case of an Emergency provided however that each of the Two Condominium Corporations shall make reasonable efforts to give prior notice of the nature of the emergency and of the nature and scope of the Shared Work necessary in light of the emergency to the Shared Facilities Committee.
- 8.4. The parties hereto hereby covenant and agree that the amount of any costs incurred by a Non-Defaulting Party in connection with any of the foregoing matters shall not be challenged by any of the other parties hereto or the Shared Facilities Committee, unless said amount(s) is clearly demonstrated to be substantially in excess of the reasonable costs and/or expenses that would have otherwise been incurred by the Defaulting Party.

#### ARTICLE IX. - THE SHARED FACILITIES COMMITTEE

- 9.1. Subject to paragraph 9.2 hereof, the Shared Facilities Committee shall consist of two (2) members, one (1) of which shall be appointed by (and be members of) each of the boards of directors of each of the Two Condominium Corporations. Each of the Two Condominium Corporations shall also appoint an alternative member to fulfil the obligation of the appointed member when unavailable to ensure timely and full functionality of the Shared Facilities Committee.
- 9.2. Until the Transfer Date, the Tower II Declarant shall be entitled to appoint up to three (3) additional members to the Shared Facilities Committee.
- 9.3. At any meeting of the Shared Facilities Committee, a quorum shall consist of at least two (2) members thereof. Until the Transfer Date, decisions of the Shared Facilities Committee shall be passed by a majority of members present by person or by proxy at meetings of the Shared Facilities Committee and the Chairman shall not have an additional or casting vote. After the Transfer Date, all decisions of the Shared Facilities Committee shall be unanimous requiring the affirmative vote of members representing all of the Corporations and the Chairman shall not have an additional or casting vote. If thirty (30) minutes after the time appointed for the holding of any meeting of the members of the of the Committee, a quorum is not present, the meeting shall stand adjourned to the same time on the corresponding day of the next following week. Any member of the Committee who cannot attend any meeting of the committee may appoint a proxy to attend and vote at the meeting in his or her place. The proxy shall be a director or officer of the Corporation represented by such member. To be effective, the proxy must be in writing and must state the office held by the proxy on the board of directors of the Corporation represented by such member.
- 9.4. The Shared Facilities Committee shall, *inter alia*, be responsible for the following:
  - (a) establishing rules and procedures with respect to the use, operation, staffing, illumination, 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;
  - (b) making arrangements for the illumination, maintenance and/or repair of the Shared Facilities, including all equipment and fixtures utilized in connection with the ongoing

operation of same, as well as all landscaping, structures, components and/or features comprising any portion of the Shared Facilities, and procuring all requisite public liability and property damage insurance coverage with respect to same;

- (c) making arrangements for the provision of all requisite utilities and equipment (eg. water and hydro services) security services and/or computer monitoring services and equipment for the Shared Facilities, including without limitation, the installation and/or reading of separate consumption or check meters measuring the consumption of utilities supplied to the Shared Facilities;
- (d) preparing and submitting the Shared Facilities Budget to each of the Two Condominium Corporations, not less than once annually, outlining the Shared Facilities Costs, for incorporation by each of the Two Condominium Corporations as part of their respective overall annual budgets, in accordance with the foregoing provisions hereof; and
- (e) reimbursing any Non-Defaulting Party for costs incurred in connection with the self-help remedies set out in Article VIII hereof.

9.5. It is expressly understood and agreed by the parties hereto that all decisions made (and all actions taken) by the Shared Facilities Committee shall forthwith be adopted, ratified and confirmed by the respective boards of directors of the Two Condominium Corporations. In addition, the board of directors of each of the Two Condominium Corporations shall jointly determine such other provisions relating to the conduct, activities and operation of the Shared Facilities Committee as may be consistent with the provisions of the Act, the provisions of their respective declarations, and the provisions of this Agreement.

#### ARTICLE X. - MUTUAL INDEMNITIES

- 10.1. Each party hereto hereby covenants and agrees to forthwith repair and/or replace any landscaping, equipment or other property (both real and personal) within the property of any other party hereto which is altered, damaged or destroyed by any such party or by its residents, tenants, invitees, workmen, agents, representatives, contractors and/or subcontractors, or by anyone else for whom such party is in law responsible or liable (either vicariously or otherwise), in the course of using (or enjoying the benefits of) the Shared Facilities.
- 10.2. Subject to the foregoing provisions of this Article X, each of the parties hereto hereby covenant and agree to indemnify and save the other harmless, from and against all claims, costs, damages and/or liabilities which either of them may hereafter suffer or incur as a result of (or in connection with) the other's use, operation, maintenance and/or repair of the Shared Facilities, or any portion thereof, provided however that no party hereto shall be indemnified for its own acts or instances of gross negligence or wilful misconduct.

#### ARTICLE XI. - INSURANCE

- 11.1. Until the Transfer Date, each of the Two Condominium Corporations (or the Tower II Declarant on behalf of the Tower II Condominium Corporations which is not yet registered from time to time) (which parties shall be hereinafter individually referred to as a "**Responsible Party**" and collectively referred to as the "**Responsible Parties**") shall obtain and maintain the following insurance with respect to those portions of the Shared Facilities (hereinafter collectively referred to as the "**Shared Facilities Insurance**") which are completed and which are contained within or situate upon their respective lands (which Shared Facilities shall be hereinafter referred to as their "**Respective Portions**"):
  - (a) public liability insurance with respect to incidents or occurrences happening upon their Respective Portions providing a minimum coverage of \$5,000,000.00 per occurrence;
  - (b) fire and property damage insurance sufficient to cover 100% of the repair and/or replacement cost of all damaged property (both real and personal) comprising part of their Respective Portions; and
  - (c) comprehensive boiler, machinery and pressure vessel insurance on a repair and replacement basis, in such amount as would be normally maintained by prudent owners of such buildings and which amount shall initially not be less than \$5,000,000.00 and shall contain a "disputed loss agreement" between the property loss insurers and the boiler and machinery insurers;

in accordance with the applicable provisions of the Act and this Agreement.

- 11.2. Each of the insurance policies maintained pursuant to the foregoing paragraph 11.1, shall:

- (a) not contain any co-insurance clause and name each of the Responsible Parties as a named insured;
- (b) contain a provision whereby the insurer will not cancel or alter or refuse to renew such policy prior to its expiration, except after sixty (60) days prior written notice to each named insured thereunder;
- (c) be taken out and maintained with the same insurer, which insurer shall, until the creation of the Shared Facilities Committee, be chosen by the Tower II Declarant, acting reasonably; and
- (d) contain waivers of subrogation which cover at a minimum the Insurance Trustee (as hereinafter defined), the directors, officers, managers, agents, employees, invitees, tenants and servants of each of the Two Condominium Corporations and/or the Tower II Declarant save and except for arson, fraud, vandalism or wilful misconduct.

11.3. Any proceeds arising from the Shared Facilities Insurance shall be payable as follows:

- (a) to the Insurance Trustee with respect to any loss occasioned to any Respective Portions comprising part of (or encompassed within) the description of any one or more of the Two Condominium Corporations; or
- (b) to the Tower II Declarant with respect to any loss occasioned to any Respective Portions not yet contained (or encompassed within) a condominium description;

for the purposes of carrying out any Shared Work arising as a result of damage in accordance with Article VII hereof. In the event there are any surplus funds remaining after the completion of said work the applicable Responsible Party whose Respective Portions has been repaired and/or restored shall be entitled to receive and/or retain all of said surplus funds.

- 11.4. Nothing contained in this Agreement shall be construed to prohibit any of the parties hereto from arranging for additional insurance above and beyond that contemplated herein, provided however, that any premiums with respect to same shall be paid by the party obtaining such additional insurance coverage.
- 11.5. From and after the Transfer Date, the responsibility for procuring the Shared Facilities Insurance shall devolve upon the Shared Facilities Committee for and on behalf of all of the Two Condominium Corporations.
- 11.6. The Responsible Parties (or the Shared Facilities Committee, if same is in existence) shall obtain an appraisal from one or more independent and qualified appraisers in order to ascertain the full replacement cost of the Shared Facilities whenever they mutually agree that such an appraisal is necessary, but not in any event, later than once every three (3) years and the costs of said appraisals shall constitute part of the Shared Facilities Costs.
- 11.7. For purposes of greater certainty and clarity there shall be no obligation to obtain insurance with respect to any portion of the Shared Facilities that have not yet been constructed from time to time nor with respect to any boiler, machinery or pressure valves not yet installed and/or operating or that may not be constructed within any of the towers comprising the Total Project.

#### ARTICLE XII. - INSURANCE TRUSTEE

- 12.1. Any and all insurance proceeds of any insurance policy in excess of 15% of the replacement cost of the property covered by the insurance policy payable to or for any party hereto for the repair of its assets and attributable to damage to any part(s) of the Shared Facilities (after allowing for any proceeds attributable to damage to other than the Shared Facilities as determined by the Insurer, acting reasonably) shall be held by an insurance trustee mutually agreeable to all Owners (the "Insurance Trustee") and if an Insurance Trustee cannot be agreed upon, the insurance trustee shall be appointed in accordance with the arbitration provisions of Article XVI hereof.
- 12.2. The insurance trustee appointed in accordance with paragraph 12.1 hereof shall be a trust company registered under the *Loan and Trust Corporations Act* or shall be a chartered bank, with which the parties shall enter into an agreement providing as follows:
  - (a) receipt by the insurance trustee of any excess proceeds as contained in paragraph 12.1 hereof; and
  - (b) the holding of such proceeds in trust and disbursement of same in order to satisfy the obligation of each Owner in accordance with Article XIII.

- 12.3. If all Owners agree not to rebuild in accordance with paragraph 13.3(b), there shall be no requirement for the appointment of an insurance trustee and all insurance proceeds shall be paid to the respective Owners.

#### ARTICLE XIII. - DAMAGE TO SHARED FACILITIES

- 13.1. If any of the Buildings are damaged to the extent of less than 25%, the respective Owners shall rebuild, restore and repair same in accordance with this agreement.
- 13.2. If major damage has occurred to one or more of the Buildings, each Owner shall determine whether the damage extends to more than 25% of its building and in default of agreement, such determination shall be referred to mediation and if necessary arbitration pursuant to this Agreement.
- 13.3. Where there has been a determination that one or more of the Buildings have been damaged to an extent greater than 25%, and:
- (a) each such Owner has elected to rebuild, then each such Owner shall expeditiously rebuild, restore and repair its Building at its own expense in a good and workmanlike manner to Acceptable Standards to permit the other Owners and those authorized by it the intended benefit of the Easements;
  - (b) all Owners have elected not to rebuild, the Owners need not rebuild their respective Buildings; or
  - (c) one or more, but not all, of the Owners has elected not to rebuild, the Owner electing not to rebuild shall inform the other Owners of its election and shall nevertheless rebuild, repair and restore its Servient Portion in such a manner so as not in any material way to adversely affect the use and enjoyment of the Easements and buildings by the other Owners.
- 13.4. In the event it is necessary to relocate any of the Easement Areas within the Total Site and/or amend the Easements relating thereto as a result of the repair and restoration of damage to the Shared Facilities, in order to re-align the Easement Areas with the as-built location of any building, structure, facility and/or improvements intended to be used pursuant to the Easement or to rectify any encroachment of a building, structure, facility and/or improvement that was not intended to be part of the Easement Area, the provisions of paragraph 6.6 hereof shall apply, *mutatis mutandis*, to the relocation and/or amendment of the Easements provided however that any obligations imposed therein upon the Tower II Declarant shall be the responsibility of the Responsible Parties and/or the Shared Facilities Committee if same is in existence.

#### ARTICLE XIV. - TERMINATION OF CONDOMINIUMS

- 14.1. The obligations and responsibilities contained in this Agreement (including without limitation the obligation to repair after damage set out in Article XIII hereof) shall apply notwithstanding that any one or more of the Two Condominium Corporations has elected to terminate the government of its lands under the Act, and in the event of such termination each of the unit owners (and for greater certainty it is acknowledged that said unit owners would be owners of the lands which were formerly encompassed within the condominium, as tenants in common) shall be bound by the terms and provisions of this Agreement as if they were original signatories hereto and shall be jointly and severally liable to comply with all the obligations and covenants contained in this Agreement and shall execute such further assurances as may be required or desired by the other Responsible Parties to give full force and effect to this Article XIV.
- 14.2. For the purposes of Section 127(1) of the Act, the obligations arising under this Agreement (including without limitation the obligations contained herein to carry out the Work) shall be deemed to be encumbrances against each unit and their appurtenant common interests contained within the description for each of the Two Condominium Corporations that has been created before the registration of the Declaration (relating thereto).

#### ARTICLE XV. - THE EASEMENT CHARGE

- 15.1. In the event that any of the parties hereto shall fail to pay or contribute any monies required to be paid or contributed in accordance with the foregoing provisions of this Agreement (including without limitation any Shared Facilities Costs incurred pursuant to the Self-Help Remedies set out in Article VIII) (hereinafter referred to as a "Delinquent Party") within 30 days after receiving written notice from the other party hereto or the Shared Facilities Committee (hereinafter referred to as the "Non-Delinquent Party") requesting such monies to be paid or

contributed then the Non-Delinquent Party shall be entitled to pay or contribute those monies which the Delinquent Party should have paid or contributed, and all monies so expended shall, until repaid by the Delinquent Party, bear interest at the rate of **24% per annum**, calculated and compounded monthly on such amount as is from time to time unpaid, and until so paid, such outstanding amount (together with all interest accruing thereon as aforesaid) shall, to the extent thereof, be and constitute a lien and charge against the Delinquent Party's lands (or common element areas, as the case may be) (hereinafter referred to as the "**Easement Charge**").

- 15.2. Subject to the overriding provisions of paragraph 15.4 hereof, the Easement Charge shall be enforceable by the Non-Delinquent Party in the same manner, and to the same extent, as a real property mortgage or charge, with all of the powers, rights and remedies inherent in, or available to, a mortgagee or chargee when a mortgage or charge of real property is in default pursuant to the provisions of the Mortgages Act, R.S.O. 1990, as amended, and/or any other applicable statutory provision or common law principle applicable thereto.
- 15.3. In the event that the Land Registrar requires the Non-Delinquent Party to apply to a court of competent jurisdiction for any order, direction, advice or authorization prior to such Land Registrar allowing the registered title of the Delinquent Party's lands or common elements to be formally encumbered by the Easement Charge, then the Non-Delinquent Party shall be entitled to forthwith apply to such court for any required order, direction, advice or authorization, and the Delinquent Party shall, for all purposes, be deemed to have consented to any such application so being made for this purpose, and the Delinquent Party shall be forever barred and estopped from bringing or instituting any action, suit, claim or other proceeding to defend, defeat, hinder or delay any such application by the Non-Delinquent Party, or its enforcement of the Easement Charge (save for the institution of arbitration proceedings pursuant to the provisions hereinafter set out, in order to dispute any alleged default and/or the Non-Delinquent Party's entitlement to the Easement Charge). Alternatively, if the Land Registrar permits, the Easement Charge may be enforced by the filing of a caution, a certificate of pending litigation, or any restriction or notice as may be permitted by the provisions of the Land Titles Act, R.S.O. 1990, as amended.
- 15.4. The Easement Charge need not be registered against the title to the Delinquent Party's lands (or common elements), assets or appurtenant interests (nor registered elsewhere) in order to enable or entitle the Non-Delinquent Party to maintain or pursue a civil action against the Delinquent Party for breach of this Agreement. However, notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that the Easement Charge shall not have any priority claim whatsoever over (or in respect of) the interest of any third party (or parties) in or to the Delinquent Party's lands, assets and appurtenant interests, unless and until the Easement Charge (or any notice thereof, or any caution or certificate of pending litigation with respect thereto) has been registered against the title to same, and once such registration occurs, the Easement Charge shall then be deemed to be fully postponed and subordinate to all liens, mortgages, charges, interests and any other encumbrances (including any and all amendments thereto or extensions thereof made from time to time) which are registered against the Delinquent Party's lands and/or appurtenant interests in priority to the registration of the Easement Charge (all hereinafter collectively referred to as the "**Prior Charges**"), and shall also be deemed to be fully postponed and subordinate to all mortgage advances theretofore made (and thereafter to be made) under any of the Prior Charges.

#### ARTICLE XVI. – ALTERNATIVE DISPUTE RESOLUTION

- 16.1. The parties agree to use their best efforts to resolve any disputes or matters which may arise between them in respect of the Shared Facilities through good faith negotiations and the parties further agree that they shall resort to legal proceedings or mediation and arbitration against one another only as a last resort. If, after using their best efforts to resolve any such dispute or matter, such dispute or matters cannot be resolved by good faith negotiations, then any such dispute, other than with respect of non-payment of any party's proportionate share of the Shared Facilities Costs, shall be determined in the following manner which for purposes of this agreement shall be called "**ADR**".
- 16.2. Whenever ADR is permitted or required under this Agreement or the Act, ADR proceedings may be commenced by the parties in accordance with the following principles and procedures:
  - (a) Prior to commencing ADR proceedings, the parties shall use their best efforts to resolve the question or matter in dispute through good faith negotiations conducted at a meeting of the full boards of directors of each party, with the assistance and presence (optional) of legal counsel representing each corporation, all acting with a view to securing a resolution of the question or matter in dispute without further proceedings.

- (b) If the parties, with the assistance of legal counsel as set forth in paragraph 16.2(a) above, are unable to resolve the questions or matter in dispute through good faith negotiations, as provided in Section 132 of the Act, the parties shall, within thirty (30) days thereafter, select a mediator qualified by education and training to assist the parties in dealing with the particular questions or matter in dispute, and the parties shall attempt to mediate their differences, and the mediator shall confer with the parties and endeavour to obtain a settlement with respect to the disagreement submitted to mediation. The parties shall initially share equally in the costs of a mediator, however, the settlement shall specify the share of the mediator's fees and expenses that each party is required to pay. Upon obtaining a settlement between and among the parties with respect to the disagreement submitted to mediation, the mediator shall make a written record of the settlement which shall form part of the agreement or matter that was the subject of the mediation.
  - (c) If good faith negotiations and the mediation process as described in paragraph 16.2(a) and (b) of this Agreement are exhausted and the parties are still unable to resolve the question or matter in dispute, within thirty (30) days after the mediator delivers a notice to the parties stating that the mediation has failed, the parties agree to submit the question or matter in dispute for resolution by a single arbitrator whose appointment is agreed upon by the parties, and the decision of the arbitrator shall be binding upon the parties hereto, and no legal recourse shall be exercised by either party hereto with respect to the question or matter in dispute until the arbitration has been completed.
  - (d) The parties shall meet and attempt to appoint a single arbitrator who is well qualified with education and training to pass upon the particular question or matter in dispute. In the event that the parties are unable to agree upon a single arbitrator, each party shall appoint one arbitrator within seven (7) days of the meeting and notify the other party. The arbitrators so appointed shall, within seven (7) days of the appointment of the last arbitrator so appointed, choose a single arbitrator who is qualified by education and training to pass upon the particular question or matter in dispute. If either party neglects or refuses to name an arbitrator within seven (7) days of being requested to do so by the other party, the arbitrator named by the first party shall proceed to resolve the dispute in accordance with *Arbitrations Act, 1991* (Ontario) and the parties agree that the arbitrator's decision shall be final and shall not be subject to appeal by any party other than on a question of law in accordance with Subsection 45(2) of the *Arbitrations Act, 1991* or pursuant to a specific ground for appeal or for setting aside the arbitrator's award pursuant to Section 46 of the *Arbitrations Act, 1991*.
  - (e) The decisions and reasons of the arbitrator shall be made within thirty (30) days after the hearing of the question or matter in dispute, and the decisions and reasons shall be drawn up in writing and signed by the arbitrator who shall also be entitled to award costs of the ADR. The compensation and expenses of the arbitrator shall initially be paid in equal proportions by each party, subject to the final outcome and any award being made as to costs of the ADR.
  - (f) Where ADR is required by this Agreement, commencement and completion of such ADR in accordance with this Agreement shall be a condition precedent to the commencement of an action at law or in equity in respect of the question or matter in dispute being arbitrated.
- 16.3. For clarity, notwithstanding the nature of the dispute, until the questions or matter in dispute is finally determined by ADR, the disputing party shall continue to perform all work and services required to be performed by it and to pay all amounts required to be paid by it in accordance with this Agreement.
- 16.4. Subject always to the parties agreeing to any modifications thereto, the mediation shall be conducted generally in accordance with the Rules of Procedure for the conduct of mediations by the mediator so chosen and the ADR shall be conducted generally in accordance with the Rules of Procedure for the conduct of ADR by the arbitrator so chosen and also in accordance with the provisions of the *Arbitrations Act, 1991* (Ontario). Any dispute, difference, issue or question arising between the parties hereto which concerns (or touches upon) the validity, construction, meaning, performance or effect of this agreement, or the rights and liabilities of the parties hereto, or with respect to any matter arising out of (or connected with) this agreement, shall be referred to (and resolved by) arbitration pursuant to the *Arbitration Act, 1991*, as amended, in accordance with the overriding provisions set out in this Article XVI. The substantive rules of law applicable to the dispute being arbitrated pursuant to the provisions hereof shall be those of the Province of Ontario, and the arbitration decision so rendered shall be binding upon the parties hereto, and their respective successors and assigns, and shall not be subject to appeal under any

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

#### ARTICLE XVII. - RELEASE OF THE DECLARANTS

- 17.1. Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that upon the registration of the Tower I Condominium Corporation, the Declarant shall be automatically released, relieved and fully discharged from any and all further obligations and liabilities arising from (or in connection with) such condominium under this Agreement or any successor agreement, and thereafter forthwith upon the request of the Declarant, the parties hereto shall each execute a formal release of the Declarant in order to evidence and confirm the foregoing cessation of the Declarant's obligations and liabilities, together with such further documents and assurances as the Declarant may reasonably require in connection therewith.
- 17.2. Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that upon the registration of the Tower II Condominium Corporation, the Tower II Declarant shall be automatically released, relieved and fully discharged from any and all further obligations and liabilities arising from (or in connection with) such condominium under this Agreement or any successor agreement, and thereafter forthwith upon the request of the Tower II Declarant, the parties hereto shall each execute a formal release of the Tower II Declarant in order to evidence and confirm the foregoing cessation of the Tower II Declarant's obligations and liabilities, together with such further documents and assurances as the Tower II Declarant may reasonably require in connection therewith.

#### ARTICLE XVIII. - NOTICES

- 18.1. All notices required or desired to be given to any of the parties hereto in connection with this Agreement, or arising herefrom, shall be in writing, and shall be hand delivered to an officer or director of the intended party at the following address, or be delivered by registered mail to the intended party at the following address [and if so mailed, same shall be deemed to have been delivered, received and effective on the 3rd day (excluding Saturdays, Sundays and statutory holidays) following the day on which such notice was mailed]:
- (a) to the Declarant – 8791 Woodbine Avenue, Suite 100, Markham, Ontario, L3R 0P4.
  - (b) to the Tower II Declarant – 8791 Woodbine Avenue, Suite 100, Markham, Ontario, L3R 0P4.
  - (c) to the Tower I Condominium - c/o its property manager at 144 Park Street, Waterloo, Ontario, Attention: Property Management Office.
  - (d) to the Tower II Condominium - c/o its property manager at 155 Caroline Street, Waterloo, Ontario, Attention: Property Management Office.
  - (e) to the Shared Facilities Committee by giving same to the Tower II Declarant (until the Transfer Date) and to at least two (2) committee members (who are not representatives or nominees of the same Condominium Corporation) either personally or by ordinary mail, postage prepaid, address to such member's respective dwelling units.
- 18.2. Any party hereto may, from time to time, by written notice to the other party hereto, delivered in accordance with the foregoing provisions, change the address to which its notices are to be delivered.

#### ARTICLE XIX. - REGISTRATION OF THIS AGREEMENT

- 19.1. The parties hereto hereby consent to the registration of this Agreement against the title to the Total Site, and hereby acknowledge, confirm and agree that this Agreement shall be deemed and construed to run with the title to each of the Tower I Lands and the Tower II Lands, respectively.
- 19.2. The Declarant further covenants and agrees that upon the registration of the Tower I Condominium, it shall cause same to enter into an agreement with the Tower II Declarant that is substantially the same as this Agreement, or to simply execute a counterpart of this Agreement, in order to be bound by all the terms, provisions and conditions contained herein, as if such condominium had been an original party to this Agreement in the place and stead of the Declarant. Moreover, notwithstanding anything provided in this Agreement to the contrary, it is expressly understood and agreed that as and when the Tower I Condominium is registered, the Declarant shall be automatically released and forever discharged from all of its covenants, obligations and liabilities arising under this Agreement.



- 19.3. The Tower II Declarant further covenants and agrees that upon the registration of the Tower II Condominium, it shall cause same to enter into an agreement with the Tower I Condominium that is substantially the same as this Agreement, or to simply execute a counterpart of this Agreement, in order to be bound by all the terms, provisions and conditions contained herein, as if such condominium had been an original party to this Agreement in the place and stead of the Tower II Declarant. Moreover, notwithstanding anything provided in this Agreement to the contrary, it is expressly understood and agreed that as and when the Tower II Condominium is registered, the Tower II Declarant shall be automatically released and forever discharged from all of its covenants, obligations and liabilities arising under this Agreement.

#### ARTICLE XX. - ESTOPPEL CERTIFICATE

- 20.1. Each of the Two Condominium Corporations (and the Tower II Declarant on behalf of the Tower II Condominium Corporations which is not yet registered) (hereinafter referred to as a "**Receiving Party**") shall, within ten (10) days after receiving a written request (hereinafter referred to as a "**Certificate Request**") accompanied by payment of a fee not in excess of \$100.00 plus all applicable taxes thereon (or such higher fee as may be appropriate based on inflationary fee increases), from or by any party interested in the status of this Agreement (hereinafter called the "**Requesting Party**"), execute, acknowledge and deliver to the Requesting Party a certificate (hereinafter called the "**Certificate**") confirming:
- (a) whether this Agreement has been modified and if so, the nature of such modifications, and confirming that it is in full force and effect;
  - (b) whether or not the terms and provisions of this Agreement have been complied with to date, and whether or not there is any outstanding default alleged (or complained of) by or against any of the Two Condominium Corporations, the Declarant, the Tower II Declarant and/or the Shared Facilities Committee as well as the nature and extent of the default so alleged;
  - (c) whether or not any Work has been (or is presently being) performed by any of the Two Condominium Corporations, the Declarant, the Tower II Declarant and/or the Shared Facilities Committee for which the costs will be claimed or charged against any of the other parties hereto and/or the Shared Facilities Committee pursuant to provisions of this Agreement.
- 20.2. Notwithstanding any provision contained herein to the contrary, nothing shall be charged to (or levied against) any of the Declarant or the Tower II Declarant if it requests (or any authorized agent or representative requests) a Certificate pursuant to this Article XX.
- 20.3. The contents of the Certificate may be pleaded as (and shall constitute) a complete defence by the Requesting Party to any litigated claim or action that is inconsistent with the facts recited in the Certificate.
- 20.4. If a Receiving Party fails to execute and deliver to the Requesting Party the Certificate so requested from them, within ten days after receiving the Certificate Request and the accompanying fee, then they shall be deemed to have certified to the Requesting Party that:
- (a) there is no outstanding default by any of the Two Condominium Corporations, the Declarant, the Tower II Declarant and/or the Shared Facilities Committee under this Agreement; and
  - (b) no Work has been (or is presently being) performed by any of the Two Condominium Corporations, the Declarant, the Tower II Declarant and/or the Shared Facilities Committee, for which the cost of same is (or may be) claimed or charged against any of the condominiums comprising the Two Condominium Corporations, the Declarant, the Tower II Declarant and/or the Shared Facilities Committee, pursuant to the provisions of this Agreement.

#### ARTICLE XXI. - RECIPROCAL BENEFIT AND BURDEN

- 21.1. The parties hereto hereby expressly declare their mutual intention that the principles of reciprocal benefit and burden shall apply to their relationship, and as such, it is hereby acknowledged and agreed that each of the easements, rights and privileges hereinbefore set forth establishes a basis for the mutual/reciprocal use and enjoyment of certain parts of the Two Condominium Corporations, including the Shared Facilities, which are intended to be used and enjoyed by each of the Declarant, the Tower II Declarant and the Two Condominium Corporations to varying degrees. As an integral and material consideration for the continuing right to the use and

enjoyment by each of the Declarant, the Tower II Declarant and the Two Condominium Corporations of such easements, rights and privileges (as are confirmed in this Agreement, or incorporated herein by way of counterpart agreement), each of the parties hereto hereby accepts (and agrees to assume) the burdens and obligations imposed upon them by virtue of this Agreement.

#### ARTICLE XXII. - CONSTRUCTION LIENS

- 22.1. Each of the parties hereto covenants and agrees to forthwith make any required payment or filing of any security, so as to forthwith remove any construction lien (claimed in respect of a supply of materials and/or the provision of services contracted for by it) which encumbers the other party's lands, by no later than thirty (30) days after the receipt of a written request to do so delivered by or on behalf of any of the other condominiums comprising the Two Condominium Corporations, and/or the Tower II Declarant failing which, such other of the Two Condominium Corporations or the Tower II Declarant may make the payment or post the security required to remove such construction lien from title, and thereafter seek reimbursement for all monies expended (and costs incurred) in doing so from the defaulting party.

#### ARTICLE XXIII. - SUCCESSORS AND ASSIGNS

- 23.1. This Agreement shall enure to the benefit of, and be correspondingly binding upon, the parties hereto and their respective successors and assigns.
- 23.2. Notwithstanding anything provided in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that:
- (a) any reference to any of the Two Condominium Corporations in this Agreement, where the context pertains to the use or enjoyment of an easement (or some other right, benefit or interest), shall be deemed to include such Condominium's duly authorized agents, representatives, employees, contractors and/or subcontractors, and shall also specifically include the unit owners thereof and their respective tenants, residents and invitees;
  - (b) any reference to the Tower II Declarant in this Agreement, where the context pertains to the use or enjoyment of an easement (or some other right, benefit or interest), shall specifically include the Tower II Declarant and the condominium corporations which are ultimately created on the Total Site, and their duly authorized agents, representatives, employees, contractors and/or subcontractors, together with all of the unit owners of said condominium corporations, and their respective tenants, residents and invitees; and
  - (c) any reference to the Shared Facilities Committee shall, unless the context provides otherwise, mean the Tower II Declarant in the event that said committee has not yet been created, provided however, that any obligations imposed upon the Shared Facilities Committee including without limitation the obligation to carry out and/or pay for any maintenance or repair work (hereinafter referred to as the "Shared Obligations"), shall apply to the Tower II Declarant only insofar as the appropriate contributions have been made by such of the Two Condominium Corporations in existence from time to time (or insurance proceeds are available) to enable the Tower II Declarant to carry out and/or pay for any of the Shared Obligations.

#### ARTICLE XXIV. - FURTHER ASSURANCES

- 24.1. The parties hereto hereby covenant and agree to forthwith execute all further documents, instruments and assurances as may be necessary or required in order to carry out the true intent of these presents, and to register this Agreement (or notice thereof) against the title to the Tower I Lands and the Tower II Lands. Without limiting the generality of the foregoing, the parties hereto hereby covenant and agree to execute all such further documents, instruments and agreements as may be required in order to realign the boundaries of the Shared Easement Areas so that same align more accurately with the final location thereof, as finally constructed. Moreover, each of the Two Condominium Corporations specifically covenants and agrees to execute, forthwith upon the request of the Tower II Declarant as is necessary and at no cost to the Tower II Declarant or to any other party hereto:
- (a) such further or supplementary Shared Facilities Agreements pertaining to (and generally confirming) those matters and details more particularly set out herein, and containing such additional provisions as the Tower II Declarant may deem necessary or desirable in order to more accurately reflect the sharing of the Shared Facilities among the Two Condominium Corporations, but in no case derogating in any material respect from the overall nature and intent of this Agreement;

- (b) whatever releases or other documents are required in order to delete this agreement from title to any lands which do not or will not form part of the Two Condominium Corporations. In this regard, the parties acknowledge and agree as follows:
  - (i) that because the precise location of the Two Condominium Corporations is not presently known and because there is currently no registerable legal description for the Total Site available, that this Agreement may be registered against lands owned by the Tower II Declarant which will not form part of the Total Site;
  - (ii) that each of the Tower I Condominium and the Tower II Condominium hereby irrevocably consents, authorizes and directs the Tower II Declarant to delete this Agreement from title to any lands which do not or will not form part of either of the Two Condominium Corporations, and irrevocably appoints the Tower II Declarant as its attorney and agent to execute any consents or other documents required by the Tower II Declarant to give effect to this paragraph;
  - (iii) from time to time to execute the releases or other documents requested by the Tower II Declarant in order to confirm the deletion of this Agreement from title to any lands which do not or will not form part of either of the Two Condominium Corporations; and
  - (iv) this Agreement shall not apply to and shall be of no further force or effect in respect of any lands which do not or will not form part of either of the Two Condominium Corporations; and
- (c) such documents, releases and assurances as the Tower II Declarant may require in order to evidence and confirm the cessation of the Tower II Declarant's obligations and liabilities hereunder with respect to the Two Condominium Corporations, and the release of all claims by the Two Condominium Corporations against the Tower II Declarant arising from, or in connection with this Agreement or any supplementary or further Shared Facilities Agreements.

- 24.2. Notwithstanding anything hereinbefore provided to the contrary, it is expressly understood and agreed that if a counterpart of this Agreement is duly executed by any of the Two Condominium Corporations (as and when same are created) with or without the Tower II Declarant as an additional signatory thereto (which incorporates all material aspects of this Agreement and the overall nature and intent hereof, but which is not executed by any of the other parties hereto), in lieu of any of the supplementary agreements referred to in paragraph 24.1(a) hereof (which would require the execution thereof by each of the Tower I Condominium Corporation and/or the Tower II Condominium Corporation), then any such party which does not execute such counterpart agreement shall nevertheless be bound by all of the terms and provisions of the said counterpart agreement as if it had duly executed same.
- 24.3. The parties agree that if the Tower II Condominium is developed in a manner substantially different from as contemplated in this Agreement, or is not constructed at all, they will co-operate in amending this Agreement so that it takes into account the changes to the development of the Tower II Lands.

#### ARTICLE XXV. - MISCELLANEOUS PROVISIONS

- 25.1. This Agreement is subject to compliance with the subdivision and part-lot control provisions of the Planning Act, R.S.O. 1990, as amended.
- 25.2. The headings used throughout the body of this Agreement form no part hereof, but shall be deemed to be inserted for convenience of reference only.
- 25.3. This Agreement shall be read and construed with all changes in gender and/or number as may be required by the context.
- 25.4. If any clause or section of this Agreement shall be determined by a court of competent jurisdiction to be illegal or unenforceable, then such clause or section shall be considered separate and severable from the rest of this Agreement, and the remaining provisions hereof shall remain in full force and effect, and shall continue to be binding upon the parties hereto as though the said illegal or unenforceable clause or section had never been included.
- 25.5. This Agreement may be executed in one or more counterparts, each of which when so executed shall constitute an original, and all of which shall together constitute one and the same agreement.

25.6. Wherever this Agreement allows a party to exercise its discretion or to act unilaterally, such exercise of discretion or actions shall be carried out honestly and in good faith.

**IN WITNESS WHEREOF** the parties hereto have hereunto caused to be affixed their corporate seals, duly attested to by their respective proper signing officers authorized in that behalf.

**144 PARK LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation.

**ONE 55 MADY LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation.



**BUDGET STATEMENT  
FOR THE FIRST YEAR OF OPERATIONS**

January 2014

# 144 Park

UPTOWN WATERLOO

Budget statement for the common expenses for the year following registration of the declaration and description of the proposed standard condominium corporation at 144 Park Street, Waterloo, Ontario.

## REVENUE

Common Element Fees	\$973,491	
Operating Interest Income	1,213	
Guest Suite Rental Income	10,921	
<b>TOTAL REVENUE</b>		<b>\$985,626</b>

## ADMINISTRATION

Management Fees	\$34,052	
Insurance	8,989	
Legal	635	
Audit	3,899	
Office Expenses	2,177	
<b>TOTAL ADMINISTRATION EXPENSES</b>		<b>\$49,752</b>

## UTILITIES

Electricity	\$90,691	
Water	44,382	
Gas	140,510	
Telephones	3,000	
<b>TOTAL UTILITIES</b>		<b>\$278,583</b>

## CONSULTING

Performance Audit	\$11,427	
<b>TOTAL CONSULTING</b>		<b>\$11,427</b>

## MAINTENANCE & REPAIRS

Building Repairs & Maintenance	\$11,487	
Building Supplies	5,804	
<b>TOTAL REPAIRS &amp; MAINTENANCE</b>		<b>\$17,292</b>

# 144 Park

UPTOWN WATERLOO

Budget statement for the common expenses for the year following registration of the declaration and description of the proposed standard condominium corporation at 144 Park Street, Waterloo, Ontario.

## CONTRACTS

Contract Cleaning	\$73,206	
In-suite Fan Coil Maintenance	14,752	
HVAC Lease	209,410	
Waste Removal	18,138	
Waste Recycling System Lease	9,674	
Concierge	67,290	
Guest Suite Unit Mortgage	0	
Guest Suite Unit Maintenance	3,509	
Land Transfer Tax	2,177	
Property Tax	1,814	
Generator Maintenance	4,111	
Life Safety & Security System Maintenance	9,674	
Building Equipment Maintenance	9,674	
Elevators	12,092	
Window Cleaning	6,046	
Pest Control	846	
<b>TOTAL CONTRACTS</b>		<b>\$442,413</b>

## TWO-WAY SHARED FACILITIES

Landscaping & Snow Removal	21,766	
Management Fees	16,215	
Legal	254	
Office Supplies	363	
Audit	1,270	
Building Repairs & Maintenance	605	
Building Supplies	302	
Electricity	30,230	
Water	562	
Garage Equipment Maintenance	2,418	
Garage Door Maintenance Contract	1,814	
Garage Sweep	846	
Two-Way Shared Facilities Reserve Fund Provision	6,406	
Provision for Shared Facilities Reserve Fund Study	3,174	
<b>TOTAL TWO-WAY SHARED FACILITIES</b>		<b>\$86,226</b>



Budget statement for the common expenses for the year following registration of the declaration and description of the proposed standard condominium corporation at 144 Park Street, Waterloo, Ontario.

**RESERVE FUND**

Reserve Fund Provision	\$94,683	
Reserve Fund Provision for Reserve Fund Study	5,250	
<b>TOTAL RESERVE FUND</b>		<b>\$99,933</b>
<b>TOTAL EXPENSES</b>		<b>\$985,626</b>

If registration of the declaration and description occurs after March 01, 2014, then the budget statement shall be read as increased by an inflation rate of 6.0% per annum each year and compounded annually. The date contained in this clause is not a guarantee that registration will take place on this date.





**NOTES TO THE BUDGET**

**I. INDIVIDUAL UNIT ASSESSMENT:**

The monthly common element charge for each unit is determined by dividing the total budgeted common element fees attributed to the property by twelve (12) to determine the monthly assessment. This amount is multiplied by the unit's percentage contribution to common expenses, as shown in Schedule "D" of the proposed declaration, to find the monthly individual common element charges.

**1. Total Monthly Common Element Assessment:**

$$\$973,491 \text{ divided by } 12 = \$81,124.23$$

**2. Monthly Individual Common Element Assessment:**

Individual unit monthly common element assessments are determined by multiplying the total monthly common element assessment (\$81,124.23) by the percentage contribution to common expenses of each unit. Please see the Schedule at the back of this Budget Statement for the individual unit monthly common element assessment.

**II. OPERATING EXPENSES:**

**1. ADMINISTRATION**

**\$49,752**

**a. Management Fees**

**\$34,052**

This covers the cost of the services of a property management company to administer the affairs of the condominium corporation and as detailed in the property management contract included in the Disclosure Statement Package. The contract for the first year is set at \$2,511.25 per month, inclusive of all start up fees, plus the H.S.T.

**b. Insurance**

**\$8,989**

This amount covers all insurance costs, including fire (all risk), comprehensive general liability, all major equipment and directors and officers liability coverage, as applicable.

**c. Legal**

**\$635**

Provision has been made for the appointment of independent legal counsel for the Corporation at the discretion of the Board of Directors and to a maximum amount of \$562 plus the H.S.T.

**d. Audit**

**\$3,899**

Section 43(7) of the Condominium Act requires an audit sixty (60) days after the turn over meeting and Section 67 requires an audit for each fiscal year. This provision is the estimated cost to complete both the audits during the year.

**e. Office Expenses**

**\$2,177**

This budgeted amount provides for any office expenses directly related to the operation of the corporation including the services of a minute taker for board meetings, various office supplies, photocopying, mailings, the annual general meeting, C.C.I membership, status certificates that may be required by the Declarant, bank charges and other such expenses.



## NOTES TO THE BUDGET

### 2. UTILITIES \$278,583

a. Electricity \$90,691

The budget is based on comparable property requirements and the current rates of 5.3 cents per kilowatt hour and administrative/distribution charges have been escalated by 3% and compounded annually. The budget includes electricity for the common areas only. Each unit will be separately metered and the cost of consumption to the unit will be the responsibility of the unit owner. Should the rates for hydro at time of registration be greater than 5.8 cents per kilowatt hour or the administrative/distribution charges have increased from current charges, then the budget will be adjusted accordingly to reflect the rates at the time of registration.

b. Water \$44,382

The budget is based on comparable property requirements and the current rates of the City of Waterloo have been escalated by 3% and compounded annually. The budget includes water and sewage charges for the common areas and units on a bulk billing basis. Should the rates for water at time of registration be greater, then the budget will be adjusted accordingly to reflect the rates at the time of registration.

c. Gas \$140,510

The budget is based on comparable property requirements and the current rates of 37.5 cents per cubic meter and administrative/distribution charges have been escalated by 3% and compounded annually. The budget includes natural gas costs for the common areas and residential units on a bulk billing basis and based on the G.F.A of those areas. Should the rates for gas at time of registration be greater than 41.3 cents per cubic meter or the administrative/distribution charges have increased from current charges, then the budget will be adjusted accordingly to reflect the rates at the time of registration.

d. Telephones \$3,000

The cost of the phone lines for the enterphone and elevators at the commercial rate.

### 3. CONSULTING \$11,427

a. Performance Audit \$11,427

The cost of the engineering study, to be conducted by the Declarant Board of Directors, to examine the common element areas and to file with the Taron Warranty Program during the first year. This is a one time expense.



## NOTES TO THE BUDGET

The Declarant shall arrange for an Agreement on behalf of the Corporation with an independent engineering consultant to prepare a Performance Audit within one (1) year immediately following registration of the Declaration and the Description. The Performance Audit shall be conducted by professional consulting engineers who shall make a thorough examination of the common element areas and assess the as-constructed condition of the various systems and components of the common element areas in order to provide the corporation with a report on the common element areas which will assist the corporation in assessing repair and maintenance requirements and in preserving any rights which the corporation may have under the Ontario New Home Warranties Plan Act. The Declarant has negotiated a price for the Performance Audit (the "Contracted Price") which has been included in the Budget as a first year expense of the corporation.

The Corporation is not restricted to the consulting engineers for the Performance Audit being prepared as set out herein. However, in the event that the corporation retains an alternate and/or additional consulting engineer to undertake the Performance Audit, at a higher cost than the Contracted Price negotiated by the Declarant then, the Declarant shall only be responsible for the amount of the Contracted Price, pursuant to Section 75 of the Condominium Act, and any expenses in excess of this stated amount shall be the sole responsibility of the condominium corporation.

<b>4.</b>	<b>MAINTENANCE &amp; REPAIRS</b>	<b>\$17,292</b>
	a. Building Repairs & Maintenance	\$11,487
	This is the estimated cost for minor repairs to the common element areas only. This account is also used for the normal day-to-day maintenance to the common element areas.	
	b. Building Supplies	\$5,804
	This is the estimated cost for supplies, such as light bulbs, for the common areas.	
<b>5.</b>	<b>CONTRACTS</b>	<b>\$442,413</b>
	a. Contract Cleaning	\$73,206
	To supply a contract cleaners on the basis of 56 hours per week, 52 weeks per year and at a maximum blended rate of \$20.22 per hour plus 10% statutory holiday pay plus 13% for the H.S.T.	
	b. In-suite Fan Coil Maintenance	\$14,752
	To inspect and change the filters in the in-suite HVAC equipment on a semi-annually basis.	
	c. HVAC Lease	\$209,410
	The cost of the HVAC lease, based on an estimated cost of \$1,500,000 and amortized over 15 years. Please refer to the Disclosure Statement for further details.	



## NOTES TO THE BUDGET

d.	Waste Removal	\$18,138
	The estimate cost for private waste removal as this service will not be provided by the municipality/region.	
e.	Waste Recycling System Lease	\$9,674
	The estimated cost to lease the waste recycling system to promote recycling.	
f.	Concierge	\$67,290
	To supply a concierge contract services on the basis of 8 hours per day, 365 days per year and at a maximum blended billing rate of \$18.54 per hour plus 10% statutory holiday pay plus 13% for the H.S.T.	
g.	Guest Suite Unit Mortgage	\$0
	The interest payable on the Guest Suite Unit mortgage will commence on the first anniversary of the registration of the Condominium Corporation. The mortgage is based on a purchase price of \$116,000, plus the H.S.T. bearing interest at four (4.0%) percent over the Government of Canada 10 Year Bond Yield. The monthly payments for the purchase price of the guest suite and the H.S.T. will commence 13 months following the registration of the condominium and will be \$1,515.21 based on an eleven (11) year term and a ten (10) year amortization period at current rates. The actual monthly payment may be different and will be based on the interest rate at the time as specified in these notes and in the Disclosure Statement. Please refer to	
h.	Guest Suite Unit Maintenance	\$3,509
	The estimated cost to clean and turn over the Guest Suite Unit after each unit, which is offset by the revenue it will generate.	
i.	Land Transfer Tax	\$2,177
	The estimated Land Transfer Tax and legal expenses payable on the purchase of the Guest Suite Unit.	
j.	Property Tax	\$1,814
	The estimated property taxes that will be payable on the Guest Suite Unit.	
k.	Generator Maintenance	\$4,111
	To inspect the emergency generator on a semi-annually basis and maintain it as may be required.	
l.	Life Safety & Security System Maintenance	\$9,674
	To inspect and maintain the life safety and security systems during the year as required by law and/or as may be required.	
m.	Building Equipment Maintenance	\$9,674
	To maintain the common area building equipment according to manufacturers' specifications.	
n.	Elevators	\$12,092
	The cost of an all inclusive contract to maintain the common element area elevators as required by law.	



## NOTES TO THE BUDGET

o.	Window Cleaning	\$6,046
	To clean all inaccessible windows once during the year.	
p.	Pest Control	\$846
	To spray the common area garbage and compactor rooms once per month.	
<b>6.</b>	<b>TWO-WAY SHARED FACILITIES</b>	<b>\$86,226</b>
a.	Landscaping & Snow Removal	\$21,766
	The Condominium Corporation's proportionate share of the cost to maintain the common area landscaping and to clear snow and ice from the roadways in the winter, including the cost of sand and salt. This represents the Condominium Corporation's proportionate share of this expense as detailed in the Disclosure Statement and subject to the Shared Facilities Agreement to be finalized at a later date.	
b.	Management Fees	\$16,215
	Provision has been made for professional property management services to administer the affairs of the Two-Way Shared Facilities. The Condominium Corporation will be responsible for its proportionate share of this expense. Please refer to the Disclosure Statement for further details.	
c.	Legal	\$254
	Provision has been made for the appointment of independent legal counsel for the Two-Way Shared Facilities to a maximum amount of \$225 plus the H.S.T. The Condominium Corporation will be responsible for its proportionate share of this expense. Please refer to the Disclosure Statement for further details.	
d.	Office Supplies	\$363
	Provision has been made for office expenses to be used for the operation of the Two-Way Shared Facilities Agreement. The Condominium Corporation will be responsible for its proportionate share of this expense. Please refer to the Disclosure Statement for further details.	
e.	Audit	\$1,270
	Provision for an annual audit for the Two-Way Shared Facilities. The Condominium Corporation will be responsible for its proportionate share of this expense. Please refer to the Disclosure Statement for further details.	
f.	Building Repairs & Maintenance	\$605
	Provision for any repairs and day to day maintenance of the Two-Way Shared Facilities. The Condominium Corporation will be responsible for its proportionate share of this expense. Please refer to the Disclosure Statement for further details.	
g.	Building Supplies	\$302
	Provision for maintenance supplies for the Two-Way Shared Facilities such as light bulbs the Garage etc. The Condominium Corporation will be responsible for its proportionate share of this expense. Please refer to the Disclosure Statement for further details.	



## NOTES TO THE BUDGET

- h. Electricity \$30,230
- The Two-Way Shared Facilities Electricity provision is based on comparable property requirements and the current rates from Waterloo North Hydro Inc. of 5.3 cents per kilowatt hour and administrative/distribution charges have been escalated by 3% and compounded annually. The budget includes electricity for the shared common areas and for shared building equipment only. Should the rates for hydro at time of registration be greater than 5.8 cents per kilowatt hour or the administrative/distribution charges have increased from current charges, then the budget will be adjusted accordingly to reflect the rates at the time of registration. The Condominium Corporation will be responsible for its proportionate share of this expense. Please refer to the Disclosure
- i. Water \$562
- The Two-Way Shared Facilities Water provision is based on comparable property requirements and the current rates from the City of Waterloo of \$1.43 per cubic metre for water and \$1.63 per cubic metre for waste water and have been escalated by 3% and compounded annually. The budget includes water and sewage charges for the shared amenity areas and building equipment shared between the Condominium Corporation and the Phase II Condominium. Should the rates for water at time of registration be greater than \$1.56 per cubic metre for water and \$1.78 per cubic metre for waste water, then the budget will be adjusted accordingly to reflect the rates at the time of registration. The Condominium Corporation will be responsible for its proportionate share of this expense. Please refer to the Disclosure Statement for further details.
- j. Garage Equipment Maintenance \$2,418
- The Condominium Corporations proportionate share of the cost to maintain the building equipment that services both Phase I and Phase II, according to manufacturers' specifications. This represents the Condominium Corporation's proportionate share of this expense as detailed in the Disclosure Statement and subject to the Shared Facilities Agreement to be finalized at a later date.
- k. Garage Door Maintenance Contract \$1,814
- The Condominium Corporation's proportionate maintain the garage door and garage door operator during the year. This represents the Condominium Corporation's proportionate share of this expense as detailed in the Disclosure Statement and subject to the Shared Facilities Agreement to be finalized at a later date.
- l. Garage Sweep \$846
- The Condominium Corporation's proportionate share to power sweep the underground garage once during the year. This represents the Condominium Corporation's proportionate share of this expense as detailed in the Disclosure Statement and subject to the Shared Facilities Agreement to be finalized at a later date.



## NOTES TO THE BUDGET

- |    |  |         |
|----|--|---------|
| m. | Two-Way Shared Facilities Reserve Fund Provision | \$6,406 |
|----|--|---------|

The Condominium Act 1998 of Ontario defines the reserve fund as a fund set up by the corporation in a special account for the major repair and replacement of common elements and assets of the Two-Way Shared Facilities in this project. The provision is calculated at 12.5%, of the estimated Two-Way Shared Facilities expenses. This amount represents the Condominium Corporations proportionate share of this cost. The Condominium Corporation will be obligated to pay its proportionate share of this expense as detailed in the Disclosure Statement and subject to the Shared Facilities Agreement to be finalized at a later date. Please refer to the Disclosure Statement for further details.

- |    |  |         |
|----|--|---------|
| n. | Provision for Shared Facilities Reserve Fund Study | \$3,174 |
|----|--|---------|

The Condominium Act 1998 of Ontario (Section 94 (4)) requires every condominium corporation to establish a reserve fund based on a study to be conducted in the first year after registration. Section 94(7) allows for the reserve fund study to be expensed from the reserve fund.

<b>III.</b>	<b>CONTRIBUTION TO THE RESERVE FUND</b>	<b>\$99,933</b>
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- |    |                        |          |
|----|------------------------|----------|
| a. | Reserve Fund Provision | \$94,683 |
|----|------------------------|----------|

The Condominium Act of Ontario defines the reserve fund as a fund set up by the corporation in a special account for the major repair and replacement of common elements and assets of the corporation. The provision is calculated at 12.5%, including the cost of the reserve fund study, and the provision for the Shared Facilities Reserve Fund, of the estimated operating expenses. Future allocations will be dictated by the reserve fund study, to be completed in the first year after registration.

- |    |   |         |
|----|---|---------|
| b. | Reserve Fund Provision for Reserve Fund Study | \$5,250 |
|----|---|---------|

The Condominium Act of Ontario (Section 94 (4)) requires every condominium corporation to establish a reserve fund based on a study to be conducted in the first year after registration. Section 94(7) allows for the reserve fund study to be expensed from the reserve fund.

### IV. GENERAL NOTES TO THE BUDGET

- a. The total common expenses of this proposed Condominium Corporation, including the provision to the reserve fund is \$973,491 as shown on the Budget Statement.
- b. The cost of each expense item is shown on the Budget Statement. The cost of the Reserve Fund Study is \$4,646 plus H.S.T.; the cost of the Performance Audit is \$10,112 plus H.S.T.; the cost of both the turn over and year end financial audits is \$3,451 plus H.S.T.
- c. The cost, type, level and frequency of services is detailed in the notes above.
- d. The monthly common element fee for each unit is shown on the attached schedule to the Budget Statement.
- e. As stated in the notes above, 12.5% of the operating expenses will be paid into the reserve fund account. The provision is \$99,933 for the first year and \$9,581 for the Two-Way Shared Facilities to the credit of this Condominium Corporation.
- f. At the time of preparation of the Budget Statement, January 2014, there are no judgments, with respect to the property, against the Declarant nor is the Declarant Corporation a party to any lawsuit material to the within property.



## NOTES TO THE BUDGET

- g. There are no services not included in the foregoing Budget that the Declarant provides, or expenses that the Declarant pays and that might reasonably be expected to become, at a subsequent time, a common expense prior to the turn-over meeting, except for the mortgage on the Guest Suite Unit as stated above in the notes and in the Disclosure Statement.
- h. There are no services not included in the foregoing Budget that the Declarant provides, or expenses that the Declarant pays and that might reasonably be expected to become, at a subsequent time, a common expense, except for the mortgage on the Guest Suite Unit as mentioned in the notes above and in the Disclosure Statement. This mortgage will increase common expenses by an average of approximately \$10.17 per residential unit per month.
- i. As at the date of the foregoing Budget, the Condominium Corporation has not been created and accordingly, there are no amounts in the Reserve Fund. At the end of the first year after registration, there should be \$94,683 in the reserve fund account and \$6,406 in the Two-Way Shared Facilities reserve fund account to the credit of this Condominium Corporation.
- j. As at the date of the foregoing Budget, January 2014, the Condominium Corporation has not been created and accordingly, there is no reserve fund study. As stated in the Notes above, the reserve fund study will be completed after registration by an independent engineer.
- k. The Harmonized Sales Tax is included in all applicable expense items on the Budget Statement.
- l. There are no current or expected fees, charges, rents or other revenue to be paid to or by the Corporation or by any of the owners for the use of the common elements or other facilities related to the property, except perhaps for the use of the amenity areas and Guest Suite at rates to be established by the Board of Directors from time to time.
- m. Inflation rate of 6.0% is to be applied per annum (unless otherwise stated) each year after March 01, 2014. Provided however, that due to the significant fluctuation in gas, hydro and water utility rates recently, in respect to which the Declarant has no control, in the event that the relevant utility company/provider obtains relevant government approval for, or in any other way effects a significant annual increase in the utility rates above the assumed inflation rate of 3%, the Declarant reserves the right to revise the first year budget statement to reflect such significant increase in the cost of supplying these utilities from the relevant utility company/provider, and to provide each unit purchaser with a revised copy of the condominium Corporation's first year budget statement. In such event, purchasers acknowledge and agree that they shall be bound by such revised budget, and the acceptance of such revised budget should not be considered nor be construed as a material change to the Disclosure Statement.





**MONTHLY COMMON ELEMENT FEES**

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	MONTHLY COMMON ELEMENT FEES BY UNIT
PARKING UNITS	A, 1, 2 and 3	175 units	\$27.85 each
LOCKER UNITS	A, 1, 2 and 3	149 units	\$10.86 each
TH 1	1	1	\$886.12
TH 2	1	2	\$863.07
TH 3	1	3	\$863.07
TH 4	1	4	\$880.94
TH 5	1	5	\$858.84
TH 6	1	6	\$882.35
TH 7	1	7	\$927.51
TH 8	1	8	\$914.34
401	4	1	\$470.34
402	4	2	\$541.83
403	4	3	\$324.53
404	4	4	\$339.58
405	4	5	\$497.62
406	4	6	\$334.88
407	4	7	\$314.66
408	4	8	\$523.96
409	4	9	\$486.33
501	5	1	\$470.34
502	5	2	\$541.83
503	5	3	\$324.53
504	5	4	\$339.58
505	5	5	\$497.62
506	5	6	\$334.88
507	5	7	\$314.66
508	5	8	\$523.96
509	5	9	\$486.33
510	5	10	\$521.13
601	6	1	\$470.34
602	6	2	\$541.83
603	6	3	\$324.53
604	6	4	\$339.58
605	6	5	\$497.62
606	6	6	\$334.88
607	6	7	\$314.66
608	6	8	\$523.96
609	6	9	\$486.33
610	6	10	\$521.13
701	7	1	\$470.34
702	7	2	\$541.83
703	7	3	\$324.53



**MONTHLY COMMON ELEMENT FEES**

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	MONTHLY COMMON ELEMENT FEES BY UNIT
704	7	4	\$339.58
705	7	5	\$497.62
706	7	6	\$334.88
707	7	7	\$314.66
708	7	8	\$523.96
709	7	9	\$486.33
710	7	10	\$521.13
801	8	1	\$470.34
802	8	2	\$541.83
803	8	3	\$324.53
804	8	4	\$339.58
805	8	5	\$497.62
806	8	6	\$334.88
807	8	7	\$314.66
808	8	8	\$523.96
809	8	9	\$486.33
810	8	10	\$521.13
901	9	1	\$470.34
902	9	2	\$541.83
903	9	3	\$324.53
904	9	4	\$339.58
905	9	5	\$497.62
906	9	6	\$334.88
907	9	7	\$314.66
908	9	8	\$523.96
909	9	9	\$486.33
910	9	10	\$521.13
1001	10	1	\$470.34
1002	10	2	\$541.83
1003	10	3	\$324.53
1004	10	4	\$339.58
1005	10	5	\$497.62
1006	10	6	\$334.88
1007	10	7	\$314.66
1008	10	8	\$523.96
1009	10	9	\$486.33
1010	10	10	\$521.13
1101	11	1	\$470.34
1102	11	2	\$541.83
1103	11	3	\$324.53
1104	11	4	\$837.20
1105	11	5	\$334.88
1106	11	6	\$314.66
1107	11	7	\$523.96



**MONTHLY COMMON ELEMENT FEES**

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	MONTHLY COMMON ELEMENT FEES BY UNIT
1108	11	8	\$486.33
1109	11	9	\$521.13
1201	12	1	\$470.34
1202	12	2	\$541.83
1203	12	3	\$324.53
1204	12	4	\$339.58
1205	12	5	\$497.62
1206	12	6	\$334.88
1207	12	7	\$314.66
1208	12	8	\$523.96
1209	12	9	\$486.33
1210	12	10	\$521.13
1301	13	1	\$470.34
1302	13	2	\$541.83
1303	13	3	\$324.53
1304	13	4	\$339.58
1305	13	5	\$497.62
1306	13	6	\$334.88
1307	13	7	\$314.66
1308	13	8	\$523.96
1309	13	9	\$486.33
1310	13	10	\$521.13
1401	14	1	\$470.34
1402	14	2	\$541.83
1403	14	3	\$324.53
1404	14	4	\$339.58
1405	14	5	\$497.62
1406	14	6	\$334.88
1407	14	7	\$314.66
1408	14	8	\$523.96
1409	14	9	\$486.33
1410	14	10	\$521.13
1501	15	1	\$652.36
1502	15	2	\$450.58
1503	15	3	\$604.85
1504	15	4	\$485.39
1505	15	5	\$636.37
1506	15	6	\$698.92
1507	15	7	\$593.57
1601	16	1	\$652.36
1602	16	2	\$450.58
1603	16	3	\$604.85
1604	16	4	\$485.39



**MONTHLY COMMON ELEMENT FEES**

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	MONTHLY COMMON ELEMENT FEES BY UNIT
1605	16	5	\$636.37
1606	16	6	\$698.92
1607	16	7	\$593.57
1701	17	1	\$652.36
1702	17	2	\$450.58
1703	17	3	\$604.85
1704	17	4	\$485.39
1705	17	5	\$636.37
1706	17	6	\$698.92
1707	17	7	\$593.57
PH 01	18	1	\$652.36
PH 02	18	2	\$450.58
PH 03	18	3	\$604.85
PH 04	18	4	\$485.39
PH 05	18	5	\$636.37
PH 06	18	6	\$698.92
PH 07	18	7	\$593.57
GPH 01	19	1	\$1,114.70
GPH 02	19	2	\$837.67
GPH 03	19	3	\$839.55
GPH 04	19	4	\$893.64
		<b>TOTAL</b>	<b>\$81,124.23</b>

# **APPENDIX “F”**

# OFFICE SCHEDULE

Number WR882241  
**CERTIFICATE OF RECEIPT**  
May 25, 2015 11:10  
Waterloo  
No. 58 *Katherine Cice*  
Kitchener Land Registrar

## DECLARATION

### CONDOMINIUM ACT, 1998

WATERLOO CONDOMINIUM PLAN NO.591	
NEW PROPERTY IDENTIFIER'S BLOCK	
RECENTLY : 22417-0134	
DECLARANT : 144 PARK LTD.	
SOLICITOR : HARRIS SHEAFFER LLP	
MARK KAROLY	
ADDRESS:	
4100 YONGE STREET SUITE 610	
TORONTO, ONTARIO	
M2P 2B5	
PHONE: 416-250-5800	FAX: 416-250-5300
No. OF UNITS <u>461</u>	
FEES : \$70.00 + (\$5.00 x (number of unit)) = \$ 2375.00	

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

**144 PARK LTD.**  
(hereinafter called the "**Declarant**")

**WHEREAS:**

- A. The Declarant is the owner in fee simple of certain lands and premises situate in the City of Waterloo, in the Province of Ontario and being more particularly described in Schedule "A" annexed hereto and in the description submitted herewith by the Declarant (hereinafter called the "**Description**") for registration in accordance with the Act and which lands are sometimes referred to as the "**Lands**" or the "**Property**";
- B. The Declarant has constructed a building upon the Property containing various units as more particularly described in this Declaration; and
- C. The Declarant intends that the Property together with the building constructed thereon shall be governed by the Act and that the registration of this Declaration and the Description will create a freehold condominium corporation that constitutes a standard condominium corporation.

**NOW THEREFORE THE DECLARANT HEREBY DECLARES AS FOLLOWS:**

**ARTICLE I.**

**INTRODUCTORY**

1.1. Definitions

The terms used in the Declaration shall have the meanings ascribed to them in the Act unless this Declaration specifies otherwise or unless the context otherwise requires and in particular:

- (a) "**Applicable Zoning By-laws**" means the Zoning By-laws, rules or regulations (as amended from time to time) of the City of Waterloo or any governmental authority having jurisdiction;
- (b) "**Barrier Free Parking Units**" means those Parking Units being Units 10 to 15, inclusive, and Unit 18 on Level A, and Unit 18 on Level 3;
- (c) "**Board**" means the Corporation's Board of Directors;
- (d) "**By-Laws**" means the by-laws of the Corporation enacted from time to time;
- (e) "**Car Wash Unit**" means the Unit designated as such in the Declaration of the Tower II Condominium;
- (f) "**Common Elements**" means all the Property, except the Units;
- (g) "**Common Interior Roadway**" means all of the roads, curbs, driveways, sidewalks, walkways and all street lighting therealong, the garage ramps and portions of the driveway aisles on the Lands or any portions thereof which are used for pedestrian and vehicular ingress and/or egress to and from any of the Two Condominiums;
- (h) "**Condominium**" or "**Tower I Condominium**" means the freehold condominium that is a standard condominium that is created by the registration of this Declaration and the "**Corporation**" means the condominium corporation created upon the registration of the Condominium;
- (i) "**Drive Aisle Units**" means Unit 116 on Level 2 and Unit 54 on Level 3;
- (j) "**Guest Suite Unit**" means Unit 36, Level 3;
- (k) "**Knock-out Panel/Drive Aisle Units**" means Units 98 to 101 inclusive on Level A; Units 117 and 118 on Level 2; and Units 55 and 56 on Level 3;
- (l) "**Knock-out Panel Units**" means Unit 115 on Level 2 and Unit 53 on Level 3

- (m) **“Owner”** means the Owner or Owners of the freehold estate(s) in a Unit, but does not include a mortgagee unless in possession;
- (n) **“Parking Units”** means Units 1 to 65 inclusive, on Level A; Units 9 to 15 inclusive and 29 to 45 inclusive, on Level 1; Units 1 to 25 inclusive, on Level 2; Units 1 to 35 inclusive, on Level 3;
- (o) **“Registration Date”** means the date of the registration of this Declaration;
- (p) **“Residential Units”** means Units 1 to 8 inclusive on Level 1, Units 1 to 9 inclusive, on Level 4; Units 1 to 10 inclusive on Levels 5 to 10 inclusive; Units 1 to 9 inclusive, on Level 11; Units 1 to 10 inclusive on Levels 12 to 14 inclusive; Units 1 to 7 inclusive on Levels 15 to 18 inclusive; Units 1 to 4, inclusive on Level 19;
- (q) **“Rooftop Terrace Units”** means Unit 10 on Level 4 as well as any other unit designated as such in the declaration of the Tower II Condominium;
- (r) **“Rules”** means the Rules passed by the Board;
- (s) **“Shared Facilities”** means certain facilities shared by the Condominium and Tower II, including the Shared Units, Common Interior Roadway, other shared roadways, exhaust fan(s) in underground garage, life safety systems and any other items more particularly set out in the Shared Facilities Agreement;
- (t) **“Shared Facilities Agreement”** or **“SFA”** means the mutual easement and cost-sharing agreement to be entered into between the Condominium and the Tower II Declarant and providing, amongst other things, for the mutual use, maintenance and cost-sharing of the Shared Facilities. The term **“Shared Facilities Agreement”** shall also be deemed to include, in its definition, any supplementary agreement(s) or counterpart agreement(s) which affirms, amends and/or supersedes the original Shared Facilities Agreement between the aforementioned parties and/or their respective successors and assigns;
- (u) **“Shared Facilities Costs”** means the aggregate of all costs and expenses incurred in connection with the Shared Facilities, all as provided in the Shared Facilities Agreement and shall include without limitation, the costs and expenses incurred in connection with the maintenance, repair and operation of the Shared Facilities, including without limitation, the cost of maintaining and repairing all electrical and mechanical equipment, fixtures and installations comprising same or appurtenant thereto, together with the amount of any municipal, provincial or federal taxes and/or common expenses assessments attributable to the Shared Facilities (or any portion thereof);
- (v) **“Shared Units”** means the Car Wash Unit, Rooftop Terrace Units, Visitor Parking Units, Knock-out Panel/Drive Aisle Units, Knock-out Panel Units and Drive Aisle Units which shall ultimately be shared and used by or on behalf of the Two Condominiums for pedestrian and vehicular access and egress and for the maintenance and operation of all mechanical, electrical, utility, site servicing and/or ancillary system(s), serving both of the Two Condominiums, including, without limitation, the Shared Facilities, in accordance with this Declaration and the Shared Facilities Agreement, the ownership of which shall be ultimately conveyed by the Declarant to the Two Condominiums as tenants-in-common;
- (w) **“Storage Units”** means Units 66 to 97 inclusive, on Level A; Units 16 to 28 inclusive, on Level 1; Units 26 to 114 inclusive, on Level 2; Units 37 to 52 inclusive, on Level 3;
- (x) **“Tower II”** or the **“Tower II Condominium”** means the residential condominium being developed by One 55 Mady Ltd. (the **“Tower II Declarant”**) on the lands to the east of the Tower I Condominium and the **“Tower II Corporation”** means the condominium corporation created upon the registration of the Tower II Condominium;
- (y) **“Tower II Lands”** means the lands included in the Tower II Condominium to be described in the declaration of the Tower II Condominium;
- (z) **“Transfer Date”** means the earlier of:
  - (i) the date upon which all residential units in the Condominium and the Tower II Condominium have been sold and conveyed by the Declarant; and
  - (ii) such earlier date at the Declarant may determine in its sole and unfettered discretion;



- (aa) “Two Condominiums” or “the Project” means the comprehensive development comprised of the Tower I Condominium and the Tower II Condominium, collectively;
- (bb) “Two Corporations” means Tower I Corporation and the Tower II Corporation, collectively;
- (b) “Units” means all portions of the Condominium designated as a unit, collectively, as the context may require;
- (cc) “Visitor Parking Units” means any units designated as such in the Declaration of the Tower II Condominium.

1.2. Act Governs the Lands

The Lands described in Schedule “A” annexed hereto and in the Description together with all interests appurtenant to the Lands are governed by the Act.

1.3. Standard Condominium

The registration of this Declaration and the Description will create a freehold condominium corporation that constitutes a standard condominium corporation.

1.4. Consent of Encumbrancers

The consent of every person having a registered mortgage against the Property or interests appurtenant thereto is contained in Schedule “B” attached hereto.

1.5. Inclusions/Exclusions of Units

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

- (a) Each Residential Unit and Guest Suite Unit *shall include* all pipes, wires, cables, conduits and ducts that supply any service to that particular Unit only, and that lie within or beyond the unit boundaries thereof as more particularly set out in Schedule “C” annexed hereto, and shall specifically include;
  - (i) All electrical receptacles, intercom and alarm controls (excluding only the cable servicing such controls), ventilation fan units, light fixtures lying within suspended ceilings and similar apparatus that supply any service to that particular Unit only, regardless of whether same are installed or located within or beyond the boundaries of said Units; and
  - (ii) Any branch piping extending to the common pipe risers, but excluding only the common pipe risers;
- (b) Each Residential Unit and Guest Suite Unit *shall exclude*:
  - (i) All mechanical heating and cooling systems and appurtenant equipment providing heating and/or cooling to the Residential Units, Guest Suite Unit and common elements;
  - (ii) All concrete, concrete block or masonry portions of load bearing walls or columns located within any of the Units;
  - (iii) All pipes, wires, cables, conduits, ducts, flues, and mechanical or similar apparatus that supply any services to more than one Unit, or to the Common Elements, or that may lie within the boundaries of any particular Residential Unit but which do not service that particular Unit;
  - (iv) All the branch pipes, riser pipes and sprinkler heads that comprise part of the emergency fire protection system within the Building; and
  - (v) All exterior door and window hardware (such as door and/or window handles, locks, hinges and peep holes).
- (c) Each Parking Unit *shall exclude* all fan, pipes, wires, cables, conduits, ducts, flues or similar apparatus (whether used for water drainage, power or otherwise) that supply any service to any Unit or to the Common Elements, together with any heating or air-

conditioning equipment, ducts, flues, shafts, etc. and/or controls of same (whether located within or beyond any walls or floors which may comprise part of the boundaries of any Parking Unit), and shall also exclude any concrete columns, concrete walls or load bearing walls which may be located within or comprise part of the boundaries of any Parking Unit, together with any fire hose cabinets and steel guard rails abutting or affixed to, or hanging from any such columns or walls;

- (d) Each Storage Unit *shall exclude* all fans, pipes, wires, cables, conduits, ducts, flues or similar apparatus (whether used for water drainage, power or otherwise) that supply any service to any Unit or to the Common Elements, together with any heating or air-conditioning equipment, ducts, flues, shafts, etc. and/or controls of same (whether located within or beyond any walls or floors which may comprise part of the boundaries of any Storage Unit), and shall also exclude any concrete columns, concrete walls or load bearing walls which may be located within or comprise part of the boundaries of any Storage Unit, together with any fire hose cabinets abutting or affixed to, or hanging from any such columns or walls;

1.6. Common Interest and Common Expenses

Each Owner shall have an undivided interest in the Common Elements as a tenant in common with all other Owners in the proportions set forth opposite each Unit number in Schedule "D" attached hereto and shall contribute to the common expenses in the proportion set forth opposite each Unit number in Schedule "D" attached hereto. The total of the proportions of the common interests and proportionate contribution to common expenses shall each be one hundred (100%) percent.

1.7. Address for Service, Municipal Address and Mailing Address of the Corporation

The Corporation's address for service shall be 8791 Woodbine Avenue, Suite 100, Markham, Ontario, L3R 0P4 or such, other address as the Corporation may by resolution of the Board determine and the Corporation's mailing address shall be 8791 Woodbine Avenue, Suite 100, Markham, Ontario, L3R 0P4. The Corporation's municipal address is 144 Park Street, Waterloo, Ontario.

1.8. Approval Authority Requirements

The following provisions are required by the approval authority to be included in this Declaration:

- (a) The rights and obligations for Common Elements, including but not limited to access lanes, sanitary, storm and water services, and open space/amenity areas, are set out in this Declaration and specifically in Article III and Article V, paragraph 5.3 herein.
- (b) Owners and occupants are advised of the following:
- (i) Due to its proximity to King Street (Regional Road No. 15), Allen Street, and Park Street, projected noise levels on this property exceed the noise level objectives approved by the Regional Municipality of Waterloo and may cause concern to some individuals. Moreover, the Residential Units have been fitted with a forced air-ducted heating system suitably sized and designed to permit the future installation of a central air conditioning system by the occupants.
  - (ii) Due to the proximity of the adjacent industry and commercial uses (e.g., commercial/residential buildings on the Bauer Building site, the Brick Brewery site, and the Tower II Condominium site), sound levels from these facilities may at times be audible.
  - (iii) Due to the proximity to the nearby brewery located at 181 King Street South, projected odour levels on this property may occasionally cause concern to some individuals
- (c) The Corporation is subject to the cost sharing arrangements and easements contained in the Shared Facilities Agreement in accordance with the provisions of this Declaration and specifically Article IX herein.
- (d) The Shared Units shall only be transferred in accordance with paragraph 4.11 herein.

- (e) The Drive Aisle Units, the Knock-out Panel/Drive Aisle Units and the Knock-out Panel Units shall only be transferred in accordance with paragraph 4.11 herein.
- (f) The transfer of the Excess Lands (as defined in Schedule "A" attached hereto) to the Tower II Declarant will be at no cost to the Corporation.
- (g) Until the completion of Tower II, the Declarant shall be required to lease a sufficient number of Drive Aisle Units and Knock-out Panel/Drive Aisle Units to Owners and occupants of Residential Units in the Condominium so that there are a sufficient number of parking spaces in the Condominium available for use by owners and residents of Residential Units in the Condominium, in accordance with paragraphs 4.6 and 4.8.
- (h) The Corporation shall maintain and repair the hardscape/landscape design in front of the main entrance of the Condominium as set out in paragraph 5.3 herein.
- (i) The Corporation shall maintain the public art adjacent to the Property in accordance with paragraph 5.3 herein.
- (j) The Corporation shall maintain all sidewalks, stairs, ramps, driveways, access routes and parking areas on the Property and on public lands between the Property and adjoining public roads in a clear, safe and snow free condition in accordance with paragraph 5.3.
- (k) The Corporation shall be responsible for signage for visitor and barrier free parking if such spaces are owned by the Corporation and used for such purposes, and the visitor parking spaces must not be transferred or leased except at no cost to the Corporation or the Tower II Corporation.

1.9. Architect/Engineer Certificates

The certificate(s) of the architect and/or engineer(s) that all buildings on the Property have been constructed in accordance with the regulations made under the Act is/are contained in Schedule "G" attached hereto.

## ARTICLE II.

### COMMON EXPENSES

2.1. Specification of Common Expenses

The common expenses shall comprise the expenses of the performance of the objects and duties of the Corporation and such other expenses, costs and sums of money incurred by or on behalf of the Corporation that are specifically designated as (or collectible as) common expenses pursuant to the provisions of the Act and/or this Declaration and without limiting the generality of the foregoing, shall include the specific expenses set out in Schedule "E" attached hereto.

2.2. Payment of Common Expenses

Each Owner shall pay to the Corporation his or her proportionate share of the common expenses and the assessment and collection of contributions toward common expenses may be regulated by the Board pursuant to the By-Laws. In addition to the foregoing, any losses, costs or damages incurred by the Corporation by reason of a breach of any provision of this Declaration, or in any By-Laws or Rules in force from time to time by any Owner, or by members of his or her family and/or their respective tenants, invitees or licensees shall be borne and paid for by such Owner and may be recovered by the Corporation against such Owner in the same manner as common expenses.

2.3. Reserve Fund

- (a) The Corporation shall establish and maintain one or more Reserve Funds and shall collect from the Owners as part of their contribution towards the common expenses, all amounts that are reasonably expected to provide sufficient funds for major repair and replacement of Common Elements and assets of the Corporation all in accordance with the provisions of the Act.
- (b) No part of any Reserve Fund shall be used except for the purpose for which the fund was established. The Reserve Fund(s) shall constitute an asset of the Corporation and shall not be distributed to any Owner(s) except on termination of the Corporation in accordance with the provisions of the Act.

- (c) However, for the purposes of the Act, this Declaration and/or the Shared Facilities Agreement, any and all portions of the Shared Facilities, not comprising part of the registered description plan of this Condominium shall be deemed to be an "asset" of the Corporation for the purposes of utilizing any of its Reserve Fund(s) in connection with this Corporation's responsibility to share in the cost of repairing and/or replacing the Shared Facilities.

2.4. Status Certificate

The Corporation shall provide a status certificate to any requesting party who has paid (in advance) the applicable fees charged by the Corporation for providing same, in accordance with the provisions of the Act, together with all accompanying documentation and information prescribed by the Act. The Corporation shall forthwith provide the Declarant (and/or any purchaser, transferee or mortgagee of a Unit from the Declarant) with a status certificate and all such accompanying documentation and information, as may be requested from time to time by or on behalf of the Declarant (or by any such purchaser, transferee or mortgagee), all at no charge or fee to the Declarant or the person requesting same on behalf of the Declarant.

ARTICLE III.

COMMON ELEMENTS

3.1. Use of Common Elements

Subject to the provisions of the Act, this Declaration, the By-Laws and any Rules, each Owner has the full use, occupancy and enjoyment of the whole or any parts of the Common Elements, except as herein otherwise provided.

However, save and except as expressly provided or contemplated in this Declaration to the contrary, no condition shall be permitted to exist, and no activity shall be carried on, within any unit or upon any portion of the Common Elements that:

- (a) will result in a contravention of any term or provision set out in the Act, this Declaration, the By-Laws and Rules of the Corporation;
- (b) is likely to damage the property of the Corporation, injure any person, or impair the structural integrity of any Unit or the Common Elements;
- (c) will unreasonably interfere with the use and enjoyment by the other Owners of the Common Elements and/or their respective Units;
- (d) may result in the cancellation (or threatened cancellation) of any policy of insurance obtained or maintained by the Corporation, or that may significantly increase any applicable insurance premium(s) with respect thereto, or any deductible portion in respect of such policy; or
- (e) would lead to a contravention by the Corporation or by other owners of the Applicable Zoning By-laws or of any terms or provisions of any agreements with any municipal or other governmental authority and which are registered on title to the Property or which otherwise affect the Property ("**Development Agreements**") or which would require obtaining the consent or approval of any person pursuant to the terms of the Development Agreements.

No one shall, by any conduct or activity undertaken in or upon any part of the Common Elements, impede, hinder or obstruct any right, privilege, easement or benefit given to any party, person or other entity pursuant to this Declaration, any By-laws and/or the Rules.

No sign, advertisement or notice of any type shall be inscribed, painted, affixed or displayed on the Common Elements except for signs marketing or other services by the Declarant and/or its related companies.

3.2. Exclusive Use Common Elements

Subject to the provisions of and compliance with the Act, this Declaration, the By-Laws and the Rules, the Owners of Unit(s) listed in Schedule "F" attached hereto shall have the exclusive use and enjoyment of those parts of the Common Elements more particularly described in Schedule "F" which are respectively allocated to the Unit(s).

Each Owner, upon the Corporation's request, shall provide to the Corporation or to any of its authorized workmen, servants, agents or contractors access to and use of the exclusive use Common Elements for the purpose of facilitating the maintenance and repair of any other part of the Common Elements, any other Unit or any other part of the building and, in particular, and without limiting the generality of the foregoing, for the purpose of installing or operating window washing equipment.

3.3. Restricted Access

- (a) Without the consent in writing of the Board, no Owner shall have the right of access to those parts of the Common Elements used from time to time for the care, maintenance or operation of the Property or any part thereof as designated by the Board, from time to time.
- (b) No one shall be entitled to place or affix any matter or thing directly on top of any rooftop structure which encloses or houses the mechanical and chiller room, the elevator shafts, the stairwells, the Communication Unit(s), the catwalks, the cooling tower, the boiler room and/or the fresh air ducts.
- (c) This paragraph shall not apply to any mortgagee holding mortgages on at least thirty percent (30%) of the Units who shall have a right of access for inspection upon forty-eight (48) hours notice to the Corporation or its property manager.

3.4. Modifications of Common Elements, Assets and Services

(a) General Prohibition

No Owner shall make any change or alteration to the Common Elements whatsoever, including any installation(s) thereon, nor alter, decorate, renovate, maintain or repair any part of the Common Elements (except for maintaining those parts of the Common Elements which he or she has a duty to maintain in accordance with the provisions of this Declaration) without obtaining the prior written approval of the Board and having entered into an agreement with the Corporation in accordance with Section 98 of the Act.

(b) Non-Substantial Additions, Alterations and Improvements by the Corporation

The Corporation may make a non-substantial addition, alteration, or improvement to the Common Elements, a non-substantial change in the assets of the Corporation or a non-substantial change in a service that the Corporation provides to the Owners in accordance with subsections 97(2) and (3) of the Act.

(c) Substantial Additions, Alterations and Improvements by the Corporation

The Corporation may, by a vote of Owners who own at least sixty-six and two thirds (66⅔%) percent of the Units, make a substantial addition, alteration or improvement to the Common Elements, a substantial change in the assets of the Corporation or a substantial change in a service that the Corporation provides to the Owners in accordance with subsections 97 (4), (5) and (6) of the Act.

3.5. Declarant Rights

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

- (a) the Declarant or a subsidiary body corporate, holding body corporate or affiliated body corporate of the Declarant (including, without limitation, the Tower II Declarant) and their respective authorized agents, representatives and/or invitees shall have free and uninterrupted access to and egress from the Common Elements, including the Shared Units for the purposes of implementing, operating and/or administering the Declarant's marketing, sale, construction and/or customer-service program(s) with respect to any Units in the Condominium or in the Tower II Condominium or any other condominiums hereinafter marketed by the Declarant or any of its subsidiaries or affiliates from locations within the Property, from time to time;
- (b) the Declarant or a subsidiary body corporate, holding body corporate or affiliated body corporate of the Declarant (including, without limitation, the Tower II Declarant) and their respective authorized agents or representatives shall be entitled to erect and maintain

signs and displays for marketing/sale purposes, as well as model suites and one or more offices for marketing, sales, construction and/or customer-service purposes, upon any portion of the Common Elements and within or outside any unsold Units, within the Shared Units, and within and at such other locations and having such dimensions as either the Declarant or the Tower II Declarant may determine in its sole and unfettered discretion, all without any charge to the Declarant or the Tower II Declarant for the use of the space(s) so occupied, nor for any utility services (or any other usual or customary services) supplied thereto or consumed thereby, nor shall the Corporation (or any one else acting on behalf of the Corporation) prevent or interfere with the provision of utility services (or any other usual or customary services) to the marketing/sales/construction/customer-service office(s) of the Declarant or the Tower II Declarant and said model suites; and

- (c) the Corporation shall ensure that no actions or steps are taken by anyone which would prohibit, limit or restrict the access and egress of the Declarant or a subsidiary body corporate, holding body corporate or affiliated body corporate of the Declarant (including, without limitation, the Tower II Declarant) and their respective authorized agents, representative and/or invitees in and to the Shared Units and over the Common Elements of the Corporation;

until one year after the date that all Residential Units in the Condominium and the Tower II Condominium have been transferred by the Declarant or the Tower II Declarant or the relevant subsidiary or affiliate.

3.6. Pets

No animal, livestock or fowl, other than those household domestic pets as permitted pursuant to Article IV of this Declaration are permitted to be on or about the Common Elements, including the exclusive use Common Elements, except for ingress to and egress from a Unit. All dogs and cats must be kept under personal supervision and control and held by leash at all times during ingress and egress from a Unit and while on the Common Elements. Notwithstanding the generality of the foregoing, no pet deemed by the Board, in their sole and absolute discretion, to be a danger to the residents of the Condominium is permitted to be on or about the Common Elements.

## ARTICLE IV.

### UNITS

4.1. General Restrictions

The occupation and use of the Units shall be in accordance with the following restrictions and stipulations:

- (a) No Unit shall be occupied or used by an Owner or anyone else, in such a manner as is likely to damage or injure any person or property (including any other Units or any portion of the Common Elements) or in a manner that will impair the structural integrity, either patently or latently, of the Units and/or Common Elements, or in a manner that will unreasonably interfere with the use or enjoyment by other owners of the Common Elements or their respective Units, or that may result in the cancellation or threat of cancellation of any insurance policy referred to in this Declaration, or that may increase any insurance premiums with respect thereto, or in such a manner as to lead to a breach by an Owner or by the Corporation of any provisions of this Declaration, the By-Laws, and/or any agreement authorized by By-Law. If the use made by an Owner of a Unit, other than the Declarant (except as is contemplated in this Declaration or in the By-Laws, or in any agreement authorized by By-Law) causes injury to any person or causes latent or patent damage to any Unit or to any part of the Common Elements or results in the premiums of any insurance policy obtained or maintained by the Corporation being increased, or results in such policy being canceled, then such Owner shall be personally liable to pay and/or fully reimburse the Corporation for all costs incurred in the rectification of the aforesaid damages, and for such increased portion of the insurance premiums so payable by the Corporation (as a result of such Owner's use) and such Owner shall also be liable to pay and/or fully reimburse the Corporation for all other costs, expenses and liabilities suffered or incurred by the Corporation as a result of such owner's breach of the foregoing provisions of this subparagraph and such Owner shall pay with his or her next monthly contribution towards the common expenses after receipt

of a notice from the Corporation, all increases in premiums in respect of such policy or policies of insurance. All payments pursuant to this clause are deemed to be additional contributions towards common expenses and recoverable as such.

- (b) Each Owner shall comply, and shall require all members of his or her family, occupants, tenants, invitees, servants, agents, contractors and licensees of his or her Unit to comply with the Act, the Declaration, the By-Laws, and all agreements authorized by By-law and the Rules.
- (c) No change shall be made in the colour of any exterior glass, window, door or screen of any Unit except with the prior written consent of the Board. Each Owner shall ensure that nothing is affixed, attached to, hung, displayed or placed on the exterior walls, including awnings and/or storm shutters, doors or windows of the building, nor shall an Owner grow any type of plant, shrubbery, flower, vine or grass outside his Unit, except with the prior written consent of the Board, and further, when approved, subject to the Rules. All shades or other window coverings shall be white or off white when visible from the outside and all draperies shall be lined in white or off white to present a uniform appearance to the exterior of the building. No clothesline or similar device shall be allowed on any portion of the Property nor shall clothes or other laundry be hung anywhere on the Property.
- (d) No exterior aerial, antenna or satellite dish shall be placed on the Property, including Units and Common Elements. Notwithstanding the foregoing, the Corporation shall be permitted to place one or more satellite dishes on the roof of the building if required to provide communication and television service to Units in the Condominium.
- (e) No sign, advertisement or notice of any type shall be inscribed, painted, affixed or displayed on any part of the outside of any Residential Unit, except for signs marketing condominiums by the Declarant and/or its related companies.

#### 4.2. Residential Units

- (a) Each Residential Unit shall be occupied and used in accordance with the applicable zoning by-laws pertaining to the Property and for no other purpose whatsoever. The number of individuals who may occupy a Residential Unit shall be the same as the number permitted by the local municipal by-laws from time to time. The foregoing shall not prevent the Declarant from completing the buildings and all improvements to the Property, maintaining Units as models for display and sale purposes, and otherwise maintaining offices, displays and signs for marketing/sales/leasing/customer service purposes upon the Common Elements, and within or outside any Unit to which the Declarant still holds title, until one year following the date that all Units in the Condominium (or in any other condominium marketed by the Declarant or any of its subsidiaries or affiliates from the Property) have been conveyed by the Declarant, the Tower II Declarant or their respective related companies.
- (b) No animal, livestock or fowl of any kind other than general household, domestic pets defined as being not more than two (2) of the following: dogs; cats; canaries, budgies or other small caged birds; or an aquarium of goldfish or tropical fish; or small caged animals usually considered to be a domestic pet shall be kept or allowed in any Unit. No pet which is deemed by the Board or the property manager, in their absolute discretion, to be a nuisance shall be kept by any Owner in any Unit. Such Owner shall, within two (2) weeks of receipt of a written notice from the Board requesting the removal of such pet, permanently remove such pet from the Property. Notwithstanding the generality of the foregoing, no pet deemed by the Board in its sole and absolute discretion, to be a danger to the residents of the Condominium shall be permitted in any Unit. No breeding of animals for sale shall be carried on, in or around any Unit. For the purpose of this Declaration the term "general household pet" shall mean a dog, domestic cat, caged bird or fish, or any other animal that the Board may designate as a common household pet in its sole and absolute discretion, from time to time. Notwithstanding the foregoing, no pet classified as an "attack dog" by the Corporation, in its sole and unfettered discretion, shall be permitted to be kept in any Unit and/or on the Common Elements of the Condominium at any time.
- (c) In the event the Board determines, in its sole discretion, acting reasonably, that any noise, odour or offensive action is being transmitted to another Unit or the common elements and that such noise, odour or offensive action is an annoyance and/or a nuisance and/or disruptive (regardless of whether that Unit is adjacent to or wherever situated in relation to the offending Unit), then the Owner of such Unit shall at his or her own expense take

such steps as shall be necessary to abate such noise, odour or offensive action to the satisfaction of the Board. In the event the Owner of such Unit fails to abate the noise, odour or offensive action, the Board shall take such steps as shall be necessary to abate the noise, odour or offensive action and the Owner shall be liable to the Corporation for all expenses incurred by the Corporation in abating the noise, odour or offensive action, which expenses are to include reasonable solicitor's fees on a substantial indemnity basis, which shall be deemed to be additional contributions to common expenses and are recoverable as such.

- (d) No Owner of a Unit shall make any change, addition, modification or alteration, except for any change, addition modification or alteration which is solely decorative in nature, in or to his Residential Unit or make any change, addition, modification or alteration to an installation upon the Common Elements, or maintain, decorate, alter or repair any part of the Common Elements, except for maintenance of those parts of the Common Elements which he has the duty to maintain, without the prior written consent of the Board, which consent shall be in the sole and unfettered discretion of the Board and may be subject to such conditions as may be determined by the Board;
- (e) (i) For the purpose of this subparagraph, "Vertical/Horizontal Party Wall" means a vertical or horizontal wall constructed along the boundary between two (2) Residential Units shown in the Description as a vertical plane. Where and to the extent that concrete, concrete block or masonry portions of walls/floors/ceilings or columns located within the Residential Unit are not load-bearing walls or columns, and contain no service conduits that service any other Unit or the Common Elements, an Owner may, upon executing an agreement pursuant to Section 98 of the Act, and with prior written consent of the Board which may attach any reasonable condition to its consent, including obtaining the approval of the insurer of the Property and the Owner's written agreement to indemnify and save the Corporation harmless from and against any and all costs, expenses, damages, claims, and/or liabilities which the Corporation may suffer or incur as a result of or in connection with such work:
- A. erect, remove or alter any internal walls or partitions within his or her Residential Unit; or
  - B. where he/she is the Owner of two (2) or more adjoining Residential Units, erect, remove or alter along all or part of those portions of the vertical or horizontal boundaries of each of such adjoining Residential Units shown in the Description as a line or plane, any Vertical/Horizontal Party Wall between his or her Residential Unit and such adjoining Residential Unit, or any soundproofing or insulating material on his or her Residential Unit side of such Vertical/Horizontal Party Wall.
- (ii) Prior to performing any work which an Owner is entitled to perform pursuant to subparagraph (i) above, the Owner shall lodge with the Board the drawings and specifications detailing the location, materials and method of construction and installation of such work, together with a certificate addressed to the Corporation from a duly qualified architect and/or structural engineer certifying that if the work is carried out in accordance with the drawings and data so lodged with the Board, the structural integrity of the Common Elements will not be impaired and such work will not interfere with or impair any structure where there is functioning or operating machinery and equipment which is part of the Common Elements.
- (iii) All work performed under subparagraph (i) above will be carried out in accordance with, the provisions of all relevant municipal and other governmental by-laws, rules, regulations or ordinances and the provisions of the By-Laws of the Corporation and the conditions, if any, of approval by the Board and the drawings, specifications and data lodged with the Board.
- (iv) Forthwith following the completion of any work which an Owner is entitled to perform pursuant to subparagraph (i) above, the Owner shall deliver a further certificate from the said architect and/or engineer, or such other architect and/or engineer as may be acceptable to the Board, certifying that the work has in fact been completed in accordance with the drawings and data previously lodged with the Board, the structural integrity of the Common Elements has not been impaired, and that such work has not interfered with or impaired any structure or



the functioning or operation of any machinery and equipment which is part of the Common Elements; or failing such certifications, specifying in reasonable detail the reasons why such certification cannot be made.

- (v) Notwithstanding the removal of the whole or any portion of any demising or partition wall or floor/ceiling as aforesaid, the adjoining Residential Units thereto shall still constitute two separate Residential Units, as illustrated in the Description and all rights and obligations of the Owner(s) of the said two adjoining Residential Units, whether arising under the Act, the Declaration, the By-Laws or the Rules of the Corporation, shall remain unchanged.
- (f) No boundary, load-bearing or partition wall, floor, door or window, toilet, bath tub, wash basin, sink, heating, plumbing or electrical installation contained in or forming part of a Unit shall be installed, removed, extended or otherwise altered without the prior written consent of the Board, but the provisions of this subparagraph shall not require any Owner to obtain the consent of the Corporation for the purpose of painting or decorating the surface of any wall, floor or ceiling which is within any Unit.

#### 4.3. Storage Units

- (a) Each Storage Unit may only be used for the storage of non-hazardous materials which materials shall not constitute a danger or nuisance to the residents of the Condominium, the Units or the Common Elements.
- (b) The Declarant, at its option, shall have the right to use and allow its sales staff, authorized personnel or any prospective purchaser or tenant to use any unsold Storage Units which right shall continue until such time as all the Residential Units in this Corporation have been transferred.
- (c) Any or all of the Storage Units may at any time be sold, leased, charged, transferred or otherwise conveyed, either separately or in combination with any other Units, provided however, any sale, transfer, assignment or other conveyance of any Storage Unit shall be made only to the Declarant, to the Corporation, or to any Owner of a Residential Unit in the Condominium. Storage Units may be leased to tenants in actual occupation of Residential Units in this Condominium. Any instrument or other document purporting to affect a sale, transfer, assignment or other conveyance of any Storage Unit, in contravention of any of the foregoing provisions, shall be deemed to be null and void and of no force and effect whatsoever.
- (d) No Owner, other than the Declarant or an entity related to the Declarant, shall retain ownership of a Storage Unit after such Owner has sold or conveyed title to all of his or her Residential Units.
- (e) Any instrument or other document purporting to affect a sale, transfer, assignment or other conveyance of any Storage Unit, in contravention of any of the foregoing provisions, shall be deemed to be null and void and of no force and effect whatsoever.

#### 4.4. Parking Units

- (a) Each Parking Unit shall be used and occupied only for the parking of motor vehicles as may be from time to time defined in the Rules of the Corporation. It shall be the responsibility of the Owners to ensure that their vehicles can be properly operated and/or parked in the parking structure within the Property. The Owners of Parking Units shall not permit any portion of any motor vehicle parked within a Parking Unit to protrude beyond the boundaries of the Parking Unit and encroach upon any portion of the Common Elements or upon any other Unit. Each Owner shall maintain his or her Parking Unit in a clean and sightly condition, notwithstanding that the Corporation may make provision in its annual budget for cleaning of Parking Units.
- (b) The Declarant, at its option, shall have the right to use and allow its customer service staff, sales staff, authorized personnel or any prospective purchaser or tenant to use any unsold Parking Units which right shall continue until one year following such time as all the Residential Units in this Condominium and in the Tower II Condominium have been transferred.
- (c) Subject to the requirements of any applicable governing authority, any or all of the Parking Units may at any time be sold, leased, charged, transferred or otherwise conveyed, either separately or in combination with any other Units, provided however,

any sale, transfer, assignment or other conveyance of any Parking Unit shall be made only to the Declarant, to the Corporation, or to any Owner of a Residential Unit in the Condominium or in the Tower II Condominium. Parking Units may be leased to tenants in actual occupation of Residential Units in this Condominium or in the Tower II Condominium. Any instrument or other document purporting to affect a sale, transfer, assignment or other conveyance of any Parking Unit, in contravention of any of the foregoing provisions, shall be deemed to be null and void and of no force and effect whatsoever.

- (d) No Owner, other than the Declarant or an entity related to the Declarant, shall retain ownership of a Parking Unit after such Owner has sold or conveyed title to all of his or her Residential Units.
- (e) Notwithstanding the provisions of this paragraph, in the event the Corporation becomes the Owner of any of the Parking Units the Board may, from time to time, designate the said Units for alternate uses, provided that such alternate use is in accordance with the requirements and the by-laws of the City of Waterloo and approved by the requisite number of Owners at a meeting duly called for that purpose.
- (f) Any instrument or other document purporting to affect a sale, transfer, assignment or other conveyance of any Parking Unit, in contravention of any of the foregoing provisions, shall be deemed to be null and void and of no force and effect whatsoever.
- (g) The Barrier Free Parking Units shall be subject to the following:
  - (i) In the event that a "disabled driver", as defined in the regulations promulgated pursuant to the *Highway Traffic Act*, R.S.O. 1990, c.H.8, as amended from time to time, including a driver whose licence plate incorporates the international symbol for the disabled, purchases or leases a Residential Unit and a Parking Unit which is not a Barrier Free Parking Unit, the owner or any person occupying the Barrier Free Parking Unit shall (if not disabled), upon notice from the Corporation and at the request of the disabled driver, exchange the right to occupy the Barrier Free Parking Unit with the disabled driver for the Parking Unit which was purchased or leased by the disabled driver, said exchange of the right to occupy said space to continue for the full period of the disabled driver's residence in the building.
  - (ii) When a disabled driver requests an exchange of occupancy rights for the Barrier Free Parking Unit, the Corporation shall forthwith notify the Owner of and any person occupying the Barrier Free Parking Unit and the Owner and/or occupant shall complete the exchange of use immediately upon delivery of the notice provided said Owner or occupant is not a disabled driver.
  - (iii) No rent, charges, fees or costs whatsoever shall be charged by the owner, occupant or the Corporation in connection with the exchange of the right to occupy.
  - (iv) Notwithstanding the provisions of paragraph 4.4(c) hereof, the Barrier Free Parking Units may only be transferred to owners of Residential Units in this Condominium.

#### 4.5. Guest Suite Unit

The Guest Suite Unit shall only be used to provide overnight accommodation for the guests of the owners and tenants of the Residential Units in the Condominium and a service/cleaning charge will have to be paid, in advance for each night of occupancy thereof, in accordance with the rules and regulations passed by the Board from time to time in connection therewith. The use of Guest Suite Unit shall be subject to the terms and provisions of all applicable municipal by-laws and regulations pertaining to the Property, and any agreement(s) entered into by the Corporation with any management/cleaning firm pertaining to same, and shall also be governed by the rules and regulations of the Corporation in force from time to time. The Corporation shall purchase the Guest Suite Unit from the Declarant for a purchase price of One Hundred and Sixteen Thousand (\$116,000.00) plus HST, and exclusive of Land Transfer Tax and registration fees. The Corporation shall give and the Declarant (or such entity as directed by the Declarant) shall take back a mortgage (the "Mortgage") for the full purchase price. The Mortgage shall bear no interest for the first year of the term and thereafter, for the balance of the term, shall bear interest at a fixed rate of interest being four (4.0%) percent over the Government of Canada Ten Bond Yield in effect on the Registration Date for ten year bonds, calculated semi-annually, not in

advance. The Mortgage shall have a term of eleven (11) years commencing on the Registration Date. Blended monthly instalments on account of principal and interest shall be computed based on an amortization period of ten (10) years and shall be payable commencing on the thirteenth month following the date of registration of this Declaration.

4.6. Knock-out Panel/Drive Aisle Units

The Knock-out Panel/Drive Aisle Units shall comprise portions of the walls of the garage constructed as part of the Condominium as well as portions of the drive aisle in the garage of the Condominium. Provided that it is satisfied that same will not negatively impact the structural integrity of the building constructed on the Property, the Owner of the Knock-out Panel/Drive Aisle Units shall have the right in its sole and absolute discretion and at any time or times to remove the knock-out panels within the Knock-out Panel/Drive Aisle Units in conjunction with the construction and development of the Tower II Lands and the garage(s) to be constructed thereon in order to allow for access through the garage within the Condominium to the garage constructed (or to be constructed) on the Tower II Lands. Title to the Knock-out Panel/Drive Aisle Units may not be transferred to any other person, firm, corporation or entity other than as set out in paragraph 4.11 hereof. Until the Tower II Lands are developed and the Knock-out Panel/Drive Aisle Unit is used for access by the Tower II Lands, the Knock-out Panel/Drive Aisle Unit may be used in the same manner as Parking Units or as visitor parking spaces. It shall be a continuing duty of the Corporation to ensure that no actions or steps are taken by or on behalf of the Corporation, or by any Owner which would limit, hinder or interfere with the Owner of the Knock-out Panel/Drive Aisle Units' right and ability to use the Knock-out Panel/Drive Aisle Units for the purposes as set out herein. All Owners within the Condominium and the Tower II Condominium shall have the right to access over the Knock-out Panel/Drive Aisle Units as necessary to access parking units, Storage Units or the common elements within the Condominium and the Tower II Condominium.

4.7. Knock-out Panel Units

The Knock-out Panel Units shall comprise portions of the walls of the garage constructed as part of the Condominium. Provided that it is satisfied that same will not negatively impact the structural integrity of the building constructed on the Property, the Owner of the Knock-out Panel Units shall have the right in its sole and absolute discretion and at any time or times to remove the knock-out panels within the Knock-out Panel Units in conjunction with the construction and development of the Tower II Lands and the garage(s) to be constructed thereon in order to allow for access through the garage within the Condominium to the garage constructed (or to be constructed) on the Tower II Lands. Title to the Knock-out Panel Units may not be transferred to any other person, firm, corporation or entity other than as set out in paragraph 4.11 hereof. It shall be a continuing duty of the Corporation to ensure that no actions or steps are taken by or on behalf of the Corporation, or by any Owner which would limit, hinder or interfere with the Owner of the Knock-out Panel Units' right and ability to use the Knock-out Panel Units for the purposes as set out herein. All Owners within the Condominium and the Tower II Condominium shall have the right to access over the Knock-out Panel Units as necessary to access parking units, Storage Units or the common elements within the Condominium and the Tower II Condominium.

4.8. Drive Aisle Units

The Drive Aisle Units shall comprise portions of the drive aisle in the garage of the Condominium. Title to the Drive Aisle Units may not be transferred to any other person, firm, corporation or entity other than as set out in paragraph 4.11 hereof. Until the Tower II Lands are developed and the Drive Aisle Unit is used for access by the Tower II Lands, the Drive Aisle Unit may be used in the same manner as Parking Units or as visitor parking spaces. It shall be a continuing duty of the Corporation to ensure that no actions or steps are taken by or on behalf of the Corporation, or by any Owner which would limit, hinder or interfere with the Owner of the Drive Aisle Units' right and ability to use the Drive Aisle Units for the purposes as set out herein. All Owners within the Condominium and the Tower II Condominium shall have the right to access over Drive Aisle Units as necessary to access parking units, Storage Units or the common elements within the Condominium and the Tower II Condominium.

4.9. Rooftop Terrace Unit

- (a) The Rooftop Terrace Unit may be used by Owners during any part of the year when there is no snow on the roof. The Rooftop Terrace Unit may also be used by visitors to the Condominium and to the Tower II Condominium. The Rooftop Terrace Unit may not be leased or sold to any Owner or otherwise assigned. The Rooftop Terrace Unit shall be maintained by the Corporation and the Tower II Corporation pursuant to the Shared Facilities Agreement.

- (b) Nothing shall be brought onto or located on the Rooftop Terrace Unit unless approved by the Board in writing or permitted under the rules and regulation of the Condominium set by the Board from time to time.
- (c) Notwithstanding any other provision hereof and notwithstanding any Bylaw or Rule of the Corporation, the Declarant and any related person, firm or Corporation shall, until the Transfer Date, be entitled to use all or any portion of the Rooftop Terrace Unit as a staging area for the construction of Tower II, and the Declarant shall maintain the Rooftop Terrace Unit while the Declarant is using the Rooftop Terrace Unit as such staging area.

4.10. Shared Units

Ownership of the Shared Units shall be shared between the Two Condominiums as referenced in the Shared Facilities Agreement. The actual transfer of ownership of an undivided interest in the Shared Units by the Declarant to the respective condominium corporations shall occur within one hundred and twenty (120) days after the Transfer Date.

4.11. Division of Shared Units

- (a) The Shared Units shall only be transferred to the Corporation or the Tower II Condominium, as tenants in common, at no charge.
- (b) Ownership of the Shared Units shall be shared between the Two Corporations with each of the Two Corporations owing a fraction of such units, the numerator of which is the number of residential condominium dwelling units in that Condominium and the denominator of which is the total number of residential condominium dwelling units in the Two Condominiums.
- (c) Once ownership of the Shared Units has been transferred to the Two Corporations by the Declarant as aforesaid, any further sale, transfer, mortgage, charge, encumbrances or other conveyance of the whole or any portion of the Shared Units (including any sale, transfer, mortgage, charge, encumbrance or other conveyance of the beneficial ownership or interest in the Shared Units) shall require (in addition to any other approvals which may be required pursuant to the provisions of the Act, this Declaration and/or the Shared Facilities Agreement) the prior written consent of the other co-tenant(s) of the Shared Units purported to be so sold, mortgaged, charged or encumbered, together with the prior approval of two-thirds of the Owners if the Corporation is purporting to so sell, transfer, mortgage, charge or encumber its interest in the Shared Units (with such Unit Owners' approvals being procured from Owners who are present, in person or by proxy, at a meeting duly called for the purpose of obtaining such approval). In addition, every new owner, mortgagee, chargee or encumbrancer of the Shared Units shall be required to execute (by way of counterpart or otherwise) an agreement in favour of the co-tenant(s) of the Shared Units, covenanting to be bound by all of the terms and provisions of the Declaration and the Shared Facilities Agreement to the same extent and effect as if it had been an original party thereto.
- (d) Any instrument or other document purporting to sell, transfer, convey, mortgage, charge or encumber an owner's undivided interests as tenants-in-common in the Shared Units, without the requisite consents being given, or without the new agreement or counterpart being executed and delivered (as the case may be) as required in the immediately preceding subparagraph, shall be null and void and of no force or effect whatsoever.

4.12. Leasing of Units

- (a) Where an Owner leases his/her Unit, the Owner shall within thirty (30) days of entering into a lease or a renewal thereof:
  - (i) notify the Corporation that the Unit is leased;
  - (ii) provide the Corporation with the lessee's name, the Owner's address and a copy of the lease or renewal or a summary of it in accordance with Form 5 as prescribed by Section 40 of Regulation 49/01; and
  - (iii) provide the lessee with a copy of the Declaration, By-Laws and rules of the Corporation.

- (b) If a lease of the Unit is terminated and not renewed, the Owner shall notify the Corporation in writing.
- (c) No tenant shall be liable for the payment of common expenses unless notified by the Corporation that the Owner is in default of payment of common expenses, in which case the tenant shall deduct, from the rent payable to the Owner, the Owner's share of the common expenses and shall pay the same to the Corporation.
- (d) Any Owner leasing his/her Unit shall not be relieved thereby from any of his/her obligations with respect to the Unit, which shall be joint and several with his/her tenant.
- (e) The term of any lease of a Parking Unit shall terminate immediately upon the tenant ceasing to reside in a Residential Unit in the Condominium or in the Tower II Condominium.
- (f) The term of any lease of a Storage Unit shall terminate immediately upon the tenant ceasing to reside in a Residential Unit in the Condominium.
- (g) No Owner shall be permitted to lease a Residential Unit in the Condominium for periods of less than six (6) months.

#### ARTICLE V.

#### MAINTENANCE AND REPAIRS

##### 5.1. Repairs and Maintenance by Owner

- (a) Each Owner shall maintain his or her Unit, and subject to the provisions of this Declaration, each Owner shall repair his or her Unit after damage, all at his or her own expense. Without limiting the generality of the foregoing, each Owner shall maintain and repair:
  - (i) the interior surface of doors which provide the means of ingress and egress from his or her Residential Unit and repair damage to those doors caused by the negligence of the Owner, residents, family members, guests, visitors, tenants, licensees or invitees to his or her Unit;
  - (ii) the interior surface of all windows in Residential Units and interior and exterior surfaces of all windows and window sills contiguous to his or her Unit and which are accessible by the terrace, balcony or patio; and shall be responsible for the costs incurred by the Corporation to repair damage to those windows caused by the negligence of the Owner, residents, family members, guests, visitors, tenants, licensees or invitees to the Unit;
  - (iii) all pipes, wires, cables, conduits, ducts and mechanical or similar apparatus, that supplies any service to his or her Unit only;
  - (iv) all exhaust fans and fan motors located in the kitchen and bathroom areas of the Unit or adjacent Common Elements and services the Unit;
  - (v) his/her Parking Unit and/or Storage Unit in a clean and sightly condition, notwithstanding that the Corporation may make provision in its annual budget for the cleaning of the Parking Units and/or Storage Units;
  - (vi) the terrace, balcony or patio to which the Unit has direct access (if such Owner's Unit has been allocated an exclusive use terrace, balcony or patio) in a clean and sightly condition;
  - (vii) with respect to Units 1 to 8, inclusive on Level 1, each Owner with a Unit containing an elevator shall be responsible for maintaining, repairing and replacing, the elevating device within their respective Unit; and
  - (viii) gas fireplaces, if any, within the Unit, provided that only persons certified to repair gas appliances shall be allowed to perform such services;
- (b) The Corporation shall make any repairs that an Owner is obliged to make pursuant to paragraph 5.1 and that the Owner does not make within a reasonable time and in such an event, an Owner shall be deemed to have consented to having said repairs done by the Corporation, and an Owner shall reimburse the Corporation in full for the cost of such

repairs, including any legal or collection costs incurred by the Corporation to collect the costs of such repairs, and all such sums of money shall bear interest at the rate of eighteen (18%) per cent per annum. The Corporation may collect all such sums of money in such instalments as the Board may decide upon. The instalments shall form part of the monthly contributions towards the common expenses of such Owner, after the Corporation has given written notice thereof. All such payments are deemed to be additional contributions towards the common expenses and recoverable as such.

5.2. Responsibility of Owner for Damage

Each Owner shall be responsible for all damage to any and all other Units and to the Common Elements, which is caused by the failure of the Owner, to so maintain and repair his or her Unit and such parts of the Common Elements for which he/she is responsible, or caused by the negligence or wilful misconduct of the Owner, his or her residents, tenants, licensees, or invitees, save and except for any such damage for which the cost of repairing same may be recovered under any policy of insurance held by the Corporation.

5.3. Repair and Maintenance by Corporation

- (a) Save as otherwise specifically provided in this Declaration to the contrary, the Corporation shall maintain, and repair after damage, the Common Elements and the Shared Units (whether or not title to same have been transferred to the Corporation), and other facilities shared with the Tower II Condominium pursuant to the Shared Facilities Agreement (provided the Corporation shall maintain and repair any portion of the Shared Facilities which the Tower II Corporation has failed to maintain and repair, in accordance with the provisions of the Shared Facilities Agreement), other than any improvements to (and/or any facilities, services or amenities installed by any unit Owner upon) any common element areas set aside for the exclusive use of any Owner. In order to maintain a uniformity of appearance throughout the Condominium, the Corporation's duty to maintain and repair shall extend to all exterior surfaces of doors which provide access to the units, exterior door frames, exterior window frames and all exterior window surfaces, and any exterior perimeter fences erected by the Declarant along the boundaries of the Property. The Corporation shall:
- (i) maintain and repair the hardscape/landscape design in front of the main entrance of the Condominium;
  - (ii) maintain all sidewalks, stairs, ramps, driveways, access routes and parking areas on the Property and on public lands between the Property and adjoining public roads in a clear, safe and snow free condition; and
  - (iii) maintain the public art adjacent to the Property.
- (b) The Corporation shall maintain, repair and replace the heating, air conditioning and ventilation equipment, including thermostatic controls contained within and servicing the Unit and such maintenance to include regularly scheduled inspections of all such equipment. Such periodic maintenance shall include the cleaning and replacement of air filters. The Corporation may make provision in its annual budget for the maintenance and repair of the heating system, servicing each Unit, including the replacement of air filters, whereupon such costs shall be allocated as part of the Common Expenses. The Corporation shall ensure compliance common industry practice with regard for the manufacturers' recommended maintenance program. The Corporation shall not be responsible for damage which arises as a result of premature failure, improper functioning and/or inadequate repair. Each Owner shall be liable for any damage to the Unit and/or Common Elements due to the malfunction of such equipment caused by the act or omission of an Owner, his servants, agents, tenants, family or guests. No Owner shall make any change, alteration or addition in or to such equipment without the prior written consent of the Board.
- (c) The Corporation shall maintain and repair the Parking Units and the Storage Units and the Common Elements at its own expense and shall be responsible for the maintenance and repair of exclusive use Common Elements, except to the extent that the aforesaid Units and Common Elements which are required to be maintained and repaired by the Owners pursuant to paragraph 5.1. The Corporation shall be responsible for the maintenance and repair of the Rooftop Terrace Unit, except to the extent that the Rooftop Terrace Unit is required to be maintained and repaired by the Declarant pursuant to paragraph 4.9(c).

- (d) Notwithstanding anything provided in paragraph 5.3(a) hereof to the contrary, it is understood and agreed that each Owner of a Residential Unit shall be responsible for the maintenance of all interior door and window surfaces within his or her Residential Unit.
- (e) Every Owner shall forthwith reimburse the Corporation for repairs to windows and doors serving his or her Unit, following damage to same caused by such Owner's negligence, or the negligence of his or her residents, tenants, invitees or licensees.

#### ARTICLE VI.

##### INDEMNIFICATION

- 6.1. Each Owner shall indemnify and save harmless the Corporation from and against any loss, costs, damage, injury or liability whatsoever which the Corporation may suffer or incur resulting from or caused by an act or omission of such Owner, his family, guests, visitors or tenants to or with respect to the Common Elements and/or all other Units, except for any loss, costs, damages, injury or liability caused by an insured (as defined in any policy or policies of insurance) and insured against by the Corporation. All payments to be made by an Owner pursuant to this Article shall be deemed to be additional contributions toward common expenses payable by such Owner and shall be recoverable as such.

#### ARTICLE VII.

##### INSURANCE

- 7.1. By the Corporation

The Corporation shall obtain and maintain to the extent obtainable, at reasonable cost, the following insurance, in one or more policies:

- (a) "All Risk" Insurance

Insurance against "all risks" (including fire and major perils as defined in the Act) as is generally available from commercial insurers in a standard "all risks" insurance policy and insurance against such other perils or events as the Board may from time to time deem advisable, insuring:

- (i) the Property and building, but excluding improvements made or acquired by an Owner; and
- (ii) all assets of the Corporation, but not including furnishings, furniture, or other personal property supplied or installed by the Owners;

in an amount equal to the full replacement cost of such real and personal property, and of the units and Common Elements, without deduction for depreciation. This insurance may be subject to a loss deductible clause as determined by the Board from time to time, and which deductible shall be the responsibility of the Corporation in the event of a claim with respect to the units and/or the Common Elements (or any portion thereof), provided however that if an owner, tenant or other person residing in the unit with the knowledge or permission of the owner, through an act or omission causes damage to such owner's unit, or to any other unit(s), or to any portion of the Common Elements, in those circumstances where such damage was not caused or contributed by any act or omission of the Corporation (or any of its directors, officers, agents or employees), then the amount which is equivalent to the lesser of the cost of repairing the damage and the deductible limit of the Corporation's insurance policy shall be added to the common expenses payable in respect of such Owner's unit.

- (b) Policy Provisions

Every policy of insurance shall insure the interests of the Corporation and the Owners from time to time, as their respective interests may appear (with all mortgagee endorsements subject to the provisions of the Act, this Declaration and the Insurance Trust Agreement, if any) and shall contain the following provisions:

- (i) waivers of subrogation against the Corporation, its directors, officers, manager, agents, employees and servants and against the Owners, and the Owners' respective residents, tenants, invitees or licensees, except for damage arising

from arson, fraud, vehicle impact, vandalism or malicious mischief caused by any one of the above;

- (ii) such policy or policies of insurance shall not be terminated or substantially modified without at least sixty (60) days prior written notice to the Corporation and to the Insurance Trustee;
- (iii) waivers of the insurer's obligation to repair, rebuild or replace the damaged property in the event that after damage the government of the Property is terminated pursuant to the Act;
- (iv) waivers of any defence based on co-insurance (other than a stated amount co-insurance clause); and
- (v) waivers of any defence based on any invalidity arising from the conduct or act or omission of or breach of a statutory condition by any insured person.

(c) Public Liability Insurance

Public liability and property damage insurance, and insurance against the Corporation's liability resulting from breach of duty as occupier of the Common Elements insuring the liability of the Corporation and the Owners from time to time, with limits to be determined by the Board, but not less than FIVE MILLION (\$5,000,000.00) DOLLARS per occurrence and without right of subrogation as against the Corporation, its directors, officers, manager, agents, employees and servants, and as against the Owners and any member of the household or guests of any Owner or occupant of a Unit.

(d) Boiler, Machinery and Pressure Vessel Insurance

Insurance against the Corporation's liability arising from the ownership, use or occupation, by or on its behalf of boilers, machinery, pressure vessels and motor vehicles to the extent required as the Board may from time to time deem advisable.

7.2. General Provisions

- (a) The Corporation, its Board and its officers shall have the exclusive right, on behalf of itself and as agents for the Owners, to adjust any loss and settle any claims with respect to all insurance placed by the Corporation, and to give such releases as are required, and any claimant, including the Owner of a damaged Unit, shall be bound by such adjustment. Provided, however, that the Board may in writing, authorize any Owner, in writing, to adjust any loss to his or her Unit;
- (b) Every mortgagee shall be deemed to have agreed to waive any right to have proceeds of any insurance applied on account of the mortgage where such application would prevent application of the insurance proceeds in satisfaction of an obligation to repair. This subparagraph 7.2(b) shall be read without prejudice to the right of any mortgagee to exercise the right of an Owner to vote or to consent if the mortgage itself contains a provision giving the mortgagee that right;
- (c) A certificate or memorandum of all insurance policies, and endorsements thereto, shall be issued as soon as possible to each Owner, and a duplicate original or certified copy of the policy to each mortgagee who has notified the Corporation of its interest in any Unit. Renewal certificates or certificates of new insurance policies shall be furnished to each Owner and to each mortgagee noted on the Record of the Corporation who have requested same. The master policy for any insurance coverage shall be kept by the Corporation in its offices, available for inspection by any Owner or mortgagee on reasonable notice to the Corporation;
- (d) No insured, other than the Corporation, shall be entitled to amend any policy or policies of insurance obtained and maintained by the Corporation. No insured shall be entitled to direct that the loss shall be payable in any manner other than as provided in the Declaration and the Act;
- (e) Where insurance proceeds are received by the Corporation or any other person rather than the Insurance Trustee, they shall be held in trust and applied for the same purposes as are specified otherwise in Article VII; and
- (f) Prior to obtaining any new policy or policies of insurance and at such other time as the Board may deem advisable and also upon the request of a mortgagee or mortgagees



holding mortgages on fifty (50%) per cent or more of the Units and in any event, at least every three (3) years, the Board shall obtain an appraisal from an independent qualified appraiser of the full replacement cost of the assets for the purpose of determining the amount of insurance to be effected and the cost of such appraisal shall be a common expense.

7.3. By the Owner

- (a) It is acknowledged that the foregoing insurance is the only insurance required to be obtained and maintained by the Corporation and that the following insurance, must be obtained and maintained by each Owner at such Owner's own expense:
  - (i) Insurance on any improvements to a Unit to the extent same are not covered as part of the standard unit by the insurance obtained and maintained by the Corporation and for furnishings, fixtures, equipment, decorating and personal property and chattels of the Owner contained within the Unit and the personal property and chattels stored elsewhere on the Property, including automobiles, and for loss of use and occupancy of the Unit in the event of damage. Every such policy of insurance shall contain waiver of subrogation against the Corporation, its manager, agents, employees and servants, and against the other Owners and any members of their household or guests except for any damage arising from arson, fraud, vehicle impact, vandalism or malicious mischief caused or contributed by any of the aforementioned parties;
  - (ii) Public liability insurance covering any liability of any Owner or any resident, tenant, invitee or licensee of such Owner, to the extent not covered by any public liability and property damage insurance obtained and maintained by the Corporation; and
  - (iii) Insurance covering the deductible on the Corporation's master insurance policy for which an owner may be responsible.
- (b) Owners are recommended to obtain, although it is not mandatory, insurance covering:
  - (i) additional living expenses incurred by an Owner if forced to leave his or her Residential Unit by one of the hazards protected against under the Corporation's policy; and
  - (ii) special assessments levied by the Corporation and contingent insurance coverage in the event the Corporation's insurance is inadequate.

7.4. Indemnity Insurance for Directors and Officers of the Corporation

The Corporation shall obtain and maintain insurance for the benefit of all of the directors and officers of the Corporation, if such insurance is reasonably available, in order to indemnify them against the matters described in the Act, including any liability, cost, charge or expense incurred by them in the execution of their respective duties (hereinafter collectively referred to as the "Liabilities"), provided however that such insurance shall not indemnify any of the directors or officers against any of the Liabilities respectively incurred by them as a result of a breach of their duty to act honestly and in good faith, or in contravention of the provisions of the Act.

**ARTICLE VIII.**

**INSURANCE TRUSTEE AND PROCEEDS OF INSURANCE**

- 8.1. The Corporation may enter into an agreement with an Insurance Trustee which shall be a Trust Company registered under the *Loan and Trust Corporations Act*, or shall be a Chartered Bank, which agreement shall, without limiting its generality, provide the following:
- (a) the receipt by the Insurance Trustee of any proceeds of insurance in excess of fifteen (15%) percent of the replacement costs of the property covered by the insurance policy;
  - (b) the holding of such proceeds in trust for those entitled thereto pursuant to the provisions of the Act, this Declaration, and any amendments thereto;
  - (c) the disbursement of such proceeds in accordance with the provisions of the Insurance Trust Agreement; and

- (d) the notification by the Insurance Trustee to the mortgagees of any insurance monies received by it.

If the Corporation is unable to enter into such agreement with such Trust Company or such Chartered Bank, by reason of its refusal to act, the Corporation may enter into such agreement with such other Corporation authorized to act as a Trustee, as the Owners may approve by By-law at a meeting called for that purpose. The Corporation shall pay the fees and disbursements of any Insurance Trustee and any fees and disbursements shall constitute a common expense.

8.2. In the event that the Corporation enters into an agreement with an Insurance Trustee and:

- (a) the Corporation is obligated to repair or replace the Common Elements, any Unit, or any asset insured in accordance with the provisions of the Act, the Insurance Trustee shall hold all proceeds for the Corporation and shall disburse same in accordance with the provisions of the Insurance Trust Agreement in order to satisfy the obligation of the Corporation to make such repairs;
- (b) there is no obligation by the Corporation to repair or replace, and if there is termination in accordance with the provisions of the Act, or otherwise, the Insurance Trustee shall hold all proceeds for the Owners in the proportion of their respective interests in the Common Elements and shall pay such proceeds to the Owners in such proportions upon registration of a notice of termination by the Corporation. Notwithstanding the foregoing, any proceeds payable as aforesaid shall be subject to payment in favour of any mortgagee or mortgagees to whom such loss is payable in any policy of insurance and in satisfaction of the amount due under a Certificate of Lien registered by the Corporation against such Unit, in accordance with the priorities thereof;
- (c) the Board, in accordance with the provisions of the Act, determines that:
- (i) there has not been substantial damage to twenty-five (25%) per cent of the building; or
- (ii) there has been substantial damage to twenty-five (25%) per cent of the building and within sixty (60) days thereafter the Owners who own eighty (80%) per cent of the Units do not vote for termination,

the Insurance Trustee shall hold all proceeds for the Corporation and Owners whose Units have been damaged as their respective interests may appear and shall disburse same in accordance with the provisions of this Declaration and the Insurance Trust Agreement in order to satisfy their respective obligations to make repairs pursuant to the provisions of this Declaration and the Act.

#### ARTICLE IX.

##### SHARED FACILITIES

9.1. The Control, Operations, Budgeting and Cost-Sharing of the Shared Facilities

- (a) Save as otherwise provided in this Declaration to the contrary and without limiting any easement that the Corporation enjoys or is subject to, the Shared Facilities shall be used only by the Declarant and the Owners in the Corporation, and by their respective, residents, tenants and invitees, and by the owners in the Tower II Condominium (to the extent they are entitled to use same) and by their respective tenants and invitees in accordance with the terms of the Shared Facilities Agreement. Save as otherwise provided in this Declaration to the contrary, no provision contained in any of the By-laws or Rules of this Corporation shall restrict the access to, egress from and/or use of the Shared Facilities by the persons entitled thereto, save for any reasonable controls or restrictions imposed on access thereto by the Board (and the Declarant, prior to the Transfer Date).
- (b) The Corporation's share of the Shared Facilities Costs shall be calculated and paid as provided in the Shared Facilities Agreement. The budget for the Corporation shall incorporate any budget for the same period for Shared Facilities Costs prepared in accordance with the Shared Facilities Agreement by or on behalf of the Owners or parties for the time being to the Shared Facilities Agreement.

## ARTICLE X.

## DUTIES OF THE CORPORATION

- 10.1. In addition to any other duties or obligations of the Corporation set out in the Act, elsewhere in this Declaration and/or specified in the By-Laws of the Corporation, the Corporation shall have the following duties, namely:
- (a) To assume and to observe and comply (and insofar as possible, compel the observance and/or compliance by all Owners, residents and their respective tenants and/or invitees) with all terms and provisions set forth in the Act, and all of the terms and provisions set forth in this Declaration and By-Laws of this Corporation.
  - (b) To not interfere with the supply of (and insofar as the requisite services are supplied from the Corporation's property, to cause) heat, hydro, water, gas and all other requisite utility services so that same are fully functional and operable during normal or customary hours of use.
  - (c) To ensure that no actions or steps are taken by or on behalf of the Corporation or by any Owner which would in any way prohibit, restrict, limit, hinder or interfere with the Declarant's access and egress over any portion of the Property so as to enable the Declarant to construct and complete the Condominium.
  - (d) To ensure that no actions or steps are taken by or on behalf of the Corporation, or by any Owner or their respective tenants or invitees which would prohibit, restrict, limit, hinder or interfere with the ability of the Declarant and/or its subsidiaries and affiliates to utilize the recreational and amenity areas and portions of the Common Elements for its marketing/sale/construction programs, as more particularly set out in the foregoing provisions of this Declaration.
  - (e) To enter into, abide by and comply with, the terms and provisions of any outstanding subdivision, condominium, site plan, development or similar agreements (as well enter into a formal assumption agreement with the City of Waterloo or other Governmental Authorities relating thereto, if so required by the City of Waterloo or other Governmental Authorities).
  - (f) When the Corporation formally retains an independent consultant (who holds a certificate of authorization within the meaning of the *Professional Engineers Act*, R.S.O. 1990, as amended or replaced, or alternatively a certificate of practice within the meaning of the *Architects Act*, R.S.O. 1990, as amended or replaced) to conduct a performance audit of the Common Elements on behalf of the Corporation, in accordance with the provisions of section 44 of the Act and section 12 of O.Reg.48/01 (hereinafter referred to as the "Performance Audit"), then the Corporation shall have a duty to:
    - (i) permit the Declarant and its authorized employees, agents and representatives to accompany (and confer with) the consultant(s) retained to carry out the Performance Audit for the Corporation (hereinafter referred to as the "Performance Auditor") while same is being conducted, and to provide the Declarant with at least fifteen (15) days written notice prior to the commencement of the Performance Audit; and
    - (ii) permit the Declarant and its authorized employees, agents and representatives to carry out any repair or remedial work identified or recommended by the Performance Auditor in connection with the Performance Audit (if the Declarant chooses to do so);

for the purposes of facilitating and expediting the rectification and audit process (and bringing all matters requiring rectification to the immediate attention of the Declarant, so that same may be promptly dealt with), and affording the Declarant the opportunity to verify, clarify and/or explain any potential matters of dispute to the Performance Auditor, prior to the completion of the Performance Audit and the concomitant submission of the Performance Auditor's report to the Board and/or the Tarion Warranty Program pursuant to section 44(9) of the Act.
  - (g) To take all reasonable steps to collect from each Owner his or her proportionate share of the common expenses and to maintain and enforce the Corporation's lien arising pursuant to the Act, against each Unit in respect of which the Owner has defaulted in the payment of common expenses.

- (h) To grant, immediately after registration of this Declaration, if required, an easement in perpetuity in favour of utility suppliers or telephone or television operators, over, under, upon, across and through the Common Elements, for the purposes of facilitating the construction, installation, operation, maintenance and/or repair of utility or telephone or television lines or equipment (and all necessary appurtenances thereto) in order to facilitate the supply of utilities and telephone and television service to each of the Units and if so requested by the grantees of such easements, to enter into (and abide by the terms and provisions of) an agreement with the utility and/or telephone and television suppliers pertaining to the provision of their services to the Property and for such purposes shall enact such by-laws or resolutions as may be required to sanction the foregoing.
- (i) To accept and register within thirty (30) days of being requested by the Declarant, a transfer/deed of land of any Parking Units and/or Storage Units not sold by the Declarant;
- (j) To execute any such documentation as may reasonably be required by the Declarant to ratify and assume any contract and/or lease agreement entered into by the Declarant with respect to the HVAC equipment, including but not limited to the following: the primary boiler, roof-top heating and air-conditioning unit for the common areas, domestic water heaters, and heating and air-conditioning units contained in the Residential Units.
- (k) To accept and register the transfer/deed from the Declarant of the Guest Suite Unit, to complete and execute all requisite documentation and affidavits necessary to effect the registration of such conveyance, and to complete, execute and register the mortgage of the Guest Suite Unit, all without cost to the Declarant; and
- (l) To take all actions reasonably necessary as may be required to fulfill any of the Corporation's duties and obligations pursuant to this Declaration.

## ARTICLE XI.

### GENERAL MATTERS AND ADMINISTRATION

#### 11.1. Rights of Entry to the Unit

- (a) The Corporation or any insurer of the Property or any part thereof, their respective agents, or any other person authorized by the Board, shall be entitled to enter any Unit or any part of the Common Elements over which any Owner has the exclusive use, at all reasonable times and upon giving reasonable notice, to perform the objects and duties of the Corporation, and, without limiting the generality of the foregoing, for the purpose of making inspections, adjusting losses, making repairs, correcting any condition which violates the provisions of any insurance policy and remedying any condition which might result in damage to the Property or any part thereof or carrying out any duty imposed upon the Corporation. In addition, the Corporation, its agents or any other person authorized by the Board shall be entitled to enter where necessary, any Unit or any part of the Common Elements over which the owners of such units have the exclusive use at such reasonable time(s) to facilitate window washing. Owners shall not obstruct nor impede access to window washing anchors located within exclusive use Common Elements.
- (b) In case of an emergency, an agent of the Corporation may enter a Unit at any time and this provision constitutes notice to enter the Unit in accordance with the Act for the purpose of repairing the Unit, Common Elements, including any part of the Common Elements over which any Owner has the exclusive use, or for the purpose of correcting any condition which might result in damage or loss to the Property. The Corporation or anyone authorized by it may determine whether an emergency exists.
- (c) If an Owner shall not be personally present to grant entry to his Unit, the Corporation or its agents may enter upon such Unit without rendering it, or them, liable to any claim or cause of action for damages by reason thereof provided that they exercise reasonable care.
- (d) The Corporation shall retain a master key to all locks controlling entry into each Residential Unit. No Owner (other than an Owner whose Unit is located at ground floor) shall change any lock, or place any additional locks on the door(s) leading directly into

purpose of repairing the Unit, Common Elements, including any part of the Common Elements over which any Owner has the exclusive use, or for the purpose of correcting any condition which might result in damage or loss to the Property. The Corporation or anyone authorized by it may determine whether an emergency exists.

- (c) If an Owner shall not be personally present to grant entry to his Unit, the Corporation or its agents may enter upon such Unit without rendering it, or them, liable to any claim or cause of action for damages by reason thereof provided that they exercise reasonable care.
- (d) The Corporation shall retain a master key to all locks controlling entry into each Residential Unit. No Owner (other than an Owner whose Unit is located at ground floor) shall change any lock, or place any additional locks on the door(s) leading directly into his or her Residential Unit (nor on any doors within said Residential Unit), nor with respect to any door(s) leading to any part of the exclusive use common element areas appurtenant to such owner's Residential Unit, without the prior written consent of the Board. Where such consent has been granted by the Board, said owner shall forthwith provide the Corporation with keys to all new locks (as well as keys to all additional locks) so installed, and all such new or additional locks shall be keyed to the Corporation's master key entry system.
- (e) The rights and authority hereby reserved to the Corporation, its agents, or any insurer or its agents, do not impose any responsibility or liability whatever for the care or supervision of any Unit except as specifically provided in this Declaration or the By-Laws.

#### 11.2. Invalidity

Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

#### 11.3. Waiver

The failure to take action to enforce any provision contained in the Act, this Declaration, the By-Laws or any other rules and regulations of the Corporation, irrespective of the number of violations or breaches which may occur, shall not constitute a waiver of the right to do so thereafter, nor be deemed to abrogate or waive any such provision.

#### 11.4. Interpretation of Declaration

This Declaration shall be read with all changes of number and gender required by the context.

#### 11.5. Headings

The headings in the body of this Declaration form no part of the Declaration but shall be deemed to be inserted for convenience of reference only.

**IN WITNESS WHEREOF** the Declarant has hereunto affixed its corporate seal under the hands of its proper officer duly authorized in that behalf.

**DATED** as of the 26<sup>th</sup> day of January, 2015.

**144 PARK LTD.**  
by its court-appointed trustee, **COLLINS BARROW**  
**TORONTO LIMITED**

Per: \_\_\_\_\_

Name: **Bryan A. Tannenbaum**  
Title: **President**

I have the authority to bind the Corporation.

**SCHEDULE "A"**

In the City of Waterloo, in the Regional Municipality of Waterloo, being of all of Lots 2 and 3 and part of Lots 1, 4, 5 and 6, Plan 186, designated as Part 2, Plan 58R-18116, being part of P.I.N. 22417-0134 (LT).

Subject to an easement over Part 2, Plan 58R-18116 as in WR666363.

Subject to an easement over Parts 1, 2 and 3, Plan 58R-18429 as in WR864508.

**RESERVING** rights-of-way or rights in the nature of easements in favour of the owners, their successors and assigns of part of Lots 217, 218, 219 and 267, Plan 385 designated as Part 1, Plan 58R-18116, being P.I.N. 22417-0135 (LT) and part of Lots 1, 5 and 6, Plan 186, designated as Part 3, Plan 58R-18116, being part of P.I.N. 22417-0134 (LT) (hereinafter collectively referred to as the "**Excess Lands**") which rights-of-way or rights in the nature of easements are as follows:

- a) in, over, along and through all of the Common Elements of this Condominium for the purposes of providing vehicular and pedestrian ingress and egress over the driveways and ramps on Levels 1, 2, 3 and A including, but not limited to, garbage, maintenance, delivery and removal vehicles, necessary to the operation of the Excess Lands;
- b) in and through all of the Common Elements of this Condominium, for the access of persons, materials, vehicles and equipment necessary for the maintenance, repair, operation, installation and reconstruction of any electrical apparatus, installation or equipment including, but not limited to, electrical cables, wires, conduits or ducts, all of which are necessary to the operation of the building to be situate within the Excess Lands;
- c) in and through all of the Common Elements of this Condominium for the access of persons, vehicles, materials and equipment necessary for the maintenance, repair, operation, construction and reconstruction of the building situate within the Excess Lands;
- d) a temporary right-of-way or right in the nature of an easement in and through all of the Common Elements, for the purposes of providing passage through all areas exterior to the building of this Condominium for an overhead crane swing, which said temporary right-of-way or right in the nature of an easement will terminate upon the completion of construction of all buildings to be constructed on the Excess Lands; and
- e) a temporary right-of-way or right in the nature of an easement in, over, along and upon all of the Common Elements of this Condominium for construction purposes, including, but not limited to, the erection of hoarding, scaffolding and the placement of equipment and construction materials necessary for the construction of any buildings on the Excess Lands, which said temporary right-of-way or right in the nature of an easement shall terminate upon the completion of construction of such building.

**RESERVING** rights-of-way or rights in the nature of easements in favour of the owners, their successors and assigns of part of Lots 219, 265 to 267, inclusive, Plan 385, designated as Part 11, Plan 58R-17849, City of Waterloo being P.I.N. 22417-0138 (LT); part Lot 1, Plan 186, designated as Part 5, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0129 (LT); part Lots 217, 218, 219 and 267, Plan 385, designated as Part 6, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0133 (LT); part Lot 217, Plan 385, designated as Part 7, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0019; part Lot 217 to 219, inclusive, Plan 385, designated as Part 8, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0018; part of Lot 218 and 219, Plan 385, designated as Part 9, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0123 (LT); part Lots 218, 219, 220 and 266, Plan 385, designated as Part 10, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0122 (LT); part Lots 219, 220, 221, 265 and 266, Plan 385, designated as Part 17, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0137 (LT); part Lot 6 and 7, Plan 186, designated as Parts 3 and 4, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0023 (LT) and part Lot 7, Plan 186, designated as Parts 1 and 2, Plan 58R-17849, City of Waterloo, being P.I.N. 22417-0024 (LT) (hereinafter collectively referred to as the "**Phase 2 Lands**"), which rights-of-way or rights in the nature of easements are as follows:

- a) in, over, along and through all of the Common Elements of this Condominium for the purposes of providing vehicular and pedestrian ingress and egress over the driveways and ramps on Levels 1, 2, 3 and A including, but not limited to, garbage, maintenance, delivery and removal vehicles, necessary to the operation of the Phase 2 Lands;
- b) in and through all of the Common Elements of this Condominium, for the access of persons, materials, vehicles and equipment necessary for the maintenance, repair, operation, installation and reconstruction of any electrical apparatus, installation or equipment including, but not limited

to, electrical cables, wires, conduits or ducts, all of which are necessary to the operation of the building to be situate within the Phase 2 Lands;

- c) in and through all of the Common Elements of this Condominium for the access of persons, vehicles, materials and equipment necessary for the maintenance, repair, operation, construction and reconstruction of the building situate within the Phase 2 Lands; and
- d) a temporary right-of-way or right in the nature of an easement in and through all of the Common Elements exterior to the building of this Condominium, for the purposes of providing passage for an overhead crane swing, which said temporary right-of-way or right in the nature of an easement will terminate upon the completion of construction of all buildings to be constructed on the Phase 2 Lands.
- e) a temporary right-of-way or right in the nature of an easement in, over, along and upon all of the Common Elements of this Condominium for construction purposes, including, but not limited to, the erection of hoarding, scaffolding and the placement of equipment and construction materials necessary for the construction of any buildings on the Phase 2 Lands, which said temporary right-of-way or right in the nature of an easement shall terminate upon the completion of construction of such building.

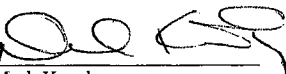
The abovementioned easements are easements required by an approval authority as a condition of approving the Declaration and Description pursuant to Subsection 20(2) of the *Condominium Act, 1998*, which condition is set out in paragraph 1.8(1) of this Declaration..

In my opinion, based on the parcel register and the plans and documents recorded in them, the legal description is correct, the described easements will exist in law upon the registration of the declaration and the description and the declarant is the registered owner of the property and appurtenant interests.

HARRIS, SHEAFFER, LLP,  
duly authorized representatives for  
**144 PARK LTD.**

May 14, 2015  
Dated

Per:

  
Mark Karoly

**SCHEDULE "B"**

**CONSENT**

(under clause 7(2)(b) of the *Condominium Act, 1998*)

1. AVIVA INSURANCE COMPANY OF CANADA has a registered mortgage within the meaning of clause 7(2)(b) of the *Condominium Act, 1998* registered as Number WR639368 in the Land Titles Division of the Waterloo Registry Office (No. 58).
2. AVIVA INSURANCE COMPANY OF CANADA consents to the registration of this declaration, pursuant to the Act, against the land or the interests appurtenant to the land, as the land and the interests are described in the description.
3. AVIVA INSURANCE COMPANY OF CANADA postpones the mortgage and the interests under it to the declaration and the easements described in Schedule "A" to the Declaration.
4. AVIVA INSURANCE COMPANY OF CANADA is entitled by law to grant this consent and postponement.

DATED this 3<sup>rd</sup> day of Feb, 2014.

**AVIVA INSURANCE COMPANY OF CANADA**

Per:   
Name: \_\_\_\_\_  
Title: **Brian Argue**  
**Authorized Signing Officer**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have the authority to bind the Corporation.



**SCHEDULE "B"**

**CONSENT**

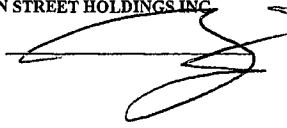
(under clause 7(2)(b) of the *Condominium Act, 1998*)

1. ALLEN STREET HOLDINGS INC. has a registered mortgage within the meaning of clause 7(2)(b) of the *Condominium Act, 1998* registered as Number WR639369 in the Land Titles Division of the Waterloo Registry Office (No. 58).
2. ALLEN STREET HOLDINGS INC. consents to the registration of this declaration, pursuant to the Act, against the land or the interests appurtenant to the land, as the land and the interests are described in the description.
3. ALLEN STREET HOLDINGS INC. postpones the mortgage and the interests under it to the declaration and the easements described in Schedule "A" to the Declaration.
4. ALLEN STREET HOLDINGS INC. is entitled by law to grant this consent and postponement.


DATED this 20 day of MARCH, 2015 R.K.

**ALLEN STREET HOLDINGS INC.**

Per: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_



Per: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

I/We have the authority to bind the Corporation. 

**SCHEDULE "B"**


**CONSENT**

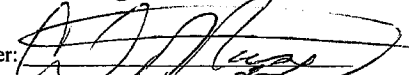
(under clause 7(2)(b) of the *Condominium Act, 1998*)

1. MARSHALLZEHR GROUP INC. has a registered mortgage within the meaning of clause 7(2)(b) of the *Condominium Act, 1998* registered as Number WR660381 in the Land Titles Division of the Waterloo Registry Office (No. 58).
2. MARSHALLZEHR GROUP INC. consents to the registration of this declaration, pursuant to the Act, against the land or the interests appurtenant to the land, as the land and the interests are described in the description.
3. MARSHALLZEHR GROUP INC. postpones the mortgage and the interests under it to the declaration and the easements described in Schedule "A" to the Declaration.
4. MARSHALLZEHR GROUP INC. is entitled by law to grant this consent and postponement.

DATED this 3<sup>rd</sup> day of February, 2018.

**MARSHALLZEHR GROUP INC.**

Per:   
Name: DAVID MARSHALL  
Title: CEO

Per:   
Name: DAVID MARSHALL  
Title: CEO

I/We have the authority to bind the Corporation.

## SCHEDULE "B"

## CONSENT

(under clause 7(2)(b) of the *Condominium Act, 1998*)

1. LAURENTIAN BANK OF CANADA has a registered mortgage within the meaning of clause 7(2)(b) of the *Condominium Act, 1998* registered as Number WR690395 in the Land Titles Division of the Waterloo Registry Office (No. 58).
2. LAURENTIAN BANK OF CANADA consents to the registration of this declaration, pursuant to the Act, against the land or the interests appurtenant to the land, as the land and the interests are described in the description.
3. LAURENTIAN BANK OF CANADA postpones the mortgage and the interests under it to the declaration and the easements described in Schedule "A" to the Declaration.
4. LAURENTIAN BANK OF CANADA is entitled by law to grant this consent and postponement.

DATED this 11<sup>th</sup> day of March 2014.

## LAURENTIAN BANK OF CANADA

Per: 

Name: ALVIN DES ROCHERS

Title: VICE PRESIDENT, SPECIAL LOANS

Per: 

Name: CONNIE DIELO

Title: ASSISTANT VICE PRESIDENT, SPECIAL LOANS

I/We have the authority to bind the Corporation.

**SCHEDULE 'C'****UNIT BOUNDARIES**

Each Residential Unit, Guest Suite Unit, Parking Unit and Storage Unit shall comprise the area within the heavy lines shown on Part 1, Sheets 1, 2, 3, 4, 5 and 6 of the Description with respect to the unit numbers indicated thereon. The monuments controlling the extent of the Residential Units, Guest Suite Unit, Parking Units and Locker Units are the physical surfaces and planes referred to below, and are illustrated on Part 1, Sheets 1, 2, 3, 4, 5 and 6 of the Description, and all dimensions shall have reference to them.

Without limiting the generalities of the foregoing, the boundaries of each Unit are as follows:

1. **BOUNDARIES OF THE RESIDENTIAL UNITS**

(being Units 1 to 8 (inclusive) on Level 1, Units 1 to 9 (inclusive) on Level 4, Units 1 to 10 (inclusive) on Levels 5 to 10 (inclusive), Units 1 to 9 (inclusive) on Level 11, Units 1 to 10 (inclusive) on Levels 12 to 14 (inclusive), Units 1 to 7 (inclusive) on Levels 15 to 18 (inclusive) and Units 1 to 4 inclusive on Level 19)

**BOUNDARIES OF THE GUEST SUITE UNIT**

(being Unit 36 on Level 3)

a) Each Residential Unit and Guest Suite Unit shall be bounded vertically by:

- i) the upper surface and plane of the concrete floor slab and/or the production thereof.
- ii) the lower surface and plane of the concrete ceiling slab and/or the production thereof.

b) Each Residential Unit and Guest Suite Unit shall be bounded horizontally by:

- i) the backside face of the drywall sheathing and production thereof on all exterior walls or walls separating a unit from the common elements.
- ii) the unfinished unit side surface and plane of the exterior doors (said doors and windows being in a closed position), door and window frames and the unit side surface of all glass or acrylic panels located therein.
- iii) in the vicinity of suspended ceilings, bulkheads, ducts, pipe spaces and concrete columns, the unit boundaries are the backside face of the drywall sheathing enclosing said suspended ceilings, bulkheads, ducts, pipe spaces and masonry structural columns and walls.

2. **BOUNDARIES OF THE PARKING UNITS**

(being Units 1 to 65 (inclusive) on Level A, Units 9 to 15 (inclusive) and Units 29 to 45 (inclusive) on Level 1, Units 1 to 25 (inclusive) on Level 2 and Units 1 to 35 (inclusive) on Level 3)

a) Each Parking Unit shall be bounded vertically by one or a combination of:

- i) the upper surface and plane of the concrete floor slab and/or the production thereof.
- ii) the plane established 2.00 metres perpendicularly distant above and parallel to the upper finished surface of the concrete floor slab.

b) Each Parking Unit shall be bounded horizontally by one or a combination of:

- i) the vertical plane established by measurements.
- ii) the surface and plane of the masonry wall and/or the production thereof.
- iii) the vertical plane established by the line and face of the columns and/or the production thereof.
- iv) the vertical plane established by measurements and perpendicular to the masonry wall.

3. **BOUNDARIES OF THE STORAGE UNITS**

(being Units 66 to 97 (inclusive) on Level A, Units 16 to 28 (inclusive) on Level 1, Units 26 to 114 (inclusive) on Level 2 and Units 37 to 52 (inclusive) on Level 3)

a) Each Storage Unit shall be bounded vertically by one or a combination of:

- i) the upper surface and plane of the concrete floor slab and/or the production thereof.
- ii) the interior surface and plane of the steel wire mesh.

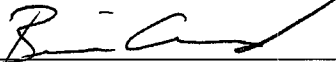
b) Each Storage Unit shall be bounded horizontally by one or a combination of:

- i) the backside face of the drywall sheathing and production thereof.
- ii) the unfinished unit side surface and plane of the frame and door frames and the wire mesh screening contained therein, the said doors being in a closed position.
- iii) the surface and plane of the masonry wall and/or the production thereof.

- iv) the interior surface and plane of the steel wire mesh.
4. **BOUNDARIES OF THE DRIVE AISLE UNITS**  
(being Unit 116 on Level 2 and Unit 54 on Level 3)
- a) Each Drive Aisle Unit shall be bounded vertically by one or a combination of:
    - i) the upper surface and plane of the concrete floor slab and/or the production thereof.
    - ii) the plane established 2.00 metres perpendicularly distant above and parallel to the upper finished surface of the concrete floor slab.
  - b) Each Drive Aisle Unit shall be bounded horizontally by one or a combination of:
    - i) the vertical plane established by measurements.
    - ii) the surface and plane of the masonry wall and/or the production thereof.
    - iii) the vertical plane established by the line and face of the columns and/or the production thereof.
    - iv) the vertical plane established by measurements and perpendicular to the masonry wall.
5. **BOUNDARIES OF THE KNOCK-OUT PANEL/DRIVE AISLE UNITS**  
(being Units 98 to 101 (inclusive) on Level A; Units 117 and 118 on Level 2; and Units 55 and 56 on Level 3)
- a) Each Knock-out Panel/Drive Aisle Unit shall be bounded vertically by one or a combination of:
    - i) the upper surface and plane of the concrete floor slab and/or the production thereof.
    - ii) the plane established 2.00 metres perpendicularly distant above and parallel to the upper finished surface of the concrete floor slab.
  - b) Each Knock-out Panel/Drive Aisle Unit shall be bounded horizontally by one or a combination of:
    - i) the vertical plane established by measurements.
    - ii) the surface and plane of the masonry wall and/or the production thereof.
    - iii) the vertical plane established by the line and face of the columns and/or the production thereof.
    - iv) the vertical plane established by measurements and perpendicular to the masonry wall.
6. **BOUNDARIES OF THE KNOCK-OUT PANEL UNITS**  
(being Unit 115 on Level 2 and Unit 53 on Level 3)
- a) Each Knock-out Panel Unit shall be bounded vertically by one or a combination of:
    - i) the upper surface and plane of the concrete floor slab and/or the production thereof.
    - ii) the plane established 2.00 metres perpendicularly distant above and parallel to the upper finished surface of the concrete floor slab.
  - b) Each Knock-out Panel Unit shall be bounded horizontally by one or a combination of:
    - i) the surface and plane of the masonry wall and/or the production thereof.
7. **BOUNDARIES OF THE ROOFTOP TERRACE UNIT**  
(being Unit 10 on Level 4)
- a) The Rooftop Terrace Unit shall be bounded vertically by one or a combination of:
    - i) the upper surface and plane of the concrete floor slab and/or the unit side surface and plane of all roof membranes and/or the production thereof.
    - ii) the plane established 3.00 metres perpendicularly distant above and parallel to the upper finished surface of the concrete floor slab.
  - b) The Rooftop Terrace Unit shall be bounded horizontally by one or a combination of:
    - i) the vertical plane established by the unit side surface of the parapet wall and/or production.
    - ii) the vertical plane established by the unit side surface of the concrete planter and/or production.
    - iii) the surface and plane of the masonry wall and/or the production thereof.

I hereby certify that the written description of the monuments and boundaries of the Units contained herein accurately corresponds with the diagrams of the Units shown on Part 1, Sheets 1, 2, 3, 4, 5 and 6 of the Description.

JANUARY 30, 2015  
Dated

  
\_\_\_\_\_  
Brian Coad, Ontario Land Surveyor  
Verhaegen•Stubberfield•Hartley•Brewer•Bezaire Inc.

Reference should be made to the provisions of the Declaration itself, in order to determine the maintenance and repair responsibilities for any Unit, and whether specific physical components (such as any wires, pipes, cables, conduits, equipment, fixtures, structural components and/or any other appurtenances) are included or excluded from the Unit, regardless of whether same are located within or beyond the boundaries established for such Unit.

4-24901.X15  
November 24, 2014

## SCHEDULE D

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	PERCENTAGE CONTRIBUTION TO COMMON EXPENSES	AND PERCENTAGE INTEREST IN COMMON ELEMENTS
PARKING UNIT	A	1	0.03463	0.03463
PARKING UNIT	A	2	0.03463	0.03463
PARKING UNIT	A	3	0.03463	0.03463
PARKING UNIT	A	4	0.03463	0.03463
PARKING UNIT	A	5	0.03463	0.03463
PARKING UNIT	A	6	0.03463	0.03463
PARKING UNIT	A	7	0.03463	0.03463
PARKING UNIT	A	8	0.03463	0.03463
PARKING UNIT	A	9	0.03463	0.03463
PARKING UNIT	A	10	0.03463	0.03463
PARKING UNIT	A	11	0.03463	0.03463
PARKING UNIT	A	12	0.03463	0.03463
PARKING UNIT	A	13	0.03463	0.03463
PARKING UNIT	A	14	0.03463	0.03463
PARKING UNIT	A	15	0.03463	0.03463
PARKING UNIT	A	16	0.03463	0.03463
PARKING UNIT	A	17	0.03463	0.03463
PARKING UNIT	A	18	0.03463	0.03463
PARKING UNIT	A	19	0.03463	0.03463
PARKING UNIT	A	20	0.03463	0.03463
PARKING UNIT	A	21	0.03463	0.03463
PARKING UNIT	A	22	0.03463	0.03463
PARKING UNIT	A	23	0.03463	0.03463
PARKING UNIT	A	24	0.03463	0.03463
PARKING UNIT	A	25	0.03463	0.03463
PARKING UNIT	A	26	0.03463	0.03463
PARKING UNIT	A	27	0.03463	0.03463
PARKING UNIT	A	28	0.03463	0.03463
PARKING UNIT	A	29	0.03463	0.03463
PARKING UNIT	A	30	0.03463	0.03463
PARKING UNIT	A	31	0.03463	0.03463
PARKING UNIT	A	32	0.03463	0.03463
PARKING UNIT	A	33	0.03463	0.03463
PARKING UNIT	A	34	0.03463	0.03463
PARKING UNIT	A	35	0.03463	0.03463
PARKING UNIT	A	36	0.03463	0.03463
PARKING UNIT	A	37	0.03463	0.03463
PARKING UNIT	A	38	0.03463	0.03463
PARKING UNIT	A	39	0.03463	0.03463
PARKING UNIT	A	40	0.03463	0.03463
PARKING UNIT	A	41	0.03463	0.03463
PARKING UNIT	A	42	0.03463	0.03463
PARKING UNIT	A	43	0.03463	0.03463
PARKING UNIT	A	44	0.03463	0.03463
PARKING UNIT	A	45	0.03463	0.03463
PARKING UNIT	A	46	0.03463	0.03463
PARKING UNIT	A	47	0.03463	0.03463
PARKING UNIT	A	48	0.03463	0.03463
PARKING UNIT	A	49	0.03463	0.03463
PARKING UNIT	A	50	0.03463	0.03463
PARKING UNIT	A	51	0.03463	0.03463
PARKING UNIT	A	52	0.03463	0.03463
PARKING UNIT	A	53	0.03463	0.03463
PARKING UNIT	A	54	0.03463	0.03463
PARKING UNIT	A	55	0.03463	0.03463
PARKING UNIT	A	56	0.03463	0.03463
PARKING UNIT	A	57	0.03463	0.03463

## SCHEDULE D

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	PERCENTAGE CONTRIBUTION TO COMMON EXPENSES	AND PERCENTAGE INTEREST IN COMMON ELEMENTS
PARKING UNIT	A	58	0.03463	0.03463
PARKING UNIT	A	59	0.03463	0.03463
PARKING UNIT	A	60	0.03463	0.03463
PARKING UNIT	A	61	0.03463	0.03463
PARKING UNIT	A	62	0.03463	0.03463
PARKING UNIT	A	63	0.03463	0.03463
PARKING UNIT	A	64	0.03463	0.03463
PARKING UNIT	A	65	0.03463	0.03463
STORAGE UNIT	A	66	0.01351	0.01351
STORAGE UNIT	A	67	0.01351	0.01351
STORAGE UNIT	A	68	0.01351	0.01351
STORAGE UNIT	A	69	0.01351	0.01351
STORAGE UNIT	A	70	0.01351	0.01351
STORAGE UNIT	A	71	0.01351	0.01351
STORAGE UNIT	A	72	0.01351	0.01351
STORAGE UNIT	A	73	0.01351	0.01351
STORAGE UNIT	A	74	0.01351	0.01351
STORAGE UNIT	A	75	0.01351	0.01351
STORAGE UNIT	A	76	0.01351	0.01351
STORAGE UNIT	A	77	0.01351	0.01351
STORAGE UNIT	A	78	0.01351	0.01351
STORAGE UNIT	A	79	0.01351	0.01351
STORAGE UNIT	A	80	0.01351	0.01351
STORAGE UNIT	A	81	0.01351	0.01351
STORAGE UNIT	A	82	0.01351	0.01351
STORAGE UNIT	A	83	0.01351	0.01351
STORAGE UNIT	A	84	0.01351	0.01351
STORAGE UNIT	A	85	0.01351	0.01351
STORAGE UNIT	A	86	0.01351	0.01351
STORAGE UNIT	A	87	0.01351	0.01351
STORAGE UNIT	A	88	0.01351	0.01351
STORAGE UNIT	A	89	0.01351	0.01351
STORAGE UNIT	A	90	0.01351	0.01351
STORAGE UNIT	A	91	0.01351	0.01351
STORAGE UNIT	A	92	0.01351	0.01351
STORAGE UNIT	A	93	0.01351	0.01351
STORAGE UNIT	A	94	0.01351	0.01351
STORAGE UNIT	A	95	0.01351	0.01351
STORAGE UNIT	A	96	0.01351	0.01351
STORAGE UNIT	A	97	0.01351	0.01351
KNOCK-OUT PANEL/DRIVE AISLE UNIT	A	98	0.00001	0.00001
KNOCK-OUT PANEL/DRIVE AISLE UNIT	A	99	0.00001	0.00001
KNOCK-OUT PANEL/DRIVE AISLE UNIT	A	100	0.00001	0.00001
KNOCK-OUT PANEL/DRIVE AISLE UNIT	A	101	0.00001	0.00001
TH 1	1	1	1.10199	1.10199
TH 2	1	2	1.07332	1.07332
TH 3	1	3	1.07332	1.07332
TH 4	1	4	1.09555	1.09555



## SCHEDULE D

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	PERCENTAGE CONTRIBUTION TO COMMON EXPENSES	AND PERCENTAGE INTEREST IN COMMON ELEMENTS
TH 5	1	5	1.06806	1.06806
TH 6	1	6	1.09730	1.09730
TH 7	1	7	1.15346	1.15346
TH 8	1	8	1.13708	1.13708
PARKING UNIT	1	9	0.03463	0.03463
PARKING UNIT	1	10	0.03463	0.03463
PARKING UNIT	1	11	0.03463	0.03463
PARKING UNIT	1	12	0.03463	0.03463
PARKING UNIT	1	13	0.03463	0.03463
PARKING UNIT	1	14	0.03463	0.03463
PARKING UNIT	1	15	0.03463	0.03463
STORAGE UNIT	1	16	0.01351	0.01351
STORAGE UNIT	1	17	0.01351	0.01351
STORAGE UNIT	1	18	0.01351	0.01351
STORAGE UNIT	1	19	0.01351	0.01351
STORAGE UNIT	1	20	0.01351	0.01351
STORAGE UNIT	1	21	0.01351	0.01351
STORAGE UNIT	1	22	0.01351	0.01351
STORAGE UNIT	1	23	0.01351	0.01351
STORAGE UNIT	1	24	0.01351	0.01351
STORAGE UNIT	1	25	0.01351	0.01351
STORAGE UNIT	1	26	0.01351	0.01351
STORAGE UNIT	1	27	0.01351	0.01351
STORAGE UNIT	1	28	0.01351	0.01351
PARKING UNIT	1	29	0.03463	0.03463
PARKING UNIT	1	30	0.03463	0.03463
PARKING UNIT	1	31	0.03463	0.03463
PARKING UNIT	1	32	0.03463	0.03463
PARKING UNIT	1	33	0.03463	0.03463
PARKING UNIT	1	34	0.03463	0.03463
PARKING UNIT	1	35	0.03463	0.03463
PARKING UNIT	1	36	0.03463	0.03463
PARKING UNIT	1	37	0.03463	0.03463
PARKING UNIT	1	38	0.03463	0.03463
PARKING UNIT	1	39	0.03463	0.03463
PARKING UNIT	1	40	0.03463	0.03463
PARKING UNIT	1	41	0.03463	0.03463
PARKING UNIT	1	42	0.03463	0.03463
PARKING UNIT	1	43	0.03463	0.03463
PARKING UNIT	1	44	0.03463	0.03463
PARKING UNIT	1	45	0.03463	0.03463
PARKING UNIT	2	1	0.03463	0.03463
PARKING UNIT	2	2	0.03463	0.03463
PARKING UNIT	2	3	0.03463	0.03463
PARKING UNIT	2	4	0.03463	0.03463
PARKING UNIT	2	5	0.03463	0.03463
PARKING UNIT	2	6	0.03463	0.03463
PARKING UNIT	2	7	0.03463	0.03463
PARKING UNIT	2	8	0.03463	0.03463
PARKING UNIT	2	9	0.03463	0.03463
PARKING UNIT	2	10	0.03463	0.03463
PARKING UNIT	2	11	0.03463	0.03463
PARKING UNIT	2	12	0.03463	0.03463
PARKING UNIT	2	13	0.03463	0.03463
PARKING UNIT	2	14	0.03463	0.03463
PARKING UNIT	2	15	0.03463	0.03463

## SCHEDULE D

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	PERCENTAGE CONTRIBUTION TO COMMON EXPENSES	AND PERCENTAGE INTEREST IN COMMON ELEMENTS
PARKING UNIT	2	16	0.03463	0.03463
PARKING UNIT	2	17	0.03463	0.03463
PARKING UNIT	2	18	0.03463	0.03463
PARKING UNIT	2	19	0.03463	0.03463
PARKING UNIT	2	20	0.03463	0.03463
PARKING UNIT	2	21	0.03463	0.03463
PARKING UNIT	2	22	0.03463	0.03463
PARKING UNIT	2	23	0.03463	0.03463
PARKING UNIT	2	24	0.03463	0.03463
PARKING UNIT	2	25	0.03463	0.03463
STORAGE UNIT	2	26	0.01351	0.01351
STORAGE UNIT	2	27	0.01351	0.01351
STORAGE UNIT	2	28	0.01351	0.01351
STORAGE UNIT	2	29	0.01351	0.01351
STORAGE UNIT	2	30	0.01351	0.01351
STORAGE UNIT	2	31	0.01351	0.01351
STORAGE UNIT	2	32	0.01351	0.01351
STORAGE UNIT	2	33	0.01351	0.01351
STORAGE UNIT	2	34	0.01351	0.01351
STORAGE UNIT	2	35	0.01351	0.01351
STORAGE UNIT	2	36	0.01351	0.01351
STORAGE UNIT	2	37	0.01351	0.01351
STORAGE UNIT	2	38	0.01351	0.01351
STORAGE UNIT	2	39	0.01351	0.01351
STORAGE UNIT	2	40	0.01351	0.01351
STORAGE UNIT	2	41	0.01351	0.01351
STORAGE UNIT	2	42	0.01351	0.01351
STORAGE UNIT	2	43	0.01351	0.01351
STORAGE UNIT	2	44	0.01351	0.01351
STORAGE UNIT	2	45	0.01351	0.01351
STORAGE UNIT	2	46	0.01351	0.01351
STORAGE UNIT	2	47	0.01351	0.01351
STORAGE UNIT	2	48	0.01351	0.01351
STORAGE UNIT	2	49	0.01351	0.01351
STORAGE UNIT	2	50	0.01351	0.01351
STORAGE UNIT	2	51	0.01351	0.01351
STORAGE UNIT	2	52	0.01351	0.01351
STORAGE UNIT	2	53	0.01351	0.01351
STORAGE UNIT	2	54	0.01351	0.01351
STORAGE UNIT	2	55	0.01351	0.01351
STORAGE UNIT	2	56	0.01351	0.01351
STORAGE UNIT	2	57	0.01351	0.01351
STORAGE UNIT	2	58	0.01351	0.01351
STORAGE UNIT	2	59	0.01351	0.01351
STORAGE UNIT	2	60	0.01351	0.01351
STORAGE UNIT	2	61	0.01351	0.01351
STORAGE UNIT	2	62	0.01351	0.01351
STORAGE UNIT	2	63	0.01351	0.01351
STORAGE UNIT	2	64	0.01351	0.01351
STORAGE UNIT	2	65	0.01351	0.01351
STORAGE UNIT	2	66	0.01351	0.01351
STORAGE UNIT	2	67	0.01351	0.01351
STORAGE UNIT	2	68	0.01351	0.01351
STORAGE UNIT	2	69	0.01351	0.01351
STORAGE UNIT	2	70	0.01351	0.01351
STORAGE UNIT	2	71	0.01351	0.01351
STORAGE UNIT	2	72	0.01351	0.01351

## SCHEDULE D

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	PERCENTAGE CONTRIBUTION TO COMMON EXPENSES	AND PERCENTAGE INTEREST IN COMMON ELEMENTS
STORAGE UNIT	2	73	0.01351	0.01351
STORAGE UNIT	2	74	0.01351	0.01351
STORAGE UNIT	2	75	0.01351	0.01351
STORAGE UNIT	2	76	0.01351	0.01351
STORAGE UNIT	2	77	0.01351	0.01351
STORAGE UNIT	2	78	0.01351	0.01351
STORAGE UNIT	2	79	0.01351	0.01351
STORAGE UNIT	2	80	0.01351	0.01351
STORAGE UNIT	2	81	0.01351	0.01351
STORAGE UNIT	2	82	0.01351	0.01351
STORAGE UNIT	2	83	0.01351	0.01351
STORAGE UNIT	2	84	0.01351	0.01351
STORAGE UNIT	2	85	0.01351	0.01351
STORAGE UNIT	2	86	0.01351	0.01351
STORAGE UNIT	2	87	0.01351	0.01351
STORAGE UNIT	2	88	0.01351	0.01351
STORAGE UNIT	2	89	0.01351	0.01351
STORAGE UNIT	2	90	0.01351	0.01351
STORAGE UNIT	2	91	0.01351	0.01351
STORAGE UNIT	2	92	0.01351	0.01351
STORAGE UNIT	2	93	0.01351	0.01351
STORAGE UNIT	2	94	0.01351	0.01351
STORAGE UNIT	2	95	0.01351	0.01351
STORAGE UNIT	2	96	0.01351	0.01351
STORAGE UNIT	2	97	0.01351	0.01351
STORAGE UNIT	2	98	0.01351	0.01351
STORAGE UNIT	2	99	0.01351	0.01351
STORAGE UNIT	2	100	0.01351	0.01351
STORAGE UNIT	2	101	0.01351	0.01351
STORAGE UNIT	2	102	0.01351	0.01351
STORAGE UNIT	2	103	0.01351	0.01351
STORAGE UNIT	2	104	0.01351	0.01351
STORAGE UNIT	2	105	0.01351	0.01351
STORAGE UNIT	2	106	0.01351	0.01351
STORAGE UNIT	2	107	0.01351	0.01351
STORAGE UNIT	2	108	0.01351	0.01351
STORAGE UNIT	2	109	0.01351	0.01351
STORAGE UNIT	2	110	0.01351	0.01351
STORAGE UNIT	2	111	0.01351	0.01351
STORAGE UNIT	2	112	0.01351	0.01351
STORAGE UNIT	2	113	0.01351	0.01351
STORAGE UNIT	2	114	0.01351	0.01351
KNOCK-OUT PANEL UNIT	2	115	0.00001	0.00001
DRIVE AISLE UNIT	2	116	0.00001	0.00001
KNOCK-OUT PANEL/DRIVE AISLE UNIT	2	117	0.00001	0.00001
KNOCK-OUT PANEL/DRIVE AISLE UNIT	2	118	0.00001	0.00001
PARKING UNIT	3	1	0.03463	0.03463
PARKING UNIT	3	2	0.03463	0.03463
PARKING UNIT	3	3	0.03463	0.03463
PARKING UNIT	3	4	0.03463	0.03463
PARKING UNIT	3	5	0.03463	0.03463

## SCHEDULE D

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	PERCENTAGE CONTRIBUTION TO COMMON EXPENSES	AND PERCENTAGE INTEREST IN COMMON ELEMENTS
PARKING UNIT	3	6	0.03463	0.03463
PARKING UNIT	3	7	0.03463	0.03463
PARKING UNIT	3	8	0.03463	0.03463
PARKING UNIT	3	9	0.03463	0.03463
PARKING UNIT	3	10	0.03463	0.03463
PARKING UNIT	3	11	0.03463	0.03463
PARKING UNIT	3	12	0.03463	0.03463
PARKING UNIT	3	13	0.03463	0.03463
PARKING UNIT	3	14	0.03463	0.03463
PARKING UNIT	3	15	0.03463	0.03463
PARKING UNIT	3	16	0.03463	0.03463
PARKING UNIT	3	17	0.03463	0.03463
PARKING UNIT	3	18	0.03463	0.03463
PARKING UNIT	3	19	0.03463	0.03463
PARKING UNIT	3	20	0.03463	0.03463
PARKING UNIT	3	21	0.03463	0.03463
PARKING UNIT	3	22	0.03463	0.03463
PARKING UNIT	3	23	0.03463	0.03463
PARKING UNIT	3	24	0.03463	0.03463
PARKING UNIT	3	25	0.03463	0.03463
PARKING UNIT	3	26	0.03463	0.03463
PARKING UNIT	3	27	0.03463	0.03463
PARKING UNIT	3	28	0.03463	0.03463
PARKING UNIT	3	29	0.03463	0.03463
PARKING UNIT	3	30	0.03463	0.03463
PARKING UNIT	3	31	0.03463	0.03463
PARKING UNIT	3	32	0.03463	0.03463
PARKING UNIT	3	33	0.03463	0.03463
PARKING UNIT	3	34	0.03463	0.03463
PARKING UNIT	3	35	0.03463	0.03463
GUEST SUITE UNIT	3	36	0.00001	0.00001
STORAGE UNIT	3	37	0.01351	0.01351
STORAGE UNIT	3	38	0.01351	0.01351
STORAGE UNIT	3	39	0.01351	0.01351
STORAGE UNIT	3	40	0.01351	0.01351
STORAGE UNIT	3	41	0.01351	0.01351
STORAGE UNIT	3	42	0.01351	0.01351
STORAGE UNIT	3	43	0.01351	0.01351
STORAGE UNIT	3	44	0.01351	0.01351
STORAGE UNIT	3	45	0.01351	0.01351
STORAGE UNIT	3	46	0.01351	0.01351
STORAGE UNIT	3	47	0.01351	0.01351
STORAGE UNIT	3	48	0.01351	0.01351
STORAGE UNIT	3	49	0.01351	0.01351
STORAGE UNIT	3	50	0.01351	0.01351
STORAGE UNIT	3	51	0.01351	0.01351
STORAGE UNIT	3	52	0.01351	0.01351
KNOCK-OUT PANEL UNIT	3	53	0.00001	0.00001
DRIVE AISLE UNIT	3	54	0.00001	0.00001
KNOCK-OUT PANEL/DRIVE AISLE UNIT	3	55	0.00001	0.00001
KNOCK-OUT PANEL/DRIVE AISLE UNIT	3	56	0.00001	0.00001

## SCHEDULE D

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	PERCENTAGE CONTRIBUTION TO COMMON EXPENSES	AND PERCENTAGE INTEREST IN COMMON ELEMENTS
401	4	1	0.58492	0.58492
402	4	2	0.67382	0.67382
403	4	3	0.40359	0.40359
404	4	4	0.42231	0.42231
405	4	5	0.61884	0.61884
406	4	6	0.41646	0.41646
407	4	7	0.39131	0.39131
408	4	8	0.65160	0.65160
409	4	9	0.60481	0.60481
ROOFTOP TERRACE UNIT	4	10	0.00001	0.00001
501	5	1	0.58492	0.58492
502	5	2	0.67382	0.67382
503	5	3	0.40359	0.40359
504	5	4	0.42231	0.42231
505	5	5	0.61884	0.61884
506	5	6	0.41646	0.41646
507	5	7	0.39131	0.39131
508	5	8	0.65160	0.65160
509	5	9	0.60481	0.60481
510	5	10	0.64808	0.64808
601	6	1	0.58492	0.58492
602	6	2	0.67382	0.67382
603	6	3	0.40359	0.40359
604	6	4	0.42231	0.42231
605	6	5	0.61884	0.61884
606	6	6	0.41646	0.41646
607	6	7	0.39131	0.39131
608	6	8	0.65160	0.65160
609	6	9	0.60481	0.60481
610	6	10	0.64808	0.64808
701	7	1	0.58492	0.58492
702	7	2	0.67382	0.67382
703	7	3	0.40359	0.40359
704	7	4	0.42231	0.42231
705	7	5	0.61884	0.61884
706	7	6	0.41646	0.41646
707	7	7	0.39131	0.39131
708	7	8	0.65160	0.65160
709	7	9	0.60481	0.60481
710	7	10	0.64808	0.64808
801	8	1	0.58492	0.58492
802	8	2	0.67382	0.67382
803	8	3	0.40359	0.40359
804	8	4	0.42231	0.42231
805	8	5	0.61884	0.61884
806	8	6	0.41646	0.41646
807	8	7	0.39131	0.39131
808	8	8	0.65160	0.65160
809	8	9	0.60481	0.60481
810	8	10	0.64808	0.64808

## SCHEDULE D

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	PERCENTAGE CONTRIBUTION TO COMMON EXPENSES	AND PERCENTAGE INTEREST IN COMMON ELEMENTS
901	9	1	0.58492	0.58492
902	9	2	0.67382	0.67382
903	9	3	0.40359	0.40359
904	9	4	0.42231	0.42231
905	9	5	0.61884	0.61884
906	9	6	0.41646	0.41646
907	9	7	0.39131	0.39131
908	9	8	0.65160	0.65160
909	9	9	0.60481	0.60481
910	9	10	0.64808	0.64808
1001	10	1	0.58492	0.58492
1002	10	2	0.67382	0.67382
1003	10	3	0.40359	0.40359
1004	10	4	0.42231	0.42231
1005	10	5	0.61884	0.61884
1006	10	6	0.41646	0.41646
1007	10	7	0.39131	0.39131
1008	10	8	0.65160	0.65160
1009	10	9	0.60481	0.60481
1010	10	10	0.64808	0.64808
1101	11	1	0.58492	0.58492
1102	11	2	0.67382	0.67382
1103	11	3	0.40359	0.40359
1104	11	4	1.04115	1.04115
1105	11	5	0.41646	0.41646
1106	11	6	0.39131	0.39131
1107	11	7	0.65160	0.65160
1108	11	8	0.60481	0.60481
1109	11	9	0.64808	0.64808
1201	12	1	0.58492	0.58492
1202	12	2	0.67382	0.67382
1203	12	3	0.40359	0.40359
1204	12	4	0.42231	0.42231
1205	12	5	0.61884	0.61884
1206	12	6	0.41646	0.41646
1207	12	7	0.39131	0.39131
1208	12	8	0.65160	0.65160
1209	12	9	0.60481	0.60481
1210	12	10	0.64808	0.64808
1301	13	1	0.58492	0.58492
1302	13	2	0.67382	0.67382
1303	13	3	0.40359	0.40359
1304	13	4	0.42231	0.42231
1305	13	5	0.61884	0.61884
1306	13	6	0.41646	0.41646
1307	13	7	0.39131	0.39131
1308	13	8	0.65160	0.65160
1309	13	9	0.60481	0.60481
1310	13	10	0.64808	0.64808
1401	14	1	0.58492	0.58492
1402	14	2	0.67382	0.67382
1403	14	3	0.40359	0.40359

## SCHEDULE D

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	PERCENTAGE CONTRIBUTION TO COMMON EXPENSES	AND PERCENTAGE INTEREST IN COMMON ELEMENTS
1404	14	4	0.42231	0.42231
1405	14	5	0.61884	0.61884
1406	14	6	0.41646	0.41646
1407	14	7	0.39131	0.39131
1408	14	8	0.65160	0.65160
1409	14	9	0.60481	0.60481
1410	14	10	0.64808	0.64808
1501	15	1	0.81128	0.81128
1502	15	2	0.56035	0.56035
1503	15	3	0.75220	0.75220
1504	15	4	0.60364	0.60364
1505	15	5	0.79140	0.79140
1506	15	6	0.86919	0.86919
1507	15	7	0.73817	0.73817
1601	16	1	0.81128	0.81128
1602	16	2	0.56035	0.56035
1603	16	3	0.75220	0.75220
1604	16	4	0.60364	0.60364
1605	16	5	0.79140	0.79140
1606	16	6	0.86919	0.86919
1607	16	7	0.73817	0.73817
1701	17	1	0.81128	0.81128
1702	17	2	0.56035	0.56035
1703	17	3	0.75220	0.75220
1704	17	4	0.60364	0.60364
1705	17	5	0.79140	0.79140
1706	17	6	0.86919	0.86919
1707	17	7	0.73817	0.73817
PH 01	18	1	0.81128	0.81128
PH 02	18	2	0.56035	0.56035
PH 03	18	3	0.75220	0.75220
PH 04	18	4	0.60364	0.60364
PH 05	18	5	0.79140	0.79140
PH 06	18	6	0.86919	0.86919
PH 07	18	7	0.73817	0.73817
GPH 01	19	1	1.38627	1.38627
GPH 02	19	2	1.04174	1.04174
GPH 03	19	3	1.04407	1.04407
GPH 04	19	4	1.11135	1.11135

**TOTALS**

**100.00000**

**100.00000**

## SCHEDULE "E"

## SPECIFICATION OF COMMON EXPENSES

Common Expenses, without limiting the definition ascribed thereto, shall include the following:

- (a) all sums of money paid or payable by the Corporation in connection with the performance of any of its objects, duties and powers whether such objects, duties and powers are imposed by the Act or this Declaration and By-laws of the Corporation or other law or by agreement;
- (b) all sums of money properly paid by the Corporation on account of any and all public and private suppliers to the Corporation of insurance coverage, utilities and services including, without limiting the generality of the foregoing, levies or charges payable on account of:
  - i) insurance premiums;
  - ii) water, sewage, electricity and geothermal heating and cooling respecting common elements and units, as applicable;
  - iii) waste disposal and garbage collection for Residential Units;
  - iv) maintenance materials, tools and supplies;
  - v) snow removal and landscaping;
  - vi) fuel, including gas, oil and hydro electricity unless metered separately for each Unit;
  - (vii) the amenities, including the Guest Suite Unit
- (c) all sums of money paid or payable by the Corporation pursuant to any management contract which may be entered into between the Corporation and a manager;
- (d) all sums of money required by the Corporation for the acquisition or retention of real property for the use and enjoyment of the property or for the acquisition, repair, maintenance or replacement of personal property for the use and enjoyment in or about the common elements;
- (e) all sums of money paid or payable by the Corporation to any and all persons, firms, or companies engaged or retained by the Corporation, its duly authorized agents, servants and employees for the purpose of performing any or all of the objects, duties and powers of the Corporation including, without limitation, legal, engineering, accounting, auditing, expert appraising, advising, maintenance, managerial, secretarial or other professional advice and service required by the Corporation;
- (f) the cost of furnishings and equipment for use in and about the Common Elements including the repair, maintenance or replacement thereof;
- (g) the cost of borrowing money for the carrying out of the objects, duties and powers of the Corporation;
- (h) the fees and disbursements of the Insurance Trustee, if any, and of obtaining insurance appraisals;
- (i) the cost of maintaining fidelity bonds as provided by By-law;
- (j) all sums required to be paid to the reserve or contingency fund as required by the Declaration or in accordance with the agreed upon annual budget of the Corporation; and
- (k) all sums of money payable under the Shared Facilities Agreement.



**SCHEDULE "F"****EXCLUSIVE USE PORTIONS OF THE COMMON ELEMENTS**

Subject to the provisions of the Declaration, the By-laws and Rules and Regulations of the Corporation and the right of entry in favour of the Corporation thereto and thereon, for the purposes of facilitating any requisite maintenance and/or repair work, or to give access to the utility and service areas appurtenant thereto:

- a) The owner(s) of a Residential Unit on Level 1 and Levels 4 to 19 (inclusive) shall have exclusive use to that that portion of the common elements, being a **Balcony and/or Terrace**, to which their Unit provides sole and direct access.
- b) The owner(s) of a Residential Unit on Level 1 shall have the exclusive use of that portion of the common elements designated as **Patio**, which is numbered the same as the Unit with the prefix 'P' and is illustrated in heavy outline on Sheet 1, Part 2 of the Description.
- c) The owner(s) of a Residential Unit on Level 4 shall have the exclusive use of that portion of the common elements designated as **Terrace**, being illustrated in heavy outline on Sheet 1, Part 2 of the Description and designated by the letter 'T' and are assigned as below.

UNIT NO.	LEVEL	TERRACE NO.
1	4	T1
2	4	T2
8	4	T3
9	4	T4

Notwithstanding the foregoing, any fixture, outlet, sign, apparatus or structure located within the limits of any exclusive use portion of the common elements shall not form part thereof.

**SCHEDULE "G"****CERTIFICATE OF ARCHITECT OR ENGINEER  
(SCHEDULE G TO DECLARATION FOR A  
STANDARD OR LEASE HOLD CONDOMINIUM CORPORATION)**(under clause 8(1)(e) of the *Condominium Act, 1998*)

I certify that: FOR PROPERTY AT 144 PARK STREET, WATERLOO

Each building on the property has been constructed in accordance with the regulations made under the *Condominium Act, 1998* with respect to the following matters:*(Check whichever boxes are applicable)*

- ~~1.~~  The exterior building envelope, including roofing assembly, exterior wall cladding, doors and windows, caulking and sealants, is weather resistant if required by the construction documents and has been completed in general conformity with the construction documents.
- ~~2.~~  Except as otherwise specified in the regulations, floor assemblies are constructed to the sub-floor.
- ~~3.~~  Except as otherwise specified in the regulations, walls and ceilings of the common elements, excluding interior structural walls and columns in a unit, are completed to the drywall (including taping and sanding), plaster or other final covering.
- ~~4.~~  All underground garages have walls and floor assemblies in place.

OR

- There are no underground garages.

- ~~5.~~  All elevating devices as defined in the *Elevating Devices Act* are licensed under that Act if it requires a licence, except for elevating devices contained wholly in a unit and designed for use only within the unit.

OR

- There are no elevating devices as defined in the *Elevating Devices Act*, except for elevating devices contained wholly in a unit and designed for use only within the unit.

6.  All installations with respect to the provision of water and sewage services are in place.
7.  All installations with respect to the provision of heat and ventilation are in place and heat and ventilation can be provided.
8.  All installations with respect to the provision of air conditioning are in place.

OR

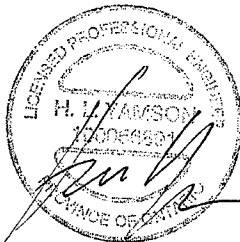
- There are no installations with respect to the provision of air conditioning.

- ~~9.~~  All installations with respect to the provision of electricity are in place.
- ~~10.~~  All indoor and outdoor swimming pools are roughed in to the extent that they are ready to receive finishes, equipment and accessories.

OR

- There are no indoor or outdoor swimming pools.

- ~~11.~~  Except as otherwise specified in the regulations, the boundaries of the units are completed to the drywall (not including taping and sanding), plaster or other final covering, and perimeter doors are in place.

DATED this 05 day of NOVEMBER, 2014.

Name: \_\_\_\_\_  
Title: Architect or Engineer

**SCHEDULE "G"**

**CERTIFICATE OF ARCHITECT OR ENGINEER  
(SCHEDULE G TO DECLARATION FOR A  
STANDARD OR LEASE HOLD CONDOMINIUM CORPORATION)**

(under clause 8(1)(e) of the *Condominium Act, 1998*)

I certify that: FOR PROPERTY AT 144 PARK STREET, WATERLOO

Each building on the property has been constructed in accordance with the regulations made under the *Condominium Act, 1998* with respect to the following matters:

(Check whichever boxes are applicable)

1.  The exterior building envelope, including ~~roofing assembly, exterior wall cladding,~~ doors and windows, caulking and ~~sealants,~~ is weather resistant if required by the construction documents and has been completed in general conformity with the construction documents.
2.  Except as ~~otherwise specified in the regulations,~~ floor assemblies are constructed to the ~~sub-floor.~~
3.  Except as otherwise specified in the regulations, ~~walls and ceilings~~ of the common elements, ~~excluding interior structural walls and columns in a unit,~~ are completed to the ~~dry wall~~ (including taping and sanding), plaster or other final covering.
4.  ~~All underground garages have walls and floor assemblies in place.~~  
OR  
 ~~There are no underground garages.~~
5.  All elevating devices as defined in the ~~*Elevating Devices Act*~~ are licensed under that Act if it requires a licence, except for elevating devices contained wholly in a unit and designed for use only within the unit.  
OR  
 ~~There are no elevating devices as defined in the *Elevating Devices Act*, except for elevating devices contained wholly in a unit and designed for use only within the unit.~~
6.  ~~All installations with respect to the provision of water and sewage services are in place.~~
7.  ~~All installations with respect to the provision of heat and ventilation are in place and heat and ventilation can be provided.~~
8.  ~~All installations with respect to the provision of air conditioning are in place.~~  
OR  
 ~~There are no installations with respect to the provision of air conditioning.~~
9.  All installations with respect to the provision of electricity are in place.
10.  All indoor and outdoor swimming pools are ~~roughed in to the extent that they are ready to receive finishes, equipment and accessories.~~  
OR  
 ~~There are no indoor or outdoor swimming pools.~~
11.  Except as otherwise specified in the regulations, the boundaries of the units are completed to the ~~dry wall (not including taping and sanding), plaster or other final covering,~~ and perimeter doors are in place.

DATED this 04 day of November, 2014.

Filip Ivanovski

Name:  
Title: Architect or Engineer



SCHEDULE "G"

**CERTIFICATE OF ARCHITECT OR ENGINEER  
(SCHEDULE G TO DECLARATION FOR A  
STANDARD OR LEASE HOLD CONDOMINIUM CORPORATION)**

(under clause 8(1)(e) of the *Condominium Act, 1998*)

I certify that: FOR PROPERTY AT 144 PARK STREET, WATERLOO

Each building on the property has been constructed in accordance with the regulations made under the *Condominium Act, 1998* with respect to the following matters:

(Check whichever boxes are applicable)

1.        The exterior building envelope, including roofing assembly, exterior wall cladding, doors and windows, caulking and sealants, is weather resistant if required by the construction documents and has been completed in general conformity with the construction documents.
2.        Except as otherwise specified in the regulations, floor assemblies are constructed to the sub-floor.
3.        Except as otherwise specified in the regulations, walls and ceilings of the common elements, excluding interior structural walls and columns in a unit, are completed to the drywall (including taping and sanding), plaster or other final covering.
4.        All underground garages have walls and floor assemblies in place.

OR

~~There are no underground garages.~~

5.        All elevating devices as defined in the *Elevating Devices Act* are licensed under that Act if it requires a licence, except for elevating devices contained wholly in a unit and designed for use only within the unit.

OR

~~There are no elevating devices as defined in the *Elevating Devices Act*, except for elevating devices contained wholly in a unit and designed for use only within the unit.~~

6.     ~~All installations with respect to the provision of water and sewage services are in place.~~
7.     ~~All installations with respect to the provision of heat and ventilation are in place and heat and ventilation can be provided.~~
8.     ~~All installations with respect to the provision of air conditioning are in place.~~

OR

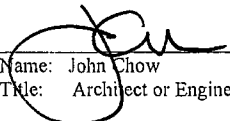
~~There are no installations with respect to the provision of air conditioning.~~

9.     ~~All installations with respect to the provision of electricity are in place.~~
10.    ~~All indoor and outdoor swimming pools are roughed in to the extent that they are ready to receive finishes, equipment and accessories.~~

OR

11.       Except as otherwise specified in the regulations, the boundaries of the units are completed to the drywall (not including taping and sanding), plaster or other final covering, and perimeter doors are in place.

DATED this 4<sup>th</sup> day of November, 2014.

  
 Name: John Chow  
 Title: Architect or Engineer