Province of Ontario

# Document General

Form 4 — Land Registration Reform Act

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CERTIFICATE OF RECEIPT
RÉCÉPISSÉ
TORONTO (66)

MAR 22 2016 13:44

LAND REGISTRAR

Jeff Hilbert

New Property Identifiers

Additional: See Schedule ☐

**Executions**

Additional: See Schedule ☐

(1) Registry ☐ Land Titles ☒

(2) Page 1 of 10 pages

(3) Property Identifier(s) Block Property: **76510-0001 to 76510-3026 both inclusive**

Additional: See Schedule ☐

(4) Nature of Document

**BY-LAW NO.2 (CONDOMINIUM ACT, 1998, SECTION 56)**

(5) Consideration

Dollars $

(6) Description

**PINS 76510-0001 to 76510-3026 (inclusive) being all Units and Common elements comprising the property included in Toronto Standard Condominium Plan No. 2510**

**The Land Titles Division of the Toronto Registry Office (No. 66)**

(7) This Document Contains:

(a) Redescription ☐ New Easement ☐ Plan/Sketch ☐

(b) Schedule for: Description ☐ Additional Parties ☐ Other ☒

(8) This Document provides as follows:

**SEE BY-LAW AND CERTIFICATE ATTACHED.**

Continued on Schedule ☐

(9) This Document relates to instrument number(s)

(10) Party(ies) (Set out Status or Interest)

| Name(s) | Signature(s) | Date of Signature Y | M | D |
|---|---|---|---|---|
| TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2510 | Per: | 2016 | 03 | 22 |
| | Mark Mandelbaum - President | | | |
| | I have authority to bind the Corporation | | | |

(11) Address for Service: **2811 Dufferin St, North York, ON M6B 3R9**

(12) Party(ies) (Set out Status or Interest)

| Name(s) | Signature(s) | Date of Signature Y | M | D |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |

(13) Address for Service

(14) Municipal Address of Property

**12 and 14 York Street**
**Toronto ON M5J 0A9**

(15) Document Prepared by:

**Minden Gross LLP**
**Suite 2200**
**145 King Street West**
**Toronto, Ontario**
**M5H 4G2**

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| Fees and Tax | |
|---|---|
| Registration Fee | |
| | |
| | |
| | |
| Total | |

Document prepared using *The Conveyancer*

2

Form 11

**CERTIFICATE IN RESPECT OF A BY-LAW**

TORONTO STANDARD CONDOMINIUM COPRORATION NO. 2510 (known as the "Corporation") certifies that:

1. The copy of the By-Law No. 2, attached as Schedule "A", is a true copy of the By-Law.

2. The By-Law was made in accordance with the Condominium Act, 1998.

3. The owners of a majority of the units of the Corporation have voted in favour of confirming the By-Law.

DATED this 21st day of March, 2016.

**TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2510**

Per: _____
Name: Mark Mandelbaum
Title: President

Per: _____
Name: Barry Fenton
Title: Secretary

We have authority to bind the Corporation.

**TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2510**
(the "**Corporation**")

**BY-LAW NO. 2**

**BE IT ENACTED** as a By-law of Toronto Standard Condominium Corporation No. 2510 (hereinafter referred to as the "Corporation" or as the "Condominium") as follows:

1. That the Corporation enter into a complex reciprocal agreement with Block 9B Developments Limited therein referred to as the Retail Owner and Block 9A Developments Limited and OPB (16 York) Inc. therein referred to as the Office Owner in the form annexed hereto as Schedule "A" for the purposes of providing for and governing the integrated, logical, and orderly use, operation, repair, maintenance, and if necessary replacement, of their respective Components, as therein defined, and the allocation and sharing of certain costs and expenses with respect thereto on a fair and reasonable basis.

2. That the President or Secretary of the Corporation be and he is hereby authorized to execute the Complex Reciprocal Agreement on behalf of the Corporation, with or without the seal of the Corporation affixed thereto, together with any amendments or modifications thereto, from time to time, and any other documents and instruments which are ancillary or incidental thereto, including without limitation, easements, rights of way and/or licences and releases and/or abandonments thereof that are required to be delivered or are otherwise contemplated by the terms of the Complex Reciprocal Agreement as well as all instruments, applications and/or affidavits which may be required in order to register the Complex Reciprocal Agreement against the title to the Condominium property and /or adjacent lands. The affixation of the corporate seal of the Corporation to all such documents and instruments is hereby authorized, ratified, sanctioned and confirmed.

DATED at Toronto, this 21st day of March, 2016.

**TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2510**

Per: _____
Name: Mark Mandelbaum
Title: President

Per: _____
Name: Barry Fenton
Title: Secretary

We have the authority to bind the Corporation.

The undersigned which owns 100% of the units, hereby confirms, pursuant to the provisions of the Condominium Act, 1998, the foregoing by-law No. 2 as by-law No. 2 of the Corporation.

**BLOCK 9B DEVELOPMENTS LIMITED**

Per: _____
Name: Mark Mandelbaum, A.S.O.

Per: _____
Name: Niall Collins, A.S.O.

We have authority to bind the Corporation

Schedule A

# COMPLEX RECIPROCAL AGREEMENT

**AMONG:**

**BLOCK 9B DEVELOPMENTS LIMITED**

- and –

**BLOCK 9A DEVELOPMENTS LIMITED and OPB (16 YORK) INC.**

- and -

**TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2510**

DATED: As of March 4, 2016

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# COMPLEX RECIPROCAL AGREEMENT

THIS AGREEMENT made as of the 4th day of March, 2016.

AMONG:

**BLOCK 9B DEVELOPMENTS LIMITED**, in its capacity as owner of the Retail Component

(hereinafter called the "**Retail Owner**")

OF THE FIRST PART

- and -

**BLOCK 9A DEVELOPMENTS LIMITED as to an undivided 70 % interest, and OPB (16 YORK) INC. as to an undivided 30% interest,** together in their capacity as owner of the Office Component
(hereinafter called the "**Office Owner**")

OF THE SECOND PART

- and -

**TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2510**

(hereinafter called the "**Residential Owner**")

OF THE THIRD PART

**WHEREAS:**

A. Block 9B Developments Limited is currently the registered owner of the Retail Lands and the Retail Component; however, the Office Owner will become the registered owner of the Retail Lands and the Retail Component;

B. The Office Owner is the registered owner of the Office Lands. Block 9B Developments Limited is currently the registered owner of those lands which include the Feature Elements, part of the Office Parking Facilities, and other lands described in Part IV of Schedule "A"; however, the Office Owner will become the registered owner of such lands in due course:

C. The Residential Owner is a condominium corporation created pursuant to the *Condominium Act* (Ontario) in respect of the Residential Component;

D. The Parties each have a substantial interest in the maintenance, operation and appearance of the Complex because of the proximity and integration of their respective Components; and

E. The Parties desire to enter into an agreement providing for and governing the integrated, logical, and orderly use, operation, repair, maintenance, and if necessary replacement, of their respective Components, and the allocation and sharing of certain costs and expenses with respect thereto on a fair and reasonable basis.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises and the mutual covenants, agreements and conditions herein contained, the Parties hereby agree as follows:

## ARTICLE 1
## INTERPRETATION

### 1.01 Definitions

The terms defined in this Section 1.01, for all purposes of this Agreement and of all indentures, agreements or other instruments supplemental hereto or confirmatory, amendatory or in modification hereof now or hereafter entered into in accordance with the provisions hereof, shall have the following meanings unless the context expressly or by necessary implication otherwise requires:

"**Additional Repairs**" has the meaning given to it in Section 17.02(b).

"**Adjustment Index**" means the fraction obtained where the denominator is the Consumer Price Index (All Items for Toronto) published by Statistics Canada for the month of **December, 2014**, and the numerator is such Consumer Price Index most recently published prior to the date of determination. In the event that at the date of determination a calculation is to be made which requires reference to the Consumer Price Index and that index is no longer published by Statistics Canada, the Parties shall use the index most nearly corresponding thereto, with the appropriate conversions being made where the basis of comparison or calculation is different.

"**Affected Party**" has the meaning given to it in Section 17.01(a).

"**Agreement**" means this agreement, including all of the schedules attached hereto and all subsequent amendments, supplements, restatements, renewals or replacements, if any, made, from time to time, by written agreement executed by the Parties.

"**Annual Budget**" has the meaning given to it in Section 8.09(a) and 8.10(a).

**"Arbitration Act"** means the *Arbitration Act, 1991*, S.O. 1991, c.17, as amended or re-enacted from time to time.

"**Arbitrator**" has the meaning given to it in Section 22.02(b).

"**arm's length**" has the meaning given to it in the *Income Tax Act* (Canada).

**"Art Object"** means the object of public art located in the Courtyard visible to the public as required pursuant to Section 9 of the Section 16 Agreement.

"**as built**" has the meaning given to it in Section 17.06.

"**Basic Fee**" has the meaning given to it in Section 9.04(a).

"**Benefiting Parties**" has the meaning given to it in Section 3.01(b)(i).

"**Buildings**" means the buildings, structures or other Improvements in each Component from time to time, and "**Building**" means any one of them.

"**Business Day**" means any day which is not a Saturday, Sunday or a day which is a statutory or civic holiday in the City of Toronto.

**"CACF"** means the central alarm and control facility equipment which controls all of the fire and life safety equipment, including emergency announcement equipment, elevator recall, central alarm and control panels for fire, smoke and heat detection, pull stations, speakers, fire panels, emergency generator system, and sprinkler systems with related equipment, for the Residential Component and the Retail Component. Certain of such equipment and systems are dedicated to ICE 1, some are dedicated to ICE 2, some are dedicated to the Retail Component and the ground level and mezzanine levels of the Residential Component, and some are interconnected.

"**CACF Rooms**" means the two rooms shown on the drawings annexed as Schedule B-19, one of which is the main CACF Room and houses the CACF for ICE 1 and the retail space designated as retail space G forming part of the Retail Component, and the other of which houses the CACF for ICE 2 and retail spaces designated as retail spaces A to F both inclusive forming part of the Retail Component.

"**CAMPA**" means the Amended and Re-Stated Construction Access, Management and Protocols Agreement dated as of March 4, 2016, between Block 9B Developments Limited, the Office Owner, and Toronto Standard Condominium Corporation No. 2510, registered against title to the Complex on or about the date hereof, as the same may be amended, supplemented, re-stated, or replaced from time to time.

"**Canopy**" means the canopy (both the structure and assembly [including the architectural features and elements thereof], the green roof on the upper side thereof and the air space there above) which overhangs the majority of the grade level exterior of ICE 1 and ICE 2 as depicted in the drawing annexed hereto as Schedules B-8 and B-10. The Canopy will contain openings in areas to provide an open air environment within the Courtyard. The Canopy will serve several functions including weather protection in areas below it, contain green roof elements on its upper surface, and provide rain water retention facilities. The legal description of the Canopy is: Firstly: Part of Block 1 on Registered Plan 657E and Part of Block E on Registered Plan 536E, designated as Parts 31 and 41 on Plan 66R-28244, City of Toronto, and Secondly: Part of Block 1 on Registered Plan 657E, Part of Blocks D and E on Registered Plan 536E, Part of Parcel 14 on Registered Plan 153E, designated as Parts 16, 32 and 40 on Plan 66R-28244, City of Toronto. It is anticipated that, in the construction of the Office Component, the Office Owner will extend the canopy onto the Office Lands.

"**capital cost**" means an expenditure which, according to GAAP, would be required to be capitalized.

"**Change in Principal Use**" means any change in the use of a significant part of a Component which would require an amendment or variation to the applicable Official Plan or zoning designations or other development controls applicable to the Lands, existing at the time of the change in use.

"**Changing Party**" has the meaning given to it in Section 18.03.

"**City**" means the City of Toronto and any successor municipality.

"**City Agreements**" means the agreements and undertakings with the City and other Governmental Authorities which have been entered into or assumed by the Parties prior to the date hereof, or after the date hereof, in accordance with Article 12 of this Agreement, and which relate to or affect more than one Component, and include, the Section 16 Agreement, the Section 45(9) Agreement, and the Site Plan Agreements.

"**Claims**" means any and all liabilities, claims, demands, damages, actions, suits or other proceedings of any kind, losses, costs and expenses, including all legal fees and disbursements.

"**Common Areas**" means those portions of the Complex set aside from time to time by the owners of the Components, for the common use of the owners of the Components and their tenants, subtenants, occupants and their respective employees and invitees, and members of the public, as they exist from time to time. Common Areas include: access roads, driveways, walkways, sidewalks, landscaped areas, certain lobbies, corridors, pedestrian malls, the Canopy, Courtyard, Drop-Off Point, Indoor Concourse, the "PATH" connection, Public Clearway Walkway, Public Linear Walkway, and Courtyard required under the City Agreements, the Office Component Common Areas (when the Office Component Building is constructed), the Tunnel to Maple Leaf Square when constructed, any Future PATH Connections, if and when constructed, to other adjacent developments, fire exits, the Canopy, landscaped, grassed or open areas (including public open space required under the City Agreements), stairways, escalators, elevators, entrances, and public washrooms and certain other public facilities; the approximate locations of the Common Areas on the date hereof are shown on the drawings attached as Schedules B-5 to B-10 both inclusive. Common Areas exclude: (a) the portions thereof licensed to tenants for patios or similar uses during the term thereof, (b) the common elements within the Residential Component for the exclusive use of Unitowners (whether individually or collectively), their Tenants, and invitees, (c) the common elements within the Office Component for the exclusive use of the Office Owner, its tenants, and invitees, (d) the common elements within the Retail Component for the exclusive use of the Retail Owner, its tenants, and invitees; all save and except for those interior or exterior doors which form part of the Common Facilities.

"**Common Areas Costs**" means the following costs in respect of the Common Areas, determined in accordance with GAAP and without duplication:

(i) the applicable costs set out in Schedule "C" hereto to the extent shared by more than one Component;

(ii) the entire cost of providing the Common Services applicable to the Common Areas (including without limitation the Canopy, Courtyard, Drop-Off Point, Indoor Concourse, the PATH, Public Clearway Walkway, Public Linear Walkway, and the Office Component Common Areas when constructed, but excluding the Common Services supplied by the Common Facilities Manager to those Common Areas and Common Facilities of the Residential Component and Retail Component shared solely by those two Components), including the wages, salaries and benefits of, and payroll taxes with respect to, all on-site personnel to the extent providing services to the Common Areas, all other personnel dedicated to the Common Areas on a full time basis or on a part time basis (based on a reasonable and equitable allocation of time devoted directly to the Common Areas), and a reasonable allocation of the head office costs of the Common Areas Manager, and the charges of all independent contractors engaged in providing Common Services and the cost of supplies and equipment used or engaged in providing same, and including the costs and expenses payable to adjacent land owners for the use of shared loading, delivery and other facilities under joint operating agreements or otherwise, but **excluding**, with respect to the applicable Common Areas, the original capital cost, debt service, repairs and replacements of a capital nature, depreciation and amortization as well as the capital costs incurred at the request of and for the primary benefit of one party as provided in Section 9.05, and excluding the original capital cost, debt service, depreciation and amortization as well as the capital costs incurred at the request of and for the primary benefit of one party as provided in Section 9.05;

(iii) the fees and expenses of accountants, auditors and independent consultants engaged by the Common Areas Manager in determining and allocating Common Areas Costs and the cost of preparing the audited statement referred to in Section 8.10(c);

(iv) the cost of insurance policies with respect to the Common Areas, the fees and expenses of any consultant or insurance claims adjusters engaged by the Common Areas Manager to advise on insurance and the fees and expenses of the Insurance Trustee if applicable;

(v) the fees and expenses payable to the Common Areas Manager pursuant to Section 8.04 and Section 10.03(c);

(vi) all HST with respect to any of the foregoing.

"**Common Areas Manager**" means the Office Owner; provided that, the Office Owner may assign its right to be the Common Areas Manager to The Cadillac Fairview Corporation Limited (or any affiliate thereof) or other reputable and experienced manager of mixed use projects in Toronto.

"**Common Areas Manager's Indemnitees**" has the meaning given to it in Section 8.07.

"**Common Areas Services**" means with respect to Common Areas:

(i) maintaining and carrying out repairs and replacements, which are not repairs and replacements of a capital nature, to Common Areas, including cleaning of all ground floor lobbies and Common Areas), landscaping, and snow removal (including snow removal from sidewalks adjacent to the Complex and the Residential/Retail Parking Ramp);

(ii) operating and carrying out repairs and replacements of a capital nature to, and restoration and reconstruction of Common Areas;

(iii) the provision of physical security services by personnel (excluding operation of the life safety and security systems to the extent such systems are included as Common Facilities); and

(iv) such other services which may from time to time be provided to two or more of the Components or parts thereof and which those Parties who benefit from such other services, agree at the time to include as Common Services (without there being any duty to so agree), any such agreement to include the allocation of the costs of such Common Services.

For clarity, Common Areas Services exclude a Private Easement established in accordance with Section 3.14.

"**Common Costs**" means costs shared by two or more of the Components

"**Common Facilities**" means those systems and facilities in the Complex on the date hereof and such other systems and facilities, the installation of which, and the designation of which as Common Facilities, shall, in the case of any future systems and facilities only, have been agreed to by those Parties which benefit from such other system or facility (without there being any duty on such Parties to so agree), as they may exist from time to time, located upon the Lands (other than the Support Facilities) which provide service to two or more of the Components, including directional and Component identification signage, electrical systems and rooms, mechanical systems and rooms, lighting systems, HVAC, electrical transformer stations, substations, trunk wiring and metering systems, water systems, plumbing systems, sewer systems, grey water systems used for irrigation and watering of landscaped areas, telephone and communication systems and rooms, pumping stations, generators, diesel fuel storage areas, connections to municipal or other water sources, trunk water pipes, metering systems, Residential/Retail Parking Ramp, Delivery and Loading Facilities, certain interior and exterior doors and related lobbies, the CACF and the CACF Rooms, waste disposal systems and any pipes, wires, cables, conduits or shafts required for any of the foregoing systems, together with all equipment, chattels and materials used in conjunction therewith; the approximate locations of some of the Common Facilities as of the date hereof are shown on the drawings attached as Schedule "B". Prior to the construction of the Building on and in the Office Lands, the Common Facilities benefit the Residential Component and the Retail Component only and not the Office Component; and, it is expected that there will be no Common Facilities that benefit the Office Component following construction of such Building.

"**Common Facilities Costs**" means the following costs in respect of the Common Facilities, determined in accordance with GAAP and without duplication:

(ii) the applicable costs set out in Schedule "C" hereto to the extent shared by more than one Component;

(iii) the entire cost of providing the Common Facilities to the Residential Component and the Retail Component, including the wages, salaries and benefits of, and payroll taxes with respect to, all on-site personnel to the extent providing services to the Residential Component and the Retail Component, all other personnel dedicated to the Residential Component and the Retail Component on a full time basis or on a part time basis (based on a reasonable and equitable allocation of time devoted directly to the Residential Component and the Retail Component), and the charges of all independent contractors engaged in providing Common Services and the cost of supplies and equipment used or engaged in providing same, and including the costs and expenses payable to adjacent land owners for the use of shared loading, delivery and other facilities under joint operating agreements or otherwise, but **excluding**, with respect to the applicable Common Areas and Common Facilities, the original capital cost, debt service, repairs and replacements of a capital nature, depreciation and amortization as well as the capital costs incurred at the request of and for the primary benefit of one party as provided in Section 9.05;

(iv) the entire cost of providing, maintaining and repairing as required, the Common Facilities which serve the Common Areas, such as the grey water systems in ICE 1 and ICE 2 which provide irrigation to the landscaped areas in the Common Areas, including the Canopy, the Courtyard, the Public Clearway Walkway, and the Public Linear Walkway;

(v) the fees and expenses of accountants, auditors and independent consultants engaged by the Common Facilities Manager in determining and allocating Common Areas Costs and the cost of preparing the audited statement referred to in Section 8.09(c);

(vi) if applicable, the cost of insurance policies with respect to the Complex insuring the Residential Component and the Retail Component, or two or more Parties, the fees and expenses of any consultant or insurance claims adjusters engaged by the Common Facilities Manager to advise on insurance and the fees and expenses of the Insurance Trustee, if applicable, as regards the Residential Component and the Retail Component;

(vii) the cost of maintaining and repairing as required, the space occupied by major components of the Common Facilities, some of which space for Common Facilities now in existence is indicated on the drawings comprising Schedule "B";

(viii) the fees and expenses payable to the Common Facilities Manager pursuant to Section 8.03 and Section 10.03(c);

(viii) all HST with respect to any of the foregoing.

"**Common Facilities Manager**" means the manager of the Residential Component, the Common Facilities, and the Common Areas below grade including the Delivery and Loading Facilities, or the replacement manager appointed pursuant to Section 8.12, as applicable.

"**Common Facilities Manager's Indemnitees**" has the meaning given to it in Section 8.05.

"**Common Facilities Services**" means with respect to Common Areas shared only by the Residential Component and the Retail Component and the Common Facilities:

i) maintaining and carrying out repairs and replacements, which are not repairs and replacements of a capital nature, to the Common Areas shared only by the Residential Component and the Retail Component, and the Common Facilities, including cleaning thereof;

ii) operating and carrying out repairs and replacements of a capital nature to, and restoration and reconstruction of the Common Areas shared only by the Residential Component and the Retail Component and the Common Facilities;

iii) the provision of infrastructure and services such as gas, electricity, water, waste-water, HVAC Services, through the Common Facilities and to Common Areas and the operation of the life safety and security system (excluding physical security services by personnel) to the extent such systems are included as Common Facilities; and

iv) such other services which may from time to time be provided to such Components or parts thereof, and which those Parties who benefit from such other services, agree at the time to include as Common Services (without there being any duty to so agree), any such agreement to include the allocation of the costs of such Common Services.

For clarity, Common Facilities Services exclude a Private Easement established in accordance with Section 3.14.

"**Complex**" means the comprehensive mixed-use complex consisting of the Office Component, the Residential Component, and the Retail Component, and the Buildings, structures, Improvements and installations intended to be constructed on the Lands as permitted by the Zoning By-law Amendment, as it may be amended or varied from time to time. A rendering of the East elevation of the Complex is attached as Schedule B-1A and a roof plan depicting the spatial relationship between the Office Component and the Residential Component is attached as Schedule B-1B. The Office Component is known municipally as 16 York Street, Toronto, ICE 2 being the north residential tower is known municipally as 14 York Street, Toronto, and ICE 1 being the south residential tower is known municipally as 12 York Street, Toronto.

"**Components**" means, collectively, the Office Component, the Residential Component, and the Retail Component. "**Component**" means any one of the Components.

**"Condominium Act"** means the *Condominium Act, 1998*, S.O. 1998, c. 19, as amended, superseded or replaced from time to time.

"**Condominium Corporation**" has the meaning given to it in Section 11.01.

"**Constructing Party**" has the meaning given to it in Section 18.05.

"**Contesting Party**" has the meaning given to it in Section 9.06(d).

"**Cost Information**" has the meaning given to it in Section 9.06(d);

"**Courtyard**" means a central landscaped courtyard with a water feature and the Art Object within the Complex. The legal description of the Courtyard is: Part of Block 1 on Registered Plan 657E, Part of Blocks D and E on Registered Plan 536E, Part of Parcel 14 on Registered Plan 153E, designated as Part 46 on Plan 66R-28244, City of Toronto.

"**Damaged Party**" has the meaning given to it in Section 3.11.

"**Damaged Structure**" has the meaning given to it in Section 17.01(a).

"**Defaulter**" has the meanings given to it in Section 8.05 and Section 8.07, as applicable.

"**Defaulting Party**" has the meaning given to it in Section 20.01.

"**Delivery and Loading Facilities**" means that portion of the Residential Component presently used for loading, receiving and shipping docks, garbage compactor and temporary garbage and recycling storage purposes, including the ingress and egress ramps and driveway facilities relating thereto, the location of which is shown on the drawings attached as Schedule B-6.

"**Disposing Party**" has the meaning given to it in Section 21.01.

"**Disputing Parties**" has the meaning given to it in Section 22.03(a).

"**Divergent Separate Facilities**" means those systems and facilities, the installation of which, and the designation of which as Divergent Separate Facilities shall have been approved (which approval may be arbitrarily withheld) by the Party on whose Lands the Divergent Separate Facilities are to be located, as they may exist from time to time, which provide service only to one of the Components not located on the Lands on which such system and facilities are located, and any pipes, wires, cables, conduits or shafts required for any of the foregoing systems and facilities, together with all equipment, chattels and materials used in conjunction therewith; for clarity, Divergent Separate Facilities include, subject to Section 4.02, tenant identification signage allocated to a Component and which is located within another Component.

"**Drop-Off Point**" means the centralized vehicular drop off access to the Complex for Unitowners and visitors to the Complex fronting on the Courtyard which provides a covered drop off facility for all Components of the Complex.

"**Easements**" means those easements and rights in the nature of easements granted in or pursuant to this Agreement. "**Easement**" means any one of the Easements.

"**Electing Parties**" has the meaning given to it in Section 17.01(b).

"**Emergency Situation**" means a state of affairs which requires urgent action to ensure the safety of individuals in the Complex, to protect the Complex or property therein or to protect the Parties from exposure to penalty, liability or expense.

"**Feature Elements**" means collectively, the Canopy, the Courtyard, part of the Indoor Concourse, and the Public Clearway Walkway. "**Feature Element**" means any one of the Feature Elements.

"**First Party**" has the meaning given to it in Section 6.03.

"**Force Majeure**" means any war, act of God, natural disaster, disturbance of underlying geological structures, other catastrophe, fire or other casualty, act of the Queen's enemies, riot or

insurrection, strike, lockout or labour disturbance, inability to obtain material, goods, equipment, services or utilities required, or any law, by-law, regulation or order of a Governmental Authority, or inability to obtain any permission or authority required thereby, but shall not include any inability of a Party to fulfill or perform any obligation because of any lack of funds or its financial condition.

**"Future PATH Connections"** mean the publicly accessible PATH connections/walkways described in Section 6.1(b) of the Section 16 Agreement which are not constructed or installed as of the date of this Agreement. Future PATH Connections within ICE I and ICE 2 as of the date of execution of this Agreement, are depicted on Schedule B-6. In the event that the City requires or approves of a connection/walkway different from that which is proposed at the date of execution of this Agreement, such alternative or replacement or additional connection/walkway is included in this definition.

"**GAAP**" means generally accepted accounting principles, applied on a consistent basis, from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which any calculation or determination is required, pursuant to this Agreement, to be made in accordance with generally accepted accounting principles, and where the Canadian Institute of Chartered Accountants includes a recommendation in its Handbook concerning the treatment of any accounting matter, such recommendation shall be regarded as the only generally accepted accounting principle applicable to the circumstances that it covers.

**"Governmental Authorities"** means the City, the government of the Province of Ontario, the federal government of Canada, or any utility, agency, board, commission, tribunal or authority having jurisdiction with respect to the Complex. "**Governmental Authority**" means any one of them.

"**HST**" means all harmonized goods and services, sales, transfer, value added or multi-stage taxes levied by the federal government and all provincial sales or transfer taxes integrated with such federal taxes and all interest and penalties upon all such taxes.

"**HVAC**" means heating, ventilation and air conditioning equipment.

**"HVAC Services**" means heating, ventilating, and air conditioning.

**"Improvements"** means all Buildings and structures and other fixed improvements now or hereafter constructed, erected or placed on the Lands, as the case may be, and includes any alterations, additions, improvements, and replacements thereto and all landscaping, soil, facilities, equipment, machinery, conveyancing devices, and fixtures from time to time erected or affixed as part thereof or placed thereon.

"**including**" means "including without limitation" and "include" means "include without limitation" and neither term shall be construed to limit the general statement which it follows to the specific or similar items immediately following it.

"**Indemnifier**" has the meaning given to it in Section 15.01.

"**Indemnitees**" has the meaning given to it in Section 15.01.

**"Indoor Concourse"** means an indoor concourse shown on the plans attached as Schedules B-8 and B-9, which will in part form part of the PATH system. The legal description of the Indoor Concourse is: Firstly: Part of Block 1 on Registered Plan 657E and Part of Block E on Registered Plan 536E, designated as Parts 1, and 6, on Plan 66R-28244, City of Toronto, and Secondly: Part of Block 1 on Registered Plan 657E, Part of Blocks D and E on Registered Plan 536E, Part of Parcel 14 on Registered Plan 153E, designated as Parts 2, 3, 4, 5, 14, and 43 on Plan 66R-28244, City of Toronto.

"**Initiating Party**" has the meaning given to it in Section 22.02(a).

"**Insurance Trust Agreement**" if applicable, means the insurance trust agreement in respect of the Complex among the Parties, and the Insurance Trustee, as such agreement is amended, supplemented, restated or replaced from time to time.

"**Insurance Trustee**" if applicable, means a professional insurance trustee appointed by the Parties, and its permitted successors and assignees, as insurance trustee pursuant to the Insurance Trust Agreement.

"**Lands**" means all of the lands described in Schedule "A" attached hereto.

"**Major Change**" means the demolition or material partial demolition of a Component, or any part thereof, any addition to, or expansion of, a Component or any Change in Principal Use or any alteration, change or improvement to a Component which, in any of the foregoing cases, affects or relates to, the use of, or, the Common Areas, or the Common Facilities, or the allocation of the Common Areas Costs or the Common Facilities Costs, with respect to, any of the Common Facilities, the Common Services, the Divergent Separate Facilities, the Support Facilities, or the Easements with respect thereto. However, repairs, restoration, reconstruction and replacements to, or of, a Component substantially to its prior state following damage or destruction, shall not be subject to Section 18.03 except for the requirement to deliver to the other Parties a copy of plans and specifications in accordance with such Section.

"**Managed Separate Facilities**" means those Separate Facilities which are maintained and operated by the owner of the Component in which such facilities are located.

"**Managers**" means collectively the Common Areas Manager and the Common Facilities Manager, and "**Manager**" means either one of them.

**"Maple Leaf Square"** means the mixed use residential, office tower, boutique hotel, and retail commercial complex constructed on the Maple Leaf Square Lands and within Toronto Standard Condominium Plan No. 2130.

**"Maple Leaf Square Lands"** means the lands known municipally as 15 York Street and being more particularly described in Schedule "G" hereto.

"**Mezzanine**" has the meaning given to it in the definition of Residential Component.

"**Mortgage**" has the meaning given to it in Section 21.03.

"**Mortgaged Lands**" has the meaning given to it in Section 21.03.

"**Mortgagee**" has the meaning given to it in Section 21.03.

"**Mortgagee Agreement**" has the meaning given to it in Section 21.03.

"**Mortgaging Parties**" has the meaning given to it in Section 21.03.

"**Mortgagor**" has the meaning given to it in Section 21.03.

"**Non-Defaulting Party**" has the meaning given to it in Section 20.01.

"**Non-Mortgaging Parties**" has the meaning given to it in Section 21.03.

"**Non-Paying Party**" has the meaning given to it in Section 9.06(c).

"**Notices**" has the meaning given to it in Section 26.02.

"**NRGFA**" means "non-residential gross floor area" as defined in the Zoning By-Law.

"**Occasional Occupants**" means the bona fide servants, employees, immediate family members and occasional guests of Unitowners while such servants, employees, immediate family members or occasional guests are living in the Residential Component.

"**Offending Party or Parties**" has the meaning given to it in Section 17.03.

"**Office Component**" means all the Buildings, fixtures, structures, works and facilities, whether free-standing or otherwise, all fixed plant, machinery and equipment and all landscaping and interior and exterior decoration now or hereafter constructed on the Office Lands, used for office purposes, the approximate location of which at present is shown on the drawings attached

as Schedules B-1A and B-1B. The Office Component includes the Feature Elements, and the Office Parking Facilities.

"**Office Component Common Areas**" means, (when the Building, Improvements, fixtures, structures, works and facilities, whether free-standing or otherwise, all fixed plant, machinery and equipment and all landscaping and interior and exterior decoration is constructed on the Office Lands), those portions of the Office Component set aside from time to time by the Office Owner, for the common use of the owners of the Components and their tenants, subtenants, occupants and their respective employees and invitees, and members of the public, as they exist from time to time, but excluding the common elements within the Office Component for the exclusive use of the Office Owner, its tenants, and invitees.

"**Office Lands**" means the lands described in Part I of Schedule "A".

"**Office Owner**" means collectively Block 9A Developments Limited as to an undivided 70% interest, and OPD (16 York) Inc. as to an undivided 30% interest, together in their capacity as owner of the Office Lands and the Office Component, and their respective successors and assigns and Permittees. It is understood that at the date of execution of this Agreement Block 9B Developments Limited is the registered owner of the Feature Elements and that part of the Office Parking Facilities located on the P1, P2, and P3 levels adjacent to the Residential Parking Facilities, but title to which shall be transferred to the Office Owner in due course.

"**Office Parking Facilities**" means the below grade parking garage to be constructed as part of the Office Component on the Office Lands, and includes the abutting portions of the P1, P2 and P3 levels of the Residential Parking Facilities and certain stairways and elevators providing access thereto for the use of tenants and subtenants of the Office Component and their respective Permittees, and members of the public including guests of Unitowners, the approximate location of which is shown on the drawings attached as Schedule B-21. The legal description of the Office Parking Facilities located on the aforementioned P1, P2, and P3 levels is: Part of Block D on Registered Plan 536E, Part of Parcel 14 on Registered Plan 153E, designated as Part 19 on Plan 66R-28244, City of Toronto.

"**Other Party**" has the meaning given to it in Section 3.11.

"**Parties**" means the Office Owner, the Residential Owner, the Retail Owner, and their respective successors and assigns, and "Party" means any one of the Parties.

"**PATH System**" means the above grade, at grade and below grade walkway system as it exists from time to time, which at the date of execution of this Agreement connects the buildings in the downtown core of the City of Toronto, from the Toronto Coach Terminal (North) to Maple Leaf Square (South) and from Metro Hall (West) to the Cambridge Suites Hotel (East). The Tunnel will continue the PATH from Maple Leaf Square under York Street, south along the east side of the Office Lands adjacent to the west side of York Street underground, and then rising to grade level by way of elevator, and escalators (one up and one down), through ICE 2 and into the open areas at grade through ICE 2 and ICE 1, essentially as depicted on Schedules B-8 and B-9 annexed hereto.

"**Permittees**" shall mean the Owners, all Persons from time to time entitled to the use and occupancy of parts of the Complex under any lease, deed or other arrangement whereunder such Person has acquired a right to the use and occupancy of any part of the Complex, and their respective officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees and concessionaires.

"**Person**" means an individual, a partnership, a corporation, a joint venture, a government or any department or agency thereof, a trust, any unincorporated organization or entity and the heirs, executors, estate trustees, administrators or other legal representatives of an individual.

"**Prime Rate**" means the rate of interest, expressed as a rate per annum, publicly announced by The Toronto-Dominion Bank main branch in Toronto, Ontario, as the reference rate of interest used by it in order to determine interest rates it will charge for loans payable on demand in Canada in lawful money of Canada, as the same is in effect from time to time and which it at present refers to as its prime rate; the declaration by such branch of The Toronto-Dominion Bank of such rate shall be final and conclusive. If such measure ceases to exist, the Prime Rate will thereafter be determined in accordance with a measure agreed upon by the Parties or determined by arbitration.

"**Private Easement**" has the meaning given to it in Section 3.14(a).

"**Public Clearway Walkway**" has the meaning set out in the plans referred to in the Site Plan Agreement, is depicted on Schedule B-8 attached hereto and designated thereon as exterior sidewalk York Street – 2 portions, one of which is on City property. The legal description of the Public Clearway Walkway is: Firstly: Part of Block 1 on Registered Plan 657E and Part of Block E on Registered Plan 536E, designated as Part 28 on Plan 66R-28244, City of Toronto, and Secondly: Part of Block 1 on Registered Plan 657E, Part of Blocks D and E on Registered Plan 536E, designated as Part 47 on Plan 66R-28244, City of Toronto.

"**Public Linear Walkway**" has the meaning set out in Section 7.1 of the Section 16 Agreement, and is depicted on Schedule B-8 attached hereto, and designated thereon as exterior sidewalk York Street – 2 portions, one of which is on City property. The legal description of the Public Linear Walkway is: Part of Blocks D and E on Registered Plan 536E, Part of Block 1 on Registered Plan 657E, designated as Parts 23, 24, 44, and 50 on Plan 66R-28244, City of Toronto.

"**Pylon Sign(s)**" means the pylon sign(s) intended to be located in the sidewalk along York Street, which sign(s) will be used exclusively by the Retail Component.

"**repair or replacement of a capital nature**" means a repair or replacement, the cost of which would be a capital cost under GAAP.

"**Repairing Party**" has the meaning given to it in Section 17.02(c).

"**Replacement Cost**" means the cost of repairing, replacing, or restoring the Complex or any portion thereof or property therein with new materials of like kind and quality on the same or a similar location without deduction for physical deterioration or any depreciation, including any increase in cost arising from the enforcement of any building by-law, regulation, ordinance or law.

"**Replacement Common Areas Manager**" has the meaning given to it in Section 8.13.

"**Replacement Common Areas Manager Contract**" has the meaning given to it in Section 8.13.

"**Replacement Common Facilities Manager**" has the meaning given to it in Section 8.12.

"**Replacement Common Facilities Manager Contract**" has the meaning given to it in Section 8.12.

"**Requesting Party**" has the meaning given to it in Section 23.01.

"**Required Reconstruction**" has the meaning given to it in Section 17.01(a).

"**Required Repairs**" has the meaning given to it in Section 17.02(a).

"**Required Standard**" means the standard which would be maintained by a prudent owner of a first class mixed-use complex of the size, nature, age and location of the Complex in accordance with good management and operating practices and, in any event, at least to the standard as may be required by any Governmental Authority or fire insurance underwriter from time to time.

"**Residential Common Areas**" means the Common Areas within the Residential Component, the approximate locations of which at present are shown on the various drawings attached as Schedule "B".

"**Residential Component**" means all the Buildings, Improvements, fixtures, structures, works and facilities, whether free-standing or otherwise, all fixed plant, machinery and equipment and all landscaping and interior and exterior decoration now or hereafter constructed on the Residential Lands and includes, for greater certainty, the Public Linear Walkway, and the Residential Parking Facilities, the Delivery and Loading Facilities, and the Residential/Retail Parking Ramp but excludes the Office Parking Facilities. The Residential Component is comprised of two high rise residential towers registered as one condominium corporation, the southerly building being herein referred to as "**ICE 1**", and the northerly building being herein referred to as "**ICE 2**". ICE 1 consists of six hundred (600) residential units on fifty-seven (57) residential levels and ICE 2 consists of seven hundred and forty-three (743) residential units on sixty-seven

(67) residential levels, in addition to a ground level entry lobby, a mezzanine floor (the "**Mezzanine**") and amenity facilities on Level 2 including the Ice Spa which contains an indoor swimming pool, an indoor whirlpool, and spa facilities.

"**Residential Lands**" means the lands described in Part II of Schedule "A".

"**Residential Owner**" means Toronto Standard Condominium Corporation No.2510, and its successors and assigns and includes, where the context allows, Permittees, and all others over whom Residential Owner may reasonably be expected to exercise control.

"**Residential/Retail Parking Ramp**" means that portion of the Residential Parking Facilities providing ingress and egress to the parking component of the Residential Component, and the Delivery and Loading Facilities, the approximate location of which is shown on the drawings attached as Schedule B-6, B-7, and B-8.

"**Residential Parking Facilities**" means the integrated multi-level underground parking facility portion of the Residential Component set aside for the parking, ingress and egress of motor vehicles and certain stairways and elevators providing access thereto for the use of Unitowners and their invitees, including the Residential/Retail Parking Ramp.

"**Residential Unit**" means a residential unit in the Residential Component.

"**Responding Party**" has the meaning given to it in Section 22.02(a).

"**Restricted Lands**" has the meaning given to it in Section 6.07(a).

"**Retail Component**" means all the Buildings, Improvements, fixtures, structures, works and facilities, whether free-standing or otherwise, all fixed plant, machinery and equipment and all landscaping and interior and exterior decoration now or hereafter constructed on the Retail Lands, being at grade level (however, one retail unit described as Part 13 on Plan 66R-28244 has a partial mezzanine described as Part 48 on Plan 66R-28244) and used for retail and commercial purposes, the approximate location of which at present is shown on the drawings attached as Schedules B-8, and B-22. The Retail Component includes a dedicated elevator and the lobby thereto and its enclosing structure, for deliveries and access to the Delivery and Loading Facilities and retail garbage room on the P1 level, as well as the retail dedicated garbage storage room on the P1 level, shown on Schedule B-6 and also shown on drawings comprising part of Schedule B-22.

"**Retail Lands**" means the lands described in Part III of Schedule "A".

"**Retail Owner**" means, as of the date of execution of this Agreement, Block 9B Developments Limited, in its capacity as owner of the Retail Lands and the Retail Component, and its successors and assigns and includes, where the context allows, its servants, employees, agents, invitees and licensees of Retail Owner and all others over whom Retail Owner may reasonably be expected to exercise control. It is intended that title to the Retail Component and the Retail Lands will be transferred to the Office Owner in due course.

"**Retail Users**" means the Retail Owner, the tenants and subtenants of the Retail Component, and their respective employees and invitees.

"**RGFA**" means "residential gross floor area" as defined in the Zoning By-Law.

"**Second Party**" has the meaning given to it in Section 6.03.

**"Section 16 Agreement"** means the agreement made among Block 9A Developments Limited, Block 9B Developments Limited, and the City pursuant to section 16 of the *City of Toronto Act* dated April 30, 2009 and registered in the Land Titles Office for Toronto (No. 66) as Instrument No. AT2080686 on May 29, 2009, as amended by the Amending Agreement to Section 16 Agreement [to which OPB (16 York) Inc. is also a party] dated October 26, 2015, and registered in the Land Titles Office for Toronto (No. 66) as Instrument No. AT4127690 on January 25, 2016, and as such agreement may be amended, restated and/or supplemented from time to time.

"**Section 45(9) Agreement**" means the agreement made among Block 9A Developments, Block 9B Developments and the City pursuant to section 45 subsection 9 of the *Planning Act*, Ontario, dated September 27, 2010 and registered in the Land Titles Office for Toronto (No. 66)

as Instrument No. AT2597278 on January 13, 2011, as such agreement may be amended, restated and/or supplemented from time to time.

"**Separate Facilities**" means those systems and facilities as they may exist from time to time which provide service only to the Component on the Lands on which they are located.

"**Servient Owner**" has the meaning given to it in Section 3.06(b).

"**Site Plan Agreement – ICE 1**" means the agreement made between Block 9B Developments Limited and the City pursuant to Section 114 subsection 14 of the *City of Toronto Act, 2006*, Ontario, dated December 18, 2012 and registered in the Land Titles Office for Toronto (No. 66) as Instrument No. AT3213325 on January 10, 2013, as amended by the Amending Agreement to Site Plan Agreement [to which OPB (16 York) Inc. is also a party] dated January 7, 2016, and registered in the Land Titles Office for Toronto (No. 66) as Instrument No. AT4125119 on January 21, 2016, and as such agreement may be amended from time to time.

"**Site Plan Agreement – ICE 2**" means the agreement made between Block 9B Developments Limited and the City pursuant to Section 114 subsection 14 of the City of Toronto Act, 2006, Ontario, dated December 18, 2012 and registered in the Land Titles Office for Toronto (No. 66) as Instrument No. AT3213326 on January 10, 2013, as amended by the Amending Agreement to Site Plan Agreement [to which OPB (16 York) Inc. is also a party] dated January 7, 2016, and registered in the Land Titles Office for Toronto (No. 66) as Instrument No. AT4125124 on January 21, 2016, and as such agreement may be amended from time to time.

"**Site Plan Agreements**" means, collectively the Site Plan Agreement – ICE 1 and the Site Plan Agreement – ICE 2.

"**such other Parties**" has the meaning given to it in Section 8.12 and 8.13.

"**Support Facilities**" means those elements or aspects of a Component, which include load-bearing walls, columns or structures, which are necessary and required to furnish adequate support to another Component, or a part thereof, including all of the Easements referred to in Sections 3.05 and 3.06.

"**Support Facilities Costs**" means the costs of providing, maintaining, repairing, reconstructing, restoring and replacing the Support Facilities and any other costs related to the Support Facilities.

"**Taxes**" means all taxes, rates, duties, levies, fees, charges, local improvement rates, imposts and assessments whatsoever (including school taxes, business taxes, commercial concentration levies, water and sewer taxes, extraordinary and special assessments and all rates, charges, excises or levies, whether or not of the foregoing nature but excluding income or capital taxes), whether municipal, provincial, federal or otherwise, which may be levied, imposed, assessed, charged or rated against the Complex or any part thereof or any furniture, fixtures, equipment or improvements therein, or against the Parties in respect of any of the same, or in respect of any rental or other compensation receivable by the Parties or any of them.

"**Term**" means the term of this Agreement as provided for in Section 2.01.

"**Tunnel**" means the proposed publicly accessible walkway/connection to the PATH System under York Street to connect the Complex with the PATH System through Maple Leaf Square at the P1 Level of Maple Leaf Square. It is anticipated that the Tunnel will exit from the west side of York Street into the Office Lands abutting the west side of York Street below grade, proceed south along the east side of the Office Land underground, and then rise to grade level by way of elevator and escalators (one up and one down) in ICE 2. Annexed hereto as Schedule B-20 is a drawing depicting the approximate location of the Tunnel as it exits from under York Street to the first level below grade of the Office Lands. The City will not permit construction of the Tunnel until 2018. In the event that the City requires or approves of a connection/walkway different from that which is proposed at the date of execution of this Agreement, such alternative or replacement or additional connection/walkway is included in this definition.

"**Unitowner**" means the owner of a residential unit within the Residential Component.

**"Wayfinding Agreement"** means a wayfinding agreement dated November 6, 2015 entered into between Block 9A Developments Limited, OPB (16 York) Inc., Block 9B Developments Limited, and the City, as such agreement may be amended from time to time, respecting the PATH System signage, as required by Section 6.5 of the Section 16 Agreement. Notice of the Wayfinding Agreement was registered in the Land Titles Office for Toronto (No. 66) as Instrument No. AT4128318 on January 26, 2016.

"**Zoning By-Law**" means the zoning by-law amendment to the former City of Toronto Zoning By-law No. 168-93 passed as By-law 494-2009, varied and amended by decision of Toronto Committee of Adjustment under File Number A0542/10TEY, as amended, supplemented, replaced, or restated from time to time in respect of the Complex.

**1.02 Interpretation**

This Agreement shall be interpreted and construed in accordance with the following provisions:

(a) **Headings, etc.** The headings and table of contents are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement and shall not be considered part of this Agreement. All uses of the words "hereto", "hereof", "hereby" and "hereunder" and similar expressions refer to this Agreement and not to any section or portion of it. References to an Article or Section or Schedule refer to the applicable article or section or schedule of this Agreement.

(b) **Governing Law.** This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the Province of Ontario (excluding any rule or principle of the conflict of laws which might refer same to the laws of another jurisdiction). Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario with respect to any matter arising hereunder or related hereto.

(c) **Time.** Time shall be of the essence of this Agreement and each of the provisions hereof.

(d) **Covenants.** Each of the provisions of this Agreement shall be construed as covenants as though the words importing covenants were used in each separate provision hereof.

(e) **Severability.** If any provision of this Agreement is determined by a Court of competent jurisdiction to be illegal or beyond the powers or capacity of the Parties bound thereby, such provision or part shall be severed from this Agreement and the remainder of this Agreement shall continue in full force and effect, *mutatis mutandis*. For purposes of giving effect to this paragraph, each paragraph, Section and Article of this Agreement shall be considered severable from every remaining paragraph, Section and Article of this Agreement. No Party is obliged to enforce any term, covenant or condition of this Agreement against any Party, or Person, if, or to the extent by so doing, such Party is caused to be in breach of any enforceable statute, rule of law, regulation or ordinance

(f) **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements, arrangements, understandings and negotiations, whether oral or written, and there are no warranties, representations or other agreements, whether direct or collateral, express or implied, that form part of or affect this Agreement or that induced any Party to enter into this Agreement or on which reliance is placed, except as specifically set forth or referred to herein.

(g) **Amendment and Waiver.** No supplement or amendment of, or waiver under, this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver by a Party of any provision of this Agreement shall be deemed or shall constitute a waiver by such Party of any other provision or shall constitute a continuing waiver unless otherwise expressly provided. No failure on the part of a Party to exercise, and no delay in exercising, any right or remedy under this

Agreement shall operate as a waiver of such right or remedy. If this Agreement is to be supplemented, amended, re-stated, or waived, in whole or in part, the Office Owner, the Retail Owner, and TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2510, shall be the only parties required to execute and deliver the same; specifically, the Unitowners shall not be required to be parties to such a document.

(h) **Currency.** All references in this Agreement to dollar amounts shall be deemed to be references to such amounts expressed in Canadian dollars.

(i) **Gender and Number.** All changes shall be made as necessary to masculine and feminine genders and to singular and plural versions as the context requires.

(j) **Successors and Assigns.** All the terms and provisions of this Agreement shall be binding upon and, subject to compliance with Article 21, shall enure to the benefit of the Parties and their respective successors and assigns.

(k) **Performance on Non-Business Day.** If any action is required to be taken pursuant to this Agreement on or by a specified date which is not a Business Day, then such action shall be valid if taken on or by the next succeeding Business Day.

(l) **Approvals and Consents.** All requests for approval or consent of a Party under this Agreement shall be made in writing. A Party receiving such a request shall respond in writing to the request for consent or approval in a timely manner and, unless otherwise expressly provided herein, shall act reasonably and in good faith in giving or withholding its consent or approval and shall deliver its response in a timely manner. Any disagreement with respect to the giving or withholding of consent or approval may be referred to arbitration unless this Agreement provides that such consent or approval may be withheld arbitrarily or in a party's sole discretion.

(m) **Calculation of Time.** In this Agreement, a period of days shall be deemed to begin on the first Business Day after the event which began the period and to end at 5:00 p.m. (Toronto time) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall terminate at 5:00 p.m. (Toronto time) on the next Business Day.

(n) **Priority of Interests.** Wherever in this Agreement, a right or obligation is provided which can in the context benefit or oblige more than one Party because one Party is the tenant or subtenant of the other Party, the benefit of the right and the burden of the obligation shall, until the earliest of the termination, surrender or expiry of the lease or sublease, be the tenant's or the subtenant's and not the landlord's or the sublandlord's, and after the earliest of the termination, surrender, or expiry, of the lease or sublease shall be the landlord's or the sublandlord's and not the tenant's or the subtenant's.

### 1.03 CAMPA Provisions Paramount

Notwithstanding the foregoing, or anything else herein to the contrary, for so long as the provisions of the CAMPA remain in force, in the event of any conflict, inconsistency, or ambiguity between the provisions of the CAMPA and this Agreement, the provisions of the CAMPA shall prevail to the extent of such conflict, inconsistency, or ambiguity.

### 1.04 Schedules

The following schedules, as the same may be updated by the Parties from time to time, form part of this Agreement and are identified as follows:

Schedule "A": Legal Descriptions

Part I - Office Lands
Part II - Residential Lands
Part III - Retail Lands
Part IV - Lands to be Transferred to the Office Owner

Schedule "B": Drawings

B-1A Roof Plan Depicting Context Relationship of the Complex
B-1B East Elevation of the Complex
B-2 Plan Depicting Parking Level P5
B-3 Plan Depicting Parking Level P4
B-4 Plan Depicting Parking Level P3
B-5 Plan Depicting Parking Level P2
B-6 Plan Depicting Parking Level P1
B-7 Plan Depicting Parking Level Mezzanine
B-8 Plan Depicting Ground Floor
B-9 Plan Depicting Mezzanine Floor
B-10 Plan Depicting Second Floor
B-11 Plan Depicting Typical Tower Layout Floors 3-29
B-12 Plan Depicting Typical Tower Layouts Floors 30-45
B-13 Plan Depicting Typical Tower Layout Floors 46-55
B-14 Plan Depicting Typical Tower Layout Floors 56-65
B-15 Plan Depicting Mechanical Penthouse
B-16 Plan Depicting Roof Plan
B-17 Sections
B-18 Retail Sections
B-19 Plan Depicting CACF Rooms
B-20 Plan Depicting the Tunnel Connection to the Complex
B-21 Plan Depicting Office Parking Facility located on the P1, P2, and P3 levels of the Residential Parking Facilities
B-22 Plans Depicting the Retail Component

Schedule "C": Allocation of Common Costs

Schedule "D": Form of Assumption Agreement for Sale

Schedule "E": Form of Assumption Agreement for Long Term Lease

Schedule "F": Form of Assumption Agreement for Mortgage

Schedule "G": Legal Description - Maple Leaf Square Lands

## ARTICLE 2
## TERM

### 2.01 Term

This Agreement and the Easements and covenants herein contained shall enure to the benefit of the Parties for a term commencing on the date first hereinabove written and, subject to the provisions of Section 26.04, ending on the earlier of:

(i) the day on which all of the Components are owned by one Person or by more than one Person as tenants in common, as joint tenants or as partners; and

(ii) a day mutually agreed to by the Parties.

## ARTICLE 3
## EASEMENTS

### 3.01 Common Areas Easements

(a) Each Party hereby grants in favour of each other Party for the benefit of the other Party's Lands, during the Term, a non-exclusive easement over and upon its Common Areas, in common with the granting Party, its tenants, sub-tenants, occupants and their respective employees and invitees, for pedestrian passage, ingress and egress by tenants and subtenants, occupants and their respective employees and invitees and other users of the Complex; subject, however, to the conditions and restrictions set out elsewhere in this Article 3 and in Section 20.03.

(b) With respect to the easements described in Section 3.01(a), the granting Party shall have the right:

(i) to make reasonable rules and regulations governing the use of its Common Areas from time to time consistent with those which may be customary for a mixed-use development of the size, nature, age and location of the Complex, provided that any change to such rules and regulations, which is material to the use of the Easements granted in this Section 3.01, including access hours, shall require the approval of the Parties which have a leasehold or freehold interest in the dominant land, other than the Residential Owner (the "**Benefiting Parties**"), such approval not to be unreasonably withheld or delayed; the granting Party shall provide the Benefiting Parties who are affected by the change with ten (10) Business Days' notice of any material change to such rules and regulations and any of such Benefiting Parties which has not notified the granting Party of any objection to such change within ten (10) Business Days of receipt of notice of the change shall be deemed to have approved it;

(ii) to impose reasonable limitations on the exercise of the rights and easements granted in Section 3.01(a) to ensure that the security for secure areas of its Component is maintained;

(iii) to temporarily prohibit pedestrian passage, ingress and egress, over portions of its Common Areas during the making of repairs and alterations and the carrying out of maintenance to its Common Areas and for the purpose of permitting temporary displays and other temporary promotional activities within its Common Areas, and the further right to make use of portions of its Common Areas for kiosks; and

(iv) subject to the provisions of Article 18 with respect to Major Changes, to alter the layout and/or structure of its Common Areas.

### 3.02 Easements of Access to Common Facilities and Divergent Separate Facilities

(a) Each Party hereby grants (i) in favour of each of the other Parties for the benefit of the other Parties' Lands a non-exclusive easement allowing it to keep on the granting Party's Lands, and to enjoy the benefit of, such Common Facilities and Divergent Separate Facilities from which it benefits, during all hours during the Term, which are presently located on the granting Party's Lands or which, with the prior written consent (which may not be arbitrarily or unreasonably withheld or unduly delayed) of the granting Party, may hereafter be located on the granting Party's Lands, and replacements thereto and (ii) in favour of such other Parties a non-exclusive easement, during all hours during the Term, over the granting Party's Lands for the benefit of the other Parties' Lands for the purpose of such other Parties and their respective employees, agents and contractors using, operating, maintaining, repairing, restoring, reconstructing, replacing and inspecting all or any part of the Common Facilities and the Divergent Separate Facilities from which it benefits; subject, however, to the conditions and restrictions set out elsewhere in this Article 3 and in Section 20.03.

(b) Notwithstanding the foregoing provisions of this Section 3.02: (i) the Parties agree that only the Managers and their respective employees, agents and contractors will

be entitled to use the easements set forth in clause (ii) of Section 3.02(a) in connection with the Common Facilities. The foregoing shall not be construed so as to limit the rights provided in Section 3.01 with respect to Common Facilities which constitute part of the Common Areas. Notwithstanding the foregoing, in the event of an Emergency Situation, if the applicable Manager is not responding to the Emergency Situation in a manner which is reasonable in the circumstances, any Party may use the easements set forth in clause (ii) of Section 3.02(a) in connection with the Common Facilities in order to respond to the Emergency Situation; and (ii) the Parties further agree that only the Party to whose Component the Divergent Separate Facilities provide service (and such Party's employees, agents and contractors) will be entitled to use the easements set forth in clause (ii) of Section 3.02(a) with respect to those Divergent Separate Facilities which provide service to its Component.

**3.03 Easement for Use of Residential/Retail Parking Ramp**

(a) The Residential Owner grants in favour of the Retail Users, for the benefit of the Retail Lands, a non-exclusive easement over the Residential/Retail Parking Ramp, in common with the Residential Owner, for the passage, ingress and egress of motor vehicles of the Retail Users and, subject to Section 11.02, their invitees, to the Delivery and Loading Facilities area within the Residential Component during all hours; subject, however, to the conditions and restrictions set out elsewhere in this Article 3 and in Section 20.03.

(b) With respect to the easements described in Section 3.03(a), the Residential Owner shall have the right:

(i) to make reasonable rules and regulations covering the use of the Residential/Retail Parking Ramp from time to time consistent with those which may be customary for a mixed-used development of the size, nature, age and location of the Complex;

(ii) to temporarily prohibit passage, ingress and egress over the Residential/Retail Parking Ramp during the making of repairs and alterations to the Residential Parking Ramp and the carrying out of maintenance to the Residential/Retail Parking Ramp; and

(iii) subject to the provisions of Article 18 with respect to Major Changes, to alter the layout and/or structure of the Residential/Retail Parking Ramp.

**3.04 Easements for Use of Delivery and Loading Facilities**

(a) The Residential Owner hereby grants in favour of the Retail Users, a non-exclusive easement over and upon the Delivery and Loading Facilities, in common with the Residential Owner, its occupants and their invitees, for the passage, ingress and egress of motor vehicles of the Retail Users, during all hours, for the purpose of taking material to and from the Delivery and Loading Facilities and their respective premises within the Retail Component; subject, however, to the conditions and restrictions set out elsewhere in this Article 3 and in Section 20.03.

(b) The Residential Owner hereby grants in favour of the Retail Owner for the benefit of the Retail Lands, a non-exclusive easement over and upon the Common Areas of the Residential Component, in common with the Residential Owner, its occupants and their invitees, for pedestrian passage, ingress and egress of the Retail Owner, tenants and subtenants of the Retail Component and their respective employees and invitees, during all hours, for the purpose of taking material to and from the Delivery and Loading Facilities and their respective premises and the areas within the Retail Component; subject, however, to the conditions and restrictions set out elsewhere in this Article 3 and in Section 20.03.

(c) With respect to the easements set out in Section 3.04(a) and (b), the Residential Owner shall have the right:

(i) to make reasonable rules and regulations from time to time consistent with those which may be customary in the operation of delivery and loading areas and distribution therefrom serving a mixed-use development of the size, nature, age and location of the Complex, including the right to impose reasonable time limitations and parking controls;

(ii) to temporarily prohibit passage, ingress and egress, over portions of its Common Areas during the making of repairs and alterations and the carrying out of maintenance to the Delivery and Loading Facilities; and,

(i) subject to the provisions of Article 18 with respect to Major Changes, to alter the layout and/or structure of the Delivery and Loading Facilities.

**3.05 Easements of Support**

(a) Each of the Parties grants to each of the other Parties for the benefit of the respective Lands of the other Parties a non-exclusive easement of support over its Lands during the Term for the vertical and lateral support of the respective Lands and Components of the other Parties; subject, however, to the conditions and restrictions set out elsewhere in this Article 3.

(b) The Support Facilities Costs shall be allocated as agreed to at the time that Support Facilities Costs are to be incurred between the Party having a leasehold or freehold interest in the servient Lands and the Party having a leasehold or freehold interest in the dominant Lands and, failing agreement, by arbitration with the arbitrator allocating Support Facilities Costs on the basis of what is equitable in the circumstances.

**3.06 Easement to Maintain and Repair Support Facility**

(a) Each of the Parties hereby grants to each of the other Parties, during the Term, a non-exclusive easement over its Lands for the benefit of the other Parties' Lands for the purpose of maintaining, repairing, reconstructing, replacing, demolishing or refurbishing the Support Facilities within its Component necessary for the adequate vertical and lateral support of the other Parties' Lands and Component.

(b) No Party benefiting from an Easement in this Section 3.06, shall exercise its rights thereunder without first complying with Article 17 in the case of Required Reconstruction and otherwise without first giving the Party which has a leasehold or freehold interest in the servient land (the "**Servient Owner**") the following:

(i) a detailed structural plan prepared by appropriate professional engineers setting out the nature, extent, cost and timing for the work to be completed in the Support Facilities;

(ii) a copy of any necessary building or other permits required by any municipal or other government authorities having jurisdiction;

(iii) evidence of insurance and security satisfactory to the Servient Owner acting reasonably; and

(iv) such other information as the Servient Owner may reasonably request.

(c) Any work to be completed to the Support Facilities shall be completed in a good and workman-like manner and in accordance with the plans and permits referred to above and in accordance with the reasonable requirements of the Servient Owner.

**3.07 Swing Crane Easement**

Each Party hereby grants in favour of the other Parties for the benefit of the other Parties' Lands a non-exclusive easement over such portions of its Lands as are not encumbered by a Building, during the Term (i) for the purpose of permitting from time to time the over-swing of cranes, booms and attendant equipment over its Lands and Component at any time or times as the other Parties may reasonably require during any Required Reconstruction or any Major Change; (ii) for the purpose of entering on its Lands to prepare surveys, drawings, specifications and

measurements, with respect to any Required Reconstruction or any Major Change; and (iii) to carry out such inspections as may be necessary to complete the Required Reconstruction or Major Change.

**3.08 Pylon Sign(s) Easement**

(a) The Office Owner hereby grants in favour of the Retail Users for the benefit of the Retail Lands, a non-exclusive easement over and upon the sidewalk along York Street being part of the Common Areas of the Office Component, in common with the Office Owner, the Residential Owner, their respective occupants and invitees, and members of the public, for the temporary passage, ingress and egress of vehicles and equipment of the Retail Users, during all hours, for the purpose of construction, use, repair, maintenance and replacement, of the Pylon Sign(s) being used exclusively by and for the Retail Component, and for the purpose of taking material to and from the Pylon Sign(s) and their respective premises and the areas within the Retail Component; subject, however, to the conditions and restrictions set out elsewhere in this Article 3 and in Section 20.03.

(b) With respect to the easements set out in Section 3.08(a), the Office Owner shall have the right, subject to the provisions of Article 18 with respect to Major Changes, to alter the layout and/or structure of the sidewalk along York Street being part of the Common Areas of the Office Component.

(c) With respect to the easements set out in Section 3.08(a), the Retail Owner acknowledges that the Public Clearway Walkway area is subject to an easement in favour of the City and may be used by members of the public generally, and that application will be required to be made to the City for approval of the installation and location of any Pylon Sign(s).

**3.09 Easements for Access to Air Space Above Feature Elements**

(a) The Office Owner hereby grants in favour of the Residential Owner for the benefit of the Residential Lands and in favour of the Retail Users for the benefit of the Retail Lands, a non-exclusive easement over and through the air space above the Feature Elements, in common with the Office Owner, its occupants and their invitees, for the passage, ingress and egress, during all hours, and for the purpose of repair, maintenance, replacement, cleaning of the Buildings in the Residential Component and/or the Retail Component; subject, however, to the conditions and restrictions set out elsewhere in this Article 3 and in Section 20.03.

(b) With respect to the easements set out in Section3.09(a), the Office Owner shall have the right:

(i) to make reasonable rules and regulations from time to time consistent with the protection of property and safety of Persons, including the right to impose reasonable time limitations;

(ii) to temporarily prohibit passage, ingress and egress, over portions of the air space aforesaid during the making of repairs and alterations and the carrying out of maintenance to the Office Component, Residential Component, Retail Component, Feature Elements, or part thereof; and

(iii) subject to the provisions of Article 18 with respect to Major Changes, to alter the layout and/or structure of the Feature Elements.

**3.10 Enjoyment of Easements**

(a) The enjoyment or use at any time of each of the Easements shall be subject to any reasonable interruptions which are reasonably necessary as a result of the ordinary operation, repair or maintenance of the Component of the Party which has a leasehold or freehold interest in the Lands subject to the Easement, except that with respect to Easements of support, prior notice must be given and the parties must agree on the reasonable steps to be taken to ensure continual support.

(b) In exercising its right to an Easement, the Party which has a leasehold or freehold interest in the Lands benefiting from an Easement shall act in a prudent and reasonable manner so as to reduce to as minimum a degree as reasonable the interference occasioned to any other Person by the use of the Easement on a basis consistent with the purpose and intent of the easement.

### 3.11 Obligations to Restore

In the event that damage is caused to the Component of the Party which has a leasehold or freehold interest in Lands subject to an Easement (the "**Damaged Party**") or unnecessary inconvenience is caused to the Damaged Party as the result of the exercise of the rights under such Easement by the Party which has a leasehold or freehold interest in the Lands benefiting from such Easement (the "**Other Party**"), the Other Party that caused or is responsible for the damage or unnecessary inconvenience shall reimburse the Damaged Party, upon demand, for all costs and expenses incurred by the Damaged Party in repairing (including any restoration necessary to restore the damaged Component to its previous condition) the damage or remedying the cause of the unnecessary inconvenience, and any other damages or losses suffered by the Damaged Party as a result thereof.

### 3.12 Execution of Further Assurances

Each Party covenants with the other Parties that it shall, from time to time and at all times hereafter, at the request of any other Party, execute such further assurances as may be necessary to perfect the grants of Easements contained in this Article 3. Without limiting the generality of the foregoing, any Party having a freehold or leasehold interest in Lands which benefit from an Easement may require, at its sole cost, that the Party which has a leasehold or freehold interest in the Lands subject to such Easement, provide it with and register a separately registrable Easement and cooperate with respect to the obtaining of any consent required under the *Planning Act* of the Province of Ontario and the preparation and registration of any reference plan of survey required therefore.

### 3.13 Licences

Without derogating from the intent and agreement of the Parties that the Easements constitute easements, in the event that any of the Easements are hereafter ultimately interpreted, construed or adjudged (by a court of competent jurisdiction) as failing to create (or being incapable of creating) a right or interest in land to the extent hereinbefore provided or contemplated, then any such Easement shall be deemed and construed to constitute, during the Term, a non-exclusive licence in favour of the Party or Parties hereinbefore mentioned (and for those specific purposes hereinbefore set out), and each of the Parties shall thereupon execute and provide all such further documents and assurances as may be required or desired in order to give full force and effect to the foregoing. None of the Parties will, directly or indirectly, challenge, by arbitration, court proceedings or otherwise, the validity of any of the Easements.

### 3.14 Grant of Easement for Facilities of Two Parties

(a) Any two of the Parties may, as between such two Parties only, grant and receive an Easement with respect to facilities if such facilities affect only the Components of such two Parties (a "**Private Easement**").

(b) A Private Easement shall be managed as mutually agreed upon between the Parties granting and receiving the Private Easement on terms and conditions mutually agreed upon between such Parties and shall not be managed by either of the Managers unless an agreement has been entered into between such Parties and one of the Managers with respect to such management. The parties to a Private Easement will agree among themselves as to the sharing by them of any costs relating to such Private Easement.

(c) Written notice of any Private Easement shall be provided to the remaining Parties to this Agreement at least 10 days prior to the granting of any such Private Easement. The Parties granting and receiving a Private Easement shall consult with the remaining Parties, but shall not be obliged to obtain any consent or approval of the remaining Parties so long as the Private Easement does not include any portion

of any other Party's Component in any portion of the servient tenement and does not interfere with the operation of the Common Areas or the Common Facilities.

(d) In the event that any Private Easement shall be granted, the provisions respecting Easements contained in this Agreement shall be applicable to such Private Easement as between the Parties whose Components constitute the dominant and servient lands with respect thereto except to the extent that such Parties agree in writing to amend any of such provisions.

**3.15 Grant of Further Easements**

(a) Each Party to this Agreement agrees to grant or consent to such further easements in favour of any other Parties hereto, as are reasonably requested and as are approved by the Owner acting reasonably, of the Component burdened by the easement (the "**Burdened Component**") to facilitate the integration of each Component and operation of each Component with any other Component; PROVIDED THAT only the Condominium Corporation shall have such right of approval on behalf of all Unitowners, and no Unitowner shall have such right.

(b) The following terms shall apply to any further Easements granted hereunder:

(i) The grant of any Easements shall be for nominal consideration.

(ii) If requested to do so by Person enjoying the benefit of the Easement, the Owner of the Burdened Component shall cause reference plan(s) of survey to be prepared indicating the location of the easement(s). Further, if requested to do so by the Person enjoying the benefit of the easement, the owner of the Burdened Component shall use its reasonable best efforts to obtain any consents necessary to permit the transfer of the Easement in compliance with the Planning Act and to satisfy any conditions imposed upon the granting of any such consents. The reasonable cost of the reference plans and the reasonable costs of obtaining any necessary consents shall be for the account of the Person requesting same. Further, any owner of a Burdened Component shall execute any necessary authorizations or consents, provided no financial obligations are thereby imposed on such owner or if any, such are satisfied by the Person requesting the Easement.

(iii) The use and enjoyment of the Easements shall be in accordance with reasonable rules and regulations established from time to time by the owner of the Burdened Component made in accordance with good practice in the use and operation of such Component and shall be subject to reasonable interruption from time to time, as may be required for repair and maintenance purposes.

(iv) The Easements shall be located in such a manner that they will not materially adversely affect the intended use, occupation, operation or enjoyment of the respective Burdened Components.

(v) All transfers conveying Easements shall be prepared at the expense of the owner of the Component benefiting from such Easements, and shall be in registrable form.

(vi) The parties acknowledge that the Easements are intended to have priority over the interests of all Mortgagees. Each Party shall obtain such agreements executed by each of its Mortgagees postponing its interest in favour of the Easements as may reasonably be required to give effect to the foregoing.

(vii) The Person enjoying the benefit of any Easement shall act in a prudent and reasonable manner when exercising its rights under any Easement, so as to interfere as little as is reasonably possible with the use and enjoyment of any Burdened Component by the owner thereof from time to time and by those permitted by such owner to be in or upon the Burdened Component from time to time, on a basis consistent with the purpose and intent of the respective Easement.

(viii) Each owner of a Component benefitting from Easements shall indemnify and save harmless the owner of the Burdened Component from any and all liability,

costs, claims, demands or actions for damages, injury or loss suffered or sustained by any Person in or about the Burdened Component by reason of any cause whatsoever arising from its use and enjoyment of such Easements, except to the extent caused or contributed to by the wilful or negligent act or omission of the owner of the Burdened Component or those for whom it is responsible in law or by the wilful or negligent act or omission of any other owner having the benefit of an Easement over the Burdened Component or those for whom it is responsible in law.

## ARTICLE 4
## SIGNAGE

### 4.01 General

Each of the Parties shall have the sole right, subject to the provisions of Section 4.02 and Article 18, to erect signs in the interior and on the exterior of its Component and on its Lands, all to the Required Standard, and, if applicable, in compliance with the provisions of the Wayfinding Agreement. A Party shall be entitled to require the removal of any sign placed by another Party in contravention of this Article 4.

### 4.02 Restrictive Covenant re Signage and Complex Name

Each of the Parties, with the intent of creating a building scheme annexed to the Lands, for the benefit of the Office Owner, the Residential Owner, the Retail Owner, and their respective tenants, subtenants, occupants and their respective employees and invitees, agree that:

(i) Except with respect to the Office Component and the Retail Component, no signage shall be installed or maintained either in, on or upon the Lands or on the exterior of the Complex or in the interior of the Complex and visible from outside of the Component unless such signage is: (i) within the areas as are approved from time to time by Governmental Authorities, (ii) such signage is consistent with the Required Standard, and, if applicable, the Wayfinding Agreement;

(ii) no Party shall use any name in the description of the Complex or its Component other than "ICE" as regards the Residential Component and the Retail Component, and other than "ICE" and/or "York Centre" as regards the Office Component, or such other name(s) for the Office Component as is/are designated from time to time by the Office Owner by Notice to the Parties; and

(iii) the signage may be amended from time to time by the Office Owner by Notice to the other Parties, provided that no amendment adding or relocating signage within the Retail Component, or the Residential Component shall be made without the prior written approval of the Retail Owner, or Residential Owner, respectively.

The Parties agree that the foregoing restrictive covenant shall be annexed to their respective Lands and Components and constitute a building scheme.

### 4.03 Maintenance of Signage

Each of the Parties covenants and agrees that it shall repair and maintain, or cause to be repaired and maintained, during the Term, its signage in a reasonable condition and state of repair, properly illuminated (if applicable), all to the Required Standard and in accordance with Section 25.01.

## ARTICLE 5
## NO BARRIERS

### 5.01 No Barriers

Each Party covenants and agrees with each of the other Parties that it will not, subject to Section 3.01(b), erect or permit to be erected any fence, wall, barrier or other obstruction whatsoever in or between its Common Areas and any other Common Areas to the intent that,

subject to Section 3.01(b), the Complex shall form one integrated Component with open and free access to and egress from and between the Office Component, the Residential Component, and the Retail Component. The burden of the foregoing covenant shall run with such Party's Lands during the Term, and the benefit of the foregoing covenant shall run with each of the other Party's Lands.

## ARTICLE 6
## COMMON FACILITIES AND DIVERGENT SEPARATE FACILITIES/ART OBJECT/DROP OFF POINT/FEATURE ELEMENTS/RESTRICTIVE COVENANTS REGARDING AIR SPACE ABOVE CANOPY AND COURTYARD/FUTURE PATH CONNECTIONS/PATH SYSTEM/TUNNEL/WAYFINDING AGREEMENT

### 6.01 Premises for Common Facilities and Divergent Separate Facilities

Each of the Parties covenants and agrees one with the other that it will provide space for, and maintain and repair, during the Term, premises for the Common Facilities and the Divergent Separate Facilities from time to time located on its Lands to the Required Standard so as to permit the functioning of the Common Facilities and the Divergent Separate Facilities.

### 6.02 Ownership of the Common Facilities

The Parties acknowledge that the Common Facilities are and will continue to be owned by the Party on whose Lands they are located.

### 6.03 Ownership of Divergent Separate Facilities

The Parties agree that the Divergent Separate Facilities are and will continue to be owned by the Party whose Component is served by the Divergent Separate Facilities, which Party will operate, maintain, repair, replace and insure such Divergent Separate Facilities at its sole cost. The Parties further agree that to the extent it is determined that a Divergent Separate Facility is owned by the Party on whose Lands it is located (the "**First Party**"), and not by the Party whose Component is served by the Divergent Separate Facility (the "**Second Party**"), then the First Party hereby grants to the Second Party an exclusive easement, during the Term, to operate, maintain, repair, replace and insure such Divergent Separate Facility at the sole cost of the Second Party. In the event that the Party whose Component is served by a Divergent Separate Facility causes any damage to the Component in which the Divergent Separate Facility is located, such Party shall diligently repair the damage at its sole cost.

### 6.04. Ownership of Art Object

The Art Object shall be owned by the Residential Owner and all costs and expenses incurred in connection with the maintenance, repair and replacement of the Art Object shall be Common Areas Costs. If there is an agreement with the artist who created the Art Object with respect to, among other matters, ownership and copyright matters, such shall be complied with by the Residential Owner. As the Courtyard is owned by the Office Owner who shall be responsible for the maintenance, repair, and replacement thereof, the Office Owner shall also maintain, repair and replace the Art Object as Common Areas Costs.

### 6.05 Ownership of Drop-Off Point

The Drop-Off Point and area surrounding the same shall be Common Areas comprising common elements of the Condominium Corporation, and all costs and expenses incurred in connection with the maintenance, repair and replacement of the Drop-Off Point and surrounding appurtenant area shall be Common Areas Costs.

### 6.06 Ownership of Feature Elements

The Feature Elements (Canopy, Courtyard, Indoor Concourse, Public Clearway Walkway) shall be owned by the Office Owner but all costs and expenses incurred in connection with the maintenance, repair and replacement of the Feature Elements shall be Common Areas Costs.

### 6.07 Restrictive Covenant Regarding Air Space Above Canopy and Courtyard

(a) To the intent that the burden of the restrictive covenant set out in subsection (b) shall run with and bind the lands on which the Canopy and the Courtyard are constructed (the "**Restricted Lands**"), and to the intent that the benefit of the covenants in subsection (b) shall be to the benefit of the Residential Lands and shall be annexed to and run with each and every part of the Residential Lands, the Office Owner, for itself and its successors and assigns, including any successors in title to the Restricted Lands, covenants with the Residential Owner, its respective successors and assigns, including any successors in title to the Residential Lands, that the Office Owner and its successors in title from time to time of all or any part or parts of the Restricted Lands shall observe and comply with the stipulations, restrictions, provisions and covenants set forth in subsection (b) following.

(b) Except for the Art Object, no permanent building or permanent structure shall be constructed at any time in the air space which is greater than ten metres above the upper surface of the Restricted Lands during the period of time that the Residential Component is in existence.

### 6.08 Future Path Connections

The Section 16 Agreement stipulates in Section 6.1(b) thereof that there be knock-out panels located on the south east wall abutting Lakeshore Boulevard West at York Street to accommodate a potential future connection to the PATH system. Such knock-out panels have been installed at the P1 level of ICE 1. The City required the inclusion of such provisions due to the possibility of a tunnel below Lakeshore Boulevard which would form part of the PATH system. If and when the City should decide upon the construction of such a tunnel and connection, the Residential Owner, the Retail Owner and the Office Owner shall co-operate with the City in the construction and implementation of the same and should any costs and expenses be incurred in such regard the same shall be allocated to the Office Component as to fifty (50%) per cent, the Residential Component as to fourty-seven (47%) per cent, and the Retail Component as to three (3%) per cent; however, it is expected that any such costs would be paid by the developer of the project to the south of the Complex whose project triggered the aforesaid future connection. The costs and expenses incurred in connection with the maintenance, repair and replacement of the Future PATH Connections shall be Common Areas Costs.

### 6.09 PATH System

The majority of the PATH System from Maple Leaf Square to and through the Complex shall be owned by the Office Owner but all costs and expenses incurred in connection with the maintenance, repair and replacement of the PATH System through the Complex shall be Common Areas Costs.

### 6.10 Tunnel

The City has not permitted the construction of the Tunnel prior to completion of construction of ICE 1 and ICE 2 and the Retail Component due to the fact that its construction will necessitate the temporary closing of York Street. It is anticipated that the City will permit construction of the Tunnel in the year 2018. The costs of construction of the Tunnel shall be the responsibility of Block 9B Developments Limited and Block 9A Developments Limited as set out in the CAMPA. The Tunnel when completed shall be part of the PATH System. The Tunnel shall be owned by the Office Owner, and after its construction initially, all costs and expenses incurred in connection with the maintenance, repair and replacement of the Tunnel shall accrue to and be part of Common Areas Costs. If there is an agreement with the City respecting the Tunnel such shall be complied with by the Office Owner but the costs incurred in such regard shall be part of Common Areas Costs.

### 6.11 Wayfinding Agreement Signage

The Wayfinding Agreement requires the installation of City approved signage in the PATH System to direct pedestrians to their destination. As the Tunnel will not be constructed until after the implementation of this Agreement, the CAMPA requires that Block 9B Developments Limited install the initial signage in the Tunnel and its access points to and egress points from the Complex. Prior to the construction of the Tunnel, the City may require installation of the approved signage

in the portions of the PATH which are completed on the Lands. All costs and expenses incurred in connection with the maintenance, repair and replacement of the Wayfinding Agreement signage, and compliance with all other aspects of the Wayfinding Agreement, shall be Common Areas Costs.

## ARTICLE 7
## MAINTENANCE

### 7.01 Maintenance of the Common Areas

Each of the Parties covenants and agrees that it shall repair and maintain, or cause to be repaired and maintained, during the Term, its Common Areas in good and clean condition and repair and in a safe and sound condition, free and clear of rubbish, debris, ice, snow and other hazards to individuals using the same, such maintenance to include, sweeping and removal of rubbish, trash, garbage and other refuse, provision of fire protection and security services, adequate heating, lighting, ventilating and air-conditioning if appropriate, and maintenance of all necessary electrical and other equipment and facilities, all to the Required Standard.

### 7.02 Maintenance of Buildings

Each of the Parties covenants and agrees that it shall maintain, repair, heat, secure and keep clean, or cause to be maintained, repaired, heated, secured and kept clean, its respective Component, including the provision of janitorial services, cleaning services, window-washing services, engineering, locksmith and repair services and such fire-protection and security services as may be required by any governmental body or fire insurance underwriter, all to the Required Standard.

### 7.03 Compliance with Fire Safety Plan

Each of the Parties will comply with, and ensure that its Component complies with, the fire safety plan prepared for the Components and the Complex as required by the Ontario Fire Code (as such Code may be amended, supplemented, restated or replaced from time to time), as such plan may be amended, supplemented, restated or replaced from time to time.

### 7.04 Compliance with Environmental Standards

(a) The Parties shall, and shall cause all those for whom they are each in law responsible, to receive, handle, use, store, treat, ship and dispose of all Hazardous Substances in strict compliance with all applicable environmental, health and safety laws, rules and regulations. If any Hazardous Substance should spill or escape from its container, the Party responsible shall immediately clean up the same in the manner prescribed by law, and if no such manner is prescribed then the same shall be cleaned up entirely so as to leave no residue.

(b) The Parties shall provide the Managers with a complete listing of all Hazardous Substances, used in, stored in, shipped to and from their respective Component. The Managers shall be entitled to promulgate and enforce reasonable Rules and Regulations relating to Hazardous Substances and with which the Parties shall comply after the same have been communicated to the Parties.

(c) "Hazardous Substance" means any pollutant, dangerous substance, liquid waste, industrial waste, hazardous material, hazardous substance or contaminant as the term may be defined in the *Environmental Protection Act*, RSO 1990 Ch.E. 19 as amended from time to time or any other statute, law, rule, regulation or order of any Governmental Authorities.

(d) If any Hazardous Substance is released into the environment by the actions of a Party or those for whom it is in law responsible, the Party within a reasonable time frame after discovery thereof by the Party, or within a reasonable time frame after receipt of written notice from the applicable Manager, if a Manager discovers the Hazardous Substance, shall remove the Hazardous Substance, or take such remedial action as is required pursuant to governing laws. If the responsible Party fails to remove the Hazardous Substance, or take such remedial action, the applicable Manager may do so and collect from the responsible Party the aggregate cost and expense reasonably incurred or to be incurred in connection with such removal or such remedial

action as determined by an engineer or other consultant selected by the applicable Manager reasonably qualified to make such assessment. The responsible Party shall indemnify and save the other Parties and the Managers harmless in respect of all loss, costs, claims and damages which the other Parties and the Managers might sustain or become liable for as a result of any Hazardous Substance used or stored in the applicable Component and any escape thereof into the environment.

### 7.05 Waste Reduction Workplan

The Parties shall co-operate with each other and the applicable Manager in the establishing of source separation of materials, waste audits and a waste reduction workplan. The Parties shall comply with present and future waste separation, waste audit and waste reduction statutes and regulations that apply to the Complex, including the *Waste Reduction Act*, 1992 and the *Environmental Protection Act*, as the same may be amended or succeeded from time to time. The Parties shall also comply with the reasonable rules and regulations of the Common Facilities Manager or if applicable, the Common Areas Manager, respecting waste separation, waste audit and waste reduction.

## ARTICLE 8
## OPERATION OF COMMON AREAS, COMMON FACILITIES, AND PROVISION OF COMMON SERVICES

### 8.01 Functions of Common Facilities Manager

(a) Subject to Force Majeure and subject to the failure of the Parties to put the Common Facilities Manager in funds, during the Term, the Common Facilities Manager shall:

(i) maintain and operate, or cause to be maintained and operated, the Common Facilities which serve the Residential Component and the Retail Component, to the intent that the Common Facilities shall provide adequate services to the applicable Components, and the Common Areas in the Residential Component and the Retail Component below grade level, including the Residential/Retail Parking Ramp, and to carry out the responsibilities delineated in Schedule "C";

(ii) provide,or cause to be provided, the Common Facilities Services to the Residential Component and the Retail Component. The Retail component shall have its own dedicated HVAC but the supply of utilities for HVAC operation shall be repaired, maintained, and managed by the Common Facilities Manager;

(iii) invoice and collect from the Parties their respective shares of the Common Facilities Costs in respect of the Residential Component and the Retail Component, and, from such receipts and its share of the Common Facilities, pay the Common Facilities Costs in respect thereof;

(iv) arrange for garbage collection for the Residential Component and the Retail Component as required with the right to charge each such Component separately if separate invoices are received from the contractor(s) providing such services; and

(v) engage and supervise such contractors, consultants and personnel as may be required to provide any or all of the functions set out in paragraphs (i), (ii) and (iii) and (iv) of this Section 8.01(a) as it deems fit,

all to the Required Standard.

(b) Coordinate with the Common Areas Manager, to avoid duplication of effort and costs, in the allocation of Common Areas Costs to the various Components on a fair and equitable basis, and to allocate between themselves the most efficient manner in which to provide Common Services to the Complex. In the event of any

inconsistency between the provisions of this Section 8.01 and the responsibilities set out in Schedule "C", the provisions of Schedule "C" shall govern shall prevail with respect to such inconsistency.

(c) The intention is that the Common Facilities Manager will have responsibility in respect of the Common Facilities, and the Common Areas below grade which serve the Residential Component and the Retail Component (it is understood that any areas used in common in the Retail Component are used solely by the Retail Component and hence are not Common Areas within the definition in this Agreement), and the Residential/Retail Parking Ramp, and specifically shall carry out the responsibilities delineated in Schedule "C". However, when the Tunnel has been constructed and the PATH connection to Maple Leaf Square has been completed, the entire PATH System in the Complex and the Tunnel shall be managed by the Common Areas Manager. All Common Areas Costs and Common Facilities Costs in respect of the Complex will be dealt with by the Managers in accordance with the provisions of this Agreement.

(d) The Common Facilities Manager shall have the right to control access to the CACF Rooms and other rooms shared by more than one Component, and to the Common Facilities, and to make and enforce reasonable rules and regulations regarding such access.

**8.02 Functions of Common Areas Manager**

(a) Subject to Force Majeure and subject to the failure of the Parties to put the Common Areas Manager in funds, during the Term, the Common Areas Manager shall:

(i) maintain and operate, or cause to be maintained and operated, the Art Object, the Common Facilities which serve the Common Areas, and the Common Areas at grade level and above, which includes the Feature Elements, and the Public Linear Walkway, but not the Residential/Retail Parking Ramp and its appurtenant equipment, and to carry out the responsibilities delineated in Schedule "C". When the Tunnel has been constructed and the PATH connection to Maple Leaf Square has been completed, the entire PATH System in the Complex and the Tunnel shall be managed by the Common Areas Manager;

(ii) provide, or cause to be provided, the Common Services to the Common Areas;

(iii) invoice and collect from the Parties their respective shares of the Common Areas Costs in respect of the Common Areas, and, from such receipts and its share of the Common Areas Costs, pay the Common Areas Costs in respect thereof; and

(iv) engage and supervise such contractors, consultants and personnel as may be required to provide any or all of the functions set out in paragraphs (i), (ii) and (iii) of this Section 8.02(a) as it deems fit,

all to the Required Standard.

(b) Coordinate with the Common Facilities Manager, to avoid duplication of effort and costs, in the allocation of Common Areas Costs to the various Components on a fair and equitable basis, and to allocate between themselves the most efficient manner in which to provide Common Services to the Complex. In the event of any inconsistency between the provisions of this Section 8.02 and the responsibilities set out in Schedule "C", the provisions of Schedule "C" shall prevail with respect to such inconsistency.

(c) The intention is that the Common Areas Manager will have responsibility in respect of the Art Object, the Common Areas at grade level and above, which include the Feature Elements, and the Public Linear Walkway, including cleaning of all ground floor lobbies and Common Areas), landscaping, and snow removal (including snow removal from sidewalks adjacent to the Complex and the Residential/Retail Parking Ramp, but not otherwise in respect of the Residential/Retail Parking Ramp and its appurtenant equipment). When the Tunnel has been constructed and the PATH connection to Maple Leaf Square has been completed, the entire PATH System in

the complex and the Tunnel shall be managed by the Common Areas Manager. All Common Areas Costs in respect of the Complex will be dealt with by the Managers in accordance with the provisions of this Agreement.

**8.03 Fees to the Common Facilities Manager**

(a) In consideration of the Common Facilities Manager performing the functions set out in Section 8.01, each of the Parties agrees to pay to the Common Facilities Manager a basic fee, subject to the provisions of Sections 8.12 and 9.04, as negotiated with the Residential Owner for such services.

(b) Prior to a Party selling, transferring or otherwise disposing of all or part of its Lands and prior to a Party commencing a Major Change, such Party shall pay to the Common Facilities Manager a reasonable start-up fee and any direct out of pocket expenses incurred by the Common Facilities Manager to compensate the Common Facilities Manager for the time and effort required to change cost and revenue allocations resulting from the introduction of a new owner of part of the Complex or the making of a Major Change; provided however that no fee shall be chargeable if no changes are required to cost or revenue allocations or to any of the Schedules to this Agreement.

(c) The Common Facilities Manager shall be entitled to such reasonable fee and reimbursement of expenses (including the cost of any legal or other consultants engaged for such purposes) as may be agreed upon with any Party requesting a special service or report or in depth analysis for its or their individual benefit.

(d) The fees payable to the Common Facilities Manager under this Section 8.03 together with applicable HST thereon will be added to each invoice or will be separately invoiced. Any part of the fee not paid when due will bear interest at the rate and calculated and payable as provided in Section 20.01(b).

**8.04 Fees to Common Areas Manager**

(a) In consideration of the Common Areas Manager performing the functions set out in Section 8.01, each of the Parties agrees to pay to the Common Areas Manager a basic fee, subject to the provisions of Sections 8.13 and 9.04, equal to ten percent (10%) of the gross amount invoiced (excluding HST) to such Party for the Common Areas Costs, excluding items (v), and (vi) of Common Areas Costs. However, in the event that there is a cost for repair, maintenance, replacement, re-construction, or new construction, in respect of which the cost is to be allocated to capital account in accordance with GAAP, the fee shall be equal to two and one half (2.5%) per cent of the gross amount on amounts (excluding HST) up to $500,000.00 and one and one half (1.5%) on amounts (excluding HST) over $500,000.00.

(b) Prior to a Party selling, transferring or otherwise disposing of all or part of its Lands and prior to a Party commencing a Major Change, such Party shall pay to the Common Areas Manager a start-up fee of $5,000.00 multiplied by the Adjustment Index together with applicable HST thereon and any direct out of pocket expenses incurred by the Common Areas Manager to compensate the Common Areas Manager for the time and effort required to change cost and revenue allocations resulting from the introduction of a new owner of part of the Complex or the making of a Major Change; provided however that no fee shall be chargeable if no changes are required to cost or revenue allocations or to any of the Schedules to this Agreement.

(c) The Common Areas Manager shall be entitled to such reasonable fee and reimbursement of expenses (including the cost of any legal or other consultants engaged for such purposes) as may be agreed upon with any Party requesting a special service or report or in depth analysis for its or their individual benefit.

(d) The fees payable to the Common Areas Manager under this Section 8.04 together with applicable HST thereon will be added to each invoice or will be separately invoiced. Any part of the fee not paid when due will bear interest at the rate and calculated and payable as provided in Section 20.01(b)

**8.05 Indemnity of Common Facilities Manager by Other Parties**

Both before and after the termination of this Agreement, the Parties, in the same proportion as their respective shares of the applicable cost centres as detailed in Schedule "C" hereto, shall indemnify and save harmless the Common Facilities Manager and its employees, directors, officers, shareholders and principals (collectively, the "**Common Facilities Manager's Indemnitees**") from and against any Claims in connection with the performance by the Common Facilities Manager of any and all of its obligations under Section 8.01, including any damage, loss or injury whatsoever to any employee, customer, invitee or other Person or property arising out of the performance, improper performance or failure to perform the functions set out in Section 8.01, but the indemnity provided under this Section shall not extend to any Claims arising out of or to the extent caused or contributed to by the willful misconduct or negligence of the Common Facilities Manager, or of Persons for whom it is in law responsible, as determined by a court of competent jurisdiction in a final judgement from which there is no appeal or with respect to which the time period to appeal has expired and for the purpose of this Section 8.05, the Common Facilities Manager is entering into this Agreement in its personal capacity and as trustee for the other Common Facilities Manager's Indemnitees. In the event that any one or more of the Parties (in this Section 8.05, the "**Defaulter**") fails to pay its respective share in accordance with the foregoing, the non-defaulting Parties shall pay the share of the Defaulter in the same proportions as their respective shares of the applicable cost centres as detailed in Schedule "C" hereto except to the extent that the Common Facilities Manager receives proceeds of the insurance maintained pursuant to Section 16.02.

**8.06 Indemnity by the Common Facilities Manager**

Both before and after the termination of this Agreement, the Common Facilities Manager shall indemnify and save harmless each of the Parties and their respective employees, directors, officers, shareholders and principals from and against any Claims arising by way of any breach by the Common Facilities Manager, or Persons for whom it is in law responsible, and any Claims arising out of or to the extent caused or contributed to by the willful misconduct or negligence of the Common Facilities Manager, or Persons for whom it is in law responsible, in the performance, improper performance or failure to perform the functions set out in Section 8.01 as determined by a court of competent jurisdiction in a final judgment from which there is no appeal or with respect to which the time period to appeal has expired and for the purpose of this Section 8.06, each of the Parties is entering into this Agreement in its personal capacity and as trustee for its respective employees, directors, officers, shareholders and principals.

**8.07 Indemnity of Common Areas Manager by Other Parties**

Both before and after the termination of this Agreement, the Parties, in the same proportion as their respective shares of the applicable cost centres as detailed in Schedule "C" hereto, shall indemnify and save harmless the Common Areas Manager and its employees, directors, officers, shareholders and principals (collectively, the "**Common Areas Manager's Indemnitees**") from and against any Claims in connection with the performance by the Common Areas Manager of any and all of its obligations under Section 8.02, including any damage, loss or injury whatsoever to any employee, customer, invitee or other Person or property arising out of the performance, improper performance or failure to perform the functions set out in Section 8.02, but the indemnity provided under this Section shall not extend to any Claims arising out of or to the extent caused or contributed to by the willful misconduct or negligence of the Common Areas Manager, or of Persons for whom it is in law responsible, as determined by a court of competent jurisdiction in a final judgement from which there is no appeal or with respect to which the time period to appeal has expired and for the purpose of this Section 8.07, the Common Areas Manager is entering into this Agreement in its personal capacity and as trustee for the other Common Areas Manager's Indemnitees. In the event that any one or more of the Parties (in this Section 8.07, the "**Defaulter**") fails to pay its respective share in accordance with the foregoing, the non-defaulting Parties shall pay the share of the Defaulter in the same proportions as their respective shares of the applicable cost centres as detailed in Schedule "C" hereto except to the extent that the Common Areas Manager receives proceeds of the insurance maintained pursuant to Section 16.02.

**8.08 Indemnity by the Common Areas Manager**

Both before and after the termination of this Agreement, the Common Areas Manager shall indemnify and save harmless each of the Parties and their respective employees, directors, officers, shareholders and principals from and against any Claims arising by way of any breach by the

Common Areas Manager, or Persons for whom it is in law responsible, and any Claims arising out of or to the extent caused or contributed to by the willful misconduct or negligence of the Common Areas Manager, or Persons for whom it is in law responsible, in the performance, improper performance or failure to perform the functions set out in Section 8.02 as determined by a court of competent jurisdiction in a final judgment from which there is no appeal or with respect to which the time period to appeal has expired and for the purpose of this Section 8.08, each of the Parties is entering into this Agreement in its personal capacity and as trustee for its respective employees, directors, officers, shareholders and principals.

**8.09 Budgets & Reports by Common Facilities Manager**

**(a)** Not later than sixty (60) days prior to the commencement date of the fiscal year as designated by the Common Facilities Manager from time to time (which may be a different year end than that chosen by the Common Areas Manager in respect of its areas of responsibility), the Common Facilities Manager shall provide the Other Parties with an annual budget setting out the estimated Common Facilities Costs to be incurred by the Parties in the next fiscal year (the "**Annual Budget**") within its sphere of operation.

(b) The Common Facilities Manager shall notify the Parties who are responsible for the payment of Common Facilities Costs in a cost centre provided for in Schedule "C" at such time as it determines that the aggregate amount of Common Facilities Costs for such cost centre will exceed, in a material respect, the amount provided for in the Annual Budget and, from the date of such notification, the Annual Budget shall be deemed to have been amended accordingly.

(c) Within 90 days after each fiscal year, the Common Facilities Manager shall provide each of the Parties with an audited statement of their respective shares of the Common Facilities Costs incurred during such year, and any required adjustments shall be paid within 30 days thereafter.

**8.10 Budgets & Reports by Common Areas Manager**

(a) Not later than sixty (60) days prior to the commencement date of the fiscal year as designated by the Common Areas Manager from time to time (which may be a different year end than that chosen by the Common Facilities Manager in respect of its areas of responsibility), the Common Areas Manager shall provide the Other Parties and the Common Facilities Manager with an annual budget setting out the estimated Common Areas Costs to be incurred by the Parties in the next fiscal year (the "**Annual Budget**") within its sphere of operation.

(b) The Common Areas Manager shall notify the Common Facilities Manager and the Parties who are responsible for the payment of Common Areas Costs in a cost centre provided for in Schedule "C" at such time as it determines that the aggregate amount of Common Areas Costs for such cost centre will exceed, in a material respect, the amount provided for in the Annual Budget and, from the date of such notification, the Annual Budget shall be deemed to have been amended accordingly.

(c) Within 90 days after each fiscal year, the Common Facilities Manager shall provide each of the Parties with an audited statement of their respective shares of the Common Areas Costs incurred during such year, and any required adjustments shall be paid within 30 days thereafter.

**8.11 Managed Separate Facilities**

The provisions of Sections 8.05 and 8.06 or Sections 8.07 and 8.08, shall apply *mutatis mutandis* to the applicable Manager and the owner of a Component in which are located Managed Separate Facilities. The scope of the Common Facilities Manager's functions with respect to Managed Separate Facilities and the fees to be paid to the Common Facilities Manager with respect to the Managed Separate Facilities will be as provided for in a separate agreement between the Common Facilities Manager and the owner of the Component in which the Managed Separate Facilities are located.

### 8.12 Failure by the Common Facilities Manager

In the event that the Common Facilities Manager materially defaults in the performance of its obligations pursuant to Section 8.01, other than by reason of Force Majeure or on account of the Parties failing to put it in funds, then the Parties who are to receive the Common Services ("**such other Parties**"), may, by notice in writing to the Common Facilities Manager, require that the Common Facilities Manager cure the failure. If the Common Facilities Manager does not cure the failure within fifteen (15) days of receipt of such written notice, or, if the failure is not capable with due diligence of being cured within such period, the Common Facilities Manager has not commenced in good faith the curing of such failure within such fifteen (15) day period and does not thereafter prosecute to completion with diligence and continuity the curing thereof, such other Parties may require that a third party facilities manager (the "**Replacement Common Facilities Manager**") be engaged, pursuant to a written contract to be entered into between the Parties and the Replacement Common Facilities Manager (the "**Replacement Common Facilities Manager Contract**"). Unless all such other Parties agree, the Replacement Common Facilities Manager shall be at arms' length from each of the Parties and shall have demonstrable experience as a facilities manager of first class, large, mixed use commercial/retail real estate complexes in Toronto. If the Parties are unable to agree as to whether or not the Common Facilities Manager has failed to perform its obligations pursuant to Section 8.01 or as to whether the Common Facilities Manager was justified in such failure by reason of Force Majeure or the failure of the other Parties to put it in funds, the matter shall be determined by a court of competent jurisdiction. If the final decision of the court is that the Common Facilities Manager failed, without justification (by reason of Force Majeure or the failure of the Parties to put it in funds), to perform its obligations pursuant to Section 8.01, such other Parties shall attempt, during the thirty (30) day period following such determination, to agree upon a Replacement Common Facilities Manager and terms and conditions of its engagement, failing which any of such other Parties may require that such matter be resolved by arbitration in accordance with Article 22. At any such arbitration such other Parties shall each provide the Arbitrator with the name of a proposed Replacement Common Facilities Manager meeting the qualifications set out above, as well as the contract (which shall be for a term not exceeding the balance of the then current calendar year plus one (1) year) which such proposed Replacement Common Facilities Manager is prepared to enter into and the Arbitrator shall decide between the proposed Replacement Common Facilities Managers based on what is in the best interests of the Complex.

### 8.13 Failure by the Common Areas Manager

In the event that the Common Areas Manager materially defaults in the performance of its obligations pursuant to Section 8.02, other than by reason of Force Majeure or on account of the Parties failing to put it in funds, then the Parties who are to receive the Common Services ("**such other Parties**"), may, by notice in writing to the Common Areas Manager, require that the Common Areas Manager cure the failure. If the Common Areas Manager does not cure the failure within fifteen (15) days of receipt of such written notice, or, if the failure is not capable with due diligence of being cured within such period, the Common Areas Manager has not commenced in good faith the curing of such failure within such fifteen (15) day period and does not thereafter prosecute to completion with diligence and continuity the curing thereof, such other Parties may require that a third party facilities manager (the "**Replacement Common Areas Manager**") be engaged, pursuant to a written contract to be entered into between the Parties and the Replacement Common Areas Manager (the "**Replacement Common Areas Manager Contract**"). Unless all such other Parties agree, the Replacement Common Areas Manager shall be at arms' length from each of the Parties and shall have demonstrable experience as a facilities manager of first class, large, mixed use commercial/retail real estate complexes in Toronto. If the Parties are unable to agree as to whether or not the Common Areas Manager has failed to perform its obligations pursuant to Section 8.02 or as to whether the Common Areas Manager was justified in such failure by reason of Force Majeure or the failure of the other Parties to put it in funds, the matter shall be determined by a court of competent jurisdiction. If the final decision of the court is that the Common Areas Manager failed, without justification (by reason of Force Majeure or the failure of the Parties to put it in funds), to perform its obligations pursuant to Section 8.02, such other Parties shall attempt, during the thirty (30) day period following such determination, to agree upon a Replacement Common Areas Manager and terms and conditions of its engagement, failing which any of such other Parties may require that such matter be resolved by arbitration in accordance with Article 22. At any such arbitration such other Parties shall each provide the Arbitrator with the name of a proposed Replacement Common Areas Manager meeting the qualifications set out above, as well as the contract (which shall be for a term not exceeding the balance of the then

current calendar year plus one (1) year) which such proposed Replacement Common Areas Manager is prepared to enter into and the Arbitrator shall decide between the proposed Replacement Common Areas Managers based on what is in the best interests of the Complex.

## ARTICLE 9
## PRORATION OF COSTS

### 9.01 Obligation to Pay

The Parties agree to pay monthly their respective shares of the various Common Areas Costs as provided for in Schedule "C" and in accordance with the applicable Annual Budget as same may be amended, from time to time, pursuant to Section 8.09(b) and 8.10(b). Each Party in whose Component Managed Separate Facilities are located agrees to pay 100% of the costs related to such facilities and the services provided therefrom. When the Building, Improvements, fixtures, structures, works and facilities, whether free standing or otherwise, all fixed plant, machinery and equipment and all landscaping and interior and exterior decoration is constructed on the Office Lands, a re-calibration of the Common Costs delineated in Schedule "C" will be required.

### 9.02 Separate Metering

To the extent practical, the consumption of utilities (natural gas, electricity, water and sewage) provided through the Common Facilities solely for the consumption within a Component (i.e. not for consumption in Common Areas or for providing Common Services) shall be separately metered or sub-metered with each owner of a Component solely responsible for the cost of installing such meters or sub-meters and such direct administration and accounting costs as may be incurred by the Common Facilities Manager in accommodating the requirements of such owner. Provided that if separate metering would result in the loss of bulk discounts then only sub-metering shall be permitted. Billing for metered or sub-metered utilities shall be based on metered consumption and also taking into account demand, connected load, capacity, hours of use and equipment being used, and any other relevant criteria, including HST and charges in connection therewith. Common Areas Costs shall not include any charge or allocation to the Components allocated on the basis set out in this Section.

### 9.03 Right to Require Arbitration

To the extent that the allocation of Common Areas Costs, or Common Facilities Costs, as set out in Schedule "C" does not result from separate metering or sub-metering, any Party, contributing to such Common Areas Costs or Common Facilities Costs, may request that such allocation be revised based on the allocation of such Common Areas Costs or Common Facilities Costs not being fair and reasonable (supported by that Party's proposed allocation of such Common Areas Costs or Common Facilities Costs, and a detailed justification for the requested revision), and, failing agreement among the relevant Parties, that such allocation be the subject of review by arbitration in accordance with Article 22 to determine whether it is fair and reasonable and, if not, to make a fair and reasonable allocation. Notwithstanding that such allocation is to be the subject of review by arbitration, the Party contesting such allocation shall pay its share of the Common Areas Costs or Common Facilities Costs as allocated and when due in accordance with Section 9.01 in accordance with the initial determination by the applicable Manager. Neither the commencement of nor the continuation of arbitration in accordance with Article 22 shall permit any Party to defer any payment hereunder. If the arbitration results in a different allocation, such different allocation shall be used in the allocation of such cost after the arbitration but the allocation provided for in Schedule "C" shall apply to the sharing of such cost up to the date of the arbitration award. If the allocation of any component of the Common Areas Costs or Common Facilities Costs has been the subject of arbitration such item may not again be the subject of arbitration except in the circumstances contemplated by Section 9.04.

### 9.04 Changes to Allocation and Fees

(a) To the extent necessary to achieve a fair and reasonable allocation of Common Areas Costs or Common Facilities Costs, and a fair and reasonable fee to the applicable Manager, for performing the functions set out in Section 8.01 and / or 8.02 (the "**Basic Fee**"), the allocation of Common Areas Costs or Common Facilities Costs will be revised by the applicable Manager as applicable, and the

Basic Fee may be revised by the applicable Manager upon the occurrence of a change to the Complex or a part thereof or upon the applicable Manager being provided with additional information by any of the Parties or upon the applicable Manager otherwise becoming aware of additional information such that the then current allocation of Common Areas Costs or Common Facilities Costs or the then Basic Fee will no longer be fair and reasonable. If at any time during the Term, any of the Parties is of the view that the then current allocation of Common Areas Costs or Common Facilities Costs or the Basic Fee is no longer fair and reasonable, whether because of a change to the Complex or a part thereof or because it has become aware of additional information, such other Party shall advise the applicable Manager(s) and provide any additional relevant information available to such additional Party, and in addition provide such Party's proposal. A change to the Complex or a part thereof shall include, but shall not be limited to, a change in the ownership of part of a Component, a change in the use of a portion of one of the Components, a physical expansion to one of the Components, the demolition of all or a part of one of the Components, a conversion of a Component or a part thereof to a condominium, the installation of meters or sub-meters for consumption of utilities provided through the Common Facilities which were not previously metered or a change in the consumption of utilities or usage of security services.

(b) In the event that the applicable Manager revises or fails to revise the allocation of Common Areas Costs or Common Facilities Costs or revises or fails to revise the Basic Fee upon the occurrence of a change to the Complex or a part thereof or upon the applicable Manager being provided with additional information by any of the Parties or otherwise becoming aware of additional information and after having been requested in writing by one or more of the Parties to do so, then any of the other Parties may require that the then existing allocation of such Common Areas Costs or Common Facilities Costs or the amount of the Basic Fee be the subject of review by arbitration in accordance with Article 22 to determine whether it is fair and reasonable and, if not, to make a fair and reasonable allocation. For certainty, the parties acknowledge that when the Building, Improvements, fixtures, structures, works and facilities, whether free standing or otherwise, all fixed plant, machinery and equipment and all landscaping and interior and exterior decoration is constructed on the Office Lands, a re-calibration of the Common Costs delineated in Schedule "C" will be required.

(c) If an arbitration pursuant to Section 9.04(b) results in a different allocation of Common Areas Costs or Common Facilities Costs or a different Basic Fee such different allocation shall be used in the allocation of Common Areas Costs or Common Facilities Costs or such Basic Fee shall be charged during the fiscal year in which the arbitration award is issued and thereafter, but the allocation and Basic Fee provided for prior to the commencement of the arbitration shall apply to the sharing of such cost in respect of prior fiscal years. If the re-allocation of any component of the Common Areas Costs or Common Facilities Costs or a revision to the Basic Fee has been determined by arbitration such item may not again be the subject of arbitration except upon a further re-allocation or revision pursuant to Section 9.04(a).

**9.05 Capital Costs**

All capital costs with respect to the Common Facilities shall be borne by the Parties in the same ratio as provided for in Schedule "C" and if not mentioned therein, then on a fair and equitable basis and consistent with the manner in which similar items are dealt with therein, except that the replacement, upgrading or alteration of, or addition to, a Common Facility made at the request of and primarily for the benefit of only one of the Parties shall be borne by such Party.

**9.06 Invoices and Payment**

(a) The Managers shall invoice monthly the Parties for their respective shares of the Common Areas Costs and/or Common Facilities Costs (including HST as applicable), in accordance with the applicable Annual Budget and shall invoice monthly each Party having Managed Separate Facilities for the charges which relate to its Managed Separate Facilities and the fees payable to the Common Facilities

Manager contemplated in Section 8.11. Alternatively, at the discretion of the applicable Manager, the applicable Manager may require the Parties to pay to the applicable Manager on the first day of each month in advance 1/12th of their respective shares of the Common Areas Costs and/or Common Facilities Costs as detailed in the Annual Budget and in accordance with Schedule "C", in which case such costs would be adjusted at the end of the fiscal year in accordance with Sections 8.09(c) and 8.10(c).

(b) Each Party shall pay its share of the Common Areas Costs and/or Common Facilities Costs relating to natural gas, electricity, water and sewage, insurance and audit fees (and all costs relating to its Managed Separate Facilities and services provided therefrom) immediately upon receipt of a notice from the applicable Manager with supporting invoices and allocations as applicable, unless the applicable Manager includes same in the Annual Budget and invoices same monthly pursuant to Section 9.06(a). If the failure to pay an amount when due results in the account, in whole or in part, incurring or becoming subject to, any legal or other expenses or any interest or penalty charges, the defaulting Party or Parties shall be solely liable for the total amount thereof.

(c) Should the applicable Manager, at its sole option and notwithstanding paragraphs (a), (b) and (e) of this Section 9.06, elect to pay any account for which it has not been put in funds, the defaulting Party or Parties shall reimburse the applicable Manager for its share on demand together with interest payable pursuant to Section 20.01 hereof. If any Party (the "**Non-Paying Party**") fails to pay its share of the Common Areas Costs or Common Facilities Costs as provided above and the applicable Manager does not elect to pay the account(s) in question, the applicable Manager shall forthwith notify the other Parties who have paid their respective shares of such account(s) and such other Parties may elect, at their sole option and without any obligation so to do, to pay the shortfall to the applicable Manager, whereupon the applicable Manager shall pay the account in question; the Non-Paying Party shall reimburse such Other Parties for the shortfall on demand together with interest pursuant to Section 20.01 hereof.

(d) The audited statement provided for in Section 8.09(c) shall be final and binding upon each Party unless a Party, within thirty (30) days after the Party's receipt thereof, shall contest any item therein by giving Notice to the applicable Manager, specifying each item contested and the reason therefore. If, during such thirty (30) day period, a Party (the "**Contesting Party**") reasonably and in good faith questions or contests the accuracy of its share of the Common Areas Costs or Common Facilities Costs which it is required to pay and/or the costs of its Managed Separate Facilities, the applicable Manager will provide the Contesting Party, at the Contesting Party's sole cost and expense and on a strictly confidential basis, with access, at the office of the applicable Manager, the applicable Manager's books and records, including all bills, invoices and receipts relating to the Common Areas Costs or Common Facilities Costs and/or relating to the costs of its Managed Separate Facilities, if applicable, and such information as the applicable Manager reasonably determines to be responsive to the Contesting Party's questions (the "**Cost Information**"). If after the Contesting Party's review of such Cost Information but in no event later than ninety (90) days after the Contesting Party's receipt of the audited statement, the applicable Manager and the Contesting Party cannot agree upon the amount of the Contesting Party's share of the Common Areas Costs or Common Facilities Costs or the amount of the costs of its Managed Separate Facilities, then the Contesting Party shall have the right within one hundred and twenty (120) days after the Contesting Party's receipt of the audited statement, to submit such dispute to arbitration in accordance with Article 22. If the decision of the Arbitrator is that the payments actually made by the Contesting Party with respect to its share of Common Areas Costs or Common Facilities Costs or the costs of its Managed Separate Facility for the fiscal year in question exceeded the Contesting Party's share of Common Areas Costs or Common Facilities Costs or the Contesting Party's actual costs of its Separately Managed Facility for such fiscal year, the applicable Manager shall invoice each of the Parties other than the Contesting Party for its share of such Common Areas Costs or Common Facilities Costs or actual costs as applicable, and at the applicable Manager's option, either:

(i) credit the overcharge, together with interest on such overcharge calculated at the Prime Rate, calculated and payable monthly from the date that the Contesting Party first paid such overcharge to the next succeeding instalments of estimated costs to be paid by the Contesting Party, if applicable or (ii) refund the overcharge to the Contesting Party within thirty (30) days after delivery of such arbitration award, together with interest on such overcharge calculated at the Prime Rate, calculated and payable monthly from the date the Contesting Party first paid such overcharge, except that if the Contesting Party is delinquent in its obligation to pay any cost owing to the applicable Manager, the applicable Manager shall pay the overcharge, together with interest to the Contesting Party after deducting all other amounts due to the applicable Manager. All appropriate revisions shall be made to the audited statement thereby arising.

(e) It is agreed that the Managers shall not be required to pay any Common Areas Costs or Common Facilities Costs until the Parties have put it or them in funds to the extent of the aggregate of the respective shares of the Parties of such Common Areas Costs or Common Facilities Costs. It is further agreed that the applicable Manager will not be required to pay any costs relating to Managed Separate Facilities until the other Party in whose Component the Managed Separate Facilities are located has put the Common Facilities Manager in funds.

### 9.07 Material Capital Costs Requiring Consultation

Notwithstanding any other provision of this Article 9, in the event that a repair or replacement of a capital nature is required with respect to a Common Facility and such repair or replacement is estimated by the applicable Manager to cost more than $250,000 multiplied by the Adjustment Index, then, except in the case of an Emergency Situation, the applicable Manager will report to and consult with the Parties, which are required to contribute to the cost of the repair or replacement, prior to effecting such repair or replacement.

## ARTICLE 10
## TAXES

### 10.01 Separate Assessments

The Parties will do all commercially reasonable acts and things necessary and desirable so that each of the Lands will be assessed separately on the assessment rolls of the taxing authority and taxed separately based upon such assessments.

### 10.02 Separate Assessments and Separate Taxation

Subject to Section 10.03, if at any time any of the Lands is assessed separately and taxed separately, then the Party having a leasehold or freehold interest in such Lands shall pay the Taxes relating to its Lands.

### 10.03 Combined Assessment, Combined Taxation or Incorrect Assessment

(a) If at any time any two or more of the Lands shall not be assessed with separate assessments or shall be assessed separately but not taxed separately, or shall be assessed separately but incorrectly, in that any or all of the Lands of one Party shall be included in the assessment of the Lands of another Party, then the Parties responsible for the Lands not separately assessed or taxed or assessed separately but incorrectly, shall use their best efforts to agree on a division of the tax liability imposed, and shall pay the Taxes in accordance with the shares agreed upon. Such Taxes shall be allocated by applying the following principles: (a) if the Lands are separately assessed, utilizing the separate assessment, (b) if the Lands are not separately assessed, obtaining sufficient official information from the assessing authority (with the assistance of the Parties, as required) to determine the methodology utilized by the assessing authority with respect to the applicable assessment of the Lands, and utilizing such methodology to properly allocate such Taxes, (c) if the Lands are not separately assessed and if such official information is not available, allocating such Taxes in a manner which is equitable and

consistent, having regard to the primary method of assessment which the assessing authorities are required to employ under applicable legislation and regulations governing the Lands at such time, and (d) in all circumstances, allocating Taxes which are imposed on a basis other than the valuation or assessment of land and improvements, or some basis other than a valuation of real estate or interests therein, in a manner consistent with the method of imposition applied by the assessing or taxing authority or, where such method of imposition is not readily apparent, on an equitable basis having regard to applicable legislation and regulations governing the Lands at such time. If such Parties are unable to reach an agreement within 30 days from the receipt of the notice of combined assessment, combined taxation or incorrect assessment, then any of them may seek a decision by arbitration in accordance with Article 22 and such Parties shall pay their respective shares of the Taxes and any penalties levied thereon and shall make any required adjusting payment in accordance with the arbitration award. If this Section 10.03(a) is applicable, each Party shall pay its share of the Taxes governed by this Section 10.03(a) to the applicable Manager not less than five (5) Business Days prior to the instalment due date, and upon receipt of such payments the applicable Manager shall remit same to the taxing authority. If Taxes governed by this Section 10.03(a) are due at a time when the Parties have not yet agreed to the allocation, or prior to the arbitration being completed, the Parties shall pay such Taxes based upon the applicable Manager's invoice, but such payment shall be without prejudice to the ultimate adjustment required among the Parties after the Parties reach agreement or the arbitration is completed.

(b) If Section 10.03(a) is applicable, the applicable Manager shall perform the following administrative services in respect of such Taxes:

(i) receive and review the notice of assessment from the assessing authorities and tax bills from the taxing authorities;

(ii) allocate such Taxes to the Parties in accordance with the principles set out in Section 10.03(a), invoice the Parties for their respective shares of such Taxes, collect from such Parties their respective shares, and pay such Taxes to the taxing authorities on their respective due dates;

(iii) receive information requests from the assessing authorities, collect relevant data from the Parties, and respond to the assessing authorities; and

(iv) coordinate any assessment appeals initiated by or on behalf of the Parties, including coordinate with consultants retained by the Parties, initiate appeals, receive notices of hearing, and provide periodic updates to the Parties regarding the status of appeals.

(c) If a Manager is required to perform the duties in Section 10.03(b), the Parties shall reimburse the appropriate Manager for a portion of the salaries and benefits of its head office personnel performing such duties, allocated on a reasonable basis and in a manner consistent with the prevailing practice of the Manager for the allocation of such salaries and benefits to its various real estate properties under management, and such amount so allocated shall constitute Common Areas Costs under this Agreement. If a Manager assists in contesting Taxes and agrees to perform functions which would otherwise be performed by outside consultants, such services shall constitute special services and the applicable Manager shall be entitled to a fee and reimbursement of expenses in an amount agreed upon between the affected Parties and the applicable Manager.

**10.04 Failure to Pay Taxes**

If any Party shall fail to pay any Taxes which are due with respect to such Party's Lands, or any share thereof as provided in this Article 10, and if such unpaid Taxes are a lien or encumbrance upon any other of the Lands or affect another Party's right to the use of Easements granted over the Lands that are the subject of the lien or encumbrance or if any lawful authority would thereafter have the right to sell or otherwise foreclose other Lands or the Lands to which the Taxes relate and such sale or foreclosure would detrimentally affect another Party's right to the use of Easements over any such Lands by reason of such non-payment, then such other Party

may, after 10 days' written notice to the defaulting Party, pay such Taxes, or share thereof, together with any interest and penalties thereon, and the defaulting Party shall reimburse, upon demand, such other Party making such payment for the amount of such payment and for all costs and expenses incurred, together with interest thereon at the rate and calculated and payable as provided in Section 20.01(b).

## ARTICLE 11
## CONDOMINIUM PROVISIONS

### 11.01 Condominium Provisions

Each Party to this Agreement which is or becomes a condominium corporation (a "**Condominium Corporation**") created pursuant to the Condominium Act hereby agrees with the other Parties as follows:

(i) the Condominium Corporation shall maintain, at all times during the Term, an adequate reserve fund in accordance with the Condominium Act, and provide annual reporting with respect thereto to the other Parties;

(ii) the Condominium Corporation shall have the benefit of the rights and Easements provided herein for the benefit of the Residential Component and will be bound by the obligations of the applicable Party herein contained;

(iii) the declaration and disclosure statement for the Condominium Corporation shall incorporate the provisions of this Section 11.01 and the restrictions contained in Sections 11.02 and 11.03, in a form satisfactory to the other Parties;

(iv) the Condominium Corporation shall provide to the other Parties, upon receipt thereof, a copy of any audit report required to be obtained by it under the Condominium Act; and

(v) any right or easement granted hereunder for the benefit of the Condominium Corporation or the Unitowners may only be enforced by the Condominium Corporation on behalf of the Unitowners and may not be enforced or brought into question by any individual Unitowner.

### 11.02 Residential Parking Spaces

The Residential Owner, with the intent and for the purpose of benefiting each and every part of the Retail Lands and the Office Lands, and burdening each and every part of the Residential Lands, hereby covenants on behalf of itself and each of the Unitowners that:

(i) any parking space within the Residential Component shall be used exclusively for the benefit of the Residential Component;

(ii) no parking space within the Residential Component shall be sold to any Person other than an owner of, or a purchaser who is the purchaser under a fully executed agreement to purchase, a residential condominium unit within the Residential Component;

(iii) each parking space within the Residential Component shall be occupied solely by a Unitowner, a person who is a tenant under a lease of a residential unit within the condominium or an Occasional Occupant; and

(iv) in no event shall parking spaces within the Residential Component be used for parking by members of the public visiting the Complex or other premises in the vicinity of the Lands.

### 11.03 No Objection

The Residential Owner, with the intent and for the purpose of benefiting each and every part of the Retail Lands and the Office Lands, and burdening each and every part of the Residential Lands, hereby covenants on behalf of itself and each of the Unitowners that it shall not object to

nor oppose any official plan amendment, rezoning application, severance application, minor variance application, site plan application and/or any other application ancillary thereto relating to the Retail Component, or the Office Component, or any neighbouring or adjacent lands. The Residential Owner further acknowledges and agrees on behalf of itself and each of the Unitowners that this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Residential Owner or any Unitowner.

## ARTICLE 12
## PLANNING ISSUES

### 12.01 Block Zoning

(a) The Parties acknowledge that the Zoning By-Law imposes specific zoning restrictions which are applicable to the entire Complex. The Parties further acknowledge that the Zoning By-Law establishes certain density permissions for the entire Complex, and that the Parties have agreed that these density permissions have been allocated among the various Components as follows:

| COMPONENT | MAXIMUM NRGFA OR RGFA |
|---|---|
| Retail Component Parcel One described in Schedule A<br>Retail Component Parcel Two described in Schedule A | 275 square metres of NRGFA<br>*272 square metres<br>755 square metres of NRGFA<br>*753 square metres |
| Office Component | The balance of the NRGFA which is currently 74,513 square metres |
| Residential Component Parcel One – ICE 1 described in Schedule A | 38,957 square metres of RGFA<br>*41,149 square metres |
| Residential Component Parcel Two – ICE 2 described in Schedule A | 47,144 square metres of RGFA<br>*47,768 |

*Varied and Amended by decision of Toronto Committee of Adjustment under File Number A0542/10TEY to 47,768 square metres of RGFA

Subject to the provisions of this Section 12.01, each Party agrees to comply with the foregoing density allocations and agrees not to construct any buildings or other improvements in its Component or use its Component for any purpose so as to appropriate density allocated to another Component or part thereof.

(b) Except as specifically provided in Section 12.01(c) hereof, nothing precludes any Party from applying for amendments from time to time to the Zoning By-Law, or for other relief or permission under the *Planning Act* (Ontario). Each party shall notify the other Parties (which notice shall contain reasonable particulars) of any official plan amendment, re-zoning, site plan control or variance applications under the *Planning Act* (Ontario) initiated by such Party or by the City (unless the City has notified such other Parties).

(c) No Party shall apply for amendments from time to time to the Zoning By-Law, or for other relief or permission under the *Planning Act* (Ontario), which could have a material negative impact upon the value of another Component or the rights of the freehold or leasehold owner of such Component without first obtaining the prior written approval thereto from the affected owner, such approval not to be unreasonably withheld or unduly delayed. Each Party agrees not to apply for, seek or support, directly or indirectly, changes to the Zoning By-Law which would have the effect of changing any Zoning By-Law provisions applicable to any other Party's Component without the approval of the other Party whose Component

would be affected. Provided, however, the Residential Owner and the Unitowners shall have no right of approval or objection under this Section 12.01.

(d) Each Party agrees to confirm to the City that they do not object to the processing of applications under the *Planning Act* (Ontario) by any of them, provided that such applications are not prohibited by this Agreement. If required by the City, each party shall execute applications or consents to the filing and processing of applications for *Planning Act* (Ontario) relief which are not prohibited by this Agreement and shall execute such other related documents, including City Agreements or amendments thereto, as may be required by the City, provided that, concurrently with any request for such execution by a Party hereto, the requesting Party shall provide the executing Party with (i) a true and complete copy of the application being made or the document to be executed, as the case may be; and (ii) a certificate from the requesting Party certifying that such application complies with the provisions of this Article 12, and the requesting Party shall give the executing party not less than five (5) Business Days' notice of the application which it proposes that the executing Party executes.

(e) In the event of a change to the Zoning By-Law being proposed by the City, or any other Person, or any other application being initiated under the *Planning Act* (Ontario), each Party shall be entitled to take such steps as are reasonably necessary and consistent with the spirit and intent of this Agreement to protect and preserve its interests in relation to its Component.

(f) If the Zoning By-Law is amended or other relief or permission under the *Planning Act* (Ontario) is granted in conformity with this Agreement so as to change the limits on density which apply to any of the Components or the entire Complex, then the parties shall adjust the density allocation for each Component under this Section 12.01 in accordance with the spirit and intent of this Agreement and the Zoning By-Law amendment or other relief or permission, and failing agreement on such adjustment, such matter shall be determined by arbitration.

**12.02 City Agreements and Zoning By-Law**

Each of the Parties acknowledges and agrees to:

(i) assume and fulfill the obligations imposed on it under the Zoning By-Law and City Agreements as those obligations relate to its Component;

(ii) refrain from any action which would jeopardize the status of any part of the Complex under the Zoning By-Law or City Agreements; and

(iii) indemnify and save each of the other Parties harmless from and against Claims that it might suffer or incur by reason of a failure to comply with the foregoing provisions of this paragraph.

Except as expressly set out in Article 3 and Article 8 of this Agreement, each Party shall bear all costs and expenses of whatsoever nature and kind in any way related to, associated with or arising from the City Agreements insofar as its Component is concerned.

**12.03 Conveyances to Governmental Authorities**

Any Party shall be entitled to grant any easements to any municipality, utility, regulatory or other Governmental Authority without the consent of the other Parties, provided the grant of such easement does not detrimentally affect the enjoyment of any of the Easements by any of the other Parties, and provided that prompt Notice of such easement is given to the other Parties.

## ARTICLE 13
## RESTRICTIVE COVENANTS

### 13.01 Density Restriction

Each of the Parties, with the intent and for the purpose of benefiting each and every part of the Lands not owned by such Party, and burdening each and every part of its Lands, hereby covenants that no building or other structure shall be constructed on or within its Lands so as to result in such Party failing to comply with the allocation of density permissions under the Zoning By-Law more particularly set out in Section 12.01 of this Agreement.

## ARTICLE 14
## OPERATING COVENANTS

### 14.01 Integration

Notwithstanding any other provision of this Agreement, the Parties agree that the Complex will be operated as an integrated first class mixed-use Complex and such Parties agree to decorate and re-decorate from time to time and operate the Common Areas in their respective Components to the Required Standard and to promote such integration.

### 14.02 Nuisance

No Party shall perform or suffer or permit the performance by its tenants, subtenants, occupants and their respective employees and invitees of any acts or omissions or practices (including the carriage of dangerous or offensive goods) which may injure or damage the Component of another Party or any part thereof or which may be a nuisance or menace to the other Party or to their respective tenants, subtenants, occupants and their employees and invitees.

## ARTICLE 15
## INDEMNITY

### 15.01 Mutual Indemnification

Subject to the provisions of Sections 8.05, 8.06, 8.07, 8.08, 12.02, and 16.03(g), each Party (the "**Indemnifier**") agrees to indemnify and save harmless the other Parties and their respective employees, directors, officers, shareholders, principals, partners and agents (collectively, the "**Indemnitees**") from and against any Claims brought or commenced by a third party due to, arising from or to the extent caused or contributed to by:

(i) any breach by the Indemnifier of any of the provisions of this Agreement; and

(ii) any damage or destruction to any part of the Component or other property of an Indemnitee or any injury to or death of an Indemnitee for which the Indemnifier is responsible in law,

and for the purposes of this Section 15.01 each Party is entering into this Agreement in its personal capacity and as trustee and agent for its respective Unitowners, employees, directors, officers, shareholders, principals, partners and agents.

## ARTICLE 16
## INSURANCE

### 16.01 All Risk Insurance and Machinery and Miscellaneous Electrical Apparatus and Pressure Vessels Insurance

Each of the Parties shall at all times maintain the following forms of insurance with respect to its Component:

(a) insurance insuring its Component in an amount equal to its Replacement Cost and gross rental value (if applicable) against damage from fire and all other perils from time to time customarily included in a property damage insurance policy on an "all risk" coverage basis (as that term is commonly understood in the insurance industry), including, coverage against damage by fire, flood, water escape, explosion, collapse, earthquake, hail, windstorm, lightning, impact by vehicles or aircraft, riots or civil commotion, vandalism or malicious acts, smoke and leakage from fire protection equipment, and for such other additional risks, casualties and hazards as would be carried by a prudent owner of a similar development; and

(b) comprehensive machinery and miscellaneous electrical apparatus and pressure vessels (commonly referred to as boiler and machinery) insurance coverage, including gross rentals, against loss or damage by inter alia, explosion, collapse by vacuum, cracking, burning or bulging of any steam or hot water boilers, pipes or accessories in an amount as would be carried by a prudent owner of a similar development.

**16.02 Liability Insurance**

Each of the Parties shall at all times maintain commercial general liability insurance against claims for personal injury, death or property damage or loss in form and in an amount (being not less than Twenty Million Dollars ($20,000,000) multiplied by the Adjustment Index) as would be carried by a prudent owner of a similar development and naming the Managers as additional insured.

**16.03 General**

(a) All property and boiler and machinery insurance policies required to be taken out pursuant to Section 16.01 shall include the following provisions:

(i) a waiver of subrogation (if obtainable at a commercially reasonable cost) in favour of each of the Parties and their respective directors, officers, employees, shareholders, principals, partners and any other Person for whom a Party has undertaken by agreement prior to loss to obtain such a waiver, and the Managers;

(ii) a "**stated amount co-insurance clause**" to the effect that the insurer agrees that the amount of insurance shown on the insurance policy is sufficient and not subject to further verification; and

(iii) a "**breach of conditions**" clause to the effect that a breach of any policy conditions of the insurance policy by any insured shall not disentitle nor prejudice the rights of any other insured from making full recovery for loss.

(b) All insurance policies required to be taken out by Sections 16.01 and 16.02 shall include provisions prohibiting the cancellation of the policy without first giving at least thirty (30) days' written notice to all parties whose interests appear thereon, and, if applicable, to the Insurance Trustee.

(c) The policies of insurance to be obtained shall name as insured parties:

(i) in the case of the policies referred to in Section 16.01, the Parties, and shall contain mortgage clauses required by registered chargees from time to time of any of the Lands (except chargees of Unitowners), all as their interests may appear; and

(ii) in the case of the policies referred to in Section 16.02, the Parties, the Managers, and all of their respective directors, officers, employees and agents, and any Persons for whom any of them is responsible in law.

(d) All property insurance and boiler and machinery policies maintained pursuant to this Agreement shall provide that all proceeds shall be payable:

(i) If applicable, to the Insurance Trustee to be dealt with in accordance with the provisions of the Insurance Trust Agreement, if there is an Insurance Trust Agreement in existence; and

(ii) to all Parties and all mortgagees of any of the Lands, jointly, unless all such parties otherwise agree, if there is no Insurance Trust Agreement in existence.

(e) If some or all of the Parties from time to time agree, the insurance policies contemplated by Sections 16.01 and 16.02 may be taken out by them jointly and arranged by the applicable Manager.

(f) If any Party takes out one or more separate insurance policies for the risks contemplated by Section 16.01 or Section 16.02, it shall ensure that its policies contain a "joint loss agreement" and it shall provide to each of the other Parties evidence of insurance coverage which conforms to the requirements of this Agreement, at the time that it places such insurance, and evidence of the renewal of each such policy not less than fifteen (15) days prior to its expiry

(g) With respect to all property and boiler and machinery insurance required under Section 16.01 the Parties hereby release each other and their respective directors, officers, employees, shareholders, principals and partners, for all loss, damage or expense caused by any of the perils required to be insured against to the extent of any insurance proceeds received or which would have been received had the insured diligently prosecuted a claim under the insurance policy.

(h) This Agreement shall be deemed to have been entered into in trust for any Person who is not a party to it and who is stated to benefit from any waiver or release herein contained.

**16.04 Insurance Premiums**

The insurance premiums for policies taken out by the Parties jointly pursuant to Section 16.03(e) shall be allocated among such Parties by the applicable Manager, taking into account, among other relevant considerations, the Replacement Cost, of the applicable Component, the income generated by the applicable Component, the square footage of the applicable Component, the asset class, location and risk profile of the applicable Component and the claims experience of the applicable Component. Any dispute in respect of such allocation shall be resolved by an experienced insurance adviser as Arbitrator under Article 22.

**16.05 Insurance Trust Agreement**

The Parties may enter into, maintain and be bound by an Insurance Trust Agreement during the Term with respect to the insurance policies referred to in Section 16.01 whether such insurance is provided in joint policies or separate policies.

**16.06 Successor Insurance Trustee**

If applicable, and if at any time there shall cease to be an Insurance Trustee or a notice has been delivered either to or by an Insurance Trustee providing for termination of such Insurance Trustee as Insurance Trustee, then the Parties shall forthwith agree upon a new Insurance Trustee and enter into a new Insurance Trust Agreement with such new Insurance Trustee, unless the Parties unanimously agree otherwise.

**16.07 Additional Insurance**

Nothing in this Agreement shall be construed to prohibit any of the Parties from obtaining any excess liability insurance or other forms of insurance, including automobile, terrorism or crime insurance, and provided further that the premiums therefore shall be the sole responsibility of such Party (unless such additional insurance is obtained by the applicable Manager under Section 16.03(e), in which event all premiums shall form part of the Common Areas Costs).

## ARTICLE 17
## DAMAGE TO THE COMPLEX

### 17.01 Common Facilities, Support Facilities and Common Areas

(a) Subject to paragraph (b) below, in the event there is damage or destruction to one or more of the Components, or any portion thereof (the "**Damaged Structure**") by any cause whatsoever, and regardless of whether such damage or destruction shall have partially, substantially or completely destroyed any or all of the Components, the Party having a leasehold or freehold interest in the Component within which the Damaged Structure is located (the "**Affected Party**") shall proceed in accordance with Section 17.04 to take any steps necessary (i) to repair, restore, reconstruct or replace the Common Facilities, the area in which Divergent Separate Facilities are located, the Support Facilities, the Common Areas which are located in its Component so that the use and enjoyment thereof by the Parties entitled to the benefit thereof will not be adversely affected in any material way and (ii) to carry out the repairs, restoration, reconstruction and replacements required pursuant to Section 17.02 (collectively, "**Required Reconstruction**").

(b) If one or more of the Components which are entitled to the benefit of any Required Reconstruction to the Damaged Structure referred to in paragraph (a) of this Section 17.01 have also been damaged and the Parties having a leasehold or freehold interest in any or all such Components (the "**Electing Parties**") elect not to repair, restore, reconstruct or replace their Components, then the Affected Party shall not be obligated to carry out Required Reconstruction which it would otherwise be obligated to carry out to the extent it is for the benefit of a Component with respect to which there has been an election not to repair, restore, reconstruct or replace. If an Electing Party does not commence to repair, restore, reconstruct or replace its Damaged Structure within one year of the occurrence of the damage or destruction and does not thereafter advise the Affected Party of its intention to do so, within 30 days of receipt of a written enquiry to that effect from the Affected Party, it shall be deemed to have elected not to rebuild.

### 17.02 Other Provisions

(a) If an Affected Party decides not to proceed within a reasonable time to repair, restore, reconstruct or replace its Component other than as required by Section 17.01(a)(i), then such Party shall nevertheless make such repairs, restoration, reconstruction and replacements to its Component as are reasonably required to avoid any damage or unreasonable discomfort to the other Components which have not been damaged or which are being repaired, restored, reconstructed or replaced and to avoid unduly or unreasonably diminishing the access to, use of, or the appearance, aesthetics or vista of such other Components ("**Required Repairs**").

(b) An Affected Party carrying out Required Reconstruction, on one month's notice to the other Parties, will be entitled to carry out additional repairs, restoration, reconstruction, or replacement ("**Additional Repairs**") at its sole cost and, except to the extent otherwise provided herein, shall comply with the provisions of Article 18 as if such Additional Repairs, constituted a Major Change.

(c) If under this Agreement an Affected Party is required to make Required Reconstruction or Required Repairs and does not in fact carry out the Required Reconstruction or Required Repairs to its Component, then any of the remaining Parties (the "**Repairing Party**") may at its own expense effect such Required Reconstruction or Required Repairs to the Component of the Affected Party and shall be entitled to require reimbursement by the Affected Party with interest at the rate provided for in Section 20.01(b).

### 17.03 No Insurance Proceeds Available

To the extent that insurance proceeds are not available therefor, the cost of Required Reconstruction or Required Repairs of or to any Common Facilities shall be borne by the Parties in an equitable manner having regard to all of the circumstances then appertaining, except to the extent the damage was caused or contributed to by one or more Parties which are in law responsible

for it (the "**Offending Party or Parties**"), in which case the Offending Party or Parties shall bear such costs to the full exoneration of the other Party or Parties to the extent the Offending Party or Parties is/are responsible.

### 17.04 Commencement and Completion

All Required Reconstruction or Required Repairs pursuant to this Article 17 shall be commenced as expeditiously as possible under the circumstances and shall be carried out continuously and expeditiously in order to be completed as soon as reasonably possible, and in a good and workmanlike manner as would be carried out by a prudent owner of a Component of the size, nature, age and location of the Complex.

### 17.05 New Easements

The Affected Party shall grant, to the extent necessary and practicable, such temporary easements and, after completion of the Required Reconstruction, shall grant such new easements (with the same priority as the Easements which they replace), to any Party whose Lands benefit from the Easements with respect to the Common Facilities, Divergent Separate Facilities, Support Facilities, or Common Areas, as will enable the latter Party to enjoy all of the benefits intended to be granted by the Easements. Such temporary or new easements will be subject to the provisions of this Agreement and will have the same force and effect as the Easements provided for in Article 3 hereof. Upon the granting of a new easement, the Easement which the new easement replaces will terminate and the Parties shall sign such documents and assurances as are necessary to remove the replaced Easements from title if registered and to register the new Easements if required.

### 17.06 Original Building Plans

All Required Reconstruction of or to the Common Facilities or Support Facilities shall be effected and performed substantially in accordance with the original "**as built**" plans, specifications, drawings and designs used in the original construction of the Complex. In the event that such original plans cannot be located or cannot functionally or legally be utilized, then variations from or changes to the Common Facilities or Support Facilities as same existed immediately prior to the damage or destruction, desired or required by any Affected Party shall be submitted to the other Parties and the provisions of Section 18.03 shall apply.

### 17.07 Expeditious Decisions and Actions

It is contemplated that damage and destruction of a significant nature will result in complicated decisions and procedures. It is, however, the desire and intention of the Parties that any decisions to be made pursuant to this Article 17 as a result of damage and destruction be made as expeditiously as is reasonably possible in the circumstances and that any work resulting from such decisions be carried out and completed as expeditiously as is reasonably possible. Any Party, which is of the opinion that another Party is not proceeding in as expeditious a manner as is reasonably possible in the circumstances, may refer the matter to arbitration. The Arbitrator shall be authorized to determine whether all Parties are acting as expeditiously as is reasonably possible in the circumstances and (subject to any legal prohibition preventing it from so doing) to make any decision which any of the Parties is entitled to make pursuant to this Article 17 if the Arbitrator is of the opinion that it is appropriate to make such a decision.

### 17.08 "As Built" Plans

Within 90 days following completion of the Required Construction, the Affected Party shall provide a copy of the "as built" plans, specifications, drawings and designs to the other Parties to this Agreement.

## ARTICLE 18
## CHANGES

### 18.01 Changes Which are Not Major Changes

Any alteration, addition or improvement made by a Party within its own Component which is not a Major Change may be made by such Party without reference to any other Party except that prior written notice shall be given to the Managers.

### 18.02 Right to Make Major Changes

Any Party may, at any time, at such Party's sole cost and expense, make a Major Change to its Component and in connection therewith may relocate any Common Facility, Divergent Separate Facility, Support Facility or Easement within its Component that has been granted to any other Party pursuant to this Agreement or otherwise, provided that such Party complies with this Article 18 and provided further that such Major Change shall not diminish in any material way the integrity of the Complex, the benefits afforded to any other Party pursuant to an Easement or unreasonably interrupt the use of such Common Facility, Divergent Separate Facility, Support Facility or Easement by such other Party or detrimentally interfere with any Common Facilities, Divergent Separate Facilities or Support Facilities or put a strain on the Common Services, Common Facilities or the Support Facilities. Any such relocation shall be carried out in a manner so as to reduce to as minimum a degree as reasonable any disruption of service or other inconvenience to the Parties entitled to use such Common Facility, Divergent Separate Facility, Support Facility or Easement. To the extent that as a result of the foregoing a new Easement is required, such new Easement shall be granted free of any prior encumbrance.

### 18.03 Plans and Specifications

If at any time a Party proposes to make a Major Change, then, before commencing such Major Change, such Party (the "**Changing Party**") shall give to the other Parties a copy of such plans and specifications, as the other Parties reasonably require, showing in reasonable detail the proposed Major Change. If no other Party, within 30 days of receipt by it of such plans and specifications, delivers to the Changing Party a written notice specifying the aspect in which the proposed Major Change will violate any provision of this Agreement, then such other Party shall conclusively be deemed to have agreed that such Major Change does not constitute such a violation, so long as such Major Change actually made is, in all material respects, as shown on the plans and specifications furnished by the Changing Party. If another Party (other than the Residential Owner) gives a written notice as aforesaid, the Changing Party shall not commence any Major Change until all of the Parties (other than the Residential Owner which has no right of approval or objection) have agreed to a resolution of the question or issue raised in such notice, or until the disagreement has been resolved by arbitration.

### 18.04 Undertaking Major Changes

Any Party making a Major Change shall do so in compliance with Section 25.01. Any Party shall, to the extent reasonably practicable, make Major Changes in such a manner as to reasonably minimize noise, vibration and other interference with the use or enjoyment of the other Components by the other Parties and their respective tenants and subtenants.

### 18.05 Insurance

Before commencing any Major Change, a Party (the "**Constructing Party**") shall obtain at its own expense those kinds of insurance as are specified in the most recent edition of the Canadian Construction Documents Committee standard construction contract form CCDC-2, as the same may be amended, supplemented or replaced, from time to time, with liability limits increased to $10,000,000 (multiplied by the Adjustment Index) per occurrence and with the other Parties and their respective mortgagees and lessors included as named insureds in all general liability policies.

## ARTICLE 19
## EXPROPRIATION

### 19.01 Agreement to Co-operate

The Parties agree to co-operate with each other in respect of any expropriation of all or any part of the Lands so that each of the Parties may receive the maximum award to which it is entitled at law.

**19.02 Proceeds**

(a) If and to the extent that any part or parts of the Lands are expropriated and to the extent that such part so expropriated (whether or not the same represents the whole part so expropriated) is not affected by the Easements, then the full proceeds accruing therefrom or awarded as a result thereof shall enure to the benefit of, belong to and be paid to the Party or Parties who have an interest therein and the remaining Party or Parties will abandon or assign to the Party or Parties so entitled to receive such award any rights which such other Party or Parties may have or acquire by operation of law to such proceeds or award and will execute such documents as, in the opinion of the Party or Parties entitled to such proceeds or award, are or may be necessary to give effect to this intention.

(b) If and to the extent that any part or parts of the Lands are expropriated and to the extent that such part so expropriated is affected by any of the Easements, then the full proceeds accruing therefrom or awarded as a result thereof relating to the part affected by the Easement(s) shall be allocated among the Parties as agreed upon by them or as determined by arbitration. If the matter is referred to arbitration, the Arbitrator shall determine the sum of money which should be allocated to each Party, and in so doing shall consider and have regard to the following factors:

(i) any Party or Parties which has an interest in each affected part of the expropriated Lands;

(ii) the nature and frequency of use over such part of the expropriated Lands by each Party under the Easements or under any other easements to which each Party may be entitled to by law; and

(iii) the relation that any such part of the expropriated Lands may bear to the overall appearance or design of the Complex.

## ARTICLE 20
## DEFAULT

**20.01 Default**

If any Party fails to perform any of its obligations under this Agreement (such Party being herein referred to as the "**Defaulting Party**" and each other Party or the specific Party or Parties for whose benefit the obligation was to be performed, as the case may be, being referred to for the purposes hereof as a "**Non-Defaulting Party**"), each of the Non-Defaulting Parties, and the applicable Manager, shall have the right to give the Defaulting Party a notice of default specifically setting forth the nature of the default and stating that the Defaulting Party shall have a period of five (5) Business Days to pay any sums of money specified therein as due and owing and ten (10) Business Days to cure any other default specified therein. If the Defaulting Party does not cure the default(s) specified in such notice of default within the time periods provided above, or, if such defaults are non-monetary defaults and are not capable with due diligence of being cured within such period, the Defaulting Party has not commenced in good faith the curing of such defaults within such ten (10) Business Day period and does not thereafter prosecute to completion with diligence and continuity the curing thereof, any Non-Defaulting Party shall have the right to:

(a) bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by all of the Parties that damages at law may be an inadequate remedy for a default or breach of this Agreement; or

(b) remedy such default, in which event it shall be entitled on demand to be reimbursed by the Defaulting Party (and to take any legal proceedings for the recovery thereof) for any monies expended to remedy any such default and any other expenses (including legal fees and disbursements) incurred by such Non-Defaulting Party together with interest from the date such monies are expended, both before and after demand, at an annual rate equal to the Prime Rate plus five percent (5%) calculated and payable monthly, or, in the case of more than one default by a Defaulting Party in any calendar year, plus fifteen percent (15%), calculated and payable monthly,

with interest on overdue interest at the same rate calculated and payable monthly; or

(c) bring any action at law as may be permitted including an action in order to recover damages.

**20.02 Rights of Parties Independent**

The rights available to the Parties under this Article 20 and at law shall be deemed to be separate and not dependent on each other and accordingly each such right shall be construed as complete in itself and not by reference to any other such right. Any one or more or any combination of such rights may be exercised by the Parties from time to time and no such exercise shall exhaust the rights or preclude the Parties from exercising any one or more of such rights or combination thereof from time to time thereafter or simultaneously.

**20.03 Suspension of Rights**

Notwithstanding any other provision of this Agreement, and without prejudice to the exercise of any other rights and remedies under this Agreement or at law, where a default is with respect to non-payment of an ascertained sum of money owing by a Party pursuant to this Agreement or where a Party refuses or neglects to execute and deliver a status certificate as provided in Section 23.01, then any other Party shall be entitled after giving 30 days' notice stipulating the sum of money in default or requesting execution and delivery of such status certificate, to temporarily suspend the right of the Defaulting Party to the enjoyment and use of the Easements, other than an Easement of support or rights required for emergency or safety situations, in favour of the Defaulting Party (and those claiming under it) and the applicable Manager may cease, in its discretion, providing Common Services to the Defaulting Party, without any liability for any loss or damage suffered by the Defaulting Party (whether foreseeable or not) until such time as the sum of money in default has been paid, together with interest and costs, or until such status certificate is executed and delivered, as the case may be.

## ARTICLE 21
## DISPOSITION

**21.01 Assumption Agreement**

It shall be a condition precedent to any sale of all or any part of the Lands of a Party (the "**Disposing Party**") that the acquiror enters into an agreement with the other Parties in the form of the attached Schedule "D". Notwithstanding the foregoing, a Unitowner need not enter into an assumption agreement but, from the time that it enters into an agreement of purchase and sale, it shall be bound by the provisions of this Agreement relating to its unit and its proportional interest in the common elements (including without limitation Article 11), whether arising before, on or after the date of such disposition (provided, however, for greater certainty, individual Unitowners shall have no rights hereunder). It shall be a condition precedent to any lease having a term in excess of twenty (20) years of all or substantially all of the Lands of a Party that the lessee enters into an agreement with the other Parties in the form of the attached Schedule "E".

**21.02 Release of Disposing Party**

A Party which has sold all or a part of its Lands to a Person who has provided the agreement required by Section 21.01, shall be released and discharged from all liabilities and obligations with respect to such Lands or part thereof, as the case may be, under this Agreement accrued or arising after the date of such sale.

**21.03 Mortgagee Agreement**

It shall be a condition precedent to any mortgage or charge, whether by way of leasehold mortgage, assignment, sublease or otherwise (the "**Mortgage**") by a Party (the "**Mortgagor**") of any of the Lands (the "**Mortgaged Lands**") that the mortgagee or chargee (the "**Mortgagee**") enter into an agreement in the form of the attached Schedule "F" (the "**Mortgagee Agreement**") with the Parties whose Lands are not being mortgaged or charged by the Mortgage (the "**Non-Mortgaging Parties**"). Notwithstanding the foregoing, a Mortgagee Agreement shall not be

required to be entered into with any Mortgagee of a condominium unit of a Unitowner but each such Mortgagee, by accepting a Mortgage of a condominium unit, shall be bound by this Agreement to the same extent as the owner of such condominium unit if the Mortgagee takes possession or control of, or becomes the owner of, such condominium unit during such period of possession, control or ownership.

**21.04 Condominium Registration**

It shall be a condition precedent to the registration of a declaration in respect of all or any part of the Lands that the Condominium Corporation so created enter into an assumption agreement in favour of the other Parties to this Agreement confirming that such Condominium Corporation shall be bound by the provisions of this Agreement which relate to its Lands and Component, whether arising before, on or after the date of condominium registration.

## ARTICLE 22
## ARBITRATION

**22.01 Requirement for Arbitration**

Where specifically provided for in this Agreement, should any dispute, difference or question arise between or among the Parties arising out of, or in connection with such specified provisions of this Agreement, then such dispute, difference or question shall be submitted to and finally resolved by arbitration by reference to a single arbitrator under the Arbitration Act. The rules and procedures set out in the Arbitration Act shall apply except to the extent that they are modified, expressly or by implication, by the provisions of this Article 22.

**22.02 Initiation of Arbitration Proceedings**

(a) If any Party or Parties to this Agreement wish to have a properly arbitrable matter under this Agreement arbitrated, such Party or Parties (the "**Initiating Party**") shall give notice to the other Party or Parties (the "**Responding Party**") specifying in sufficient detail the particulars of the matter or matters in dispute, the facts and any provisions of law relied upon and the relief claimed and proposing the name of the person it wishes to be the single arbitrator. Within 10 days after receipt of such notice, the Responding Party shall give notice to the Initiating Party advising whether the Responding Party accepts or does not accept the arbitrator proposed by the Initiating Party. If such notice is not given within such 10 day period, the Responding Party shall be deemed to have accepted the arbitrator proposed by the Initiating Party. If the Responding Party does not accept the arbitrator proposed by the Initiating Party and the Parties cannot agree upon a single arbitrator within such 10 day period, either the Initiating Party or the Responding Party may apply to a judge of the Superior Court of Ontario for the appointment of a single arbitrator.

(b) The individual selected as arbitrator (the "**Arbitrator**") shall be qualified by education and experience to decide the matter in dispute. The Arbitrator shall be at arm's length from each of the Parties and shall not be a member of the audit or legal firm or firms who advise any of the Parties, nor shall the Arbitrator be a person who is otherwise regularly retained by any of the Parties, other than as an Arbitrator hereunder.

**22.03 Procedure for Arbitration Hearing**

(a) The Arbitrator shall within 15 days of such appointment, convene a meeting in the city of Toronto, of the Initiating Party and the Responding Party (the "**Disputing Parties**") to settle a time for the arbitration, narrow, if possible, the issues to be arbitrated, and settle any procedural issues.

(b) The Arbitrator with the agreement of the Disputing Parties may set the procedure for the arbitration at the initial meeting convened pursuant to subsection (a) above. Failing agreement of the Arbitrator and the Disputing Parties as to the procedure for the arbitration, the process set out in subsections (c) through (l), both inclusive, shall apply.

(c) The arbitration shall take place in the City of Toronto, Ontario.

(d) The arbitration shall be conducted in English.

(e) Within 10 days of the appointment of the Arbitrator, each of the Disputing Parties shall provide to the others copies of all necessary documents on which it intends to rely and shall not thereafter submit or rely upon any documents without the approval of the Arbitrator.

(f) No formal statement of claim, statement of defence or reply shall be filed by the Disputing Parties.

(g) No Disputing Party shall file an affidavit of documents and there shall be no oral discovery of any of the Disputing Parties. Notwithstanding the forgoing, the Disputing Parties may submit written interrogatories to each other and the written interrogatories and the answers provided may be admitted into evidence.

(h) Subject to any adjournments which the Arbitrator allows, the final hearing will be continued on successive working days until it is concluded.

(i) All meetings and hearings will be in private.

(j) Each Disputing Party may be represented at any meetings or hearings by legal counsel.

(k) At the request of any Disputing Party, one or more of the other Disputing Parties shall be required to post reasonable security for the costs of the arbitration on a full indemnity basis.

(l) Each Disputing Party shall be given an opportunity to be heard and each may examine, cross-examine and re-examine all witnesses at the arbitration. All witnesses shall affirm or give evidence under oath.

**22.04 The Decision**

(a) The Arbitrator will make a decision in writing and will set out reasons for decision in the decision.

(b) The Arbitrator will send a copy of the decision to each of the Disputing Parties as soon as practicable after the conclusion of the hearing, but in any event no later than 30 days thereafter, unless that time period is extended for a fixed period by the Arbitrator on written notice to each Disputing Party because of illness or other cause beyond the Arbitrator's control.

(c) The decision shall be final and binding on the Parties and shall not be subject to any appeal other than an error of law.

**22.05 Jurisdiction and Powers of the Arbitrator**

(a) By submitting to arbitration, the Disputing Parties shall be taken to have conferred on the Arbitrator the following jurisdiction and powers, to be exercised at the Arbitrator's discretion subject only to the provisions of this Article 22, with the object of ensuring the just, expeditious, economical and final determination of the dispute referred to arbitration.

(b) Without limiting the jurisdiction of the Arbitrator at law, the Disputing Parties agree that the Arbitrator shall have jurisdiction to:

(i) determine any question of law arising in the arbitration;

(ii) determine any question as to the Arbitrator's jurisdiction;

(iii) determine any question of good faith, dishonesty, or fraud arising in the dispute;

(iv) order any Disputing Party to furnish further details of that Party's case, in fact or in law;

(v) proceed in the arbitration notwithstanding the failure or refusal of any Party to comply with the provisions of this Article 22 or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving that Party written notice that the Arbitrator intends to do so;

(vi) receive and take into account such written or oral evidence tendered by the Disputing Parties as the Arbitrator determines is relevant, whether or not strictly admissible in law;

(vii) make one or more interim awards;

(viii) order the Disputing Parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any documents or classes of documents in their possession or control which the Arbitrator determines to be relevant;

(ix) order the preservation, storage, sale or other disposal of any property or thing under the control of any of the Disputing Parties; and

(x) assess costs of the arbitration against one or more of the Disputing Parties including counsel and witness fees.

**22.06 Costs of the Arbitration**

Failing any assessment of costs by the Arbitrator, the Initiating Party and the Responding Parties shall each pay one-half of the expenses of the arbitration, including the fees and expenses of the Arbitrator and shall each be responsible for paying the fees and expenses of its own witnesses and legal counsel. If there is more than one Responding Party, the Responding Parties' share of such fees and expenses shall be shared equally among them. If a Disputing Party shall fail to pay costs awarded against it pursuant to Section 22.05(b)(x) or its share of any fees or expenses of the Arbitrator as provided for in this Section 22.06, then any of the other Disputing Parties may pay the same and the defaulting Disputing Party shall, upon demand, reimburse the Disputing Party or Parties who have made such payment together with interest as provided in Section 20.01.

**22.07 Application of the Arbitration Act**

Notwithstanding the foregoing, the following provisions of the Arbitration Act shall not apply to any arbitration under this Agreement: Sections 6, 7(2), 7(4), 7(5), 8(1), 8(2) and 8(3).

## ARTICLE 23
## STATUS CERTIFICATE

**23.01 Status Certificate**

Each Party, within ten (10) Business Days after receipt of a written request by any other Party or a prospective purchaser, or mortgagee or other encumbrancee of that Party's interest in the Lands (the "**Requesting Party**") and the payment of a fee in the amount of $500.00 multiplied by the Adjustment Index or such lesser fee established by the Party to whom the request has been sent, shall execute and make available to the Requesting Party, a certificate stating:

(i) whether or not this Agreement has been modified and, if this Agreement has been modified, the certificate shall identify the nature of the modification;

(ii) whether or not this Agreement has been terminated; and

(iii) whether or not the Party executing the certificate has given or received a notice in accordance with Section 20.01 hereof and, if such notice has been either given or received, stating the nature of the default set out in the notice and whether or not the Defaulting Party has taken or commenced all reasonable steps necessary to cure such default, whether or not the Party executing the certificate has elected to take

steps to cure such default, and if so, the amount of the costs and expenses actually or anticipated to be paid or incurred by such Party in curing such default;

provided a Party shall not be required to provide a certificate to a particular Requesting Party more frequently than once in any 6 calendar month period. If a Party receives a written request from the Requesting Party to sign multiple certificates at one time, such Party and the Requesting Party shall negotiate a global fee for the execution of the multiple certificates.

**23.02 Estoppel Defence**

The status certificate referred to in Section 23.01 hereof may be pleaded and shall be a complete defence by the Requesting Party to any action brought on a claim that is inconsistent with the facts recited in the certificate.

## ARTICLE 24
## PROVISIONS RUN WITH THE LAND

**24.01 Provisions Run with the Land**

(a) The Parties shall not interfere with, hinder, impede, or disturb the enjoyment of any of the Easements and any other rights, benefits and privileges conferred on any Party to this Agreement except as expressly provided in this Agreement.

(b) The Easements, rights and provisions set forth in this Agreement establish a basis for mutual and reciprocal use and enjoyment of such Easements, rights and provisions and, as an integral and material consideration for obtaining the right to such use and enjoyment, each Party does hereby accept and agree to assume the burden of and to be bound by each and every one of the covenants entered into by it in this Agreement

(c) The provisions of this Agreement are intended to run with the real property benefited and burdened thereby, specifically, in the real property described in Schedule "A".

## ARTICLE 25
## COMPLIANCE WITH LAW AND AGREEMENT

**25.01 Compliance with Law**

The Parties, in performing their respective obligations and exercising their respective rights under this Agreement, covenant and agree to comply with all lawful rules, laws, by-laws, orders, ordinances, regulations and requirements of any municipality, board, agency or Governmental Authority having jurisdiction over the Lands and the City Agreements. Without limiting the generality of the foregoing the Parties will comply with the requirements of all environmental authorities, fire inspectors, building inspectors, insurance inspectors, elevator inspectors, and health and safety committee representatives.

**25.02 Compliance with Agreement**

The Parties covenant and agree to comply with all of the provisions contained in this Agreement and not to authorize or permit with respect to their respective Components any breach of this Agreement by any resident, occupant, visitor, guest, employee, agent, invitee, tenant, sub-tenant, licensee or permittee. The Parties agree that if any action is taken by a Unitowner (or a person in occupation of a unit or proposed unit in a condominium) in contravention of any obligation of the Residential Owner or the Condominium Corporation under this Agreement, the Residential Owner or Condominium Corporation shall be required to pay the legal fees and expenses incurred by the Other Parties in any legal proceeding involving the Unitowner or its Tenant with respect to such contravention.

## ARTICLE 26
## GENERAL PROVISIONS

### 26.01 Force Majeure

Whenever and to the extent any Party is prevented, hindered or delayed in the fulfillment of any obligation hereunder or the doing of any work or the making of any repairs, replacements, reconstruction or Required Reconstruction by reason of Force Majeure, notwithstanding that Party's reasonable efforts to fulfill such obligation, that Party's obligation shall be postponed and such Party shall be relieved from any liability in damages or otherwise for breach thereof, for so long as and to the extent such prevention, hindering or delay continues to exist plus a reasonable mobilization period if reasonably required.

### 26.02 Notices

(a) Any notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Agreement ("**Notices**") shall be in writing and shall be deemed to have been received if delivered to an employee of the Party at its address as hereinafter set out or, if there is no actual or apprehended disruption of the postal service sent by registered mail postage prepaid, or transmitted by telecopier or other electronic means which produces a written document at or to the applicable addresses or telecopier numbers, as the case may be, set out below or to such other address or addresses or telecopier number or numbers as any Party may from time to time designate to the other Parties in such manner. Any communication which is delivered or transmitted by telecopier or other electronic means as aforesaid shall be deemed to be validly and effectively given on the date of such delivery or transmission if such date is a Business Day, and if such delivery or transmission was made during the normal business hours of the recipient; otherwise it shall be deemed to have been given on the Business Day next following such date of delivery or transmission. Any communication sent by registered mail shall be deemed to have been given on the fourth ($4^{th}$) Business Day following mailing in Canada.

(b) Any Notices so delivered, transmitted or sent may be delivered, transmitted or sent to the following addresses or telecopier numbers:

(i) if to the Retail Owner at:

Block 9B Developments Limited
2811 Dufferin Street
Toronto, Ontario
M6B 3R9

Attention: Mark Mandelbaum
Telecopier No.: 416-635-6601

With a copy to:

Block 9A Developments Limited
20 Queen Street West
5th Floor
Toronto, Ontario
M5H 3R4

Attention: Executive Vice-President and General Counsel
Telecopier No.: 416-598-8607

and to:

OPB (16 YORK) INC.
200 King Street West
Suite 2200
Toronto, Ontario,
M5H 3X6

Attention: Managing Director, Real Estate
Telecopier: 416-366-0199

(ii) if to the Residential Owner at:

2811 Dufferin Street
Toronto, Ontario
M6B 3R9

Attention: Mark Mandelbaum
Telecopier No.: 416-635-6601

(iii) if to the Office Owner at:

Block 9A Developments Limited
20 Queen Street West
5th Floor
Toronto, Ontario
M5H 3R4

Attention: Executive Vice-President and General Counsel
Telecopier No.: 416-598-8607

and to:

OPB (16 YORK) INC.
200 King Street West
Suite 2200
Toronto, Ontario,
M5H 3X6

Attention: Managing Director, Real Estate
Telecopier: 416-366-0199

**26.03 Construction Liens and Writs of Execution**

(a) Each of the Parties which has borrowed money, or contracted for work, services, or materials to be performed or installed, or supplied, as the case may be, covenants and agrees to vacate, discharge or otherwise remove any construction lien or other encumbrance or charge registered against the title of the Lands of any other Party within fifteen (15) days of written request from a Party whose Lands or entitlement to Easements are so affected.

(b) Each of the Parties covenants and agrees to vacate, discharge or otherwise remove any writ of execution issued against it and registered against the title of the Lands of any other Party within five (5) days of written request from a Party whose Lands or entitlement to Easements are so affected.

(c) If a registration is made against Lands for the purpose only of including those rights and Easements in, over and upon such Lands which have been granted to another Party, then such registration shall not be deemed to be a registration against such Lands for the purpose of paragraph (a) or (b) above.

**26.04 *Planning Act***

This Agreement is entered into subject to the express condition that it is to be effective only on obtaining such consents, if any, as may be required under section 50 of the *Planning Act* (Ontario), or any successor legislation or other statute which may hereafter be passed to take the place of or to amend the *Planning Act* (Ontario).

**26.05 No Partnership or Agency**

The Parties do not, by reason of entering into this Agreement, in any way whatsoever or for any purpose become partners of each other, or joint venturers or members of a joint enterprise.

No Party shall be agent for any other Party except as otherwise herein provided or as may be agreed to by the Parties from time to time.

**26.06 Further Assurances**

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

**26.07 Registration**

(a) Upon execution of this Agreement, the Office Owner shall register this Agreement or notice of this Agreement on title to the Complex. The parties covenant and agree to execute such further documents as may be required in order to give effect to this provision. Upon termination or expiration of this Agreement, the Parties or their successors in title, shall upon request, consent to the removal or discharge of registration of this Agreement from title to the Complex.

(b) The parties acknowledge and agree that for registration purposes the sketches and plans referred to in Schedule "B", are not attached to the registration copy of this Agreement, however these schedules remain an integral part of this Agreement to the same extent, effect and as fully as if each of them was set out and specifically repeated in this Agreement even though said documents are not physically attached to the registered Agreement. Copies of the sketches and plans referred to in Schedule "B", are available for viewing at the offices of the Common Areas Manager, and at the offices of the Common Facilities Manager.

**26.08 Representations and Warranties**

(a) Each of the Parties represents and warrants to each of the other Parties that it has the power and capacity to enter into this Agreement, that the execution and delivery of this Agreement by it has been duly authorized and that this Agreement constitutes a valid and binding obligation of it and is enforceable against it in accordance with its terms.

(b) Each of the Parties represents and warrants to each of the other Parties that it has not mortgaged, charged or otherwise encumbered, whether by way of leasehold mortgage, assignment, sublease or otherwise, (except for leases or sub-leases to tenants or sub-tenants in occupation), or agreed to so mortgage, charge or otherwise encumber all or any part of its Lands or Component, except to the extent disclosed by the registered title to the Lands as at the date of this Agreement and in respect of which mortgages, charges or other encumbrances, the Parties shall obtain a postponement or subordination or assumption agreement from them with respect to this Agreement.

**26.10 Survival**

All indemnity and default provisions contained in this Agreement shall survive termination of this Agreement.

**IN WITNESS WHEREOF** the Parties have executed this Agreement.

**BLOCK 9B DEVELOPMENTS LIMITED**

Per: _____
Name: Mark Mandelbaum
Title: Vice President

Per: _____
Name:
Title:

I/We have authority to bind the Corporation

**BLOCK 9A DEVELOPMENTS LIMITED**
(Office Component Owner as to an undivided 70 %)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation

**OPB (16 YORK) INC.**
(Office Component Owner as to an undivided 30 %)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation

**TORONTO STANDARD CONDOMINIUMCORPORATION NO. 2510**
(Residential Owner)

Per: _____
Name: Mark Mandelbaum
A.S.O.

Per: _____
Name:
Title: A.S.O.

I/We have authority to bind the Corporation

## SCHEDULE "A"

## LEGAL DESCRIPTION OF LANDS

### PART I - OFFICE LANDS

Part of Blocks C, D and E and Part of Lake Street (closed by By-Law 10950 registered as Instrument No. 4725ES) on Registered Plan 536E, Part of Parcel 14, Plan 153, designated as Part 1 on Plan 66R-24464. City of Toronto.

Being All of PIN: 21395-0204(LT)

### PART II - RESIDENTIAL LANDS

**Firstly: Parcel One ICE 2**

Part of Block 1 on Registered Plan 657E and Part of Block E on Registered Plan 536E, designated as Parts 11 and 27 on Plan 66R-28244. City of Toronto.

Formerly being Part of PIN: 21395-0206(LT)

**Secondly: Parcel Two ICE 1**

Part of Block 1 on Registered Plan 657E, Part of Blocks D and E on Registered Plan 536E, Part of Parcel 14 on Registered Plan 153E, designated as Parts 5, 9, 10, 12, 18, 23, 24, 29, 30, 33, 34, 36, 37, 39, 42, 44, 45 and 49 on Plan 66R-28244. City of Toronto

Formerly being Part of PIN: 21395-0207(LT)

The lands above described were then consolidated and entered in PIN 21395-0230 and are now all of the Units and Common Elements of Toronto Standard Condominium Plan No. 2510 recorded under PINs 76510-0001(LT) to 76510-3026(LT)

### PART III - RETAIL LANDS

**PARCEL ONE:**

Part of Parcel 14 on Registered Plan 153E, Part of Block 1 on Registered Plan 657E and Part of Blocks D and E on Registered Plan 536E, designated as Parts 20, 21, 22 and 35 on Plan 66R-28244. City of Toronto

Being Part of PIN: 21395-0229(LT)

**PARCEL TWO:**

Part of Block 1 on Registered Plan 657E and Part of Block E on Registered Plan 536E, designated as PARTS 13, 17 and 48 on Plan 66R-28244. City of Toronto

Being Part of PIN: 21395-0226(LT)

### PART IV - LANDS TO BE TRANSFERRED TO THE OFFICE OWNER

**Firstly:**

Part of Parcel 14 on Registered Plan 153E, Part of Block 1 on Registered Plan 657E and Part of Blocks D and E on Registered Plan 536E, designated as PARTS 2, 3, 4, 14, 15, 16, 19, 25, 32, 38, 40, 43, 46, 47 and 50 on Plan 66R-28244.

Being Part of PIN: 21395-0229 (LT)

**Secondly:**

Part of Block 1 on Registered Plan 657E and Part of Block E on Registered Plan 536E, designated as PARTS 1, 6, 7, 8, 26, 28, 31 and 41 on Plan 66R-28244.

Being Part of PIN: 21395-0226 (LT)

**The above lands to be transferred to the Office Owner include:**

The **Canopy** described as follows:

Firstly: Part of Block 1 on Registered Plan 657E and Part of Block E on Registered Plan 536E, designated as Parts 31 and 41 on Plan 66R-28244, City of Toronto, being Part of PIN: 21395-0226(LT), and,
Secondly: Part of Block 1 on Registered Plan 657E, Part of Blocks D and E on Registered Plan 536E, Part of Parcel 14 on Registered Plan 153E, designated as Parts 16, 32 and 40 on Plan 66R-28244, City of Toronto, being Part of PIN: 21395-0229(LT).

The **Courtyard** described as follows:

Part of Block 1 on Registered Plan 657E, Part of Blocks D and E on Registered Plan 536E, Part of Parcel 14 on Registered Plan 153E, designated as Part 46 on Plan 66R-28244, City of Toronto, being Part of PIN: 21395-0229(LT).

Part of the **Indoor Concourse** described as follows:

Firstly: Part of Block 1 on Registered Plan 657E and Part of Block E on Registered Plan 536E, designated as Parts 1, and 6, on Plan 66R-28244, City of Toronto, being Part of PIN: 21395-0226(LT),
and,
Secondly: Part of Block 1 on Registered Plan 657E, Part of Blocks D and E on Registered Plan 536E, Part of Parcel 14 on Registered Plan 153E, designated as Parts 2, 3, 4, 14, and 43 on Plan 66R-28244, City of Toronto, being Part of PIN: 21395-0229(LT).

The **Public Clearway Walkway** described as follows:

Firstly: Part of Block 1 on Registered Plan 657E and Part of Block E on Registered Plan 536E, designated as Part 28 on Plan 66R-28244, City of Toronto, being Part of PIN: 21395-0226(LT), City of Toronto,
and,
Secondly: Part of Block 1 on Registered Plan 657E, Part of Blocks D and E on Registered Plan 536E, designated as Part 47 on Plan 66R-28244, City of Toronto, being Part of PIN: 21395-0229(LT).

**Miscellaneous** lands described as follows:

Firstly: Part of Parcel 14 on Registered Plan 153E, Part of Block 1 on Registered Plan 657E and Part of Blocks D and E on Registered Plan 536E, designated as PARTS 15, 19, 25, 38, and 50 on Plan 66R-28244. City of Toronto, being Part of PIN: 21395-0229 (LT),
and,
Secondly: Part of Block 1 on Registered Plan 657E and Part of Block E on Registered Plan 536E, designated as PART 7, 8, and 26 on Plan 66R-28244, City of Toronto, being Part of PIN: 21395-0226 (LT).

## SCHEDULE "B"

B-1A Roof Plan Depicting Context Relationship of the Complex

B-1B East Elevation of the Complex

B-2 Plan Depicting Parking Level P5

B-3 Plan Depicting Parking Level P4

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B-4 Plan Depicting Parking Level P3

B-5 Plan Depicting Parking Level P2

B-6 Plan Depicting Parking Level P1

75

B-7 Plan Depicting Parking Level Mezzanine

B-8 Plan Depicting Ground Floor

B-9 Plan Depicting Mezzanine Floor

B-10 Plan Depicting Second Floor

B-11 Plan Depicting Typical Tower Layout Floors 3-29

B-12 Plan Depicting Typical Tower Layouts Floors 30-45

B-13 Plan Depicting Typical Tower Layout Floors 46-55

B-14 Plan Depicting Typical Tower Layout Floors 56-65

B-15 Plan Depicting Mechanical Penthouse

B-16 Plan Depicting Roof Plan

B-17 Sections

B-18 Retail Sections

B-19 Plans Depicting CACF Rooms

B-20 Plan Depicting Future Tunnel Connection to the Complex

B-21 Plan Depicting Office Parking Facility located on the P1, P2, and P3 levels of the Residential Parking Facilities.

B-22 Plans Depicting the Retail Component - 2 pages

# SCHEDULE "C"

# ALLOCATION OF COMMON COSTS

## SCHEDULE "D"

## FORM OF ASSUMPTION AGREEMENT FOR SALE

**THIS AGREEMENT** made the • day of •, 20• among

•
(hereinafter called the "**Assignor**")

- and -

•
(hereinafter called the "**Assignee**")

- and -

•
(hereinafter collectively called the "**Non-Assigning Party**")

**WHEREAS** the Assignor is the registered owner of the lands described in Schedule "A" annexed hereto (the "**Assignor's Lands**");

**AND WHEREAS** the Non-Assigning Party is the registered owner of the lands described in Schedule "B" annexed hereto (the "**Non-Assigning Party's Lands**");

**AND WHEREAS** given the mutual inter-dependency of Assignor's Lands and the Non-Assigning Party's Lands including common support and systems, the Assignor and the Non-Assigning Party entered into a complex reciprocal agreement dated the 4th day of March, 2016, as amended and/or assigned (the "**Complex Reciprocal Agreement**") which provides, inter alia, for reciprocal easements and licenses that are required between the properties, responsibility for shared facilities and equipment and processes to deal with loss and damage, redevelopment and insurance;

**AND WHEREAS** Section 21.01 of the Complex Reciprocal Agreement provides that a Party thereto may only transfer its Lands or any part thereof or interest therein if the transferee has executed and delivered an Assumption Agreement in the form herein set forth in order to formally evidence and confirm the Assignee's agreement to assume all of the Assignor's obligations and liabilities set forth in the Complex Reciprocal Agreement;

**AND WHEREAS** words and phrases which are capitalized herein and which are defined in the Complex Reciprocal Agreement shall have the same meaning in this Agreement as in the Complex Reciprocal Agreement except to the extent otherwise specifically provided herein.

**NOW THEREFORE THESE PRESENTS WITNESSETH** that in consideration of the sum of $10.00 of lawful money of Canada now paid by each of the Parties hereto to the other, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the Parties hereto hereby confirm the veracity of the foregoing recitals, both in substance and in fact, and the Assignee, the Assignor and the Non-Assigning Party hereby covenant and agree as follows, namely:

1. That the Assignee hereby assumes (and shall be bound by) all of the Assignor's obligations contained in the Complex Reciprocal Agreement in place of the Assignor, including all outstanding obligations and liabilities as of the date hereof.

2. That the Assignee shall execute and give such further documents and/or assurances as the Non-Assigning Party and/or the Assignor may hereafter require, from time to time, in order to evidence and confirm the foregoing.

3. Except to the extent that there are outstanding defaults by the Assignor under the Complex Reciprocal Agreement as of the date hereof (notice of which has been provided to the Assignor in accordance with the provisions of the Complex Reciprocal Agreement), the

Assignor is hereby fully released, relieved and forever discharged from all further obligations and/or liabilities arising under the Complex Reciprocal Agreement (or with respect to the Assignor's Lands).

**IN WITNESS WHEREOF** the undersigned parties have hereunto executed these presents as of the date first above-mentioned.

• (the Assignor)

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

• (the Assignee)

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

• (the Non-Assigning Party)

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

• (the Non-Assigning Party)

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

## SCHEDULE "E"

## FORM OF ASSUMPTION AGREEMENT FOR LONG TERM LEASE

**THIS AGREEMENT** made the • day of •, 20• among

•
(hereinafter called the "**Long Term Landlord**")

- and -

•
(hereinafter called the "**Long Term Tenant**")

- and -

•
(hereinafter collectively called the "**Other Party**")

**WHEREAS** the Long Term Landlord is the registered owner of the lands described in Schedule "A" annexed hereto (the "**Long Term Landlord's Lands**");

**AND WHEREAS** the Other Party is the registered owner of the lands described in Schedule "B" annexed hereto (the "**Other Party's Lands**");

**AND WHEREAS** given the mutual inter-dependency of Long Term Landlord's Lands and the Other Party's Lands including common support and systems, the Long Term Landlord and the Other Party entered into a complex reciprocal agreement dated the 4th day of March 2016, as amended and/or assigned (the "**Complex Reciprocal Agreement** ") which provides, inter alia, for reciprocal easements and licenses that are required between the two properties, responsibility for shared facilities and equipment and processes to deal with loss and damage, redevelopment and insurance;

**AND WHEREAS** Section 21.01 of the Complex Reciprocal Agreement provides that a party thereto may only enter into a long term lease of its Lands or any part thereof or interest therein if the Long Term Tenant has executed and delivered an Assumption Agreement in the form herein set forth in order to formally evidence and confirm the Long Term Tenant's agreement to assume all of the Long Term Landlord's obligations and liabilities set forth in the Complex Reciprocal Agreement;

**AND WHEREAS** words and phrases which are capitalized herein and which are defined in the Complex Reciprocal Agreement shall have the same meaning in this Agreement as in the Complex Reciprocal Agreement except to the extent otherwise specifically provided herein.

**NOW THEREFORE THESE PRESENTS WITNESSETH** that in consideration of the sum of $10.00 of lawful money of Canada now paid by each of the parties hereto to the other, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby confirm the veracity of the foregoing recitals, both in substance and in fact, and the Long Term Tenant, the Long Term Landlord and the Other Party hereby covenant and agree as follows, namely:

4. That the Long Term Tenant hereby assumes (and shall be bound by) all of the Long Term Landlord's obligations contained in the Complex Reciprocal Agreement in place of and in addition to the Long Term Landlord.

5. That the Long Term Tenant shall execute and give such further documents and/or assurances as the Other Party and/or the Long Term Landlord may hereafter require, from time to time, in order to evidence and confirm the foregoing.

6. The Long Term Landlord continues to be responsible for all obligations and/or liabilities arising under the Complex Reciprocal Agreement (with respect to its Lands), notwithstanding the entering into of the lease to the Long Term Tenant.

**IN WITNESS WHEREOF** the undersigned parties have hereunto executed these presents as of the date first above-mentioned.

- (the Long Term Landlord)

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

- (the Long Term Tenant)

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

- (the Party)

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

- (the Other Party)

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

## SCHEDULE "F"

## FORM OF ASSUMPTION AGREEMENT FOR MORTGAGE

**THIS AGREEMENT** dated as of the • day of •, •.

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

**[Non-Mortgaging parties]**

(hereinafter collectively called the "**Non-Mortgaging Party**")

- and -

**[Mortgagee]**

(hereinafter called the "**Mortgagee**")

**WHEREAS** BLOCK 9B DEVELOPMENTS LIMITED, BLOCK 9A DEVELOPMENTS LIMITED, OPB (16 YORK) INC., and TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2510 entered into a complex reciprocal agreement dated the 4th day of March, 2016 as amended and/or assigned (the "**Complex Reciprocal Agreement**") setting forth certain reciprocal rights and obligations to govern the operation and maintenance of the Complex;

**AND WHEREAS** by a mortgage (hereinafter called the "**Mortgage**") made between • (hereinafter called the "**Mortgagor**") as mortgagor and the Mortgagee, as • mortgagee, dated • and registered on title to the Lands legally described in the attached Schedule "A" (the "**Mortgaged Lands**"), the Mortgagor charged in favour of the Mortgagee all of the Mortgagor's right, title and interest in and to the Mortgaged Lands, including the Complex Reciprocal Agreement (hereinafter collectively called the "**Mortgaged Interest**") as security for the Mortgagor's obligations under the Mortgage;

**AND WHEREAS** it is a requirement under Section 21.03 of the Complex Reciprocal Agreement that the Mortgagee enter into this Agreement with the Non-Mortgaging Party;

**AND WHEREAS** all capitalized terms which are not defined herein have the respective meaning ascribed thereto under the Complex Reciprocal Agreement;

**NOW THEREFORE** for good and valuable consideration the Mortgagee agrees as follows:

7. In the event that and for so long as the Mortgagee shall be in ownership, possession or control (whether directly or by way of a receiver or receiver and manager) of the Mortgaged Interest, the Mortgagee shall perform all the covenants and obligations of the Mortgagor under the Complex Reciprocal Agreement and the Mortgagee shall not sell, transfer, lease or mortgage or otherwise encumber the Mortgaged Interest or any part thereof or its interest in the Complex Reciprocal Agreement other than in accordance with Article 21 of the Complex Reciprocal Agreement .

8. This Agreement shall enure to the benefit of the Non-Mortgaging Party, its successors and assigns and shall be binding upon the Mortgagee and its successors and assigns.

**IN WITNESS WHEREOF** the Mortgagee has duly executed this Agreement.

**[Mortgagee]**

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

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**[Non-Mortgaging Parties]**

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

**SCHEDULE "G"**

**MAPLE LEAF SQUARE LANDS**

PIN 21396-0086 (LT)

FIRSTLY: PT BLK B PL 536E TORONTO; PT LAKE ST PL 536E TORONTO AS AMENDED BY PL 642E AS CLOSED BY BYLAW ES15237, DESIGNATED AS PARTS 14, 18, 19, 21, 23, 26, 35, 36, 42, 44, 49, 65, 70, 75, 82, 83, 89, 91, 118, 119, 123, 124, 125, 127, 130, 131, 132, 134, 135, 138, 140, 142, 144, 145, 147, 149, 152, 153, 155, 156, 159, 161 & 162, PLAN 66R25080;

SECONDLY: PART OF BLOCK 1, PLAN 655E; PART OF LORNE STREET (FORMERLY HARBOUR STREET) CLOSED BY CITY BY-LAW 18901, AS IN ES36919, PLAN 536E, AS AMENDED BY PLAN 642E, DESIGNATED AS PART 1, PLAN 66R24314, BEING PART OF BREMNER BOULEVARD CLOSED BY CITY OF TORONTO BY-LAW 906-2009, AS IN INSTRUMENT NO. AT2248338;

THIRDLY: PART OF BLOCK B, PLAN 536E; PART BLOCK 1, PLAN 655E; PART OF LAKE ST, PLAN 536E, AS AMENDED BY PLAN 642E, CLOSED BY ES15237 & ES36919; PT LORNE STREET, PLAN 536E, TORONTO (FORMERLY HARBOUR ST.) AS AMENDED BY PLAN 642E AS CLOSED BY ES15237 & ES36919 ALL BEING PARTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 20, 22, 24, 25, 28, 31, 32, 33, 34, 37, 38, 39, 40, 41, 43, 45, 46, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 71, 72, 73, 74, 76, 77, 79, 80, 81, 84, 85, 86, 87, 90, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 121, 122, 128, 133, 136, 139, 141, 143, 146, 148, 150, 151, 157, 160, 163, 164, 165, 166 & 167, PLAN 66R25080; CITY OF TORONTO

FOURTHLY: TORONTO STANDARD CONDOMINIUM PLAN NO. 2130.

## Schedule C

## Ice Condominium & York Centre Complex

- Allocation of Common Areas Costs & Common Facilities Costs
- Schedule of Responsibilities between Common Areas Manager (CAM) and Common Facilities Manager (CFM)

| Common Areas/Common Facilities and/or Services | Responsibility | Cost Sharing Percentage | | |
|---|---|---|---|---|
| | | Retail Owner | Office Owner | Residential Owner |
| **1. Common Areas Costs / Common Areas Services**<br>- Canopy<br>- Green Roof (Anchors, Drains, Flashing, Membrane, Cleaning & landscaping)<br>- Courtyard (Lighting, Water Feature)<br>- Drop Off Point<br>- Indoor Concourse/Décor<br>- PATH Connections<br>- Sidewalks (Exterior)<br>- Interior Ground Floor Common Areas/Walkway<br>- Art Object<br>- PATH Escalator (Service and Maintenance)<br>- Retail Freight Elevator (Service and Maintenance)<br>- Common Areas Elevator (Ground Floor to Parking 1) - Service and Maintenance<br>- Ground Floor Public Washrooms (inclusive of drains)<br>- Doors and Hardware for Interior Ground Floor Common Areas<br>- Security for Interior Ground Floor Common Areas<br>- Signage for Interior Ground Floor Common Areas<br>- Landscaping (York Street Courtyard)<br>- Snow Removal (Loading Dock and Parking Ramps, Drop Off Point, Exterior Perimeter)<br>- Cleaning of Interior Ground Floor Common Areas, Refuse Room, Exterior<br>- Window Cleaning of Retail exterior glass, Interior Ground Floor Common Areas, Courtyard Vertical Glass, Skylight exterior green roof glass and Canopy<br>- General Maintenance of Interior Ground Floor Common Areas and Green Roof (changing lightbulbs, filters, etc.) | **CAM**<br>***See Note 1** | **1%** | **4%** | **95%** |
| **2. Common Facilities / Common Services**<br>- Fire and Life Safety Systems / CACF Rooms / Fire Safety Plans<br>- Electrical Systems servicing Residential, Retail Units and Interior Ground Floor Common Areas<br>- Generator System and all testing<br>- Mechanical Systems servicing Residential, Retail Units and Interior Ground Floor Common Areas<br>- Utilities servicing Residential, Retail Units and Common Areas and associated sub-metering<br>- HVAC System servicing Residential, Retail Units and Common Areas<br>- Camera System servicing Common Areas<br>- Loading Dock - Cleaning, Repair and Maintenance<br>- Underground Parking Area - Cleaning, Repair and Maintenance<br>- Garbage Removal (including garbage from retail units & all Common Area<br>- Reserve Fund Administration<br>- Common Area Insurance | **CFM**<br>***See Note 2** | **1%** | **0%** | **99%** |

**Note 1:**

In the absence of agreement to the contrary by the owners of the Components of another cost sharing allocation for any of the Common Areas Costs or Common Facilities Costs, the allocation between the Retail Component, the Office Component and the Residential Component, prior to the completion of the office complex known as the York Centre Complex, shall be based upon relative square footages of all the Components located within the ICE complex as follows:

**ICE Complex before Construction of York Centre Complex**

| Retail Component | Square Footage | Allocation |
|---|---|---|
| - Retail Units | 8,242 | 1% |
| - Retail Elevator | 151 | |
| - Retail Refuse Room | 552 | |
| - Loading Dock | 1,700 | |
| | **10,645** | |
| **Office Component** | | |
| - Courtyard Pump Room | 326 | 4% |
| - Level 1 PATH | 1,797 | |
| - PATH to Maple Leaf Square | 11,944 | |
| - Courtyard | 27,223 | |
| | **41,290** | |
| **Residential Component** | | |
| - ICE I* | 442,924 | 95% |
| - ICE II* | 514,170 | |
| *RGFA's from Zoning By-Law as per Section 12.01 of Agreement | **957,094** | |
| **Total** | **1,009,659** | |

**Note 2:**

In the absence of any agreement to the contrary by the owners of the Components of another cost sharing allocation of the Common Facilities Costs, the allocation between the Retail Component, the Office Component and the Residential Component, prior to the completion of the office complex known as the York Centre Complex, shall be based on the relative square footages of only the Retail Component and the Residential Component (without any allocation to the Office Component, as it is not expected that the Office Component will derive any benefit prior to the completion of the York Centre Complex) as follows:

**ICE Complex Before Construction of York Centre Complex**

| Retail Component | Square Footage | Allocation |
|---|---|---|
| - Retail Units | 8,242 | 1% |
| - Retail Elevator | 151 | |
| - Retail Refuse Room | 552 | |
| - Loading Dock | 1,700 | |
| | **10,645** | |
| **Residential Component** | | |
| - ICE I* | 442,924 | 99% |
| - ICE II* | 514,170 | |
| * RGFA from Zoning by-law as per Section 12.01 of Agreement | **957,094** | |
| **Total Square Footage** | **967,739** | |

**Note 3:**

Upon completion of the construction of the Office Component, the owners of the Retail Component, the Residential Component and the Office Component shall review the responsibilities and costs allocations for the Common Areas, Common Areas Services, Common Facilities and Common Facilities Services to reflect the necessary changes due to the construction of the Office Component and creation of additional shared Common Areas, Common Areas Services, Common Facilities and/or Common Facilities Services. In the absence of agreement, the parties may utilize the arbitration provisions set out in Sections 9.03 and Article 22 of ~~the~~ this Agreement. The Common Area Manager will retain responsibility for any new Common Areas including the Tunnel. To the extent any Common Facilities are constructed that benefit all three components (i.e.. the Office Component, the Retail Component and the Residential Component) but for greater certainty not the Common Facilities described in Note 2 above which only benefit the Residential Component and the Retail Component, the operation and maintenance of such Common Facilities will also becpme the responsibility of the Common Areas Manager.

**Note 4:**

To the extent that there is a conflict between the provision of this Schedule C and any of the provisions in this Agreement or any of its other Schedules, the provisions in the Schedule C shall prevail.