

RECIPROCAL AGREEMENT

THIS AGREEMENT made as of the ____ day of _____, 20__

BETWEEN:

SIMCOE STANDARD CONDOMINIUM CORPORATION NO. ____, a condominium corporation created by the registration of a declaration and description under the Condominium Act, 1998

(hereinafter called the **“Corporation”**)

-And-

1815496 ONTARIO LIMITED

(hereinafter called the **“1815496”**)

WHEREAS the Corporation was created by the registration of the declaration and description in accordance with the provisions of the Act, which declaration and description has been registered in the Land Registry Office for the Land Titles Division of Simcoe (No. 51) as Instrument No. _____ creating a condominium plan legally known as Simcoe Standard Condominium Plan No. _____.

AND WHEREAS 1815496 is the declarant of the Condominium (also hereinafter sometimes referred to as **“Declarant”**) and is the owner of the Retirement Home Lands;

AND WHEREAS the 1815496 or related companies, intend to develop and construct a retirement home on the Retirement Home Lands;

AND WHEREAS the parties hereto are entering into this Agreement to provide, without limitation, for the use, operation, maintenance, repair, service, reconstruction, if necessary, and the sharing of responsibilities and costs for mutual services within the Project, the disposition of insurance proceeds, confirmation of and certain general rules with respect to the easements and to set forth certain other agreements of the parties relating to the Project and the sharing of other responsibilities and costs;

IN CONSIDERATION OF the mutual covenants herein contained, and for other good and valuable consideration and the sum of Ten Dollars (\$10.00) now paid by each of the parties hereto to the other (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree each with the other as follows:

ARTICLE 1.00 DEFINITIONS AND INTERPRETATIONS

1.01 Definitions

All capitalized words used herein and not otherwise specifically defined shall have ascribed to them the meanings defined in the Act. In this Agreement, unless a contrary intention is expressed, the following terms shall have the following meanings:

(a) **“Acceptable Standard”** shall mean:

- (i) with respect to equipment, device, apparatus or system: efficient and safe operating capability for its intended purpose(s) in accordance with the standards specified by its manufacturer(s)/supplier(s) and prescribed by all applicable laws, regulations and by-laws;
- (ii) with respect to any structural or other non-operating element, part or component: good repair, having regard to the standards maintained by a prudent owner of a comparable building of comparable age;
- (iii) in conformity with all as-built architectural, structural, design, mechanical,

electrical and other similar plans, specifications and drawings pursuant to which applicable Project shall have originally been constructed and pursuant to which any additions, alterations or improvements to such Project shall have been made in accordance with this Agreement, or as changed to comply with all applicable laws, regulations and by-laws in force at the applicable time.

- (b) **“Act”** shall mean the Condominium Act, S.O. 1998, Chapter c.19, as amended, or any successor legislation;
- (c) **“Additional User Fee Amenities”** shall mean and include those services, facilities and amenities located within the Retirement Home excluding the Shared Facilities to which a reasonable fee shall apply to the supply of goods, facilities and/or services, including but not limited to meal and beverages in the restaurant, the hair salon/spa, and the doctor’s office (if applicable);
- (d) **“Agreement”** means this Agreement including all of the schedules, which are annexed hereto, any subsequent amendments and any documents which are related to and stipulated to form a part of this Agreement;
- (e) **“Authority”** means any federal, provincial, regional or municipal government, department, board, agency or other authority (including without limitation, suppliers of public utilities) having claim or jurisdiction over the project or any part thereof, including in particular but without limitation, the City and **“Authorities”** shall mean every Authority;
- (f) **“Budget”** means the budget prepared by the Retirement Home Owner described in subsection 4.01(b) (viii);
- (g) **“Business Day”** means any day which is not a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (h) **“City”** means the City of Barrie;
- (i) **“Condominium”** means Simcoe Standard Condominium No. ____ or upon its termination shall mean the owners of the Condominium Lands from time to time;
- (j) **“Condominium Lands”** means the lands described in Schedule “A” to the Declaration of the Condominium;
- (k) **“Condominium Structure”** means the Condominium Lands and any structures built or to be built on the Condominium Lands, together with all easements and appurtenances thereto;
- (l) **“Corporation”** means the corporation created upon the registration of the Condominium;
- (m) **“Declaration”** means the declaration of the Corporation;
- (n) **“Driveways/Walkways”** means those driveways and/or walkways which comprise part of the Project including all appurtenance and services relating thereto;
- (o) **“Easements”** means those easements, rights of way, and rights in the nature of easements described in the declaration of the Condominium and Article 2.00;
- (p) **“Equipment”** means all appropriate equipment, chattels and materials that are required for use in connection with the maintenance, operation and repair of the Shared Facilities;
- (q) **“Laws”** means all applicable laws, codes, bylaws, regulations, ordinances (including municipal and provincial fire regulations and pollution control regulations), fire underwriters regulations or other requirements of law;

- (r) **“Owners” or “Parties”** means the parties to this Agreement from time to time and their respective successors and assigns; **“Owner”** or **“Party”** shall have the corresponding singular meaning;
- (s) **“Proportionate Share”** means the percentage of the Shared Costs attributable between the Retirement Home and the Condominium as forth in Schedule “A” hereto;
- (t) **“Project”** means collectively the Condominium Structure and the Retirement Home Structure;
- (u) **“Retirement Home”** means the residential retirement building constructed on the Retirement Home Lands;
- (v) **“Retirement Home Lands”** means the lands described as part of: Park Lot 1, Plan 302, Part Park Lot 2, Plan 302 being Part of Part 1 51R41384, City of Barrie, County of Simcoe being part of PIN 58361-0831;
- (w) **“Retirement Home Owner”** means 1815496 Ontario Limited and its successors, including successors in title to the Retirement Home Lands;
- (x) **“Retirement Home Recreational Facilities”** shall mean and include the indoor swimming pool, mens’ and ladies’ change rooms, fitness area with exercise equipment to be furnished at the discretion of the Retirement Home, the lounge, the library, the furnished lobby of the Retirement Home and the chapel.
- (y) **“Retirement Home Structure”** means the Retirement Home Lands and any structures built or to be built on the Retirement Home Lands, together with all easements and appurtenances thereto;
- (z) **“Shared Costs”** means the costs involved in operating, maintaining, repairing and replacing the Shared Facilities and any costs related to the Shared Services and **“Shared Cost”** shall mean any specific cost to any one of the Shared Facilities or Shared Services;
- (aa) **“Shared Facilities”** shall mean and include:
 - (i) The Retirement Home Recreational Facilities;
 - (ii) The Shared Servicing Systems, including those parts of any energy management system, watermain service and pumps, sanitary drainage system, storm drainage system, fire line and sprinkler system and telephone service situate within the property of either party, including, where applicable, the below grade portions of the buildings, other than any equipment, including connecting cables/conduits/pipes, benefiting solely one of the parties hereto and practicably distinguishable from common service facilities benefiting the other party;
 - (iii) Driveways/Walkways
 - (iv) The Equipment; and
 - (v) Any other facility shared by the Project;

and shall not include the Additional User Fee Amenities;

- (bb) **“Shared Services”** means the services for the Shared Facilities including, without restricting the generality of the foregoing:
 - (i) The maintenance and repair, including renovation or reconstruction, as necessary, of the Shared Facilities to ensure that same are and will operate in accordance with the Acceptable Standard;
 - (ii) Snow/ice removal on the Driveways/Walkways;
 - (iii) The provision of security services, as required, for the Shared Facilities;
 - (iv) The operation of the Retirement Home Recreational Facilities excluding the Additional User Fee Amenities, and including the supply of utility services to the Shared Facilities; and

- (v) Telecommunications services through and within service conduits, wires, and cables wherever located.
- (cc) **“Shared Servicing Systems”** means any trunk servicing systems including the watermain and lawn sprinkler pump and supply system, sanitary sewer system and associated pumping station, storm sewers and other main drainage routes, electrical substation, structure and supply lines and underground electrical supply system to transformer including conduit, underground telephone and cable and/or satellite television supply system including conduit and all further secondary extensions that may be shared by the buildings;
- (dd) **“Shuttle Bus”** means a mini-bus owned or rented by the Retirement Home Owner for shared use as a limited bus service in accordance with schedule time by the Retirement Home Owner;
- (ee) **“Stipulated Rate”** means the rate of interest which is three (3) per cent per annum above the prime rate of interest per annum, the prime rate being that rate of interest, periodically charged by the Royal Bank of Canada at its head office in Toronto, Canada, to its most favorite commercial customers for loans in Canadian funds as the same fluctuates from time to time;
- (ff) **“Structure”** means the Condominium Structure or the Retirement Home Structure as the context may require;
- (gg) **“Two Developments”** means the Condominium and the Retirement Home;
- (hh) **“Unit”** has the meaning ascribed to it in the Act; and
- (ii) **“Unit Owner”** means the owner of a Unit.

1.02 Headings

The division of this Agreement in to articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.03 Number and Gender

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

1.04 Recitals

The recitals hereinbefore set forth are true in substance and in fact.

Article 2.00

EASEMENTS

2.01 Easements

- (a) The parties hereto confirm the easements created in the Declaration and Description of the Condominium, and/or by separately registered instruments in the appropriate property parcel register in the Land Registry Office, including but not limited to the easements referred to in Schedule “A” of the Declaration.
- (b) In addition to the easements described above, and for clarity, each party confirms the granting to the other an easement of support over the Structure of the grantor for support in and to all supporting columns, fittings, roof slabs, walls or floor slabs, footings and foundations as the same presently exist or are altered as permitted in this Agreement.

- (c) Each party confirms the granting of an easement to the other, over and through the Structure, of the grantor of such easement for the purpose of allowing emergency fire route access over the corridors and stairs designated from time to time by the owner of the Structure, in compliance with applicable fire regulations.
- (d) Each Party hereby grants to each of the other, an easement over that portion of its Structure as is necessary for the benefiting Party to perform and exercise its duties, obligations, and rights hereunder and for the purpose of enabling each benefiting Party to construct, operate, maintain and repair its respective portion of the Shared Facilities as the case may be and accessing any of the Shared Facilities, subject to such reasonable notice requirements and time restrictions as may be required by the granting Party.
- (e) Each Party hereby grants to each of the other Party, an easement in, on, over and through that portion of its Structure as is necessary for the benefiting Party to maintain, operate, repair, replace and inspect or gain access to any servicing system, which pertains to the provision of services to such benefiting Party or for the purpose of serving and benefiting any part of the Shared Servicing Systems, Subject to such reasonable notice requirements and time restrictions as may be required by the granting Party.

2.02 Damage to Structure

In the event that damage or inconvenience is caused to the Structure of the grantor of an easement as a result of the exercise of the grantee's rights to such easement, the party that caused the damage or inconvenience shall repair the damage or remedy the cause of the inconvenience forthwith at its own expense.

2.03 Duty to Exercise Easements Prudently

In exercising its rights to any easement, right or license granted or referred to in this Agreement, the party exercising them shall act in a prudent and reasonable manner so as to minimize undue interference occasioned to the other party burdened by such easement, right or license, including but limited to, the temporary interruption and loss of service occasioned thereby. Each Party hereby indemnifies and saves harmless the other from and with respect to any damage caused to the Shared Facilities, or any part thereof, caused by the negligence, willful act or excessive use by said party of the Shared Servicing Systems or any part of the Shared Facilities.

2.04 Rebuilding

Subject to the provisions otherwise contained in this Agreement, each party hereto may, at its sole cost and expense, make any alterations or additions (including demolition and reconstruction) to its respective building both before and after substantial damage, and in so doing, may relocate any easement or right within its respective part of the Shared Facilities provided that any such alteration, addition or relocation, after it has been completed, shall not diminish in any material manner the benefits having been enjoyed by the other party from such easement or right prior to its alteration or relocation, and provided that:

- (a) Alternative easements are provided during easement relocation and the relocation plans are approved by the affected party, such approval not be unreasonably withheld or delayed;
- (b) All costs are borne by the party relocating the easement including any requisite compensation to the other party affected by such alteration for any direct financial loss suffered by it as a result; and
- (c) The party relocating the easement obtains *Planning Act* (Ontario) approval to the conveyance of the new easement.

By entering into this Agreement, each of the parties hereto agree to execute, without delay, all further assurances, easement agreements, indentures or transfers if required by the other party hereto (at whose sole expense such documentation or transfer shall be provided) necessary or required to carry out the true intent of this Agreement including such further documents, instruments and agreements as may be required to specify, accurately, the location of any

easements herein created or referred to and, in so doing, to retransfer any such easements which retransfer identifies the specific location of such easement being so granted hereby and also to realign the boundaries of various easements referred to herein and in Schedule "A" to the Declaration of the Condominium so that same align more accurately with the as built configuration and the location of the Shared Facilities.

2.05 Additional Easements

In the event it is determined by either party hereto that any new easement or right is required and which is essential for the purpose of maintaining, operating, repairing, replacing and inspecting or gaining any required access to any new servicing systems which are essential to service any of the lands of the said parties governed by this Agreement which are essential to service any of the lands of the said parties governed by this Agreement, then the party over whose lands the easement or right is required (the "**grantor**") shall execute without delay all grants, conveyances, instruments and assurances as are required to grant or convey or transfer same, provided that the lands of the grantor of such easement or right shall not be required to grant same if its lands shall be materially diminished thereby, or if same would interfere with the use and enjoyment of any amenity or installation on its lands, provided further that the grantee of such easement or right financially secures to the grantor to its satisfaction, reasonably exercises, its liability to bear all costs, expenses and damages, direct or indirect, caused to the grantor to its lands, as a result of the grant herein contemplated which the grantee hereby covenants and agrees to do and further that such grantee provides detailed plans and specifications showing the location and specifications respecting such service to installed or created.

2.06 Omitted Easements

In the event that a Party (in this paragraph, the "**Dominant Owner**") at any time and from time to time shall deliver written notice to any other Party (in this paragraph, the "**Servient Owner**") that any easement, right and right in the nature of an easement in, on, over, across, through, above, under, or otherwise pertaining to such Servient Owner's lands as servient tenement, in favor of the Dominant Owner's lands is required:

- (a) for the proper and efficient functioning of the Dominant Owner's Structure;
- (b) to be granted pursuant to this Agreement;
- (c) by applicable Laws; and
- (d) to reflect the existence of an as-built service or use that already exists but has not been formalized by way of formal grant of easement;

The Servient Owner shall grant, transfer and convey such easement, in accordance with the following provisions of this paragraph and shall co-operate with the Dominant Owner in satisfying any conditions imposed to obtain all necessary consents with respect thereto. If required, the Dominant Owner shall deliver to the Servient Owner with its request for any such an easement a draft reference plan prepared by an Ontario Land Surveyor engaged at the sole cost and expense of the Dominant Owner, depicting thereon those portions of the Servient Owner's lands which are intended to be made subject to the said easement, together with written reasons explaining why such easement is required. In the event that the Servient Owner shall dispute the requirement for such an easement, such dispute shall be resolved pursuant to the mediation/arbitration provisions contained in this Agreement based on the criteria for such an easement set forth above in this paragraph. The Dominant Owner shall, at its sole cost and expense, obtain any consents required under the subdivision control provisions of the *Planning Act* (Ontario) and shall pay any costs in connection with satisfying any conditions related to such consents, unless otherwise agreed to between the parties hereto. The Servient Owner shall grant, transfer and convey the said easement to the Dominant Owner as soon as possible and in no event no later than five (5) business days following the later of (i) the date upon which such consents become final, binding and incapable of further appeal; and (ii) that date on which the reference plan is deposited in the Land Titles Division of the Simcoe Registry Office (No.51). The form of any transfers of easement(s) required to give effect to the aforesaid grant, transfer and conveyance of the said easement(s), shall be mutually agreed upon by the Parties, acting reasonably. There shall be no additional consideration payable by Parties with respect to the transfer, grant and conveyance of the said easement(s), provided that the preparation and

registration of all of the aforesaid documentation shall be performed by the Dominant Owner all at its sole cost and expense, including, without limitation, any legal fees and disbursements, unless otherwise agreed to between the parties hereto. The obligation to grant, transfer and convey any easement pursuant to this paragraph shall be stayed pending the decision of the arbitrator with respect to any arbitration initiated pursuant to this paragraph.

2.07 Reciprocal Benefit and Burden

The continued enjoyment by either party to any easement, right or privilege hereby granted or referred to shall be dependant and conditional upon that party contributing to the cost and expense of the operation, maintenance, repair, replacement and inspection of that easement, right or privilege in accordance herewith. The failure by within party to so contribute according to the Proportionate Share of such cost or expense thereof, shall, at the option of the other party lead to the suspension of its enjoyment of such easement, right or privilege. The benefits to either party hereunder arising from any term or provision of this Agreement shall be construed as interdependent with the requirement by such party to perform those obligations hereunder.

2.08 Rules Governing the Use of the Retirement Home Recreational Facilities

The Corporation acknowledges and agrees with the Retirement Home Owner that the use of the Retirement Home Recreational Facilities by the owners and occupants of the Condominium shall be subject to such reasonable regulations, rules, restrictions and limitation as may be imposed by the Retirement Home Owner upon the residents and their guests of the Retirement Home; provided always that this section shall not be construed to and in way derogate from the grant of use contained in Section 2.01 hereof.

2.09 Alterations to the Retirement Home Recreational Facilities

The parties acknowledge and agree that: (a) while the Unit Owners shall have access to the Retirement Home Recreational Facilities, the Retirement Home Recreational Facilities may be altered, removed or replaced at the discretion of the Retirement Home Owner at its own expense; (b) the Additional User Fee Amenities neither form part of the Retirement Home Recreational Facilities nor part of the Shared Costs pertaining to the use, operation and maintenance of the Shared Facilities.

ARTICLE 3.00

SHARED FACILITIES

3.01 The Retirement Home Recreational Facilities and Shared Facilities

The Parties hereby agree that the use of the Shared Facilities is for the mutual benefit and use of the Parties, and, subject to paragraph 4.02, the Corporation shall bear the cost allocation toward the maintenance and operation of the Shared Facilities and the repair and replacement of the Shared Servicing Systems and the Driveways/Walkways, according to its Proportionate Share as set forth in Schedule "A". Subject to paragraph 4.03, the Retirement Home Owner reserves the right to increase, annually, the cost contribution of the Corporation toward the Shared Costs. The Parties hereby agree that, in exercising their rights to use the Shared Facilities, they shall act in a prudent and reasonable manner so as to minimize the interference occasioned to the other party hereto by the use of the Retirement Home Recreational Facilities and Shared Facilities, and each party herein covenants and agrees to comply with all of the provisions herein contained and will not authorize or condone any breach thereof by any resident, tenant, invitee, servant or agent.

3.02 Duties of the Retirement Home Owner

The maintenance, repair, replacement, management and operation of the Retirement Home Recreational Facilities and Shared Facilities shall be carried out by the parties in the manner and with the duties as follows:

- (a) The Retirement Home Owner shall be primarily responsible for arranging for the performance of the maintenance, repair, replacement, management and operation of the Retirement Home Recreational Facilities and Shared Facilities to the Acceptable Standard. The Retirement Home Owner shall have reasonable discretion with respect to the means of performing maintenance, repair, and operation of the Shared Facilities. The obligations of the Retirement Home Owner hereunder shall include undertaking any repairs or replacement of a capital nature relating to the Shared Facilities;
- (b) For administrative convenience, and unless otherwise agreed upon, the Retirement Home Owner shall enter into all contracts for the maintenance and repair of any of the Retirement Home Recreational Facilities and any of the Shared Facilities for the benefit of both parties and shall make prompt payments thereunder. The Corporation shall pay in equal monthly installments, in advance, its Proportionate Share of the Shared Costs as set forth in Schedule "A" hereto, in accordance with the Budget;
- (c) The Retirement Home Owner shall retain, until the expiry of five (5) years from the end of the fiscal year to which they relate, copies of all statements and records of its contracts and expenses in connection with the Shared Facilities. All statements and records shall be kept in accordance with generally accepted accounting principles, and the Retirement Home Owner shall permit the Corporation and its auditor to inspect such books and records from time to time upon no less than two (2) business days advance written notice, and to make further copies thereof.
- (d) In no event shall the Corporation delay or refuse, for any reason whatsoever, to make any payment of its Proportionate Share of the Shared Costs at the time when it is responsible to make payments under this Agreement, and all such required payments shall be made in compliance with this Agreement. It is intended that the only remedy available to either party with respect to a dispute with the other party concerning a monetary matter under this Agreement shall be mediation/arbitration provisions or those other specific, remedial provisions which are set forth in this Agreement.
- (e) After receiving a report from a qualified, independent consultant, either Party may give written notice 1 year after the creation of the Corporation, to the other Party that (i) the cash cost allocated to a Shared Cost is inappropriate; (ii) its Proportionate Share of a Shared Cost is inappropriate or (iii) a component should be added or deleted from the Shared Facilities. Such notice shall be accompanied by all data in support of its intention that (i) the cost allocated to such Shared Costs is inappropriate; (ii) the existing allocation of such component of the Shared Facilities does not represent a fair and equitable proportion used by the Party; or (iii) a component should be added or deleted from the Shared Facilities, and the suggested cost, allocation, reallocation or restatement of such Shared Costs.
- (f) If either Party gives to the other such written notice as is contemplated in subparagraph (e) of this Section 3.02 and thereafter the parties cannot agree as to a reassessment or reallocation of any Shared Cost, all within thirty (30) days of giving such notice, then the party using the assessment or allocation, may apply to have the dispute mediated and arbitrated in accordance with Article 17.00. Until such mediation or arbitration is finally concluded, the Corporation shall continue to pay its Proportionate Share of all Shared Costs in full compliance with the provisions of this Agreement. Notwithstanding the foregoing, no suggested allocation, reallocation or restatement of the Shared Costs, and no mediation/arbitration proceedings in regard to any matter referred to in this

subparagraph (e) of Section 3.02 shall be made or commenced prior to a date which is at least one (1) year from the date of creation of the Corporation.

3.03 Additional User Fee Amenities

The Retirement Home Owner and the Corporation acknowledges and agree that Shared Costs shall not include the following costs, which costs shall be paid on an individual basis by the Unit Owners and their respective tenants, and invitees:

- (a) services rendered in the hair salon;
- (b) meals and beverages provided in the dining room; and
- (c) various fees may be charged by professions, consultants, etc. attending the professional offices;

3.04 Shuttle Bus

The Retirement Home Owner and the Corporation acknowledges and agree that the use of the Shuttle Bus shall be on a “first come, first serve” basis. A user fee may apply as determined by the Retirement Home Owner.

ARTICLE 4.00 OPERATION OF THE SHARED FACILITIES

4.01 Authority and Duties of the Retirement Home Owner

(a) Authority

Subject to paragraph 2.09, the Retirement Home Owner, shall have full authority, discretion and responsibility over all matter relating to the use, operation, management, maintenance and repair of the Retirement Home Recreational Facilities and Shared Facilities.

(b) Duties

The functions and duties of the Retirement Home Owner shall be to maintain, replace, repair, inspect and operate the Retirement Home Recreational Facilities and Shared Facilities including, without restricting the generality of the foregoing:

- (i) ensuring that the the Driveways/Walkways, and the Retirement Home Recreational Facilities, including the grounds, landscaping, and recreational amenities are maintained in the first class condition, to the Acceptable Standard, throughout the Project;
- (ii) maintaining, repairing and replacing the entrance ways, lighting, signage, roads and curbs within the Driveways/Walkways to the Acceptable Standard;
- (iii) operating, managing, maintaining, servicing, repairing and replacing the Shared Servicing Systems so as to minimize the interruption of service to either Structure;
- (iv) the hiring, management, direction and disciplining of any recreation facilities staff, grounds security and concierge desk personnel and all grounds maintenance personnel, landscaping and snow removal contractors, service and repairmen who may be engaged or employed by the Retirement Home Owner from time to time with respect to the Shared Services and Shared Facilities;
- (vi) engaging the services of a professional manager or management company to assist the Retirement Home Owner, as it sees fit, in managing the Shared Services, Retirement Home Recreational Facilities and the Shared Facilities;

- (vii) promulgation and enforcement of the reasonable rules and regulations relating to the use and enjoyment of the Shared Facilities or any matters relating thereto;
- (viii) the preparation and furnishing to the Corporation in writing, not later than sixty (60) days prior to the commencement of each fiscal year of the Corporation, which fiscal year shall not be changed without prior written notice to the Retirement Home Owner, (A) the operating and capital budgets for the Shared Facilities for the following fiscal year, setting forth by categories the Retirement Home Owner's best estimate of all expenses for the maintenance and operation of the Shared Facilities and the repair and replacement of the Shared Servicing Systems, the Driveways/ Walkways and the Shared Landscape Areas and for the provision of the Shared Services for the next fiscal year; and (B) the amount to be assessed to the Corporation on account of the Retirement Home Recreational Facilities;
- (xi) the keeping of accurate accounts of the financial transactions involved in the management of the Shared Facilities and to render to the Corporation annually statements of income and expenditures with respect thereto, and to keep such accounts open for inspection by the Corporation, its managing agent and its auditor at all reasonable times, and to maintain such accounts in accordance with generally accepted accounting principles; and
- (xii) the engagement of any professional services, consultations, opinions, reports and advice with respect to the Shared Facilities in any matters relating thereto.

4.02 Cost Sharing

The Owners shall share all costs and expenses of every nature and kind (whether foreseen or unforeseen, direct or indirect) with respect to the operation, supervision, administration and maintenance, as may be necessary, with respect to the Shared Facilities in accordance with their Proportionate Share and such payments shall be made in accordance with Subparagraph (b) of Section 3.02.

4.03 First Year Costs of the Corporation

The Retirement Home Owner acknowledges, and agrees that, for the 1st year following the date of creation of the Corporation, the costs and expenses for which the Corporation shall be responsible shall not be greater than the amount specified in the first year budget of the Corporation (inclusive of HST) per Unit contained in the Condominium relating to the Shared Facilities (excluding any costs relating to the Additional User Fee Amenities).

4.04 Alterations

The parties acknowledge that the Retirement Home Owner will have reasonable discretion and to either alter or change the use, from time to time, of the Retirement Home Recreational Facilities and the Additional User Fee Amenities with a view to deciding how to serve the best interests and needs of the residents of the Retirement Home, within the sole discretion of the Retirement Home Owner.

4.05 Duty to Conform

The Corporation hereby covenants and agrees with the Declarant that it shall not amend its declaration, pass by-laws or rules governing any part of the Shared Facilities located within the Condominium which are in any manner whatsoever inconsistent with the terms and conditions of this Agreement.

ARTICLE 5.00

SPECIAL PROVISIONS

5.01 Maintenance and Repair of Each Party's Structure

Save as herein specifically provided, each party shall operate, maintain and repair its own Structure and those portions of the site owned or governed by it to the Acceptable Standard.

Notwithstanding that the general maintenance and repair of each party's Structure shall remain its own responsibility, except as herein specifically provided in respect to the Shared Facilities, in order to preserve the general high standards and overall uniform appearance of the Project as a single integrated site, the parties hereto agree with one another that, in repainting, restaining, recladding the exterior portions of the Project, no alteration shall be made to the original colour scheme or materials used without the prior approval of both parties.

5.02 Maintain Appearance of the Site

The parties acknowledge and agree that it is essential to the appearance and integrity of the overall site that the Shared Landscaped Areas must be maintained to the Acceptable Standard. Accordingly, without the prior written consent of the Retirement Home Owner, neither the Corporation nor the owners and occupants of the Condominium shall vary the landscaping installations, permit the storage of equipment therein or the partial or complete enclosure of such area, or take any similar step or permit anything to be done thereon which, in the opinion of the Retirement Home Owner, acting reasonably, may adversely affect the appearance of the overall site.

ARTICLE 6.00

ALTERATIONS

6.01 Consideration

Subject to the provisions of paragraph 6.03 hereof, each of the party hereto may at any time at such party's sole cost and expense, make alterations, additions, or improvements to its Structure including without restriction, demolition, reconstruction and repairs to foundations and footings, and in connection therewith may relocate any easement within its Structure which has been granted to the other party hereto pursuant to this Agreement, provided, however, that such alterations, additions, improvements and relocations shall not, without the written consent of such other party:

- (a) diminish in any material way the benefits afforded to the other party by such easement, or
- (b) unreasonably interrupt the use of such easement by the other party, or
- (c) diminish in any material way the value or use of the Structure of the other party, or
- (d) detrimentally interfere with any of the Shared Facilities, or
- (e) alter the exterior appearance of the Project.

6.02 Consent

If at any time, either party hereto proposes to make any alterations, additions, improvements or relocations to its respective Structure which will require the consent of the other party pursuant to the terms of Section 6.01 hereof, before commencing any such work in connection therewith, such party shall give to the other a copy of the plans and specifications showing the proposed work. Upon receipt of the plans and specifications, such party shall have ten (10) days thereafter to approve of the undertaking of such work, provided that refusal to grant consent can only be based on the provisions of Section 6.01, paragraphs (a) to (e) inclusive, hereof; should no notice of refusal to grant consent be received by the party desiring to undertake the said work, then the other party shall conclusively be deemed to have agreed to the said work and to have given its consent under the provisions of Section 6.01, provided that the said work is done in all material respects as shown on the plans and specifications as so furnished. Provided further that if the party having received the said plans and specifications gives written notice of refusal to grant consent to the said work, it shall in its notice state the reason it does not so consent in accordance with the provisions of Section 6.01, paragraphs (a) to (e) inclusive, together with reasonable

explanation in connection therewith, in which event no such alterations, additions, improvements or relocations proposed by the party so furnishing the plans and specifications shall be commenced until the parties have agreed to a resolution of the disagreement, and should there be no resolution within twenty (20) days after consent to the plans and specifications is refused, the disagreement shall be resolved by mediation/arbitration in accordance with the provisions of this Agreement. Notwithstanding any of the foregoing, for clarity, the Retirement Home Owner may make any alterations, additions, relocations or improvements to the Retirement Home in the nature of leasehold improvements, the removal or replacement of partitions, the alterations or removal of non-structural or non-load bearing walls or columns; the removal and replacement of mechanical, electrical and plumbing fixtures, equipment, services and systems which exclusively serve the Retirement Home and any portion thereof, including modifications to the Additional User Fee Amenities, and the same need not be performed in compliance with Sections 6.01 and 6.02 hereof.

6.03 Compliance with Laws

All alterations, additions, relocations or improvements permitted by this Agreement shall be done in full compliance with all laws, rules, orders, ordinances, regulations and requirements of any government or, municipality or any agency thereof having jurisdiction over the Structure and the site and, to the extent reasonable practicable, in such manner as to reasonably minimize the interference with the use or enjoyment of the other party of its own Structure and of its easement rights set forth in Article 2.00, and shall be done during time periods which will not cause inconvenience or nuisance to the other Structure and its occupants.

ARTICLE 7.00

COMPLIANCE WITH ZONING BYLAW AND DEVELOPMENT AGREEMENTS

7.01 Compliance with the Zoning By-Law

Each of the parties hereto acknowledges that their respective proprietary interests in the Project may be subject to a number of agreements, rules, regulations, ordinances or acts in favor of Authorities, or may further be subject to a single, site specific restricted area by-law, under which either phase of the project must contain certain services, facilities and installations in order for the Declarant and/or the Corporation, to remain in conformity with such by-law. Accordingly, each party agrees to abide by the provisions of those agreements, rules, regulations, ordinances, acts or by-laws which affect the Project, and to do all things necessary to keep them in full force and effect and in good standing, including maintaining all required services, facilities and installations on their lands as are required by any such by-law referred to herein, and further agrees to execute any specific easements required to be granted to such Authorities in accordance therewith, and to further use their best efforts to effect the renewal or replacement of any such agreements as may be necessary or desirable, all with the object and purpose of permitting and with a view of not hindering or preventing the continued use and enjoyment of the Project as an integral whole and of each party's respective lands including those buildings and installations situate thereon.

7.02 Compliance with Development Agreements

The Corporation and the Retirement Home Owner, as owner of the Retirement Home, hereby covenant and agree to maintain, repair and replace if necessary, from time to time, during the term hereof to the Acceptable Standard, all works, facilities and installations described in any development, site plan or similar agreement entered into with the City, the County of Simcoe and/or any other relevant Authority dealing with any aspect of the development of the Project, without restricting the generality of the foregoing, any recreational amenity, landscaping, traffic lights and turning circles, walkways, roads, parking spaces, exterior lighting, fire safety measures, roadways and signage.

7.03 Indemnification

The Corporation hereby indemnifies and saves the Declarant harmless from any cost, loss, expense, damage or liability that it may suffer as a result of any breach by the Corporation, its owners and occupants, of the covenants as set forth in this Article.

ARTICLE 8.00

INSURANCE

8.01 All Risk Insurance

Each party, shall at all times obtain and maintain full replacement cost insurance without deduction for depreciation with respect to its own Structure, including any portion of the Shared Facilities located therein and including without limitation building insurance against damage from fire and all other perils from time to time customarily included in a property damage insurance policy on an “all risk” coverage basis (as that term is commonly understood in the insurance industry) including, without limitation, coverage against damage by fire, flood, explosion, collapse, earthquake, hail, windstorm, lightning, impact by vehicles or aircraft, riots, vandalism or malicious act, smoke and leakage from fire protection equipment.

8.02 Liability Insurance

The parties shall, at all times, maintain comprehensive general liability insurance against claims for personal injury, death or property damage or loss in an amount of not less than Five Million (\$5,000,000.00) Dollars in respect of any one accident or occurrence.

8.03 Co-Insured

The policy or policies of insurance to be obtained shall name each party as a co-insured with respect to the Shared Facilities, and each party shall deliver to the other, upon request, certified copies of all insurance policies required to be taken out and maintained in accordance with this Agreement.

8.04 Allocation of Insurance Costs

With respect to the allocation of insurance premiums in respect of coverage that relates to the Shared Facilities, the parties shall commission their insurance agents and/or advisors to provide an appropriate allocation of the costs of any combined insurance between them on the basis of the “experience rating” applicable to each of them, the appraised replacement value of the Shared Facilities, and such resulting insurance costs shall be allocated to each party as part of that party’s Proportionate Share of the Shared Costs. This provision shall not be construed to make the Retirement Home Owner an insurer of the Corporation.

8.05 Proceeds of Insurance

Subject to the provisions contained in Article 8.00 below, the parties agree that the proceeds of insurance available to repair or replace any portion of the Shared Facilities shall be so employed for such purpose only and shall not be paid to either party but shall be paid initially to an insurance trustee jointly appointed to administer the proceeds of insurance on behalf of both parties.

8.06 General

- (a) Such policies of insurance shall contain provisions prohibiting their cancellation or modification reducing or restricting coverage without at least sixty (60) days prior written notice to the other party, and to all parties whose interest appears thereon.
- (b) Nothing in this Agreement shall be construed to prohibit any of the parties from obtaining any other insurance coverage, and the premium therefor shall be the sole responsibility of the party who has obtained further coverage.

ARTICLE 9.00

DAMAGE TO SHARED FACILITIES

9.01 Damage

In the event there is damage to or the destruction of the Shared Facilities, or any portion thereof by any cause whatsoever, and regardless of whether such damage or destruction shall have partially, substantially or completely destroyed any or all of the Shared Facilities, the parties shall forthwith proceed to repair, restore and reconstruct the Shared Facilities, that it is obligated to maintain, so that the use, benefit and enjoyment will not be adversely affected in any material way.

9.02 No Insurance Proceeds

To the extent that insurance proceeds are not available therefor, the cost of the repairs, restoration and reconstruction of the Shared Facilities shall be borne by the parties in their Proportionate Share.

9.03 Commencement and Completion

All repairs, replacements, restoration, or reconstruction pursuant to this Article 9.00 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.

9.04 New Easements

The Two Developments within which such repair, restoration and reconstruction of Shared Facilities is occurring will grant such relocated, amended or new easements, where it is reasonably able to do so, over its particular Structure to the other of the Two Developments whose particular Structure benefits from the Shared Facilities, as will enable the later of the Two Developments to enjoy all of the benefits intended to be granted by the easements.

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

For purposes of Section 127(1) and (2) of the Act, the obligations created by this Article 9.00 shall be deemed to be an encumbrance against each Unit and their appurtenant common interest.

9.06 Original Project Plans

All repairs, restoration and reconstruction of the Shared Facilities shall be effected and performed substantially in accordance with the original plans, specifications, drawings and designs used in the original construction of the Project. In the event that such original plans cannot be functionally or legally re-utilized, then variations or changes therefrom desired or required by the parties shall be submitted to the Two Developments for their approval, not to be unreasonably withheld, together with detailed plans and specifications in duplicate of the proposed replacement, restoration or reconstruction.

ARTICLE 10.00

FORCE MAJEURE

10.01 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 or replacements by reason of force majeure, the fulfillment of such obligation or the doing of such work or making of such repairs or replacements shall be postponed and such Party shall be relieved from any liability in damages or otherwise for breach thereof, for so long as and to the extent such prevention, hindrance or delay continues to exist.

For the purposes of this Agreement, force majeure means war, other catastrophe, fire, storm, flood, earthquake, explosion, accident, energy shortage, sabotage, act of the Queen's enemies, riot or insurrection, strike, lock-out, or labour disturbance, inability to obtain materials, goods, equipment, services or utilities required, or any law, municipal by-law, governmental regulation or order, or inability to obtain any permission or authority required to be obtained

ARTICLE 11.00

SELF HELP

11.01 Self Help

If any party to this Agreement (the "**Failing Party**") fails to perform any of its obligations under this Agreement, subject to force majeure, then in addition to the other rights or privileges specifically provided for in this Agreement, the other party (the "**Requesting Party**") may give the Failing Party written notice outlining the nature of the default and requesting the Failing Party to perform its obligation.

If, without reasonable cause, the Failing Party has not, within seventy-two (72) hours of receipt of such notice, commenced and thereafter is not taking reasonable steps necessary to cure the default set out in such notice, including, without limitation, the payment of any cost or expense required to be made by the Failing Party, the performance of maintenance, repair or replacement work, the hiring of contractors, entry onto the Structure of the Failing Party, the exercise of any right of access of such Failing Party, the payment of any sum secured by lien and/or filing of a bond to discharge a lien. The Failing Party agrees to pay directly to the Requesting Party any cost or expense actually paid or incurred by the Requesting Party in performing the obligations of the Failing Party pursuant to this Agreement together with interest at the rate equal to the Stipulated Rate, from the date such payment is made by the Requesting Party until reimbursement is made to the Requesting Party. Provided, however, that any amount expended or incurred by the Requesting Party as can clearly be demonstrated to be substantially in excess of reasonable costs or expenses which would properly have been paid to cure the default is not recoverable from the Failing Party.

ARTICLE 12.00

LIENS, COVENANTS, ETC.

12.01 Liens

If at any time the Corporation (the "**Defaulting Party**") shall fail to pay to the Retirement Home Owner (the "**Creditor Party**") any sum of money payable to the Creditor Party pursuant to the provisions of this Agreement, then, in addition to any other rights which the Creditor Party may have by operation of law, the Creditor Party shall (unless otherwise specifically provided herein) have a lien, to secure the payment of such sum of money, together with all costs and interest accruing thereon pursuant to Section 12.06, against the Structure of the Defaulting Party. Such lien shall arise immediately upon the receipt or deemed receipt of notice by the Creditor Party

to the Defaulting Party demanding payment of said sum of money by the Defaulting Party and asserting the said lien against the Structure of the Defaulting Party. From and after the date upon which such lien arises, the Creditor Party shall be entitled to file a caution or such other notice of such lien as may be permitted by the provisions of the Land Titles Act or any amendments thereto or by such other legislation that may be applicable to the title of the Project from time to time.

12.02 Enforcement of Lien and Other Rights

If a lien shall arise under Section 12.01, such lien shall be enforceable in addition to the other remedies otherwise available in law or at equity by enforcement in the same manner as a mortgage in default.

12.03 Liens Survive Termination of Agreement

Notwithstanding any termination of this Agreement, any lien which shall have arisen prior to such termination pursuant to Section 12.01 shall remain in full force and effect until the amount secured thereby shall be paid in full or satisfied, together with the costs and interest provided for in Section 12.06.

12.04 Lien as Encumbrance against Unit

For the purposes of Section 123-128 (inclusive) of the Act, a lien against the Condominium shall be deemed to be an encumbrance against each Unit and its appurtenant Common Interest therein.

12.05 Liens Survive Conveyance

No conveyance or other divestiture of title shall in any way affect or diminish any lien arising pursuant to Section 12.01, and any lien which would have arisen pursuant to Section 12.01 had there been no conveyance or divestiture of title shall be defeated, or otherwise diminished or affected, by reason of such conveyance or divestiture of title.

12.06 Interest and Costs

In each instance when a party shall be obligated to pay any sum of money to another party, interest shall accrue and be payable at the Stipulated Rate from the date such sum first became due, calculated and compounded monthly, not in advance. If any legal action, demand or proceeding is brought, instituted or taken by a party, or if a party shall cure a default of the other party, the party in default shall pay to the other party all expenses incurred, including a solicitor's fee (on a solicitor and his own client basis), unless a court shall otherwise award.

12.07 Mortgagee's Right to Assignment of Lien

Any mortgagee holding a mortgage upon any Structure, or upon any Unit shall have the right to receive an assignment or obtain a discharge of any lien affecting such Structure or Unit arising pursuant to Section 12.01 upon payment, in the case of a lien against a Structure, of the amount secured by such lien or, in the case of a Unit, upon payment of a portion of the lien in the amount determined by the proportioned specified in the Declaration for sharing Common Interest in accordance with the provisions hereinafter set forth in this paragraph. Such mortgagee shall give to the person asserting the lien a written notice offering to purchase by way of assignment, or to obtain a partial discharge of same, which notice shall set forth a date and time of closing which shall be not less than ten (10) days nor more than thirty (30) days after the giving of such notice, and the place of closing in the City of Barrie. On the date of closing, the person asserting the lien shall deliver to the mortgagee an instrument, in registrable form discharging or assigning the lien, together with the debt secured thereby, or partially discharging and assigning the lien for any unit and its appurtenant Common Interest to such mortgagee, upon payment by such mortgagee of the full amount secured by the lien, including interest, or other amount, including interest, to obtain a partial discharge of a lien affecting a unit.

ARTICLE 13.00

CERTIFICATE

13.01 Certificate

Each Owner, within ten (10) days after receipt of a written request by any person (the “**Demanding Party**”) and the payment of a reasonable fee established by such party to whom the request has been sent, shall execute, acknowledge and make available to the Demanding Party, a certificate (the “**Certificate of Compliance**”) stating:

- (a) whether or not this Agreement has been modified and if this Agreement has been modified, the certificate shall identify the nature of the modifications.
- (b) whether or not this Agreement has been terminated in accordance with Article 14.00.
- (c) whether or not a lien in accordance with Section 12.01 has arisen and is outstanding in favour of or against the Party executing the certificate, and if a lien has so arisen and is then outstanding, stating the amount and subject matter of the lien and the Structure that is affected by the lien.
- (d) whether or not the party executing the certificate has given or received notice in accordance with Section 11.01; and if such notice has been given or received, stating the nature of the default set out in the notice and whether or not such Failing Party has taken or commenced all reasonable steps necessary to cure such default, whether or not the Requesting Party has elected to take steps to cure such default, and if so, the amount of the costs and expenses actually or anticipated to be paid or incurred by the Requesting Party in curing such default.

13.02 Estoppel Defence

The certificate referred to in Section 13.01 may be pleaded and shall be a complete defence by the Demanding Party to any action brought on a claim this is inconsistent with the facts stated in such certificate.

ARTICLE 14.00

INDEMNITY

14.01 Indemnity

- (a) Each Owner covenants to indemnify and save the other Owner harmless (such Owner covenanting to indemnify and save harmless in this Section 14.01 being called the “**Indemnifier**” and the Owner receiving the benefit of such indemnity being called the “**Indemnatee**”) from any and all claims resulting from:
 - (i) any damage to property either real or personal owned by the Indemnatee howsoever occasioned and arising out of an event caused directly or indirectly by the negligence and/or recklessness of the Indemnifier or those for whom it is responsible at law, except to the extent such damages is occasioned by the act, default or negligence of the Indemnatee or for those for whom the Indemnatee is in law responsible;
 - (ii) any personal or bodily injury to any person or persons including death resulting at any time therefrom, howsoever occasioned, caused directly or indirectly by the negligence and/or recklessness of the Indemnifier or those for whom it is responsible at law, except to the extent such damage is occasioned by the act, default or negligence of the Indemnatee or those for whom the Indemnatee is in law responsible; and
 - (iii) any breach, violation or non-performance of any covenant, obligation or agreement of the Indemnifier contained in this Agreement.

The indemnity referred in this clause (a) above is herein this Section 14.01 referred to as the **“Indemnity”** and the third party to whom the Indemnitee may or shall be liable pursuant to any claim is hereinafter referred to as the **“Claimant”**.

- (b) It is hereby expressly understood and agreed that the Indemnity shall be absolute and unconditional and obligation to the Indemnifier shall not be released, discharged, diminished, mitigated, impaired or affected by any dealings between the indemnitee and Claimant, whether with or without notice to the Indemnifier, including, without limiting the generality of the foregoing:
 - (i) any extension of time, indulgences or modifications which the Claimant extends to or makes with the Indemnitee;
 - (ii) any waiver by or failure of the Claimant to enforce any rights it may have pursuant to its claim and the assignment of the claim;
 - (iii) any amendment to or modification of a claim;
 - (iv) the accepting of any proposals, the granting of any releases or otherwise dealing with the Indemnitee or any other person or persons as the Claimant may see fit; and
 - (v) any other thing or things whatsoever either of a like nature to the foregoing or otherwise.
- (c) No action or proceeding brought or instituted under an Indemnity and no recovery in pursuance thereof shall be a bar or defense to any further action or proceeding which may be brought under such Indemnity by reason of any further default hereunder.
- (d) No modification of an Indemnity shall be effective unless the same is in writing and is executed by both the Indemnifier and the Indemnitee.
- (e) All of the terms, covenants and conditions of an Indemnity extend to and are binding upon the Indemnifier, his or its heirs, executors, administrators, successors and assigns, as the case may be, and enure to the benefit of and may be enforced by the Indemnitee, its successors and assigns, as the case may be.
- (f) The Indemnities shall be construed in accordance with the laws of the Province of Ontario.
- (g) Wherever in this Section 14.01 reference is made to either the Claimant, the Indemnifier or the Indemnitee, the reference is deemed to apply also to their respective heirs, executors, administrators, successors and assigns.

ARTICLE 15.00

CHARGES, DEBTS AND INTEREST

15.01 Charges

- (a) If at any time either Owner (the **“Debtor Party”**) shall fail to pay any other person a sum of money which if not paid could adversely affect the continued use and enjoyment of the Easements by all parties entitled thereto, then the other Owner (the **“Paying Party”**) shall have the right, at any time after the expiry of thirty (30) days prior notice to the Debtor Party specifying such failure and the failure of the Debtor Party to make payment of same within such thirty (30) day period, to make such payment on behalf of the Debtor Party shall forthwith, upon notice, reimburse the Paying Party for such payment.

- (b) If at any time either Owner (the **“Defaulting Party”**) shall fail to pay the other Owner (the **“Creditor Party”**) any sum of money payable pursuant to the provisions of this Agreement or fail to fully, promptly and diligently comply with any of its obligations pursuant to this Agreement which results in any cost or expense to the Creditor Party directly or indirectly, then, in addition to any rights of subrogation which the Creditor Party may have by operation of law, the Creditor Party shall have a charge against the Project of the Defaulting Party to secure the payment of such sum of money together with any costs and interest accruing thereon pursuant to Section 15.04 against the Lands of the Defaulting Party. Any such charge shall arise upon the giving of written notice by the Creditor Party to the Defaulting Party, with a copy to the mortgagee or charge of the Defaulting Party’s Structure, demanding payment of said sum of money by the Defaulting Party but shall become enforceable only upon the expiry of sixty (60) days next thereafter and for greater certainty such charge so created shall not have priority to any mortgage or charge existing prior to the date that such charge arose in accordance with the foregoing. At any time after the expiry of such sixty (60) day period, the Creditor Party shall be entitled to file against the Lands of the Defaulting Party, Subject to this Agreement, a caution or such other notice of such charge as may be permitted by the provisions of the *Land Titles Act* R.S.O. 1990, c. L.5, as amended, or by such other legislation that may be applicable to the title of such Lands from time to time. Provided that the Creditor Party shall register on the title to the Lands of the Defaulting Party a good and valid discharge and/or release of any such notice or caution which was registered as aforesaid with respect to the said charge, within two (2) Business Days following the proper payment of the sum of money secured by said charge, together with all costs and interest accrued thereon pursuant to Section 15.04
- (c) Any charges or mortgagee of a Structure of a Defaulting Party shall have the right to pay the monies owing to the Creditor Party and upon receipt of such payment, the Creditor Party shall assign such charge to the mortgagee or charge making such payment or, at the request of the mortgagee or charge shall give a good and valid discharge and/or release of such notice or caution which was registered with respect to the said charge.

15.02 Enforcement of Charge

If a charge shall arise under Section 15.01, such charge shall, upon the expiry of 90 days following the date that such charge arises, be enforceable, in addition to the remedies otherwise available in law or at equity, in the same manner as a mortgage in default pursuant to the provisions of the *Mortgages Act* R.S.O. 1990, c. M. 40, as amended.

15.03 Charges Survive Conveyance

No conveyance or other divestiture of title shall in any way affect or diminish any charge arising pursuant to Section 15.01 (other than any conveyance or other divestiture of title by the holder of any mortgage or charge having priority to the charge arising pursuant to this Article 15.00) and any charge that would have arisen pursuant to Section 15.01 had there been no such conveyance or divestiture of the title shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

15.4 Interest and Costs

In each instance when the Defaulting Party shall be obligated to pay any sum of money to the Creditor Party under this Agreement and fails to do so, interest shall accrue thereon and be payable hereunder on demand at the Stipulated Rate. Such interest shall accrue from the date such sum first became due and payable and shall be calculated and compounded monthly. If any legal action, demand or proceeding is brought, instituted or taken by the Creditor Party, the

Defaulting Party shall pay to the Creditor Party all expenses incurred therefor, including a solicitor's fee (on a solicitor and his/her own client basis), unless a court shall award otherwise.

ARTICLE 16.00

TERMINATION

16.01 Termination of Agreement

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

16.02 Termination of Shared Facilities and Easements

Notwithstanding Section 16.01, unless the written consent referred to therein includes a mutual and specific surrender of the rights and obligations relating to the Shared Facilities and the Easements by the Parties, the termination of this Agreement pursuant to and to the extent provided in Section 16.01 shall not be deemed to terminate with respect to:

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

16.03 Debts and Liens Survive

Notwithstanding the termination of this Agreement, if at any time such termination, any Party shall be obligated to pay any sum of money pursuant to the provisions hereof, such obligation shall not be extinguished until such sum of money, together with any interest accruing thereon, shall be paid, and any lien securing the payment of such sum of money shall, as provided in Section 12.03 hereof remain in full force and effect and continue to secure the payment and any interest which shall accrue thereon.

16.04 Continuity

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

16.05 Termination of Condominium

- (a) Notwithstanding termination of the Condominium under the Act, the Unit Owners of the Condominium and their interests in the Condominium Structure will continue after termination to be bound by the provisions of this Agreement as if original signatories to this Agreement.
- (b) For the purposes of greater certainty and clarity, after termination, every reference to the Corporation in this Agreement shall mean and be deemed to refer to Unit Owners as tenants in common of the Condominium Structure.
- (c) Notwithstanding anything contained in this Agreement to the contrary, any claim against the Condominium Structure and any judgment by a court with respect to such claim shall be deemed to be a claim or judgment, as the case may be, against such Unit Owners of the Condominium jointly and severally for the amount of such claim or judgment.
- (d) If termination occurs, the Corporation shall forthwith give notice thereof to the Retirement Home Owner.

ARTICLE 17.00

MEDIATION/ARBITRATION

17.01 Mediation

- (a) Any Party may refer any matter of disagreement respecting this Agreement, to mediation pursuant to the Act and otherwise in accordance with the following procedures.
- (b) The Mediator has no authority to render a binding decision or force the Parties to accept a settlement.
- (c)
 - (i) The Parties shall co-operate to select a mediator (the “**Mediator**”), who shall be an impartial third party.
 - (ii) No person shall serve as a Mediator in a dispute in which he or she has any financial or personal interest in the result of the mediation.
 - (iii) Prior to accepting an appointment, the prospective Mediator shall disclose any circumstances likely to create a presumption of bias or interest in the outcome of the proceedings, or prevent a prompt meeting with the parties.
- (d)
 - (i) Upon appointment, the parties shall enter into a written agreement with the Mediator.
 - (ii) The agreement shall include the time and location of the mediation session. The Parties and the Mediator may schedule additional mediation sessions.
 - (iii) If the Parties are unable to reach a settlement the Mediator shall not act as an arbitrator.
 - (iv) The Mediator or any member of the Mediator’s firm or company will not act for any of the Parties individually in relation to the subject matter of the mediation in any capacity during the currency of the mediation or any time thereafter.
- (e)
 - (i) At the first session, the Parties will produce all information the Mediator reasonably requires to understand the issues including, any written materials; a description of any witnesses and what they each could testify to; or the Mediator may ask the Parties for written materials or information in advance of the mediation session.
 - (ii) At the mediation session(s), the Mediator will conduct an orderly settlement negotiation. The Parties shall be represented by a person with authority to settle the case.
- (f)
 - (i) The Parties recognize that mediation proceedings are settlement negotiations and that all offers, promises, conduct and statements, whether written or oral made in the course of the proceedings are inadmissible in any litigation or arbitration of their dispute, to the extent the law allows.
 - (ii) In the event the Parties do reach a settlement that is made into a written agreement, the agreement will be admissible in a court or arbitration proceedings to enforce it, unless the Parties otherwise agree.
- (g) The Parties may be represented by a lawyer at any stage of the mediation process.
- (h) The mediation shall be terminated in any of the following circumstances:
 - (i) By execution of a settlement agreement by the Parties;
 - (ii) By a declaration by the Mediator to the effect that, in the judgement of the Mediator, further efforts at mediation are no longer worthwhile; or
 - (iii) By a declaration by any Party to the effect that the mediation proceedings are terminated.

- (i) The Parties undertake not to take any further steps in any legal proceedings regarding the issues being mediated while the mediation is in progress unless the same is required to preserve rights.
- (j) (i) Each Party shall pay the share of the Mediator's fees and expenses that,
 - (1) The settlement specifies, if a settlement is obtained; or
 - (2) The Mediator specifies in the notice that the mediation has failed, if the mediation has failed.
- (ii) Each party will bear its own costs and expenses of its participation in the Mediation, unless otherwise agreed.

17.02 Arbitration

- (a) In the event of any dispute between the Parties with respect to this Agreement or matters arising therefrom or pertaining thereto, and such matter cannot be resolved among or between any of the parties in accordance with Article 17.01, the matter in dispute, following the conducting of an unsuccessful mediation, upon notice by one party to the other stipulating that it requires the matter to be submitted to arbitration, shall be submitted to arbitration and the decision of the arbitrator shall be binding upon the Parties, and upon submitting such matter to arbitration, no legal recourse shall be exercised by any Party hereto.
- (b) In the event the parties to such dispute are unable to agree upon a single arbitrator, each party to the dispute shall appoint one arbitrator within seven (7) days of notice by another party requiring submission of the dispute to arbitration. The arbitrator so appointed shall, within seven (7) days of the appointment of the last arbitrator so appointed, choose a single arbitrator. If any Party neglects or refuses to name its arbitrator within seven (7) days of being requested to do so or to proceed with arbitration, the arbitrator named by the other Party shall proceed and settle the dispute and his or her decision shall be final and binding upon the parties and not subject to appeal.
- (c) The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act* (Ontario).
- (d) The costs of the arbitration shall be borne equally by the Parties.

ARTICLE 18.00

GENERAL PROVISIONS

18.01 Notices

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

Corporation:

Retirement Home Owner:

or such other address as a Party may, from time to time, advise to the other party by notice in writing. The date of receipt of any such notice, demand, request, consent or approval, if served personally, shall be deemed to be the date of delivery or if mailed, the fifth (5th) business day following the date of mailing.

18.02 Provisions Run With the Land

- (a) Each of the Parties covenant and agree that they shall not interfere with, hinder, impeded, or disturb the enjoyment of any of the easements and all other rights, benefits and

privileges conferred on the other Party in this Agreement except as expressly provided in this Agreement.

- (b) The Parties hereby acknowledge and agree that the easements, rights and provisions as set forth in this Agreement establish a basis for mutual and reciprocal use and enjoyment of such easements, rights and provisions and as an integral and material consideration for the continuing right to such use and enjoyment, each Party does hereby accept, agree to assume the burden of, and to be bound by each and every covenants entered into by them in this Agreement.
- (c) The Corporation hereby expressly acknowledges and agrees that its obligations and liabilities hereunder for the Shared Costs are and shall be treated as common expenses of the Condominium.
- (e) The Parties consent to the registration of this Agreement against title to the Project and hereby acknowledge that the provisions of this Agreement are intended to run with the real property benefited and burdened thereby and except as may otherwise be specifically provided shall bind and enure to the benefit of the respective Parties and their respective successors and assigns.
- (f) Upon the sale, transfer or conveyance by any Unit Owner, such Unit Owner shall be automatically released and discharged pro tanto from any liabilities and obligations it would bear hereunder as the owner of such units sold, transferred or conveyed and shall no longer be liable to any other owner for any breach of this Agreement caused or occurring subsequent to the date of such sale, transfer or conveyance relating to such unit; correspondingly, any subsequent Unit Owner shall assume pro tanto to such liabilities and obligations insofar as the burden of such liabilities are capable of passing to such person by operation of law.

18.03 Compliance with Law

The Parties, in performing their respective obligations and exercising their respective rights under this Agreement, covenant and agree to comply with all rules, laws, by-laws, development agreements, orders, ordinances, regulations and requirements of the City of Barrie, Province of Ontario, and any board agency or Authority having jurisdiction over the Project. The Corporation hereby indemnifies and saves the Retirement Home Owner harmless from any cost, loss, expense, damage or liability that it may suffer as a result of any breach by the Corporation, its owners and occupants of the covenants as set forth in this provision.

18.04 Performance of Work and Maintenance Standards

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

18.05 Construction and other Liens

Each of the Parties which has borrowed money, or contracted for work, services, or material to be performed or installed, or supplied, as the case may be, covenants and agrees to remove any construction liens or other encumbrances or charge registered against the Structure of any of the others of them, within thirty (30) days of written request from the party whose Structure is so affected.

18.06 Planning Act

This Agreement is entered into subject to the express condition that it is to be effective only on obtaining such consents, if any, as may be required under Section 50 of the Planning Act

(Ontario), or any successor legislation or other statute which may hereafter be passed to take the place of or to amend the Planning Act (Ontario). Where a consent under the Planning Act to any Easement, license or right to use is required and has not then been granted, such Easement, license or right to use shall be deemed to be for twenty-one (21) years less a day.

18.07 Time of the Essence

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

18.08 No Partnership or Agency

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

18.09 Further Assurances

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

18.10 Severability

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

18.11 Effective Date of Agreement

It is intended that notwithstanding the actual date of execution of this Agreement by the parties hereto, this Agreement, and its terms and provisions, shall take effect from the date of registration of the Declaration of the Corporation which shall constitute the effective date of this Agreement.

IN WITNESS WHEREOF the parties hereto in all of their respective capacities relating to the Project have executed this Agreement on the _____ day of _____, 201 .

SIGNED, SEALED AND DELIVERED)	SIMCOE STANDARD CONDOMINIUM
)	CORPORATION NO. _____
)	Per:_____
)	Name:
)	Title:
)	
)	1815496 ONTARIO LIMITED
)	Per:_____
)	Name:
)	Title:

SCHEDULE “A”

PROPORTIONATE ALLOCATION OF SHARED COSTS

For the purposes of determining costs not specifically metered or allocated between the Retirement Home and the Condominium, the following percentages will apply:

<u>PARTY</u>	<u>PERCENTAGE ALLOCATION</u>
Condominium	50%
Retirement Home	50%