

Properties

PIN

57359 - 0365    LT

Description

BLOCK 1, PLAN 49M102; TOWNSHIP OF GREATER MADAWASKA

Address

CALABOGIE

PIN

57359 - 0366    LT

Description

BLOCK 2, PLAN 49M102; TOWNSHIP OF GREATER MADAWASKA

Address

CALABOGIE

PIN

57359 - 0367    LT

Description

BLOCK 3, PLAN 49M102; TOWNSHIP OF GREATER MADAWASKA

Address

CALABOGIE

PIN

57359 - 0368    LT

Description

BLOCK 4, PLAN 49M102; TOWNSHIP OF GREATER MADAWASKA

Address

CALABOGIE

Consideration

Consideration        \$1.00

Applicant(s)

The notice is based on or affects    a valid and existing estate, right, interest or equity in land

Name

CALABOGIE PEAKS ULC

Address for Service

30 Barrett Chute Road

Calabogie, Ontario K0J 1H0

I, PAUL MURPHY, PRESIDENT, have the authority to bind the corporation.

This document is not authorized    under Power of Attorney by this party.

Party To(s)

Capacity

Share

Name

CALABOGIE PEAKS ULC

Address for Service

30 Barrett Chute Road

Calabogie, Ontario K0J 1H0

I, PAUL MURPHY, PRESIDENT, have the authority to bind the corporation

This document is not authorized    under Power of Attorney by this party.

Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice is for an indeterminate period

Schedule: See Schedules

Signed By

Cindy Kerry Morin

1770 Woodward Drive, Suite 200

Ottawa

K2C 0P8

acting for Applicant(s)

Signed

2020 03 05

Tel

613-722-0015

Fax

613-722-5932

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

MARTIN Z BLACK LAW OFFICE

1770 Woodward Drive, Suite 200

Ottawa

K2C 0P8

2020 03 05

Tel

613-722-0015

Fax

613-722-5932

Fees/Taxes/Payment

Statutory Registration Fee

\$65.05

Fees/Taxes/Payment

Total Paid

\$65.05

File Number

Applicant Client File Number :

CALP012

Party To Client File Number :

CALP012

**LAND TITLES ACT**

**Application to register Notice of an unregistered estate, right, interest or equity  
Section 71 of the Act**

TO: The Land Registrar for the Land Titles Division of Renfrew No. 49

I, Martin Black, am the solicitor for Calabogie Peaks ULC.

I confirm that the applicant is the registered owner, and I confirm that this document effects an interest in the lands described as Block 1, Block 2, Block 3 and Block 4 on Plan 49M-102, Township of Greater Madawaska, being PINs 57359-0365, 57359-0366, 57359-0367 and 57359-0368

The lands are registered in the name of Calabogie Peaks ULC, and I hereby apply under Section 71 of the *Land Titles Act* for the entry of a Notice in the register for the said parcels.

This Notice will be effective for an indeterminate time.

The address for service of the applicant is: 30 Barrett Chute Road, Calabogie, Ontario K0J 1H0

Dated: March 3, 2020

  
\_\_\_\_\_  
Signature of the solicitor for the applicant

## SHARED FACILITIES AGREEMENT

THIS AGREEMENT MADE as of the 3<sup>rd</sup> day of March, 2020

AMONG:

CALABOGIE PEAKS ULC (also referred to as the "Pines Declarant")  
in its capacity as the owner of the Pines Lands until registration by it,  
and as declarant of a declaration creating a condominium corporation  
and, thereafter, the condominium corporation

(hereinafter referred to as the "Pines Condominium Corporation")

OF THE FIRST PART

- and -

CALABOGIE PEAKS ULC (also referred to as the "Cedars Declarant")  
in its capacity as the owner of the Cedars Lands until registration by it,  
and as declarant of a declaration creating a condominium corporation  
and, thereafter, the condominium corporation

(hereinafter referred to as the "Cedars Condominium Corporation")

OF THE SECOND PART

-and-

CALABOGIE PEAKS ULC,  
in its capacity as the initial owner of all the units in the Pines Condominium  
Corporation and all the units in the Cedars Condominium Corporation

OF THE THIRD PART

-and-

CALABOGIE PEAKS ULC,  
in its capacity as the owner of the Resort Lands

(hereinafter referred to as the "Resort Owner")

OF THE FOURTH PART

-and-

CALABOGIE PEAKS ULC,  
in its capacity as the owner and supplier of the Utilities

(hereinafter referred to as the "Utilities Owner")

OF THE FIFTH PART

WHEREAS the Pines Declarant is the registered owner of the Pines Lands (as hereinafter defined) on which the Pines Declarant intends to register a declaration and description pursuant to the *Condominium Act, 1998*, in order to create the Pines Condominium;

AND WHEREAS the Cedars Declarant is the registered owner of the Cedars Lands (as hereinafter defined) on which the Cedars Declarant intends to register a declaration and description pursuant to the Act in order to create the Cedars Condominium;

AND WHEREAS the Resort Owner is the registered owner of the Resort Lands and intends to operate and develop various resort facilities (the "Resort Component");

AND WHEREAS the Utilities Owner is the owner of the Utilities (as hereinafter defined) and supplies such Utilities to the Pines Lands, the Cedar Lands and Resort Lands;

AND WHEREAS it is acknowledged and agreed that the Pines Declarant and the Cedars Declarant are entering into this Agreement for and on behalf of the Pines Condominium and the Cedars Condominium, respectively, and on the express understanding that as and when same are registered as separate condominium corporations, such condominium corporations shall assume all covenants and obligations of the Pines Declarant and the Cedars Declarant, respectively, relating to the matters hereinafter set out, and correspondingly the Pines Declarant and the Cedars Declarant shall thereupon be automatically released, relieved and forever discharged from said obligations and/or liabilities;

AND WHEREAS the parties wish to enter into this Agreement for the purposes of providing for (i) the mutual use, maintenance, repair, replacement, governance and cost-sharing of certain Shared Facilities, as hereinafter defined, as well as to regulate and govern the use and enjoyment of various easements which will serve and benefit the parties hereto; (ii) the use and consumption of the Utilities and payment for such Utilities by the Two Condominiums, the Pines Unit Owners and the Cedars Unit Owners; and (iii) the establishment and enforcement of restrictive covenants applicable to the Two Condominiums, the Pines Unit Owners and the Cedars Unit Owners for the benefit of the parties hereto;

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 are hereby expressly acknowledged), the parties hereto hereby covenant and agree, to and with each other, as follows:

#### **ARTICLE 1.00— RECITALS**

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

#### **ARTICLE 2.00 — DEFINITIONS**

##### **2.01 General Terms**

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

##### **2.02 Specific Terms**

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

- (a) "Acceptable Standards" shall mean:
  - (i) with respect to any equipment, device, apparatus or system: efficient and safe operating capability for its intended purpose(s) in accordance with the standards specified by its manufacturer(s)/supplier(s) and prescribed by all applicable laws, regulations and by-laws;
  - (ii) with respect to any landscaped/grassed area: appearing to be properly cultivated/tended, suitable for its intended purpose(s) and in compliance with all applicable laws, regulations and by-laws; and
  - (iii) with respect to any structural or other non-operating element, part or component: good repair, having regard to the standards maintained by a prudent owner of a comparable building of comparable age;
- (j) "Access Road" shall mean the access road legally described as Block 4, Plan 49M-102, which provides shared vehicular access from Barrett Chute Road to the Two Condominiums and the Resort Lands;
- (k) "Access Road Easement" shall mean the right-of-way and easement hereby granted in perpetuity in favour of the Two Condominiums over, across and upon the Access Road;

- (l) "Act" shall mean the *Condominium Act, 1998*, S.C. 1998, c.19 and all regulations made thereunder, as amended, together with any successor legislation intended to replace or supersede same;
- (m) "Agreement" shall mean this agreement and all written amendments hereto and all schedules referred to herein;
- (n) "Benefitting Owners" shall mean those owners of the dominant tenement with respect to any of the Easements (as that term is hereinafter defined) that are entitled to the benefit of same, provided however, that for the purposes of giving and receiving notice(s), procuring consents and for the purposes of carrying out any Work (as that term is hereinafter defined) or repairing and/or restoring any damage or alterations, all as contemplated in Article 8.00 hereof, and "Benefitting Owners" shall include, where applicable, the Two Condominiums, the Unit Owners, the Resort Owner and the Utilities Owner;
- (o) "Buildings" shall mean the buildings constructed on the Pines Lands and the Cedars Lands;
- (p) "Cedars Condominium" or "Cedars Building" shall mean the condominium constructed on the Cedars Lands;
- (q) "Cedars Declaration" shall mean the declaration creating the Cedars Condominium whether same has been registered pursuant to the provisions of the Act as of the date of this Agreement or is registered at any time thereafter;
- (r) "Cedars Lands" shall mean the lands and premises legally described in Schedule "B" hereto;
- (s) "Cedars Unit Owners" shall mean the owners of the Cedars Condominium units from time to time;
- (t) "Communal Water & Wastewater Systems" shall mean the existing and future communal water and wastewater systems that service the Resort Lands, the Pines Lands and the Cedars Lands, and that operate under the authority of the Ministry of Environment, Conservation and Parks, including:
  - (i) all the buildings, equipment, appurtenances, pipes and related infrastructure located on the Resort Lands and governed by the Responsibility Agreement; and
  - (ii) water sub-meters located on the Cedars Lands and the Pines Lands;
- (u) "Communal Water & Wastewater Systems Cost of Service" shall mean the total operating costs of the Communal Water & Wastewater Systems, including without limitation the following:
  - (i) the costs to operate, monitor, maintain, repair, rehabilitate and/or replace the Communal Water & Wastewater Systems;
  - (ii) taxes, including property, HST and income taxes;
  - (iii) costs incurred under the Responsibility Agreement, including the accumulation of a reserve fund and the posting of a performance bond or alternate security; and
  - (iv) a Reasonable Return on the capital cost of the Communal Water & Wastewater Systems, net of depreciation;
- (v) "Declarations" shall mean the Pines Declaration and the Cedars Declaration;
- (w) "Easements" shall mean, collectively, the easements, rights, rights of way, and rights in the nature of easements over, under or through the Shared Facilities as described in Schedule "A" to the Pines Declaration or in Schedule "A" to the Cedars Declaration, including the Access Road Easement and the Servicing and Maintenance and Repair Easements, and shall also include the Relocated Easements (as that term is defined in Section 7.05 hereof) and any other easements, rights and rights in the nature of an easement hereafter created between the Two Condominiums and/or the Resort

Component, and the Utilities Owner, and the owners of the lands intended to comprise same, and relating to the Shared Facilities, and the term "Easement" shall mean any particular portion of the Easements as dictated by the context in which said term is used;

- (x) "Easement Areas" shall mean collectively those portions of the Total Site which are subject to the Easements, and shall also include any Relocated Easement Areas (as described in Section 7.05 hereof) and any Omitted Easements (as described in Section 7.06 hereof) and the term "Easement Area" shall mean any particular portion of the Easement Areas as dictated by the context in which said term is used;
- (y) "Electricity Distribution System" shall mean the existing and future electricity distribution systems that service the Resort Lands, the Pines Lands and the Cedars Lands, including:
  - (i) the central meter, underground high and low voltage distribution equipment, high voltage switches and high voltage transformers located on the Resort Lands; and
  - (ii) electric sub-meters located on the Cedars Lands and the Pines Lands;
- (r) "Electricity Distribution System Cost of Service" shall mean total operating costs of the Electricity Distribution System, including without limitation the following:
  - (i) the costs of purchased electricity;
  - (ii) the costs to operate, monitor, maintain, repair, rehabilitate and/or replace the Electricity Distribution System;
  - (iii) taxes, including property, HST and income taxes; and
  - (iv) a Reasonable Return on the capital cost of the Electricity Distribution System, net of depreciation;
- (s) "Emergency" shall mean any circumstance or event involving danger to, or the safety of, persons, danger of property damage or loss and/or the suspension of any utility or service to any one or all of the Pines Condominium, the Cedars Condominium and the Resort Lands whether actually occurring or imminent;
- (t) "Governing Documents" shall mean the Pines Declaration, the Cedars Declaration and this Agreement, collectively;
- (u) "Governmental Authorities" shall mean the Township of Greater Madawaska and all other governmental authorities or agencies having jurisdiction over the Total Site;
- (v) "Monthly Utility Charges" shall mean the monthly fees charged to the Unit Owners and the Two Condominiums based on the Communal Water & Wastewater System Cost of Service, the Electric Distribution System Cost of Service and the Propane Distribution System Cost of Service, using rates that:
  - (i) account for each connected party's volumetric consumption or use of the utility service as measured by submeters certified by Measurement Canada;
  - (ii) recover such Costs of Service calculated in accordance with traditional North American utility rate making standards; and
  - (iii) are just, reasonable and non-discriminatory;
- (w) "Owner" shall mean with respect to the Pines Lands, the Pines Condominium Corporation and with respect to the Cedars Lands, the Cedars Condominium Corporation (until such time as a condominium is registered on the Cedars Lands, the Owner of such lands is the Cedars Declarant) and with respect to the Resort Lands, the Resort Owner and their respective successors and assigns;
- (x) "Parking Areas" shall mean the parking areas within the Resort, in one or more locations to be determined by the Resort Owner, which provide parking spaces for visitors to the Two Condominiums and the Resort Lands;

- (y) "Pines Condominium" or "Pines Building" shall mean the condominium constructed on the Pines Lands;
- (z) "Pines Declaration" shall mean the declaration creating of the Pines Condominium whether same has been registered pursuant to the provisions of the Act as of the date of this Agreement or is registered at any time thereafter;;
- (aa) "Pines Lands" shall mean the lands and premises legally described in Schedule "A" hereto;
- (bb) "Pines Unit Owners" shall mean the owners of the Pines Condominium units from time to time;
- (cc) "Propane Distribution System" shall mean the existing and future propane distribution systems that service the Resort Lands, the Cedars Lands and the Pines Lands, including:
  - (i) the underground propane lines, propane tanks, vaporizers and regulators located on the Resort Lands; and
  - (ii) propane sub-meters located on the Cedars Lands and the Pines Lands;
- (dd) "Propane Distribution System Cost of Service" means the total operating costs of the Propane Distribution System, including without limitation the following:
  - (i) the cost of purchased propane;
  - (ii) the costs to operate, monitor, maintain, repair, rehabilitate and/or replace the Propane Distribution System;
  - (iii) taxes, including property, HST and income taxes; and
  - (iv) a Reasonable Return on the capital cost of the Propane Distribution System, net of depreciation;
- (ee) "Reasonable Return" shall mean a return that is sufficient to maintain the Utilities financial integrity and enable them to attract additional capital on reasonable terms. The Reasonable Return shall never be less than the Ontario Energy Board's allowed Weighted Average Cost of Capital plus 250 basis points.
- (ff) "Reference Plan" shall mean the plan of reference deposited in the Registry Office for the Land Titles Division of the Renfrew (No. 49) as Plan 49R-19479;
- (gg) "Responsibility Agreement" shall mean the Responsibility Agreement between the Resort Owner and The Township of Greater Madawaska registered in the Registry Office for the Land Titles Division of the Renfrew (No. 49) as Instrument No. RE256224;
- (hh) "Resort Component" shall mean the freehold resort premises owned or to be developed by the Resort Owner adjacent to the Two Condominiums;
- (ii) "Resort Lands" shall mean those lands described in Schedule "C" hereto;
- (jj) "Servicing and Maintenance and Repair Easements" shall mean the Easements created upon the registration of the Pines Declaration, the Cedars Declaration and/or pursuant to the terms of this Agreement, providing for the installation, maintenance, operation, alteration, servicing, repair, replacement, inspection and monitoring of various utility and other services in, on, over, along, upon, across and through the Easement Areas;
- (kk) "Servient Owners" shall mean those owners of the servient tenements in respect of the Easements who are subject to the burden of same, provided however, that for the purposes of giving and receiving notices, and for the purposes of carrying out any Work or repairing and/or restoring any damage or alterations, all as contemplated in Article 8.00 hereof, the term "Servient Owners" shall include, where applicable, the condominium corporation (for and on behalf of the unit owners thereof) created over all or any portion of the aforesaid servient tenement;



- (ll) "Shared Facilities" shall mean the Parking Areas and Access Road which provide shared parking and access to and from the Two Condominiums and the Resort Component;
- (mm) "Shared Facilities Budget" shall mean the annual budget outlining the projected Shared Facilities Costs for the 12-month period immediately following the preparation and submission of same to the Pines Condominium, the Cedars Condominium, and the Owner(s) of the Resort Component, which is prepared in accordance with the terms and provisions of this Agreement;
- (nn) "Shared Facilities Committee" shall mean the committee formed in accordance with the provisions of Article 10.00 hereof, that will manage, control and/or operate the Shared Facilities;
- (oo) "Shared Facilities Costs" shall mean the aggregate of all costs and expenses incurred in connection with the Shared Facilities from time to time, as provided in this Agreement and set out on Schedule "D" attached hereto, and shall include without limitation, the costs and expenses incurred in connection with the maintenance, repair and operation of the Shared Facilities, including without limitation, the cost of maintaining and repairing all electrical and mechanical equipment, fixtures and installations comprising same or appurtenant thereto, together with the amount of any municipal, provincial or federal taxes and/or any common expense assessments attributable to the Shared Facilities (or any portion thereof);
- (pp) "Shared Servicing Systems" shall mean the servicing pipes, wires, cables, conduits and systems, serving or benefiting the Shared Facilities, including without limitation, as applicable, all pertinent portions of the storm and sanitary sewer systems, and the gas, domestic water, plumbing, fresh and exhaust air ventilation systems, hydro-electric, energy management, computer monitoring, emergency lighting, fire protection and life safety systems and vaults, (as well as portions of various ancillary mechanical and electrical fixtures, cables, valves, meters and equipment appurtenant thereto), which provide security, monitoring, heat, power, drainage, fire protection and/or any other type of service to the Shared Facilities (whether presently existing or installed subsequent to the date of registration of the Declarations), provided however, that the term "Shared Servicing Systems" shall exclude any servicing system(s) which serve and benefit only one of the Pines Condominium, the Cedars Condominium or the Resort Component exclusively and the term "Shared Servicing System" shall mean the particular "Shared Servicing System" dictated by the context in which said term is used;
- (qq) "Total Project" shall mean all of the buildings, structures, improvements and installations intended to be constructed upon the Total Site and contained or to be contained within the Pines Condominium, the Cedars Condominium or the Resort Component;
- (rr) "Total Site" shall mean the Pines Lands, the Cedars Lands and the Resort Lands;
- (ss) "Transfer Date" shall mean:
  - (i) the date upon which both of the Pines Condominium and the Cedars Condominium have been registered as condominiums pursuant to the provisions of the Act and all units therein have been sold and conveyed by the Cedars Declarant and by the Pines Declarant; or
  - (ii) such earlier date that the Pines Declarant and the Cedars Declarant may jointly determine in their sole and unfettered discretion;
- (tt) "Two Condominiums" shall mean the Pines Condominium and the Cedars Condominium;
- (uu) "Unit Owners" shall mean the Pines Unit Owners and the Cedars Unit Owners;
- (vv) "Utilities" mean the Communal Water & Wastewater Systems, the Electric Distribution System and the Propane Distribution System located on the Resort Lands.

### ARTICLE 3.00 — RESPONSIBILITY FOR PAYING UTILITY CHARGES

- 3.01 The Resort Owner, the Two Condominiums and the Unit Owners agree to pay their Monthly Utility Charges to the Utilities Owner within 25 days of billing. Late payments bear interest at the rate of 24% per annum, calculated and compounded monthly on the amount from time to time unpaid ("Default Amount").
- 3.02 If any of the Two Condominiums or the Unit Owners do not pay their Monthly Utility Charge within 60 days of billing, the Utilities Owner shall have the right to collect the arrears by action and shall also have a charge upon the defaulting Condominium's lands or the Unit Owner's Unit, as the case may be, until the arrears, together with interest ("Arrears"), are paid in full. As security for the payment of any Arrears, each of the Two Condominiums charge their lands and each of the Unit Owners hereby charge their Units in favour of the Utilities Owner in the amount of outstanding Arrears from time to time, and agrees that the terms of such charge are those terms set out in the charge terms filed under the *Land Registration Reform Act*, R.S.O. 1990, c. L.4, as number 200033.

### ARTICLE 4.00 — RESTRICTIVE COVENANTS

- 4.01 The covenants and restrictions contained herein shall be observed by the Two Condominiums and shall run with and for benefit of the Resort Lands, so that all persons hereafter holding or claiming unto the parties hereto or any of them shall be bound to observe the said covenants and restrictions; and it is hereby declared and agreed that the Resort Owner, its successors and assigns, shall have the right to enforce observance of the said covenants and restrictions so that the said covenants and restrictions shall enure to and be for the mutual benefit of all persons so holding or claiming. This covenant is not to be held binding upon any person except in respect of breaches committed or continued during its seisin of or title to the property described herein upon or in respect of which such breaches shall have been committed.
- (a) No changes within either of the Two Condominiums shall be made to any building exterior, exterior colour or exterior materials, including the installation or changes to any fences, decks, balconies and patios, until the plans for such changes have been approved in writing by the Resort Owner, such approval not to be unreasonably withheld or delayed. Any such changes shall respect the following covenants:
    - i. the permitted exterior finishes are restricted to real wood and wood composite siding products, stone and stone veneer and other building products that follow such theme as may be approved by the Resort Owner;
    - ii. the permitted colours are neutral tones that match the natural background such as beige, taupe, brown, rust, grey, green, low yellow and natural wood shades and other colours that follow such theme as may be approved by the Resort Owner.
  - (b) No structure or building of any sort shall be erected, placed or constructed within either of the Two Condominiums until the architectural drawings or building plans, including a list of exterior materials, colours and a finished grade elevation profile of the proposed structure or building have been approved in writing by the Transferor or its designated representative or agent, such approval not to be unreasonably withheld or delayed. It is understood that the Resort Owner's review shall relate to the exterior appearance of the proposed building(s) or structure(s) only and using the criteria described in subparagraph (a) above.
  - (c) Renewable solar installations, antennae, towers, satellite dishes and other exterior equipment require the prior written approval of the Resort Owner, such approval not to be unreasonably withheld or delayed.
  - (d) No signage is permitted.
  - (e) No awnings, shades, screens, enclosures or structures whatsoever shall be erected over the outside of any window, balcony, deck or patio.
  - (f) The Two Condominiums shall not alter the slope of any lands within the Two Condominiums nor interfere with any drainage established thereon.
  - (g) Parking is restricted to the Parking Areas. No parking is permitted on the Access Road.

- (h) Parking spaces may not be enclosed. No garage enclosure or enclosure of any kind may be placed, erected or maintained in the Parking Area or Access Road.
- (i) Parking is restricted to a private passenger automobile, compact van, sport utility vehicle, station wagon, personal trucks and motorcycle and excludes watercraft, campers, trailers, snowmobiles, and recreational equipment.
- (j) Parking spaces may not be leased.
- (k) Parking spaces may only be occupied by a resident or invitee of a Unit in one of the Two Condominiums.
- (l) No repairs, other than minor emergency repairs, shall be made to any motor vehicle parked in the Parking Area or the Access Road.
- (m) Car washing is prohibited.
- (n) No items, except for authorized automobiles, may be stored or left on the Access Road or Parking Area, including tires, firewood, cans, bottles, containers or other objects.

#### **ARTICLE 5.00— RESPONSIBILITY FOR PAYING THE SHARED FACILITIES COSTS**

- 5.01 The Shared Facilities Costs shall be allocated to and paid by the Owners based on the anticipated use of the Shares Facilities as more particularly set out on Schedule "D" attached hereto. For greater certainty, it is understood and agreed that the Pines Declarant and the Cedars Declarant shall pay and be responsible for any portion of the Shared Facilities Costs for or in respect of the Pines Condominium or the Cedars Condominium, respectively, prior to its registration and for which the Pines Condominium or the Cedars Condominium, if registered, respectively, would otherwise be responsible.
- 5.02 The cost of any services necessitated by the wilful or negligent act or omission of any party hereto or of any of its occupants, employees, agents, contractors, licensees or invitees shall be paid by that party and not included in the Shared Facilities Costs that are allocated and paid by the parties hereto in the manner set forth in Section 5.01 hereof.

#### **ARTICLE 6.00 — USE OF THE SHARED FACILITIES**

##### **6.01 General Use of the Shared Facilities**

Subject to the Act, the use of the Shared Facilities by the Resort Component and its tenants and invitees and by the Two Condominiums and their owners, residents and tenants (as well as the invitees of said owners, residents and tenants) of units therein and, where applicable, the general public shall, at all times, be subject to and in accordance with the applicable provisions of the Governing Documents.

#### **ARTICLE 7.00 — THE EASEMENTS**

##### **7.01 Confirmation of Easements**

The parties hereto hereby acknowledge and agree that the Servicing and Maintenance and Repair Easements described below shall be deemed to be created pursuant to the provisions of Section 12(1)4 of the Act, and are hereby expressly confirmed, ratified and agreed to, namely an easement, right of way and right in the nature of an easement over, along, upon, across and through the common element areas of the Pines Condominium and the Cedars Condominium in favour of the other of the Two Condominiums, the Resort Lands and the Utilities Owner that require same for the following purposes:

- (a) installing, maintaining, operating, altering, repairing, replacing, inspecting and monitoring lines, pipes, wires, conduits, cables, watermains, valves and/or meters (including the supply and receipt of services and the discharge of storm and sanitary sewer effluents and drainage through same) whether presently existing or installed subsequent to the grant of this easement (and whether same comprise a part of the Shared Servicing Systems or service only one of the Two Condominiums or service only the Resort Lands) as from time to time may be required or convenient to provide water, hydro, gas, propane, communications, internet, irrigation and storm and sanitary sewer

services to either of the Two Condominiums or to the Resort Lands, and the owners, tenants, residents and permitted occupants thereof; and

- (b) providing pedestrian access and egress to the service personnel of the Two Condominiums, and of the Resort Owner and the Utilities Owner, and their service vehicles, together with any equipment, materials and/or machinery required to maintain, repair, replace and/or inspect any part of the buildings, installations, structures, improvements and/or services located upon the lands of either of the Two Condominiums or the Resort Lands, but servicing and benefiting the other of the Two Condominiums or the Resort Lands;

including, without limitation, the right to penetrate, cross, drill through, bore into or travel through any floor slab, ceiling slab, concrete, block or masonry walls, drywall enclosures, or similar installations located thereon for any of the foregoing purposes, provided that such right shall not impair or diminish the loadbearing capacity or structural integrity of same or any support that same are providing to any portion of the buildings, structures, installations or improvements located from time to time on the lands of the Servient Owner, nor unreasonably interfere with the use and enjoyment of the lands of the Servient Owner by the owners of same.

#### 7.02 Invalidity of Easements

Without limiting the generality of the foregoing, and to the extent that any of the Easements shall be finally interpreted or adjudged (by a court of competent jurisdiction) as failing to, or incapable of, creating a right or interest in land, any such Easement so adjudged or interpreted shall be deemed to constitute a licence in favour of those parties and for those specific purposes, as set out herein and the parties hereto shall execute any and all documentation that may be required in order to give further effect to this provision. Furthermore, if any of the Easements is not validly created until the registration of the Pines Condominium or the Cedars Condominium such Easement shall be deemed to constitute a licence in favour of those parties and for those specific purposes, as set out herein, until the registration of the Pines Condominium or the Cedars Condominium, as the case may be.

#### 7.03 General Use of Easements

- (a) The use and enjoyment of the Easements by the Benefitting Owners shall be subject to the overriding provisions and/or restrictions set forth in the Pines Declaration, the Cedars Declaration and this Agreement.
- (b) Subject to the provisions set out in Sections 7.04 and 7.05 of this Agreement with respect to the use of specific Easements:
  - (i) the Benefitting Owners, in exercising their rights under the Easements, shall act (and cause any other persons using the Easements to act) in a prudent and reasonable manner and in accordance with all applicable laws so as to minimize (insofar as is reasonably possible) the interference and inconvenience occasioned thereby to the owner(s) of the Easement Areas;
  - (ii) each of the Two Condominiums and the Utilities Owner shall have the right to partially obstruct (on a temporary basis only) an Easement Area (or alternatively, temporarily suspend the benefit of the Easement relating thereto) in order to maintain and/or repair any buildings, installations, structures and/or services that said component has a duty to maintain and repair under the Act or otherwise, upon ten (10) days prior written notice of such partial obstruction or temporary suspension (as the case may be), being given to the Benefitting Owners and the Servient Owners, provided however, that in the event said maintenance and repair work involves any part of the Shared Facilities, such maintenance and repair work shall only be carried out in accordance with and pursuant to the provisions of Article 8.00 hereof;
  - (iii) there shall be no partial obstruction of an Easement Area (or temporary suspension of the Easements relating thereto) for any purpose other than those specifically set out in this Section 7.03, without the consent of the Benefitting Owner, unless alternate arrangements with respect to the use and enjoyment of an Easement Area, satisfactory to the Benefitting Owner, acting reasonably, are implemented.

- (c) Notwithstanding any provisions contained herein to the contrary, the Shared Facilities Committee shall be entitled to partially obstruct (on a temporary basis) an Easement Area and/or temporarily suspend an Easement if the suspension and/or obstruction is necessary or convenient for the purposes of inspecting, maintaining and/or repairing all or any portion of the Shared Facilities provided, however, that five (5) days prior written notice of the temporary suspension or partial obstruction shall be given to the Benefitting Owners and the Servient Owners.
- (d) The temporary suspension of an Easement and/or the partial obstruction of an Easement Area shall be carried out in a reasonable and prudent manner so as to minimize the interference or inconvenience occasioned thereby to the Benefitting Owners or the Servient Owners.

#### **7.04 Use of Servicing and Maintenance and Repair Easements**

- (a) Subject to Section 7.03(c) hereof, there shall be no obstruction or suspension (partial, temporary or otherwise) of the Servicing and Maintenance and Repair Easements if same would result in the interruption of utilities and/or services to any one or more of the Benefitting Owners or the Servient Owners for a period of more than three (3) hours without the consent of the Benefitting Owners and the Servient Owners.
- (b) Except in the case of an Emergency, no entry pursuant to the Servicing and Maintenance and Repair Easement shall be made unless and until forty-eight (48) hours prior written notice of the intention to enter is given to the Benefitting Owners and the Servient Owners, which notice shall specify the intended time of commencement and completion of the Work intended to be carried out.
- (c) Any work to be conducted pursuant to the Servicing and Maintenance and Repair Easements shall be carried out in accordance with the provisions of Article 8.00 hereof.

#### **7.05 Relocation of Easements**

- (a) The Pines Declarant shall have the unilateral right to relocate any of the Easement Areas within the Pines Lands and the Cedars Declarant shall have the unilateral right to relocate any Easement Areas within the Cedars Lands (which relocated easements areas shall be hereinafter referred to as the "Relocated Easement Areas") as well as amend the Easements relating thereto so that same reflect the Relocated Easement Areas (which amended Easements shall be hereinafter referred to as the "Relocated Easements") in order to re-align the Easement Areas with the as-built location of any building, structure, facility and/or improvements intended to be used pursuant to the Easement or to rectify any encroachment of a building, structure, facility and/or improvement that was not intended to be part of the Easement Area, provided however that:
  - (i) any relocation of an Easement Area and/or amendment of an Easement does not diminish the benefit of the Easement to such an extent that it would no longer be adequate for the purposes intended;
  - (ii) the Pines Declarant or the Cedars Declarant, as applicable, (the "Relocating Party") shall prepare a reference plan delineating the Relocated Easement Areas; and
  - (iii) the Relocating Party shall be responsible for procuring any and all consents from the Governmental Authorities required in connection with the relocation of the Easements, on the understanding that all necessary parties hereto shall cooperate with the Relocating Party in satisfying any conditions imposed with respect thereto.
- (b) The Resort Owner shall have the unilateral right to relocate or narrow the Access Road Easement (which relocated or narrowed easement area shall be hereinafter referred to as the "Relocated Access Road Easement") in order to re-align and/or narrow the Access Road Easement, provided however that:
  - i. any relocation or narrowing of the Access Road Easement does not diminish the benefit of such Easement to such an extent that it would no longer be adequate for the purposes intended;

- ii. the Resort Owner shall prepare a reference plan delineating the Relocated Access Road Easement; and
  - iii. the Resort Owner shall be responsible for procuring any and all consents from the Governmental Authorities required in connection with the relocation of the Access Road Easement, on the understanding that all necessary parties hereto shall co-operate with the Resort Owner in satisfying any conditions imposed with respect thereto.
- (c) If parking areas are relocated to the common elements or units of a future proposed condominium development, charges or common expense payments may apply to the allocation of such parking to unit owners. Such charges, if any, shall form part of the Two Condominium's common expenses or shall be paid directly by the owners having the benefit of such parking, as determined by the Two Corporation's Board of Directors. Upon the transfer of a future parking unit (or the allocation of the use of a common element space) the owner of the unit with the benefit of such parking will be bound by the Declaration and Description of the condominium in which the parking unit is located.
- (d) The parties hereto shall use reasonable commercial efforts to procure any such releases and reconveyances as may be required from time to time in order to evidence and confirm the Relocated Easements and/or Relocated Easement Areas and/or Relocated Access Road Easement, as hereinbefore contemplated, and shall execute any and all documentation and do and suffer any act necessary to give effect to same, and there shall be no additional consideration payable by the parties with respect to the aforesaid release and reconveyance of the relevant Easements, and the transfer, grant and conveyance of the Relocated Easements and/or Relocated Access Road Easement, provided that the preparation and registration of all of the aforesaid documentation shall be performed by the Relocating Party, all at its sole cost and expense.

#### 7.06 Omitted Easements

In the event that a party hereto (in this Section, the "Dominant Owner") at any time and from time to time shall deliver written notice to any other party hereto (in this Section, the "Servient Owner") that any easement, right and right in the nature of an easement in, on, over, across, through, above, under, or otherwise pertaining to such Servient Owner's Lands as servient tenement, in favour of the Dominant Owner's Lands which is, in its opinion, acting reasonably, required for the proper and efficient functioning of the Dominant Owner's project, has not been created for any reason, the Servient Owner shall grant, transfer and convey such easement, right, and right in the nature of an easement in accordance with the following provisions of this Section and shall co-operate with the Dominant Owner in satisfying any conditions imposed to obtain all necessary consents with respect thereto. The Dominant Owner shall deliver to the Servient Owner with its request for any such easement a draft reference plan prepared by an Ontario Land Surveyor engaged at the sole cost and expense of the Dominant Owner, depicting thereon those portions of the Servient Owner's Lands which are intended to be made subject to the said easement, together with written reasons explaining why such easement is required. In the event that the Servient Owner shall dispute the requirement for such an easement, such dispute shall be resolved pursuant to the arbitration provisions contained in this Agreement based on the criteria for such an easement set forth above in this Section. Provided that the Dominant Owner obtains the necessary consent (if required by operation of law) of the Committee of Adjustment, thirty (30) days following the later of the date upon which such consent becomes final, binding and incapable of further appeal, the Servient Owner shall grant, transfer and convey the said easement to the Dominant Owner. The form of any transfers of easement required to give effect to the aforesaid grant, transfer and conveyance of the said easement, shall be mutually agreed upon by the parties, failing which the form of such transfer of easement shall be decided pursuant to arbitration as provided for by this Agreement. There shall be no additional consideration payable by the parties with respect to the transfer, grant and conveyance of the said easement, provided that the preparation and registration of all of the aforesaid documentation shall be performed by the Dominant Owner all at its sole cost and expense. The obligation to grant, transfer and convey any easement pursuant to this Section shall be stayed pending the decision of the arbitration panel with respect to any arbitration initiated pursuant to this Section.

## **ARTICLE 8.00 - MAINTENANCE AND REPAIR WORK**

- 8.01 The inspection, maintenance, repair and/or replacement of any buildings, installations, structures, improvements and/or services pursuant to the Servicing and Maintenance and Repair Easements or otherwise, including any repair after damage (hereinafter collectively referred to as the "Work"), shall be carried out in accordance with the following conditions, provisions and restrictions:
- (a) any Work relating to the Shared Facilities (hereinafter referred to as the "Shared Work") undertaken (or required to be undertaken) prior to the creation of the Shared Facilities Committee, shall be carried out and completed under the direction and control of the Pines Declarant and the Cedars Declarant and any Shared Work undertaken (or required to be undertaken) after the creation of the Shared Facilities Committee shall be the sole responsibility of the Shared Facilities Committee and be carried out and completed under the direction and control of the Shared Facilities Committee, and in either case, the cost of undertaking and completing the Shared Work shall comprise part of the Shared Facilities Costs; and
  - (b) any Work that does not relate to the Shared Facilities (the "Exclusive Work") shall be the responsibility of and carried out under the direction and control of the Benefitting Owners, all at their sole cost and expense.
- 8.02 The Shared Work shall be carried out as soon as reasonably possible, having due regard to weather conditions and the availability of labour, materials and equipment.
- 8.03 In the event that any buildings, soil or structures or other improvements situate within the applicable property (i.e. the Pines Lands and/or the Cedars Lands) encompassing the Easement Areas are physically altered or damaged in the course of carrying out the Work, then such alteration or damage shall be forthwith restored and/or repaired, as the case may be, to substantially the same condition as existed prior to such physical alteration or damage having occurred or arisen by:
- (a) the Shared Facilities Committee if said damage and/or alteration arose pursuant to any Shared Work; or alternatively
  - (b) the Benefitting Owners if said damage and/or alteration arose pursuant to any Exclusive Work, or pursuant to any Shared Work carried out by the Benefitting Owners pursuant to Article 9.00 of this Agreement.

## **ARTICLE 9.00 — SELF-HELP REMEDIES**

- 9.01 Notwithstanding anything hereinafter provided to the contrary, it is expressly understood and agreed that in the event that:
- (a) the Shared Facilities Committee has failed to implement, carry out and/or complete any Shared Work that any one or more of the Two Condominiums would otherwise have a duty to implement, carry out and/or complete under this Agreement, the Act, the Pines Declaration, the Cedars Declaration or the by-laws of either of the Two Condominiums; or
  - (b) any of the Responsible Parties (as hereinafter defined) or the Shared Facilities Committee, as the case may be, fails to obtain and maintain the Shared Facilities Insurance (as that term is hereinafter defined) it is obliged to obtain and maintain pursuant to Article 12.00 hereof:

(for the purposes of this Section the party failing to carry out the Shared Work, obtain and maintain the Shared Facilities Insurance and/or enter into its Shared Trust Agreement, as the case may be, shall be hereinafter referred to as a "Defaulting Party" and the party intending to carry out the Shared Work, obtain and maintain the Shared Facilities Insurance and/or enter into the Shared Trust Agreement, as the case may be, for and on behalf of the Defaulting Party shall be hereinafter referred to as the "Non-Defaulting Party") then provided:

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

the Non-Defaulting Party shall be entitled to carry out the Shared Work (provided however that the provisions of Section 8.02 and 8.03 hereof shall apply *mutatis mutandis* to said Shared Work) and/or obtain and maintain the Shared Facilities Insurance for and on behalf of the Defaulting Party and the cost incurred by the Non-Defaulting Party in connection with any of the foregoing provisions shall, for all purposes, constitute Shared Facilities Costs to be shared and paid for in accordance with the provisions of Article 5.00 hereof.

- 9.02 For the purposes of this Article 9.00, the commencement of any Shared Work by the Shared Facilities Committee shall be evidenced by either its institution of a tendering process in respect of the Shared Work, or by the actual implementation or utilization of physical labour and/or materials with respect thereto.
- 9.03 Notwithstanding anything hereinbefore provided to the contrary, each of the Two Condominiums shall be entitled to carry out the Shared Work without notice in the case of an Emergency provided however that each of the Two Condominiums shall make reasonable efforts to give prior notice of the nature of the Emergency and of the nature and scope of the Shared Work necessary in light of the Emergency to the Shared Facilities Committee.
- 9.04 The parties hereto hereby covenant and agree that the amount of any costs incurred by a Non-Defaulting Party in connection with any of the foregoing matters shall not be challenged by any of the other parties hereto or the Shared Facilities Committee, unless said amount is clearly demonstrated to be substantially in excess of the reasonable costs and/or expenses that would have otherwise been incurred by the Defaulting Party.

#### ARTICLE 10.00 — THE SHARED FACILITIES COMMITTEE

- 10.01 Subject to Section 10.02 hereof, the Shared Facilities Committee shall consist of three (3) members, one (1) of which shall be appointed by (and be a member of) the board of directors of the Pines Condominium Corporation, one (1) of which shall be appointed by (and be a member of) the board of directors of the Cedars Condominium Corporation, and one (1) of which shall be appointed by the Resort Owner, provided that, prior to the creation of the Pines Condominium Corporation or the Cedars Condominium Corporation, one (1) member shall be appointed by each of the Pines Declarant and the Cedars Declarant, respectively. Each of the Two Condominiums and the Resort Owner shall also appoint an alternative member to fulfil the obligations of the appointed member when unavailable to ensure timely and full functionality of the Shared Facilities Committee.
- 10.02 At any meeting of the Shared Facilities Committee, a quorum shall consist of at least two (2) members thereof. Until the Transfer Date, decisions of the Shared Facilities Committee shall be passed by a majority of members present in person or by proxy at meetings of the Shared Facilities Committee and the Chairman shall not have an additional or casting vote. After the Transfer Date, all decisions of the Shared Facilities Committee shall be unanimous requiring the affirmative vote of members representing both of the condominium corporations and the Chairman shall not have an additional or casting vote. If thirty (30) minutes after the time appointed for the holding of any meeting of the members of the Shared Facilities Committee, a quorum is not present, the meeting shall stand adjourned to the same time on the corresponding day of the next following week. Any member of the Shared Facilities Committee who cannot attend any meeting of the committee may appoint a proxy to attend and vote at the meeting in his or her place. The proxy shall be a director or officer of the condominium corporation represented by such member. To be effective, the proxy must be in writing and must state the office held by the proxy on the board of directors of the condominium corporation represented by such member.
- 10.03 The Shared Facilities Committee shall, *inter alia*, be responsible for the following:
- (a) establishing rules and procedures with respect to the use, operation, staffing, illumination, maintenance and/or repair of the Shared Facilities, and determining the manner in which all maintenance and/or repair work with respect to same shall be carried out;
  - (b) making arrangements for the illumination, maintenance and/or repair of the Shared Facilities, including all equipment and fixtures utilized in connection with the ongoing operation of same, as well as all landscaping, structures, components and/or water features comprising any portion of the Shared Facilities, and procuring all requisite public liability and property damage insurance coverage with respect to same;



- (c) making arrangements for the provision of all requisite utilities and equipment (e.g. water and hydro services), security services and/or computer monitoring services and equipment for the Shared Facilities, including without limitation, the installation and/or reading of separate consumption or check meters measuring the consumption of utilities supplied to the Shared Facilities;
- (d) preparing and submitting the Shared Facilities Budget to the Two Condominiums and the Resort Owner, not less than once annually, outlining the Shared Facilities Costs, for incorporation by each of the Two Condominiums as part of their respective overall annual budgets, in accordance with the foregoing provisions hereof; and
- (e) reimbursing any Non-Defaulting Party for costs incurred in connection with the self-help remedies set out in Article 9.00 hereof.

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

#### **ARTICLE 11.00 — MUTUAL INDEMNITIES**

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

#### **ARTICLE 12.00.—INSURANCE**

- 12.01 Until the Transfer Date, each of the Two Condominiums (or the Cedars Declarant on behalf of the Cedars Condominium prior to its registration under the Act and the Pines Declarant on behalf of the Pines Condominium prior to its registration under the Act) (which parties shall be hereinafter individually referred to as a "Responsible Party" and collectively referred to as the "Responsible Parties") shall obtain and maintain the following insurance with respect to those portions of the Shared Facilities (hereinafter collectively referred to as the "Shared Facilities Insurance") which are completed and which are contained within or situate upon their respective lands (which Shared Facilities shall be hereinafter referred to as their "Respective Portions"):
- (a) public liability insurance with respect to incidents or occurrences happening upon their Respective Portions providing a minimum coverage of \$2,000,000.00 per occurrence;
- (b) fire and property damage insurance sufficient to cover 100% of the repair and/or replacement cost of all damaged property (both realty and personalty) comprising part of their Respective Portions; and
- (c) comprehensive boiler, machinery and pressure vessel insurance on a repair and replacement basis, in such amount as would be normally maintained by prudent owners of such buildings and which amount shall initially not be less than \$2,000,000.00 and shall contain a "disputed loss agreement" between the property loss insurers and the boiler and machinery insurers;

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

12.02 Each of the insurance policies maintained pursuant to the foregoing Section 12.01, shall:

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

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

- (a) to the Insurance Trustee with respect to any loss occasioned to any Respective Portions comprising part of (or encompassed within) the description of any one or both of the Two Condominiums; or
- (b) to the Pines Condominium with respect to any loss occasioned to any Respective Portions contained (or encompassed within) the Pines Condominium; or
- (c) to the Cedars Declarant with respect to any loss occasioned to any Respective Portions not yet contained (or encompassed within) the Cedars Condominium;

for the purposes of carrying out any Shared Work arising as a result of damage in accordance with Article 8.00 hereof. In the event there are any surplus funds remaining after the completion of said work, the applicable Responsible Party whose Respective Portions have been repaired and/or restored shall be entitled to receive and/or retain all of said surplus funds.

12.04 Nothing contained in this Agreement shall be construed to prohibit any of the parties hereto from arranging for additional insurance above and beyond that contemplated herein, provided however, that any premiums with respect to same shall be paid by the party obtaining such additional insurance coverage.

12.05 From and after the Transfer Date, the responsibility for procuring the Shared Facilities Insurance shall devolve upon the Shared Facilities Committee for and on behalf of both of the Two Condominiums.

12.06 The Responsible Parties (or the Shared Facilities Committee, if same is in existence) shall obtain an appraisal from one or more independent and qualified consultants or trade professionals or appraisers in order to ascertain the full replacement cost of the Shared Facilities whenever they mutually agree that such an appraisal is necessary but not, in any event, less than once every three (3) years and the costs of said appraisals shall constitute part of the Shared Facilities Costs.

12.07 For purposes of greater certainty and clarity there shall be no obligation to obtain insurance with respect to any portion of the Shared Facilities that have not yet been constructed from time to time nor with respect to any boiler, machinery or pressure valves not yet installed and/or operating or that may not be constructed within any of the Buildings comprising the Total Project.

#### **ARTICLE 13.00— INSURANCE TRUSTEE**

13.01 Any and all insurance proceeds of any insurance policy in excess of 15% of the replacement cost of the property covered by the insurance policy payable to or for any party hereto for the repair of its assets and attributable to damage to any part(s) of the Shared Facilities (after allowing for any proceeds attributable to damage to other than the Shared Facilities as determined by the Insurer, acting reasonably) shall be held by an insurance trustee mutually agreeable to the Two Condominiums (the "Insurance Trustee") and if an Insurance Trustee cannot be agreed upon, the insurance trustee shall be appointed in accordance with the provisions of Article 17.00.

13.02 The insurance trustee appointed in accordance with Section 13.01 hereof shall be a trust company registered under the Loan and Trust Corporations Act or shall be a chartered bank, with which the parties shall enter into an agreement providing as follows:

- (a) receipt by the insurance trustee of any excess proceeds as set out in Section 13.01 hereof; and
- (b) the holding of such proceeds in trust and disbursement of same in order to satisfy the obligation of each of the Two Condominiums in accordance with Article 14.00.

#### **ARTICLE 14.00 — DAMAGE TO SHARED FACILITIES**

14.01 If either or both of the Pines Condominium and the Cedars Condominium is damaged to the extent of less than 25%, the respective Owner shall rebuild, restore and repair same in accordance with this Agreement.

14.02 If major damage has occurred to one or more of the Pines Condominium or the Cedars Condominium, each Owner shall determine whether the damage extends to more than 25% of its building and in default of agreement, such determination shall be referred to mediation and if necessary arbitration pursuant to this Agreement.

14.03 Where there has been a determination that either or both of the Pines Condominium and the Cedars Condominium have been damaged to an extent greater than 25%, and:

- (a) each such Owner has elected to rebuild, then each such Owner shall expeditiously rebuild, restore and repair its portion of the Building at its own expense in a good and workmanlike manner to Acceptable Standards to permit the other Owner and those authorized by it the intended benefit of the Easements;
- (b) both Owners have elected not to rebuild, the Owners need not rebuild their respective portions of the Buildings, provided that the Owners shall inform the Resort Owner of their election; or
- (c) one, but not both, of the Owners has elected not to rebuild, the Owner electing not to rebuild shall inform the other Owner and the Resort Owner of its election and shall nevertheless rebuild, repair and restore its Servient Portion in such a manner so as not in any material way to adversely affect the use and enjoyment of the Easements and relevant portions of its Building by the other Owner.

In the event that either or both of the Pines Condominium and the Cedars Condominium is not rebuilt pursuant to (b) or (c) above, the Resort Owner shall have the option to purchase such Condominium property at a price equal to eighty percent (80%) of the then fair market value of such property, determined by the Condominium(s) not being rebuilt and the Resort Owner, and failing such agreement, then by ADR pursuant to Article 17 hereof, with a closing to take place within 120 days after the delivery of the notice of election, or the last of the two notices of election referred to above.

14.04 In the event it is necessary to relocate any of the Easement Areas within the Total Site and/or amend the Easements relating thereto as a result of the repair and restoration of damage to the Shared Facilities, in order to re-align the Easement Areas with the as-built location of any building, structure, facility and/or improvements intended to be used pursuant to the Easements or to rectify any encroachment of a building, structure, facility and/or improvement that was not intended to be part of the Easement Area, the provisions of Section 7.05 hereof shall apply, mutatis mutandis, to the relocation and/or amendment of the Easements provided however that any obligations imposed therein upon the relevant Owner shall be the responsibility of the Responsible Parties and/or the Shared Facilities Committee if same is in existence.

#### **ARTICLE 15.00 — TERMINATION OF CONDOMINIUMS**

15.01 The obligations and responsibilities contained in this Agreement (including without limitation the obligation to repair after damage set out in Article 14.00 hereof) shall apply notwithstanding that the Pines Condominium or the Cedars Condominium has elected to terminate the government of its lands under the Act, and in the event of such termination each of the unit owners (and for greater certainty it is acknowledged that said unit owners would be owners of

the lands which were formerly encompassed within the condominium, as tenants in common) shall be bound by the terms and provisions of this Agreement as if they were original signatories hereto and shall be jointly and severally liable to comply with all the obligations and covenants contained in this Agreement and shall execute such further assurances as may be required or desired by the other Responsible Party to give full force and effect to this Article 15.00.

- 15.02 For the purposes of Section 127(1) of the Act, the obligations arising under this Agreement (including without limitation the obligations contained herein to carry out the Work and the option in favour of the Resort Owner, as referred to in Section 14.03 hereof) shall be deemed to be encumbrances against all of the units and their appurtenant common interests contained within the description of the Pines Condominium and the Cedars Condominium.

#### ARTICLE 16.00—THE EASEMENT CHARGE

- 16.01 In the event that any of the parties hereto shall fail to pay or contribute any monies required to be paid or contributed in accordance with the foregoing provisions of this Agreement (including without limitation any Shared Facilities Costs incurred pursuant to the Self-Help Remedies set out in Article 9.00) (hereinafter referred to as a "Delinquent Party") within 30 days after receiving written notice from at least one of the other parties hereto or the Shared Facilities Committee (hereinafter referred to as the "Non-Delinquent Party") requesting such monies to be paid or contributed, then the Non-Delinquent Party shall be entitled to pay or contribute those monies which the Delinquent Party should have paid or contributed, and all monies so expended shall, until repaid by the Delinquent Party, bear interest at the rate of 24% per annum, calculated and compounded monthly on such amount as is from time to time unpaid, and until so paid, such outstanding amount (together with all interest accruing thereon as aforesaid) shall, to the extent thereof; be and constitute a lien and charge against the Delinquent Party's lands (or common element areas, as the case may be) (hereinafter referred to as the "Easement Charge").
- 16.02 Subject to the overriding provisions of Section 16.04 hereof, the Easement Charge shall be enforceable by the Non-Delinquent Party in the same manner, and to the same extent, as a real property mortgage or charge, with all of the powers, rights and remedies inherent in, or available to, a mortgagee or chargee when a mortgage or charge of real property is in default pursuant to the provisions of the *Mortgages Act*, R.S.O. 1990, as amended, and/or any other applicable statutory provision or common law principle applicable thereto and the parties agree that the terms of such charge are those terms set out in the charge terms filed under the *Land Registration Reform Act*, R.S.O. 1990, c. L.4, as number 200033.
- 16.03 In the event that the Land Registrar requires the Non-Delinquent Party to apply to a court of competent jurisdiction for any order, direction, advice or authorization prior to such Land Registrar allowing the registered title of the Delinquent Party's lands or common elements to be formally encumbered by the Easement Charge, then the Non-Delinquent Party shall be entitled to forthwith apply to such court for any required order, direction, advice or authorization, and the Delinquent Party shall, for all purposes, be deemed to have consented to any such application so being made for this purpose, and the Delinquent Party shall be forever barred and estopped from bringing or instituting any action, suit, claim or other proceeding to defend, defeat, hinder or delay any such application by the Non-Delinquent Party, or its enforcement of the Easement Charge (save for the institution of arbitration proceedings pursuant to the provisions hereinafter set out, in order to dispute any alleged default and/or the Non-Delinquent Party's entitlement to the Easement Charge). Alternatively, if the Land Registrar permits, the Easement Charge may be enforced by the filing of a caution, a certificate of pending litigation, or any restriction or notice as may be permitted by the provisions of the *Land Titles Act*, R.S.O. 1990, as amended.
- 16.04 The Easement Charge need not be registered against the title to the Delinquent Party's lands (or common elements), assets or appurtenant interests (nor registered elsewhere) in order to enable or entitle the Non-Delinquent Party to maintain or pursue a civil action against the Delinquent Party for breach of this Agreement. However, notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that the Easement Charge shall not have any priority claim whatsoever over (or in respect of) the interest of any third party (or parties) in or to the Delinquent Party's lands, assets and appurtenant interests, unless and until the Easement Charge (or any notice thereof, or any caution or certificate of pending litigation with respect thereto) has been registered against the title to same, and once such registration occurs, the Easement Charge shall then be deemed to be fully postponed and subordinate to all liens, mortgages, charges, interests and any other encumbrances (including any and all amendments thereto or extensions thereof made from time to time) which are registered against the Delinquent Party's lands and/or appurtenant interests in priority to the

registration of the Easement Charge (all hereinafter collectively referred to as the "Prior Charges"), and shall also be deemed to be fully postponed and subordinate to all mortgage advances theretofore made (and thereafter to be made) under any of the Prior Charges.

#### ARTICLE 17.00— ALTERNATIVE DISPUTE RESOLUTION

- 17.01 The parties agree to use their best efforts to resolve any disputes or matters which may arise between them in respect of the Shared Facilities through good faith negotiations and the parties further agree that they shall resort to legal proceedings or mediation and arbitration against one another only as a last resort. If, after using their best efforts to resolve any such dispute or matter, such dispute or matter cannot be resolved by good faith negotiations, then any such dispute, other than with respect to non-payment of any party's proportionate share of the Shared Facilities Costs, shall be determined in the following manner which for purposes of this agreement shall be called "ADR".
- 17.02 Whenever ADR is permitted or required under this Agreement or the Act, ADR proceedings may be commenced by the parties in accordance with the following principles and procedures:
- (a) Prior to commencing ADR proceedings, the parties shall use their best efforts to resolve the question or matter in dispute through good faith negotiations conducted at a meeting of the full boards of directors of each party, with the assistance and presence (optional) of legal counsel representing each party, all acting with a view to securing a resolution of the question or matter in dispute without further proceedings.
  - (b) If the parties, with the assistance of legal counsel as set forth in Section 17.02(a) above, are unable to resolve the question or matter in dispute through good faith negotiations, as provided in Section 132 of the Act, the parties shall, within thirty (30) days thereafter, select a mediator qualified by education and training to assist the parties in dealing with the particular question or matter in dispute, and the parties shall attempt to mediate their differences, and the mediator shall confer with the parties and endeavour to obtain a settlement with respect to the disagreement submitted to mediation. The parties shall initially share equally in the costs of a mediator; however, the settlement shall specify the share of the mediator's fees and expenses that each party is required to pay. Upon obtaining a settlement between the parties with respect to the disagreement submitted to mediation, the mediator shall make a written record of the settlement which shall form part of the agreement or matter that was the subject of the mediation.
  - (c) If good faith negotiations and the mediation process as described in Section 17.02(a) and (b) of this Agreement are exhausted and the parties are still unable to resolve the question or matter in dispute, within thirty (30) days after the mediator delivers a notice to the parties stating that the mediation has failed, the parties agree to submit the question or matter in dispute for resolution by a single arbitrator whose appointment is agreed upon by the parties, and the decision of the arbitrator shall be binding upon the parties hereto, and no legal recourse shall be exercised by either party hereto with respect to the question or matter in dispute until the arbitration has been completed.
  - (d) The parties shall meet and attempt to appoint a single arbitrator who is well qualified by education and training to pass upon the particular question or matter in dispute. In the event that the parties are unable to agree upon a single arbitrator, each party shall appoint one arbitrator within seven (7) days of the meeting and notify the other party. The arbitrators so appointed shall, within seven (7) days of the appointment of the last arbitrator so appointed, choose a single arbitrator who is qualified by education and training to pass upon the particular question or matter in dispute. If either party neglects or refuses to name an arbitrator within seven (7) days of being requested to do so by the other party, the arbitrator named by the first party shall proceed to resolve the dispute in accordance with *Arbitration Act, 1991* (Ontario) and the parties agree that the arbitrator's decision shall be final and shall not be subject to appeal by any party other than on a question of law in accordance with Subsection 45(2) of the *Arbitration Act, 1991* or pursuant to a specific ground for appeal or for setting aside the arbitrator's award pursuant to Section 46 of the *Arbitration Act, 1991*.
  - (e) The decisions and reasons of the arbitrator shall be made within thirty (30) days after the hearing of the question or matter in dispute, and the decisions and reasons shall be drawn up in writing and signed by the arbitrator who shall also be entitled to award costs of the ADR. The compensation and expenses of the arbitrator shall initially be paid

in equal proportions by each party, subject to the final outcome and any award being made as to costs of the ADR.

- (f) Where ADR is required by this Agreement, commencement and completion of such ADR in accordance with this Agreement shall be a condition precedent to the commencement of an action at law or in equity in respect of the question or matter in dispute being arbitrated.

17.03 For clarity, notwithstanding the nature of the dispute, until the question or matter in dispute is finally determined by ADR, the disputing party shall continue to perform all work and services required to be performed by it and to pay all amounts required to be paid by it in accordance with this Agreement.

17.04 Subject always to the parties agreeing to any modifications thereto, the mediation shall be conducted generally in accordance with the rules of procedure of the mediator chosen and the ADR shall be conducted generally in accordance with the rules of procedure for the conduct of ADR as defined by the arbitrator so chosen and also in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Any dispute, difference, issue or question arising between the parties hereto which concerns (or touches upon) the validity, construction, meaning, performance or effect of this Agreement, or the rights and liabilities of the parties hereto, or with respect to any matter arising out of (or connected with) this Agreement, shall be referred to and resolved by arbitration pursuant to the *Arbitration Act, 1991*, as amended, in accordance with the overriding provisions set out in this Article. The substantive rules of law applicable to the dispute being arbitrated pursuant to the provisions hereof shall be those of the Province of Ontario, and the arbitration decision so rendered shall be binding upon the parties hereto, and their respective successors and assigns, and shall not be subject to appeal except as set out herein.

#### ARTICLE 18.00 — RELEASE OF DECLARANTS

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

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

#### ARTICLE 19.00 — NOTICES

19.01 All notices required or desired to be given to any of the parties hereto in connection with this Agreement, or arising herefrom, shall be in writing, and shall be hand delivered to an officer or director of the intended party at the following address, or be delivered by registered mail to the intended party at the following address (and if so mailed, same shall be deemed to have been delivered, received and effective on the third day (excluding Saturdays, Sundays and statutory holidays) following the day on which such notice was mailed):

- (a) to the Pines Declarant — 30 Barrett Chute Road, Calabogie, ON K0H 1H0
- (b) to the Cedars Declarant — 30 Barrett Chute Road, Calabogie, ON K0H 1H0
- (c) to the Resort Owner — 30 Barrett Chute Road, Calabogie, ON K0H 1H0
- (d) to the Utilities Owner — 30 Barrett Chute Road, Calabogie, ON K0H 1H0

- (e) to the Pines Condominium Corporation — to its property manager, MJM Management — 387 Bell Street South, Ottawa ON K1S 4K5
  - (f) to the Cedars Condominium Corporation — to its property manager, MJM Management — 387 Bell Street South, Ottawa ON K1S 4K5
  - (g) to the Shared Facilities Committee by giving same to the Resort Owner and to the Pines Declarant and the Cedars Declarant, until the Transfer Date, and to the Two Condominiums' representatives appointed pursuant to Section 10.01 thereafter.
- 19.02 Any party hereto may, from time to time, by written notice to the other parties hereto, delivered in accordance with the foregoing provisions, change the address to which its notices are to be delivered.

#### **ARTICLE 20.00 — REGISTRATION OF THIS AGREEMENT**

- 20.01 The parties hereto hereby consent to the registration of this Agreement against the title to the Total Site, and hereby acknowledge, confirm and agree that this Agreement shall be deemed and construed to run with the title to each of the Pines Lands, the Cedars Lands and the Resort Lands, respectively. Each of the Pines Declarant and the Cedars Declarant further covenants and agrees that upon the registration of the Pines Condominium and the Cedars Condominium, respectively, pursuant to the provisions of the Act, it shall cause the Pines Condominium or the Cedars Condominium, as the case may be, to enter into an agreement with the other Condominium and the Resort Owner to assume all of the liability and obligations of the Pines Declarant and the Cedars Declarant, respectively, contained in this Agreement or to simply execute a counterpart of this Agreement, in order to be bound by all the terms, provisions and conditions contained herein, as if the Cedars Condominium had been an original party to this Agreement in the place and stead of the Cedars Declarant.

#### **ARTICLE 21.00 — ESTOPPEL CERTIFICATE**

- 21.01 Each of the Two Condominiums (and the Pines Declarant and the Cedars Declarant on behalf of the Pines Condominium and the Cedars Condominium, respectively, until it is registered) and the Resort Owner (hereinafter referred to as a "Receiving Party") shall, within ten (10) days after receiving a written request (hereinafter referred to as a "Certificate Request") accompanied by payment of a fee not in excess of \$100.00 per Receiving Party, plus all applicable taxes thereon (or such higher fee as may be appropriate based on inflationary fee increases), from or by any party interested in the status of this Agreement (hereinafter called the "Requesting Party"), execute, acknowledge and deliver to the Requesting Party a certificate (hereinafter called the "Certificate") confirming:
- (a) whether this Agreement has been modified and if so, the nature of such modifications, and confirming that it is in full force and effect;
  - (b) whether or not the terms and provisions of this Agreement have been complied with to date, and whether or not there is any outstanding default alleged (or complained of) by or against either of the Two Condominiums, the Pines Declarant, the Cedars Declarant, the Resort Owner and/or the Shared Facilities Committee as well as the nature and extent of the default so alleged;
  - (c) whether or not any Work has been (or is presently being) performed by either of the Two Condominiums, the Pines Declarant, the Cedars Declarant, the Resort Owner and/or the Shared Facilities Committee for which the costs will be claimed or charged against any of the other parties hereto and/or the Shared Facilities Committee pursuant to provisions of this Agreement.
- 21.02 Notwithstanding any provision contained herein to the contrary, no fee shall be charged to (or levied against) the Pines Declarant or the Cedars Declarant if either of them requests (or any authorized agent or representative of the Pines Declarant or the Cedars Declarant, as applicable, requests) a Certificate pursuant to this Article 21.00.
- 21.03 The contents of the Certificate may be pleaded as (and shall constitute) a complete defence by the Receiving Party to any litigated claim or action that is inconsistent with the facts recited in the Certificate.

21.04 If a Receiving Party fails to execute and deliver to the Requesting Party the Certificate so requested from it, within ten days after receiving the Certificate Request and the accompanying fee, then it shall be deemed to have certified to the Requesting Party that:

- (a) there is no outstanding default by either of the Two Condominiums, the Pines Declarant, the Cedars Declarant, the Resort Owner and/or the Shared Facilities Committee under this Agreement; and
- (b) no Work has been (or is presently being) performed by either of the Two Condominiums, the Pines Declarant, the Cedars Declarant, the Resort Owner and/or the Shared Facilities Committee, for which the cost of same is (or may be) claimed or charged against either of the Two Condominiums, the Pines Declarant, the Cedars Declarant, the Resort Owner and/or the Shared Facilities Committee, pursuant to the provisions of this Agreement.

#### **ARTICLE 22.00— RECIPROCAL BENEFIT AND BURDEN**

22.01 The parties hereto hereby expressly declare their mutual intention that the principles of reciprocal benefit and burden shall apply to their relationship and, as such, it is hereby acknowledged and agreed that each of the easements, rights and privileges hereinbefore set forth establishes a basis for the mutual/reciprocal use and enjoyment of the Shared Facilities, which are intended to be used and enjoyed by the Two Condominiums and the Resort Component to varying degrees. As an integral and material consideration for the continuing right to the use and enjoyment by each of the Two Condominiums and the Resort Component of such easements, rights and privileges (as are confirmed in this Agreement, or incorporated herein by way of counterpart agreement), each of the parties hereto hereby accepts (and agrees to assume) the burdens and obligations imposed upon them by virtue of this Agreement.

#### **ARTICLE 23.00 — CONSTRUCTION LIENS**

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

#### **ARTICLE 24.00 — SUCCESSORS AND ASSIGNS**

24.01 This Agreement shall enure to the benefit of, and be correspondingly binding upon, the parties hereto and their respective successors and assigns.

24.02 Notwithstanding anything provided in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that:

- (a) any reference to either of the Two Condominiums in this Agreement, where the context pertains to the use or enjoyment of an easement (or some other right, benefit or interest), shall be deemed to include the Two Condominiums' duly authorized agents, representatives, employees, contractors and/or subcontractors; and shall also specifically include the unit owners thereof and their respective tenants, residents and invitees;
- (b) any reference to the Pines Declarant in this Agreement, where the context pertains to the use or enjoyment of an easement (or some other right, benefit or interest), shall specifically include the Pines Declarant and the Pines Condominium and their duly authorized agents, representatives, employees, contractors and/or subcontractors, together with all of the unit owners of said condominium corporation, and their respective tenants, residents and invitees;
- (c) any reference to the Cedars Declarant in this Agreement, where the context pertains to the use or enjoyment of an easement (or some other right, benefit or interest), shall specifically include the Cedars Declarant and the Cedars Condominium and their duly authorized agents, representatives, employees, contractors and/or subcontractors,



together with all of the unit owners of said condominium corporation, and their respective tenants, residents and invitees; and

- (d) any reference to the Shared Facilities Committee shall, unless the context provides otherwise, mean the Pines Declarant and the Cedars Declarant in the event that said committee has not yet been created, provided however, that any obligations imposed upon the Shared Facilities Committee including without limitation the obligation to carry out and/or pay for any maintenance or repair work (hereinafter referred to as the "Shared Obligations"), shall apply to the Pines Declarant and/or the Cedars Declarant only insofar as the appropriate contributions have been made by such of the Two Condominiums in existence from time to time (or insurance proceeds are available) to enable the Pines Declarant and/or the Cedars Declarant to carry out and/or pay for any of the Shared Obligations.

#### **ARTICLE 25.00 — FURTHER ASSURANCES**

- 25.01 The parties hereto hereby covenant and agree to forthwith execute all further documents, instruments and assurances as may be necessary or required in order to carry out the true intent of these presents, and to register this Agreement (or notice thereof) against the title to the Pines Lands and the Cedars Lands. Without limiting the generality of the foregoing, the parties hereby covenant and agree to execute all such further documents, instruments and agreements as may be required in order to realign the boundaries of the Shared Easement Areas so that same align more accurately with the final location thereof, as finally constructed. Moreover, each of the Two Condominiums and the Resort Owner specifically covenants and agrees to execute, forthwith upon the request of the Pines Declarant or the Cedars Declarant, as is necessary and at no cost to the Pines Declarant, the Cedars Declarant or to any other party hereto:
- (a) such further or supplementary Shared Facilities Agreements pertaining to (and generally confirming) those matters and details more particularly set out herein, and containing such additional provisions as the Pines Declarant or the Cedars Declarant may deem necessary or desirable in order to more accurately reflect the sharing of the Shared Facilities between the Two Condominiums and the Resort Component, but in no case derogating in any material respect from the overall nature and intent of this Agreement;
  - (b) whatever releases or other documents are required in order to delete this agreement from title to any lands which do not or will not form part of the Pines Condominium, the Cedars Condominium or the Resort Component; and
  - (c) such documents, releases and assurances as the Pines Declarant or the Cedars Declarant may require in order to evidence and confirm the cessation of the Pines Declarant's or the Cedars Declarant's obligations and liabilities hereunder with respect to the Pines Condominium or the Cedars Condominium, as the case may be, and the release of all claims by the Two Condominiums and the Resort Component against the Pines Declarant or the Cedars Declarant arising from, or in connection with this Agreement or any supplementary or further Shared Facilities Agreements.
- 25.02 Notwithstanding anything hereinbefore provided to the contrary, it is expressly understood and agreed that if a counterpart of this Agreement is duly executed by the Cedars Condominium (as and when same is created) with or without the Cedars Declarant as an additional signatory thereto (which incorporates all material aspects of this Agreement and the overall nature and intent hereof, but which is not executed by any of the other parties hereto), in lieu of any of the supplementary agreements referred to in Section 25.01 (a) hereof (which would require the execution thereof by the Cedars Condominium Corporation), then any such party which does not execute such counterpart agreement shall nevertheless be bound by all of the terms and provisions of the said counterpart agreement as if it had duly executed same.

#### **ARTICLE 26.00 — MISCELLANEOUS PROVISIONS**

- 26.01 This Agreement is subject to compliance with the subdivision and part-lot control provisions of the *Planning Act*, R.S.O. 1990, as amended.
- 26.02 The headings used throughout the body of this Agreement form no part hereof but shall be deemed to be inserted for convenience of reference only.

- 26.03 This Agreement shall be read and construed with all changes in gender and/or number as may be required by the context.
- 26.04 If any clause or section of this Agreement shall be determined by a court of competent jurisdiction to be illegal or unenforceable, then such clause or section shall be considered separate and severable from the rest of this Agreement, and the remaining provisions hereof shall remain in full force and effect, and shall continue to be binding upon the parties hereto as though the said illegal or unenforceable clause or section had never been included.
- 26.05 This Agreement may be executed in one or more counterparts, each of which when so executed shall constitute an original, and all of which together shall constitute one and the same agreement.
- 26.06 Wherever this Agreement allows a party to exercise its discretion or to act unilaterally, such exercise of discretion or actions shall be carried out honestly and in good faith.

IN WITNESS HEREOF the parties hereto have executed this Agreement by their respective proper signing officers authorized in that behalf.

**CALABOGIE PEAKS ULC**

as the Pines Declarant  
as the Cedars Declarant  
as the Resort Owner  
as the Utilities Owner

Per: PM Murphy  
Name: Paul Murphy, president  
I have the authority to bind the corporation

**SCHEDULE "A"****THE PINES LANDS**

Part of Block 2, Plan 49M-102, being Parts 3 and 4 on Plan 49R-19479, Township of Greater Madawaska, County of Renfrew

Being part of PIN 57359-0366

**SCHEDULE "B"****THE CEDARS LANDS**

Part of Block 2, Plan 49M-102, being Parts 1 and 2 on Plan 49R-19479, Township of Greater Madawaska, County of Renfrew

Being part of PIN 57359-0366

**SCHEDULE "C"****THE RESORT LANDS**

- Firstly     Block 1, Plan 49M-102, Township of Greater Madawaska, County of Renfrew, being PIN 57359-0365
- Secondly: Part of Block 2, Plan 49M-102, being Parts 5 and 6 on Plan 49R-19479, Township of Greater Madawaska, County of Renfrew, being part of PIN 57359-0366
- Thirdly:   Block 3, Plan 49M-102, Township of Greater Madawaska, County of Renfrew, being PIN 57359-0367
- Fourthly:  Block 4, Plan 49M-102, Township of Greater Madawaska, County of Renfrew, being PIN 57359-0368

SCHEDULE "D"

SHARED FACILITIES

Allocation of Shared Facilities Costs

Description	% Allocation		
	Pines	Cedars	Resort Lands
Snow Removal from the Access Road	33 1/3%	33 1/3%	33 1/3%
Snow Removal from Parking Areas, including exclusive use parking spaces	55%	45%	0%
Maintenance and repair of the Access Road	33 1/3%	33 1/3%	33 1/3%
Maintenance and repair of the Parking Areas, including exclusive use parking spaces	55%	45%	0%