

DATED this 16 day of APRIL, 2002.

BETWEEN:

LONGWOOD BUILDING CORPORATION
(as current owner of the Property)

- and -

LONGWOOD BUILDING CORPORATION
(On behalf of future Owners of the Property)

COMMON ELEMENTS AGREEMENT

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File: 29326-0155

COMMON ELEMENTS AGREEMENT

This Agreement made the 16 day of April, 2002.

BETWEEN:

LONGWOOD BUILDING CORPORATION

(Hereinafter called "Longwood" as current owner of the Property)

AND:

LONGWOOD BUILDING CORPORATION

(On behalf of future Owners of the Property)

RECITALS

Longwood is the owner of a multi-unit residential housing project located on the property described in Schedule "A" (the "Property");

There will be thirty-three (33) freehold residential units constructed on the Property (the "Units"). The legal description of all the Units located on the Property will be described by Reference Plan upon completion of the Units.

Owners of Units share certain common elements with each other including services and utilities ("Common Elements"). In addition, some Units share certain structural elements with other Units (the "Shared Elements"). Finally, owners of Units hold title to Common Property as tenants-in-common ("Common Property"). The Common Elements, Shared Elements and Common Property are described in this Agreement.

Longwood intends to register Bylaws of the City of Ottawa exempting the Property from the part lot control provisions of the *Planning Act of Ontario*.

This Agreement is being registered to define and establish the rights and obligations between Owners of Units, their mortgagees and tenants, from time to time, with respect to the Common Elements, Shared Elements and Common Property referred to in this Agreement.

Any person or corporation who acquires an interest in the Property or in any Unit after this Agreement is registered is bound by the provisions of this Agreement.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. DEFINED TERMS AND SCHEDULE

1.1 Definitions In This Agreement:

- 1.1.1 **"Common Expenses"** means the expenses of maintaining, repairing and replacing the Common Property and Common Elements.
- 1.1.2 **"Common Elements"** means those elements defined in 2.3 hereof.
- 1.1.3 **"Common Property"** means that part of the Property owned by all Owners as tenants in common as described in Schedule "B" and being the private internal road that provides pedestrian and vehicular access to the Units.
- 1.1.4 **"Owner" or "Owners"** means the owner of any one of the Units on the Property or the owners of all of the Units on the Property, respectively, and their successors and assigns.
- 1.1.5 **"Property"** means the lands described in Schedule "A".
- 1.1.6 **"Proportionate Share"** means the share of the Common Expenses from time to time that each Owner must pay. The Proportionate Share of each Owner is listed in Schedule "C".
- 1.1.7 **"Shared Elements"** means certain elements of the project which are for the joint and mutual use and benefit of only adjacent Owners. These elements are described in Section 2.4.
- 1.1.8 **"Unit" or "Units"** means the individual freehold titles created on the Property together with the homes thereon.

1.2 Schedules:

- 1.2.1 The following Schedules to this Agreement form part of the Agreement:

Schedule "A" – Description of the Property

Schedule "B" – Description of the Common Property

Schedule "C" – Proportionate Share of Common Expenses

Schedule "D" – Rules and Regulations

Schedule "E" – Status Certificate

2. DESCRIPTION OF THE UNITS, THE COMMON PROPERTY, COMMON ELEMENTS AND SHARED ELEMENTS

2.1 Freehold Interest in the Units and Common Property

- 2.1.1 This Agreement applies to all Units constructed and to be constructed on the Property. Each Owner enjoys a freehold title to the Owner's respective Unit. This title includes a freehold title to a 1/33rd interest, as a tenant in

common with all other Owners of these Units, in the Common Property, entitling the Owner to use the Common Property for the benefit of the Owner's title.

2.2 Restriction on Partition and Sale of Common Property

2.2.1 An Owner's freehold interest as a tenant in common of the Common Property shall not be separated from the freehold ownership of the balance of the Owner's Unit. The Owners agree not to make any application for partition or sale of the Common Property.

2.3 Common Elements

2.3.1 The Common Elements means certain elements which are for the joint and mutual use and benefit of certain or all owners including the following elements:

2.3.1.1 services and utilities located on or under the Common Property and on or under the Units to service the Units and the Common Property, including lines, wires, cables, conduit, pipes, works, boxes, transformers, meters, hydrants and any other item reasonably required to supply necessary services and utilities to the Property or to any Unit, including but not limited to hydro, telephone, natural gas, data and cablevision;

2.3.1.2 common landscaping and lighting;

2.3.1.3 perimeter fencing;

2.3.1.4 mutual easements for access, services and utilities, repair, maintenance and replacement;

2.3.1.5 storm sewers, catch basins, sanitary sewers, watermains, hydrants and water services for the mutual benefit and joint use of Owners;

2.3.1.6 designated spaces for visitor parking;

2.3.1.7 a community mailbox, if applicable;

2.3.1.8 any other elements located on the Property which benefits all Owners and any alterations or additions to the Common Elements considered necessary by the Owners' Committee.

2.3.2 The Common Elements shall exclude service laterals located within the lot lines upon which a Unit is built.

The Common Elements shall exist in perpetuity unless the Owners from time to time agree otherwise in writing and register notice of such Agreement on title to their respective properties.

2.4 Shared Elements

2.4.1 In addition to the Common Elements, the Owners acknowledge that party or dividing walls exists for the joint use and mutual benefit of certain Owners. These party walls divide the Units and are for the benefit of the Owners on each side of the walls. The party walls shall be located on Reference Plans which will be registered to delineate the boundaries of the Units.

2.4.2 Other Shared Elements between these Unit Owners are:

2.4.2.1 The roof elements above their party walls;

2.4.2.2 Foundation and building elements, structural or otherwise supporting and enclosing the party walls;

2.4.2.3 Privacy fences separating a portion of each rear yard.

2.4.2.4 Utility boxes and services which service more than one unit.

Owners shall have access to Shared Elements as may be required for the operation, maintenance and repair thereof. The Shared Elements shall exist in perpetuity unless the Owners who from time to time enjoy Shared Elements between each other mutually agree otherwise in writing and register notice of such Agreement on title to their respective properties.

2.5 This Agreement Binds All Owners

2.5.1 By accepting a Transfer of a Unit, each Owner is deemed to have contracted directly with every other Owner for every term and condition of this Agreement, even if the provision referred to in Section 2.6 was not included in the Transfer.

2.5.2 The benefits and burdens of this Agreement shall run with the title to the Lands described in Schedule "A" and the terms hereof shall be binding on and enure to the benefit of all present and future Owners of such lands.

2.6 Title Transfers Shall Refer to this Agreement

2.6.1 Each Owner agrees to include in any transfer, deed, conveyance, charge, mortgage or other dealing with his or her interest in the Units a limitation to the effect that the transfer, deed, conveyance, charge, mortgage or other dealing is subject to the rights and obligations set out in this Agreement, by express reference to the registration particulars thereof, and shall extract from the person or corporation who is acquiring such interest a covenant to obtain a similar covenant with respect to any similar dealing, it being the intent of this Agreement that the interests hereby created and the obligations imposed by this Agreement shall be inseparable from the ownership of each Unit. The sale of a Unit to any purchaser or by subsequent purchasers shall contain the following provision, which shall be incorporated in all transfers of a Unit from the Owner (or from subsequent purchasers) so that it shall be a covenant which runs with the Property for the benefit of the Owners:

"The Transferee, and the Transferee's successors and assigns agree not to use, occupy or deal with the property, or any part of it, except in accordance with the provisions of the Common Elements Agreement registered on the ____ day of _____, 2002 as Instrument No. _____ and agree to be bound by and carry out the duties and obligations of an Owner under the Common Elements Agreement. This Agreement shall run with and bind the property described in this Transfer for the benefit of the other Owners referred to in the Common Elements Agreement. The Transferee shall include this covenant in all subsequent transfers of the property."

2.7 Relationship of Owners

2.7.1 No Owner is, or is intended to be, or shall be deemed to be the partner, agent or legal representative of any other Owner, except to the extent provided for in this Agreement.

2.8 Several Liability

2.8.1 As between the Owners, the obligations of each Owner relating to the Common Property as a whole shall be several and not joint and the obligation of any Owner shall be limited to that Owner's Proportionate Share.

3. MANAGEMENT OF THE COMMON PROPERTY AND COMMON ELEMENTS

3.1 Initial Management of Common Property and Common Elements

3.1.1 The Common Property and Common Elements shall be managed by Longwood or its nominee until such time as a majority of the Units are transferred to the first purchasers. During this time Longwood or its nominee shall be entitled to charge to the Owners as a Common Expense a reasonable fee for labour furnished or materials supplied by Longwood or its nominees, servants or agents to manage, maintain, repair and replace the Common Property and Common Elements as required and, in default of payment on demand, Longwood shall have the same rights and remedies as set out in Section 5.5.

3.2 Turnover of Management to the Owners' Committee

3.2.1 When a majority of the Units have been transferred by Longwood to first purchasers, the management and supervision of the maintenance, repair and replacement of the Common Property and Common Elements shall be done by an Owners' Committee described below.

3.3 Owners' Committee

3.3.1 Once created, the duties of the Owners' Committee are:

3.3.1.1 to prepare an annual budget for the maintenance, repair and general upkeep of the Common Property and Common Elements;

3.3.1.2 to estimate the amount of Common Expenses for the ensuing year;

3.3.1.3 to keep the Common Property and Common Elements insured according to the requirements of this Agreement;

3.3.1.4 to establish and utilize a reserve fund for contingencies including the major repair and replacement of the Common Property and Common Elements;

————— 3.3.1.5 generally, to oversee the management and operation of the Common Property and Common Elements and, if deemed necessary, to appoint a property manager which will deal with day to day management, accounting and general administrative

matters and will be fully accountable to the Owners' Committee;

- 3.3.1.6 to revise the rules and regulations imposed upon the Owners as set out in Schedule "D" when necessary;
- 3.3.1.7 to arbitrate disputes between Owners who benefit from Shared Elements about maintenance, repair and replacement of the Shared Elements; and
- 3.3.1.8 to account to the Owners from time to time with respect to the performance of its duties, and, in particular, to call annual meetings of the Owners in accordance with this Agreement.

3.4 Meeting of Owners to Create the Owners' Committee

- 3.4.1 Within sixty (60) days after Longwood ceases to be the owner of a majority of the Units, Longwood shall call the first meeting of the Owners. At this meeting, nominations of qualified individuals for the Owners' Committee will be received and then the Owners shall vote to elect, three (3) qualified individuals to form the Owners' Committee.

3.5 Qualifications

- 3.5.1 Each member of the Owners' Committee shall be either;
 - 3.5.1.1 an Owner of a Unit;
 - 3.5.1.2 a nominee of an Owner;
 - 3.5.1.3 a chargee of an interest in a Unit; or
 - 3.5.1.4 a nominee of a chargee of an interest in a Unit.

A Committee member shall be deemed to have tendered his or her resignation from the Owners Committee when there is default of payment of his or her Common Expenses for a period of sixty (60) days or more.

3.6 Subsequent Elections. Term and Quorum

- 3.6.1 The three (3) committee members elected at the first meeting of Owners shall hold office for a one (1) year term. Thereafter, Committee members shall be elected at annual meetings of Owners called for that purpose. At each annual meeting of Owners, in accordance with the number of votes cast for each nominated Committee member, the least number of votes

cast resulting in the shortest term and vice versa, one (1) Committee member shall be elected to hold office until the first annual meeting following the date of his or her election; one (1) Committee member shall be elected to hold office until the second annual meeting following the date of his or her election; and one (1) Committee member shall be elected to hold office until the third annual meeting following the date of his or her election. Where the Committee members are elected by acclamation, the Owners at the meeting shall determine the distribution of terms. A majority of the Owners may remove at their pleasure any member of the Owners' Committee.

- 3.6.2 A quorum for the transaction of business at any meeting of the Owners' Committee shall be two (2). Notwithstanding vacancies on the Committee, the remaining Committee members may exercise the powers of the Committee so long as a quorum remains in office. A quorum of Committee members may also fill a vacancy on the Owners' Committee by appointing one (1) Owner to hold office until the next annual meeting of Owners.

3.7 Calling of Meetings

- 3.7.1 Meetings of the Owners' Committee shall be held when called by any Committee member. Notice of any meeting shall be given to each Committee member personally, not less than forty-eight (48) hours before the time when the meeting is to be held, or by ordinary mail, or by leaving the notice at the last recorded address of the Committee member not less than five (5) days before the day the meeting is to be held. No notice of a meeting shall be necessary if all the Committee members are present and consent to the holding of the meeting or if those absent waive notice of or otherwise signify in writing their consent to the holding of the meeting.

3.8 Regular Meeting

- 3.8.1 The Owners' Committee may appoint a time and a place for regular meetings. A copy of any resolution of the Owners' Committee fixing such time and place shall be sent to each Committee member and no further notice shall be required for the regular meetings.

3.9 Indemnity of Committee Members and Officers

- 3.9.1 Every Committee member and his or her personal representatives shall be indemnified and saved harmless by the Owners from and against:

- 3.9.1.1 any liability and all costs, charges and expenses that the Committee member sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him or her for or in respect of the execution of the duties of the Committee; and
- 3.9.1.2 all other costs, charges and expenses that the Committee member sustains or incurs in respect of the affairs of the Committee;

provided that:

all other members of the Owners' Committee are advised of any such action, suit or other proceeding, or cost, charge or expense, forthwith after the Committee member received notice; and

the Owners are given the right to join in the defence of the action, suit or proceeding.

- 3.9.2 A Committee member shall not be indemnified by the Owners in respect of any liability, cost, charge or expense that he or she sustains or incurs in or about any action, suit or other proceeding as a result of which he or she is adjudged to be in breach of any duty or responsibility set out in this Agreement unless in an action brought against the Committee member he or she has achieved complete or substantial success as a defendant.

3.10 Officers

- 3.10.1 The Owners' Committee may elect from any of its members a President, Secretary and Treasurer. One person may hold more than one office. If any of these elected Officers are unable to attend a meeting of the Owner's Committee, the remaining members may select from themselves a replacement for that meeting.

3.11 President

- 3.11.1 The President shall preside at all meetings of the Owners and of the Owners' Committee and shall be charged with the general supervision of the business and affairs of the Common Property, Common Elements and this Agreement.

3.12 Secretary

3.12.1 The Secretary shall give or cause to be given all notices required to be given to the Owners, Committee members, auditors, mortgagees and all others entitled to notice. The Secretary shall attend all meetings of the Owners' Committee and of the Owners and shall enter or cause to be entered in books kept for that purpose minutes of all proceedings at these meetings. The Secretary shall be the custodian of all books, papers, records, documents and other relevant instruments and shall perform such other duties as may be delegated by the Owners' Committee.

3.13 Treasurer

3.13.1 The Treasurer shall keep or cause to be kept full and accurate books of accounting which shall record all receipts and disbursements and, under the direction of the Owners' Committee, shall control the deposit, safekeeping and disbursement of money. Upon request, the Treasurer shall render to the Owners' Committee or any Owner an account of all his or her transactions and of the financial position of the Owners governed by this Agreement. The Treasurer shall perform other duties that may be delegated to him or her by the Owners' Committee.

3.14 Agents and Attorneys

3.14.1 The Owners' Committee shall have power from time to time to appoint managers, personnel, agents or attorneys with such powers of management or otherwise, including the power to sub-delegate, as may be thought fit. Without limiting the generality of the foregoing, the Owners' Committee may appoint a property manager which property manager shall be fully accountable to the Owners' Committee.

4. MEETING OF OWNERS

4.1 Annual Meetings

4.1.1 The Owners' Committee shall call an annual meeting of the Owners to receive reports, to elect Owners' Committee members, and to transact such other business as may be set out in the notice of the meeting. The Owners shall be provided with not less than twenty-one (21) days written notice of all annual general meetings.

4.2 Meetings Called by Owners

4.2.1 Any of the Owners may, in writing, call a meeting specifying the purpose or purposes of the meeting, the place for holding the meeting, and the date for holding of the meeting which shall not be sooner than fourteen (14) days' after written notice has been given to the Owners.

4.3 Quorum

4.3.1 The presence in person or by proxy of not less than thirty percent (30%) of the votes of all Owners shall be necessary to constitute a quorum at all meetings of Owners for the transaction of business. If a quorum is not present, the holders of a majority of votes, present in person or represented by proxy, at such meeting shall have power to adjourn the meeting from time to time until a quorum shall be present or represented. At any adjourned meeting at which a quorum is present or represented, any business may be transacted which might have been transacted at the meeting as originally notified.

4.4 Votes

4.4.1 At all meetings, each of the Owners who is not at such time in default in the payment of the Owner's Proportionate Share of the Common Expenses shall be entitled to cast one (1) vote for each matter presented for vote. Only Owners not in default shall be entitled to vote either in person or by proxy. In the event that more than one (1) person shall have an interest in any one of the Units, then for the purpose of any voting decision to be made by the Owners, such persons shall be deemed to be one (1) for the purpose of computing such votes. All voting by Owners shall be on the basis of one vote per Unit.

4.5 General

4.5.1 Unless otherwise specified in this Agreement, any resolution passed by a majority vote at a meeting of the Owners shall be binding on Owners and their respective successors and assigns.

5. COMMON EXPENSES

5.1 Common Expenses

5.1.1 The Common Expenses of the Common Property and Common Elements shall include the following:

5.1.1.1 all municipal, provincial or other government taxes, rates or

assessments, including local improvement rates, charged, levied or issued against the Common Property and Common Elements as they become due and payable if assessed separately from the Units;

- 5.1.1.2 insurance premiums for the Common Property and Common Elements, including public liability insurance and all costs related to securing insurance coverage;
- 5.1.1.3 maintenance, repair and replacement of the Common Property and Common Elements;
- 5.1.1.4 the cost of services and supplies for the Common Property and Common Elements;
- 5.1.1.5 landscaping and snow removal costs for the Common Property and Common Elements;
- 5.1.1.6 the cost of legal, accounting, managing, auditing and engineering services or other professional advice and service required by the Owners' Committee;
- 5.1.1.7 the cost of personnel required to operate, maintain, repair and replace the Common Property and Common Elements;
- 5.1.1.8 a contribution towards a reserve fund for major repair and replacement of the Common Property and Common Elements which reserve fund shall constitute an asset of the Owners' Committee to be held in trust for all of the Owners. This fund shall not be distributed on the sale of a Unit;
- 5.1.1.9 any amounts spent to remedy any Owner's breach of this Common Elements Agreement as well as any amount spent by the Owners' Committee on behalf of the Owners to enforce the remedies provided for in this Agreement upon the default of any Owner; and
- 5.1.1.10 such other expenses as are normally incurred in maintaining a high quality, residential development.

5.2 Payment of Common Expenses

- 5.2.1 Each Owner shall pay to the Treasurer of the Owners' Committee, the Owners' Proportionate Share of the Common Expenses at such time or

times determined by the Owners' Committee regardless of when the expense will be incurred without any set off or deduction. The Owners' Committee may request that payment be made by delivery to the Treasurer of the Owners' Committee of a series of monthly post-dated cheques for the Owner's Proportionate Share of the estimated Common Expenses for each year. The Owners' payments are to be held by the Treasurer for the benefit of the Common Property and Common Elements and used to pay all Common Expenses. The reserve funds received by the Treasurer shall be segregated and deposited into a special interest bearing trust account to be held by the Treasurer until the reserve funds are required to be expended, or until the Owners, by a confirming vote of two-thirds (2/3) of the then current Owners, direct the Owners' Committee to use the fund for another purpose.

5.3 Change in Common Expenses

5.3.1 The total monthly amount to be collected for Common Expenses may from time to time be changed by either:

5.3.1.1 a notice from the Owners' Committee advising that additional funds are necessary to keep Common Expenses current and setting out with reasonable detail the reason for the decision of the Owners' Committee; or

5.3.1.2 a confirming vote of a majority of the then current Owners.

5.4 Priority of Common expenses

5.4.1 The Owners agree that each Owner's obligation to pay his or her Proportionate Share of the Common Expenses shall constitute a first charge upon each Owner's Unit subject only to municipal taxes having statutory priority. The amount of an Owner's Common Expense arrears, all costs incurred to collect the arrears including solicitor and client costs, and all interest thereon will have priority over the rights of any purchaser or mortgagee of an Owner's interest, whether the rights of the purchaser or mortgagee were created before or after the Common Expense payments became due. This charge shall be deemed to be a charge to which the *Mortgages Act* R.S.O. 1990 c.M.40 applies.

5.5 Default

5.5.1 If an Owner does not pay the Owner's Proportionate Share of Common Expenses, when requested to do so by the Owners' Committee, (the

"Defaulting Owner") the amount in arrears and all costs incurred to collect the arrears including solicitor and client costs shall bear interest in favour of the Treasurer as trustee for the other Owners at a rate of interest which is the greater of:

- 5.5.1.1 fifteen percent (15%) per annum, calculated monthly; and
- 5.5.1.2 a rate which is equal to five (5%) per annum above the prime lending rate of the Royal Bank of Canada on the date of each default.

If the Defaulting Owner's failure to pay continues for a period of fifteen (15) days, the other Owners, in addition to all other rights set out herein shall have the right to collect the arrears, costs and interest by action and shall have a charge upon the Defaulting Owner's Unit until the arrears, costs and interest are paid in full. If the arrears, costs and interest have not been paid within thirty-five (35) days of the due date, the other Owners or any of them (the "Paying Owners") shall be entitled to advance the necessary sum on behalf of the Defaulting Owner. As security for this advance the Defaulting Owner hereby charges his or her Unit in favour of the Paying Owners in the amount so contributed from time to time together with interest 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. L4, as number 9320.

5.6 Non-avoidance

- 5.6.1 The obligations of an Owner to contribute towards Common Expenses shall not be avoided by waiver of the right to use the Common Property and Common Elements or by abandonment or by any other means.

5.7 Direction to Tenant

- 5.7.1 A Defaulting Owner who has leased his or her Unit to a tenant agrees that the Treasurer of the Owners' Committee, on behalf of the other Owners, shall be entitled to serve a notice upon such Defaulting Owner's tenant requiring the tenant to pay all further rents due and becoming due to the Treasurer until such time as the full amount of the Defaulting Owner's arrears, costs and interest have been paid in full. The Owners agree that any lease or tenancy agreement which they may enter into with respect to their Unit shall be deemed to contain a provision authorizing the tenant to pay rent to the Treasurer in the event this notice is served.

6. CHANGES TO COMMON PROPERTY AND COMMON ELEMENTS

6.1 A Substantial Change Requires a Two-Third (2/3) Vote of Owners

6.1.1 The Owners' Committee may, by a confirming vote of two-thirds (2/3) of the Owners, make any substantial additions, alterations or improvements to, or renovation of the Common Property and Common Elements. For this purpose, any addition, alteration, or improvement to, or renovation of the Common Property and Common Elements shall be deemed to be substantial if the cost of such addition, alteration or improvement to or renovation of the Common Property and Common Elements is in excess of twenty percent (20%) of the then current annual budget.

6.2 Other Changes

6.2.1 The Owners' Committee may, by a confirming vote of a majority of Owners, make any other addition, alteration, or improvement to, or renovation of the Common Property and Common Elements.

7. USE OF UNIT

7.1 Structural Alterations

7.1.1 An Owner shall be prohibited from making any alteration to his or her Unit, the result of which will interfere with the structure or bearing walls of an adjacent Unit without the prior consent of the adjacent Owner. Any approved alterations shall be completed at the expense of the Owner and shall not result in any reduction in the Common Property and Common Elements.

7.2 Alterations to Exterior

7.2.1 An Owner shall not make any alteration to the exterior of his or her Unit without the confirming vote of the majority of the other Owners. Despite this restriction, an Owner may change the colour of exterior elements of his or her Unit and may make other alterations of a minor or cosmetic nature if the prior approval of the Owners' Committee is obtained.

7.3 Compliance with Zoning

No alterations shall be made to any unit except in compliance with all applicable zoning by-laws and other requirements of any authority.

7.4 Alterations to Grade, Shared Elements, Common Property and Common Elements

7.4.1 An Owner shall not alter, repair, demolish, remove or replace any of the Shared Elements except in accordance with Sections 2.4 and 7.6. An Owner shall not alter the slope of the Property nor interfere with any drainage established on the Property. An Owner shall not alter, repair, demolish, remove or replace any of the Common Property and Common Elements. All work required to the Common Property and Common Elements shall be done by the Owners' Committee.

7.5 Restrictions on Leasing

7.5.1 An Owner shall not lease the Unit nor allow the tenant to take possession of the Unit until the Owner has delivered to the Owner's Committee an acknowledgment signed by the Tenant agreeing to abide by this Common Elements Agreement. X

7.6 Maintenance and Repair of Shared Elements

7.6.1 The obligation to maintain and repair and keep in good condition the Shared Elements shall rest with and be shared equally by the Owners from time to time who share the Shared Elements. In the event that any work is required to be done to maintain and keep in repair the Shared Elements, the affected Owners agree that prior to any such work being undertaken, approval as to its cost shall be obtained from the Owners affected by the work. In the case of an emergency, any one of the Owners shall be at liberty to carry out the work required to be done or shall be entitled to exercise such easements and rights of way which are reasonably necessary for the purpose of doing the necessary work and may enter in or upon the property which is to be affected by such work. The Owners shall indemnify the Owner which causes such work to be performed in these circumstances to the extent of their proper share of such work, the intention being that the cost of the work shall be borne equally by and amongst the affected Owners.

7.7 Right of Access

7.7.1 Owners are entitled to exercise such easements and rights of access over other Units on the Property as are reasonably necessary for the purpose of carrying out maintenance, repair and replacement to the Owner's Unit and Shared Elements. To this end the Owners grant to each other and their

servants and agents, including any municipal authority, such easements and rights of access.

7.7.2 Each Owner shall have the right to maintain, repair and replace any encroachments resulting from eaves and horizontal or vertical extensions of party walls and the right to enter into and upon and to pass and repass over the abutting Unit at all reasonable times with equipment and machinery for the purposes of cleaning, painting, repairing, replacing and otherwise maintaining the building, landscaping and fencing and any encroachments therefrom. Such right to access shall not include the right of entry into the building on the abutting Unit but shall include the right of passing and repassing over the roof of the abutting building.

7.7.3 The Units on which hydro transformers, catch basins and/or mailboxes are located are subject to an easement for such purposes together with a right of access to such Common Property and Common Elements.

7.8 Damage

7.8.1 In the event of fire or other casualty causing damage or destruction to the property subject to the Shared Elements or to the Common Property and Common Elements, the damage or destruction shall be repaired expeditiously in a good and workmanlike manner with materials of equivalent or better quality and in accordance with all applicable by-laws and codes. For this purpose, the Owners of the property damaged or destroyed shall execute and deliver all necessary proofs of loss, and subject to any mortgagee's interest, all cheques representing insurance proceeds shall be endorsed and released by the affected Owners to be applied to the cost of such repair in accordance with the progress of repair or reconstruction.

8. SALE BY OWNER

8.1 Notice of Sale

8.1.1 When an Owner enters into an agreement for the sale of his or her Unit the Owner shall immediately notify the Owners' Committee of such sale, the name and address of the purchaser and date set for the completion of the sale. Before completing the sale, the Owner shall pay to the Treasurer the Owner's Proportionate Share of all Common Expenses to the date of sale calculated by the Owners' Committee on a per diem basis, to the best of its ability.

8.2 Assumption Agreement

8.2.1 When the Owner sells his or her Unit, the Owner must cause the purchaser to sign an assumption agreement in a form satisfactory to the Owners' Committee whereby such purchaser assumes in writing all of the obligations of the Owner under this Agreement. If the Owner sells without obtaining this assumption agreement and delivering it to the Owners' Committee, the Owner shall continue to be liable for the obligations imposed under this Agreement despite having sold his or her Unit.

8.3 Purchasers' Status Certificate

8.3.1 At the written request of an Owner, or a purchaser from an Owner or of a mortgagee or proposed mortgagee of an Owner, and upon payment of the Owners' Committee's then current fee, the Owners' Committee shall deliver a Status Certificate in the form attached hereto as Schedule "E".

9. INSURANCE

9.1 Insurance Coverage

9.1.1 The Owners' Committee shall obtain and maintain the following insurance:

9.1.1.1 insurance against fire, major perils and such other perils as the Owners may from time to time deem advisable insuring the Common Property and Common Elements in an amount equal to the replacement cost of such real and personal property without deduction for depreciation; and

9.1.1.2 public liability and property damage insurance, and insurance against the Owners' liability resulting from breach of duty as occupier of the Common Property and Common Elements insuring the liability of the Owners from time to time, with limits to be determined by the Owners, but not less than two million dollars (\$2,000,000.00).

9.2 Provisions Affecting Coverage

9.2.1 Every policy of insurance referred to in Section 9 shall insure the interests of the Owners from time to time, as their respective interests may appear, and to the extent reasonably available shall contain the following provisions:

- 9.2.1.1 waivers of subrogation against the Owners, the Owners' Committee, their agents, employees and servants and as against the Owners and their permitted occupants except for arson, fraud, vehicle impact, vandalism, or malicious mischief;
- 9.2.1.2 such policy or policies of insurance shall not be terminated or substantially modified without at least sixty (60) days' prior written notice to the Owners;
- 9.2.1.3 waivers of any defence based on coinsurance or of invalidity arising from the conduct or any act or omission or breach of statutory condition of any insured;
- 9.2.1.4 any coverage provided or monies payable under any insurance purchased by any of the Owners, occupants or mortgagees shall not be brought into contribution with any coverage or monies payable pursuant to policies obtained by the Owners' Committee.

9.3 Settlement

- 9.3.1 The Owners' Committee shall have the exclusive right to adjust any loss and settle any claims with respect to all insurance and to give such releases as are required, and any claimant, including the Owner of a damaged Unit, shall be bound by such adjustment. The Owners may, however, authorize any of the Owners in writing to adjust any loss to his or her Unit.

9.4 Insuring the Unit

- 9.4.1 Each Owner shall insure his or her own Unit in an amount equal to its full replacement cost and, upon request shall provide the Owners' Committee with proof of insurance.

9.5 Breach of Conditions

- 9.5.1 The Owners sharing the Shared Elements and Common Property and Common Elements shall at no time do or commit any act of omission or commission which would constitute a breach of statutory conditions applicable to the fire insurance covering the Unit of which he or she is the Owner and the Common Property and Common Elements or which would void such fire insurance coverage or, except with the consent of the insurer, increase the risk.

10. INDEMNIFICATION

10.1 Indemnification

10.1.1 Each Owner shall indemnify and save harmless the other Owners from and against any losses, costs, damage, injury or liability whatsoever which any other Owner may suffer or incur resulting from or caused by an act or omission of the Owner, the Owner's servants or agents, guests and tenants to or with respect to the Common Property and Common Elements, except for any loss, cost, damages, injury or liability caused by an insured (as defined in any policy or policies of insurance) and insured against by the Owners. ✕

10.2 Reimbursement

10.2.1 If an Owner makes payments in respect to the Common Property and Common Elements in excess of the Owner's Proportionate Share for any reason other than a reason attributed to the Owner's act or omission or the act or omission of those for whom the Owner is in law responsible, the other Owners agree to indemnify the Owner for the excess amount so paid to the extent of their individual pro rata share of the amount and such amount shall be payable to the Owner on demand.

10.3 Indemnification of Owners' Committee

10.3.1 Except in the case of gross negligence or fraud on the part of the Owners' Committee, its servants or agents, the Owners shall indemnify and save harmless the Owners' Committee members from and in respect of any and all liability and from all claims or demands arising out of damage or injuries to persons or property in or about or in any way connected with the Common Property and Common Elements.

11. ARBITRATION

11.1 Arbitration

11.1.1 If there is any dispute, difference or question which is not covered by the provisions of this Agreement or, which has not been resolved by the Owners' Committee, or which has not been resolved at a meeting of the Owners by a decision approved by the majority of the Owners, then the dispute, difference or question shall be referred to arbitration. The arbitration shall be conducted by three (3) persons, one (1) to be appointed by each side to the dispute and a third (3rd) to be appointed by the two (2)

so appointed. If either side to the dispute fails to appoint an arbitrator within ten (10) days after one (1) of the parties has appointed an arbitrator and has notified the other in writing of the appointment and of the matter in dispute to be dealt with, the other arbitrators shall be appointed in accordance with the provisions of the *Arbitration Act*, S.O. 1991.

12. **BANKING ARRANGEMENTS AND EXECUTION OF DOCUMENTS**

12.1 **Banking Arrangements**

12.1.1 The banking business of the Owners' Committee shall be transacted with such bank or trust company and by such persons and in such manner as the Owners' Committee may designate.

12.1.2 Execution of Documents:

12.1.2.1 The Owners' Committee may, at any time and from time to time, direct the manner in which and the person or persons by whom a particular document or obligation may be signed in relation to this Agreement.

13. **MISCELLANEOUS**

13.1 **Zoning**

13.1.1 The Owners acknowledge that the zoning by-laws which apply to the Property may consider all Units or a block of Units as one property for by-law purposes.

13.2 **Choice of Law**

13.2.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

13.3 **Further Assurances**

13.3.1 The Owners agree to sign such further and other papers, cause such meetings to be held and resolutions passed, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement.

13.4 **Notices**

13.4.1 The delivery of any notice required to be given to the Owner shall be effective upon personal delivery or if mailed, notice shall be deemed to be

delivered four (4) days after the date of mailing if mailed by prepaid registered post addressed to the Owner at the last recorded address for the Owner in the ownership records maintained by the Owners' Committee. Any notice required to be given the Owners' Committee shall be served personally on a Committee member or addressed by ordinary mail to the Owners' Committee at an address which the Committee advises the Owners of from time to time.

13.5 Severability

13.5.1 Every provision of this Agreement is severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality shall not affect the validity of the remainder of this agreement.

13.6 Interpretation

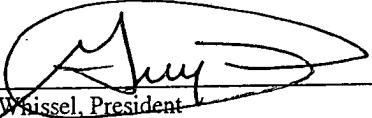
13.6.1 This Agreement shall be read with all changes of gender and number required by the context..

13.7 Successors and Assigns

13.7.1 This Agreement is for the benefit of and binds Longwood, the Owners and their respective successors, assigns, heirs and estate trustees.

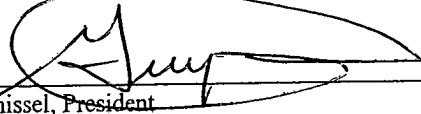
IN WITNESS WHEREOF, the parties hereto have hereunder executed this agreement on the 16 day of April, 2002.

LONGWOOD BUILDING CORPORATION

Per: 
Guy Whissel, President

I have authority to bind the Corporation

LONGWOOD BUILDING CORPORATION
on behalf of all future Owners of the Property

Per: 
Guy Whissel, President

I have authority to bind the Corporation

SCHEDULE "A"
DESCRIPTION OF THE PROPERTY

Blocks	Property Identification Number
Block 1	
Block 2	
Block 3	
Block 4	
Block 5	
Block 6	
Block 7	
Block 8	
Block 9	
Block 11	
all on Plan 4M-	, City of Ottawa

SCHEDULE "B"
DESCRIPTION OF THE COMMON PROPERTY

Block 11, Plan 4M- City of Ottawa

SCHEDULE "D"
RULES AND REGULATIONS

The following rules and regulations shall be observed by the Owner and the term "Owner and the term "Owner" shall include any other person occupying the Unit with the Owner's approval, including any tenant occupying the Unit:

1. No owner shall do, or permit anything to be done in the Unit or bring or keep anything therein which will in any way increase the risk of fire or the rate of fire insurance on the Unit, or on property kept therein, or obstruct or interfere with the rights of other Owners, or do anything which is, on a reasonable standard bound to injure or annoy them, or conflict with the laws relating to fire or with the regulations of the Fire Department or with any insurance policy for the Lands or conflict with any of the rules and ordinances of the Board of Health or with any statute or municipal by-law.
2. Owners shall not place, leave or permit to be placed or left in or upon the Common Property and Common Elements any debris, refuse or garbage except in such locations as are designated by the Owners' Committee.
3. No noise, caused by any instrument or other device, or otherwise, which in the opinion of the Owners' Committee may be calculated to disturb the comfort of the other Owners, shall be permitted.
4. The sidewalks, entry, passageways, walkways and driveways used in common by the Owners shall not be obstructed by any of the Owners or used by them for any purpose other than for ingress and egress to an from their respective Unit.
5. No telecommunications antenna, dish, aerial, tower or similar structure and appurtenances thereto shall be erected on or fastened to any Unit, except as a connection for a common television cable system. x
6. No one shall harm, mutilate, destroy, alter or litter any of the landscaping work on the Common Property and Common Elements including grass, trees, shrubs, hedges, flowers, flower beds, interlock stones and curbing.
7. No planters, structures, tents, furniture or other apparatus shall be placed, located, kept or maintained on the Common Property and Common Elements by the Owners.
8. Any loss, costs or damage incurred by the other Owners by reason of a breach of any rules and regulations in force from time to time by any of the Owners, his family, guests, servants, agents or occupants of a Unit shall be borne by such Owner and may be recovered by the other Owners against such Owner in the same manner as common expenses.
9. No animal, livestock or fowl other than a pet shall be kept on the Lands and no pet that is deemed by the Owners' Committee, in its absolute discretion, to be a nuisance shall be kept by any Owner. Owners who keep a pet in their Unit or any part of the Lands shall within two weeks or receipt of a written notice from the Owners' Committee requesting the removal of such pet, permanently remove such pet from the Lands. x
10. No owner shall alter the exterior of the Unit, including repainting and resurfacing, nor erect, install or permit clothes lines or any television antenna or satellite dish on the dwelling units or elsewhere within the Lands without the prior written consent of the majority of the Unit Owners. x

SCHEDULE "E"

STATUS CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES THAT, as of the date hereof:

1. The Owner of the Unit known municipally as _____, the ("Unit") is not in default in the payment of the Common Expenses as defined in the Common Elements Agreement;
2. The Owners' Committee is not presently considering any increase in the Common Expenses;
3. The Common Expenses for the Unit is \$ 45.00 payable on the 1st day of each month with the next payment due _____;
4. The Owners are not presently involved in any legal action affecting the Common Property and Common Elements;
5. The Owners' Committee is not presently considering any substantial addition, alteration or improvement to, renovation or any substantial change in the Common Property and Common Elements.
6. The Owner's Committee has secured all policies of insurance that are required under the provisions of the said Common Elements Agreement;
7. The address of the Owners' Committee is:

8. The Owners' Committee Members and Officers are as follows:

NAME	ADDRESS
------	---------

9. The Owners' Committee's Reserve Fund amounts to \$ _____ as at

10. The fiscal year end of the Owners' Committee is

DATED at Ottawa this 16 day of April, 2002

CHAPEL PARK OWNERS' COMMITTEE

Per: _____

Name:
Title:

I have authority to bind the Committee.

