

D-738219

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DECLARATION
MADE PURSUANT TO THE CONDOMINIUM ACT

THIS DECLARATION (hereinafter called the "Declaration") is made and executed pursuant to the provisions of the Condominium Act, R.S.O. 1980, Chapter 24, as amended from time to time, and the regulations made thereunder (all of which are hereinafter referred to as the "Act"), BY:

Scarlet Gate Development Inc., a corporation incorporated under the laws of the Province of Ontario, (hereinafter called the "Declarant")

WHEREAS the Declarant is the owner in fee simple of lands and premises situate in the City of Toronto, Province of Ontario, and being more particularly described in Schedule "A" attached hereto, and in the Description submitted herewith by the Declarant for registration in accordance with Section 4 of the Act (hereinafter called the "Description");

AND WHEREAS the Declarant has constructed upon the said lands eleven (11) townhouse dwelling units (hereinafter called the "Dwelling Units"), being Units 1-11, Level 1 and one (1) shared facilities unit being Unit 12, Level 1 (the "Shared Facilities Unit");

AND WHEREAS the Declarant intends that the said lands together with the said buildings thereon shall be governed by the Act;

NOW THEREFORE THE DECLARANT DECLARES AS FOLLOWS:

ARTICLE I

INTRODUCTORY

1) **Definitions** - All words here in which are defined in the Act shall have ascribed to them the meanings set out in the Act, as amended from time to time, and the following terms used herein shall have the meanings set out below, unless the context otherwise requires:

- (a) "Units" means all of the Dwelling Units, and "Unit" means one of them;
- (b) "Reciprocal Agreement" means an agreement entered into by the Corporation and Scarlet Gate Phase II Inc. to govern the use of the common facilities, easements and all matters common to the Proposed Corporations;
- (c) "Proposed Corporations" means this Corporation and the condominium corporation to be created on the lands adjacent to the north of the Corporation's lands owned or to be purchased by Scarlet Gate Phase II Inc.; and
- (d) "Shared Facilities Units" means the Shared Facilities Unit and the similar unit containing shared facilities to be created in the condominium corporation created on the adjacent lands as detailed in the Reciprocal Agreement.

(2) **Statement of Intention** - The Declarant intends that the lands and premises described in Schedule "A" together with all interest appurtenant to the said lands (the "Lands") be governed by the Act, and any amendments thereto.

(3) **Consent of Encumbrancers** - The consent of every person having a registered mortgage against the Lands is contained in Schedule "B" attached hereto.

(4) **Boundaries of Units and Monuments** - The monuments controlling the extent of the Units are the physical surfaces mentioned as the boundaries of Units in Schedule "C" attached hereto.

(5) **Common Interest and Common Expenses** - Each owner shall have an undivided interest in the common elements as a tenant in common with all other owners and shall contribute to the common expenses in the proportions set forth opposite each unit number in Schedule "D" attached hereto. The total of the proportions of the common interests shall be one hundred percent (100%).

(6) **Exclusive use of Common Elements** - The owners of certain Units shall have the exclusive use of those parts of the common elements as set forth in Schedule "E" attached hereto.

(7) **Address for Service and Mailing Address of the Corporation** - The Corporation's address for service shall be 5218 Yonge Street, Willowdale, Ontario, M2N 5P6, or such other address or addresses as may be and determined by

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resolution of the board and its mailing address shall be 5214 Yonge Street, Willowdale, Ontario, M2N 5P6 or such other municipal address as may be approved for the buildings by the City of Toronto.

ARTICLE II

COMMON EXPENSES

(1) Specifications of Common Expenses - Common expenses means the expenses of the performance of the objects and duties of the Corporation and, without limiting the generality of the foregoing, shall include those expenses set out in Schedule "E" attached hereto.

(2) Payment of Common Expenses - Each owner, including the Declarant, shall pay to the Corporation his proportionate share of the common expenses, and the assessment and collection of the contributions toward the common expenses may be regulated by the board pursuant to the by-laws of the Corporation. In addition to the foregoing, any losses, costs or damages incurred by the Corporation by reason of a breach of any rules and regulations of the Corporation in force from time to time by any unit owner, or by members of his family and/or their respective tenants, invitees or licensees, shall be borne and paid for by such owner, and may be recovered by the Corporation against such owner in the same manner as common expenses.

(3) Reserve Fund

(a) The Corporation shall establish and maintain one or more reserve funds and shall collect from the owners as part of their contribution towards the common expenses, amounts that are reasonably expected to provide sufficient funds for major repairs and/or replacement of the common elements and assets of the Corporation, all in accordance with the provisions of the Act.

(b) No part of any reserve fund shall be used except for the purpose for which the fund was established. The amount of the reserve fund shall constitute an asset of the Corporation and shall not be distributed to any owner except on termination of the Corporation.

(4) Certificate of Common Expenses - The Corporation shall provide a certificate and accompanying statements and information in accordance with Section 32 (8) of the Act, and the regulations thereto, and shall provide a duplicate thereof without additional charge if requested. Save as hereinafter qualified, the Corporation shall be entitled to charge such fee therefor as permitted by the Act. The Corporation shall provide the Declarant, without any charge or fee, such certificate and accompanying statements and information as may be requested from time to time by or on behalf of the Declarant in connection with the sale or mortgage of a Unit.

ARTICLE III

UNITS

(1) Occupation and Use - The occupation and use of the units shall be in accordance with the following restrictions and stipulations:

(a) Each of the Dwelling Units, being Units 1-11, Level 1, inclusive, shall be occupied and used only as a private single family residence and for no other purpose; provided, however, that the foregoing shall not prevent the Declarant or its affiliates from completing the buildings and all improvements to the property, maintaining units as a model/office for display and sale purposes, and otherwise maintaining construction offices, displays and signs until all units in the Proposed Corporations have been sold or leased. The garage pertaining to a Unit shall be used and occupied only for the parking of motor vehicles unless otherwise provided for in the rules and regulations of the Corporation (hereinafter called the "Rules and Regulations") and, without restricting any definition of motor vehicle as may be imposed by the board of directors, "motor vehicle" shall be deemed to include a private passenger automobile, minivan or station wagon as customarily understood. The owner of each Unit shall maintain such driveway in a clean and sightly condition. Provision for cleaning of the driveways may be made by the Board of Directors for all of the Units as a block. No repairs to any motor vehicle shall be made on any part of any driveway or garage.

(b) No Unit shall be occupied or used by anyone in such a manner as is likely to damage the property or that will unreasonably interfere with the use or enjoyment by other unit owners of the common elements and the other Units or that may result in the cancellation or threat of cancellation of any policy of insurance placed by or on behalf of the Corporation. If a Unit is occupied or used by anyone in such a manner as to result in an increase in premium cost of any policy of insurance placed by or on behalf of the Corporation, the owner of such Unit shall reimburse the Corporation for such increase, and such increase in premium cost shall be added to the owner's contribution towards the common expenses.

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- (c) No boundary wall, load-bearing partition wall, floor, door or window, toilet, bathtub, wash basin, sink, heating, air-conditioning, plumbing, structural, mechanical or electrical installation (save for usual lighting fixtures used in Unit) contained in or forming part of a Unit shall be installed, removed, extended or otherwise altered without the prior written consent of the Corporation; provided however, that the provisions of this subparagraph shall not require any owner to obtain the consent of the Corporation for the purpose of painting or decorating, including the alteration of the surface on any wall, floor or ceiling which is within any Unit.
 - (d) No animal, livestock or fowl, other than a household pet as defined by the Rules and Regulations shall be kept or allowed in any Unit. No pet that is deemed by the board or Manager, as appointed from time to time pursuant to any Management Agreement, (hereinafter called the "Manager"), in its absolute discretion, to be a nuisance shall be kept by any owner, tenant or other occupant of any Unit. Such owner, tenant or other occupant shall, within two (2) weeks of receipt of written notice from the board or the aforementioned Manager requesting the removal of such pet, permanently remove such pet from the property. No breeding of pets for sale shall be carried on in or around any Unit.
 - (e) Where an owner of a Unit fails to contribute his proportionate share of common expense contributions for any one or more of such Units and a claim for and notice of lien is filed against title to the Unit in the unit register, the owner, any mortgagee of the Units, or any person claiming through either of them shall not be entitled to a discharge of the lien against any of the Units unless and until the outstanding contributions toward common expenses (including interest and collection costs) have been paid to the Corporation in respect of each of the Units.
 - (f) The Declarant or its affiliates may use Units (which includes the use of the garage as an office) as model suites and/or sales office for sales purposes or as a project office in connection with Units constructed or to be constructed on the Lands or for sales of the units in the adjacent lands owned by the Declarant or its affiliates.
 - (g) The Shared Facilities Unit shall be used only for the purposes for which it was originally created, i.e. to provide shared driveways, visitor parking, garage entrance, mechanical room and other services or systems which are intended to be shared by the Proposed Corporations. The Shared Facilities Unit may only be transferred by the Declarant to the Proposed Corporations as tenants in common and shall not be transferred or owned by any other party. No mortgage or charge may be placed on the Shared Facilities Unit.
- (2) Rights of Entry to the Unit
- (a) The Corporation, or any insurer of the property or any part thereof, their respective agents, or any other persons authorized by the board, shall be entitled to enter any Unit or any part of the common elements over which any owner has the exclusive use, at all reasonable times and upon giving reasonable notice, to perform the objects and duties of the Corporation, and without limiting the generality of the foregoing, for the purpose of making inspections, adjusting losses, making repairs, correcting any condition which violates the provisions of any insurance policy or policies, remedying any condition which might result in damage to the property, and confirming compliance with the municipal requirements.
 - (b) In case of an emergency, an agent, employee or authorized representative of the Corporation may enter a Unit at any time and without notice for the purpose of repairing the Unit, common elements and any part of the common elements of which any owner has the exclusive use, or for the purpose of correcting any condition which might result in damage or loss to the property or any assets of the Corporation. The Corporation or anyone authorized by it may determine whether an emergency exists.
 - (c) If an owner, resident, or tenant of a Unit, shall not be personally present to grant entry to his Unit, the Corporation or its agents may enter upon such Unit without rendering it, or them, liable for any claim or cause of action for damages by reason thereof provided that they exercise reasonable care.
 - (d) The Corporation shall retain a key to all locks to each Unit and exclusive use areas. No owner, resident, or tenant shall change any lock or place any additional locks on the doors to any Unit or in the Unit or to the garage or to any part of the common elements of which such owner, resident or tenant has the exclusive use without immediately providing to the Corporation a key for each new or changed lock. In addition, the Corporation must have record of the security code of each Unit and must be notified by the Owner, resident or tenant of any change to the security code.
 - (e) The rights and authority hereby reserved to the Corporation, any insurer, or their respective agents, employees or authorized representatives do not impose upon them any responsibility or liability

whatsoever for the care or supervision of any Unit except as specifically provided in this Declaration or the by-laws.

ARTICLE IV

LEASING OF UNITS

- (1) Notification of Lease
 - (a) Where the owner of a Unit leases his unit, the owner shall notify the Corporation that the unit is leased and shall provide to the Corporation the lessee's name and the owner's address.
 - (b) In addition, no owner shall lease his Unit unless he delivers to the Corporation a covenant or agreement signed by the tenant, to the following effect: "I acknowledge and agree that I, the members of my household, and my guests from time to time, will, in using the Unit rented by me and the common elements, comply with the Condominium Act, the Declaration and the By-laws, and all Rules and Regulations of the Condominium Corporation, during the term of my tenancy, and will be subject to the same duties imposed by the above as if I were a unit owner, except for the payment of common expenses, unless otherwise provided by the Condominium Act or the Declaration".
- (2) Tenant's Liability - No tenant shall be liable for the payment of common expenses unless notified in writing by the Corporation that the owner is in default of payment of common expenses, and requiring said tenant to pay to it an amount equal to the amount in default, in which case the tenant shall deduct from the rent otherwise payable to the owner, an amount equal to the amount in default, and shall pay same to the Corporation.
- (3) Owner's Liability - Any owner leasing his Unit shall not be relieved thereby from any of his obligations with respect to the Unit, which obligations shall be joint and several with his tenant.

ARTICLE V

COMMON ELEMENTS

- (1) General Use - Each owner may make reasonable use of, and has the right to enjoy the whole or any part of the common elements, subject to any conditions or restrictions set out in the Act, the Declaration, the Corporation's by-laws (the "By-laws"), the Rules and Regulations. However, no condition shall be permitted to exist, and no activity shall be carried on in the common elements that is likely to damage the property or that will unreasonably interfere with the use or enjoyment, by other unit owners, of the Common elements and the other Units, or that results in the cancellation of any policy of insurance referred to in the Declaration.

No owner shall make any change or alteration to, or installation upon, the common elements, or maintain, decorate, alter or repair any part of the common elements, save as allowed hereunder and, except for maintaining those parts of the common elements which he has a duty to maintain, without obtaining the approval of the Corporation in writing in accordance with the Act or the Declaration.

Notwithstanding anything herein to the contrary and notwithstanding any Rules and Regulations or By-laws of the Corporation to the contrary the Declarant shall be entitled to erect and maintain signs upon the common elements, and within or outside any unsold Dwelling Units, pursuant to the Declarant's ongoing marketing and/or sales program in respect of the within Corporation or the Adjacent Corporations. The signs may be erected at such location and may have such dimensions as the Declarant may determine in its sole discretion.

- (2) Use of Common Elements and Exclusive use of parts of common elements
 - (a) Subject to compliance with the Act, the Declaration, the By-laws and Rules and Regulations passed pursuant to the Act, the owners of certain Units shall have the exclusive use of those parts of the common elements as set out in Schedule "F" attached hereto.
 - (b) The Declarant, its sales staff, its authorized personnel or agents, or any prospective purchaser shall together have the exclusive use of 10 common element parking spaces to be designated by the Declarant, which right shall cease forthwith upon the sale of all Units owned by the Declarant in the Corporation and the Adjacent Corporations, or as waived by the Declarant if earlier.
- (3) Restrictive Access - Without the consent in writing of the board, no owner shall have any right of access to those parts of the common elements used from time to time as utilities areas, building maintenance and storage areas, manager's offices, areas for operating machinery, the roof, or any other parts of the common elements used for the care, maintenance, or operation of the property. Provided, however, that this paragraph shall not apply

to first mortgagees holding mortgages on at least ten (10%) percent of the units, who shall have the right of access for inspection upon forty-eight (48) hours written notice to the Corporation or its designate.

(4) Additions, Alterations and Improvements

- (a) For the purposes of subsection 1 of Section 38 of the Act, the board shall decide whether any addition, alteration or improvement to, or renovation of, the common elements, or any change in the assets of the Corporation, is substantial.
- (b) No alteration, work, repairs, decoration, painting, maintenance, structure, fence, screen, hedge or erection of any kind whatsoever ("the Work") shall be performed, done, erected or planted within or in relation to the common elements (including any part thereof over which any owner has the exclusive use), except by the Corporation or with its prior written consent or as permitted by the By-laws or Rules and Regulations.
- (c) The Corporation shall have access at all reasonable times to any part of the common elements over which any owner has the exclusive use in order to do the Work.

(5) Pets - No animal, livestock or fowl other than a household pet as defined by the Rules and Regulations shall be permitted upon the common elements, including those parts thereof of which any owner has the exclusive use. When on the common elements, all pets must be under leash. No pet that is deemed by the board or the Manager, in its absolute discretion, to be a nuisance shall be permitted by any owner, tenant or other occupant upon the common elements. Such owner, tenant or other occupant shall, within two (2) weeks of receipt of a written notice from the board or the Manager requesting removal of such pet, permanently remove such pet from the property.

ARTICLE VI

MAINTENANCE AND REPAIRS

(1) Each owner shall maintain his Units and exclusive use areas including and all common element areas servicing his unit including the roof and all doors and windows (including garage doors) and all exteriors of the dwelling and the heating ventilation and air condition equipment and the exterior of the unit, including cleaning glass windows and, subject to the provisions of the Declaration and Section 42 of the Act, each owner shall repair his Unit and exclusive use areas including and all common element areas servicing his unit including the roof and all doors and windows (including garage doors) and the heating ventilation and air condition equipment after damage, all at his own expense. Each owner shall be responsible for damage to any Unit and to the common elements caused by the failure of the owner to so maintain and repair his Unit and exclusive use areas including the roof and all doors and windows and the heating ventilation and air condition equipment. Any maintenance or repair to the roof is subject to obtained prior approval of the Board of Directors.

(2) The Corporation shall repair and maintain the common elements except as aforesaid.

Each owner from time to time shall forthwith reimburse the Corporation for repairs to exclusive use areas of the common element areas, and for repairs to any part of the Common elements which are the unit owners responsibility as aforesaid or are caused by his negligence or intentional misconduct or that of his servants, agents, tenants, members of his family or guests.

(3) The Corporation shall make any repairs that an owner is obligated to make and that he does not make within a reasonable time, after written notice is given to such owner by the Corporation. In such event, an owner shall be deemed to have consented to having repairs done to his Unit or common element areas that such owner is responsible to repair, by the Corporation. The owner shall reimburse the corporation in full for the cost of such repairs, including any legal or Collection costs incurred by the Corporation in order to collect the costs of such repairs and all such costs shall bear interest at the rate of twenty-four (24%) percent per annum until paid by the owner. The Corporation may collect such costs in such instalments as the board may decide upon, which instalments shall be added to the monthly contributions towards the common expenses of such owner, after the receipt of a written notice from the Corporation thereof, and shall be treated in all respects as common expenses, and recoverable as such.

ARTICLE VII

DUTIES OF THE CORPORATION

The duties of the Corporation shall include but shall not be limited to the following:

- (a) to carry out such duties as are set out in the By-laws of the Corporation;

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- (b) to enter into the Reciprocal Agreement; and
- (c) to take title to the Shared Facilities Units as tenant in common with Scarlet Gate Phase II Inc.

ARTICLE VIII

INSURANCE

(1) Insurance Maintained by the Corporation

- (a) Fire and Extended Risks - The Corporation shall obtain and maintain insurance against damage by fire and major perils as defined in the Act, and insurance against such other perils or events as the board may from time to time deem advisable, in respect of its obligation to repair or arising in respect of the Unit owners' interests in the Units and common elements, and in respect of the unit owners' obligation to repair any damage to:
- (i) the common elements;
 - (ii) personal property owned by the Corporation, excluding furnishings, furniture and other personal property supplied or installed by the unit owners or any of them; and
 - (iii) the units, except for any improvements or betterments made or acquired by the unit owners or any of them; in an amount equal to the full replacement cost of such real and personal property and such Units, without deduction for depreciation. This insurance may be subject to a loss deductible clause, which may vary in respect of the various perils insured against, as advised is prudent by the Corporation's insurance advisors or managing agent.
- (b) Public Liability and Property Damage Insurance - The Corporation shall obtain and maintain public liability and property damage insurance, with limits to be determined by the board, insuring the Corporation against liability resulting from breach of duty as occupier of the Common elements, or arising from the ownership, use or operation, by or on its behalf, of machinery, pressure vessels and motor vehicles.
- (c) General Provisions re: Policies of Insurance - Such policy or policies of insurance will insure the interest of the Corporation and the unit owners from time to time, as their respective interests may appear, with mortgage endorsements which shall be subject to the provisions of this Declaration and the Insurance Trust Agreement, and shall contain the following provisions:
- (i) proceeds arising from any loss shall be payable to the Insurance Trustee, save and except that when the amount receivable from the insurer for any loss arising out of any one occurrence does not exceed fifty thousand (\$50,000.00) dollars the proceeds of such loss shall be payable to the Corporation and not to the Insurance Trustee;
 - (ii) waivers of subrogation against the Corporation, its managers, agents, employees and servants, and against the owners, and any resident, tenants, invitee, or licensee of a Unit, except for damage arising out of arson, fraud or wilful destruction caused by any one of the above;
 - (iii) such policy or policies of insurance shall not be cancelled or substantially modified without at least sixty (60) days written notice sent by registered mail to all parties whose interests appear thereon, and to the Insurance Trustee, and to any first mortgagee who has charges on more than twenty-five (25%) percent of the Units;
 - (iv) waivers of any defence based on co-insurance or on any invalidity arising from any act, or omission, or breach of a statutory condition, by any insured;
 - (v) provisions that the same shall be primary insurance in respect of any other insurance carried by the unit owners or any of them;
 - (vi) Waiver of the insurer's option to repair, rebuild or replace in the event that after damage, the government of the property is terminated pursuant to the Act, which provisions shall not be required to be contained in the Corporation's liability and property damage policy referred to in Section 1(b) above;
 - (vii) requirements that the Corporation shall rebuild its common elements at least to the extent necessary to replace the facilities over which the Adjacent Corporations have easements.

(2) General Provisions Regarding the Condominium Insurance

- (a) Prior to obtaining any policy or policies of insurance under this Article XIII, save for the Corporation's liability and property damage policy referred to in Section 1(b) above, or any renewal or renewals thereof, or at such other times as the board may deem advisable, and also upon the request of the mortgagee or mortgagees holding mortgages on fifty (50%) percent or more of the Units, the board shall obtain an appraisal from an independent qualified appraiser, of the full replacement cost of the property, for the purpose of determining the amount of insurance to be effected pursuant to the provisions hereof, and the cost of such appraisal shall be a common expense; provided that during the first two (2) years following registration, the replacement value shall be deemed to be the sale price of the Units subject to Consumer Price Index increases through the period less land value and no appraisal shall be required during this period unless otherwise determined by the board.
- (b) The Corporation, its board, and its officers shall have the exclusive right, on behalf of itself and as agents for the owners, to adjust any loss and settle any claims with respect to all insurance placed by the Corporation, and to give such releases as are required, and any claimant, including the owner of a damaged Unit, shall be bound by such adjustment. Provided however that the board may, in writing, authorize an owner to adjust any loss to his unit.
- (c) Every mortgagee shall be deemed to have agreed to waive any contractual right or statutory provision to have the proceeds of any insurance applied on account of the mortgage where such application would prevent the application of the proceeds of any insurance towards the repair or replacement of the property pursuant to the provisions of this Declaration or the Act. This paragraph (c) shall be read without prejudice to the right of any mortgagee to exercise the right of an owner to vote, or to consent to matters at meetings of owners, if the mortgage itself contains such a provision, and also without prejudice to the right of any mortgagee to receive the proceeds of any insurance if the property is not repaired or replaced.
- (d) A certificate or memorandum of all insurance policies and endorsements thereto shall be issued as soon as possible to each owner and mortgagee who has notified the Corporation of his interest in any unit. Renewal certificates or certificates of new insurance policies shall be furnished to each mortgagee who has notified the Corporation of his interest in any Unit, no later than ten (10) days before the expiry of any Current insurance policy. The master policies for the insurance coverage maintained by the Corporation shall be kept by the Corporation in its offices, available for inspection by any owner or mortgagee or other insured, or by the Insurance Trustee on reasonable notice to the Corporation.
- (e) No insured, other than the Corporation, shall be entitled to amend any policy or policies of insurance obtained and maintained by the Corporation, or to direct that the loss shall be payable in any manner other than as provided for in this Declaration.

(3) Indemnity Insurance - The Corporation shall, no later than the date of the turnover meeting held pursuant to Section 26 of the Act, obtain and maintain insurance for the benefit of directors and officers of the Corporation, in order to indemnify them against any liability, cost, charge or expense (the "liabilities") incurred by them in the execution of their duties, provided that such insurance shall not indemnify them against liabilities incurred as a result of contravention of Section 24 (1) of the Act.

(4) It is acknowledged that the foregoing insurance is the only insurance required to be obtained and maintained by the Corporation and that the following insurance, or any other insurance, if deemed necessary or desirable by any owner or tenant, may be obtained and maintained by such owner or tenant:

- (a) Insurance on any additions or improvements made by an owner to his Unit, and on furnishings, fixtures, equipment, decorating and personal property and chattels of the owner contained within his Unit, and his personal property and chattels stored elsewhere on the property, including his automobile or automobiles, and for loss of use and occupancy of his Unit in the event of damage. Such policy or policies of insurance shall contain waiver of subrogation against the Corporation, its manager, directors, officers, agents, employees, and servants, and against the other unit owners and any residents, tenants, invitees or licensees of such other units, except for any damage arising from vehicle impact, arson or fraud caused or contributed to by any of the above.
- (b) Public liability insurance covering any liability of any owner or any resident, tenant, invitee or licensee of his unit, to the extent not covered by any public liability and property damage insurance obtained and maintained by the Corporation.
- (c) Insurance covering additional living expenses incurred by an owner or tenant if forced to leave his Dwelling Unit.

(d) Insurance covering special assessments levied against an owner's Unit by the Corporation.

(5) Indemnification By Owners - Each owner shall indemnify and save the Corporation harmless from any loss, costs, damage, injury or liability which the Corporation may suffer or incur resulting from or caused by any act or omission of such owner, or any resident, tenant, invitee or licensee of his unit, to the common elements or to any unit, except for any loss, costs, damage, injury or liability insured against by the Corporation. Each owner shall also indemnify and save the Corporation harmless from any loss, costs, damage, injury or liability which the Corporation may suffer by reason of the breach of any rules or regulations in force from time to time by any owner, his family, his employee, guests or occupants of his unit.

(6) Insurance Trust Agreement

(a) The Corporation shall enter into, and at all times maintain, an Insurance Trust Agreement with a trust company registered under the Loan and Trust Corporations Act, or a chartered bank or other firm qualified to act as an insurance trustee. Such agreement shall provide that the trustee shall hold all insurance proceeds which are subject to the terms of the Insurance Trust Agreement, in trust and disburse the proceeds in satisfaction of the Corporation's and the owners respective obligations to repair, in accordance with the provisions of the Act and this Declaration. Notwithstanding the foregoing, where insurance proceeds payable on any one loss or occurrence are less than fifty thousand (\$50,000.00) dollars such proceeds shall be paid directly to the Corporation pursuant to the direction of the Insurance Trustee as set forth in the Insurance Trust Agreement, and shall be held in trust and disbursed by the Corporation as if it were acting as the Insurance Trustee. The Insurance Trust Agreement shall ensure that the interests of the Adjacent Corporations in certain easements and rights of way over the Corporation's property in the event of termination.

(b) The Insurance Trust Agreement shall commence upon the date of registration of the Declaration, and shall run for a period of twelve (12) months thereafter, whereupon in the event that a new board of directors has not yet been elected by the unit owners at a meeting called pursuant to Section 26 of the Act (the "Turnover Meeting"), then such Insurance Trust Agreement shall be renewed for a further twelve (12) month period, upon written notice delivered by the Corporation to the Insurance Trustee requesting the renewal of same. When a new board of directors has been elected at the Turnover Meeting, then the Insurance Trust Agreement shall terminate at the end of the twelve (12) month period during which the Turnover Meeting was held, unless same is ratified by the new board of directors. If ratified as aforesaid, the Insurance Trust Agreement (or any renewal thereof) shall continue automatically on an annual basis until sixty (60) days after the Corporation delivers written notice to the Insurance Trustee of its desire to terminate the agreement. If the Insurance Trust Agreement is not ratified as aforesaid, then the new board of directors shall cause the Corporation to enter into a new Insurance Trust Agreement with another trust company, chartered bank or other firm qualified to act as an insurance trustee, so that an Insurance Trust Agreement will at all times be in existence and maintained by the Corporation.

(7) Deductable - Each Unit owner shall pay the deductible for any claims on the Corporation's insurance arising out of damage to such Unit owner's Unit or the common elements providing services to his unit, and if a deductible arises out of damage to more than one unit then the deductible shall be split between such Unit owner. No deductible payments shall be made by the Corporation.

ARTICLE IX

MISCELLANEOUS

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

(2) Waiver - The failure to take action to enforce any provisions contained in the Act, this Declaration, the By-laws, or any Rules and Regulations of the Corporation, irrespective of the number of violations or breaches which may occur, shall not constitute a waiver of the right to do so thereafter, nor be deemed to abrogate or waive any such provisions.

(3) Construction of Declaration - This Declaration shall be read with all changes of number and gender required by the context.

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

DATED at *Toronto* this *25th* day of *September*, 2000.

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

SCARLET GATE DEVELOPMENT INC.

Ed Estreicher A.S.O. c/s

SCHEDULE "A"

LEGAL DESCRIPTION

In the City of Toronto, (formerly the City of Etobicoke), being part of Lot 17, Concession D, Fronting on the Humber, (Geographic Township of Etobicoke) as shown on Parts 1 and 3 on a Plan of Survey deposited in the Land Registry Office for the Land Titles Division of Toronto (No 66) as Plan 66R-18842, Being Part of PIN 07379-0488(I.T).

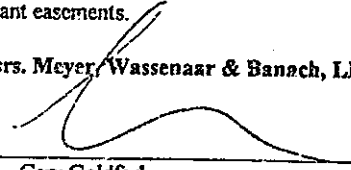
Subject to an easement in favour of the Consumer's Gas Company Ltd. Over Part 1, Plan 66R-18523 as set out in Instrument No E272801.

Subject to an Easement in favour of Toronto Hydro-Electric System Limited over Part 1, Plan 66R-18602, as set out in Instrument No E325079.

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In our opinion, based on the parcel register and plans and documents recorded therein, the legal description is correct, the easements described exist in law, and the Declaration is the registered owner of the Land and appurtenant easements.

Messrs. Meyer, Wassenaar & Banach, LLP

Sept 22, 2000
Dated

Per: 
Gary Goldfarb

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SCHEDULE "B"

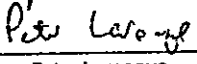
THE CONDOMINIUM ACT, R. S. O. 1980, Chapter c.84 Consent under clause b of Subsection 1 of Section 3 of the Act.

THE GUARANTEE COMPANY OF NORTH AMERICA, having a registered mortgage within the meaning of Clause b, Subsection 1 of Section 3 of the Condominium Act, R.S.O. 1980, Chapter 84, registered as Instrument No. E311800, in the Land Registry Office for the Land Titles Division of Metropolitan Toronto, hereby consents to the registration of this Declaration pursuant to the Condominium Act against the land or interest appurtenant to the land described in the Description.

IN WITNESS WHEREOF the undersigned has caused these presents to be signed by its duly authorized officers in that behalf this 13th day of September, 2000.

THE GUARANTEE COMPANY OF NORTH AMERICA

Per: 
Name: Ginette Fournier
Title: Attorney-In-Fact

Per: 
Name: Peter Larocque
Title: Attorney-In-Fact

We have authority to bind the Corporation.

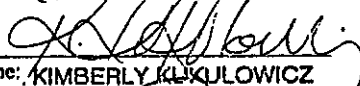
SCHEDULE "B"

THE CONDOMINIUM ACT, R. S. O. 1980, Chapter c.84 Consent under clause b of Subsection 1 of Section 3 of the Act.

THE EQUITABLE TRUST COMPANY AND FCC MORTGAGE ASSOCIATES INC., having a registered mortgage within the meaning of Clause b, Subsection 1 of Section 3 of the Condominium Act, R.S.O. 1980, Chapter 84, registered as Instrument No. E229399, in the Land Registry Office for the Land Titles Division of Metropolitan Toronto, hereby consents to the registration of this Declaration pursuant to the Condominium Act against the land or interest appurtenant to the land described in the Description.

IN WITNESS WHEREOF the undersigned has caused these presents to be signed by its duly authorized officers in that behalf this day of September, 2000.

THE EQUITABLE TRUST COMPANY

Per: 
Name: KIMBERLY KLUKULOWICZ
Title: VICE PRESIDENT MORTGAGE SERVICES

Per: 
Name: Sylvia Pimentel
Title: Manager, Mortgage Services

We have authority to bind the Corporation.

FCC MORTGAGE ASSOCIATES INC.

Per: 
Name: Eli Dardouch
Title: President

I have authority to bind the Corporation.

SCHEDULE "C"

UNIT BOUNDARIES

RESIDENTIAL UNITS (Levels 1 to 11 inclusive)

Each Residential Unit, being Units 1 to 11 inclusive, on Level 1, shall comprise the area within the heavy lines as shown on the Description Part 1, Sheet 1, filed concurrently herewith, with respect to the number indicated thereon.

The monuments controlling the extent and location of the units are the physical surfaces of the walls, the floors and the ceilings as mentioned in the unit boundaries below.

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

HORIZONTAL BOUNDARIES

- The upper surface of the concrete floor slab.
- The production of the upper surface of the concrete floor slab.
- The unfinished unit side surface of the ceiling drywall.
- In the vicinity of Unit 12, the upper surface and plane of the pre cast concrete ceiling slab of unit 4.
- The unfinished unit side surface of the plywood sub floor.
- The finished exterior surface of the aluminum soffit.
- The unfinished unit side surface of the top of the overhead doors. In the closed position.
- The horizontal production of the uppermost surface and plane of the asphalt shingle roof.

VERTICAL BOUNDARIES

- The unfinished unit side surface of the drywall.
- The unfinished unit side surface of the exterior doors, windows, door and window frames and sills and the unit side surface of all glass or plastic panels located therein. The said doors and windows being in a closed position.
- The unfinished unit side surface of the poured concrete or masonry walls.
- The production of the back face of the concrete curb.
- The exterior surface and plane of the brick in the vicinity of unit 12.
- The unfinished surface of the overhead door in the closed position.
- The unfinished unit side surface and plane of the concrete wall and its production across all openings.
- The unfinished exterior surface of the aluminum fascia in the vicinity of unit 12.
- The vertical plane controlled by the bearings and distances shown on plan 66R-18842.

SLOPING BOUNDARIES

- The exterior surface and plane of the copper flashing in the vicinity of unit 12.
- The unfinished unit side surface of the drywall in the vicinity of the skylights and rear sloping ceilings.

With Respect to Residential Units:

- In cases where any such surface or plane is interrupted by apertures for exhaust ducts, such surface or plane shall be extended across such apertures.
- The description of a unit shall include the heating, or air treatment equipment, which serves that unit only and the appurtenances, connections, etc., with respect thereto, no matter where located.

Notwithstanding the foregoing, Residential Units shall exclude:

- Any load bearing column, structural member or load bearing partition contained within the unit;
- Exterior windows and window frames, exterior doors and exterior door frames; and
- Any pipe, wire, cable, conduit, duct, shaft or public utility line used for power, cable television, water, heating, air conditioning or drainage which is within the Residential Unit or within any wall or floor of any Residential Unit and provides any service or utility to another unit or units; but the unit shall include any fixture outlet or other facility with respect to any such service or utility which is within the boundaries of the unit and which serves the unit only.

SHARED FACILITY UNIT (Unit 12 Level 1)

The Shared Facilities unit, being Unit 12, Level 1, shall comprise the area within the heavy lines as shown on the Description Part 1, Sheet 1, filed concurrently herewith, with respect to the Unit number indicated thereon.

The monuments controlling the extent and location of the units are the physical surfaces of the walls, the floors, and the ceilings as mentioned in the unit boundaries below.

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

HORIZONTAL BOUNDARIES

- The production of the upper surface of the concrete floor slab.
- In the vicinity of Unit 12, the upper surface and plane of the pre cast concrete ceiling slab of unit 4.
- The finished exterior surface of the aluminum soffit.
- The horizontal production of the uppermost surface and plane of the asphalt shingle roof.

VERTICAL BOUNDARIES

- The production of the back face of the concrete curb.
- The exterior surface and plane of the brick in the vicinity of unit 12.
- The unfinished unit side surface and plane of the concrete wall and its production across all openings.
- The unfinished exterior surface of the aluminum fascia in the vicinity of unit 12.
- The vertical plane controlled by the bearings and distances shown on plan 66R-18842.

SLOPING BOUNDARIES

- The exterior surface and plane of the copper flashing in the vicinity of unit 12.

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SCHEDULE "D"

Common element percentage
and common interest percentage.

Unit 1, Level 1	9.0909
Unit 2, Level 1	9.0909
Unit 3, Level 1	9.0909
Unit 4, Level 1	9.0909
Unit 5, Level 1	9.0909
Unit 6, Level 1	9.0909
Unit 7, Level 1	9.0909
Unit 8, Level 1	9.0909
Unit 9, Level 1	9.0909
Unit 10, Level 1	9.0909
Unit 11, Level 1	9.0909
Unit 12, Level 1	9.0909
	100%

SCHEDULE "E"SCHEDULE OF COMMON EXPENSES

Common expenses shall include the following:

- (a) All expenses of the Corporation incurred by it or the board in the performance of the objects and duties of the Corporation whether such objects or duties are imposed under the provisions of the Act or of the Corporation;
- (b) All sums of money levied or charged to the Corporation on account of any and all public and private suppliers of insurance coverage, taxes, utilities and services including, without limiting the generality of the foregoing, levies or charges for:
 - Insurance Premiums
 - Utilities for use of common elements
 - Maintenance materials, tools and supplies
 - Snow removal from sidewalks and landscaping and snow melting from driveway
 - Realty Taxes (including local improvement charges) levied against the entire property until such time as taxes are levied against each unit
 - Realty Taxes, if any, levied against common elements
- (c) Remuneration payable by the Corporation to any employees deemed necessary for the proper operation and maintenance of the property;
- (d) The cost of maintaining fidelity bonds as provided in the by-laws;
- (e) All sums of money paid or payable by the Corporation to or for the benefit of any and all persons, firms or corporations engaged or retained by the Corporation, the Board, its duly authorized agents, servants, and employees for the purpose of performing any or all of the duties of the Corporation; including, without limitation, legal, engineering, accounting, expert appraisal, advisory, maintenance, managerial and secretarial services;
- (f) The cost of equipment for use in and about the common elements including the repair, maintenance, operation or replacement thereof;
- (g) All sums of money paid or payable by the Corporation pursuant to the provisions of subsections (4) and (5) of Section 38 of the Act, as amended;
- (h) The cost of borrowing money for the purpose of carrying out the objects and duties of the Corporation;
- (i) The cost of insurance appraisals;
- (j) The fees of the insurance trustee.

SCHEDULE "F"EXCLUSIVE USE PORTIONS OF THE COMMON ELEMENT

The owners of Residential Units inclusive shall have the exclusive use of the front and rear yards as shown on Part 2, Sheet 1, as follows:

<u>UNIT</u>	<u>FRONT YARD</u>	<u>REAR YARD</u>
Unit 1	F1	R1
Unit 2	F2	R2
Unit 3	F3	R3
Unit 4	F4	R4
Unit 5	F5	R5
Unit 6	F6	R6
Unit 7	F7	R7
Unit 8	F8	R8
Unit 9	F9	R9
Unit 10	F10	R10
Unit 11	F11	R11

Notwithstanding the foregoing, any fixture, outlet, sign, apparatus or structure located within the limits of the Exclusive Use Portions of the Common Elements shall not form part thereof.

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**meyer, wassenaar
& banach, LLP,**

Barristers & Solicitors

Royal Bank Building, 5001 Yonge Street, Suite 301, North York, Ontario, Canada M2N 6P6

Telephone: (416) 223-9191

Fax: (416) 223-9405

Willem J.B. Meyer, Q.C. (Retired)

Sy. L. Wassenaar, Q.C.

Martin Banach, LL.B.

Joseph Fried, LL.B.

Gary D. Goldfarb, LL.B.

* Duriya Patel, B.Sc., LL.B.

* Robert L. Riteman, M.B.A., LL.B.

* Also of the New York Bar

September 25, 2000

Land Registry Office
20 Dundas Street West
3rd Floor
Toronto, Ontario

Dear Sir:

Re: Scarlet Gate Development Inc. - Declaration

Please be advised that we are solicitors for Scarlet Gate Development Inc. and we confirm the following:

1. The municipal address of the condominium building.

540 Scarlett Road, Toronto
542 Scarlett Road, Toronto
544 Scarlett Road, Toronto

2. The name of the Builder.

Scarlet Gate Development Inc.

3. The trade name.

Scarlet Gates

If you have any further questions, please do not hesitate to contact our office.

Yours very truly,

MEYER, WASSENAAR & BANACH, LLP

Per:

Gary D. Goldfarb

/slw

THE LAND TITLES ACT

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D 733210

IN WITNESS WHEREOF
I have hereunto set my hand and
the seal of the Office of the Registrar
of Land Titles at Toronto
Ontario this 15th day of June 2009

'09 06 27 15 09

[Signature]

DECLARATION

THE CONDOMINIUM ACT

METROPOLITAN TORONTO CONDOMINIUM PLAN No 1341

NEW PROPERTY IDENTIFIERS BLOCK 12341

RECENTLY : 07379-0488

DECLARANT : SCARLET GATE DEVELOPMENT INC.

SOLICITOR : Gary Goldfarb

MEYER, WASSENAAR & BANACH

ROYAL BANK BUILDING SUITE 301

5001 YONGE STREET

NORTH YORK, ONTARIO

M2N-6P6

PHONE: 416-223-9191

No. OF UNITS 12

FEES: \$50.00 + \$5.00 x 12 = \$110.00

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