

***JOINT USE AND COMMON
ELEMENTS MAINTENANCE
AGREEMENT***

The Woodlands Phase I



Document General

Form 4 -- Land Registration Reform Act

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<p style="writing-mode: vertical-rl; transform: rotate(180deg);">FOR OFFICE USE ONLY</p> <p>1251164</p> <p>RECEIVED OTTAWA-CARLETON</p> <p>DEC 9 14:52</p> <p><i>Edward Phillips</i> SAIL COUNCIL CERTIFICATION OFFICER</p> <p>New Property Identifiers</p> <p>Additional: See Schedule <input type="checkbox"/></p> <p>Executions</p> <p>Additional: See Schedule <input type="checkbox"/></p>	(1) Registry <input type="checkbox"/> Land Titles <input checked="" type="checkbox"/> (2) Page 1 of 20 pages	
	(3) Property Identifier(s) Block Property 04157 0767	
	(4) Nature of Document APPLICATION TO REGISTER NOTICE OF AN UNREGISTERED INTEREST (Section 71 of the Act)	
	(5) Consideration Dollars \$	
(6) Description FIRSTLY: Block 1, Plan 4M-1053 City of Ottawa, Regional Municipality of Ottawa-Carleton Land Registry Office for the Land Titles Division of Ottawa-Carleton (No. 04)		
(7) This Document Contains: (a) Redescription New Easement Plan/Sketch <input type="checkbox"/> (b) Schedule For: Description <input type="checkbox"/> Additional Parties <input type="checkbox"/> Other <input checked="" type="checkbox"/>		

(8) This Document provides as follows:

RICHCRAFT HOMES has an unregistered estate, right, interest or equity in the land registered in the name of RICHCRAFT HOMES LTD. in respect of the lands described in Box (6) above and hereby applies under Section 71 of the Land Titles Act for entry of a Notice of a Joint Use and Common Elements Maintenance Agreement in the register for for the said parcel.

Continued on Schedule

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

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

RICHCRAFT HOMES LTD.

Signature(s) per: *Edward Phillips*

Date of Signature Y M D 1999 12 09

Edward Phillips

I have the authority to bind the Auth. Signing Officer

Corporation

(11) Address for service 2280 St. Laurent Boulevard, Suite 201, Ottawa, Ontario K1G 4K1

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

Signature(s)

Date of Signature Y M D

(13) Address for service

(14) Municipal Address of Property

Multiple

Woodlands

(15) Document Prepared by:

Kristine F. Burton
MERNER BURTON MASSIE
136 Lewis Street
Ottawa, Ontario
K2P 0S7

473

Fee and Tax	
Registration Fee	50
Total	

2

SCHEDULE

Description Continued

P.I.N.	Block	Plan
04157 0768	2	4M-1053
04157 0769	3	4M-1053
04157 0770	4	4M-1053
04157 0771	5	4M-1053
04157 0772	6	4M-1053
04157 0773	7	4M-1053
04157 0774	8	4M-1053
04157 0775	9	4M-1053
04157 0776	10	4M-1053
04157 0777	11	4M-1053
04157 0785	19	4M-1053
04157 0787	21	4M-1053
04157 0789	23	4M-1053

THIS AGREEMENT made as of the 9 day of Dec. 1999

BETWEEN

RICHCRAFT HOMES LTD.
Hereinafter called "Richcraft"

OF THE FIRST PART

AND

RICHCRAFT HOMES LTD. IN TRUST
On behalf of future Owners
Hereinafter called the "Owners"

OF THE SECOND PART

WHEREAS Richcraft is the owner of the lands and premises described in Schedule "A" hereto attached (hereinafter called the "Lands").

AND WHEREAS there will be erected on the Lands fifty-seven (57) residential townhouse units (hereinafter called the "Units").

AND WHEREAS Richcraft intends to sell each of the Units.

AND WHEREAS Richcraft has obtained a by-law, being By-law No. 257-99 of the City of Ottawa, exempting the Lands from the provisions of Section 50 of the Planning Act in order that the individual Units can be sold together with a one fifty-seventh (1/57th) interest in a part of the Lands as more particularly described in Schedule "B". The By-law was registered on the 3rd day of November, 1998, as No. LT1242066.

AND WHEREAS the Owners will have a Co-tenancy interest and shall enjoy certain rights with respect to Shared Property, more particularly hereinafter set forth.

AND WHEREAS as a condition of the passing of the By-law, Richcraft is required to enter into an agreement to regulate and administer the Shared Property, and to ensure that this agreement is binding on the Purchasers and Owners.

AND WHEREAS this agreement is necessary to define and establish the rights and obligations with respect to the use, operation, management, supervision, maintenance, repair and replacement by the Owners, mortgagees and tenants, from time to time respectively of the Units on the Lands and with respect to the said Shared Property.

AND WHEREAS pursuant to this Agreement, all purchasers will take title subject to a covenant to be bound by the provisions of this Agreement.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

- 1. INTERPRETATION
 - 1.1 Definitions
 - (a) "Shared Expenses" means the expenses relation to the maintenance and repair of the Shared Property and are described herein in Section 4.1.
 - (b) "Shared Property" means that part of the Lands and appurtenances thereon which are described in Section 2.3 and Schedule "B".
 - (c) "Co-Tenancy Interest" means the tenancy in common interest in the lands described in Schedule "B".
 - (d) "Lands" means all of the lands and premises described in Schedule "A" attached hereto.
 - (e) "Owner" means the owner of one of the units on the Lands.
 - (f) "Proportionate Share" means the equal percentage that each of the Owners shall bear of the Shared Expenses.

1.2 Schedules The Schedules to this agreement are part of the agreement and are as follows:

Schedule "A"	Legal Description of the Lands
Schedule "B"	Legal Description of the Co-Tenancy Interest
Schedule "C"	Shared Expenses
Schedule "D"	Rules and Regulations
Schedule "E"	Estoppel Certificate
Schedule "F"	Legal Description of Area subject to a right-of-way for the benefit of abutting land designated for future residential development.

2. OWNERSHIP RIGHTS

2.1 Co-Tenancy Interest The Owners share a Co-Tenancy Interest in the lands described in Schedule "B". During the ownership of the Owner's Co-Tenancy Interest, each Owner shall have the right in common with other Owners of Units and subject to this agreement to use and enjoy the lands described in Schedule "B".

2.2 Shared Property Subject to the terms of this agreement, the Owners have the right to use certain parts of Units for access, services and utilities and for party walls. During the ownership of a Unit, each Owner shall have the right to use these areas which, together with the Co-Tenancy Interest, form the Shared Property. The Shared Property includes the following:

- (a) a private street with concrete sidewalks
- (b) common conduits for electrical, cablevision and telephone service located beneath the foundations of the Units and common utility service laterals located in common utility trenches running from one or more of the Units out to the primary transformer or other distribution points.
- (c) the high voltage cables and conduits from the street to the transformers and the secondary wiring from the transformer to the Unit metering.
- (d) a private street with concrete sidewalks.
- (e) the services and utilities located on or under the private street and immediately contiguous to the said street and along the street frontage of the Lands, including street lighting and fire hydrants together with conduits and enclosures for hydro and cable utilities and all appurtenances, but not including lateral connections. These services and utilities will be extended to service the future residential development on the abutting land to the west of the Lands.
- (f) a parkette and other green spaces.
- (g) catch basins and pipes thereto installed within the Lands
- (h) common storm sewers for the mutual benefit and joint use of the Owners in each block of attached Units
- (i) a chain link fence around the perimeter of the Lands, except the frontage on Hunt Club Road, and around the parkette.
- (j) party walls which exist for the joint use and mutual benefit of certain Owners which party wall divides the Units.

2.4 Shared Expenses Each of the Owners shall contribute in equal shares to the Shared Expenses.

2.5 In Perpetuity The Shared Property shall exist in perpetuity except that the Owners from time to time enjoying the benefit of party walls and storm sewers may mutually agree in writing to alter such provisions.

2.6 Restriction on Sale Upon accepting delivery of a transfer of a Unit and Co-Tenancy Interest, the Owner agrees that the ownership of the Co-Tenancy Interest may not be sold, assigned, transferred, pledged, charged, or encumbered in any manner unless, at the same time:

- 5
- (a) the Owner shall have sold, assigned, transferred, pledged, charged or encumbered the Unit purchased with the Co-Tenancy Interest. It is the intent of this Agreement that the Co-Tenancy Interest always be inseparable from the ownership of the Unit.
- (b) The Owner shall have sold, assigned, transferred, pledged, charged or encumbered the Owner's interest in this Agreement. It is the intent of this Agreement that the Co-Tenancy Interest be inseparable from the rights, duties and obligations of the Owners pursuant to this Agreement.

2.7 Transferee's Covenant All contracts for 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 Lands for the benefit of the Owners:

With the intention that this covenant shall run with and bind the lands herein described for the benefit of all others having an interest in such lands, the Transferee, for himself and his heirs, executors and assigns, agrees that he shall not use, occupy or deal with the lands, or any part thereof or any interest therein, except in accordance with the provisions of the Shared Property and Co-Tenancy Agreement registered on the _____ day of _____ 1999, as Instrument No. _____

2.8 Richcraft's Rights and Obligations Richcraft has the same rights and obligations as the Owners in respect of the Shared Property and Richcraft shall cease to have such rights and obligations upon the completion of the sale of the Units and the Co-Tenancy Interest.

2.9 Contractual Relationship Between Owners Each Owner of a Unit is deemed to have contracted directly with each other Owner with respect to the provisions in this Agreement.

2.10 Relationship of Owners The Owners are not considered to be and shall not be deemed to be engaged in a business or as a general partnership, a limited partnership, a company, shareholders of a corporation, a joint venture, a joint stock company or an association nor shall the Owners or any of them for any purpose be, or be deemed to be treated in any way whatsoever to be liable or responsible hereunder as partners or joint venturers, but at all times the relationship shall be solely that of tenants in common. For greater certainty, no Owner is, or is intended to be, or shall be deemed to be the partner, agent or legal representative of any other owner, whether for the purposes of this agreement or otherwise, except in all respects as provided in this Agreement.

2.11 Several Liability As between the Owners, the obligations of each Owner relating to the Shared 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 SHARED PROPERTY

3.1 Management of Shared Property The Shared Property shall be managed by Richcraft until such time as a majority of the Units are sold. In computing the cost of maintenance and repair, Richcraft shall be entitled to charge at the going rate for labour furnished or materials supplied by its servants and agents. When a majority of the Units have been sold by Richcraft, the management and supervision of the maintenance and repair of the Shared Property, excluding the party walls, shall be exercised by a Co-Tenancy Committee. The duties of the Co-Tenancy Committee are as follows:

- (a) to prepare an annual budget for the maintenance, repair and general upkeep of the Shared Property excluding the party walls;
- (b) to estimate the amount of Shared Expenses for the ensuing fiscal year;
- (c) to establish a reserve fund for contingencies including the major repair and replacement of the Shared Property excluding the party walls;
- (d) generally, to oversee the management and operation of the Shared Property and, if deemed necessary, to appoint a property manager which will deal with day to day management, accounting and general administrative matters and will fully account to the Co-Tenancy Committee;

- (c) revise the rules and regulations imposed upon the Owners as set out in Schedule "E" when deemed necessary; and
- (f) account to the Owners from time to time with respect to the foregoing and, in particular, to call annual meetings of the Owners in accordance with Section 9 of this Agreement.

3.2 Meetings of Owners Within sixty (60) days after Richcraft ceases to be the owner of a majority of the Units, Richcraft shall call the first meeting of the Unit Owners. A quorum for the transaction of business at any meeting of Unit Members shall be nineteen (19). At such meeting of Owners, three (3) Owners shall be elected to form the Co-Tenancy Committee. A quorum for the transaction of business at any meeting of the Co-Tenancy 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 Co-Tenancy Committee by appoint one (1) Owner to hold office until the next annual meeting of Owners.

3.3 Qualifications Each Committee member shall be either:

- (a) an Owner of a Unit;
- (b) a nominee of an Owner;
- (c) a chargee of an interest in a Unit; or
- (d) a nominee of a chargee of an interest in a Unit.

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

3.4 Election and Term The three (3) members of the Co-Tenancy Committee shall be elected at a meeting of Owners called for that purpose. At such meeting of Owners, in accordance with the number of votes cast for each nominated member, one (1) member shall be elected to hold office until the first annual meeting following the date of his election; one (1) member shall be elected to hold office until the second annual meeting following the date of his election; and one (1) member shall be elected to hold office until the third annual meeting following the date of his election. Where the members are elected by acclamation, the Owners at the meeting shall determine the distribution of terms.

3.5 Calling of Meetings Meetings of the Co-Tenancy Committee shall be held when called by any member of the Co-Tenancy Committee. Notice of any meeting shall be given to each 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 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 members are present and consent to the holding of the meeting or if those absent waive notice or otherwise signify in writing their consent to the holding of the meeting.

3.6 Regular Meeting The Co-Tenancy Committee may appoint a time and a place for regular meetings. A copy of any resolution of the Co-Tenancy Committee fixing such time and place shall be sent to each committee member and no further notice shall be required for any such meeting.

3.7 Indemnity of Committee Members and Officers Every member and officer of the Co-Tenancy Committee and his heirs, executors, administrators and other legal personnel representatives shall be indemnified and saved harmless by the Owners from and against:

- (a) any liability and all costs, charges and expenses that he sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him for or in respect of the execution of the duties of his office; and
- (b) all other costs, charges and expenses that he sustains or incurs in respect of the affairs of the Co-Tenancy;
 - (i) provided that: the Co-Tenancy Committee is advised of any such action, suit or other proceeding or cost, charge or expense, forthwith after the member or officer received notice thereof, and

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

Notwithstanding the foregoing, no member or officer of the Co-Tenancy Committee shall be indemnified by the Co-Tenancy Committee in respect of any liability, cost, charge or expense that he sustains or incurs in or about any action, suite or other proceeding as a result of which he is adjudged to be in breach of any duty or responsibility set out hereunder unless in an action brought against him in his capacity as a member or officer of the Co-Tenancy Committee he has achieved complete or substantial success as a defendant.

3.8 Officers The members of the Co-Tenancy Committee may elect from any of its members a President, Secretary and Treasurer. One person may hold more than one (1) office.

3.9 Term of Office A majority of the Owners may remove at their pleasure any officer or member of the Co-Tenancy Committee.

3.10 President The President shall, when present, preside at all meetings of the Owners and of the Co-Tenancy Committee and shall be charged with the general supervision of the business and affairs of the Co-Tenancy.

3.11 Secretary The Secretary shall give or cause to be given all notices required to be given to the Owners, members of the Co-Tenancy Committee, auditors, mortgagees and all others entitled thereto; or cause to be entered in books kept for that purpose minutes of all proceedings at such meetings; he shall be the custodian of all books, papers, records, documents and other instruments belonging to the Co-Tenancy and he shall perform such other duties as may be prescribed by the Co-Tenancy Committee.

3.12 Treasurer The Treasurer shall keep or cause to be kept, full and accurate books of accounting which shall record all receipts and disbursements of the Co-Tenancy and, under the direction of the Co-Tenancy Committee, shall control the deposit of money, the safekeeping of securities and the disbursement of the funds of the Co-Tenancy; he shall render to the Co-Tenancy Committee, whenever required of him, an account of all his transactions as Treasurer and of the financial position of the Co-Tenancy; and he shall perform such other duties as may be prescribed by the Co-Tenancy Committee.

3.13 Agents and Attorneys The Co-Tenancy Committee shall have power from time to time to appoint managers, personnel, agents or attorneys for the Co-Tenancy 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 Co-Tenancy Committee may appoint a property manager which property manager shall be fully accountable to the Co-Tenancy Committee.

4. SHARED EXPENSES

4.1 Shared Expenses The Shared Expenses of the Shared Property shall include the following:

- (a) all municipal, provincial or other government taxes, rates or assessments, including local improvement rates, charged, levied or issued against the Shared Property as they become due and payable;
- (b) insurance premiums with respect to the maintenance of insurance policies on the Shared Property, including property damage and public liability insurance and all costs related to securing insurance coverage;
- (c) repair, replacement and maintenance of the Shared Property including landscaping and snow removal;
- (d) services and supplies for the Shared Property;
- (e) maintenance materials, tools and supplies;
- (f) the cost of legal, accounting, managing, auditing and engineering services or other professional advice and service required by the Co-Tenancy Committee;
- (g) the cost of personnel required to maintain, repair and operate the Shared Property;

- (h) a contribution towards a reserve fund for major repair and replacement of the Shared Property which reserve fund shall constitute an asset of the Co-Tenancy Committee to be held in trust for all of the Owners and shall not be distributed on the sale of a Unit;
- (i) any amounts spent to remedy any Owner's breach of this Co-Tenancy Agreement as well as any amount spent by the Co-Tenancy Committee on behalf of the Owners to enforce the remedies provided for in this Agreement upon the default of any Owner;
- (j) such other expenses as are normally incurred in maintaining a high quality, residential development.

When the residential development of the land immediately to the west of the Lands is completed and the private road, services and utilities are extended to service such development the owners of the units in the development will be required to contribute a pro-rata share of the repair and maintenance thereof.

4.2 Party Walls Notwithstanding anything contained herein to the contrary, party walls are the sole responsibility of those Owners enjoying the benefit of same and the cost of their maintenance, repair and replacement is not part of the Shared Expenses as defined herein.

4.3 Payment of Shared Expenses Each Owner shall pay to the Treasurer of the Co-Tenancy Committee his share of the Shared Expenses being one fifty-seventh (1/57th) of the total of such expenses. On the first day of January in each year the Owner shall deliver to the Treasurer of the Co-Tenancy Committee twelve (12) post dated cheques for the Owner's share of the estimated Shared Expenses for the following year. Such sums are to be held by the Treasurer, in trust, and to be used by the Treasurer for the purpose of maintaining the Shared Property and keeping current all Shared Expenses. The reserve fund received by the Treasurer shall be segregated and deposited into a special interest bearing trust account to be held by the Treasurer until such funds are required to be expended, or until the Owners, by a decision confirmed by a majority of the then current Owners, direct the Co-Tenancy Committee to use the fund for another purpose.

4.4 Change in Shared Expenses The total monthly amount to be collected for Shared Expenses may from time to time be changed by either:

- (a) thirty (30) days notice from the Co-Tenancy Committee advising that additional funds are necessary to keep Shared Expenses current and setting out with reasonable detail the reason for the Co-Tenancy Committee's decision; or
- (b) a decision signed by a majority of the then current Owners present at any meeting of all Owners where a quorum has been satisfied.

4.5 Priority of Shared Expenses The Owners agree that every amount from time to time payable by him for Shared Expenses shall constitute a first charge upon the Owner's Unit subject only to municipal taxes having statutory priority and that any such amounts that may from time to time be in arrears will have priority to the rights of any purchaser or mortgagee of such interest, whether the instrument in favour of such purchaser or mortgagee is registered before or after such common expense payments become due. This charge shall be deemed to be a charge to which the *Mortgages Act*, R.S.O. 1990 c.M.40 applies.

4.6 Default Should an Owner (the "Defaulting Owner") make default in payment of Shared Expenses, the amount in arrears shall bear interest in favour of the Treasurer as trustee for the other Owners at a rate of interest which is the greater of:

- (a) fifteen percent (15%) per annum, calculated monthly;
- (b) a rate which is equal to five (5%) per annum above the bank rate of The Bank of Nova Scotia. In case such default continues for a period of fifteen (15) days, the other Owners, in addition to the rights set out in Section 4.5, shall have the right to collect the same by action and shall have a charge upon the Defaulting Owner's Unit until such amount shall have been paid. If such amount shall not have been paid within a thirty-five (35) day period, 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 the advance the Defaulting Owner hereby charges his Unit in favour of the Paying Owners in the amount

so contributed from time to time together with interest at the interest at the rate herein set forth and agrees that the terms of such charge are those terms set out in the Standard Charge Terms filed under the *Land Registration Reform Act*, R.S.O. 1990, c.L4, as No. 9320.

4.7 Non-Avoidance The obligations of an Owner to contribute towards Shared Expenses shall not be avoided by waiver of the right to use the Shared Property or by abandonment.

4.7 Direction to Tenant If a Unit is leased to a tenant and the Owner is in default in the payment of any amount on account of Shares Expenses or any other amount required to be paid pursuant to this Agreement, then the Owner agrees that the other Owners shall be entitled to serve a notice upon the tenant of such defaulting Owner's Unit requiring such tenant to pay all further rents due and becoming due to the other Owners until such time as the full amount of any such arrears together with interest thereon as provided in Section 4.6 hereof, owing by the Defaulting Owner has been fully paid. Each of the Owners agree that any lease or tenancy agreement which they may enter into with respect to the Unit shall contain a provision authorizing the tenant to make any such payment of rent to the other Owners in the event of delivery to the tenant of such notice by the other Owners.

5. SHARED PROPERTY

5.1 Use of Shared Property Except as otherwise provided herein each Owner has the full use, occupancy and enjoyment of the whole or any part of the Shared Property with all others entitled thereto for the purposes intended.

5.2 Substantial Change to Property

- (a) The Co-Tenancy Committee may, by a confirming vote of at least thirty-eight (38) Owners at a meeting where a quorum is present, make any substantial additions, alterations or improvements to, or renovation of the Shared Property. For this purpose, any addition, alteration or improvement to, or renovation of the Shared Property shall be deemed to be substantial if the cost of such addition, alteration or improvement to or renovation of the Shared Property is in excess of twenty percent (20%) of the current annual budget.
- (b) the Co-Tenancy Committee may, by a confirming vote of at least twenty-eight (28) Owners at a meeting where a quorum is present, make any other addition, alteration, or improvement to, or renovation of the Shared Property.

6. USE OF UNIT

6.1 Structural Alterations 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 other Owner holding an interest in such Unit and provided that any such alteration shall be completed at the expense of the Owner and shall not result in any reduction in the Shared Property.

6.2 Alterations to Exterior An Owner shall not make any alteration to the exterior of the Unit without the prior written approval of the Co-Tenancy Committee, unless such alteration is minor or cosmetic in nature, in which event such approval shall not be required.

6.3 Alteration to Grade An Owner shall not alter, repair, demolish, remove or replace any of the Shared Property or alter the slope of the Lands nor interfere with any drainage established on the Lands.

6.4 Restrictions on Leasing An Owner shall not lease the Unit unless an agreement is signed by the tenant and delivered to the Co-Tenancy Committee by the Owner prior to the tenant taking possession of the Unit as follows:

"I, _____, covenant and agree that I and any person using the Unit and the Shared Property will comply with the Shared Property and Co-Tenancy Agreement affecting the ownership and use of the Unit and Shared Property."

No tenant shall be liable for the prepayment of Shared Expenses unless notified by the Co-Tenancy Committee that the Owner is in default of payment of Shared Expenses, in which case the tenant shall deduct from the rent payable to the Owner the Owner's share of the Shared Expenses and shall pay the same to the Co-Tenancy Committee.

The Owner's rights and obligations with respect to the Owner's Land shall be joint and several with the tenant.

6.5 Maintenance and Repair of Party Walls The obligation to maintain and repair and keep in good condition the party walls shall rest with and be shared equally by the Owners from time to time who share the party walls. The management and supervision of maintenance and repair of the party walls shall be exercised by the Owners who share same. In the event that any work is required to be done to maintain and keep in repair the party walls, it is agreed that prior to any such work being undertaken, approval as to its cost shall be obtained from the Owners affected by the work provided, however, that 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 and the Owner of the remaining property shall indemnify the Owner which causes such work to be performed to the extent of his proper share of such work, the intention being that the cost of such work shall be borne equally by and amongst the Owners sharing the party wall.

6.6 Right of Access

- (a) Any Owner who pursuant to the provisions of this Agreement is required or entitled to exercise supervision and management of the maintenance and repair of the Shared Property, or is elected or appointed to the Co-Tenancy Committee may exercise in relation thereto such easements and rights of access as are reasonably necessary for the purpose of carrying out such maintenance and repair and to this end the other Owners do hereby grant to these owners and their servants and agents, including any municipal authority, such easements and rights of access.
- (b) Each Owner shall have the right to maintain, repair and replace any encroachments resulting from caves 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.

6.7 Damage In the event of fire or other casualty causing damage or destruction to the Shared Property, such damage or destruction shall be repaired as expeditiously as possible following the happening thereof in a good and workmanlike manner with materials of standard quality and in accordance with all applicable by-laws, and for this purpose the Owners from time to time of any part walls so damaged or destroyed shall execute and deliver all necessary proofs of loss, and except to the extent that any mortgagee having an interest in fire insurance proceeds may otherwise require or to the extent that the Owners affected by such damage or destruction may mutually agree in writing, all cheques representing insurance proceeds shall be endorsed and released by them and such proceeds of insurance shall be applied to the cost of such repair in accordance with the progress of repair or reconstruction.

7. SALE BY OWNER

7.1 Notice of Sale Upon an Owner entering into an agreement for the sale of his Unit and his Co-Tenancy Interest, he shall immediately thereafter notify the Co-Tenancy Committee of such sale, the name and address of the purchaser and date set for completion of such sale. The Owner shall pay to the Co-Tenancy Committee, prior to the completion of such sale, all monies due and owing by the Owner up to and including the date of completion of such sale with respect to any unpaid Shares Expenses.

7.2 Assumption Agreement The Owner agrees in case of the sale to cause the purchaser to sign an assumption agreement in a form satisfactory to the Co-Tenancy Committee whereby such purchaser assumes in writing all of the obligations of the Owner under this Agreement and to specifically acknowledge that such purchaser has received a copy of this Agreement. If the Owner sells without obtaining such assumption agreement and delivering it to the Co-Tenancy Committee, the Owner shall continue to be liable for the obligations imposed under this Agreement.

7.3 Estoppel Certificate The Co-Tenancy Committee shall on the request of a purchaser deliver to such purchaser on closing an Estoppel Certificate in the form attached hereto as Schedule "F" for the then current fee. The Estoppel Certificate shall also be made available to mortgagees at the Co-Tenancy Committee's then current fee.

8. PARTITION RESTRICTIONS

8.1 Partition Restrictions

- (a) An Owner shall not have the right to petition nor make any application to, or petition any court or authority having jurisdiction, nor commence, nor prosecute any action, for partition and sale of the Co-Tenancy Interest under the provisions of the *Partition Act, R.S.O. 1990, c.P.4*, as may be amended from time to time or any statute enacted to replace it.
- (b) In case an order for sale is made under such Act, each of the Owners shall be permitted to purchase the interest at such sale.

8.2 Remedies Upon any breach of section 8.1 by any of the Owners, the other Owners may, in addition to all other rights and remedies in law and in equity be entitled to obtain an order restraining the commission of any such breach and an order rescinding and removing the effects of any such breach and the Owner in breach shall not be entitled to plead in defence that there would be an adequate remedy at law; it being recognized and agreed that the injury and damage resulting from any such breach could not be entirely compensated by an award of damages.

9. MEETING OF OWNERS

9.1 Annual Meetings The Co-Tenancy Committee shall call an annual meeting of the Owners to receive reports, to elect Co-Tenancy 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.

9.2 Meetings called by Owners 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 all of the Owners.

9.3 Quorum The presence in person or by proxy of not less than thirty-three point three percent (33.3%) of the votes shall be necessary to constitute a quorum at all meetings of Owners for the transaction of business. If a quorum shall not be present, the holders of a majority of votes present in person or represented by proxy, at such meeting shall have power to adjourn from time to time the meeting until a quorum shall be present or represented. At any adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified.

9.4 Votes At all meetings, each of the Owners who is not at such time in default in the payment of the Shared Expenses shall be entitled to cast one (1) vote for each matter presented for vote. Only Owners of record 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.

9.5 General 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 heirs, executors, administrators, successors and assigns.

10. INSURANCE

10.1 Insurance Coverage The Co-Tenancy Committee shall obtain and maintain the following insurance:

- (a) public liability and property damage insurance, and insurance against the Owners' liability resulting from breach of duty as occupier of the Shared Property insuring the liability of the Owners from time to time, with limited to be determined by the Owners, but not less than One million dollars (\$1,000,000.00) and without right of subrogation as against each of the

Owners, the Co-Tenancy Committee, their agents, employees and servants, and as against the Owners and occupants.

10.2 Provisions Affecting Coverage Every policy of insurance referred to in Section 10 shall insure the interests of the Owners from time to time, as their respective interests may appear and shall to the extent reasonably available contain the following provisions:

- (a) waivers of subrogation against the Owners, the Co-Tenancy Committee, their agents, employees and servants and as against the Owners, except for arson, fraud, vehicle impact, vandalism, or malicious mischief,
- (b) such policy or policies of insurance shall not be terminated or substantially modified without at least sixty (60) days prior notice to the Owners.
- (c) Waivers of any defence based on co-insurance or of invalidity arising from the conduct or any act or omission or breach of statutory condition of any insured.
- (d) Any coverage provided or monies payable under any insurance purchased by any of the Owners, occupant or chargee shall not be brought into contribution with any coverage or monies payable pursuant to policies held herein.

10.3 Settlement The Co-Tenancy 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 damages Unit, shall be bound by such adjustment. The Owners may, however, authorize any of the Owners in writing to adjust any loss to his Unit.

10.4 Insuring the Unit Each Owner shall insure his or her own Unit in an amount equal to its fully replacement cost and shall provide the Co-Tenancy Committee with proof of insurance.

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

11. INDEMNIFICATION

11.1 Indemnification The 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, his employees, customers or any guest thereof, and any tenant to or with respect to the Shared Property, except for any loss, cost, damage, injury or liability caused by an insured (as defined in any policy or policies of insurance) and insured against by the Owners.

11.2 Reimbursement In the event that the Owner shall be required to make payment in respect to the Shared Property in an amount 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, in their respective Proportionate Share, agree to indemnify the Owner for the excess amount so paid, and such amount shall be payable to the Owner on demand.

11.3 Indemnification of Co-Tenancy Committee Except in the case of gross negligence or fraud on the part of the Co-Tenancy Committee, its servants or agents, the Owners shall indemnify and save harmless the Co-Tenancy 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 Shared Property and defend at the expense of the Owners all suits which may be rendered against the Co-Tenancy Committee members on account thereof.

12. ARBITRATION

12.1 Arbitration If, during the continuance of this Agreement, there is any dispute, difference or question which is not covered by the provisions of this Agreement or which has not been resolved at a meeting of the Owners by decision approved by the majority of the Owners, then such dispute, difference or question shall then 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 such dispute shall fail 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*.

13. BANKING ARRANGEMENTS, CONTRACTS AND BORROWING

13.1 Banking Arrangements The banking business of the Co-Tenancy shall be transacted with such bank or trust company by such persons and in such manner as the Co-Tenancy Committee may designate.

13.2 Execution of Documents Documents relating to the Co-Tenancy shall be signed by the President together with the Secretary or any Co-Tenancy Committee member. The Co-Tenancy Committee may, at any time and from time to time, direct the manner in which the person or persons by whom a particular deed, transfer, contract or obligation may be signed.

13.4 Borrowing The Co-Tenancy may borrow such amounts as necessary to carry out the objects and duties of the Co-Tenancy and to secure the same by a mortgage or pledge of any asset of the Co-Tenancy; provided that each borrowing in excess of twenty percent (20%) of the annual budget shall require separate approval by a majority of the Owners at a meeting duly called for the purpose of obtaining such approval.

14. MISCELLANEOUS

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

14.2 Further Assurances 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 and every part thereof.

14.3 Notices The delivery of any notice required to be given to the Owner hereunder shall be effective if personally delivered or if mailed notice shall be deemed to be delivered four (4) days after the date of mailing if mailed by prepaid registered mail, addressed to the Owner at the last recorded address for the Owner in the ownership records maintained by the Co-Tenancy Committee. Any notice required to be given to the Co-Tenancy Committee shall be served personally on a committee member or addressed by ordinary mail to the Co-Tenancy Committee at an address which the Committee advises the Owners of from time to time.

14.4 Severability Every provision of this Agreement is intended to be 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 the Agreement.

14.5 Interpretation The use of the masculine gender in this Agreement shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural wherever the context so requires. This Agreement shall be read with all changes of gender and number required by the context.

14.6 Successors and Assigns Except as otherwise provided, this Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns and the successors in title to the undivided interests in the Shared Property.

RICHCRAFT HOMES LTD.

Per:


Edward Phillips

I HAVE THE AUTHORITY TO BIND THE CORPORATION

RICHCRAFT HOMES LTD. IN TRUST

Per:



Edward Phillips

I HAVE THE AUTHORITY TO BIND THE CORPORATION

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SCHEDULE "A"

LEGAL DESCRIPTION OF THE LANDS

Blocks 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 19, 21 and 23 on Plan 4M-1053, City of Ottawa,
Regional Municipality of Ottawa-Carleton.

SCHEDULE "B"

LEGAL DESCRIPTION OF THE CO-TENANCY INTEREST

Blocks 1, 3, 8, 10, 11, 19, 21 and 23, Plan 4M-1053, City of Ottawa, Regional
Municipality of Ottawa-Carleton

SCHEDULE "C"

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ESTIMATED ANNUAL SHARED EXPENSES

	\$
Insurance	700
Utilities	600
Audit Fees	750
Maintenance	2,000
Snow Removal	10,000
Supplies	250
Landscaping	4,200
Reserve Fund	3,000
Management Fees	4,500
	<u>26,000</u>
Estimated shared expenses per unit per month	38.00

SCHEDULE "D"

RULES AND REGULATIONS

The following rules and regulations shall be observed by the 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 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 Shared Property or that of any Owner or conflict with any of the rules and ordinances of the Board of Health or which any statute or municipal by-law.
2. Owners shall not place, leave or permit to be placed or left in or upon the Shared Property any debris, refuse or garbage. Such debris, refuse or garbage shall be contained in properly sealed refuse bags or properly secured containers and placed by the street for garbage pick-up or designated pick-up days.
3. No one shall harm, mutilate, destroy, alter or litter any of the landscaping work on the Shared Property including grass, trees, shrubs, hedges, flowers, flower beds, lockstones and curbing unless agreed to by a majority of the Owners.
4. No planters, structures, tents, furniture or other apparatus shall be placed, located, kept or maintained by the Owners on the Shared Property unless agreed to by a majority of the Owners.
5. Any loss, cost 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 Shared Expenses.
6. No animal, livestock or fowl other than a pet shall be permitted on the Shared Property and no pet that is deemed by the Co-Tenancy Committee, in its absolute discretion, to be a nuisance shall be permitted on the Shared Property.

SCHEDULE "E"
ESTOPPEL CERTIFICATE

HEREBY CERTIFIES THAT as of the date hereof:

1. The Owner of Unit _____ is not in default in the payment of the Shared Expenses as defined in the Co-Tenancy Agreement.
2. The Co-Tenancy Committee is not presently considering any increase in the Shared Expenses.
3. The Shared Expenses for this Unit are \$ _____ per month payable on the first of each month.
4. The Owners are not presently involved in any legal action affecting the Shared Property.
5. The Co-Tenancy Committee is not presently considering any substantial addition, alteration or improvement of the Shared Property or any substantial change in the assets of the Co-Tenancy.
6. The Co-Tenancy Committee has secured all policies of insurance that are required under the provisions of the Co-Tenancy Agreement.
7. The address of the Co-Tenancy Committee is _____
8. The Co-Tenancy Committee Members and Officers are as follows:

NAME	ADDRESS
9. The Co-Tenancy Committee's Reserve Fund amounts to \$ _____ as at _____
10. The fiscal year end of the Co-Tenancy Committee is December 31.

DATED at Ottawa this _____ day of _____ 1999

Name:
Office:

SCHEDULE "F"
LAND SUBJECT TO RIGHT-OF-WAY

Block 23, Plan 4M-1053, City of Ottawa, Regional Municipality of Ottawa-Carleton