

STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9
Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

Direct: (416) 869-5257
E-mail: pduffy@stikeman.com

BY EMAIL AND COURIER

January 6, 2010
File No. 100519.1011

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Yonge-Eglinton Centre
P.O. Box 2319, Suite 2700
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

Re: Compliance Counsel Undertaking
Board File No: EB 2009-0308

Enclosed is the response Compliance Counsel received from Provident Energy Management Inc. in response to our request for Provident to produce: (i) the Energy Supply and Services Agreement referred to in section 3.3 of Provident's Conditions of Service; and (ii) the Schedule of Charges referred to in section 3.5 of Provident's Conditions of Service.

Yours truly,


Patrick G. Duffy

/mas
enclosure

cc: George Vegh, *Counsel to THESL*
Maureen Helt, *OEB*
Patrick Duffy, *Stikeman Elliott*
Dennis O'Leary, *Counsel to SSMWG*
Andrew Taylor, *Counsel to EDA*

TORONTO
MONTREAL
OTTAWA
CALGARY
VANCOUVER
NEW YORK
LONDON
SYDNEY

Mary Sibenik

From: Carol Thomas [cthomas@airdberlis.com] on behalf of Dennis O'Leary [doleary@airdberlis.com]
Sent: Wednesday, January 06, 2010 2:01 PM
To: Glenn Zacher; Patrick Duffy; maureen.helt@oeb.gov.on.ca
Cc: dhamilton@pemi.com
Subject: THESL Compliance Proceeding EB-2009-0308
Attachments: image001.gif; Provident Utility Monitoring Agreement - Solaris 2.PDF; Provident Utility Monitoring Agreement - Solaris.PDF; Provident Utility Monitoring Agreement - Avonshire.PDF

In response to the request by counsel for THESL to provide a copy of any agreements Provident requires consumers to enter into with it and to provide a copy of any schedule of tariffs and charges, I advise as follows.

1. The only tariff or charge which Provident has published is found on its Website under "Frequently Asked Questions". It states that Provident will charge \$25.00 plus GST for a payment returned from the bank. To the extent that Provident is asked for a reference letter or other administrative requests, it will first advise the consumer of its costs to perform the task before proceeding. Most of the commonly requested tasks, such as providing historical data, reprints of past accounts, etc., are not requested because the information is available to customers on-line.
2. Despite what is stated in the Conditions of Service, Provident does not require end-use consumers to enter into electricity supply and service agreements. Provident enters into a Utility Monitoring Agreement ("UTA") with the condominium corporation of each respective building. This agreement provides that Provident will provide water, thermal and electricity meter reading services.

Provident's administrative fee is \$15.00 (s. 2.04(d)). While Provident is required under the UTA to maintain the submetering systems, the maintenance costs of same are the responsibility of the condominium corporation (s. 2.03). The billing rate charged to the end user for his/her consumption "shall be the same rate being charged to the [condo] corporation by the local electricity authority/provider" (s. 3.01(a)).

A copy of the UTA for Phases 1 and 11 of the "Solaris at Metrogate" Project, and "Residences of Avonshire" Project are attached. It is important to note that a copy of the UTA agreement is included in the disclosure statement provided to each prospective condominium purchaser as part of the condominium developer's disclosure obligations.

Regards,

Dennis O'Leary

Carol Thomas

Assistant to Dennis M. O'Leary

T 416.863.1500 x4503
 F 416.863.1515
 E cthomas@airdberlis.com

Brookfield Place • 181 Bay Street
 Suite 1800 • Box 754
 Toronto ON • M5J 2T9 • Canada
www.airdberlis.com

Air & Berlis

If you are having issues opening a Microsoft Office file please click on the following link to download the Office 2007 converter from the Microsoft web site: [Compatibility Pack](#)

This message may contain confidential and/or privileged information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. Aird & Berlis LLP may monitor, retain and/or review email. Email transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. Neither Aird & Berlis LLP nor the sender, therefore, accepts liability for any errors or omissions in the contents of this message, which arise as a result of email transmission. Any advice contained in this communication, including any attachments, which may be interpreted as US tax advice is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code; or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication.



Please consider the environment before printing this email.

UTILITY MONITORING AGREEMENT

THIS AGREEMENT dated as of this _____ day of _____, 200_____

BETWEEN:

TORONTO STANDARD CONDOMINIUM CORPORATION NO. _____
(hereinafter referred to as this or the "Condominium" or this or the "Corporation")

OF THE FIRST PART

- and -

PROVIDENT ENERGY MANAGEMENT INC.
(hereinafter referred to as "Provident" or the "Utility Monitor")

OF THE SECOND PART

WHEREAS the Corporation is comprised of owners of units and their appurtenant common interests in respect of the lands and premises registered as Toronto Standard Condominium Plan No. _____, with the Condominium being municipally located at Kennedy Road and Sufferance, Toronto, Ontario (hereinafter collectively referred to as the "Real Property");

AND WHEREAS the Condominium is a mixed-use project containing 439 dwelling units (together with a designated superintendent suite comprising part of the common elements), 1 daycare centre unit, 484 parking units, 311 locker, 1 shared service room unit, 1 recreation centre unit and 1 communication control unit;

AND WHEREAS the Condominium has been designed so that:

- a) each of the dwelling units are:
 - i) serviced by (and equipped with) an in-suite two-pipe fan coil unit or system [and also serviced by a central energy recovery ventilation system and by central high-efficiency boilers and heating/cooling circulation pumps, situate on the roof of (or elsewhere within) the Condominium], which will provide domestic hot water, heating and cooling services thereto;
 - ii) individually check metered for their respective hot water and electricity consumption, so that the cost of each unit owner's hot water and electricity consumption shall not comprise part of the common expenses [however, the cost of cold water supplied to, and consumed by, each of the dwelling units (and any exclusive use common element areas appurtenant thereto) shall comprise part of the common expenses since the cold water consumption for the Condominium is bulk-metered]; and
 - iii) individually check metered by way of a thermal check meter installed as an appurtenance to each fan coil unit or system situate within each dwelling unit, that is designed to measure the volume of water coursing through (and utilized by) each in-suite fan coil heating and cooling system servicing each dwelling unit, as well as measuring the respective water temperatures correspondingly entering and leaving the said fan coil system(s), in order to calculate the total amount of thermal energy utilized by (or in connection with) each dwelling unit's fan coil system(s), so that the cost of heating and cooling each unit owner's dwelling unit shall not comprise part of the common expenses; and
- b) the daycare centre unit is:
 - i) individually check metered for its electricity consumption, so that the cost of the daycare centre unit owner's electricity consumption shall not comprise part of the common expenses; and
 - ii) individually check metered for its water consumption, so that the cost of the daycare centre unit owner's water consumption shall not comprise part of the common expenses;

AND WHEREAS the thermal check meter and the hot water and electricity check meters appurtenant to each of the dwelling units in this Condominium shall hereinafter be collectively referred to as the "Residential Sub-Metering System", and the check meters for electricity and water appurtenant to the daycare centre unit shall hereinafter be collectively referred to as the "Commercial Sub-Metering System";

AND WHEREAS the declaration of the Condominium confirms that while the bulk water, gas and electricity bills will be issued by the respective local water, gas and electricity suppliers directly to the Corporation from time to time:

- a) each dwelling unit owner shall be obliged to pay (and be solely responsible to reimburse the Corporation, through payments made to the Utility Monitor) for the cost of the hot water and electricity respectively utilized or consumed by each owner's dwelling unit (and any exclusive use common element areas appurtenant thereto), as well as for the cost of heating and cooling his or her dwelling unit, as measured by the Residential Sub-Metering System; and

- b) the daycare centre unit owner shall be obliged to pay (and be solely responsible to reimburse the Corporation, through payments made to the Utility Monitor) for the cost of the water and electricity respectively utilized or consumed by the daycare centre unit (and any exclusive use common element areas appurtenant thereto), as measured by the Commercial Sub-Metering System;

AND WHEREAS the Corporation has agreed to retain the services of Provident to read the Residential Sub-Metering System appurtenant to each of the dwelling units from time to time, and to also read the Commercial Sub-Metering System appurtenant to the daycare centre unit from time to time, following the Corporation's periodic receipt of the respective bulk water and electricity bills from the local water and electricity authorities/providers, and to correspondingly invoice:

- a) each of the dwelling unit owners in this Condominium for the cost of heating and cooling their respective dwelling units, and for the cost of their respective consumption of hot water and electricity (based on Provident's periodic reading of the thermal check meter and the hot water and electricity check meters appurtenant to each owner's dwelling unit), as agent for (and on behalf of) the Corporation; and
- b) the daycare centre unit owner for the cost of its consumption of water and electricity (based on Provident's periodic reading of the check meters for water and electricity appurtenant to the daycare centre unit), as agent for (and on behalf of) the Corporation;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration and the sum of TEN (\$10.00) DOLLARS of lawful money of Canada now paid by each of the parties hereto to the other (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby confirm the veracity of the foregoing recitals, and further covenant and agree, to and with each other, as follows:

ARTICLE I - CONFIRMATION OF ENGAGEMENT

- 1.01 The Corporation hereby retains and appoints Provident to be its sole and exclusive agent, and to act on the Corporation's behalf, in operating, maintaining, repairing, monitoring and periodically reading:
 - a) the Residential Sub-Metering System appurtenant to each of the dwelling units within the Condominium, and correspondingly invoicing each of the dwelling unit owners for the cost of heating and cooling their respective dwelling units and for the cost of their respective consumption of hot water and electricity (based on Provident's periodic readings of the Residential Sub-Metering System), all as more particularly set out herein; and
 - b) the Commercial Sub-Metering System appurtenant to the daycare centre unit within the Condominium, and correspondingly invoicing the daycare centre unit owner for the cost of its consumption of water and electricity service (based on Provident's periodic readings of the Commercial Sub-Metering System), all as more particularly set out herein.
- 1.02 Provident hereby accepts such appointment, and agrees to act on behalf of the Corporation in accordance with the provisions of this Agreement, in a faithful, diligent and honest manner.

ARTICLE II - THE CORPORATION'S OBLIGATIONS

- 2.01 The Corporation covenants and agrees to forward directly to Provident, forthwith after the Corporation's receipt, a copy of the bulk electricity and bulk water bills or invoices issued by the local electricity and water authorities/providers from time to time, for the electricity and water services utilized or consumed by the Corporation as a whole, pursuant to readings taken from the Corporation's bulk electricity and water meters (hereinafter collectively referred to as the "Bulk Utility Bills").
- 2.02 The Corporation further covenants to forward to Provident an up-to-date list of the names and contact information (including, without limitation, the addresses for service and telephone numbers) of all unit owners and tenants in the Condominium according to the Corporation's records from time to time (hereinafter referred to as the "Register"), together with all updates to the Register (as and when made), all at no charge or cost to Provident.
- 2.03 The Corporation hereby grants to Provident (and to its authorized agents, representatives and/or contractors) the free, uninterrupted and unobstructed right and license during the currency or term of this Agreement and any renewal thereof, to enter upon and within all units and common elements of this Condominium on the Corporation's behalf, at all reasonable times, for the sole and exclusive purpose of inspecting, maintaining, repairing, monitoring and/or reading the Residential Sub-Metering System appurtenant to each of the dwelling units, and the Commercial Sub-Metering System appurtenant to the daycare centre unit. The Corporation agrees to pay for (or to forthwith fully reimburse Provident for) all costs and expenses incurred by Provident in connection with any required maintenance, repair and/or replacement of any of the Residential Sub-Metering Systems and/or Commercial Sub-Metering Systems. Subject to the overriding provisions of sections 6.02 and 6.03 hereof, Provident shall indemnify and save the Corporation harmless from and against all costs, claims, damages and/or liabilities which the Corporation may suffer or incur as a result of any damage or injury occasioned to any person(s) and/or property by Provident (or by those for whom Provident is liable at law), which has been caused in connection with (or as a result of) Provident's exercise of the foregoing inspection, maintenance, repair and/or monitoring services, including any damage to any unit(s) or common element areas (or any portion thereof), as well as any damage to any goods, chattels, fixtures or equipment situate therein.
- 2.04 The Corporation acknowledges and agrees that notwithstanding that it has retained Provident to read the Residential Sub-Metering System appurtenant to each of the dwelling units, and to invoice each of the dwelling unit owners accordingly,

as agent for (and on behalf of) the Corporation, and to correspondingly read the Commercial Sub-Metering System appurtenant to the daycare centre unit, and to invoice the daycare centre unit owner accordingly, as agent for (and on behalf of) the Corporation, with the objective of recovering payment or reimbursement for as much of the Bulk Utility Bills as is possible and appropriate, the Corporation shall nevertheless remain solely responsible and liable:

- a) to pay the Bulk Utility Bills to the local water and electricity authorities or providers, as and when same are due, including any applicable interest charges and/or penalties for late payment exigible with respect thereto, irrespective of whether Provident has collected or remitted any or all monies owing by:
 - i) the respective dwelling unit owners, for the cost of heating and cooling their respective dwelling units and for the cost of their respective consumption of hot water and electricity; and
 - ii) the daycare centre unit owner, for the cost of its consumption of water and electricity;
- b) to pay for (or to forthwith fully reimburse Provident for) all costs and expenses incurred by Provident in connection with any required maintenance, repair and/or replacement of any of the Residential Sub-Metering Systems and/or Commercial Sub-Metering Systems so undertaken by Provident from time to time, as and when deemed necessary;
- c) to take all necessary steps to collect any outstanding payments owing by any unit owners who have not fully paid any invoice(s) issued by Provident to them by their respective due date(s) (hereinafter collectively referred to as the "Defaulting Owners"), as contemplated in the declaration of the Corporation; and
- d) to pay to Provident an administration fee in consideration of (and as compensation for) Provident conducting the periodic readings of the Residential Sub-Metering System appurtenant to each dwelling unit, and the Commercial Sub-Metering System appurtenant to the daycare centre unit (all of which sub-metering systems are hereinafter collectively referred to as the "Sub-Metering Systems"), issuing the appropriate invoices to each of the dwelling unit owners and the daycare centre unit owner respectively (hereinafter individually referred to as an "Invoice" and collectively referred to as the "Invoices"), collecting the corresponding monies owing from each of the unit owners, and for attending to the maintenance and repair of each of the Sub-Metering Systems, as and when needed from time to time, in an amount equivalent to \$15.00 per dwelling unit and \$15.00 per daycare centre unit per month, plus any all sales and excise taxes exigible with respect thereto (hereinafter referred to as the "Administration Fee"), to the extent that same has not been collected from any dwelling unit owners and/or the daycare centre unit owner as part of their respective Invoices. The Administration Fee shall be increased annually on each anniversary of the date of registration of the Condominium, throughout the term of this Agreement and any renewal thereof, to reflect the percentage increase (if any) in the Consumer Price Index published by Statistics Canada (all items for regional cities) for the City of Toronto (hereinafter referred to as the "CPI") during the immediately preceding year, determined by comparing the CPI as at the beginning of such year, with the CPI as at the end of such year. To the extent that the Administration Fee has been paid by the Corporation to Provident on behalf of any of the Defaulting Owners, Provident shall be deemed to have automatically assigned to the Corporation all of its right, title, and interest in and to such payment, including the right to collect same directly from such Defaulting Owners by way of a lien registered against the respective units of the Defaulting Owners by or on behalf of (and in favour of) the Corporation, as expressly provided or contemplated in the declaration of the Corporation, and Provident shall execute and provide any confirmations and/or assurances as may be reasonably required by the Corporation in order to evidence or confirm the foregoing.

- 2.05 Provident acknowledges that the Corporation shall retain the unilateral right, power and authority to enter into any bulk water and/or electricity purchase contract relating to this Condominium (or any portion thereof), for any term and at any fixed or variable rate, provided that the Corporation shall forthwith provide Provident with a full copy of any such contract for its records.

ARTICLE III - PROVIDENT'S OBLIGATIONS

- 3.01 Forthwith following Provident's receipt of a copy of the Bulk Utility Bills from the Corporation from time to time, Provident shall cause the Residential Sub-Metering System appurtenant to each dwelling unit, and the Commercial Sub-Metering System appurtenant to the daycare centre unit, to be read (either by a direct visual reading or by remote electronic/computerized means, or by any other method, provided same is reasonably reliable and accurate), and shall thereafter issue and submit the Invoices to each of the dwelling unit owners [for the cost of heating and cooling their respective dwelling units and for the cost of their respective consumption of hot water and electricity], and to the daycare centre unit owner [for the cost of its consumption of water and electricity], together with the Administration Fee on a per dwelling unit or daycare centre unit per month basis (hereinafter referred to as each dwelling unit owner's or the daycare centre unit owner's "Individual Share"), on the express understanding that:
- a) The billing rate charged to any dwelling unit owner or the daycare centre unit owner for his or her consumption of electricity shall be the same rate being charged to the Corporation by the local electricity authority/provider from time to time, so that each dwelling unit owner and the daycare centre unit owner shall always be charged at the Corporation's bulk rate for his or her individual electricity usage;
 - b) The billing rate charged to the daycare centre unit owner for its consumption of water shall be the same rate being charged to the Corporation by the local water authority/provider from time to time, so that the daycare centre unit owner shall always be charged at the Corporation's bulk rate for its individual water usage;

- c) The Invoice shall oblige the dwelling unit owner or the daycare centre unit owner (as the case may be) to pay his or her or its Individual Share to Provident, in full, on or before the tenth (10th) day following the receipt of the Invoice by or on behalf of said unit owner (hereinafter referred to as the "Due Date");
 - d) Provident shall only be required to issue the Invoices directly to the registered owner of the dwelling unit or the daycare centre unit (as the case may be), or to whomsoever the registered owner may otherwise direct Provident and the Corporation in writing;
 - e) Provident shall not invoice or bill the Corporation for the cost of any water and electricity consumed by (or in respect of) the non-exclusive use common elements and any non-dwelling or non-daycare centre units in this Condominium; and
 - f) Provident shall use its best efforts to collect the Individual Share(s) from all of the dwelling unit owners and the daycare centre unit owner, on a per unit basis, on or before their respective Due Date, and shall remit the Individual Shares so collected, less the Administration Fees owing to Provident, directly to the Corporation, to be followed by a monthly report and accounting of all Invoices issued and monies collected in relation to the applicable Bulk Utility Bills. In connection with the foregoing, Provident shall implement a pre-authorized payment plan system, with each dwelling unit owner and the daycare centre unit owner being obliged to provide a sample cheque marked "void" directly to Provident (and such other bank forms, authorizations, documents and instruments as may be reasonably required from time to time by Provident in order to implement any such pre-authorized payment plan system), and the Corporation shall, without charge, take all steps reasonably required by Provident in order to facilitate the implementation of same. Notwithstanding the foregoing efforts, Provident acknowledges and agrees that it has no power or authority to enforce payment of the respective Invoices against any Defaulting Owners directly (without the concurrence and involvement of the Corporation), and that under no circumstances shall Provident be entitled to interrupt or terminate any water or electricity service to any dwelling units or the daycare centre unit of any Defaulting Owners.
- 3.02 Subject to the overriding provisions of section 2.04(b) and section 5.04 hereof, Provident shall address (and where necessary, rectify) any concerns related to the proper functioning or malfunctioning of the Sub-Metering Systems (or any portion thereof), as soon as reasonably possible after same has been brought to Provident's attention by or on behalf of the Corporation.

ARTICLE IV - TERM OF AGREEMENT AND RENEWAL OPTION

- 4.01 The term of this Agreement shall commence on the date of execution of this Agreement (which shall, for all purposes, be the date above-mentioned), and shall correspondingly expire five (5) years thereafter (hereinafter referred to as the "Initial Term").
- 4.02 The Corporation shall have the right to renew this Agreement for an additional term of five (5) years, commencing from the date immediately following the last day of the Initial Term (hereinafter referred to as the "Second Term"), upon giving written notice to Provident of its desire to renew the term of this Agreement as aforesaid, at least 60 days prior to the end of the Initial Term.
- 4.03 In the event that the Sub-Metering Systems (or any component parts thereof which are, in the sole opinion of Provident, material to the proper operation of the Sub-Metering Systems) is substantially destroyed by fire or any other cause for which Provident is not responsible, then Provident shall have the unilateral right and option of immediately terminating this Agreement, by written notice delivered to the Corporation, without prejudice to any other rights or remedies that Provident may have as a result of the Corporation's default.
- 4.04 In the event that the Corporation defaults in the due and regular performance of any of its obligations hereunder, and fails to fully rectify any such default within five (5) days of receiving written notice thereof from Provident, then Provident shall have the unilateral right and option of immediately terminating this Agreement, by written notice delivered to the Corporation, without prejudice to any other rights and/or remedies that Provident may have as a result of the Corporation's default.
- 4.05 Notwithstanding anything hereinbefore or hereinafter provided to the contrary, and in recognition of the fact that this agreement falls under the purview of section 112 of The Condominium Act 1998, S.O. 1998 as amended (hereinafter referred to as the "Act"), it is understood and agreed that:
 - a) Provident may, at its option, terminate this Agreement at any time by giving sixty (60) days prior written notice of same to the Corporation, and upon such termination, all obligations of Provident shall cease and the Corporation shall correspondingly be obliged to forthwith pay to Provident all outstanding amounts owed by the Corporation to Provident in accordance with the provisions of this Agreement, including all unpaid Administration Fees, costs and reasonable disbursements incurred by Provident directly for and on behalf of the Corporation, up to the date of such termination; and
 - b) The Corporation may, at its option, terminate this Agreement at any time prior to the expiry of twelve (12) months following the election of a new board of directors at the Corporation's turnover meeting convened in accordance with the provisions of section 43(1) of the Act, upon giving sixty (60) days prior written notice of same to Provident, and on or before such termination, all outstanding amounts owed by the Corporation to Provident in accordance with the provisions of this Agreement shall be fully settled and paid.

- 4.06 In the event that the government of the Corporation is terminated pursuant to Part VIII of The Condominium Act 1998, S.O. 1998 as amended, then the unit owners in the Condominium shall thereupon be jointly and severally liable to Provident for the outstanding obligations of the Corporation set out in this Agreement, as tenants in common.
- 4.07 In the event that this Agreement expires or is otherwise terminated, for whatever reason, then the Corporation shall forthwith ensure that the duties and obligations of Provident set out herein are fully assumed by another utility monitor or other entity capable of doing so, and the Corporation shall indemnify Provident from and against all costs, claims, damages and/or liabilities which Provident may thereafter suffer or incur as a result of the Corporation's failure to do so.

ARTICLE V - THE SUB-METERING SYSTEMS

- 5.01 It is expressly understood and agreed by the parties hereto that the Sub-Metering Systems, and all of its component parts, shall at all times remain the sole property of the Corporation (or of any party leasing any of such component parts to the Corporation), or of the respective owners of the units to which such meters or sub-meters are appurtenant, inasmuch as the declarant of the Corporation installed the Residential Sub-Metering System appurtenant to each dwelling unit, as well as the Commercial Sub-Metering System appurtenant to the daycare centre unit, at the time that the Condominium was first occupied, and charged the cost of installing same to each of the respective dwelling unit purchasers and the daycare centre unit purchaser, on the final closing of each unit sale transaction.
- 5.02 The Corporation shall obtain and maintain adequate fire, theft and liability insurance in respect of the Sub-Metering Systems throughout the term of this Agreement and any renewal thereof (for the full replacement cost thereof, on a stated amount/no co-insurance basis) and shall be responsible for determining the adequacy of the insurance coverage, and for paying all applicable insurance premiums in connection therewith. The Corporation shall endeavour to have Provident noted as a co-insured party, along with the Corporation, in each policy of insurance so obtained by the Condominium, and shall provide Provident with copies of all such insurance policies and any renewals thereof, as and when requested.
- 5.03 Provident agrees to attend to the maintenance, repair and/or replacement of the Sub-Metering Systems (or any portion thereof), as and when required, subject however to the overriding obligation of the Corporation to fully pay for (or to forthwith fully reimburse Provident for) all costs and expenses incurred in connection with such maintenance or repair work and/or replacement. Subject to the foregoing, Provident's obligation to attend to the maintenance and repair of the Sub-Metering Systems shall include:
- a) testing, servicing, fixing after normal wear and tear, and replacing all obsolete, worn-out or failed components and/or equipment comprising part of the Sub-Metering Systems (or appurtenant thereto) from time to time;
 - b) keeping the Sub-Metering Systems in good working order, so as to minimize or eliminate interruption in the operation thereof, and to ensure that same operates in full compliance with all applicable requirements, standards or criteria established by Measurement Canada, and all other governmental authorities having jurisdiction over the Real Property and/or the Sub-Metering Systems from time to time; and
 - c) responding promptly to all reasonable requests for the maintenance and/or repair of the Sub-Metering Systems (or any portion thereof) received from the Corporation from time to time.
- 5.04 Notwithstanding anything contained in this Agreement to the contrary, it is understood and agreed that the Corporation shall be solely responsible for the cost of repairing the Sub-Metering Systems (or any portion thereof) after damage has been occasioned thereto (save and except for any damage caused by the acts or omissions of Provident, its contractors and subcontractors, or those for whom Provident is in law responsible), and the Corporation agrees to indemnify and save Provident (and each of its officers, directors, agents, representatives, contractors and subcontractors respectively) harmless, from and against all costs, claims, damages and/or liabilities sustained or incurred as a result of any claim(s) or action(s) which may hereafter be instituted or pursued by any dwelling unit owner(s) and/or the daycare centre unit owner, and/or by their respective residents, tenants, invitees or licensees, as a result of the Corporation's failure to repair the Sub-Metering Systems after such damage. The Corporation shall forthwith notify Provident of any such damage, and shall keep Provident informed as to its progress in rectifying same.
- 5.05 The Corporation will not use (nor authorize the use by any person or entity other than Provident of) the Sub-Metering Systems, and will not interfere (nor authorize the interference or tampering, directly or indirectly) with the Sub-Metering Systems (or any portion thereof). The Corporation will exercise all rights and remedies available to it by or under The Condominium Act 1998, and any other applicable legislation, agreement(s) or otherwise, in order to prevent or stop any such interference or tampering with the Sub-Metering Systems (or any portion thereof), at all times.
- 5.06 During the term of this Agreement and any renewal thereof, the Corporation covenants and agrees to supply, without any cost or charge to Provident, adequate space within the confines of the Condominium to facilitate Provident's operation, maintenance and repair of the Sub-Metering Systems (or any portion thereof), in a location secured by a locked door and accessible only to personnel authorized by Provident, provided however that this section shall not in any way limit the Corporation's ability to access or grant access to such space in the event of an emergency. Provident shall further be entitled to the use of electrical power, lighting and heating, ventilation and air conditioning services for or in connection with the operation, maintenance, repair and/or monitoring of the Sub-Metering Systems (or any portion thereof), if same is required, without any cost or charge to Provident therefor. The Corporation shall keep said space or location secure, and shall forthwith report to Provident any incident of violation of said security which comes to the attention of the Corporation.

ARTICLE VI - MISCELLANEOUS

- 6.01 The Corporation and Provident represent and warrant to each other that they each have the right, power and authority to enter into this Agreement, and fully perform their respective covenants and obligations contained herein.
- 6.02 Notwithstanding anything hereinbefore provided to the contrary, and save and except as expressly provided in section 6.03 hereof, it is understood and agreed by both parties hereto that Provident shall not be responsible or liable for any death or injury arising from, or in connection with, any occurrence in or relating to the Condominium, nor for any damage to any property of the Corporation or of any unit owners (or of any others) located within the confines of the Condominium or relating to the Condominium, nor shall Provident be responsible or liable for any loss or damage to any property of the Corporation or of any unit owners (or of any others) from any cause or source whatsoever, in excess of the monetary limits of liability established by section 6.03 hereof, whether or not any such death, injury, loss or damage results from the negligence or gross negligence of Provident or its agents, servants or employees, or any other person(s) for whom Provident may in law be responsible, and whether or not such death, injury, loss or damage results from a fundamental breach of this Agreement (or any other agreement made between the parties hereto), or the breach of a fundamental term of this Agreement (or of any other agreement made between the parties hereto). Without limiting the generality of the foregoing, it is expressly understood and agreed that Provident shall not be responsible or liable for any injury or damage caused, either directly or indirectly, to any person(s) or property, whether resulting from the installation, operation, maintenance, repair, monitoring and/or malfunction of the Sub-Metering Systems (or any portion thereof) or otherwise [including any damage or injury resulting from any mistaken or erroneous reading of the Sub-Metering Systems (or any portion thereof) and/or any errors with respect to any of the Invoices issued in connection therewith], in excess of the monetary limits of liability established by section 6.03 hereof.
- 6.03 The liability of Provident to the Corporation under this Agreement, in respect of any default or breach hereof (of any nature or kind whatsoever), or in respect of any claim involving negligence, gross negligence, wilful misconduct or a breach of a duty of care, including without limitation, a fundamental breach of this agreement or the breach of a fundamental term hereof, shall be limited to the sum of ONE THOUSAND (\$1,000.00) DOLLARS in respect of each such breach or claim, to a maximum of TEN THOUSAND (\$10,000.00) DOLLARS in the aggregate. Without limiting the generality of the foregoing, it is understood and agreed by the parties hereto that neither the Corporation, nor any unit owners (nor any residents, tenants, invitees and/or licensees) shall make or pursue (or be entitled to make or pursue) any claim or proceeding against Provident, nor hold Provident responsible or liable in any way, either directly or indirectly (whether based or founded in contract law, tort law or in equity), for any cost, claim, damage, injury, loss and/or liability in excess of the foregoing monetary limits, regardless of the circumstances surrounding the claim or alleged breach, the severity of the alleged breach, or the magnitude of the resulting damage, loss or injury occasioned to the Corporation and/or any unit owners thereof, and/or their respective residents, tenants, invitees and licensees.
- 6.04 This Agreement constitutes the entire agreement between Provident and the Corporation pertaining to the subject matter hereof, including without limitation, the operation, maintenance, repair and monitoring of the Sub-Metering Systems, and all prior negotiations, commitments, conditions, representations, warranties and/or undertakings which may have been made with respect to same are expressly merged in this Agreement. Except as provided in this Agreement, there are no oral or written conditions, representations, warranties, undertakings or agreements (including collateral agreements) either expressed or implied, made by Provident to the Corporation relating to the subject matter of this Agreement. Without limiting the generality of the foregoing, it is expressly acknowledged and agreed that Provident has made no representation or warranty whatsoever to the Corporation that any savings in the cost of hot water, the in-suite heating and cooling costs and/or the electricity costs to any dwelling unit owner(s), or any savings in the water and electricity costs to the daycare centre unit owner, and/or to the Corporation, may or will result from the operation of the Sub-Metering Systems or any portion thereof.
- 6.05 No amendment or other modification to this Agreement shall be valid or binding upon Provident or the Corporation unless it is writing and signed by both Provident and the Corporation.
- 6.06 In the sole discretion of Provident, any of its rights or obligations under this Agreement may be exercised or performed by an independent person or company designated by Provident, which person or company shall be deemed not to be the employee or agent of Provident for liability purposes.
- 6.07 No waiver by Provident of any breach, failure or default in performance by the Corporation, and no failure, refusal or neglect by Provident to exercise any right under this agreement or to insist upon strict compliance with the obligations of the Corporation under this agreement, shall constitute a waiver of the provisions of this agreement with respect to any subsequent breach, failure or default, and shall not constitute a waiver by Provident of its right at any time to require strict compliance with the provisions of this Agreement.
- 6.08 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, and each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario. All references to currency in this Agreement refer to Canadian dollars.
- 6.09 Time shall be of the essence of this Agreement, in all respects.
- 6.10 Any notice which Provident desires (or is required) to deliver to the Corporation hereunder may be duly delivered by mailing same to the Corporation at the address indicated at the bottom of this Agreement, and if so mailed, same shall be deemed to have been delivered on the second business day following the date of mailing same. Any notice which the Corporation desires (or is required) to deliver to Provident hereunder may be duly delivered by personal delivery to

Provident at the address indicated at the bottom of this Agreement, and same shall be deemed to have been delivered when actually received by Provident.

- 6.11 Every provision of this Agreement is intended to be several, and if any term or provision hereof is adjudged by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, then such illegal or invalid provision shall not be deemed or construed to affect the validity of the remainder of this agreement, and this Agreement shall then accordingly be read and construed as if such illegal or invalid provision had been omitted herefrom.
- 6.12 This Agreement shall be binding upon, and shall correspondingly enure to the benefit of, each of the parties hereto and their respective successors and assigns, provided however that this agreement shall at all times be personal to, and non-assignable by, the Corporation.
- 6.13 Any headings used throughout this Agreement are for ease of reference only, and shall not be deemed or construed to form a part of this agreement, nor shall they influence the construction or interpretation of this Agreement. The division of this Agreement into articles is for convenience of reference only, and shall not affect the construction or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first mentioned above.

PROVIDENT ENERGY MANAGEMENT INC.

**TORONTO STANDARD CONDOMINIUM
CORPORATION NO. _____**

Per: _____
Authorized Signing Officer

Per: _____
President -
I have authority to bind the Corporation

Per: _____
Authorized Signing Officer

Address for service:

Address for service:

Provident Energy Management Inc.
100 Supertest Road
North York, Ontario, M3J 2M2
Attention: David Hamilton

Toronto Standard Condominium
Corporation No. _____

Toronto, Ontario

UTILITY MONITORING AGREEMENT

THIS AGREEMENT dated as of this _____ day of _____, 200 _____

BETWEEN:

TORONTO STANDARD CONDOMINIUM CORPORATION NO. _____
(hereinafter referred to as this or the "Condominium" or this or the "Corporation")

OF THE FIRST PART

- and -

PROVIDENT ENERGY MANAGEMENT INC.
(hereinafter referred to as "Provident" or the "Utility Monitor")

OF THE SECOND PART

WHEREAS the Corporation is comprised of owners of units and their appurtenant common interests in respect of the lands and premises registered as Toronto Standard Condominium Plan No. _____, with the Condominium being municipally located at Kennedy Road and Sufferance, Toronto, Ontario (hereinafter collectively referred to as the "Real Property");

AND WHEREAS the Condominium is a mixed-use project containing approximately 423 dwelling units (together with a designated superintendent suite comprising part of the common elements), 5 commercial/retail units, 641 parking units, 309 locker units, 4 parking/locker units, 6 shared service room units, 1 commercial/retail garbage room unit, 1 recreation centre unit, 1 co-gen unit and 1 communication control unit;

AND WHEREAS the Condominium has been designed so that:

- a) each of the dwelling units shall be:
 - i) serviced by (and equipped with) an in-suite two-pipe fan coil unit or system [and also serviced by a central energy recovery ventilation system and by central high-efficiency boilers and heating/cooling circulation pumps, situate on the roof of (or elsewhere within) the Condominium], which will provide domestic hot water, heating and cooling services thereto;
 - ii) individually check metered for their respective hot water and electricity consumption, so that the cost of each unit owner's hot water and electricity consumption shall not comprise part of the common expenses [however, the cost of cold water supplied to, and consumed by, each of the dwelling units (and any exclusive use common element areas appurtenant thereto) shall comprise part of the common expenses since the cold water consumption for the Condominium is bulk-metered]; and
 - iii) individually check metered by way of a thermal check meter installed as an appurtenance to each fan coil unit or system situate within each dwelling unit, that is designed to measure the volume of water coursing through (and utilized by) each in-suite fan coil heating and cooling system servicing each dwelling unit, as well as measuring the respective water temperatures correspondingly entering and leaving the said fan coil system(s), in order to calculate the total amount of thermal energy utilized by (or in connection with) each dwelling unit's fan coil system(s), so that the cost of heating and cooling each unit owner's dwelling unit shall not comprise part of the common expenses; and
- b) each of the commercial/retail units shall be:
 - i) individually check metered for their respective electricity consumption, so that the cost of each commercial/retail unit owner's electricity consumption shall not comprise part of the common expenses; and
 - ii) individually check metered for their respective water consumption, so that the cost of each commercial/retail unit owner's water consumption shall not comprise part of the common expenses;

AND WHEREAS the thermal check meter and the hot water and electricity check meters appurtenant to each dwelling unit shall hereinafter be collectively referred to as the "Residential Sub-Metering System", and the respective check meters for electricity and water appurtenant to each of the commercial/retail units shall hereinafter be collectively referred to as the "Commercial Sub-Metering System";

AND WHEREAS the declaration of the Condominium confirms that while the bulk water, gas and electricity bills will be issued by the respective local water, gas and electricity suppliers directly to the Corporation from time to time:

- a) each dwelling unit owner shall be obliged to pay (and be solely responsible to reimburse the Corporation, through payments made to the Utility Monitor) for the cost of the hot water and electricity respectively utilized or consumed by each owner's dwelling unit (and any exclusive use common element areas appurtenant thereto), as well as for the cost of heating and cooling his or her dwelling unit, as measured by the Residential Sub-Metering System; and

- b) each commercial/retail unit owner shall be obliged to pay (and be solely responsible to reimburse the Corporation, through payments made to the Utility Monitor) for the cost of the water and electricity respectively utilized or consumed by each owner's commercial/retail unit (and any exclusive use common element areas appurtenant thereto), as measured by the Commercial Sub-Metering System;

AND WHEREAS the Corporation has agreed to retain the services of Provident to read the Residential Sub-Metering System appurtenant to each of the dwelling units from time to time, and to also read the Commercial Sub-Metering System appurtenant to each of the commercial/retail units from time to time, following the Corporation's periodic receipt of the respective bulk water and electricity bills from the local water and electricity authorities/providers, and to correspondingly invoice:

- a) each of the dwelling unit owners in this Condominium for the cost of heating and cooling their respective dwelling units, and for the cost of their respective consumption of hot water and electricity (based on Provident's periodic reading of the thermal check meter and the hot water and electricity check meters appurtenant to each owner's dwelling unit), as agent for (and on behalf of) the Corporation; and
- b) each of the commercial/retail unit owners in this Condominium for the cost of their respective consumption of water and electricity (based on Provident's periodic reading of the respective check meters for water and electricity appurtenant to each owner's commercial/retail unit), as agent for (and on behalf of) the Corporation;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration and the sum of TEN (\$10.00) DOLLARS of lawful money of Canada now paid by each of the parties hereto to the other (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby confirm the veracity of the foregoing recitals, and further covenant and agree, to and with each other, as follows:

ARTICLE I - CONFIRMATION OF ENGAGEMENT

- 1.01 The Corporation hereby retains and appoints Provident to be its sole and exclusive agent, and to act on the Corporation's behalf, in operating, maintaining, repairing, monitoring and periodically reading:
 - a) the Residential Sub-Metering System appurtenant to each of the dwelling units within the Condominium, and correspondingly invoicing each of the dwelling unit owners for the cost of heating and cooling their respective dwelling units and for the cost of their respective consumption of hot water and electricity (based on Provident's periodic readings of the Residential Sub-Metering System), all as more particularly set out herein; and
 - b) the Commercial Sub-Metering System appurtenant to each of the commercial/retail units within the Condominium, and correspondingly invoicing each of the commercial/retail unit owners for the cost of their respective consumption of water and electricity service (based on Provident's periodic readings of the Commercial Sub-Metering System), all as more particularly set out herein.
- 1.02 Provident hereby accepts such appointment, and agrees to act on behalf of the Corporation in accordance with the provisions of this Agreement, in a faithful, diligent and honest manner.

ARTICLE II - THE CORPORATION'S OBLIGATIONS

- 2.01 The Corporation covenants and agrees to forward directly to Provident, forthwith after the Corporation's receipt, a copy of the bulk electricity and bulk water bills or invoices issued by the local electricity and water authorities/providers from time to time, for the electricity and water services utilized or consumed by the Corporation as a whole, pursuant to readings taken from the Corporation's bulk electricity and water meters (hereinafter collectively referred to as the "Bulk Utility Bills").
- 2.02 The Corporation further covenants to forward to Provident an up-to-date list of the names and contact information (including, without limitation, the addresses for service and telephone numbers) of all unit owners and tenants in the Condominium according to the Corporation's records from time to time (hereinafter referred to as the "Register"), together with all updates to the Register (as and when made), all at no charge or cost to Provident.
- 2.03 The Corporation hereby grants to Provident (and to its authorized agents, representatives and/or contractors) the free, uninterrupted and unobstructed right and license during the currency or term of this Agreement and any renewal thereof, to enter upon and within all units and common elements of this Condominium on the Corporation's behalf, at all reasonable times, for the sole and exclusive purpose of inspecting, maintaining, repairing, monitoring and/or reading the Residential Sub-Metering System appurtenant to each of the dwelling units, and the Commercial Sub-Metering System appurtenant to each of the commercial/retail units. The Corporation agrees to pay for (or to forthwith fully reimburse Provident for) all costs and expenses incurred by Provident in connection with any required maintenance, repair and/or replacement of any of the Residential Sub-Metering Systems and/or Commercial Sub-Metering Systems. Subject to the overriding provisions of sections 6.02 and 6.03 hereof, Provident shall indemnify and save the Corporation harmless from and against all costs, claims, damages and/or liabilities which the Corporation may suffer or incur as a result of any damage or injury occasioned to any person(s) and/or property by Provident (or by those for whom Provident is liable at law), which has been caused in connection with (or as a result of) Provident's exercise of the foregoing inspection, maintenance, repair and/or monitoring services, including any damage to any unit(s) or common element areas (or any portion thereof), as well as any damage to any goods, chattels, fixtures or equipment situate therein.
- 2.04 The Corporation acknowledges and agrees that notwithstanding that it has retained Provident to read the Residential Sub-Metering System appurtenant to each of the dwelling units, and to invoice each of the dwelling unit owners accordingly,

as agent for (and on behalf of) the Corporation, and to correspondingly read the Commercial Sub-Metering System appurtenant to each of the commercial/retail units, and to invoice each of the commercial/retail unit owners accordingly, as agent for (and on behalf of) the Corporation, with the objective of recovering payment or reimbursement for as much of the Bulk Utility Bills as is possible and appropriate, the Corporation shall nevertheless remain solely responsible and liable:

- a) to pay the Bulk Utility Bills to the local water and electricity authorities or providers, as and when same are due, including any applicable interest charges and/or penalties for late payment exigible with respect thereto, irrespective of whether Provident has collected or remitted any or all monies owing by:
 - i) the respective dwelling unit owners, for the cost of heating and cooling their respective dwelling units and for the cost of their respective consumption of hot water and electricity; and
 - ii) the respective commercial/retail unit owners, for the cost of their individual consumption of water and electricity;
- b) to pay for (or to forthwith fully reimburse Provident for) all costs and expenses incurred by Provident in connection with any required maintenance, repair and/or replacement of any of the Residential Sub-Metering Systems and/or Commercial Sub-Metering Systems so undertaken by Provident from time to time, as and when deemed necessary;
- c) to take all necessary steps to collect any outstanding payments owing by any unit owners who have not fully paid any invoice(s) issued by Provident to them by their respective due date(s) (hereinafter collectively referred to as the "Defaulting Owners"), as contemplated in the declaration of the Corporation; and
- d) to pay to Provident an administration fee in consideration of (and as compensation for) Provident conducting the periodic readings of the Residential Sub-Metering System appurtenant to each dwelling unit, and the Commercial Sub-Metering System appurtenant to each commercial/retail unit (all of which sub-metering systems are hereinafter collectively referred to as the "Sub-Metering Systems"), issuing the appropriate invoices to each of the dwelling unit owners and commercial/retail unit owners respectively (hereinafter individually referred to as an "Invoice" and collectively referred to as the "Invoices"), collecting the corresponding monies owing from each of the unit owners, and for attending to the maintenance and repair of each of the Sub-Metering Systems, as and when needed from time to time, in an amount equivalent to \$15.00 per dwelling unit and \$15.00 per commercial/retail unit per month, plus any all sales and excise taxes exigible with respect thereto (hereinafter referred to as the "Administration Fee"), to the extent that same has not been collected from any dwelling unit owners and/or commercial retail unit owners as part of their respective Invoices. The Administration Fee shall be increased annually on each anniversary of the date of registration of the Condominium, throughout the term of this Agreement and any renewal thereof, to reflect the percentage increase (if any) in the Consumer Price Index, published by Statistics Canada (all items for regional cities) for the City of Toronto (hereinafter referred to as the "CPI") during the immediately preceding year, determined by comparing the CPI as at the beginning of such year, with the CPI as at the end of such year. To the extent that the Administration Fee has been paid by the Corporation to Provident on behalf of any of the Defaulting Owners, Provident shall be deemed to have automatically assigned to the Corporation all of its right, title, and interest in and to such payment, including the right to collect same directly from such Defaulting Owners by way of a lien registered against the respective units of the Defaulting Owners by or on behalf of (and in favour of) the Corporation, as expressly provided or contemplated in the declaration of the Corporation, and Provident shall execute and provide any confirmations and/or assurances as may be reasonably required by the Corporation in order to evidence or confirm the foregoing.

- 2.05 Provident acknowledges that the Corporation shall retain the unilateral right, power and authority to enter into any bulk water and/or electricity purchase contract relating to this Condominium (or any portion thereof), for any term and at any fixed or variable rate, provided that the Corporation shall forthwith provide Provident with a full copy of any such contract for its records.

ARTICLE III - PROVIDENT'S OBLIGATIONS

- 3.01 Forthwith following Provident's receipt of a copy of the Bulk Utility Bills from the Corporation from time to time, Provident shall cause the Residential Sub-Metering System appurtenant to each dwelling unit, and the Commercial Sub-Metering System appurtenant to each commercial/retail unit, to be read (either by a direct visual reading or by remote electronic/computerized means, or by any other method, provided same is reasonably reliable and accurate), and shall thereafter issue and submit the Invoices to each of the dwelling unit owners [for the cost of heating and cooling their respective dwelling units and for the cost of their respective consumption of hot water and electricity], and to each of the commercial/retail unit owners [for the cost of their respective consumption of water and electricity], together with the Administration Fee on a per dwelling unit or commercial/retail unit per month basis (hereinafter referred to as each dwelling unit owner's or each commercial/retail unit owner's "Individual Share"), on the express understanding that:
- a) The billing rate charged to any dwelling unit owner or commercial/retail unit owner for his or her consumption of electricity shall be the same rate being charged to the Corporation by the local electricity authority/provider from time to time, so that each dwelling unit owner and each commercial/retail unit owner shall always be charged at the Corporation's bulk rate for his or her individual electricity usage;
 - b) The billing rate charged to any commercial/retail unit owner for his or her consumption of water shall be the same rate being charged to the Corporation by the local water authority/provider from time to time, so that each

commercial/retail unit owner shall always be charged at the Corporation's bulk rate for his or her individual water usage;

- c) The Invoice shall oblige the dwelling unit owner or commercial/retail unit owner to pay his or her Individual Share to Provident, in full, on or before the tenth (10th) day following the receipt of the Invoice by or on behalf of said unit owner (hereinafter referred to as the "Due Date");
 - d) Provident shall only be required to issue the Invoices directly to the registered owner of the dwelling unit or commercial/retail unit (as the case may be), or to whomsoever the registered owner may otherwise direct Provident and the Corporation in writing;
 - e) Provident shall not invoice or bill the Corporation for the cost of any water and electricity consumed by (or in respect of) the non-exclusive use common elements and any non-dwelling or non-commercial/retail units in this Condominium; and
 - f) Provident shall use its best efforts to collect the Individual Share(s) from all of the dwelling unit owners and commercial/retail unit owners, on a per unit basis, on or before their respective Due Date, and shall remit the Individual Shares so collected, less the Administration Fees owing to Provident, directly to the Corporation, to be followed by a monthly report and accounting of all Invoices issued and monies collected in relation to the applicable Bulk Utility Bills. In connection with the foregoing, Provident shall implement a pre-authorized payment plan system, with each dwelling unit owner and commercial/retail unit owner being obliged to provide a sample cheque marked "void" directly to Provident (and such other bank forms, authorizations, documents and instruments as may be reasonably required from time to time by Provident in order to implement any such pre-authorized payment plan system), and the Corporation shall, without charge, take all steps reasonably required by Provident in order to facilitate the implementation of same. Notwithstanding the foregoing efforts, Provident acknowledges and agrees that it has no power or authority to enforce payment of the respective Invoices against any Defaulting Owners directly (without the concurrence and involvement of the Corporation), and that under no circumstances shall Provident be entitled to interrupt or terminate any water or electricity service to any dwelling units or commercial/retail units of any Defaulting Owners.
- 3.02 Subject to the overriding provisions of section 2.04(b) and section 5.04 hereof, Provident shall address (and where necessary, rectify) any concerns related to the proper functioning or malfunctioning of the Sub-Metering Systems (or any portion thereof), as soon as reasonably possible after same has been brought to Provident's attention by or on behalf of the Corporation.

ARTICLE IV - TERM OF AGREEMENT AND RENEWAL OPTION

- 4.01 The term of this Agreement shall commence on the date of execution of this Agreement (which shall, for all purposes, be the date above-mentioned), and shall correspondingly expire five (5) years thereafter (hereinafter referred to as the "Initial Term").
- 4.02 The Corporation shall have the right to renew this Agreement for an additional term of five (5) years, commencing from the date immediately following the last day of the Initial Term (hereinafter referred to as the "Second Term"), upon giving written notice to Provident of its desire to renew the term of this Agreement as aforesaid, at least 60 days prior to the end of the Initial Term.
- 4.03 In the event that the Sub-Metering Systems (or any component parts thereof which are, in the sole opinion of Provident, material to the proper operation of the Sub-Metering Systems) is substantially destroyed by fire or any other cause for which Provident is not responsible, then Provident shall have the unilateral right and option of immediately terminating this Agreement, by written notice delivered to the Corporation, without prejudice to any other rights or remedies that Provident may have as a result of the Corporation's default.
- 4.04 In the event that the Corporation defaults in the due and regular performance of any of its obligations hereunder, and fails to fully rectify any such default within five (5) days of receiving written notice thereof from Provident, then Provident shall have the unilateral right and option of immediately terminating this Agreement, by written notice delivered to the Corporation, without prejudice to any other rights and/or remedies that Provident may have as a result of the Corporation's default.
- 4.05 Notwithstanding anything hereinbefore or hereinafter provided to the contrary, and in recognition of the fact that this agreement falls under the purview of section 112 of The Condominium Act 1998, S.O. 1998 as amended (hereinafter referred to as the "Act"), it is understood and agreed that:
- a) Provident may, at its option, terminate this Agreement at any time by giving sixty (60) days prior written notice of same to the Corporation, and upon such termination, all obligations of Provident shall cease and the Corporation shall correspondingly be obliged to forthwith pay to Provident all outstanding amounts owed by the Corporation to Provident in accordance with the provisions of this Agreement, including all unpaid Administration Fees, costs and reasonable disbursements incurred by Provident directly for and on behalf of the Corporation, up to the date of such termination; and
 - b) The Corporation may, at its option, terminate this Agreement at any time prior to the expiry of twelve (12) months following the election of a new board of directors at the Corporation's turnover meeting convened in accordance with the provisions of section 43(1) of the Act, upon giving sixty (60) days prior written notice of same to

Provident, and on or before such termination, all outstanding amounts owed by the Corporation to Provident in accordance with the provisions of this Agreement shall be fully settled and paid.

- 4.06 In the event that the government of the Corporation is terminated pursuant to Part VIII of The Condominium Act 1998, S.O. 1998 as amended, then the unit owners in the Condominium shall thereupon be jointly and severally liable to Provident for the outstanding obligations of the Corporation set out in this Agreement, as tenants in common.
- 4.07 In the event that this Agreement expires or is otherwise terminated, for whatever reason, then the Corporation shall forthwith ensure that the duties and obligations of Provident set out herein are fully assumed by another utility monitor or other entity capable of doing so, and the Corporation shall indemnify Provident from and against all costs, claims, damages and/or liabilities which Provident may thereafter suffer or incur as a result of the Corporation's failure to do so.

ARTICLE V - THE SUB-METERING SYSTEMS

- 5.01 It is expressly understood and agreed by the parties hereto that the Sub-Metering Systems, and all of its component parts, shall at all times remain the sole property of the Corporation (or of any party leasing any of such component parts to the Corporation), or of the respective owners of the units to which such meters or sub-meters are appurtenant, inasmuch as the declarant of the Corporation installed the Residential Sub-Metering System appurtenant to each dwelling unit, as well as the Commercial Sub-Metering System appurtenant to each commercial/retail unit, at the time that the Condominium was first occupied, and charged the cost of installing same to each of the respective dwelling unit purchasers and commercial/retail unit purchasers, on the final closing of each unit sale transaction.
- 5.02 The Corporation shall obtain and maintain adequate fire, theft and liability insurance in respect of the Sub-Metering Systems throughout the term of this Agreement and any renewal thereof (for the full replacement cost thereof, on a stated amount/no co-insurance basis) and shall be responsible for determining the adequacy of the insurance coverage, and for paying all applicable insurance premiums in connection therewith. The Corporation shall endeavour to have Provident noted as a co-insured party, along with the Corporation, in each policy of insurance so obtained by the Condominium, and shall provide Provident with copies of all such insurance policies and any renewals thereof, as and when requested.
- 5.03 Provident agrees to attend to the maintenance, repair and/or replacement of the Sub-Metering Systems (or any portion thereof), as and when required, subject however to the overriding obligation of the Corporation to fully pay for (or to forthwith fully reimburse Provident for) all costs and expenses incurred in connection with such maintenance or repair work and/or replacement. Subject to the foregoing, Provident's obligation to attend to the maintenance and repair of the Sub-Metering Systems shall include:
- a) testing, servicing, fixing after normal wear and tear, and replacing all obsolete, worn-out or failed components and/or equipment comprising part of the Sub-Metering Systems (or appurtenant thereto) from time to time;
 - b) keeping the Sub-Metering Systems in good working order, so as to minimize or eliminate interruption in the operation thereof, and to ensure that same operates in full compliance with all applicable requirements, standards or criteria established by Measurement Canada, and all other governmental authorities having jurisdiction over the Real Property and/or the Sub-Metering Systems from time to time; and
 - c) responding promptly to all reasonable requests for the maintenance and/or repair of the Sub-Metering Systems (or any portion thereof) received from the Corporation from time to time.
- 5.04 Notwithstanding anything contained in this Agreement to the contrary, it is understood and agreed that the Corporation shall be solely responsible for the cost of repairing the Sub-Metering Systems (or any portion thereof) after damage has been occasioned thereto (save and except for any damage caused by the acts or omissions of Provident, its contractors and subcontractors, or those for whom Provident is in law responsible), and the Corporation agrees to indemnify and save Provident (and each of its officers, directors, agents, representatives, contractors and subcontractors respectively) harmless, from and against all costs, claims, damages and/or liabilities sustained or incurred as a result of any claim(s) or action(s) which may hereafter be instituted or pursued by any dwelling unit owner(s) and/or any commercial/retail unit owner(s), and/or by their respective residents, tenants, invitees or licensees, as a result of the Corporation's failure to repair the Sub-Metering Systems after such damage. The Corporation shall forthwith notify Provident of any such damage, and shall keep Provident informed as to its progress in rectifying same.
- 5.05 The Corporation will not use (nor authorize the use by any person or entity other than Provident of) the Sub-Metering Systems, and will not interfere (nor authorize the interference or tampering, directly or indirectly) with the Sub-Metering Systems (or any portion thereof). The Corporation will exercise all rights and remedies available to it by or under The Condominium Act 1998, and any other applicable legislation, agreement(s) or otherwise, in order to prevent or stop any such interference or tampering with the Sub-Metering Systems (or any portion thereof), at all times.
- 5.06 During the term of this Agreement and any renewal thereof, the Corporation covenants and agrees to supply, without any cost or charge to Provident, adequate space within the confines of the Condominium to facilitate Provident's operation, maintenance and repair of the Sub-Metering Systems (or any portion thereof), in a location secured by a locked door and accessible only to personnel authorized by Provident, provided however that this section shall not in any way limit the Corporation's ability to access or grant access to such space in the event of an emergency. Provident shall further be entitled to the use of electrical power, lighting and heating, ventilation and air conditioning services for or in connection with the operation, maintenance, repair and/or monitoring of the Sub-Metering Systems (or any portion thereof), if same is required, without any cost or charge to Provident therefor. The Corporation shall keep said space or location secure,

and shall forthwith report to Provident any incident of violation of said security which comes to the attention of the Corporation.

ARTICLE VI - MISCELLANEOUS

- 6.01 The Corporation and Provident represent and warrant to each other that they each have the right, power and authority to enter into this Agreement, and fully perform their respective covenants and obligations contained herein.
- 6.02 Notwithstanding anything hereinbefore provided to the contrary, and save and except as expressly provided in section 6.03 hereof, it is understood and agreed by both parties hereto that Provident shall not be responsible or liable for any death or injury arising from, or in connection with, any occurrence in or relating to the Condominium, nor for any damage to any property of the Corporation or of any unit owners (or of any others) located within the confines of the Condominium or relating to the Condominium, nor shall Provident be responsible or liable for any loss or damage to any property of the Corporation or of any unit owners (or of any others) from any cause or source whatsoever, in excess of the monetary limits of liability established by section 6.03 hereof, whether or not any such death, injury, loss or damage results from the negligence or gross negligence of Provident or its agents, servants or employees, or any other person(s) for whom Provident may in law be responsible, and whether or not such death, injury, loss or damage results from a fundamental breach of this Agreement (or any other agreement made between the parties hereto), or the breach of a fundamental term of this Agreement (or of any other agreement made between the parties hereto). Without limiting the generality of the foregoing, it is expressly understood and agreed that Provident shall not be responsible or liable for any injury or damage caused, either directly or indirectly, to any person(s) or property, whether resulting from the installation, operation, maintenance, repair, monitoring and/or malfunction of the Sub-Metering Systems (or any portion thereof) or otherwise [including any damage or injury resulting from any mistaken or erroneous reading of the Sub-Metering Systems (or any portion thereof) and/or any errors with respect to any of the Invoices issued in connection therewith], in excess of the monetary limits of liability established by section 6.03 hereof.
- 6.03 The liability of Provident to the Corporation under this Agreement, in respect of any default or breach hereof (of any nature or kind whatsoever), or in respect of any claim involving negligence, gross negligence, wilful misconduct or a breach of a duty of care, including without limitation, a fundamental breach of this agreement or the breach of a fundamental term hereof, shall be limited to the sum of ONE THOUSAND (\$1,000.00) DOLLARS in respect of each such breach or claim, to a maximum of TEN THOUSAND (\$10,000.00) DOLLARS in the aggregate. Without limiting the generality of the foregoing, it is understood and agreed by the parties hereto that neither the Corporation, nor any unit owners (nor any residents, tenants, invitees and/or licensees) shall make or pursue (or be entitled to make or pursue) any claim or proceeding against Provident, nor hold Provident responsible or liable in any way, either directly or indirectly (whether based or founded in contract law, tort law or in equity), for any cost, claim, damage, injury, loss and/or liability in excess of the foregoing monetary limits, regardless of the circumstances surrounding the claim or alleged breach, the severity of the alleged breach, or the magnitude of the resulting damage, loss or injury occasioned to the Corporation and/or any unit owners thereof, and/or their respective residents, tenants, invitees and licensees.
- 6.04 This Agreement constitutes the entire agreement between Provident and the Corporation pertaining to the subject matter hereof, including without limitation, the operation, maintenance, repair and monitoring of the Sub-Metering Systems, and all prior negotiations, commitments, conditions, representations, warranties and/or undertakings which may have been made with respect to same are expressly merged in this Agreement. Except as provided in this Agreement, there are no oral or written conditions, representations, warranties, undertakings or agreements (including collateral agreements) either expressed or implied, made by Provident to the Corporation relating to the subject matter of this Agreement. Without limiting the generality of the foregoing, it is expressly acknowledged and agreed that Provident has made no representation or warranty whatsoever to the Corporation that any savings in the cost of hot water, the in-suite heating and cooling costs and/or the electricity costs to any dwelling unit owner(s), or any savings in the water and electricity costs to any commercial/retail unit owner(s), and/or to the Corporation, may or will result from the operation of the Sub-Metering Systems or any portion thereof.
- 6.05 No amendment or other modification to this Agreement shall be valid or binding upon Provident or the Corporation unless it is writing and signed by both Provident and the Corporation.
- 6.06 In the sole discretion of Provident, any of its rights or obligations under this Agreement may be exercised or performed by an independent person or company designated by Provident, which person or company shall be deemed not to be the employee or agent of Provident for liability purposes.
- 6.07 No waiver by Provident of any breach, failure or default in performance by the Corporation, and no failure, refusal or neglect by Provident to exercise any right under this agreement or to insist upon strict compliance with the obligations of the Corporation under this agreement, shall constitute a waiver of the provisions of this agreement with respect to any subsequent breach, failure or default, and shall not constitute a waiver by Provident of its right at any time to require strict compliance with the provisions of this Agreement.
- 6.08 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, and each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario. All references to currency in this Agreement refer to Canadian dollars.
- 6.09 Time shall be of the essence of this Agreement, in all respects.

- 6.10 Any notice which Provident desires (or is required) to deliver to the Corporation hereunder may be duly delivered by mailing same to the Corporation at the address indicated at the bottom of this Agreement, and if so mailed, same shall be deemed to have been delivered on the second business day following the date of mailing same. Any notice which the Corporation desires (or is required) to deliver to Provident hereunder may be duly delivered by personal delivery to Provident at the address indicated at the bottom of this Agreement, and same shall be deemed to have been delivered when actually received by Provident.
- 6.11 Every provision of this Agreement is intended to be several, and if any term or provision hereof is adjudged by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, then such illegal or invalid provision shall not be deemed or construed to affect the validity of the remainder of this agreement, and this Agreement shall then accordingly be read and construed as if such illegal or invalid provision had been omitted herefrom.
- 6.12 This Agreement shall be binding upon, and shall correspondingly enure to the benefit of, each of the parties hereto and their respective successors and assigns, provided however that this agreement shall at all times be personal to, and non-assignable by, the Corporation.
- 6.13 Any headings used throughout this Agreement are for ease of reference only, and shall not be deemed or construed to form a part of this agreement, nor shall they influence the construction or interpretation of this Agreement. The division of this Agreement into articles is for convenience of reference only, and shall not affect the construction or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first mentioned above.

PROVIDENT ENERGY MANAGEMENT INC.

TORONTO STANDARD CONDOMINIUM
CORPORATION NO. _____

Per: _____
Authorized Signing Officer

Per: _____
President -
I have authority to bind the Corporation

Per: _____
Authorized Signing Officer

Address for service:

Address for service:

Provident Energy Management Inc.
100 Supertest Road
North York, Ontario, M3J 2M2
Attention: David Hamilton

Toronto Standard Condominium
Corporation No. _____
Toronto, Ontario

UTILITY MONITORING AGREEMENT

THIS AGREEMENT dated this _____ day of _____, 200 _____

B E T W E E N:

TORONTO STANDARD CONDOMINIUM CORPORATION NO. _____
(hereinafter referred to as this or the "Condominium" or this or the "Corporation")

OF THE FIRST PART

- and -

PROVIDENT ENERGY MANAGEMENT INC.
(hereinafter referred to as "Provident" or the "Utility Monitor")

OF THE SECOND PART

WHEREAS the Corporation is comprised of owners of units and their appurtenant common interests in respect of the lands and premises registered as Toronto Standard Condominium Plan No. _____, with the Condominium being municipally located at 100 Harrison Garden Boulevard, Toronto, Ontario (hereinafter collectively referred to as the "Real Property");

AND WHEREAS the Condominium is a residential highrise project containing approximately 435 dwelling units (together with a designated superintendent suite comprising part of the common elements), along with various parking, locker and other ancillary units;

AND WHEREAS the Condominium has been designed so that each of the dwelling units shall be:

- a) serviced by (and equipped with) an in-suite four-pipe fan coil unit or system [and also serviced by a central energy recovery ventilation system and by central high-efficiency boilers and heating/cooling circulation pumps, situate on the roof of (or elsewhere within) this Condominium], which will provide domestic hot water, heating and cooling services thereto;
- b) individually check metered for their respective hot water and electricity consumption, so that the cost of each unit owner's hot water and electricity consumption shall not comprise part of the common expenses [however, the cost of cold water supplied to, and consumed by, each of the dwelling units (and any exclusive use common element areas appurtenant thereto) shall comprise part of the common expenses since the cold water consumption for this Condominium is bulk-metered]; and
- c) individually check metered by way of a thermal check meter installed as an appurtenance to each fan coil unit or system situate within each dwelling unit, that is designed to measure the volume of water coursing through (and utilized by) each in-suite fan coil heating and cooling system servicing each dwelling unit, as well as measuring the respective water temperatures correspondingly entering and leaving the said fan coil system(s), in order to calculate the total amount of thermal energy utilized by (or in connection with) each dwelling unit's fan coil system(s), so that the cost of heating and cooling each unit owner's dwelling unit shall not comprise part of the common expenses;

AND WHEREAS the thermal check meter and the hot water and electricity check meters appurtenant to each dwelling unit shall hereinafter be collectively referred to as the "Sub-Metering System";

AND WHEREAS the declaration of the Condominium confirms that while the bulk water, gas and electricity bills will be issued by the respective local water, gas and electricity suppliers directly to the Corporation from time to time, each dwelling unit owner shall be obliged to pay (and be solely responsible to reimburse the Corporation, through payments made to the Utility Monitor) for the cost of the hot water and electricity respectively utilized or consumed by each owner's dwelling unit (and any exclusive use common element areas appurtenant thereto), as well as for the cost of heating and cooling his or her dwelling unit, as measured by the Sub-Metering System;

AND WHEREAS the Corporation has agreed to retain the services of Provident to read the Sub-Metering System appurtenant to each of the dwelling units from time to time, following the Corporation's periodic receipt of the respective bulk water and electricity bills from the local water and electricity authorities/providers, and to correspondingly invoice each of the dwelling unit owners in this Condominium for the cost of heating and cooling their respective dwelling units, and for the cost of their respective consumption of hot water and electricity (based on Provident's periodic reading of the thermal check meter and the hot water and electricity check meters appurtenant to each owner's dwelling unit), as agent for (and on behalf of) the Corporation;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration and the sum of TEN (\$10.00) DOLLARS of lawful money of Canada now paid by each of the parties hereto to the other (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby confirm the veracity of the foregoing recitals, and further covenant and agree, to and with each other, as follows:

ARTICLE I - CONFIRMATION OF ENGAGEMENT

- 1.01 The Corporation hereby retains and appoints Provident to be its sole and exclusive agent, and to act on the Corporation's behalf, in operating, maintaining, repairing, monitoring and periodically reading the Sub-Metering System appurtenant to each of the dwelling units within the Condominium, and correspondingly invoicing each of the dwelling unit owners for the cost of heating and cooling their respective dwelling units and for the cost of their respective consumption of hot water and electricity (based on Provident's periodic readings of the Sub-Metering System), all as more particularly set out herein;
- 1.02 Provident hereby accepts such appointment, and agrees to act on behalf of the Corporation in accordance with the provisions of this Agreement, in a faithful, diligent and honest manner.

ARTICLE II - THE CORPORATION'S OBLIGATIONS

- 2.01 The Corporation covenants and agrees to forward directly to Provident, forthwith after the Corporation's receipt, a copy of the bulk electricity and bulk water bills or invoices issued by the local electricity and water authorities/providers from time to time, for the electricity and water services utilized or consumed by the Corporation as a whole, pursuant to readings taken from the Corporation's bulk electricity and water meters (hereinafter collectively referred to as the "Bulk Utility Bills").
- 2.02 The Corporation further covenants to forward to Provident an up-to-date list of the names and contact information (including, without limitation, the addresses for service and telephone numbers) of all unit owners and tenants in the Condominium according to the Corporation's records from time to time (hereinafter referred to as the "Register"), together with all updates to the Register (as and when made), all at no charge or cost to Provident.
- 2.03 The Corporation hereby grants to Provident (and to its authorized agents, representatives and/or contractors) the free, uninterrupted and unobstructed right and license during the currency or term of this Agreement and any renewal thereof, to enter upon and within all units and common elements of this Condominium on the Corporation's behalf, at all reasonable times, for the sole and exclusive purpose of inspecting, maintaining, repairing, monitoring and/or reading the Sub-Metering System appurtenant to each of the dwelling units. The Corporation agrees to pay for (or to forthwith fully reimburse Provident for) all costs and expenses incurred by Provident in connection with any required maintenance, repair and/or replacement of any of the Sub-Metering System. Subject to the overriding provisions of sections 6.02 and 6.03 hereof, Provident shall indemnify and save the Corporation harmless from and against all costs, claims, damages and/or liabilities which the Corporation may suffer or incur as a result of any damage or injury occasioned to any person(s) and/or property by Provident (or by those for whom Provident is liable at law), which has been caused in connection with (or as a result of) Provident's exercise of the foregoing inspection, maintenance, repair and/or monitoring services, including any damage to any unit(s) or common element areas (or any portion thereof), as well as any damage to any goods, chattels, fixtures or equipment situate therein.
- 2.04 The Corporation acknowledges and agrees that notwithstanding that it has retained Provident to read the Sub-Metering System appurtenant to each of the dwelling units, and to invoice each of the dwelling unit owners accordingly, as agent for (and on behalf of) the Corporation, with the objective of recovering payment or reimbursement for as much of the Bulk Utility Bills as is possible and appropriate, the Corporation shall nevertheless remain solely responsible and liable:
- a) to pay the Bulk Utility Bills to the local water and electricity authorities or providers, as and when same are due, including any applicable interest charges and/or penalties for late payment exigible with respect thereto, irrespective of whether Provident has collected or remitted any or all monies owing by the respective dwelling unit owners, for the cost of heating and cooling their respective dwelling units and for the cost of their respective consumption of hot water and electricity;
 - b) to pay for (or to forthwith fully reimburse Provident for) all costs and expenses incurred by Provident in connection with any required maintenance, repair and/or replacement of the Sub-Metering System (or any portion thereof) so undertaken by Provident from time to time, as and when deemed necessary;
 - c) to take all necessary steps to collect any outstanding payments owing by any unit owners who have not fully paid any invoice(s) issued by Provident to them by their respective due date(s) (hereinafter collectively referred to as the "Defaulting Owners"), as contemplated in the declaration of the Corporation; and
 - d) to pay to Provident an administration fee in consideration of (and as compensation for) Provident conducting the periodic readings of the Sub-Metering System appurtenant to each dwelling unit, issuing the appropriate invoices to each of the dwelling unit owners (hereinafter individually referred to as an "Invoice" and collectively referred to as the "Invoices"), collecting the corresponding monies owing from each of the unit owners, and for attending to the maintenance and repair of the Sub-Metering System, as and when needed from time to time, in an amount equivalent to \$15.00 per dwelling unit per month, plus any all sales and excise taxes exigible with respect thereto (hereinafter referred to as the "Administration Fee"), to the extent that same has not been collected from any dwelling unit owners as part of their respective Invoices. The Administration Fee shall be increased annually on each anniversary of the date of registration of the Condominium, throughout the term of this Agreement and any renewal thereof, to reflect the percentage increase (if any) in the Consumer Price Index published by Statistics Canada (all items for regional cities) for the City of Toronto (hereinafter referred to as the "CPI") during the immediately preceding year, determined by comparing the CPI as at the beginning of such year, with the CPI as at the end of such year. To the extent that the Administration Fee has been paid by the Corporation to Provident on behalf of any of the Defaulting Owners, Provident shall be deemed to have automatically assigned to the Corporation all of its right, title, and interest in and to such payment, including the right to collect same directly

from such Defaulting Owners by way of a lien registered against the respective units of the Defaulting Owners by or on behalf of (and in favour of) the Corporation, as expressly provided or contemplated in the declaration of the Corporation, and Provident shall execute and provide any confirmations and/or assurances as may be reasonably required by the Corporation in order to evidence or confirm the foregoing.

- 2.05 Provident acknowledges that the Corporation shall retain the unilateral right, power and authority to enter into any bulk water and/or electricity purchase contract relating to this Condominium (or any portion thereof), for any term and at any fixed or variable rate, provided that the Corporation shall forthwith provide Provident with a full copy of any such contract for its records.

ARTICLE III - PROVIDENT'S OBLIGATIONS

- 3.01 Forthwith following Provident's receipt of a copy of the Bulk Utility Bills from the Corporation from time to time, Provident shall cause the Sub-Metering System appurtenant to each dwelling unit to be read (either by a direct visual reading or by remote electronic/computerized means, or by any other method, provided same is reasonably reliable and accurate), and shall thereafter issue and submit the Invoices to each of the dwelling unit owners [for the cost of heating and cooling their respective dwelling units and for the cost of their respective consumption of hot water and electricity], together with the Administration Fee on a per dwelling unit per month basis (hereinafter referred to as each dwelling unit owner's "Individual Share"), on the express understanding that:
- a) The billing rate charged to any dwelling unit owner for his or her consumption of electricity shall be the same rate being charged to the Corporation by the local electricity authority/provider from time to time, so that each dwelling unit owner shall always be charged at the Corporation's bulk rate for his or her individual electricity usage;
 - b) The Invoice shall oblige the dwelling unit owner to pay his or her Individual Share to Provident, in full, on or before the tenth (10th) day following the receipt of the Invoice by or on behalf of said unit owner (hereinafter referred to as the "Due Date");
 - c) Provident shall only be required to issue the Invoices directly to the registered owner of the dwelling unit, or to whomsoever the registered owner may otherwise direct Provident and the Corporation in writing;
 - d) Provident shall not invoice or bill the Corporation for the cost of any water and electricity consumed by (or in respect of) the non-exclusive use common elements and any non-dwelling unit in this Condominium; and
 - e) Provident shall use its best efforts to collect the Individual Share(s) from all of the dwelling unit owners, on a per dwelling unit basis, on or before their respective Due Date, and shall remit the Individual Shares so collected, less the Administration Fees owing to Provident, directly to the Corporation, to be followed by a monthly report and accounting of all Invoices issued and monies collected in relation to the applicable Bulk Utility Bills. In connection with the foregoing, Provident shall implement a pre-authorized payment plan system, with each dwelling unit owner being obliged to provide a sample cheque marked "void" directly to Provident (and such other bank forms, authorizations, documents and instruments as may be reasonably required from time to time by Provident in order to implement any such pre-authorized payment plan system), and the Corporation shall, without charge, take all steps reasonably required by Provident in order to facilitate the implementation of same. Notwithstanding the foregoing efforts, Provident acknowledges and agrees that it has no power or authority to enforce payment of the respective Invoices against any Defaulting Owners directly (without the concurrence and involvement of the Corporation), and that under no circumstances shall Provident be entitled to interrupt or terminate any water or electricity service to any dwelling unit(s) of any Defaulting Owner(s).
- 3.02 Subject to the overriding provisions of section 2.04(b) and section 5.04 hereof, Provident shall address (and where necessary, rectify) any concerns related to the proper functioning or malfunctioning of the Sub-Metering System (or any portion thereof), as soon as reasonably possible after same has been brought to Provident's attention by or on behalf of the Corporation.

ARTICLE IV - TERM OF AGREEMENT AND RENEWAL OPTION

- 4.01 The term of this Agreement shall commence on the date of execution of this Agreement (which shall, for all purposes, be the date above-mentioned), and shall correspondingly expire five (5) years thereafter (hereinafter referred to as the "Initial Term").
- 4.02 The Corporation shall have the right to renew this Agreement for an additional term of five (5) years, commencing from the date immediately following the last day of the Initial Term (hereinafter referred to as the "Second Term"), upon giving written notice to Provident of its desire to renew the term of this Agreement as aforesaid, at least 60 days prior to the end of the Initial Term.
- 4.03 In the event that the Sub-Metering System (or any component parts thereof which are, in the sole opinion of Provident, material to the proper operation of the Sub-Metering System) is substantially destroyed by fire or any other cause for which Provident is not responsible, then Provident shall have the unilateral right and option of immediately terminating this Agreement, by written notice delivered to the Corporation, without prejudice to any other rights or remedies that Provident may have as a result of the Corporation's default.

- 4.04 In the event that the Corporation defaults in the due and regular performance of any of its obligations hereunder, and fails to fully rectify any such default within five (5) days of receiving written notice thereof from Provident, then Provident shall have the unilateral right and option of immediately terminating this Agreement, by written notice delivered to the Corporation, without prejudice to any other rights and/or remedies that Provident may have as a result of the Corporation's default.
- 4.05 Notwithstanding anything hereinbefore or hereinafter provided to the contrary, and in recognition of the fact that this agreement falls under the purview of section 112 of The Condominium Act 1998, S.O. 1998 as amended (hereinafter referred to as the "Act"), it is understood and agreed that:
- a) Provident may, at its option, terminate this Agreement at any time by giving sixty (60) days prior written notice of same to the Corporation, and upon such termination, all obligations of Provident shall cease and the Corporation shall correspondingly be obliged to forthwith pay to Provident all outstanding amounts owed by the Corporation to Provident in accordance with the provisions of this Agreement, including all unpaid Administration Fees, costs and reasonable disbursements incurred by Provident directly for and on behalf of the Corporation, up to the date of such termination; and
 - b) The Corporation may, at its option, terminate this Agreement at any time prior to the expiry of twelve (12) months following the election of a new board of directors at the Corporation's turnover meeting convened in accordance with the provisions of section 43(1) of the Act, upon giving sixty (60) days prior written notice of same to Provident, and on or before such termination, all outstanding amounts owed by the Corporation to Provident in accordance with the provisions of this Agreement shall be fully settled and paid.
- 4.06 In the event that the government of the Corporation is terminated pursuant to Part VIII of The Condominium Act 1998, S.O. 1998 as amended, then the unit owners in the Condominium shall thereupon be jointly and severally liable to Provident for the outstanding obligations of the Corporation set out in this Agreement, as tenants in common.
- 4.07 In the event that this Agreement expires or is otherwise terminated, for whatever reason, then the Corporation shall forthwith ensure that the duties and obligations of Provident set out herein are fully assumed by another utility monitor or other entity capable of doing so, and the Corporation shall indemnify Provident from and against all costs, claims, damages and/or liabilities which Provident may thereafter suffer or incur as a result of the Corporation's failure to do so.

ARTICLE V – THE SUB-METERING SYSTEM

- 5.01 It is expressly understood and agreed by the parties hereto that the Sub-Metering System, and all of its component parts, shall at all times remain the sole property of the Corporation (or of any party leasing any of such component parts to the Corporation), or of the respective owners of the units to which such meters or sub-meters are appurtenant, inasmuch as the declarant of the Corporation installed the Sub-Metering System appurtenant to each of the dwelling units, at the time that the Condominium was first occupied, and charged the cost of installing same to each of the respective dwelling unit purchasers on the final closing of each unit sale transaction.
- 5.02 The Corporation shall obtain and maintain adequate fire, theft and liability insurance in respect of the Sub-Metering System throughout the term of this Agreement and any renewal thereof (for the full replacement cost thereof, on a stated amount/no co-insurance basis) and shall be responsible for determining the adequacy of the insurance coverage, and for paying all applicable insurance premiums in connection therewith. The Corporation shall endeavour to have Provident noted as a co-insured party, along with the Corporation, in each policy of insurance so obtained by the Condominium, and shall provide Provident with copies of all such insurance policies and any renewals thereof, as and when requested.
- 5.03 Provident agrees to attend to the maintenance, repair and/or replacement of the Sub-Metering System (or any portion thereof), as and when required, subject however to the overriding obligation of the Corporation to fully pay for (or to forthwith fully reimburse Provident for) all costs and expenses incurred in connection with such maintenance or repair work and/or replacement. Subject to the foregoing, Provident's obligation to attend to the maintenance and repair of the Sub-Metering System shall include:
- a) testing, servicing, fixing after normal wear and tear, and replacing all obsolete, worn-out or failed components and/or equipment comprising part of the Sub-Metering System (or appurtenant thereto) from time to time;
 - b) keeping the Sub-Metering System in good working order, so as to minimize or eliminate interruption in the operation thereof, and to ensure that same operates in full compliance with all applicable requirements, standards or criteria established by Measurement Canada, and all other governmental authorities having jurisdiction over the Real Property and/or the Sub-Metering System from time to time; and
 - c) responding promptly to all reasonable requests for the maintenance and/or repair of the Sub-Metering System (or any portion thereof) received from the Corporation from time to time.
- 5.04 Notwithstanding anything contained in this Agreement to the contrary, it is understood and agreed that the Corporation shall be solely responsible for the cost of repairing the Sub-Metering System (or any portion thereof) after damage has been occasioned thereto (save and except for any damage caused by the acts or omissions of Provident, its contractors and subcontractors, or those for whom Provident is in law responsible), and the Corporation agrees to indemnify and save Provident (and each of its officers, directors, agents, representatives, contractors and subcontractors respectively) harmless, from and against all costs, claims, damages and/or liabilities sustained or incurred as a result of any claim(s) or action(s) which may hereafter be instituted or pursued by any dwelling unit owner(s), and/or by their respective residents, tenants,

invitees or licensees, as a result of the Corporation's failure to repair the Sub-Metering System after such damage. The Corporation shall forthwith notify Provident of any such damage, and shall keep Provident informed as to its progress in rectifying same.

- 5.05 The Corporation will not use (nor authorize the use by any person or entity other than Provident of) the Sub-Metering System, and will not interfere (nor authorize the interference or tampering, directly or indirectly) with the Sub-Metering System (or any portion thereof). The Corporation will exercise all rights and remedies available to it by or under The Condominium Act 1998, and any other applicable legislation, agreement(s) or otherwise, in order to prevent or stop any such interference or tampering with the Sub-Metering System (or any portion thereof), at all times.
- 5.06 During the term of this Agreement and any renewal thereof, the Corporation covenants and agrees to supply, without any cost or charge to Provident, adequate space within the confines of the Condominium to facilitate Provident's operation, maintenance and repair of the Sub-Metering System (or any portion thereof), in a location secured by a locked door and accessible only to personnel authorized by Provident, provided however that this section shall not in any way limit the Corporation's ability to access or grant access to such space in the event of an emergency. Provident shall further be entitled to the use of electrical power, lighting and heating, ventilation and air conditioning services for or in connection with the operation, maintenance, repair and/or monitoring of the Sub-Metering System (or any portion thereof), if same is required, without any cost or charge to Provident therefor. The Corporation shall keep said space or location secure, and shall forthwith report to Provident any incident of violation of said security which comes to the attention of the Corporation.

ARTICLE VI - MISCELLANEOUS

- 6.01 The Corporation and Provident represent and warrant to each other that they each have the right, power and authority to enter into this Agreement, and fully perform their respective covenants and obligations contained herein.
- 6.02 Notwithstanding anything hereinbefore provided to the contrary, and save and except as expressly provided in section 6.03 hereof, it is understood and agreed by both parties hereto that Provident shall not be responsible or liable for any death or injury arising from, or in connection with, any occurrence in or relating to the Condominium, nor for any damage to any property of the Corporation or of any unit owners (or of any others) located within the confines of the Condominium or relating to the Condominium, nor shall Provident be responsible or liable for any loss or damage to any property of the Corporation or of any unit owners (or of any others) from any cause or source whatsoever, in excess of the monetary limits of liability established by section 6.03 hereof, whether or not any such death, injury, loss or damage results from the negligence or gross negligence of Provident or its agents, servants or employees, or any other person(s) for whom Provident may in law be responsible, and whether or not such death, injury, loss or damage results from a fundamental breach of this Agreement (or any other agreement made between the parties hereto), or the breach of a fundamental term of this Agreement (or of any other agreement made between the parties hereto). Without limiting the generality of the foregoing, it is expressly understood and agreed that Provident shall not be responsible or liable for any injury or damage caused, either directly or indirectly, to any person(s) or property, whether resulting from the installation, operation, maintenance, repair, monitoring and/or malfunction of the Sub-Metering System (or any portion thereof) or otherwise [including any damage or injury resulting from any mistaken or erroneous reading of the Sub-Metering System (or any portion thereof) and/or any errors with respect to any of the Invoices issued in connection therewith], in excess of the monetary limits of liability established by section 6.03 hereof.
- 6.03 The liability of Provident to the Corporation under this Agreement, in respect of any default or breach hereof (of any nature or kind whatsoever), or in respect of any claim involving negligence, gross negligence, willful misconduct or a breach of a duty of care, including without limitation, a fundamental breach of this agreement or the breach of a fundamental term hereof, shall be limited to the sum of ONE THOUSAND (\$1,000.00) DOLLARS in respect of each such breach or claim, to a maximum of TEN THOUSAND (\$10,000.00) DOLLARS in the aggregate. Without limiting the generality of the foregoing, it is understood and agreed by the parties hereto that neither the Corporation, nor any unit owners (nor any residents, tenants, invitees and/or licensees) shall make or pursue (or be entitled to make or pursue) any claim or proceeding against Provident, nor hold Provident responsible or liable in any way, either directly or indirectly (whether based or founded in contract law, tort law or in equity), for any cost, claim, damage, injury, loss and/or liability in excess of the foregoing monetary limits, regardless of the circumstances surrounding the claim or alleged breach, the severity of the alleged breach, or the magnitude of the resulting damage, loss or injury occasioned to the Corporation and/or any unit owners thereof, and/or their respective residents, tenants, invitees and licensees.
- 6.04 This Agreement constitutes the entire agreement between Provident and the Corporation pertaining to the subject matter hereof, including without limitation, the operation, maintenance, repair and monitoring of the Sub-Metering System, and all prior negotiations, commitments, conditions, representations, warranties and/or undertakings which may have been made with respect to same are expressly merged in this Agreement. Except as provided in this Agreement, there are no oral or written conditions, representations, warranties, undertakings or agreements (including collateral agreements) either expressed or implied, made by Provident to the Corporation relating to the subject matter of this Agreement. Without limiting the generality of the foregoing, it is expressly acknowledged and agreed that Provident has made no representation or warranty whatsoever to the Corporation that any savings in the cost of hot water, the in-suite heating and cooling costs and/or the electricity costs to any dwelling unit owner(s) and/or to the Corporation, may or will result from the operation of the Sub-Metering System or any portion thereof.
- 6.05 No amendment or other modification to this Agreement shall be valid or binding upon Provident or the Corporation unless it is writing and signed by both Provident and the Corporation.

- 6.06 In the sole discretion of Provident, any of its rights or obligations under this Agreement may be exercised or performed by an independent person or company designated by Provident, which person or company shall be deemed not to be the employee or agent of Provident for liability purposes.
- 6.07 No waiver by Provident of any breach, failure or default in performance by the Corporation, and no failure, refusal or neglect by Provident to exercise any right under this agreement or to insist upon strict compliance with the obligations of the Corporation under this agreement, shall constitute a waiver of the provisions of this agreement with respect to any subsequent breach, failure or default, and shall not constitute a waiver by Provident of its right at any time to require strict compliance with the provisions of this Agreement.
- 6.08 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, and each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario. All references to currency in this Agreement refer to Canadian dollars.
- 6.09 Time shall be of the essence of this Agreement, in all respects.
- 6.10 Any notice which Provident desires (or is required) to deliver to the Corporation hereunder may be duly delivered by mailing same to the Corporation at the address indicated at the bottom of this Agreement, and if so mailed, same shall be deemed to have been delivered on the second business day following the date of mailing same. Any notice which the Corporation desires (or is required) to deliver to Provident hereunder may be duly delivered by personal delivery to Provident at the address indicated at the bottom of this Agreement, and same shall be deemed to have been delivered when actually received by Provident.
- 6.11 Every provision of this Agreement is intended to be several, and if any term or provision hereof is adjudged by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, then such illegal or invalid provision shall not be deemed or construed to affect the validity of the remainder of this agreement, and this Agreement shall then accordingly be read and construed as if such illegal or invalid provision had been omitted herefrom.
- 6.12 This Agreement shall be binding upon, and shall correspondingly enure to the benefit of, each of the parties hereto and their respective successors and assigns, provided however that this agreement shall at all times be personal to, and non-assignable by, the Corporation.
- 6.13 Any headings used throughout this Agreement are for ease of reference only, and shall not be deemed or construed to form a part of this agreement, nor shall they influence the construction or interpretation of this Agreement. The division of this Agreement into articles is for convenience of reference only, and shall not affect the construction or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first mentioned above.

PROVIDENT ENERGY MANAGEMENT INC.

TORONTO STANDARD CONDOMINIUM
CORPORATION NO. _____

Per: _____
Authorized Signing Officer

Per: _____
President -
I have authority to bind the Corporation

Per: _____
Authorized Signing Officer

Address for service:

Provident Energy Management Inc.
100 Supertest Road
North York, Ontario, M3J 2M2
Attention: David Hamilton

Address for service:

Toronto Standard Condominium
Corporation No. _____
100 Harrison Garden Boulevard
Toronto, Ontario