

**INSURANCE TRUST AGREEMENT**

THIS AGREEMENT, made in duplicate this 20th day of  
May , 19 87 .

B E T W E E N:

METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 600,  
a corporation created under the laws of the Province  
of Ontario by the registration under The Condominium  
Act, R.S.O., 1980, (hereinafter referred to as "The  
Act"), of the Declaration of JARVIS ONE INC., (hereinafter  
called the "Settlor"),

OF THE FIRST PART

- and -

THE CANADA TRUST COMPANY,  
(hereinafter called "Trustee")

OF THE SECOND PART

WHEREAS, the Settlor has obtained certain policies of  
insurance set forth in Schedule "A" annexed hereto;

AND WHEREAS the Settlor desires to make provision for the  
expeditious payment out of the proceeds of such insurance in the event of  
damage to the property as described in the description registered pursuant  
to The Condominium Act, R.S.O. 1980, and amendments thereto, herein called  
"The Act".

In consideration of the mutual covenants herein contained, it  
is hereby mutually agreed by the parties hereto as follows:

.. . . .

## ARTICLE I

### Definitions

The terms used in this Agreement shall have ascribed to them the definitions contained in The Act.

## ARTICLE II

### Appointment of Trustee

The Settlor doth hereby appoint the Trustee to act as Trustee pursuant to the provisions of the declaration and by-laws of the Settlor, copies of which are submitted herewith to the Trustee.

## ARTICLE III

### Payment By Trustee

The Trustee hereby irrevocably authorizes and directs that all insurance proceeds from an insurance claim not exceeding \$10,000.00 shall be paid directly from the insurance to the Settlor. All insurance proceeds received by the Trustee, provided they exceed \$10,000.00 for any one loss, shall be received by the Trustee and shall be held by it in trust and paid in accordance with the following terms and conditions:

1. -In the event of:
  - (a) Damage to the buildings, if the Trustee receives a certificate duly executed by the President (or Vice-President) and the Secretary of the Settlor, certifying:

(i) that the board has determined that less than 25% of the buildings have been substantially damaged, or,

(ii) that the board has determined that 25% or more of the buildings have been substantially damaged and that owners who own 80% of the units have not voted for termination within sixty (60) days of such determination by the board.

or, (b) Damage to the property excluding the buildings and the units,

the Trustee shall disburse the proceeds of all insurance in its hands and arising out of such damage, towards the cost of repairing such damage, from time to time, as the repairs of such damage progress, upon the written request of the Settlor (specifying the persons and the amounts to be paid to such persons) accompanied by the following:

(a) A certificate signed by the President (or the Vice-President) and the Secretary of the Settlor dated not more than thirty (30) days prior to such request and counter-signed by the Architect or Engineer, if any, employed by the Settlor in connection with such repairs, setting forth the following:

(i) That the sum then requested either has been paid by the Settlor or is justly due to contractors, sub-contractors, material men, engineers, architects or other persons who have rendered services or furnished materials for repairs therein specified, the names and addresses of such persons, a brief description of such

services and materials, the several amounts so paid or due to each of said persons in respect thereto, that no part of such expenditures has been or is being made the basis of any previous or then ending request for the payment of insurance proceeds then held by the Trustee or has theretofore been paid out of such insurance proceeds, and that the sum then requested does not exceed the value of the services and materials described in such certificate;

- (ii) That except for the amount, if any, stated in such certificate to be due for services or materials, there is no outstanding indebtedness known to the Settlor, after due enquiry, which is then due for labour, wages, materials, supplies or services in connection with such repairs which if unpaid might become the basis of a lien under the Construction Lien Act by reason of such repair, to the building or any part thereof.
- (b) An opinion of a Solicitor, acting for the Settlor or other evidence reasonably satisfactory to the Trustee to the effect that there has not been filed with respect to the building or the property, or any part thereof, any lien under the Construction Lien Act which has not been discharged except such as will be discharged by payment of the amount then requested.

Any balance of proceeds of insurance remaining in the Trustee's hands after payment in full of the cost of repairs of the buildings as aforesaid, shall be paid over by the Trustee to the Settlor.

2. If, upon the receipt of any certificate referred to in Paragraph 1 of this Article, the Trustee shall not have sufficient funds to pay the amount due and owing as set out therein, the Settlor shall be so notified by the Trustee, and the Settlor shall further notify, in writing, the Trustee, as to which of the persons or companies set forth in the said certificate are to be paid by the Trustee.

3. The Trustee shall not be under any duty to enquire as to the correctness of any amounts received by it on account of the proceeds of any insurance, nor shall it be under any obligation to take any steps to enforce the payment thereof to it.

#### ARTICLE IV

##### Deficiency of Insurance Proceeds

The Settlor shall be promptly notified of any proceeds of insurance deposited with the Trustee on behalf of the Settlor, and the Trustee shall be under no obligation to make any payments specified in this Agreement except out of the proceeds of insurance held in trust for the Settlor.

#### ARTICLE V

##### Provisions Relating to Trustee

1. The Trustee shall have no duties except those which are expressly set forth in the Agreement and shall in no way be responsible or liable for any loss, cost of damages which may result from anything done or omitted to be done by such Trustee, hereunder, except in the case of negligence or bad faith. The Trustee shall be protected in acting upon any certificate, statement, request, consent, agreement or other instrument whatsoever, not only as to its due execution and validity and the

effectiveness of its provisions, but also as to the truth and accuracy of any information therein contained, which it shall, in good faith, believe to be genuine, and to have signed and presented by the proper person or persons. It shall have no responsibility with respect to any cheques deposited with it hereunder except to deposit same in the usual course and it shall have no responsibility with respect to the application of any funds paid by it pursuant to the provisions of this Agreement.

2. The Settlor shall reimburse the Trustee for all expenses incurred by it in connection with its duties under this Agreement and shall indemnify it and save it harmless against any and all liabilities, costs and expenses including legal fees, for anything done or omitted to be done by it in the performance of this Agreement, except as a result of negligence or bad faith.

## ARTICLE VI

### Termination of Condominium

Notwithstanding anything to the contrary herein contained, where a notice of termination is registered in accordance with the provisions of The Act, the Settlor shall forthwith notify the Trustee, in writing, of such registration, and upon receipt of such notice the Trustee, shall pay any insurance proceeds then in its hands to the owners and any mortgagees with respect to the units of such owners, in the proportion of each owner's common interest, and in satisfaction of any liens registered by the Settlor against such unit in accordance with the priorities thereof.

## ARTICLE VII

### Termination of Agreement

1. The term of this Agreement shall commence upon the date of registration of the Settlor, and shall run for a period of twelve (12) months thereafter, whereupon in the event that a new board of directors of the Corporation has not been elected by the unit owners at a meeting called pursuant to Section 26 of The Act (the "Turnover meeting"), then this Agreement shall be renewed for a further (12) month period upon written request of the Settlor to the Trustee requesting a renewal of same, and upon receipt by the Trustee of such request, a new contract, having the same terms and conditions as herein set forth, shall be deemed to have been entered into for the requisite twelve (12) month period, as effectively as if a separate agreement had been executed by the parties hereto.

2. In the event that a new board of directors has been elected at the Turnover meeting, then this Agreement, or any subsequent agreement entered or deemed to be entered into pursuant to the provisions of paragraph 1 of Article VII above (the "Subsequent Agreement"), shall terminate at the end of the twelve (12) month period during which the Turnover meeting was held, unless same is ratified by the new board of directors. The Settlor shall forthwith notify the Trustee in writing of any such ratification, and if ratified as aforesaid, this Agreement or the Subsequent Agreement (as the case may be) shall continue automatically from year to year, until sixty (60) days after the Settlor delivers written notice to the Trustee of its desire to terminate same. In the event that the new board of directors fails to ratify this Agreement or the Subsequent Agreement (as the case may be), then such new board shall forthwith cause the Settlor to enter into a new insurance trust agreement with another trust company or other firm qualified to act as a trustee, so that an insurance trust agreement will at all times be in existence and maintained by the Settlor.

3. Following termination of this Agreement or the Subsequent Agreement (as the case may be), and upon payment to the Trustee of all fees and charges due to the Trustee, the Trustee shall turn over all sums deposited with it and not yet distributed in accordance with the provisions hereof, to any new trustee appointed pursuant to the provisions of the Settlor's declaration, and thereupon, the Trustee's obligations hereunder shall cease.

4. At any time hereafter the Settlor shall have the sole and unrestricted right to terminate this Agreement by written notice to the Trustee, upon delivery to the Trustee of a duplicate original agreement between the Settlor and a Trust Company registered under The Loan and Trust Corporations Act or a Chartered Bank, or such corporation as the Settlor in its discretion may deem advisable in the event that the Settlor is unable to enter into such agreement with such Trust Company, or such Chartered Bank by reason of their refusal to act, pursuant to which such other Trust Company or Chartered Bank or corporation shall assume duties as Trustee, in the place of the Trustee herein. Following such termination, upon payment to the Trustee herein of all fees and charges due to the Trustee hereunder, the Trustee herein shall turn over all sums deposited with it, remaining in its hands, to such new Trustee, and thereupon its obligations hereunder shall cease.

5. The Trustee may at any time resign from its duties hereunder by giving to the Settlor not less than Thirty (30) days notice in writing thereof and its obligations hereunder (except for the payment of any sums remaining in its hands to a successor Trustee, as hereinafter provided) shall cease. Following such resignation, upon payment to the Trustee of all fees and charges due to it hereunder and upon delivery to it as a duplicate original agreement between the Settlor and another Trust Company registered under The Loan and Trust Corporations Act or a Chartered Bank, or such corporation as the Settlor in its discretion may deem advisable in



the event that the Settlor is unable to enter into such agreement with such Trust Company, or such Chartered Bank by reason of their refusal to act, pursuant to which such other Trust Company or Chartered Bank or corporation shall assume such duties as Trustee in place of the Trustee herein, The Trustee herein shall turn over all sums deposited with it, remaining in its hands, to such new trustee, and thereupon its obligations hereunder shall cease.

6. In the event that the Settlor fails to appoint a new trustee within thirty (30) days after notice to terminate has been given pursuant to paragraph 2 or 5 hereof, the Trustee shall be entitled to appoint such new trustee.

#### ARTICLE VIII

##### Declaration and By-Laws and Rights of Third Parties

1. This Agreement shall not be modified or amended without the consent of the parties hereto and any mortgagee holding first mortgages on more than 50% of the units. Any amendments to the Declaration or by-laws shall be communicated to the Trustee by the Settlor.

2. Upon being advised of damage to the buildings or upon receipt of any monies in accordance with the terms of this Agreement, the Trustee shall notify all mortgagees shown on the Settlor's register.

3. Certain provisions of this Agreement are for the benefit of the mortgagees of the units and all such provisions are covenants for the benefit of any mortgagee shown on the Settlor's register and may be enforced by such mortgagee.

## ARTICLE IX

### Address For Service

Any certificate, declaration or notice in writing given to the Settlor, pursuant to this Agreement, shall be sufficiently given if mailed by prepaid registered post to the Settlor at .....

Any certificate, declaration of notice in writing given to the Trustee pursuant to this Agreement shall be sufficiently given if mailed by prepaid registered post to The Canada Trust Company, Personal Trust Department, 5th Floor, 110 Yonge Street, Toronto, Ontario, M5C 1T4. Such certificate, declaration, and notices in writing shall be deemed to have been received on the business day next following the date of such mailing.

## ARTICLE X

### Remuneration of Trustee

The Settlor shall pay the Trustee's fees and charges as set out in Schedule "B" annexed hereto.

## ARTICLE XI

### Assignment of Agreement

This Agreement shall be binding upon and ensure to the benefit of the parties hereto, and their respective successors and assigns, and this Agreement shall not be assignable by the Trustee without the prior written consent of the Settlor.

## ARTICLE XII

### Headings and Governing Laws

The use of headings in this agreement shall have no effect on the interpretation or meaning of this agreement.

This agreement shall be governed by the laws of Ontario.

## ARTICLE XIII

### Acceptance of Trust

The Trustee hereby accepts the trust herein set forth.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

METROPOLITAN TORONTO CONDOMINIUM  
CORPORATION No. 600  
by its member  
JARVIS ONE INC.

Per: \_\_\_\_\_  
President

Per: \_\_\_\_\_  
Secretary

THE CANADA TRUST COMPANY

By \_\_\_\_\_

By \_\_\_\_\_

**SCHEDULE "A"**

**Insurance Policies:**

Allstate Insurance Company  
Policy No. 56 771 112  
\$8,000 on Building  
Expiry: January 1, 1988

## **SCHEDULE "B"**

THE Corporation shall pay the Trustee an initial fee of three hundred dollars (\$300.00) upon the execution of this Agreement, being an initial "set-up fee" and the per annum retainer fee in advance.

HEREAFTER, this per annum retainer fee of one hundred and fifty dollars (\$150.00) shall be payable upon the anniversary date of this Agreement in each year during the term of this Agreement.

IN the event the Trustee shall, pursuant to the provisions hereof, administer any insurance proceeds, it shall be entitled to an additional fee, payable in advance of the release of any insurance proceeds held in trust, equivalent to:

- (a) minimum fee of \$150.00 per claim processed
- (b) one per cent (1%) of the first twenty-five thousand dollars (\$25,000.00) administered by it
- (c) one half of one percent (1/2 of 1%) upon the balance of funds administered by it.

THE Corporation shall indemnify and save the Trustee harmless against any and all liabilities, costs and expenses, including legal fees, for anything done or omitted to be done by the Trustee in the performance of this Agreement, except as a result of negligence or bad faith.

THIS fee schedule may be amended from time to time by written notice from the Trustee to the Corporation at any time.