

(114)

COMMON FACILITIES AGREEMENT NO. 2

THIS AGREEMENT made this 10 day of July, 2008.

BETWEEN:

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 1466,  
a corporation created by the registration of a declaration and description on  
the 23<sup>rd</sup> day of September, 2002, in the Land Registry Office for the Land  
Titles Division of Toronto (No. 66) as Instrument No. AT272  
(hereinafter "TSCC 1466")

OF THE FIRST PART;

- and -

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 1526,  
a corporation created by the registration of a declaration and description on  
the 16<sup>th</sup> day of June, 2003, in the Land Registry Office for the Land Titles  
Division of Toronto (No. 66) as Instrument No. AT196062  
(hereinafter "TSCC 1526")

OF THE SECOND PART;

WHEREAS:

- (a) Pursuant to a Common Facilities Agreement dated as of the 23<sup>rd</sup> day of September, 2002, and registered in the Land Titles Division of Toronto (No. 66) as Instrument No. AT131702, a copy of which is attached to this Agreement as Schedule "A" (the "Common Facilities Agreement" or "CFA"), TSCC 1466 and TSCC 1526 set out their respective rights and obligations concerning the Common Facilities all as more particularly described in the CFA.
- (b) The Common Facilities Agreement is referred to in the respective Declarations of the parties hereto;
- (c) The parties wish to enter into this Agreement to clarify and elaborate on the rights and obligations set out the CFA with respect to the use, maintenance, operation, governance, replacement and repair of the Common Facilities;
- (d) The parties herein may collectively be referred to as the "Corporations".

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of these premises, the mutual covenants and agreements hereinafter set forth, the sum of \$10.00, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, the parties hereto hereby covenant and agree as follows:

ARTICLE 1.00

TRUTH OF RECITALS AND DEFINITIONS

1.01 Truth of Recitals

The recitals hereinbefore set forth are true in substance and in fact.

1.02 Definitions

For ease of distinguishing between the CFA and this Agreement, this Agreement has been called

the Common Facilities Agreement No. 2. The words and definitions contained in the CFA shall apply to this Agreement including, but not limited to the definition of "Common Facilities". In addition, the words "Common Elements", "Common Expenses", "Common Interest", "Declaration", "Description", "By-Laws", "Registration", "Rules", shall have the same meanings as are ascribed to such terms in the *Condominium Act, 1998* as amended, and the regulations made thereunder (collectively referred to as the "Act"), unless this Agreement specified otherwise or unless the context otherwise requires.

## ARTICLE 2.00

### MANAGEMENT OF COMMON FACILITIES

#### 2.01 Meetings of the Committee

(a) Unless otherwise agreed by a majority of the members of the Committee ("Committee Members" or "Committee Member" as appropriate), the Committee shall meet on the first Thursday of every other month at a place and time to be determined by the Committee. A copy of any resolution of the Committee fixing the place and time of such regular meeting, or changing the date from the first Thursday of every other month (or any subsequent changes) shall be sent to each Committee Member and to the Boards of Director of each party, but no other notice shall be required for any such regular meeting. Nothing in this Agreement restricts or prohibits the calling and holding of other, additional meetings of the Committee so long as they are called in accordance with the procedures set out in the CFA.

(b) The Committee may conduct its meetings by teleconference or other electronic means as approved by a majority decision of the Committee by resolution from time to time, provided that all Committee Members consent to the meeting being held by teleconference and or other approved electronic means.

(c) Where a duly appointed representative of either of the parties cannot attend a Committee meeting, then upon giving the other party written notice, the party whose representative cannot attend may appoint another person to be that party's voting representative for that specific Committee meeting.

(d) As it is important that the duly appointed Committee Members attend meetings in person and not vote by proxy, therefore, it is agreed that proxies will not be allowed for voting on any issue. Proxies can only be used for the purpose of constituting or obtaining quorum.

#### 2.02 Voting

In order to assist in making decisions for non-substantial matters, the parties agree that for the following matters decisions shall be by a majority of the Committee Members attending the meeting, but such majority must include at least one representative from each party:

- (a) Any non-budgeted expense or expenditure, including any contract for services, that does not exceed a total aggregate value of Five Thousand dollars (\$5,000.00) per matter/item per calendar year, and the total annual aggregate value for any and all non-budgeted expenses or expenditures of any nature does not exceed Twenty Thousand Dollars (\$20,000);
- (b) Decisions relating to already budgeted expenses and expenditures as long as the actual amount expended does not exceed the budgeted amount. Nothing in this paragraph (b) shall alter or modify the voting requirements of the Committee for approving the budget.
- (c) Adopting and approving rules for the Common Facilities;
- (d) Fixing the place and time of Committee meetings or changing the date of the regular meetings as set out in paragraph 2.01 (a) above;
- (e) Approval and signing of Minutes of the Committee;
- (f) Such other matters as the whole Committee shall by unanimous decision decide.

#### 2.03 Bank Accounts

The Committee shall open and maintain at least two bank accounts for the Common Facilities, which shall include: (a) general operating account; and (b) reserve fund account. These accounts shall be separate and distinct from the accounts held by each of the Corporations and the signing authorities set out in paragraph 2.04 shall apply. All duties, obligations, standard of care, etc. applicable to bank accounts as set out in the Act and the Corporations' Declarations and by-laws shall apply to these bank accounts.

#### 2.04 Signing Authority

The parties agree that except for serious and immediate emergencies, the signing authority for any matter, including but not limited to, the bank accounts for the Common Facilities, any contract, or the borrowing of funds, and the signing of audited financial statements shall require two signatures consisting of one member from each of the parties.

Notwithstanding the foregoing, in cases of serious and immediate emergencies the following shall apply:

- (a) If one of the two authorized/designated signatories is not available to sign then that person's corporation shall designate a replacement authorized signing person;
- (b) If, acting reasonably, that corporation is unable to designate or authorize a replacement person to sign in time to properly deal with the serious and immediate emergency, then any other member of the Committee may be the second signing authority regardless of which corporation that person is from;

#### 2.05 Property Management for the Common Facilities

Presently each party has contracted with its own, different, property management company, and the property management company acting for TSCC 1466 is also the property management company for the Common Facilities. The Corporations agree that if they both have contracted with the same property management company then that company would also manage the Common Facilities.

In the situation where the Corporations have different property management companies (as is presently the case) then the Corporations agree that the management of the Common Facilities be alternated, or rotated, between the two management companies on a bi-annual basis, with the outgoing company reasonably assisting the incoming company with the transition.

The Corporations agree to have this provision inserted in any property management agreement they enter into, on the assumption that the management company wishes to manage the Common Facilities. For greater clarity, nothing in this clause 2.05 is meant to restrict one Corporation from contracting with any management company nor in any way to restrict a management company from conducting business with either Corporation, or to force a management company to manage the Common Facilities, if it does not wish to.

In the case where it would be the turn for the management company of one Corporation to manage the Common Facilities and it does not wish to, or cannot, then the outgoing management company (of the other corporation) shall have the right to continue the Common Facilities for a further two years without further approval of the committee.

Nothing in this clause 2.05 derogates from or in any way affects the normal termination rights under a management agreement (which usually provide for a 60 day termination for any reason).

#### 2.06 Liaison with Property Manager of the Common Facilities

Liaison with the property manager for the Common Facilities shall be by two members of the Committee consisting of one member from each party (the "DMs" or individually a "DM"). Subject to below, it is only the DMs together who can give binding instructions to property management.

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In all cases where instructions are required, then the property manager shall contact the DMs in writing (email is acceptable) for such instructions. Each DM shall communicate with the other and with the property manager within 48 hours of the time of the said notification, to try to agree on the instructions to give the property manager. If one DM does not respond to the other or to the property manager with their instructions within the said 48 hours, then it shall be deemed that the non-responding DM has agreed with the instructions of the other DM and those instructions shall be the instructions from the Committee to the property manager. In this case both the property manager and the responding DM shall immediately advise the Committee of the matter, the instructions given and the action taken by, or to be taken by, the property manager.

In situations that are not serious or of an immediate emergency nature and the DMs have responded but cannot agree on the instructions, then it shall be deemed that there are no instructions and the issue shall be placed on the agenda for the next Committee meeting and decided upon by the Committee at that meeting.

#### 2.07 Annual Budget

The Committee and property management shall on an ongoing basis review the Common Facilities Budget to ensure that all items are allocated appropriately to minimize as much as possible any duplication of items with the Corporations' own budgets.

#### 2.08 Reserve Fund and Reserve Fund Study

The Committee shall maintain a clearly designated reserve fund to comply with all requirements of the Act and the Corporations' Declarations, with the reserve funds being held in the reserve fund bank account described in 2.03 above.

The Committee shall also adhere to and be bound by all reserve fund studies, funding and funding plans requirements set out in the Act.

#### 2.09 Insurance

The Corporations shall adhere to the insurance requirements set out in the CFA, but the parties recognize that there could be overlap or duplication of insurance coverage with the individual policies held by each party. Therefore, to the greatest extent possible, without reducing the correct and proper insurance coverage to be carried for the Common Facilities, both as to perils insured and the quantum of coverage, the parties will investigate and if possible modify the Common Facilities insurance as much as possible in order to save costs.

#### 2.10 Superintendent and Superintendent's Suite

Since the Superintendent's Suite (the "Suite") is owned by the Corporations as tenant-in-common, each Corporation has a separate mortgage on the Suite, and these mortgages expire at different times. Therefore, each party shall provide to the other a copy of their current mortgage, as amended or replaced from time to time.

It is agreed that if and when either Corporation wishes to sell its interest in the Suite, then it can only sell/transfer it to the other party and not to any other person or entity. There shall be no obligation on the other party to purchase the interest in the Suite, but the parties agree to act reasonably and take reasonable efforts to try to purchase the interest, subject to the Boards of the buying corporation so deciding and receiving the necessary approval, if any, of the owners, in accordance with the Act.

The parties recognize that it could arise that one or both of the Corporations may need to refinance/re-mortgage their interests in the Suite. Therefore, the parties agree that each party shall be entitled to so re-finance/re-mortgage so long as:

- (a) At least 60 days written advance notice is given to the other party;
- (b) Such re-financing will not impede or in any way adversely affect the other party's rights and interest in the Suite;

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- (c) The re-financing party has completely followed and complied with all requirements under the Act and that party's Declaration, by-laws and rules.

It is agreed that TSCC 1526 shall be entitled to hire its own superintendent (the "1526 Superintendent") at its sole costs, expense and risk. In this case then with respect to the Superintendent defined under the CFA (the CFA Superintendent"), he/she shall continue to provide the normal services to the Common Facilities, and both parties shall contribute the necessary funds to the Common Facilities budget for the CFA Superintendent, including but not limited to, benefits and any payroll deductions and remittances. The balance of the CFA Superintendent's time and work will be for the benefit of TSCC 1466 and therefore any costs and expenses of the ~~CFA~~ Superintendent shall be the sole responsibility and risk of TSCC 1466.

2.11 P1, P2 and P3 of Both Corporations, Shared Servicing Systems, Water Fountain and Irrigation System

The parties acknowledge that with respect to the P1, P2 and P3 levels of both Corporations, and those shared servicing systems defined in the CFA as Shared Servicing Systems, under the CFA only the visitors' parking, the common driveway and ramp are included in, and form part of, the Common Facilities the costs of which, and the costs of the Required Easements (which includes the Servicing System Easements) are included in the Common Expenses. The parties believe that it would be in the best interests of both Corporations that the physical structure of the entire P1, P2 and P3 levels of the underground, including but not limited to all surface areas and ramps for all three levels, the drainage and electrical, exhaust and sprinkler systems and the visitors parking entrance lobby/vestibule located on the P1 level [Level A] almost directly under the main lobby of the two Corporations (collectively the "Underground") and the Shared Servicing Systems be designated as a part of the Common Facilities and thus their repair, maintenance and major replacement would be included in the Common Expenses and governed by the CFA and this Agreement.

The parties acknowledge that the water fountain room is part of the Common Facilities. The parties also believe that the water fountain itself, along with any and pipes, conduits etc. servicing it (the "Water Fountain") and the irrigation system for the two Corporations (the Irrigation System") should also be designated as part of the Common Facilities.

Therefore, the parties agree that the Underground, the Water Fountain, the Irrigation System and the Shared Servicing Systems shall be deemed to be, and treated as if they were, part of the Common Facilities under the CFA and thus all the rights and obligations under the CFA and this Agreement shall apply to it, including the costs of repair, maintenance and replacement.

For greater clarity, the Underground and the Shared Servicing Systems shall not include any stacks of any type, non-visitor parking spaces/spots, the lobby enclosures for the Underground (including outer surfaces/elevator vestibules) that are located on each Corporation's property (these are different than the visitors parking entrance lobby/vestibule mentioned in the preceding paragraph), lockers, locker rooms, and garbage and recycling rooms or areas (collectively the "Excluded Matters"). Each Corporation shall remain responsible for their respective part of the Excluded Matters.

Notwithstanding the foregoing, the Corporations agree that each Corporation shall remain responsible for the operation and management of the Excluded Matters. Each Corporation shall remain responsible to enforce all provisions under the Act and each Corporation's declaration, by-laws and rules along with any joint rules or rules from the Committee that may be passed time to time. For repairs to parking spots and lockers required as a result of damage caused by the owner of the parking spot of locker, or by a person for whom the owner is in law responsible, the Corporation on whose property the parking spot or locker is located shall take the normal steps to correct the damage and seek enforcement, compliance and collection from the owner.

2.12 Duties of Committee Members

- (a) The parties agree that the Committee is similar to a Board of Directors of a condominium corporation, and therefore, the duties and responsibilities of the Committee's members are, or should be, the same as the duties, responsibilities and ethical standards of members of a Board of Directors of a condominium corporation. This includes the duty to act honestly, in good faith

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and in the best interest of the Common Facilities, along with such other duties as set out in the Act, including but not limited the duty to disclose conflicts of interest.

(b) The parties also acknowledge and agree that the members of the Committee will be exposed to, and will handle and deal with, confidential information of not just the respective parties and their common elements and assets, but also of the Common Facilities and of owners. It is therefore, recognized and agreed that the fiduciary duties and confidentiality standards that apply to a member of a Board of Directors of a condominium corporation apply equally to the Committee, its members and the respective parties.

(c) The parties agree to ensure that their representatives on the Committee adhere to and each member sign a copy of the Code of Ethics prepared and published by the Canadian Condominium Institute (Toronto), as amended from time to time.

#### 2.13 Indemnity of Committee Members

Every member of the Committee (the "Member") and their respective heirs, executors, administrators, successors, estate trustees and personal representatives shall at all times be indemnified and saved harmless jointly and severally by the parties from:

(a) all costs, claims, expenses, damages and liabilities which any Member suffers sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him or her for or in respect of anything done, permitted to be done, or omitted to be done by him/her in connection with the execution of the duties of his/her office; and

(b) all other costs, charges and expenses that such Member sustains or incurs in respect of the affairs of the Common Facilities and the Committee.

#### 2.14 Indemnity Insurance for Committee Members

If the insurance maintained separately by each of the parties for the benefit of their directors and officers does not cover the actions of their representatives appointed to be Members in the fulfillment of their duties as Members or fully covers the Liabilities set out in paragraph 2.12, then the Committee shall purchase and maintain insurance for the benefit of every Member in order to indemnify them against the said liabilities

#### 2.15 Rules for the Common Facilities

Until modified by the Committee in accordance with the voting procedure set out in this Agreement, the parties agree that the rules set out in Schedule "A" to this Agreement shall be the rules applicable to the Common Facilities. Each Corporation agrees to advise its owners and residents of these rules and distribute, circulate and post them appropriately in their building

### ARTICLE 3.00

#### GENERAL PROVISIONS

##### 3.01 Termination

This Agreement cannot be terminated other than by the consent of both parties, but can be terminated with such mutual consent. Except as may otherwise be agreed upon, if this Agreement is terminated, any easements and proprietary rights related thereto and as benefiting each of the buildings, the Common Facilities as set out in the CFA shall remain in full force and effect.

##### 3.02 Termination of any one of the Corporations

On the termination of any one of the Corporations pursuant to the Act, the unit owners of the corporation so terminated, shall be jointly and severally liable to comply with all obligations and

covenants of such corporation in this Agreement and will execute such further assurances as may be deemed necessary or desirable by the other party to give full force and effect to this paragraph.

### 3.03 Force Majeure

Whenever and to the extent any party is prevented, hindered or delayed in the fulfillment of any obligation hereunder (save and except a failure to pay moneys) for reasons beyond the reasonable control of such party, the liability of that party to perform such obligation shall be postponed for as long as and to the extent such prevention, hindrance or delay continues to exist.

### 3.04 Binding Effect of Agreement

The provisions of this Agreement are intended to run with the real property benefited and burdened thereby and shall be binding on and enure for the benefit of the respective successors in title thereof.

### 3.05 Compliance with Law

Each Party, in performing their respective obligations and exercising their respective rights under this Agreement and the CFA, covenants and agrees to comply with all rules, laws, orders, ordinances, regulations and requirements of any government, whether imposed by the local municipality, or by any governmental agency having jurisdiction over all of their property.

### 3.06 Indemnification

Each party agrees to indemnify and save each other harmless from all costs, expenses, damage and liability that it may suffer or incur as a result of any such party not complying with any of the terms of this Agreement.

### 3.07 Further Assurances

The parties covenant and agree to execute whatever further documents or assurances as are required to give effect to any and all provisions of this Agreement.

### 3.08 Severability

If any provision in this Agreement is determined by a Court of competent jurisdiction to be illegal or beyond the powers or capacity of the party or parties bound hereby, or in the event any part or provision of this Agreement is liable to determination pursuant to any provision of the Act, such provision or part shall be severed from this Agreement and the remainder of this

Agreement shall continue in full force and effect mutatis, mutandis. For purposes of giving effect to this paragraph, each clause, paragraph or article of this Agreement shall be considered severable from every remaining clause, paragraph or article of this Agreement.

### 3.09 The Planning Act

The provisions of this Agreement are subject to the provision of the Planning Act (Ontario) where applicable.

### 3.10 Notices

All notices, requests, demands or other communications by the terms thereof required, or permitted to be given by one party to another, shall be in accordance with Article 12 of the CFA.

### 3.11 Not Supersede CFA

This agreement is entered into for the purposes of clarifying and elaborating on the rights and obligations set out in the CFA with respect to the use, maintenance, operation, governance, replacement and repair of the Common Facilities. If there is a dispute between this Agreement and CFA, then the CFA shall take priority or precedent.

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IN WITNESS WHEREOF the parties hereto, have executed this Agreement.

TORONTO STANDARD CONDOMINIUM  
CORPORATION NO. 1466

Per: [Signature]  
Name: Dennis Hill  
Title: Vice President

Per: [Signature]  
Name: Mona Savard  
Title: General Manager

I/We have authority to bind the corporation

TORONTO STANDARD CONDOMINIUM  
CORPORATION NO. 1526

Per: [Signature]  
Name: DIANA SANCHEZ  
Title: PRESIDENT

Per: [Signature]  
Name: Laurie Diamond  
Title: Treasurer

I/We have authority to bind the corporation