

AGREEMENT TO PROVIDE ENERGY MANAGEMENT SERVICES

THIS AGREEMENT entered into this 30th day of January, 2017.

B E T W E E N:

PROVIDENT ENERGY MANAGEMENT INC.
(hereinafter called "Energy")

OF THE FIRST PART

- and -

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2566
(hereinafter called the "Corporation")

OF THE SECOND PART

WHEREAS the Corporation is comprised of owners of units and their appurtenant common interests, in a residential condominium consisting of 363 dwelling units, together with parking units, locker units, bicycle storage/locker units, shared service units, and other ancillary units (hereinafter collectively referred to as the "Building" or the "Condominium"), registered as Toronto Standard Condominium Corporation No. 2566, and municipally located at 255 Village Green Square, Toronto, Ontario (the "Real Property");

AND WHEREAS the Building contains a system consisting of wiring, fittings, sensors and a computer which are intended to monitor and control the consumption of heating fuel and electricity therein or therefrom (hereinafter collectively referred to as the "System");

AND WHEREAS the Corporation has agreed to retain the energy management services provided or furnished by Energy in respect of the System, in order to monitor and control the Building's consumption of heating fuel and electricity, on the express understanding that the System (and all of its component parts) shall at all times remain the sole property 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 now paid by each of the parties hereto to the other (the receipt and sufficiency of which is hereby acknowledged), the parties hereto hereby confirm the veracity and accuracy of the foregoing recitals, and further covenant and agree, to and with each other, as follows:

ARTICLE I - What Energy Shall Do

- 1.01 Energy shall maintain and operate the System in accordance with Energy's internal operating criteria which have been established and may be modified, from time to time in the future, in Energy's sole and unfettered discretion, acting reasonably and in the best interests of the Corporation (and without any requirement on the part of Energy to give notice to, or to obtain input from, the Corporation, regarding Energy's internal operating criteria or changes made thereto from time to time).
- 1.02 Energy agrees to assume complete responsibility for the care and maintenance of the System, and specifically agrees to complete and/or undertake the following:
 - a) Four (4) comprehensive maintenance inspections per year, complete with supply of all routine labour and parts for the System;
 - b) Each inspection will encompass a complete check of the System and related items, together with recommended adjustments necessary for energy efficiency;
 - c) Calibration of critical input points will be checked annually. These will include OAT (outside air temperature) sensors, chilled and condenser water temperature sensors, heating water temperature sensors and any other input points on the System deemed critical by Energy and the Corporation;
 - d) Routine telephone assistance will be included to assist in resolving programming problems and operational needs etc. The Corporation agrees to restrict non-emergency calls to normal business hours. (9:00 a.m. to 5:00 p.m. excluding weekends);
 - e) Energy shall provide 24-hour critical systems monitoring for domestic hot water, the heating system, the cooling system, and the primary boiler system (if and where applicable) via remote dial-up connection;
 - f) Energy shall maintain a System database back-up, and regularly update the back-up;
 - g) Energy shall notify the Corporation's property manager of critical conditions immediately upon receipt of a critical alarm, via remote dial-up connection;
 - h) Energy shall provide 24-hour non-critical systems monitoring, and Energy shall notify the Corporation's property manager of all non-critical conditions during normal business hours;
 - i) Energy shall provide qualified technicians available on a 24-hour basis to diagnose, troubleshoot, and service all components of the System; and
 - j) Energy shall provide to the Corporation, at no cost to the Corporation during the term hereof, all hardware and software upgrades that are determined by Energy to aid the operating efficiency, comfort, and diagnosis of the Corporation's heating, ventilation and air conditioning ("HVAC") equipment.

ARTICLE II - Term of Agreement and Renewal Option

- 2.01 The term of this agreement shall commence on the date of execution hereof (which shall for all purposes be the date above-mentioned), and shall expire five (5) years thereafter (hereinafter referred to as the "Initial Term").
- 2.02 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 Energy of its desire to renew the term of this agreement as aforesaid, at least 60 days prior to the end of the Initial Term.
- 2.03 In the event that the System (or any component parts thereof which are, in the sole opinion of Energy, material to the proper operation of the System) is destroyed by fire or any other cause, or in the event that the Corporation defaults in the due and regular performance of any of its obligations hereunder, then Energy 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 Energy may have as a result of the Corporation's default.
- 2.04 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 Energy, then Energy 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 Energy may have as a result of the Corporation's default.
- 2.05 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) Energy 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 Energy shall cease and the Corporation shall correspondingly be obliged to forthwith pay to Energy all outstanding amounts owed by the Corporation to Energy in accordance with the provisions of this Agreement, including all unpaid fees, costs and reasonable disbursements incurred by Energy 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 Energy, and on or before such termination, all outstanding amounts owed by the Corporation to Energy in accordance with the provisions of this Agreement shall be fully settled and paid.

ARTICLE III - Charges Payable By The Corporation To Energy and the Corporation's Obligation to Insure the System

- 3.01 The Corporation shall pay Energy:
 - a) a monthly fee, payable in arrears on the last day of each and every month throughout the term of this agreement (and any renewal thereof), in the amount of \$1,000.00 per month, plus all applicable taxes, for Energy's monitoring of the System and the Corporation's overall energy savings; and
 - b) an annual fee, payable in arrears in quarter-yearly installments (ie. on the last day of every third month period) throughout the term of this agreement (and any renewal thereof), in the amount of \$3,000.00 per year, plus all applicable taxes, for Energy providing a preventative maintenance program in respect of the System, as detailed in section 1.02 hereof.
- 3.02 Notwithstanding anything contained herein to the contrary, it is understood and agreed by the parties hereto that the foregoing monthly and annual fees shall only be applicable for the first year of this agreement and thereafter, the monthly and annual fees for each of the succeeding or subsequent years of this agreement shall be increased respectively from the monthly and annual fees payable during the immediately preceding year, by the percentage increase 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).
- 3.03 The Corporation shall obtain and maintain adequate insurance in respect of the 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 paying all applicable insurance premiums in connection therewith. Each insurance policy will name Energy or its nominee as the insured party and loss payee thereof.

ARTICLE IV - Calculating and Reporting Energy Savings

- 4.01 Energy shall prepare and deliver to the Corporation a yearly report setting out the aggregate amount of monetary savings that the Corporation has realized as a result of the operation of the System (hereinafter collectively referred to as the "Savings").
- 4.02 The Savings shall be calculated for each year throughout the term of this agreement and any renewal thereof. The Savings will be based on the model prepared and submitted for LEED (Leadership in Energy and Environmental Design), Toronto Green Standard Tier 1 or Toronto Green Standard Tier 2, as applicable.
- 4.03 In calculating the Savings, Energy may make adjustments deemed appropriate by Energy acting reasonably, taking into account factors generally accepted by the engineering profession as being relevant in determining the consumption of heating fuel and electricity in the Building during all relevant periods of time, including without limitation, variations in energy costs and outside temperatures, changes to the Building and its use or occupancy, the start-up of equipment and the addition of new equipment.

ARTICLE V - Access to System/Security of System

- 5.01 The Corporation shall take all steps desired or required by Energy to assist and co-operate in the operation of the System, and shall permit access to Energy's authorized agents and representatives to all relevant parts of the Building in connection therewith. Without limiting the generality of the foregoing, it is understood and agreed that for as long as this agreement is in existence, and up to one (1) year thereafter:
- a) the Corporation shall be obliged to provide consumption information relevant to the Building to Energy forthwith upon the latter's request for same made from time to time; and
 - b) Energy and its authorized agents and representatives shall have the free, uninterrupted and unobstructed right and license to enter upon and within the Building, upon giving prior reasonable notice to the Corporation or its property manager of any intended access or visit, for the purposes of inspecting, maintaining, repairing and monitoring the System, and examining the Corporation's books and records pertaining to the consumption of heating fuel and electricity with respect thereto.
- 5.02 The Corporation shall, throughout the term of this agreement and any renewal thereof, make available to Energy all of its books and records pertaining to the consumption of heating fuel and electricity in the Building, and shall provide Energy with copies of all invoices pertaining to the consumption of heating fuel and electricity in the Building. By entering into this agreement, the Corporation hereby irrevocably authorizes its property manager or managing agent to make available to Energy all of its books and records, in order to allow Energy to conduct its own investigations and to perform its duties and responsibilities as herein set forth.
- 5.03 The Corporation covenants and agrees to supply, without any charge or cost to Energy, a telephone line or internet connection (if applicable), that is dedicated to the System, together with adequate space in the Building for the maintenance of the System, in a location secured by a locked door and accessible only to personnel authorized by Energy. The Corporation shall keep said location secure, and shall forthwith report to Energy any incident of violation of said security which comes to the attention of the Corporation.

ARTICLE VI - Miscellaneous Provisions

- 6.01 The Corporation represents and warrants that it is responsible for the operation and maintenance of the Building, and has the power and authority to enter into this agreement and fulfil its covenants and obligations contained herein.
- 6.02 Save and except as provided in section 6.03 hereof, Energy shall not be responsible or liable for any death or injury arising from, or in connection with, any occurrence in or relating to the Building, nor for any damage to any property of the Corporation or of others located in or relating to the Building, nor shall Energy be responsible or liable for any loss or damage to any property of the Corporation or of others from any cause or source whatsoever, whether or not any such death, injury, loss or damage results from the negligence or gross negligence of Energy or its agents, servants or employees, or any other person(s) for whom Energy 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, and save and except as provided in section 6.03 hereof, it is expressly understood and agreed that Energy 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 and/or malfunction of the System (or of any component parts thereof), or otherwise.
- 6.03 The liability of Energy 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 HUNDRED (\$100.00) DOLLARS in respect of each such breach or claim, to a maximum of ONE THOUSAND (\$1,000.00) DOLLARS in the aggregate. Without limiting the generality of the foregoing, it is understood and agreed by the parties hereto that the Corporation shall not make or pursue any claim or proceeding against Energy, nor hold Energy 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.
- 6.04 Notwithstanding anything contained in this agreement to the contrary, it is expressly acknowledged and agreed that Energy has not made, and is not making, any representation or warranty whatsoever to the Corporation that any Savings shall result from the installation and operation of the System, and Energy shall not be liable to the Corporation in any manner whatsoever if no Savings are, in fact, realized as a result of the installation of the System, or if the amount of the Savings realized are unsatisfactory to the Corporation in any respect.
- 6.05 This agreement constitutes the entire agreement between Energy and the Corporation pertaining to the subject matter hereof, including, without limiting the generality of the foregoing, the installation, operation and monitoring of the System, and all prior negotiations, commitments, conditions, representations, warranties and undertakings are merged herein. 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 Energy to the Corporation relating to the subject matter of this agreement.
- 6.06 No amendment or other modification to this agreement shall be valid or binding upon Energy or the Corporation unless it is writing and signed by both Energy and the Corporation.

- 6.07 No waiver by Energy of any breach, failure or default in performance by the Corporation, and no failure, refusal or neglect by Energy 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 Energy 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 be construed in accordance with, the laws of the Province of Ontario.
- 6.09 Time shall be of the essence of this agreement, in all respects.
- 6.10 Any notice or report which Energy 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 Energy hereunder may be duly delivered by personal delivery to Energy at the address indicated at the bottom of this agreement, and same shall be deemed to have been delivered when actually received by Energy.
- 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 be non-assignable by, the Corporation.

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

PROVIDENT ENERGY MANAGEMENT INC.

Per: 

AUTHORIZED SIGNING OFFICER

Per: 

AUTHORIZED SIGNING OFFICER

We have authority to bind the Corporation

**TORONTO STANDARD CONDOMINIUM
CORPORATION NO. 2566**

Per: 

Elio Zoffanieri - President

I have authority to bind the Corporation

Address for service:

Provident Energy Management Inc.
20 Floral Parkway
Concord, Ontario, L4K 4R1
Attention: David Hamilton

Address for service:

Toronto Standard Condominium Corporation No. 2566
255 Village Green Square, Toronto, Ontario, M1S 0L7