

THIS INDENTURE made this 27th day of August, 2012

BETWEEN:

YORK CONDOMINIUM
CORPORATION NO. 323, a corporation
created under the Condominium Act,

(hereinafter called "323")

OF THE FIRST PART;

- and -

YORK CONDOMINIUM
CORPORATION NO. 435, a corporation
created under the Condominium Act,

(hereinafter called "435")

OF THE SECOND PART.

AGREED BACKGROUND FACTS

- A. On April 27, 1977 323 and Starburst Investments Limited ("Starburst") entered into an agreement to jointly operate the High Park Green Recreational facilities ("HPGR") for the benefit of 323 and a condominium being built by Starburst on adjacent land. (the "HPGR Agreement").
- B. The Condominium under construction was registered as 435 and Starburst assigned all of its rights under the HPGR agreement to 435.

- C. The HPGR agreement provided for easements over the lands of the parties in favour of the non-owner party and provided for the joint management of the recreational facilities.
- D. On September 19, 2005 the parties entered into an agreement under which the parties gave up all rights to lands leased from the City of Toronto on which HPGR operated tennis courts and a park in exchange for the transfer to 435 of part of lots 12 and 13 Plan 660, designated as parts 1-5 on Plan 66R-22817 on which HPGR now operates tennis courts and a park (the "Land Swap Agreement").
- E. On May 3, 2007 the parties entered into Minutes of Settlement to resolve a dispute about the obligation of 435 to contribute to the maintenance of the portion of 323's underground garage over which 435 has an easement (the "Garage Easement Agreement").
- F. In light of changed circumstances the parties wish to amend the HPGR Agreement to change some of the easements and to modernize the management structure.

NOW THEREFORE, in consideration of the mutual agreements contained herein, which the parties acknowledge to be good and sufficient consideration The Parties agree as follows:

AGREEMENTS

1. Except as expressly provided in this agreement the HPGR Agreement, the Garage Easement Agreement and the Land Swap Agreement remain in full force and effect.

EASEMENTS

2. Pursuant to the terms of the Garage Easement Agreement the easement granted in the HPGR Agreement, section 1.02 over Parts 2 and 10 Plan 66R-9415 between an elevation of 358.50' and 366.00' is cancelled and, in its place 323 grants to 435 an easement over parts 4 (between an elevation of 109.27M and 111.56M) and 1 on plan 66R-26301 for the sole purpose of moving containers of waste from 435's property to the designated pick up area for waste on part 7 of plan 66R-9415.
3. 323 grants an easement to 435 over part 5 on plan 66R-26301 and 435 grants an easement to 323 over part 7 on plan 66R-26301. In each case the easement allows pedestrian passage over walkways within the areas covered by the easement and reasonable use and enjoyment of the gardens on the said lands. The lands subject to these easements shall be considered part of the recreational lands within the meaning of the HPGR Agreement and maintenance of the walkways and gardens on parts 5 and 7 shall be the joint responsibility of the parties in accordance with the HPGR Agreement.

4. The parties acknowledge that existing fences belonging to 435 encroach onto part 5 on plan 66R-26301. 323 consents to this encroachment and 435 shall be entitled to replace or repair these fences as long as the amount of the encroachment is not increased without the written consent of 323. The cost of the maintenance, repair and replacement of the fences is the sole responsibility of 435.
5. 323 grants an easement to 435 over part 6 on plan 66R-26301 for the purpose of pedestrian passage over the existing concrete walkway. The cost of snow removal and sanding or salting the walkway will be a joint cost of the parties in accordance with the HPGR agreement but 435 shall have no other responsibility for the cost of repairing, maintaining or replacing the walkway.
6. There is an access doorway between the 323 underground garage and the 435 underground garage which is at the north end of part 4 on Plan 66R-26301. Residents of each condominium ordinarily exit their respective garages by a ramp to Quebec Avenue in the case of 435 and by a driveway to Gothic Avenue in the case of 323. From time to time the normal method of egress for one of the condominiums is blocked. The parties agree that, in the event of such a blockage, the unblocked condominium will grant the residents of the blocked condominium the right to leave and enter through the unblocked entrance and to cross the underground garage of the unblocked condominium to do so. The parties agree that:
 - a. In the event of an unexpected blockage access will be granted immediately and the parties respective property managers and superintendents are authorized to take the necessary steps to provide access.

- b. In the event of a planned blockage the condominium affected will give written notice to the other condominium as far in advance as is practical setting out the expected duration of the blockage. The condominium receiving the notice will respond promptly and may impose reasonable terms on the access but will not unreasonably withhold approval of the access.

AMENDMENTS TO HPGR AGREEMENT

7. Paragraph 1 of the HPGR Agreement is amended by adding:
- 1.03 The term recreational lands shall include Parts 1 to 5 on Plan 66R-22817 and Parts 5 and 7 on Plan 66R-26301 and the term "recreation facilities" shall include any facilities on the said lands.
8. Paragraph 2 of the HPGR Agreement is amended by deleting the phrase "service lands" from paragraph 2.01
9. Paragraph 4.01 is deleted and replaced with the following:
- 4.01 The recreational lands shall be used for a swimming pool, tennis courts and a park subject to the rules made by the HPGR Board from time to time.

10. Article V is deleted and replaced with the following:

DISPUTE RESOLUTION

5.01 In the event that a dispute arises between the parties they will make good faith efforts to negotiate a resolution which may include conducting a joint meeting of the boards of both condominiums if either party requests such a meeting.

5.02 In the event that a dispute cannot be resolved by discussion between the parties either party may require that the dispute be mediated in which case the rules in Schedule 1 to this agreement shall apply.

5.03 In the event that a dispute cannot be resolved by mediation either party may require that the dispute be arbitrated in which case the rules in Schedule 2 to this agreement shall apply.

11. Paragraph 6.01 is deleted and replaced with the following:

- a. The recreational facilities and lands shall be managed by a Board of Directors with four members, two appointed by each party. At any meeting of the Board of Directors a quorum shall consist of three directors. All decisions of the Board shall be by a majority.

12. The second paragraph of Article XIII is deleted.

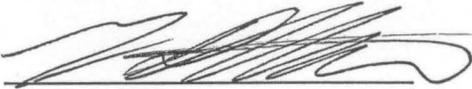
13. Paragraph 15.01 is deleted and replaced with the following:

15.01 Any notice under this agreement shall be sufficiently given if hand delivered to the management office of 323 at 50 Quebec Avenue, Toronto Ontario or to the management office of 435 at 100 Quebec Avenue, Toronto Ontario during the ordinary posted business hours of the respective offices.

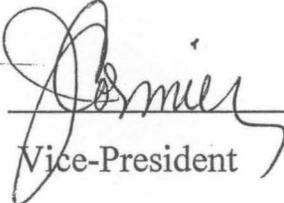
14. This agreement shall be effective once each of the parties has passed a By-law confirming the agreement and the By-Laws have both been confirmed by the unit owners of the two condominiums,

Dated: August 27, 2012

YORK CONDOMINIUM CORPORATION NO. 323 per:

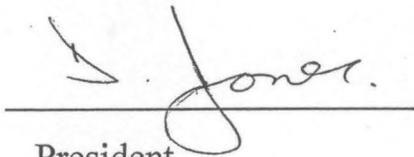


President

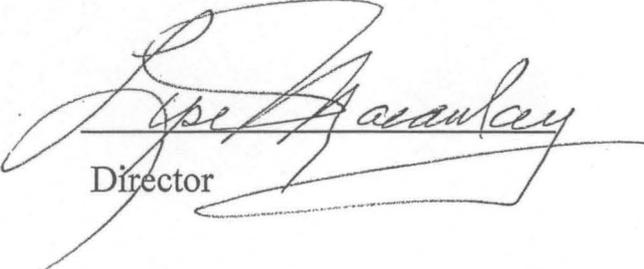


Vice-President

YORK CONDOMINIUM CORPORATION NO. 435 per:



President



Director

SCHEDULE "1"

MEDIATION

1. A Disagreement may be submitted to mediation by a party (the Mediation Initiating Party) by service of a written notice of submission to mediation (the Mediation Notice) on the other party to the Disagreement (the Mediation Responding Party).
2. The Mediation Notice shall include the name of three mediators proposed by the Mediation Initiating Party. The mediators proposed shall be independent of the parties and experienced in the mediation of condominium disputes
3. The Mediation Responding Party shall select one of the mediators proposed by the Mediation Initiating Party within 7 days of service of the Mediation Notice
4. If no mediator is selected during the 7 day period, the parties are deemed to have consented to the selection of the first mediator proposed by the Mediation Initiating Party.
5. The Mediation Initiating Party shall immediately notify the mediator selected (the Mediator) of his/her selection as Mediator.
6. The Mediator shall attempt, within 7 days of written notice to the Mediator of his/her selection, to schedule a mediation session by consulting with the parties to the Disagreement. The mediation session shall be an in-person meeting of all parties to the Disagreement together with the Mediator.
7. If one of the parties to the Disagreement does not respond to the Mediator, or if in the reasonable opinion of the Mediator one of the parties to the Disagreement does not cooperate in the scheduling of a timely mediation session, the Mediator shall deliver a notice to all parties stating a date, time and place for the mediation.
8. The parties to the Disagreement shall provide the Mediator with a written statement of the issues in dispute and any relevant documentation prior to the mediation session.
9. All communications at a mediation session, all documents and materials filed with the Mediator, as well as the Mediator's notes and records shall be deemed to be without prejudice settlement discussions.
10. The Mediator shall not disclose to anyone who is not a party to the mediation anything said or any materials submitted to the mediator except when ordered to do so by judicial authority or where required to do so by law.
11. If the mediation session does not result in settlement of the Disagreement, the Mediator shall immediately deliver a notice to all parties stating that the mediation has failed.
12. Each party shall pay an equal share of the Mediator's fees and expenses unless a settlement

agreement between the parties specifies otherwise. The Mediator may require a deposit prior to the mediation and if so requested, the parties shall pay a pro rata share of the total deposit to the Mediator to be held on account of and be applied against the Mediator's fees and expenses.

1. A Disagreement may be submitted to mediation by a party (the Mediator Initiating Party) by service of a written notice of submission to mediation (the Mediation Notice) on the other party to the Disagreement (the Mediator Responding Party).
2. The Mediation Notice shall include the name of three mediators proposed by the Mediator Initiating Party. The mediators proposed shall be independent of the parties and experienced in the mediation of condominium disputes.
3. The Mediator Responding Party shall select one of the mediators proposed by the Mediator Initiating Party within 7 days of service of the Mediation Notice.
4. If no mediator is selected during the 7 day period, the parties are deemed to have consented to the selection of the first mediator proposed by the Mediator Initiating Party.
5. The Mediator Initiating Party shall immediately notify the mediator selected (the Mediator) of his/her selection as Mediator.
6. The Mediator shall attempt within 7 days of written notice to the Mediator of his/her selection to schedule a mediation session by consulting with the parties to the Disagreement. The mediation session shall be an in-person meeting of all parties to the Disagreement together with the Mediator.
7. If one of the parties to the Disagreement does not respond to the Mediator, or if in the reasonable opinion of the Mediator one of the parties to the Disagreement does not cooperate in the scheduling of a timely mediation session, the Mediator shall deliver a notice to all parties stating a date, time and place for the mediation.
8. The parties to the Disagreement shall provide the Mediator with a written statement of the issues in dispute and any relevant documentation prior to the mediation session.
9. All communications at a mediation session, all documents and materials filed with the Mediator, as well as the Mediator's notes and records shall be deemed to be without prejudice settlement discussions.
10. The Mediator shall not disclose to anyone who is not a party to the mediation anything said or any materials submitted to the mediator except when ordered to do so by judicial authority or where required to do so by law.
11. If the mediation session does not result in settlement of the Disagreement, the Mediator shall immediately deliver a notice to all parties stating that the mediation has failed.
12. Each party shall pay an equal share of the Mediator's fees and expenses unless a settlement

SCHEDULE "2"

ARBITRATION

1. Thirty (30) days after the Mediator delivers a notice that the mediation has failed any of the parties to the Disagreement (the Arbitration Initiating Party) may submit the Disagreement to arbitration by a single arbitrator in accordance with the *Arbitration Act, 1991* by service of a written notice (the Arbitration Notice) on the other party to the Disagreement (the Arbitration Responding Party).
2. The Arbitration Notice shall include the name of three arbitrators proposed by the Arbitration Initiating Party. The arbitrators proposed shall be independent of the parties and experienced in the arbitration of condominium disputes
3. The Arbitration Responding Party shall select one of the arbitrators proposed by the Arbitration Initiating Party within 7 days of service of the Arbitration Notice
4. If no arbitrator is selected during the 7 day period, the parties are deemed to have consented to the selection of the first arbitrator proposed by the Arbitration Initiating Party.
5. If the preceding procedures do not result in the appointment of an arbitrator, any of the parties to the Disagreement may apply to the court for the appointment of the arbitrator in accordance with the *Arbitration Act, 1991*.
6. The Arbitration Initiating Party shall immediately notify the arbitrator appointed of his/her appointment as Arbitrator.
7. The Arbitrator, within 7 days of receiving notice of appointment, shall give at least 7 days written notice of a preliminary meeting to all parties to the Disagreement. The purpose of the preliminary meeting will be to determine procedural matters before the hearing and the preliminary meeting shall take place not more than 30 days after the appointment of the arbitrator.
8. The Arbitrator shall determine by whom and to what extent the costs of the arbitration are to be paid, which costs include the parties' legal expenses, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration, pursuant to Section 54 of the *Arbitration Act, 1991*.
9. The Arbitrator may require a deposit or deposits from time to time on account of the Arbitrator's fees and expenses and if so requested, the parties shall each pay an equal share of the deposit or deposits to the Arbitrator to be held on account of and be applied against the Arbitrator's fees and expenses.
10. In the event that the deposit or deposits is less than the Arbitrator's fees and expenses, the balance shall be paid in equal shares by the parties within 30 days of invoice from the Arbitrator.

11. The Arbitrator shall make an award, including written reasons, within 30 days of the completion of the hearing.
 12. To the extent not specified herein, the Arbitrator may determine the procedures to be followed in the arbitration, in accordance with the *Arbitration Act, 1991*.
1. The Arbitration Notice shall include the names of three arbitrators proposed by the Arbitration Initiating Party. The arbitrators proposed shall be independent of the parties and experienced in the arbitration of construction disputes.
 2. The Arbitration Responding Party shall select one of the arbitrators proposed by the Arbitration Initiating Party within 7 days of service of the Arbitration Notice.
 3. If no arbitrator is selected during the 7 day period, the parties are deemed to have consented to the selection of the first arbitrator proposed by the Arbitration Initiating Party.
 4. If the preceding procedures do not result in the appointment of an arbitrator, any of the parties to the Disagreement may apply to the court for the appointment of the arbitrator in accordance with the *Arbitration Act, 1991*.
 5. The Arbitration Initiating Party shall immediately notify the arbitrator appointed of his/her appointment as Arbitrator.
 6. The Arbitrator, within 7 days of receiving notice of appointment, shall give at least 7 days written notice of a preliminary meeting to all parties to the Disagreement. The purpose of the preliminary meeting will be to determine procedural matters before the hearing and the preliminary meeting shall take place not more than 30 days after the appointment of the arbitrator.
 7. The Arbitrator shall determine by whom and to what extent the costs of the arbitration are to be paid, which costs include the parties' legal expenses, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration, pursuant to Section 24 of the *Arbitration Act, 1991*.
 8. The Arbitrator may require a deposit or deposits from time to time on account of the Arbitrator's fees and expenses and if so requested, the parties shall each pay an equal share of the deposit or deposits to the Arbitrator to be held on account of and be applied against the Arbitrator's fees and expenses.
 9. In the event that the deposit or deposits is less than the Arbitrator's fees and expenses, the balance shall be paid in equal shares by the parties within 30 days of invoice from the Arbitrator.

