

**SOUTH KEYS LANDING**

**JOINT USE AGREEMENT**

Walkley Road

JOINT USE AGREEMENT

BETWEEN:

**1497213 ONTARIO INC.**

hereinafter called "Ontario"  
as current owner of the Property

AND:

**1497213 ONTARIO INC.**

on behalf of future Owners  
of the Property

**RECITALS**

Ontario is the owner of a multi-unit residential housing project located on the property described in Schedule "A" (the "**Property**");

There are one hundred and forty-four (144) freehold residential units to be constructed on the Property (the "Unit(s)").

Owners of Units share certain parts of the Property and the services and utilities which pass through these parts, as tenants-in-common (the "Common Property"). In addition, the Units share certain structural elements with other Units (the "Shared Elements"). The Common Property and the Shared Elements are described in this Agreement.

Therefore, this Agreement is being registered to define and establish the rights and obligations between Owners of Units, their mortgagees and tenants, from time to time, with respect to the Common Property and Shared Elements referred to in this Agreement.

Any person or corporation who acquires an interest in the Property or in any Unit after this Agreement is registered is bound by the provisions of this Agreement.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. DEFINED TERMS AND SCHEDULE

1.1 Definitions In This Agreement:

- (a) "**Common Expenses**" means the expenses of maintaining, repairing and replacing the Common Property. These expenses are described herein in Section 4.1.
- (b) "**Common Property**" means that part of the Property owned by all Owners as tenants in common as described in Section 2.2 and Schedule "B". This property is described in Schedule "B".
- (c) "**Owner**" or "**Owners**" means the owner of any one of the Units on the Property or the owners of all of the Units on the Property, respectively, and their successors and assigns.
- (d) "**Property**" means the lands described in Schedule "A".
- (e) "**Proportionate Share**" means the share of the Common Expenses from time to time that each Owner must pay. The Proportionate Share of each Owner is .6945%
- (f) "**Shared Elements**" means certain elements of the project which are for the joint and mutual use and benefit of only certain Owners. These elements are described in Section 2.5.
- (g) "**Unit**" or "**Units**" means the individual freehold titles.

1.2 Schedules:

The following Schedules to this Agreement are part of the Agreement:

Schedule "A" - Description of the Property  
Schedule "B" - Description of the Common Property  
Schedule "C" - Common Expenses and Pro-forma Budget  
Schedule "D" - Rules and Regulations  
Schedule "E" - Estoppel Certificate

2. DESCRIPTION OF THE UNITS, THE COMMON PROPERTY AND SHARED ELEMENTS

2.1 Freehold Interest in the Units and Common Property.

This Agreement applies to all 144 Units. Each Owner enjoys a freehold title to the Owner's respective Unit. This title includes a freehold title to a 1/144<sup>th</sup> interest, as a tenant in common with all other Owners of these Units, in the Common Property, entitling the Owner to use the Common Property for the benefit of the Owner's title.

2.2 Common Property.

The Common Property described in Schedule "B" includes the following elements:

- (a) services and utilities located on or under the Common Property and on or under the Units to service the Units and the Common Property, including hydro transformers, fire hydrants, pathway lights and catch basins together with conduits and enclosures for hydro and cable utilities;
- (b) mutual easements for access, services and utilities, repair, maintenance and replacement;
- (c) common storm sewers, sanitary sewers, and watermains for the mutual benefit and joint use of Owners;
- (d) grassed areas lying outside individual Units;
- (e) internal roadways for mutual access to the Property;
- (f) sidewalks that provide pedestrian access to the Units excluding pathways leading to the Units themselves;
- (g) twenty-two (22) parking spaces designated for use by visitors;
- (h) a road access to adjacent property;
- (i) an open space area along Walkley Road;
- (j) any other elements located in the Common Property which benefit all Owners.

The Common Property is subject to a right of way to the City for access for maintenance of a stormwater retention pond.

### 2.3 Parking

- (a) The twenty-two parking spaces shown on the Site Plan shall be for the exclusive use of visitors to the Property.
- (b) The owners will be entitled to park within the boundaries of their Units, whether inside attached garages or in driveways associated with the Units, provided they do not obstruct access to the Common Property or other Units.

### 2.4 Restriction on Partition and Sale of Common Property.

An Owner's freehold interest as a tenant in common of the Common Property shall not be separated from the freehold ownership of the balance of the Owner's Unit. The Owners agree not to make any application for partition or sale of the Common Property.

### 2.5 Shared Elements.

In addition to the Common Property, the Owners acknowledge that party or dividing walls exist for the joint use and mutual benefit of certain Owners. These party walls divide the Units and are for the benefit of the Owners on each side of the walls.

Other Shared Elements between these Unit Owners are:

- (a) The roof elements above their party walls;
- (b) Structural elements supporting and enclosing the party walls including foundations;
- (c) Any fences in the rear yard.

The Shared Elements shall exist in perpetuity unless the Owners who from time to time enjoy Shared Elements between each other mutually agree otherwise in writing.

### 2.6 This Agreement Binds All Owners.

By accepting a Transfer of a Unit, each Owner is deemed to have contracted directly with every other Owner for every term and condition of this Agreement.

### 2.7 Agreements to Sell Units Shall Refer to this Agreement.

The Agreement of Purchase and Sale for a Unit being sold by Ontario to the first purchaser(s) shall contain a clause whereby the purchaser(s) agrees not to use, occupy or deal with the Property, or any part of it, except in accordance with the provisions of this Joint Use Agreement. The Agreement of Purchase and Sale for a Unit being sold by the first purchaser(s) and all subsequent purchasers, shall contain the following provision, which shall be incorporated in all Agreements of Purchase and Sale and in an Assumption Agreement to be executed by such purchasers and delivered to the Owners' Committee:

"The Purchaser, and the Purchaser's successors and assigns agree not to use, occupy or deal with the property, or any part of it, except in accordance with the provisions of the Joint Use Agreement registered on the day of \_\_\_\_\_, 200\_ as Instrument No. \_\_\_\_\_. This agreement is for the benefit of the other Owners referred to in the Joint Use Agreement."

### 2.8 Relationship of Owners.

No Owner is, or is intended to be, or shall be deemed to be the partner, agent or legal representative of any other Owner, except to the extent provided for in this Agreement.

### 2.9 Several Liability.

As between the Owners, the obligations of each Owner relating to the Common Property as a whole shall be several and not joint and the obligation of any Owner shall be limited to that Owner's Proportionate Share.

### 3.0 MANAGEMENT OF THE COMMON PROPERTY

#### 3.1 Initial Management of Common Property.

The Common Property shall be managed by Ontario or its nominee until such time as a majority of the Units are transferred to the first purchasers. During this time Ontario or its nominee shall be entitled to charge to the Owners as a Common Expense a reasonable fee for labour furnished or materials supplied by Ontario or its nominees, servants or agents to manage, maintain, repair and replace the Common Property as required and, in default of payment on demand, Ontario shall have the same rights and remedies as set out in Section 4.5. Ontario or its nominee shall perform all the duties of the Owners' Committee described below until such time as the Owners' Committee has been elected.

#### 3.2 Turnover of Management to the Owners' Committee.

When a majority of the Units have been transferred by Ontario to first purchasers, the management and supervision of the maintenance, repair and replacement of the Common Property shall be done by an Owners' Committee described below.

#### 3.3 Owners' Committee.

Once created, the duties of the Owners' Committee are:

- (a) to prepare an annual budget for the maintenance, repair and general upkeep of the Common Property;
- (b) to estimate the amount of Common Expenses for the ensuing year;
- (c) to keep the Common Property insured according to the requirements of this Agreement;
- (d) to establish and utilize a reserve fund for contingencies including the major repair and replacement of the Common Property;
- (e) generally, to oversee the management and operation of the Common Property and, if deemed necessary, to appoint a property manager which will deal with day to day management, accounting and general administrative matters and will be fully accountable to the Owners' Committee;
- (f) to enforce the rules and regulations imposed upon the Owners as set out in Schedule "D" and to make such amendments as are necessary from time to time;
- (g) to arbitrate disputes between Owners who benefit from Shared Elements about maintenance, repair and replacement of the Shared Elements; and
- (h) to account to the Owners from time to time with respect to the performance of its duties, and, in particular, to call annual meetings of the Owners in accordance with this agreement.

#### 3.4 Meeting of Owners to Create the Owners' Committee.

Within sixty (60) days after Ontario ceases to be the owner of a majority of the Units, Ontario shall call the first meeting of the Owners. At this meeting, nominations of qualified individuals for the Owners' Committee will be received and then the Owners shall vote to elect five (5) qualified individuals to form the Owners' Committee.

#### 3.5 Qualifications.

Each member of the Owners' Committee shall be either:

- (a) an Owner of a Unit;
- (b) a nominee of an Owner;
- (c) a chargee of an interest in a Unit; or
- (d) a nominee of a chargee of all interest in a Unit.

A Committee member shall be deemed to have tendered his or her resignation from the Owners' Committee when there is default of payment of his or her Common Expenses for a period of sixty (60) days or more.

#### 3.6 Subsequent Elections, Term and Quorum.

At the first meeting of Owners and at each annual meeting of Owners thereafter, in accordance with the number of votes cast for each nominated Committee member, two (2) Committee members shall be elected to hold office until the first annual meeting following the date of his or her election and three (3) Committee members shall be elected to hold office until the second annual meeting following the date of his or her election. Where the Committee members are elected by acclamation, the Owners at the meeting shall determine the distribution of terms. A majority of the Owners may remove at their pleasure any member of the Owners' Committee.

A quorum for the transaction of business at any meeting of the Owners' Committee shall be three (3). Notwithstanding vacancies on the Committee, the remaining Committee members may exercise the powers of the Committee so long as a quorum remains in office. A quorum of Committee members may also fill a vacancy on the Owners' Committee by appointing one (1) Owner to hold office until the next annual meeting of Owners.

3.7 Calling of Meetings.

Meetings of the Owners' Committee shall be held when called by any Committee member. Notice of any meeting shall be given to each Committee member personally, not less than forty-eight (48) hours before the time when the meeting is to be held, or by ordinary mail, or by leaving the notice at the last recorded address of the Committee member not less than five (5) days before the day the meeting is to be held. No notice of a meeting shall be necessary if all the Committee members are present and consent to the holding of the meeting or if those absent waive notice of or otherwise signify in writing their consent to the holding of the meeting.

3.8 Regular Meeting.

The Owners' Committee may appoint a time and a place for regular meetings. A copy of any resolution of the Owners' Committee fixing such time and place shall be sent to each Committee member and no further notice shall be required for the regular meetings.

3.9 Indemnity of Committee Members and Officers.

Every Committee member and his or her personal representatives shall be indemnified and saved harmless by the Owners from and against:

- (a) any liability and all costs, charges and expenses that the Committee member 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 the execution of the duties of the Committee; and
- (b) all other costs, charges and expenses that the Committee member sustains or incurs in respect of the affairs of the Committee;

provided that:

- (i) all other members of the Owners' Committee are advised of any such action, suit or other proceeding, or cost, charge or expense, forthwith after the Committee member received notice; and
- (ii) the Owners are given the right to join in the defence of the action, suit or proceeding.

However, no Committee member shall be indemnified by the Owners in respect of any liability, cost, charge or expense that he or she sustains or incurs in or about any action, suit or other proceeding as a result of which he or she is adjudged to be in breach of any duty or responsibility set out in this Agreement, unless in an action brought against the Committee member he or she has achieved complete or substantial success as a defendant.

3.10 Officers.

The Owners' Committee may elect from any of its members a President, Secretary and Treasurer. One person may hold more than one (1) office. If any of these elected officers are unable to attend a meeting of the Owners' Committee, the remaining members may select from themselves a replacement for that meeting.

3.11 President.

The President shall preside at all meetings of the Owners and of the Owners' Committee and shall be charged with the general supervision of the business and affairs of the Common Property and this Agreement.

3.12 Secretary.

The Secretary shall give or cause to be given all notices required to be given to the Owners, Committee members, auditors, mortgagees and all others entitled to notice. The Secretary shall attend all meetings of the Owners' Committee and of the Owners and shall enter or cause to be entered in books kept for that purpose minutes of all proceedings at these meetings. The Secretary shall be the custodian of all books, papers, records, documents and other relevant instruments and shall perform such other duties as may be delegated by the Owners' Committee.

3.13 Treasurer.

The Treasurer shall keep or cause to be kept full and accurate books of accounting which shall record all receipts and disbursements and, under the direction of the Owners' Committee, shall control the deposit, safekeeping and disbursement of money. Upon request, the Treasurer shall render to the Owners' Committee or any Owner an account of all his transactions and of the financial position of the Owners governed by this Agreement. The Treasurer shall perform other duties that may be delegated to him or her by the Owners' Committee.

3.14 Agents and Attorneys.

The Owners' Committee shall have power from time to time to appoint managers, personnel, agents or attorneys with such powers of management or otherwise, including the power to sub-delegate, as may be thought fit. Without limiting the generality of the foregoing, the Owners' Committee may appoint a property manager which property manager shall be fully accountable to the Owners' Committee.

#### 4. COMMON EXPENSES

##### 4.1 Common Expenses.

The Common Expenses of the Common Property shall include the following:

- (a) all municipal, provincial or other government taxes, rates or assessments, including local improvement rates, charged, levied or issued against the Common Property as they become due and payable if assessed separately from the Units;
- (b) insurance premiums for the Common Property, including public liability insurance together with all costs related to securing insurance coverage and liability insurance for the Owners' Committee;
- (c) maintenance, repair and replacement of the Common Property;
- (d) snow removal costs for the Common Property;
- (e) landscape maintenance and lawn cutting of the Common Property;
- (f) central garbage pickup, if required;
- (g) the maintenance and repair of the stormwater retention pond;
- (h) the cost of legal, accounting, managing, auditing and engineering services or other professional advice and service required by the Owners' Committee;
- (i) the cost of personnel required to operate, maintain, repair and replace the Common Property;
- (j) a contribution towards a reserve fund for major repair and replacement of the Common Property which reserve fund shall constitute an asset of the Owners' Committee to be held in trust for all of the Owners. This fund shall not be distributed on the sale of a Unit.
- (k) any amounts spent to remedy any Owner's breach of this Joint Use Agreement as well as any amount spent by the Owners' Committee on behalf of the Owners to enforce the remedies provided for in this Agreement upon the default of any Owner;
- (l) the expenses incurred from time to time pursuant to the Joint Use Agreement; and
- (m) such other expenses as are normally incurred in maintaining a high quality, residential development.

The estimated Common Expenses and the Estimated Budget for the first twelve months after the completion of the first sales of Units are set out in Schedule "C".

##### 4.2 Payment of Common Expenses.

Each Owner shall pay to the Treasurer of the Owners' Committee, the Owners' Proportionate Share of the Common Expenses at such time or times determined by the Owners' Committee regardless of when the expense will be incurred without any set off or deduction. The Owners' Committee may request that payment be made by delivery to the Treasurer of the Owners' Committee of a series of monthly post-dated cheques for the Owner's Proportionate Share of the estimated Common Expenses for each year. The Owners' payments are to be held by the Treasurer for the benefit of the Common Property and used to pay all Common Expenses. The reserve funds received by the Treasurer shall be segregated and deposited into a special interest bearing trust account to be held by the Treasurer until the reserve funds are required to be expended, or until the Owners, by a confirming vote of two-thirds (2/3) of the then current Owners, direct the Owners' Committee to use the fund for another purpose.

##### 4.3 Change in Common Expenses.

The total monthly amount to be collected for Common Expenses may from time to time be changed by either:

- (a) a notice from the Owners' Committee advising that additional funds are necessary to keep Common Expenses current and setting out with reasonable detail the reason for the decision of the Owners' Committee; or
- (b) a confirming vote of a majority of the then current Owners.

##### 4.4 Priority of Common Expenses.

The Owners agree that each Owner's obligation to pay his or her Proportionate Share of the Common Expenses shall constitute a first charge upon each Owner's Unit subject only to municipal taxes having statutory priority. The amount of an Owner's Common Expense arrears will have priority to the rights of any purchaser or mortgagee of an Owner's interest, whether the rights of the purchaser or mortgagee were created before or after the Common Expense payments became due. This charge shall be deemed to be a charge to which the Mortgages Act, R.S.O. 1990 c.M.40 applies.

#### 4.5 Default.

If an Owner does not pay the Owner's Proportionate Share of Common Expenses (the "Defaulting Owner"), the amount in arrears shall bear interest in favour of the Treasurer as trustee for the other Owners at a rate of interest which is the greater of:

- (a) fifteen percent (15%) per annum, calculated monthly; and
- (b) a rate which is equal to five (5%) per annum above the prime lending rate of the Royal Bank of Canada on the date of each default.

If the Defaulting Owner's failure to pay continues for a period of fifteen (15) days, the other Owners, in addition to the rights set out in section 4.4, shall have the right to collect the arrears by action and shall have a charge upon the Defaulting Owner's Unit until the arrears are paid in full. If the arrears are not or have not been paid within thirty-five (35) days of the due date, the other Owners or any of them (the "**Paying Owners**") shall be entitled to advance the necessary sum on behalf of the Defaulting Owner. As security for this advance the Defaulting Owner hereby charges his or her Unit in favour of the Paying Owners in the amount so contributed from time to time together with interest and agrees that the terms of such charge are those terms set out in the charge terms filed under the *Land Registration Reform Act*, R.S.O. 1990, c. L4, as number 9320.

#### 4.6 Non-avoidance.

The obligations of an Owner to contribute towards Common Expenses shall not be avoided by waiver of the right to use the Common Property or by abandonment or by any other means.

#### 4.7 Direction to Tenant.

A Defaulting Owner who has leased his or her Unit to a tenant agrees that the Treasurer of the Owners' Committee, on behalf of the other Owners, shall be entitled to serve a notice upon the tenant of such Defaulting Owner's tenant requiring the tenant to pay all further rents due and becoming due to the Treasurer until such time as the full amount of the Defaulting Owner's arrears together with interest have been paid in full. The Owners agree that any lease or tenancy agreement which they may enter into with respect to their Unit shall be deemed to contain a provision authorizing the tenant to pay rent to the Treasurer in the event this notice is served.

### 5. CHANGES TO COMMON PROPERTY

#### 5.1 A Substantial Change Requires a Two-Third (2/3) Vote of Owners.

The Owners' Committee may, by a confirming vote of two-thirds (2/3) of the Owners, make any substantial additions, alterations or improvements to, or renovation of the Common Property. For this purpose, any addition, alteration, or improvement to, or renovation of the Common Property shall be deemed to be substantial if the cost of such addition, alteration or improvement to or renovation of the Common Property is in excess of twenty percent (20%) of the current annual budget.

#### 5.2 Other Changes.

The Owners' Committee may, by a confirming vote of a majority of Owners, make any other addition, alteration, or improvement to, or renovation of the Common Property.

### 6. USE OF UNIT

#### 6.1 Structural Alterations.

An Owner shall be prohibited from making any alteration to his or her Unit, the result of which will interfere with the structure or bearing walls of an adjacent Unit without the prior consent of the adjacent Owner. Any approved alterations shall be completed at the expense of the Owner and shall not result in any reduction in the Common Property.

#### 6.2 Alterations to Exterior.

An Owner shall not make any alteration to the exterior of his or her Unit without the prior approval of the Owners' Committee.

#### 6.3 Alterations to Grade.

An Owner shall not alter, repair, demolish, remove or replace any of the Common Property or alter the slope of the Property nor interfere with any drainage established on the Property.

#### 6.4 Restrictions on Leasing.

An owner shall not lease a Unit unless an agreement is signed by the tenant and delivered to the Owners' Committee by the Owner prior to the tenant taking possession of the Unit to the following effect:

"I, \_\_\_\_\_, covenant and agree that I and any person using the Unit and the Common Property will comply with the Joint Use Agreement affecting the ownership and use of the Unit and Common Property".

No tenant shall be liable for the prepayment of Common Expenses unless notified by the Owners' Committee that the Owner is in default of payment of Common Expenses, in which case, the tenant shall deduct,

from the rent payable to the Owner, the Owner's share of the Common Expenses, and shall pay the same to the Owners' Committee.

The Owner's rights and obligations with respect to the Owner's Land shall be joint and several with the tenant.

#### 6.5 Maintenance and Repair of the Shared Elements.

The obligation to maintain and repair and keep in good condition the Shared Elements shall rest with and be shared equally by the Owners from time to time who share the Shared Elements. The management and supervision of maintenance and repair of the Shared Elements comprising the party walls and road shall be exercised by the Owners who share same. In the event that any work is required to be done to maintain and keep in repair the party walls and road, it is agreed that prior to any such work being undertaken, approval as to its cost shall be obtained from the Owners affected by the work. Notwithstanding the foregoing, in the case of an emergency, any one of the Owners shall be at liberty to carry out the work required to be done or shall be entitled to exercise such easements and rights of way which are reasonably necessary for the purpose of doing the necessary work and may enter in or upon the Property which is to be affected by such work and the Owners of the remaining property shall indemnify the Owner which causes such work to be performed to the extent of their proper share of such work, the intention being that the cost of such work shall be borne equally by and amongst the Owners of the Shared Elements affected.

#### 6.6 Right of Access.

- (a) Any Owner who, pursuant to the provisions of this Agreement, is required or entitled to exercise supervision and management of the maintenance and repair of the Shared Elements, or is elected or appointed to the Owners' Committee, may exercise in relation thereto such easements and rights of access as are reasonably necessary for the purpose of carrying out such maintenance and repair to the Shared Elements or Common Property as the case may be and to this end the other Owners do hereby grant to these Owners and their servants and agents, including any utility or municipal authority, such easements and rights of access. Such easements and rights also extend to the necessary access to clean, paint, repair and replace that part of the party wall and roof that is not owned in common but situated on the boundary dividing the Units;
- (b) Each Owner shall have the right to maintain, repair and replace any encroachments resulting from eaves and horizontal or vertical extensions of party walls and the right to enter into and upon and to pass and repass over the abutting Unit at all reasonable times with equipment and machinery for the purposes of cleaning, painting, repairing, replacing and otherwise maintaining the building, the wiring of the Units, landscaping and fencing and any encroachments therefrom. Such right to access shall not include the right of entry into the building on the abutting Unit but shall include the right of passing and repassing over the roof of the abutting building;
- (c) It is acknowledged that each of the blocks of connected Units has a common storm sewer, sanitary sewer and watermain located beneath the Units and that each Unit is separately connected to such common pipes. All costs in relation to the common pipes are included in the Common Expenses. The Owners are responsible for the costs in relation to the pipes leading from the Units to the common pipes. The Owners' Committee is entitled to exercise such easements and rights of access over other Units on the Property as are reasonably necessary for the purpose of carrying out maintenance, repair and replacement of the Common Property;
- (d) It is acknowledged that there are underground hydro, gas, cable and telephone utilities located under certain Units which form part of the Common Property. All costs in relation to the said utilities are included in the Common Expenses. The Owners' Committee is entitled to exercise such easements and rights of access over the said Units as are reasonably necessary for the purpose of carrying out maintenance, repair and replacement of the said utilities.

#### 6.7 Damage.

In the event of fire or other casualty causing damage or destruction to property subject to the Shared Elements or the Common Property, such damage or destruction shall be repaired as expeditiously as possible following the happening thereof in a good and workmanlike manner with materials of standard quality and in accordance with all applicable by-laws, and for this purpose the Owners from time to time of the property so damaged or destroyed shall execute and deliver all necessary proofs of loss, and except to the extent that any mortgagee having an interest in fire insurance proceeds may otherwise require or to the extent that the Owners affected by such damage or destruction may mutually agree in writing, all cheques representing insurance proceeds shall be endorsed and released by them and such proceeds of insurance shall be applied to the cost of such repair in accordance with the progress of repair or re-construction.

### 7. SALE BY PURCHASER

#### 7.1 Notice of Sale.

Upon an Owner entering into an agreement for the sale of his Unit and his Co-tenancy Interest, he shall immediately thereafter notify the Owners' Committee of such sale, the name and address of the purchaser and the date set for the completion of the sale. The Owner shall pay to the Owners' Committee, prior to the completion of the sale, all monies due and owing by the Owner up to and including the date of completion of the sale with respect to any Common Expenses.

7.2 Assumption Agreement.

When the Owner sells his or her Unit, the Owner must cause the purchaser to sign an assumption agreement in a form satisfactory to the Owners' Committee whereby such purchaser assumes in writing all of the obligations of the Owner under this Agreement. If the Owner sells without obtaining this assumption agreement and delivering it to the Owners' Committee, the Owner shall continue to be liable for the obligations imposed under this Agreement despite having sold his or her Unit. Notwithstanding the foregoing provisions of this Section, a purchaser who has not signed an assumption agreement as required shall, upon registration of a transfer of the Unit in favour of such purchaser, be deemed to have signed an assumption agreement pursuant to which such purchaser has assumed, from the date of transfer of title to the purchaser, all obligations of the Owner of the Unit under this Agreement.

7.3 Purchasers' Estoppel Certificate.

At the written request of an Owner, of a purchaser from an Owner or of a mortgagee or proposed mortgagee of an Owner, and upon payment of the Owners' Committee's then current fee, the Owners' Committee shall deliver an Estoppel Certificate in the form attached hereto as Schedule "E".

8. MEETING OF OWNERS

8.1 Annual Meetings.

The Owners' Committee shall call an annual meeting of the Owners to receive reports, to elect Owners' Committee members, and to transact such other business as may be set out in the notice of the meeting. The Owners shall be provided with not less than twenty-one (21) days' written notice of all annual general meetings.

8.2 Meetings Called by Owners.

Any of the Owners may, in writing, call a meeting specifying the purpose or purposes of the meeting, the place for holding the meeting, and the date for holding of the meeting which shall not be sooner than fourteen (14) days after written notice has been given to the Owners.

8.3 Quorum.

The presence in person or by proxy of not less than thirty percent (30%) of the votes of all Owners shall be necessary to constitute a quorum at all meetings of Owners for the transaction of business. If a quorum is not present, the holders of a majority of votes, present in person or represented by proxy, at such meeting shall have power to adjourn the meeting from time to time until a quorum shall be present or represented. At any adjourned meeting at which a quorum is present or represented, any business may be transacted which might have been transacted at the meeting as originally notified.

8.4 Votes.

At all meetings, each of the Owners who is not at such time in default in the payment of the Owner's Proportionate Share of the Common Expenses shall be entitled to cast one (1) vote for each matter presented for vote. Only Owners not in default shall be entitled to vote either in person or by proxy. In the event that more than one (1) person shall have an interest in any one of the Units, then for the purpose of any voting decision to be made by the Owners, such persons shall be deemed to be one (1) for the purpose of computing such votes. All voting by Owners shall be on the basis of one vote per Unit.

8.5 General.

Unless otherwise specified in this Agreement, any resolution passed by a majority vote at a meeting of the Owners shall be binding on Owners and their respective successors and assigns.

9. INSURANCE

9.1 Insurance Coverage.

The Owners' Committee shall obtain and maintain the following insurance:

- (a) insurance against fire, major perils and such other perils as the Owners may from time to time deem advisable insuring the Common Property in an amount equal to the replacement cost of such real and personal property without deduction for depreciation;
- (b) public liability and property damage insurance, and insurance against the Owners' liability resulting from breach of duty as occupier of the Common Property insuring the liability of the Owners from time to time, with limits to be determined by the Owners, but not less than two million dollars (\$2,000,000.00); and
- (c) such insurance as the Owners' Committee may deem necessary or desirable for the purpose of indemnifying the members of the Owners' Committee.

9.2 Provisions Affecting Coverage.

Every policy of insurance referred to in Section 9 shall insure the interests of the Owners from time to time, as their respective interests may appear, and to the extent reasonably available shall contain the following provisions:

- (a) waivers of subrogation against the Owners, the Owners' Committee, their agents, employees and servants and as against the Owners and then permitted occupants except for arson, fraud, vehicle impact, vandalism, or malicious mischief;
- (b) such policy or policies of insurance shall not be terminated or substantially modified without at least sixty (60) days' prior written notice to the Owners;
- (c) waivers of any defence based on co-insurance or of invalidity arising from the conduct or any act or omission or breach of statutory condition of any insured;
- (d) any coverage provided or monies payable under any insurance purchased by any of the Owners, occupants or mortgagees shall not be brought into contribution with any coverage or monies payable pursuant to policies obtained by the Owners' Committee.

### 9.3 Settlement.

The Owners' Committee shall have the exclusive right to adjust any loss and settle any claims with respect to all insurance and to give such releases as are required, and any claimant, including the Owner of a damaged Unit, shall be bound by such adjustment. The Owners may, however, authorize any of the Owners in writing to adjust any loss to his or her Unit.

### 9.4 Insuring the Unit.

Each Owner shall insure his or her own Unit in an amount equal to its full replacement cost and shall provide the Owners' Committee with proof of insurance. If an Owner fails to so insure his or her Unit, the Owners' Committee may arrange for the required insurance in the name of the Unit Owner and the Unit Owner shall reimburse the Owners' Committee for the cost of placing such insurance, such cost to be recovered by the Owners' Committee as part of the Unit Owners' Proportionate Share of Common Expenses.

### 9.5 Breach of Conditions.

The Owners sharing the Shared Elements and Common Property shall at no time do or commit any act of omission or commission which would constitute a breach of statutory conditions applicable to the fire insurance covering the Unit of which he or she is the Owner and the Common Property or which would void such fire insurance coverage or, except with the consent of the insurer, increase the risk.

## 10. INDEMNIFICATION

### 10.1 Indemnification.

Each Owner shall indemnify and save harmless the other Owners from and against any losses, costs, damage, injury or liability whatsoever which any other Owner may suffer or incur resulting from or caused by an act or omission of the Owner, the Owner's servants or agents, guests and tenants to or with respect to the Common Property, except for any loss, cost, damage, injury or liability caused by an insured (as defined in any policy or policies of insurance) and insured against by the Owners.

### 10.2 Reimbursement.

If an Owner makes payments in respect to the Common Property in excess of the Owner's Proportionate Share for any reason other than a reason attributed to the Owner's act or omission or the act or omission of those for whom the Owner is in law responsible, the other Owners agree to indemnify the Owner for the excess amount so paid to the extent of their individual pro rata share of the amount and such amount shall be payable to the Owner on demand.

### 10.3 Indemnification of Owners' Committee.

Except in the case of gross negligence or fraud on the part of the Owners' Committee, its servants or agents, the Owners shall indemnify and save harmless the Owners' Committee members from and in respect of any and all liability and from all claims or demands arising out of damage or injuries to persons or property in or about or in any way connected with the Common Property.

## 11. ARBITRATION

### 11.1 Arbitration.

If there is any dispute, difference or question which is not covered by the provisions of this Agreement, or, which has not been resolved by the Owners' Committee, or which has not been resolved at a meeting of the Owners by a decision approved by the majority of the Owners, then the dispute, difference or question shall be referred to arbitration. The arbitration shall be conducted by three (3) persons, one (1) to be appointed by each side to the dispute and a third (3rd) to be appointed by the two (2) so appointed. If either side to the dispute fails to appoint an arbitrator within ten (10) days after one (1) of the parties has appointed an arbitrator and has notified the other in writing of the appointment and of the matter in dispute to be dealt with, the other arbitrators shall be appointed in accordance with the provisions of the *Arbitration Act, S.O. 1991*.

## 12. BANKING ARRANGEMENTS AND EXECUTION OF DOCUMENTS

### 12.1 Banking Arrangements.

The banking business of the Owners' Committee shall be transacted with such bank or trust company by such persons and in such manner as the Owners' Committee may designate.

12.2 Execution of Documents.

The Owners' Committee may, at any time and from time to time, direct the manner in which and the person or persons by whom a particular document or obligation may be signed in relation to this Agreement.

13. MISCELLANEOUS

13.1 Zoning.

The Owners acknowledge that all Units are considered one property for the purposes of compliance with the Zoning By-law of the City of Ottawa.

13.2 Choice of Law.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

13.3 Further Assurances.

The Owners agree to sign such further and other papers, cause such meetings to be held and resolutions passed, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement.

13.4 Notices.

The delivery of any notice required to be given to the Owner shall be effective upon personally delivered or if mailed, in this case notice shall be deemed to be delivered four (4) days after the date of mailing if mailed by prepaid registered post, addressed to the Owner at the last recorded address for the Owner in the ownership records maintained by the Owners' Committee. Any notice required to be given to the Owners' Committee shall be served personally on a Committee member or addressed by ordinary mail to the Owners' Committee at an address which the Committee advises the Owners of from time to time.

13.5 Severability.

Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality shall not affect the validity of the remainder of this Agreement.

13.6 Interpretation.

This Agreement shall be read with all changes of gender and number required by the context.

13.7 Successors and Assigns.

This Agreement is for the benefit of and it binds Ontario, the Owners and their respective successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunder executed this agreement on the \_\_\_\_ day of \_\_\_\_\_, 200\_

**1497213 ONTARIO INC.**

Per: \_\_\_\_\_, President  
I have authority to bind the corporation

**1497213 ONTARIO INC.**  
on behalf of all future Owners of the Property

Per: \_\_\_\_\_, President  
I have authority to bind the corporation

04069-0660 - Block 1, Plan 4M-1205  
04069-0661 - Block 2, Plan 4M-1205  
04069-0662 - Block 3, Plan 4M-1205  
04069-0663 - Block 4, Plan 4M-1205  
04069-0664 - Block 5, Plan 4M-1205  
04069-0665 - Block 6, Plan 4M-1205  
04069-0666 - Block 7, Plan 4M-1205  
04069-0667 - Block 8, Plan 4M-1205  
04069-0668 - Block 9, Plan 4M-1205  
04069-0669 - Block 10, Plan 4M-1205  
04069-0670 - Block 11, Plan 4M-1205  
04069-0671 - Block 12, Plan 4M-1205  
04069-0672 - Block 13, Plan 4M-1205  
04069-0673 - Block 14, Plan 4M-1205  
04069-0674 - Block 15, Plan 4M-1205  
04069-0675 - Block 16, Plan 4M-1205  
04069-0676 - Block 17, Plan 4M-1205  
04069-0677 - Block 18, Plan 4M-1205  
04069-0678 - Block 19, Plan 4M-1205  
04069-0679 - Block 20, Plan 4M-1205  
04069-0680 - Block 21, Plan 4M-1205  
04069-0681 - Block 22, Plan 4M-1205  
04069-0682 - Block 23, Plan 4M-1205  
04069-0683 - Block 24, Plan 4M-1205  
04069-0684 - Block 25, Plan 4M-1205  
04069-0685 - Block 26, Plan 4M-1205  
04069-0686 - Block 27, Plan 4M-1205  
04069-0687 - Block 28, Plan 4M-1205  
04069-0688 - Block 29, Plan 4M-1205  
04069-0689 - Block 30, Plan 4M-1205 SAVE AND EXCEPT Parts 1 and 2  
on Plan 4R-18712  
04069-0690 - Block 31, Plan 4M-1205  
04069-0691 - Block 32, Plan 4M-1205  
04069-0692 - Block 33, Plan 4M-1205  
04069-0693 - Block 34, Plan 4M-1205  
04069-0694 - Block 35, Plan 4M-1205  
04069-0695 - Block 36, Plan 4M-1205  
04069-0696 - Block 37, Plan 4M-1205

**SCHEDULE "B"**

**The Common Property**

The Common Property comprising the elements referred to in Section 2.2 of this Joint Use Agreement is hereby described as follows:

04069-0688 - Block 29, Plan 4M-1205

04069-0689 - Block 30, Plan 4M-1205 SAVE AND EXCEPT Parts 1 and 2  
on Plan 4R-18712

04069-0690 - Block 31, Plan 4M-1205

04069-0691 - Block 32, Plan 4M-1205

04069-0692 - Block 33, Plan 4M-1205

04069-0693 - Block 34, Plan 4M-1205

04069-0694 - Block 35, Plan 4M-1205

04069-0695 - Block 36, Plan 4M-1205

04069-0696 - Block 37, Plan 4M-1205

The Common Property is subject to a right of way to the City of Ottawa to access the stormwater management pond for maintenance.

**SCHEDULE "C"**

**Common Expenses & Pro-forma Budget**

South Keys Landing Common Expenses

Required Payments pursuant to item 4b of Purchase and Sale Agreement and items 4.1 and 4.2 of Joint Use Agreement prepared March 28, 2002

Revised:

REVENUES

Units	Per Month	Yearly	
144	\$50.25	12	\$86,825.00

EXPENSES

Utilities

Common Hydro \$1,000.00

Repairs and Maintenance

General Maintenance \$5,000.00

Landscaping and Grounds \$10,000.00

Snow Removal \$20,000.00

Site Improvements \$2,500.00

Garbage Pickup Allowance \$5,000.00

Stormwater Maintenance \$5,000.00

Fence Maintenance \$2,500.00

Administration

Insurance \$6,000.00

Audit/Accounting \$3,500.00

Legal \$2,000.00

Property Management \$10,000.00

Printing and Supplies \$1,500.00

Misc. \$1,500.00

SUBTOTAL \$75,500.00

Reserve Fund Contribution \$11,325.00 15% of subtotal

**TOTAL \$86,825.00**

Note: the foregoing are estimated operational expenses subject to revision

## SCHEDULE "D"

### RULES AND REGULATIONS

The following rules and regulations shall be observed by the Owner and the term "Owner" shall include any other person occupying the Unit with the Owner's approval, including any tenant occupying the Unit:

1. An Owner shall not do, or permit anything to be done in the Unit or bring to or keep anything in the Unit which will in any way increase the risk of fire or the rate of fire insurance on the Unit, or on property kept in it, or obstruct or interfere with the rights of other Owners, or do anything which is, on a reasonable standard, bound to injure or annoy them, or conflict with the laws relating to fire or with the regulations of the Fire Department or with any insurance policy for the Common Property or conflict with any of the rules and ordinances of the local Health Unit or with any statute or municipal by-law.
2. Debris, refuse or garbage shall be contained in properly sealed refuse bags and placed in the designated garbage areas or bins for pickup. Owners shall not place, leave or permit to be placed or left in or upon the Common Property any debris, refuse or garbage except in such locations at indicated times as are designated by the Owners' Committee from time to time.
3. No noise, caused by any instrument or other device, or otherwise, which in the opinion of the Owners' Committee may be calculated to disturb the comfort of the other Owners, shall be permitted.
4. Owners should not obstruct the Common Property or use it for any purpose other than that for which it was intended.
5. No telecommunications antenna, dish in excess of 24 inches in diameter, aerial, tower or similar structure and appurtenances thereto shall be erected on or fastened to any Unit, except as a connection for a common television cable system. The Owners' Committee must give its prior written approval to the location of any telecommunications dish less than 24 inches in diameter.
6. An Owner shall not harm, mutilate, destroy, alter or litter any of the landscaping on the Common Property including grass, trees, shrubs, ledges, flowers, flower beds, lockstones and curbing.
7. An Owner shall not place or keep any planters, structures, tents, furniture or other apparatus on the Common Property.
8. Any loss, cost or damage incurred by the other Owners by reason of a breach of any rules and regulations in force from time to time by any of the Owners shall be born by such Owner and may be recovered by the other Owners against such Owner in the same manner as Common Expenses.
9. No animal, livestock or fowl other than a pet shall be kept in the Units or on the Common Property. If the Owners' Committee, in its reasonable discretion, deems an Owner's pet to be a nuisance and the situation is not resolved to the satisfaction of the Owners' Committee, the Owner shall permanently remove the pet from the Property within two weeks of receipt of a written notice from the Owners' Committee requesting the pet to be removed. Pets shall be kept on a hand held leash when not confined in the dwelling or fenced areas of the Unit. Owners are required to "stoop and scoop" on the Common Property and all exterior areas adjacent to Units including driveways, front yards, side yards and rear yards, whether fenced or not.
10. No structure or fence may be erected in the front yard of the Unit. No structure may be erected in the side yard or rear yard of the Unit except a shed and/or a fence provided it does not exceed the height of the privacy fence separating the Unit yards, is made of wood and otherwise integrates with the appearance of the Units and fences, and does not encroach on or interfere with access to any underground services or utilities.
11. No repairs, lubrication or oil changes shall be made to any motor vehicle on any part of the Common Property.
12. Side yard fences shall have a gate, if necessary, to permit a right of access across the rear yard to adjoining properties.

**SCHEDULE "E"**

**ESTOPPEL CERTIFICATE**

\_\_\_\_\_, Ottawa

I, \_\_\_\_\_, Treasurer of the Owners' Committee established pursuant to a Joint Use Agreement registered with the Land Registry Office for the Land Registry Division of Ottawa-Carleton at Ottawa (No. 4) as Instrument No. \_\_\_\_\_ CERTIFY THAT:

- 13 The Owner of the Unit is not in default in the payment of his or her Proportionate Share of the Common Expenses under the Joint Use Agreement;
- 14 The Owners' Committee is not presently considering any increase in the Common Expenses;
- 15 The estimated Proportionate Share of Common Expenses for this Unit is \$ \_\_\_\_\_ annually, payable \$ \_\_\_\_\_ monthly on the 1st day of each month;
- 16 The Owners are not presently involved in any legal action affecting the Common Property;
- 17 The Owners' Committee is not aware of any proposed substantial addition, alteration or improvement to or renovation of the Common Property;
- 18 The Owners' Committee has secured all policies of insurance that are required under the provisions of the said Joint Use Agreement;
- 19 The address of the Owners' Committee is:

20 The Owners' Committee Members and Officers are as follows:

<u>NAME</u>	<u>ADDRESS</u>
-------------	----------------

21 The Owners' Reserve Fund amounts to \$ \_\_\_\_\_.

DATED at Ottawa, this      day of      , 200\_

**SOUTH KEYS LANDING COMMITTEE**

Name - \_\_\_\_\_  
Office - \_\_\_\_\_