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July 30, 2014
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Board of Directors
Metropolitan Toronto Condominium Corporation No. 1106
Attention: Daisy Cheng

Reply to: [redacted]
ext. [redacted]
file ref. 18716.001

Dear Board Members:

Re: Metropolitan Toronto Condominium Corporation 1106 (the "Corporation")
Cost Sharing and Easement Arrangements-Property Management Office

Further to our recent discussion, I have had the opportunity to review the Easement and Cost Sharing Agreement made the 26th day of February 1996, the Amending Agreement made the 30th day of October 1997 and the Second Amending Agreement made the 20th day of September 2007 (the "Agreements"), together with the Declaration of the Corporation, registered February 2, 1996, instrument numbers D489442, AT48/44m E124937 and D487185, respectively.

As I understand, the Corporation would like to know what happens in the event that any one of the condominium corporations (currently occupying the property management office) employ different property management and how practically the same may work going forward.

Background

Declaration

Section 1 of the Corporation's Declaration, which provides, in part, as follows:

> a) the "Adjacent Condominium Corporations" means those two (2) condominium corporations to be developed and created as two (2) separate condominium corporations under the Act or alternatively maintained as rental apartment buildings on those lands and premises, situate adjacent to the lands described in Schedule "A" attached hereto. The one Adjacent Condominium Corporation (herein referred to as "Building C" or the "Tam O'Shanter Highlands") constitutes a proposed condominium corporation to be registered under the Act by the Declarant or maintained as a rental building, and to be situate on that part of Block 1 and Part of Block 2, Plan 66M-2255, Scarborough, designed as Parts 3, 15, 16, 17, 18, 19, 20, 23, 24 and 25 on Reference Plan 66R-17138 (the "Building C Lands").
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> The other Adjacent Condominium Corporation (herein referred to as "Building D") constitutes a condominium corporation to be registered under the Act or maintained as a rental building by the registered owner of those lands and premises situate on that part of Block 2, Plan 66M-2255, Scarborough designed as Part 2 on Reference Plan 66R-16857 having a property identifier number 06105-0191 LT (the "Building D Lands").

This Corporation shall sometimes be referred to herein as the "Casitas". It is understood that for purposes of reference herein, this Condominium and the Adjacent Condominium Corporations are hereinafter collectively referred to as the "Three Condominium Corporations".

Section 31 Use of service rooms units

(being unit 52 on level 1 and units 257, 258 and 259 on Level A)

The service room units shall only be used for the purpose of housing the respective servicing equipment (including electrical and mechanical equipment) contained therein and any ancillary equipment or supplies and for the purposes of operating, maintain and repairing such equipment, and access to the service room units shall be restricted to the authorized agents, servants, employees and tradesmen or members of the board or any officers of the Three Condominium Corporations or the Shared Facilities Committee.

Section 32-Use of Management Office Unit

Being Unit 51 on Level 1)

The management office unit shall be used and occupied by the managers of the Three Condominium Corporations, from time to time, along with their respective employees and agents. In the event all Three Condominium Corporations shall have the same manager, then the management office unit shall be used as a central management office for such common manager. The cost of all utilities servicing the management office unit and the maintenance and operation of the management office unit shall be shared by the Three Condominium Corporations in accordance with their respective Proportionate Share of Shared Facilities Costs (as herein defined), regardless of whether or not the Adjacent Condominium Corporations have their own management offices within their respective buildings.

We draw your attention to the following in the Agreements:

> **Section 1.02(v)** "management office unit" shall mean unit 51 on level 1 of the Casitas, the use of which will be shared only by the Casitas and Building C in the circumstances set forth in the Casitas' declaration and this Agreement (2nd amendment), and which shall form part of the Two-Way Shared Facilities;
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> **Section 1.02 (mm)** "Shared Facilities" means collectively the Shared Units, the Common Interior Roadway (refer to definition 1.02(n)) and the Shared Servicing Systems (refer to definition 1.02(uu)). The term, "Shared Facility" means whichever one of the Shared Facilities that the context indicates;
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> **Section 1.02 (qq)** "Shared Units" shall collectively mean the electrical room situate in the Casitas being unit 259 on level A (hereinafter referred to as the "electrical room unit") and the security gatehouse unit, each of which forms part of the Shared Facilities and which shall be shared by the Three Condominium Corporations;

Section 1.02 (rr) "Shared Units Proportionate Interest" shall mean the interest in the Shared Units that will ultimately be conveyed to each of the Three Condominium Corporations as tenants-in-common, in accordance with Article 2.00 hereof;

Section 1.13 of the Second Amending Agreement
"Two-Way Shared Units" shall collectively mean the service room units and the management office unit each of which forms part of the Two-way Shared Facilities and which shall be shared by Building B and Building C;"

2.02 (f) Ascertainment of Total Amounts Required
Once the Shared Facilities Committee is created, it shall establish the total amount of money as is required for the proper operation, maintenance, repair and replacement of the Shared Facilities, (including the Shared Outdoor Facilities and Shared Servicing System) and each of the Three Condominium Corporations shall contribute to same in their respective Proportionate Share of the Shared Facilities Cost and at such times and upon such terms as may be agreed upon by the Shared Facilities Committee or as may be determined by the arbitrator pursuant to the arbitration provisions hereinafter provided, in the event no such agreement can be reached.

2.02 (h) Ratification of Acts of Shared Facilities Committee
Each of the boards of each of the Three Condominium Corporations shall consider for ratification all acts, decisions, contracts, agreements passed or entered into by the condominium's respective delegated representatives on the Shared Facilities Committee forthwith following the passage, enactment or entering into of same by the Shared Facilities Committee, and no acts of the Shared Facilities Committee's members shall be binding on any of the Three Condominium Corporation's whose board determines not to ratify such acts and if the board of any of the Three Condominium Corporations does not, within ten (10) days of being provided with notice of the acts or decisions of either one of its designated members who represent that corporation or the Shared Facilities Committee, give notice to the said committee that it refuses to ratify such acts or decisions of its designated member, then such board shall be deemed for the purpose of this agreement to have so ratified such acts or decisions made by its designated member(s).

Accordingly, from the foregoing, it is clear that:

1. Originally under the Easement & Cost Sharing Agreement (D489442), the Management Office was held and is to be shared equally by all Three Condominium Corporations.

The Corporation is thus entitled to its use of the space in conjunction with the other condominium, even if it has separate management. Further, the Corporation may choose to create an additional office in that space before it will consider using another unused portion of Casitas property. Assuming that the new office is not part of the Shared Units, the Corporation has the ability to do this unilaterally, subject to there being no provisions in the Declaration prohibiting the specific space to be used as a property management office. However, by doing so, the Corporation is also conceding or foregoing certain rights, while still having to pay its proportion of shared costs. Is this in the Corporation's best interest?

Pursuant to the Second Amending Agreement to the Easement and Cost Sharing Agreement dated September 20, 2007, the definition of the management office was amended and was confirmed to be shared only by the Corporation and Building C. There is no methodology for the Corporation to bill the other two corporations for the relocation of its property management office, nor is there any obligation for Building C to pay. This is something the parties must negotiate.

2. From the terms of the management agreement between Casitas and Del Property Management dated 30th day of January, 1998, as you are aware of termination must be done in the following manner:

> 12 (a) The Manager may, without cause, at its option, terminate this Agreement upon giving sixty (60) days notice in writing to the Corporation, and upon such termination, all obligations of the Manager shall cease, and the Corporation shall forthwith pay to the Manager any monies due to it pursuant to the provisions of paragraph 12(b) hereof, up to the date of termination of this Agreement. The Corporation may, without cause at its option, terminate this Agreement upon giving sixty (60) days notice in writing to the Manager, at which time all outstanding accounts owed by the Corporation to the Manager pursuant to the provision of paragraph 12(b) hereof shall forthwith settled and paid.

We understand that the Corporation is able to provide such written notice directly once it has secured new management; we have drafted same and have attached a copy for your review.

3. **Termination of Three-Way and Two-Way Shared Facilities Management Agreements**

We understand that there are no Management Agreements for Shared Facilities pursuant to our request for same to Del.

Accordingly, [redacted]'s email is incorrect in that termination must be done in accordance with the terms of the agreement, since there is no agreement. Thus the Corporation should be able to give its notice to terminate to coincide with termination of the management agreement.

Further, the Corporation should confirm that it has not been presented with any renewal of any other Shared Facility agreements and thus, no renewal, once presented, will be accepted by the Corporation.

I do recall from one of our conversations that there was a discussion about the renewal of one of these agreements. Under the terms of the Shared Facilities agreements, as highlighted above, the Corporation has the ability to decline the renewal of these agreements and, as such the agreement would not be renewable in accordance with its terms.

We trust the foregoing is satisfactory, please do not hesitate to contact us should you have any questions.

Yours truly,

ELIA ASSOCIATES PC

for: [redacted]

[redacted]
B.Comm, LL.B., A.T.C

[redacted]/aq
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