

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**CROWE SOBERMAN INC., in its capacity as
Licensed Insolvency Trustee of 1482241 Ontario Limited**

**RESPONDING MOTION RECORD OF THE RESPONDENTS,
NEELOFAR AHMADI, JAMSHID HUSSAINI AND HOMELIFE DREAMS REALITY
INC.**

March 14, 2018

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Homelife Dreams Reality Inc.

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO**

**CROWE SOBERMAN INC., IN ITS CAPACITY AS LICENSED INSOLVENCY
TRUSTEE OF 1482241 ONTARIO LIMITED**

**AFFIDAVIT OF IVAN MITCHELL MERROW
(sworn March 14, 2018)**

I, Ivan Mitchell Merrow, of the City of Toronto, MAKE OATH AND SAY:

1. I am a lawyer employed by the law firm of Miller Thomson LLP, counsel for the Respondents, namely Neelofar Ahmadi ("**Neelo**"), Jamshid Hussaini ("**James**") and Homelife Dreams Realty Inc. ("**Homelife**"), and as such I have knowledge of the facts and matters to which I hereinafter depose. Where I depose based upon information and belief obtained from others I have stated the source of that information and belief and I believe it to be true.
2. I make this affidavit primarily in response to the affidavit of Alain Checroune ("**Checroune**") sworn on March 13, 2018 (the "**Checroune Affidavit**") filed in support of the motion by 1482241 Ontario Limited ("**148**") for an order extending the time for 148 to file a proposal under the *Bankruptcy and Insolvency Act* ("**BIA**").
3. I also wish to respond to certain sections of the Fourth Report of Crowe Soberman Inc. dated March 7, 2018 (the "**Fourth Report**"), the proposal trustee (the "**Proposal Trustee**") as set out below.
4. The Respondents do not take a position with respect to 148's motion to extend the time to file a proposal. However, in light of the allegations contained in the Checroune Affidavit, the Respondents wish to clarify the record in respect to their interest in the Duncan Mill Property (as defined below) and set out their position for the benefit of the Court.

5. I note that as the Checroune Affidavit was only served on March 13, 2018, I am swearing this in place of our client in order to inform the Court and parties of our clients' position as soon as possible. Where a document has been referred to in the Fourth Report, I have indicated the location of the document.

Property Claim

6. As has been previously raised in these proceedings, the Respondents take the position that, among other things, they hold a 20% beneficial interest in the property municipally known as 240 Duncan Mill Road (the "**Duncan Mill Property**"). On that basis, the Respondents have raised the issue of whether the Duncan Mill Property should form part of the proposal proceedings of 148 at all.

7. This issue was raised during the initial motion to approve the sale process (the "**Sale Process**") on November 3, 2017. Although Justice Hainey ultimately approved the Sale Process (the "**Sale Process Order**"), in his endorsement, he acknowledged that this was an open issue by stating that the Sale Process Order did "*not determine the validity or enforceability of the agreements to which . . . Jamshid Hussaini, Neelofar Ahmadi and Homelife Dreams Realty Inc. are [a] party or related interests*". A copy of Justice Hainey's endorsement dated November 3, 2017 is attached as **Exhibit "A"**.

8. Despite this, at paragraphs 15 to 18 of the Checroune Affidavit, Mr. Checroune states that the Property Claim of the Respondents is invalid and without merit; however, he provides no basis for those statements.

9. To the contrary, both Neelo and James have sworn affidavits in these proceedings and in the Respondents' litigation proceedings against 148 and Checroune in Court File No. CV-14-506305 (the "**Action**") setting out the details of their beneficial interest in the property municipally known as 240 Duncan Mill Road (the "**Duncan Mill Property**"), which is the subject of the Sale Process. For example, copies of Neelo's affidavit sworn November 2, 2017 ("**Neelo's Affidavit**") and James' affidavit sworn November 2, 2017 ("**James' Affidavit**") are attached as **Exhibits B and C** to my affidavit. I have also attached selected exhibits that were attached to Neelo's Affidavit for the benefit of the Court, as described below. Both Neelo's Affidavit and James' Affidavit have been previously filed with the Court and arrangements will be made to have these affidavits available at the hearing of 148's extension motion.

10. In short, as set out in Neelo's Affidavit and James' Affidavit, it has always been the Respondents' position that, although 148 is the registered legal owner of the Duncan Mill Property, it only holds bare legal title to the Duncan Mill Property, as demonstrated by the following events and supporting documents:

- (a) On or about August 13, 2001, 148 purchased the Duncan Mill Property from C/F Realty Holdings Inc. A copy of the parcel register for the Duncan Mill Property is attached hereto and marked **Exhibit "D"**;
- (b) On or about August 2, 2005, 148, as borrower, and Computershare Trust Company of Canada ("**Computershare**") and Royal Bank of Canada ("**RBC**"), as lenders, entered into a first mortgage loan agreement (the "**Loan Agreement**"). Checroune signed the Loan Agreement on behalf of 148, as purchaser, and personally as the "beneficial owner" of the Duncan Mill Property. A true copy of the Loan Agreement is attached hereto and marked **Exhibit "E"**;
- (c) On or about September 21, 2005, 148 and Checroune entered into an express declaration for good and valuable consideration that 148 holds bare legal title to the Duncan Mill Property only on Checroune's behalf (the "**Bare Trust Declaration**"). A true copy of the Bare Trust Declaration is attached hereto and marked **Exhibit "F"**;
- (d) On September 29, 2005, 148 registered a mortgage on title to the Duncan Mill Property in favour of Computershare as Instrument No. AT935525 to secure the loan (the "**RBC Mortgage**"). A true copy of the RBC Mortgage is attached hereto and marked **Exhibit "G"**; and
- (e) On June 29, 2012 Checroune affirmed the Bare Trust Declaration by signing the Amended Trust Declaration with James and Neelo. The effect of the Bare Trust Declaration was to transfer 15% of Checroune's beneficial interest in the Subject Property in trust to James and 5% of the Subject Property in trust to Neelo (the "**Amended Trust Declaration**"), a true copy of which is attached hereto and marked **Exhibit "H"**.

11. In addition to the Amended Trust Declaration, James and Neelo entered into an agreement on June 6, 2012 with Checroune to purchase the Duncan Mill Property by

purchasing all of the shares of 148, which was later amended on June 18, 2012 (collectively, the "APS"). A true copy of the APS is attached hereto and marked **Exhibit "I"**.

12. I am advised by Neelo and James and believe that they paid an initial deposit of \$200,000 to Checroune on June 6, 2012 (the receipt of which was acknowledged in the APS) and a further \$1,000,000 to Checroune on or around June 21, 2012.

13. On the basis of the above, it is the Respondents' position that the APS, Amended Trust Declaration, and Supplementary Agreements are all valid and binding agreements for which they paid good and valid consideration. As a result, 148 is a trustee and holds bare legal title to the Duncan Mill Property in trust for Checroune, James and Neelo.

Interference and Delay Caused by Checroune/148

14. As noted above, James and Neelo had previously pursued, among other things, an order for specific performance in respect to the APS in the Action. A copy of the Fresh as Amended Statement of Claim is attached as **Exhibit "J"**.

15. At Paragraph 9 of Neelo's Affidavit, she notes that Checroune has done everything he can to thwart the Respondents' claims including threats, locking them out of the building and cutting power (see Para. 9). As a result, the Respondents have had to resort to seeking an injunction to restrain Checroune's conduct. On October 27, 2014, Justice Whitaker granted an interlocutory injunction (the "**Whitaker Order**") against 148 and Checroune that, among other things, restrained Checroune and 148 from interfering with the quiet enjoyment of the building and from selling, mortgaging or encumbering the Duncan Mill Property. A copy of the Whitaker Order is attached as **Exhibit "K"**.

16. Now shown to me and attached as **Exhibit "L"** to my affidavit is a copy of Justice Cavanagh's Endorsement dated April 19, 2017 in respect to a motion for summary judgment brought by Checroune and 148 in which they attempted to obtain an order discharging the certificate of pending litigation ("**CPL**") registered against the Duncan Mill Property in favour of the Respondents and setting aside the Whitaker Order. Justice Cavanagh not only dismissed their requests to discharge the CPL and the Whitaker Order, but also declined to grant summary judgment in respect to their claim for damages in respect to the lease entered into with 148.

17. The Action has been stayed as against 148 as result of these proposal proceedings. As such, there has been no judicial determination of the Respondents' claims. Further, contrary to Mr. Checroune's statements in his affidavit, as noted above, the Sale Process Order did not determine the validity or enforceability of the Respondents' Claims.

Proofs of Claim

18. As described in more detail in the Fourth Report, James and Neelo have repeatedly made their position known to the Proposal Trustee by way of Neelo's Affidavit, correspondence sent to the Proposal Trustee (see Miller Thomson's letters attached as Appendices H and L to the Fourth Report) and by filing Proofs of Claim (Property) in respect to their beneficial interests (see Appendix J).

19. Although the Respondents' Property Claims have been disallowed by the Proposal Trustee, the Proposal Trustee has made it clear that the disallowances were issued on a without prejudice basis, with a right to file a further claim, as the Proposal Trustee has not yet convened a claims process and as the claims are contingent and have not yet been determined (see Appendix K).

20. While the Respondents reserve their rights with respect to the position taken by the Proposal Trustee, as set out in the letter from Craig Mills of Miller Thomson dated February 20, 2018 (attached as Appendix L to the Fourth Report), the Respondents have requested that:

- (a) the net proceeds be held in trust by the Proposal Trustee following closing;
- (b) there shall be no distributions to any creditors subject to further order of the Court; and
- (c) the Proposal Trustee seek direction from the Court following closing in respect to a mechanism to resolve the Respondents' claim prior to the distribution of proceeds, the formulation of a claims process or a BIA proposal.

21. Although the draft Approval and Vesting Order contained in the motion record filed by the Proposal Trustee (Tab 4) does include a provision that the sale proceeds be held in trust pending further order of the Court, I also see that the draft Ancillary Order (Tab 6 to the

Proposal Trustee's motion record) contemplates that distributions be made to the First Mortgagees and the Second Mortgagees (as defined in the Fourth Report).

22. I am advised by Mr. Mills and believe that on March 9, 2018, he contacted counsel for the Proposal Trustee to request a copy of the security opinion provided to the Proposal Trustee along with details of the amounts proposed to be paid to the First and Second Mortgagees and in respect to the DIP Loan. I am further advised by Mr. Mills that he had requested copies of the mortgages. To date, no details or documents have been provided.

23. The Respondents agree with the position taken by Mr. Checroune that nothing should be paid to any lenders until this information has been provided and the parties have reached an agreement as to the amount owing or a further court order is made. In particular, as the Second Mortgage was subsequently registered in contravention of the clear provisions of the Whitaker Order, the Respondents need to carefully consider their position in this regard.

The Sale of the Property

24. I am also advised by Mr. Mills and believe that he had also inquired as to the purchase price in respect to purchase agreement that is the subject of the Proposal Trustee's sale approval motion. Counsel for the Proposal Trustee declined to provide him with this information. While understandably the purchase price is typically kept confidential in sale approval motions brought in the context of insolvency proceedings, it is difficult for the Respondents to formulate their position without any information. This is complicated further when an order is being sought to make distributions for undisclosed amounts to the First and Second Mortgagees.

25. Should the Court determine that the sale of the Duncan Mill Property should be approved, the Respondents reserve their rights to assert and have their Property Claims determined prior to the formulation of a proposal by 148 as noted above.

26. I make this affidavit in response to the Checroune Affidavit and for no other or improper purpose.

SWORN BEFORE ME at the City of Vaughan, in the Regional Municipality of York, this 14th day of MARCH, 2018.



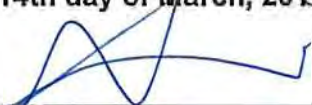
A COMMISSIONER FOR TAKING AFFIDAVITS



IVAN MITCHELL MERROW

Nahla Khouri, Lawyer
55861Q

**This is Exhibit "A" referred to in the affidavit
of IVAN MITCHEL MERROW, SWORN BEFORE ME
this 14th day of March, 2017**



A COMMISSIONER FOR TAKING AFFIDAVITS

Nahla Khourl, Lawyer
55861Q 

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

CROWE SOBERMAN INC., in its capacity as Licensed Insolvency Trustee of 1482241 Ontario Limited

Nov 3/17

November 3, 2017

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

MOTION RECORD
(Returnable November 2, 2017)

I am satisfied that this motion, which is not opposed, should be granted on the terms of the attached order. The order made today does not determine the validity or enforceability of the agreements to which Torjan Properties Ltd. or Jamshid Hussaini, Nellofor Ahmadi and

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Lawyers for 1482241 Ontario Limited.



Homelife Dream Realty Inc
and party, on any
related interests.

There shall be a
Sealing order with
respect to Confidential
Appendix A & B of the
Supplemental Report of the
Proposed Trustee dated
November 2, 2017.


I wish remain
seized of this matter.

Haining J.

This is Exhibit "B" referred to in the affidavit
of IVAN MITCHEL MERROW, SWORN BEFORE ME
this 14th day of March, 2017.



A COMMISSIONER FOR TAKING AFFIDAVITS

Nahla Khouri, Lawyer
55861Q 

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO**

**AFFIDAVIT OF NEELOFAR AHMADI
(sworn November 2ND, 2017)**

I, Neelofar Ahmadi, of the Town of Richmond Hill, in the Regional Municipality of York, MAKE OATH AND SAY:

1. I am one of the plaintiffs in the Action (as defined below), and one of the respondents to the within application, and as such I have knowledge of the facts and matters to which I hereinafter depose. Where I depose based upon information and belief obtained from others I have stated the source of that information and belief and I believe it to be true.

2. I make this affidavit in response to the Affidavit of Alain Checroune ("**Checroune**") sworn October 26, 2017 in support of a motion by 1482241 Ontario Ltd. ("**148 Ontario Ltd.**") for, among other relief, a priority charge in favour of 148 Ontario Ltd., authorization for a sale process in respect of the property municipally known as 240 Duncan Mill Road ("**240 Duncan Mill**"), interim financing in the amount of \$750,000.00 ranking ahead of all creditors except the mortgagees, and extending the time for 148 Ontario Ltd. to file a proposal (the "**Proposal Proceedings**").

3. 148 Ontario Ltd.'s motion materials were delivered to my lawyers at Miller Thomson LLP ("**MT**") on Friday, October 27, 2017. Mr. Jamshid Hussaini ("**James**") and myself are seeking an adjournment of the 148 Ontario Ltd.'s motion returnable November 3, 2017 so we have time to prepare a full response.

4. James, Homelife Dreams Realty Inc. ("**Homelife**") and I (collectively, the "**Plaintiffs**") are currently in litigation against Checroune and 148 Ontario Ltd. in court file CV-14-506305 (the "**Action**"). Our Action against Checroune is for, among other relief, specific performance

of his agreement to sell 240 Duncan Mill to James and me. Attached at **Exhibit "A"** is a copy of our Fresh as Amended Statement of Claim in the Action.

5. I believe that this proceeding is an attempt by Checroune and 148 Ontario Ltd. to evade their obligation to complete the sale of 240 Duncan Mill to us. Despite binding contracts and agreements to the contrary, Checroune has denied that James and I hold 20% of the shares in 148 Ontario Ltd., refused to acknowledge we hold a 20% interest in 240 Duncan Mill by a trust declaration, and refused to complete the sale of 240 Duncan Mill to us. I am also concerned that Checroune has failed to disclose that 148 Ontario Ltd. holds 240 Duncan Mill in a bare trust for the benefit of Checroune, James, and me.

6. As I will set out below, he has made multiple attempts to sell 240 Duncan Mill to other purchasers while having binding agreements in place with James and me. James and I have been prosecuting our claim diligently and intend to bring the Action to a determination on the merits.

OUR BENEFICIAL INTEREST IN 240 DUNCAN MILL

7. The following documents, among others, set out the interest that James and I have in 240 Duncan Mill:

- (a) the Agreement of Purchase and Sale and Amendment to Agreement of Purchase and Sale (together, the "**APS**") pursuant to which Checroune agreed to sell 240 Duncan Mill to James and me, true copies of which are attached to this affidavit and marked **Exhibit "B"**;
- (b) the Trust Declaration showing that 148 Ontario Ltd. has no beneficial interest in 240 Duncan Mill because it holds 240 Duncan Mill in a bare trust, and an Amended Trust Declaration (the "**Trust Declaration**") granting James and me a 20% beneficial interest in 240 Duncan Mill until the sale of the remaining 80% to us is completed, true copies of which are attached to this affidavit and marked **Exhibit "C"**;
- (c) the Consent to Transfer Shares, the Transfer of Shares, and the Share Certificates granting James and me 20% of the shares in 148 Ontario Ltd., true copies of which are attached to this affidavit and marked **Exhibit "D"**; and

- (d) the Undertaking of Checroune to sell, and James and myself to purchase, the remaining balance of the shares of 148 Ontario Ltd., a copy of which is attached to this affidavit and marked **Exhibit "E"**.

8. On June 13, 2014, we obtained leave from Master Haberman to issue a Certificate of Pending Litigation ("CPL") on 240 Duncan Mill (the "**Order of Master Haberman**"). Attached to this affidavit and marked **Exhibit "F"** is a true copy of the Order of Master Haberman and a true copy of the CPL.

9. Contrary to Checroune's agreements with us, he has done everything in his power to force James and me to abandon our interest in 240 Duncan Mill. For example, Checroune, among other things:

- (a) threatened and brandished a knife at our sub-tenant, was criminally charged for doing so, and was released on bail on the condition, among others, that he would not re-attend at 240 Duncan Mill;
- (b) locked us out of the building, shut off the lights, and cut power to the elevators during business hours;
- (c) threatened to sell 240 Duncan Mill to other purchasers; and
- (d) refused to allow James and me to participate in the management of 240 Duncan Mill.

The details are set out in a previous affidavit I swore in support of an injunction to restrain Checroune's conduct. The affidavit I swore on October 24, 2014 (the "**October 2014 Ahmadi Affidavit**"), without exhibits, is attached to this affidavit and marked **Exhibit "G"**.

THE INJUNCTION

10. On October 27, 2014, the Honourable Justice Whitaker made an interlocutory injunction order against 148 Ontario Ltd. and Checroune (the "**Whitaker Order**"). A true copy of the Whitaker Order is attached to this affidavit and marked **Exhibit "H"**. The Whitaker Order, among other things:

- (a) restrained Checroune and 148 Ontario Ltd. from interfering with our quiet enjoyment of 240 Duncan Mill, including restraining them from turning off the

lights during business hours, denying access to elevators, cancelling access cards and parking passes, towing our cars, posting notices that the Subject Property is closed, physically or verbally harassing, threatening or intimidating us, and in any way disrupting our business; and

- (b) restrained Checroune and 148 Ontario Ltd. from selling, mortgaging, encumbering or otherwise dealing with 240 Duncan Mill or the shares of 148 Ontario Ltd.

11. Despite the Whitaker Order, Checroune continued to wage a campaign of intimidation and harassment against me, James, Homelife, and our sub-tenants. The details are set out in a previous affidavit I swore on June 4, 2015 (the "**June 2015 Ahmadi Affidavit**"), a true copy of which is attached, without exhibits, to this affidavit and marked **Exhibit "I"**.

12. Checroune and 148 Ontario Ltd. have also continued to deal with 240 Duncan Mill and encumber 240 Duncan Mill in blatant contravention of the Whitaker Order. A true copy of a parcel register search of 240 Duncan Mill is attached to this affidavit and marked **Exhibit "J"**.

13. I believe that Checroune arranged to refinance the first secured mortgage on title without our consent. A true copy of the first mortgage and the assignment is attached to this affidavit and marked **Exhibit "K"**.

14. On June 27, 2016, we objected to the refinancing in a letter from our lawyers at MT to Checroune's counsel at the time. A true copy of the June 27, 2016 letter is attached to this affidavit and marked **Exhibit "L"**.

15. A further secured mortgage was registered on title to 240 Duncan Mill in breach of the Whitaker Order. The secured mortgage was registered as AT4349221 on title to 240 Duncan Mill is in favour of Janodee Investments and Meadowshire Investments Ltd. (the "**Meadowshire Charge**"). A true copy of the Meadowshire Charge is attached to this affidavit and marked **Exhibit "M"**.

THE SUMMARY JUDGMENT MOTION

16. From November 2016 to April 2017, Checroune and 148 Ontario Ltd. prepared and argued an unsuccessful summary judgment motion (the "**SJM**"). The state of affairs leading

up to the SJM are set out in a previous affidavit I swore on December 1, 2016 (the "December 2016 Ahmadi Affidavit"), a true copy of which is attached, without exhibits, to this affidavit and marked **Exhibit "N"**.

17. On April 19, 2017, the Honourable Justice Cavanagh released his decision with respect to Checroune and 148 Ontario Ltd.'s SJM. Justice Cavanagh specifically considered Checroune and 148 Ontario Ltd.'s request that our CPL be dismissed and the Whitaker Order be set aside. He refused to do so and dismissed their motion in its entirety. A true copy of the decision of the Honourable Justice Cavanagh is attached to this affidavit and marked **Exhibit "O"**.

18. Checroune and 148 Ontario Ltd.'s evidence throughout the Action has been plagued by inconsistencies and statements that defy belief. The gaps and credibility concerns with Checroune's evidence were set out in Justice Cavanagh's decision to order that the Action ought to proceed to trial.

19. For example, Checroune denies having any involvement in registering a secured mortgage on title to 240 Duncan Mill despite clear evidence to the contrary. The Meadowshire Charge records Checroune as personal guarantor and 148 Ontario Ltd. This encumbrance was put on title to 240 Duncan Mill in breach of the Whitaker Order. Notwithstanding this evidence, Checroune has baldly denied under oath that he was involved in registering the Meadowshire Charge. A true copy of the relevant excerpts from Checroune's cross examination dated January 17, 2017 is attached to this affidavit and marked **Exhibit "P"**.

20. Checroune is not a credible witness. I fear that he is manipulating and abusing the process available to him under the *Bankruptcy and Insolvency Act* (Canada) to prejudice James and me in our Action, and to the detriment of 148 Ontario Ltd.'s *bona fide* creditors.

21. James and I have made our best efforts to move the Action forward diligently, but our efforts continue to be undermined by Checroune's actions, including but not limited to the fact that:

- (a) Checroune has changed lawyers four times. True copies of the various Notices of Change of Lawyers we have received is attached to this affidavit and marked **Exhibit "Q"**.

- (b) I am advised by my lawyers that we served our Affidavit of Documents on Checroune and 148 Ontario Ltd. on September 26, 2016. We wrote to him many times before and after the SJM to obtain his Affidavit of Documents. True copies of letters from our lawyers at MT to counsel for Checroune and 148 Ontario Ltd. requesting their Affidavit of Documents are attached to this affidavit and marked **Exhibit "R"**.
- (c) Checroune refused to deliver his Affidavit of Documents until our lawyers served him with a Notice of Motion on September 7, 2017. A true copy of the Notice of Motion and Affidavit of Service of Patricia Santilli is attached to this affidavit and marked **Exhibit "S"**.

22. I am advised by my lawyers at MT that Checroune delivered his Affidavit of Documents on September 18, 2017. He did not respond to our request that a timetable be set in the Action. I am advised by Nahla Khouri of MT that on September 25, 2017, she wrote a letter to Checroune's counsel identifying deficiencies in Checroune's Affidavit of Documents, requesting agreement to a Discovery Plan, and commitment to our proposed timetable to dispense with the Action. A true copy of the September 25, 2017 letter from MT is attached to this affidavit and marked **Exhibit "T"**.

23. I am advised by MT that on October 4, 2017, Checroune's counsel ultimately agreed to produce him for discovery on January 16-18, or January 23-26, 2018. On October 12, 2017, MT agreed to hold those dates for discovery conditional on Checroune's agreement to our Discovery Plan and Timetable. MT advises me that they did not receive Checroune's agreement to a timetable. A true copy of this email exchange between MT and Checroune's counsel is attached to this affidavit and marked **Exhibit "U"**.

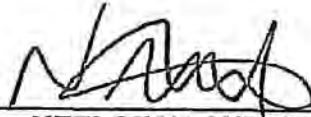
24. James and I are opposing the relief sought in 148 Ontario Ltd.'s motion except for the relief sought in paragraph 1(a) and (f) of 148 Ontario Ltd.'s Notice of Motion, validating service and extending the proposal period, respectively. We are seeking an adjournment to allow us the opportunity to cross examine Checroune and provide a more fulsome response to the relief sought in this motion.

25. I make this affidavit in response to 148 Ontario Ltd.'s motion and for no other or improper purpose.

SWORN BEFORE ME at the City of Markham, in the Regional Municipality of York, this 2nd day of November, 2017.



*Ivan Mitchell Merrow, Lawyer
Commissioner for Taking Affidavits*



NEELOFAR AHMADI

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. 31-2303814
Estate File No. 31-2303814

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at TORONTO

**AFFIDAVIT OF NEELOFAR AHMADI
(SWORN NOVEMBER 2, 2017)**

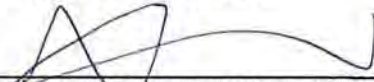
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Lawyers for the Respondents, Neelofar Ahmadi,
Jamshid Hussaini and Homelife Dreams Realty
Inc.

**This is Exhibit "C" referred to in the affidavit
of IVAN MITCHEL MERROW, SWORN BEFORE ME
this 14th day of March, 2017**



A COMMISSIONER FOR TAKING AFFIDAVITS

**Nahla Khouri, Lawyer
55861Q**

Court File No. 31-2303814
Estate File No. 31-2303814

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO**

**AFFIDAVIT OF JAMSHID HUSSAINI
(sworn November 2ND, 2017)**

I, Jamshid Hussaini, of the Town of Richmond Hill, in the Regional Municipality of York, MAKE OATH AND SAY:

1. I am one of the plaintiffs in the Action (as defined below), and I am the sole director and officer of Homelife Dreams Realty Inc., and as such I have knowledge of the facts and matters to which I hereinafter depose. Where I depose based upon information and belief obtained from others I have stated the source of that information and belief and I believe it to be true.
2. I make this affidavit in response to the Affidavit of Alain Checroune ("**Checroune**") sworn October 26, 2017 in support of a motion by 1482241 Ontario Ltd. ("**148 Ontario Ltd.**") for, among other relief, a priority charge in favour of 148 Ontario Ltd., authorization for a sale process in respect of the property municipally known as 240 Duncan Mill Road ("**240 Duncan Mill**"), interim financing in the amount of \$750,000.00 ranking ahead of all creditors except the mortgagees, and extending the time for 148 Ontario Ltd. to file a proposal (the "**Motion**").
3. I have read the affidavit of Neelofar Ahmadi sworn November 2, 2017 in response to the Motion, and I confirm that the contents of her affidavit is true. I adopt her evidence as my own and that of Homelife Dreams Realty Inc.

4. I make this affidavit in response to 148 Ontario Ltd.'s motion and for no other or improper purpose.

SWORN BEFORE ME at the City of Markham, in the Regional Municipality of York, this 2nd day of November, 2017.



Commissioner for Taking Affidavits

**IVAN MERROW
LAWYER**



JAMSHID HUSSAINI

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. 31-2303814
Estate File No. 31-2303814

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at TORONTO

**AFFIDAVIT OF JAMSHID HUSSAINI
(SWORN NOVEMBER 2ND, 2017)**

MILLER THOMSON LLP
40 King Street West
SUITE 5800
Toronto, Ontario
M5H 3S1

Gregory Azeff LSUC#: 425324C
Tel: 416.595.2660

Ivan Merrow LSUC#: 70064U
Tel: 905.415.6737
Fax: 905.415.6777

Lawyers for the Respondents, Neelofar Ahmadi,
Jamshid Hussaini and Homelife Dreams Realty
Inc.

**This is Exhibit "D" referred to in the affidavit
of IVAN MITCHEL MERROW, SWORN BEFORE ME
this 14th day of March, 2017**



A COMMISSIONER FOR TAKING AFFIDAVITS

**Nahla Khouri, Lawyer
55861Q**



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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REGISTRY
OFFICE 066

10088-0069 (LT)

PAGE 1 OF 5
PREPARED FOR FC01666
ON 2017/11/02 AT 08:47:33

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: LT 02-03 PL 7607 NORTH YORK; PT LT 04 PL 7607 NORTH YORK PT 2, RS1204; TORONTO (N YORK) , CITY OF TORONTO

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:
RE-ENTRY FROM 10088-0184

DTM CREATION DATE:
2002/02/25

OWNERS' NAMES:
1482241 ONTARIO LIMITED

CAPACITY SHARE:
HELD

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHRD
<p>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2002/02/23 **</p> <p>**SUBJECT. ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO</p> <p>** SUBSECTION 4(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 13, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *</p> <p>** AND ESCHEATS OR FORFEITURE TO THE CROWN.</p> <p>** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF</p> <p>** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY</p> <p>** CONVENTION.</p> <p>** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</p> <p>**DATE OF CONVERSION TO LAND TITLES: 2002/02/25 **</p> <p>NOTE: THE NO DEALINGS INDICATOR IS IN EFFECT ON THIS PROPERTY</p>						
HY471937	1965/10/20	AGREEMENT		*** DELETED AGAINST THIS PROPERTY ***	TOWNSHIP OF NORTH YORK	
HY5227330	1967/10/20	REST COV APL ANNEX				C
HY579166	1970/07/20	BYLAW EX PART LOT REMARKS: BY-LAW NO. 23292				C
RS1204	1970/11/17	PLAN REFERENCE				C
HY624203	1972/09/15	NOTICE OF LEASE REMARKS: SKETCH ATTACHED.		*** COMPLETELY DELETED ***	D. P. OIL LIMITED	
HY639054	1973/04/06	NOTICE OF LEASE REMARKS: SKETCH ATTACHED.		*** COMPLETELY DELETED ***	THE CLORON COMPANY OF CANADA LTD.	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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PAGE 2 OF 5
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* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NO#.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHD
NY645074	1973/08/16	NOTICE OF LEASE		*** COMPLETELY DELETED ***	THE CLOROX COMPANY OF CANADA LTD.	
NY646786	1973/09/30	NOTICE OF LEASE		*** COMPLETELY DELETED ***	WESTINGHOUSE CANADA LIMITED	
G4BA1088	1977/11/30	PLAN BOUNDRIES ACT REMARKS: RE: H/ 730261-PL10556				C
NY748158	1978/09/26	NOTICE OF LEASE		*** COMPLETELY DELETED ***	DCM VALLEY BUSINESS CENTRE LTD.	
TB176112	1984/06/04	RELEASE REMARKS: RE: AGREEMENT NY471937		*** DELETED AGAINST THIS PROPERTY ***		
TB977117	1995/11/14	NOTICE OF LEASE		*** DELETED AGAINST THIS PROPERTY *** 148224 CANADA LIMITED	ACCUMARK PROMOTIONS GROUP INC.	
TR51734	1999/11/30	NOTICE OF LEASE		*** DELETED AGAINST THIS PROPERTY *** CF/REALTY HOLDINGS INC.	KIMARK CHILD AND FAMILY SERVICES	
TR80940	2001/08/13	TRANSFER REMARKS: PLANNING ACT STATEMENT	\$15,300,000	CF/REALTY HOLDINGS INC.	1482241 ONTARIO LIMITED	C
TR80941	2001/08/13	CHARGE		*** DELETED AGAINST THIS PROPERTY *** 1482241 ONTARIO LIMITED	HELLER FINANCIAL CANADA, LTD.	
TR80942	2001/08/13	ASSIGNMENT GENERAL REMARKS: RENTS TR80941		*** DELETED AGAINST THIS PROPERTY *** 1482241 ONTARIO LIMITED	HELLER FINANCIAL CANADA, LTD.	
AT398140	2004/01/30	TRANSFER OF CHARGE REMARKS: TR80941 & TR80942		*** COMPLETELY DELETED *** HELLER FINANCIAL CANADA, LTD.	HELLER FINANCIAL CANADA HOLDING COMPANY	
AT398141	2004/01/30	NO ASSGN RENT GEN REMARKS: TR80941 & TR80942		*** COMPLETELY DELETED *** HELLER FINANCIAL CANADA, LTD.	HELLER FINANCIAL CANADA HOLDING COMPANY	
AT446534	2004/03/31	LR'S ORDER		*** COMPLETELY DELETED *** LAND REGISTRAR		

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* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
		REMARKS: DELETE NY471937, TD176112				
AT776208	2005/04/14	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** 1521428 ONTARIO INC.		
AT794523	2005/05/04	BIS CONSTRUCT LIEN		*** COMPLETELY DELETED ***	1521428 ONTARIO INC.	
		REMARKS: RE: AT776208				
AT928259	2005/09/22	APL (GENERAL)		*** COMPLETELY DELETED *** 1482241 ONTARIO LIMITED		
		REMARKS: DELETE NY624293, NY635854, NY645074, NY646780, NY748158				
AT928103	2005/09/23	APL (GENERAL)		*** COMPLETELY DELETED *** 1482241 ONTARIO LIMITED		
		REMARKS: TR51734 HAS BEEN DETERM. THERE'S NO OCCUPATION				
AT935525	2005/09/29	CHARGE	\$11,250,000	1482241 ONTARIO LIMITED	COMPUTERSHARE TRUST COMPANY OF CANADA	C
AT935526	2005/09/29	NO ASSGN RENT GEN		1482241 ONTARIO LIMITED	COMPUTERSHARE TRUST COMPANY OF CANADA	C
		REMARKS: RENTS, RE: AT935525				
AT945883	2005/10/11	DISCH OF CHARGE		*** COMPLETELY DELETED *** HELLER FINANCIAL CANADA HOLDING COMPANY		
		REMARKS: RE: TI90941				
AT1417119	2007/04/11	LIEN		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		
AT1444155	2007/05/11	DISCHARGE INTEREST		*** COMPLETELY DELETED ***	HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE	
		REMARKS: RE: AT1417119				
AT1519476	2007/07/26	NO DET/SURR LEASE		*** COMPLETELY DELETED ***	ACCUMARK PROMOTIONS GROUP INC.	
		REMARKS: RE: TR977117				
AT1519477	2007/07/26	NOTICE OF LEASE		*** COMPLETELY DELETED *** 1482241 ONTARIO LIMITED	ACCUMARK PROMOTIONS GROUP INC.	
AT2214546	2009/10/29	CAU AGR PUR & SALE		*** COMPLETELY DELETED ***		

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PAGE 4 OF 5
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* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHRD
				1482241 ONTARIO LIMITED BULLETIN 1000-02, AMENDED ON 2016/01/19 BY H. GARSTKA.	NORTH SASKATCHEWAN MOTOR IRMS INC.	
AT2340582	2010/03/31	APL (GENERAL)		*** COMPLETELY DELETED *** G DEGREE INTEGRATED COMMUNICATIONS INC.		
				REMARKS: EXPIRE DATE: 2009/12/30, DELETED PURSUANT TO BULLETIN 1000-02, AMENDED ON 2016/01/19 BY H. GARSTKA.		
				REMARKS: AT1519177		
AT2418963	2010/06/21	RESTRICTIONS ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	NORTH YORK FAMILY PHYSICIANS HOLDINGS INC.	C
AT2448796	2010/07/16	NOTICE OF LEASE		NORTH YORK FAMILY PHYSICIANS HOLDINGS INC.	NORTH YORK FAMILY PHYSICIANS HOLDINGS INC.	C
AT2463369	2010/07/29	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** 7063580 CANADA INC.		
AT2502481	2010/09/13	CERTIFICATE		*** COMPLETELY DELETED *** 7063580 CANADA INC.		
				REMARKS: CERTIFICATE OF ACTION RE: AT2463369		
AT2767471	2011/07/28	APL AMEND ORDER		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE	2144688 ONTARIO LTD.	
				REMARKS: S/B APPLICATION TO REGISTER COURT ORDER		
AT2928012	2012/01/24	CERTIFICATE		*** COMPLETELY DELETED *** 2144688 ONTARIO LTD.	1482241 ONTARIO LTD.	
				REMARKS: CERTIFICATE OF PENDING LITIGATION		
AT3589829	2014/05/27	CAUTION-LAND		*** COMPLETELY DELETED *** 1402241 ONTARIO LIMITED	HUSSAINI, JAMSHID AHMADI, HELOFAR	
AT3606967	2014/06/13	APL (GENERAL)		HUSSAINI, JAMSHID AHMADI, HELOFAR		C
				REMARKS: CERTIFICATE OF PENDING LITIGATION		
AT3633735	2014/07/15	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** MAM ENGINEERING LTD.		
AT3699036	2014/09/26	CERTIFICATE		*** COMPLETELY DELETED *** MAM ENGINEERING LTD.		
				REMARKS: CERTIFICATE OF ACTION		
AT3984281	2015/08/20	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** YYZ PLUMBING INC.		

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT4222577	2016/05/19	APL AMEND ORDER REMARKS: DELETE AT2767471 AND AT2958012.		ONTARIO SUPERIOR COURT OF JUSTICE	1482241 ONTARIO LIMITED	C
AT4222702	2016/05/19	APL DEL CONST LIEN REMARKS: AT363735. & AT3699036.		*** COMPLETELY DELETED *** NAMI ENGINEERING LTD.		
AT4225538	2016/05/25	CERTIFICATE		ALLEVIO CLINIC #1 TORONTO INC.		C
AT4236037	2016/06/02	TRANSFER OF CHARGE REMARKS: AT935925.		COMPUTERSHARE TRUST COMPANY OF CANADA	DAN REALTY LIMITED E. MANSION INVESTMENTS LIMITED COPPERSTONE INVESTMENTS LIMITED	C
AT4236049	2016/06/02	NO ASSIGN RENT GEN REMARKS: AT935925		1482241 ONTARIO LIMITED	DAN REALTY LIMITED E. MANSION INVESTMENTS LIMITED COPPERSTONE INVESTMENTS LIMITED	C
AT4261850	2016/06/29	NO ASSIGN RENT GEN REMARKS: AT935925, AT935526		COMPUTERSHARE TRUST COMPANY OF CANADA	1482241 ONTARIO LIMITED	C
AT4349221	2016/09/21	CHARGE	\$1,420,000	1482241 ONTARIO LIMITED	JANODEE INVESTMENTS LTD. HEADONSHIRE INVESTMENTS LTD.	C
AT4349222	2016/09/21	NO ASSIGN RENT GEN REMARKS: AT4349221.		1482241 ONTARIO LIMITED	JANODEE INVESTMENTS LTD. HEADONSHIRE INVESTMENTS LTD.	C
AT4349427	2016/09/21	APL DEL CONST LIEN REMARKS: AT3984281.		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE		
AT4349428	2016/09/21	APL DEL CONST LIEN REMARKS: AT2463369. DELETE AT2502981		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE		
AT4350034	2016/09/22	NOTICE REMARKS: AT4349221		1482241 ONTARIO LIMITED	JANODEE INVESTMENTS LTD. HEADONSHIRE INVESTMENTS LTD.	C

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**This is Exhibit "E" referred to in the affidavit
of IVAN MITCHEL MERROW, SWORN BEFORE ME
this 14th day of March, 2017**



A COMMISSIONER FOR TAKING AFFIDAVITS

**Nahla Khouri, Lawyer
55861Q**



**RBC Financial Group
CMBS Program**

320 Front Street West, 11th Floor
Toronto, Ontario, M5V 3B6

August 2, 2005

1482241 Ontario Ltd.
c/o Alain Checroune
105 Mosfield Drive
Don Mills, ON

Re: Duncan Mill Road Office
240 Duncan Mill Road, Toronto, ON

Dear Sirs:

RBC Royal Bank (the "Lender") offers to make a first mortgage loan (the "Loan") to 1482241 Ontario Ltd. (the "Borrower") on and subject to the terms and conditions set out in this letter (the "Commitment") and in First Addendum dated August 2, 2005.

A. BUSINESS TERMS

Property: 240 Duncan Mill Road, Toronto, ON

Loan Amount: \$11,000,000.00 *350,000.00* *OK*

Semi-Annual Interest Rate: 155 basis points over the yield on the Government of Canada mortgage benchmark bond that most closely approximates the Loan term, as determined by the Lender.

Term: 10 years (the last day of which is the maturity date)

Recourse: The Loan is full recourse to the Borrower.

Guarantor(s): Alain Checroune shall guarantee all Loan indebtedness.

Indemnitor(s): The Borrower and Alain Checroune shall each provide a limited indemnification to the Lender in the Lender's standard form for, among other things, fraud, environmental matters, misrepresentation and misappropriation of funds relating to the Property.

Maximum LTV: Loan to appraised value not to exceed 75%, as determined by the Lender.

Minimum DSCR: Not to be less than 1.25x, as determined by the Lender.

Payments: Equal monthly payments of principal and interest based on a 20 year amortization period shall be payable by automatic debit from the Borrower's account on the first day of each month. On the maturity date, the remaining Loan balance shall be due and payable.

Closing Date: On or before September 16, 2005.

Prepayment: The Loan may not be prepaid in whole or in part at any time prior to the maturity date.

Defeasance Rights: The Borrower shall have the right to substitute Government of Canada bonds acceptable to the Lender for the Property as Loan security, on and subject to the terms

set out in the Lender's standard Loan documents and the Borrower's satisfaction of all conditions therein.

- Subordinate Liens:** No subordinate mortgages, liens, charges or other financial encumbrances or security interests in respect of the Property shall be permitted (including without limitation, financing leases or other security in respect of any fixtures, furniture, equipment or other personal property) without the express written consent of the Lender in its sole discretion.
- Underwriting Fee:** 0.500% of the Loan Amount. The underwriting fee shall be deemed earned and payable by the Borrower to the Lender upon the Lender's issuance of a closing confirmation whether or not the Loan closes.
- Deposit for Third Party Costs:** \$20,000.00 to be remitted to the Lender upon execution of this Commitment and to be applied as described in this Commitment.
- Good Faith Deposit:** 1.0% of the Loan Amount to be remitted to the Lender upon the Lender's issuance of a closing confirmation as further described in this Commitment.
- Reserves:** The Borrower shall pay the reserves required by Schedule A. If an amount is not specified on Schedule A, any required reserves shall be specified in the Borrower's Rate Lock Confirmation.
- Transfers:** Any transfer of any interest in the Property or any part thereof, or any change of effective voting control of the Borrower or any unregistered/beneficial owner of the Property (excluding any change of ownership of less than 50% of the voting securities of such person) shall require the prior approval of the Lender in its sole discretion. If the Lender approves such a transfer or change of control, such approval shall be subject to the Borrower's satisfaction of certain conditions set out in the Loan documents, including execution and delivery of an assumption agreement (in the Lender's standard form) and payment by the Borrower to the Lender of an assumption fee of 0.25% of the Loan Amount (but not to exceed \$15,000.00) and all fees, costs and expenses of the Lender, its services, legal counsel and professional bond rating agencies.
- Closing Conditions:** The Lender shall not be obligated to advance the Loan until all terms and conditions of this Commitment have been fully complied with by the Borrower at its sole cost and expense and to the satisfaction of the Lender in its sole and absolute discretion, including each of the following conditions precedent:
- Due Diligence and Closing Deliveries: All due diligence and closing deliveries shall have been completed or received, as the case may be, and the Lender shall be satisfied with all due diligence investigations, inspections and reports with respect to all matters it considers necessary or desirable with respect to the Loan, the Property and each Borrower Entity (and the principals thereof), including without limitation all closing / underwriting deliveries and other matters set out in Schedule B.
- Credit Committee Approval: The Lender's credit committee shall have approved the Loan in its sole discretion. Nothing herein shall limit the discretion of the Lender's credit committee to approve or decline the Loan, and approval of the Loan may be subject to such conditions and terms (whether or not set out in this Commitment) as such committee may determine.

B. GENERAL PROVISIONS

1. **Borrower Entity/Lender Entity:** In this Commitment, (a) "Borrower Entity" means the Borrower, each Indemnitor, each Guarantor and each person having an unregistered/beneficial ownership interest in the Property from time to time. Unless disclosed in writing to the Lender prior to acceptance of this Commitment, the Borrower represents and warrants to the Lender that the Borrower does not hold the Property in trust for any unregistered/beneficial owners, and (b) "Lender Entity" means each of the Lender, Computershare Trust Company of Canada, the Loan servicer, all persons having an ownership interest in the Loan from time to time and their respective employees, officers, directors, agents and consultants. The Borrower must be a Canadian resident corporation.
2. **Property:** In this Commitment, "Property" shall include the fee simple estate in the lands, and all present and future buildings, improvements, fixtures, equipment, chattels, leases and rents, as described in the Lender's standard Loan documents and subject to the Lender's approval prior to Loan closing.
3. **Loan Documents:** The Loan shall be evidenced and secured by (a) a first priority freehold mortgage, charge, assignment and security interest of the Property, including a mortgage, a general assignment of rents and leases, and a general security agreement, (b) a recourse guarantee from the Guarantor(s), if any, (c) an indemnity from the Indemnitor(s), and (d) such other security as the Lender may otherwise reasonably require. Each unregistered / beneficial owner, if any, shall execute a beneficial owners' agreement in favour of the Lender. All Loan documents shall be in the Lender's standard form subject only to such modifications acceptable to the Lender to reflect the subject Loan transaction.
4. **Events of Default:** The Borrower shall be in default under the Loan, and the Lender may take immediate enforcement proceedings, if an Event of Default occurs, as set out in the Lender's standard Loan documents. Events of Default include, but are not limited to: (a) any default by the Borrower in any Loan payment or reserve payment when due; (b) any default by the Borrower or other Borrower Entity in observing or performing any other covenant, condition or obligation under any Loan document on its part to be observed or performed which is not cured within the applicable grace or cure period provided therein, or if no such period is provided, within 30 days following such written notice of such default; (c) any misrepresentation by any Borrower Entity in connection with the Loan; (d) certain acts of bankruptcy and insolvency in respect of any Borrower Entity as set out in the Lender's standard Loan documents; (e) any default or enforcement proceedings occur or are taken under any other encumbrance of the Property whether ranking prior or subsequent to the Lender's security; and (f) any expropriation of the Property which, in the opinion of the Lender, materially impairs the value of the Property, the validity, enforceability or priority of the security of the Loan documents, or the ability of any Borrower Entity to fulfil its obligations to the Lender in respect of the Loan. The Borrower shall immediately advise the Lender of an Event of Default. The Loan documents shall require the Borrower to pay a prepayment charge to the Lender upon any acceleration or prepayment of the Loan prior to maturity.
5. **Third Party Costs:** All third party costs and expenses of the Lender in connection with the Loan, including without limitation all legal, appraisal, engineering, environmental assessments, title insurance and insurance consultant fees, costs and expenses shall be paid by the Borrower whether or not the Loan closes. On acceptance of this Commitment, the Borrower shall pay the deposit for third party costs to the Lender, which shall be held and applied by the Lender to all third party costs and expenses incurred by it whether or not the Loan closes. The portion of such deposit so applied shall be non-refundable to the Borrower in all circumstances. The Lender shall refund the unexpended balance of the deposit to the Borrower at Loan closing, or if the Loan does not close for any reason, once the Lender has determined and paid all such third party costs and expenses, and each Borrower Entity has delivered a full and final release in the Lender's required form. If such third party costs and expenses exceed the deposit paid to the Lender, the Borrower shall pay the excess to the Lender upon demand.
6. **Closing Confirmation/Good Faith Deposit:** Upon approval of the Loan by the Lender's credit committee, the Lender shall issue a closing confirmation. The closing confirmation may contain such conditions of Loan closing as the Lender may determine in its sole discretion, including any conditions imposed by such credit committee and any conditions contained in this Commitment which have not been satisfied. If the closing confirmation is not accepted by each Borrower Entity without amendment and returned to the Lender accompanied by the required good faith deposit within 3 business days following issuance by the Lender, then this Commitment and the closing confirmation shall terminate, and the Lender shall have no obligation to close the Loan. The Lender shall have the right in its sole discretion to terminate this Commitment if the Loan

advance is not made by the closing date specified on Page 1 for any reason, notwithstanding any intervening negotiations or other dealings between any of the parties.

7. **Rate Lock:** On a date agreed to by the Borrower and the Lender (but not earlier than three (3) business days prior to the scheduled closing date), the Lender shall lock the interest rate. The Loan shall close on the scheduled closing date, subject to satisfaction of any remaining Loan conditions, which shall be at the Borrower's sole risk and cost. Notwithstanding the foregoing, the Lender may decline to lock the interest rate (which shall not be a Lender default hereunder) if it is not satisfied in its sole discretion that the Borrower can satisfy any remaining Loan conditions prior to Loan closing. If for any reason (other than default by the Lender hereunder) the interest rate is not locked and closed by the Closing Date specified in this Commitment, or the Loan fails to close within three (3) business days after the interest rate is locked, the Borrower shall be in breach of this Commitment and the Lender shall have the right in its sole discretion to terminate this Commitment, notwithstanding any intervening negotiations or other dealings between any of the parties. Upon any such termination, the good faith deposit shall not be refundable to the Borrower and may be retained by the Lender as liquidated damages. Notwithstanding the foregoing, if the Lender incurs losses, costs or damages (including costs of reserving and hedging the principal amount of the Loan or interest rate) which exceed the good faith deposit, then the Borrower shall be responsible for and pay such additional amount to the Lender forthwith on demand. The entire good faith deposit shall be returned to the Borrower if the Loan is advanced.
8. **Material Adverse Change:** Notwithstanding the satisfaction of all Loan conditions, the issuance of a closing confirmation and/or rate lock, the Lender shall not be required to close the Loan and may terminate this Commitment if it determines in its sole discretion that there has occurred any change in financial market conditions, applicable laws, or general accounting standards (in each case whether in Canada, the United States or other international markets) which would, in the opinion of the Lender in its sole discretion, materially and adversely affect the ownership or value of the Loan or the Lender's ability to sell or securitize the Loan profitably in a secondary market transaction.
9. **Property Management:** All property managers and each property management agreement from time to time shall be subject to the Lender's approval.
10. **Approval of Leases:** The Lender shall have the right to approve all new non-residential leases and all renewals and extensions of existing leases; however, the following shall not require Lender approval: (a) any renewals or extensions arising from tenant's exercise of any existing rights, and (b) any new leases, renewals or extensions with unrelated tenants which are (i) written on a Lender-approved form, (ii) are made on market terms, and (iii) demise less than 5,000 square feet for a term of 10 years or less (inclusive of all extension and renewal options). The Loan documents shall include certain representations and warranties and covenants by the Borrower concerning the status and future dealings with all leases and rents, including the requirement that the Borrower obtain an attornment agreement from each tenant.
11. **Financial Statements:** The Borrower shall provide to the Lender annual operating statements and rent rolls for the Property, annual financial statements from each Borrower Entity, and such other information respecting the Property and each Borrower Entity as the Lender may reasonably require from time to time.
12. **Information and Materials:** The Borrower warrants that all information and materials provided or delivered to the Lender in connection with the Loan, including the Property and each Borrower Entity, are correct and complete as of the date provided and will continue to be correct and complete on Loan closing, failing which the Lender shall have no obligation to advance the Loan. The Borrower acknowledges that the Lender's decision to make the Loan will be based on all such information and materials. The Borrower shall promptly disclose to the Lender from time to time any and all changes in such information and materials or any additional information or materials relating to the Property or any Borrower Entity, which may reasonably be expected to influence the Lender's decision to make the Loan.
13. **Credit Investigations:** Each Borrower Entity authorizes the Lender or its representatives to make inquiries of, and exchange information with, third parties regarding the character, general reputation, personal characteristics, financial and credit data of such Borrower Entity, including its respective directors, officers, shareholders, and principals.
14. **Consent to Disclosure:** Each Borrower Entity acknowledges and agrees that the Loan (or securities or certificates backed by or representing any interest in the Loan or a pool of loans which includes the Loan) may be sold or securitized into the secondary market without restriction and without notice to or the consent of the Borrower or any other Borrower Entity. Each Lender Entity may release, disclose, exchange, share, transfer and assign from time to time, as it may determine in its sole discretion, all information and materials (including

financial statements and information concerning the status of the Loan, such as existing or potential Loan defaults, lease defaults or other facts or circumstances which might affect the performance of the Loan) provided to or obtained by any Lender Entity relating to any Borrower Entity, the Property or the Loan (both before and after the Loan advance and/or default) without restriction and without notice to or the consent of the Borrower or any other Borrower Entity as follows: (i) to any other Lender Entity; (ii) to any subsequent or proposed purchaser of the Loan, including any subsequent or proposed Lender Entity, and their respective third party advisors and agents, such as lawyers, accountants, consultants, appraisers, credit verification sources and servicers; (iii) to the public or any private group in any offering memorandum, prospectus or other disclosure document (including all initial and continuing disclosure requirements), regardless of format or scope of distribution; (iv) to the public or other interested persons, directly or indirectly through information service providers or other market participants, for the purpose of providing market information from time to time relating to the status of the Loan or loan pools or any interest therein regardless of format or scope of distribution; (v) to any governmental authority having jurisdiction over such sale or securitization of the Loan or loan pool or any trade of any interest in the Loan or loan pool; and (vi) to any other person in connection with the sale, assignment or securitization of the Loan or in connection with any collection or enforcement proceedings taken under or in respect of the Loan and/or the Loan documents. Each Borrower Entity irrevocably consents to the collection, obtaining, release, disclosure, exchange, sharing, transfer and assignment of all such information and materials.

15. Computershare: Computershare Trust Company of Canada ("Computershare") shall advance the Loan and shall be named as the Lender in the Loan documents. Reference in this Commitment to "Lender" shall include Computershare. Computershare shall have, and may exercise, at all times and without restriction, all of the rights and benefits of the Lender under this Commitment and shall hold the Loan, the Loan indebtedness and Loan documents solely as custodian and agent for the Lender and all other persons having an ownership interest in the Loan from time to time, and the Lender and such other Loan owners shall be entitled to receive and enjoy, through Computershare, all right, title and interest of Computershare in respect of the Loan and the Loan documents and the full benefit thereof at all times. Each Borrower Entity shall deal exclusively with Computershare or the Loan servicer in respect of all matters relating to the Loan and the Loan documents and agrees that all enforcement actions or proceedings may be brought by Computershare or the Loan servicer on behalf of the Lender and all other persons having an ownership interest in the Loan from time to time and waives any requirement that the Lender or such other Loan owners be a party thereto.
16. Limited Recourse to Lender Entities: No Lender Entity nor any of their respective assets shall have or be subject to any actions, proceedings, losses, damages, liabilities, claims, demands, costs or expenses of any kind or nature made by or on behalf of any Borrower Entity arising from or relating to, directly or indirectly, the Loan, including the making or administration of the Loan or any default or other act or omission by any Lender Entity under or relating to the Loan or any of the Loan documents, and each Borrower Entity hereby agrees to indemnify and save each Lender Entity harmless from and against all such matters.
17. Brokerage Commission: The Borrower shall pay any brokerage or finder's fees, commissions or other compensation payable to any person not affiliated with or contracted by the Lender in connection with this transaction and shall indemnify and hold each Lender Entity harmless in respect of same.
18. Assignment: The Lender may sell, transfer or assign the Loan, the Loan indebtedness and the Loan documents, or any interest therein, from time to time without notice to or the consent of any Borrower Entity. Thereafter, the Lender shall have no further obligations under or in respect of the Loan or the Loan documents. This Commitment may not be sold, transferred or assigned by any Borrower Entity.
19. Effect of Commitment: This Commitment, together with the Loan documents, shall constitute the entire agreement between the parties in respect of the Loan. Each Borrower Entity acknowledges that this Commitment is only a summary of basic Loan terms, and that the Loan documents will include additional terms and conditions not specifically referenced herein as the Lender deems necessary or appropriate. This Commitment can only be changed, modified or extended by a written instrument executed and delivered by the Lender and each Borrower Entity. This Commitment and any amendments hereto shall survive the execution and delivery of the Loan documents by the Borrower Entity; provided, however, that in the event of any express conflict or inconsistency between any provision of this Commitment and any provision of any Loan document, the provision of such Loan document shall prevail to the extent of such conflict or inconsistency. The existence of additional terms, conditions or provisions (including any rights, remedies, representations and warranties) contained in any Loan document shall not be construed or deemed as being in conflict with this Commitment.
20. Further Assurances: Each Borrower Entity shall promptly cure any defect in the preparation, execution and delivery of the Loan documents to which it is a party and shall promptly execute and deliver or cause to be executed or delivered, upon request by the Lender all such other and further documents, agreements,

opinions, certificates and instruments as may be required by the Lender to more fully state its obligations as set out in any Loan document or to make any recording, file any notice or obtain any consent, including any documents required by the Lender in connection with the assignment or securitization of the Loan.

21. **Construction of Loan Documents:** In this Commitment: (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders, (b) reference to the Lender, Borrower, Computershare, Beneficial Owner, Indemnitor, Guarantor, Lender Entity, Borrower Entity or any other person shall include their respective heirs, executors, administrators, legal representatives, successors and assigns, (c) all dollar amounts are expressed in Canadian dollars, (d) the division of any Loan document into separate Articles, Sections, Subsections and Schedule(s), and the insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of such Loan document, (e) if more than one person is named as, or otherwise becomes or assumes the obligations and liabilities of any Borrower Entity, then all obligations and liabilities of such persons shall be joint and several, (f) time shall be of the essence, and (g) the parties hereto have expressly agreed and required that this Commitment as well as all documents related thereto, including all agreements and notices, be drafted in English. Les parties aux présentes ont expressément exigé que la présente entente ainsi que tout document y relié, incluant toute entente et tout avis, soit rédigés en anglais. All schedules and addenda annexed hereto form part of this Commitment. The rights and obligations of the parties with respect to the Loan documents shall be determined in accordance with the laws of the Province in which the Property is located and federal laws applicable thereto.
22. **Withholding Taxes.** This provision shall not apply to any deduction or withholding for taxes under the laws of Canada or any province thereof ("Canadian taxes") or for taxes of a country or jurisdiction other than Canada ("foreign taxes") arising from or in respect of any Loan payment where such deduction or withholding arises solely as a result of a change in the current status of the Lender as a resident of Canada, or as a result of any assignment of the Loan by the Lender to a non-resident of Canada. Subject to the foregoing, to the extent that any payment on or in respect of the Loan shall become subject to a deduction or withholding imposed on such Loan payment for Canadian taxes or foreign taxes (including any deduction or withholding arising from a change in applicable laws), the amount of such Loan payment shall be automatically increased by an amount which ensures that the Lender receives, after such deduction or withholding is made including any additional withholding or deduction on such additional amount) and without any credit to the Borrower therefore, the full amount of the payment specified in the Loan documents. The Borrower shall pay the amount of any such deduction or withholding to the applicable taxing authority as required by applicable laws and, upon request, provide the Lender with evidence of such payment.
23. **Survival of Representations, Warranties and Covenants:** The representations, warranties, covenants and obligations of each Borrower Entity contained in each Loan document shall (a) survive any advance or repayment of the Loan, any full or partial release, termination or discharge of any Loan document, and any remedial proceedings taken by any Lender Entity under any Loan document or applicable law, (b) enure to the benefit of the Lender and each person having an ownership interest in the Loan from time to time notwithstanding such Loan owner is not a party to any Loan document, and (c) be fully effective and enforceable by the Lender notwithstanding any due diligence performed by or on behalf of any Lender Entity or any breach or other information (to the contrary or otherwise) known to any Lender Entity at any time. Such representations and warranties are deemed to be made on the date of execution of each such Loan document and are deemed repeated as of Loan closing.
24. **Effect of Termination:** No termination of this Commitment shall limit, restrict or otherwise affect in any way (i) the obligations of the Borrower to pay to the Lender any third party costs and expenses of the Lender in connection with the Loan or any of the underwriting fee, deposit for third party costs or good faith deposit specified in this Commitment, (ii) the rights of the Lender in respect of any deposits paid to the Lender, including its right to retain the good faith deposit and/or to apply the deposit for third party costs as set out herein, and (iii) any rights and remedies of the Lender against any Borrower Entity arising from any breach of this Commitment by such Borrower Entity, including any claim for damages.
25. **Counterparts/Facsimile Transmission:** This Commitment may be executed in counterparts, and each such counterpart shall be deemed to be an original and all of which together constitute one and the same document. Delivery of this Commitment by any party may be made by facsimile transmission to any other party, the broker or their respective agents and shall be valid and binding as if it is an originally signed document.
26. **Acceptance:** If this Commitment is not executed by each Borrower Entity and returned without amendment to the Lender together with the deposit for third party costs by August 8, 2005, then this Commitment shall immediately terminate and shall be null and void and the Lender shall have no further obligations hereunder.

Very truly yours,

RBC Royal Bank



Norm Camiré
Senior Manager

Please return this Commitment to the Lender at the address set out on Page 1 of this Commitment, duly executed by each Borrower Entity.

I/We hereby accept the above Commitment on the terms and conditions stated herein and each person executing this Commitment on behalf of any Borrower Entity represents and warrants that he/she has the power and authority to bind such Borrower Entity.

ACCEPTED AND AGREED AS OF THE 9th DAY OF August, 2005.

BORROWER(S): 1482241 ONTARIO LTD.

Per: 
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____


We have authority to bind the corporation

BENEFICIAL OWNER(S):

Per: 
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

GUARANTOR(S)/INDEMNITOR(S):


ALAIN CHEGROUNE

Name for Loan Diligence contact:

Alain Checrone.

Address:

240 DUNCAN MILL RD.
SUITE 321
TORONTO, ONTARIO M3B 1Z4

Telephone Number:

(416) 444 - 9100

Fax Number:

(416) 447 - 1179

e-mail address:

Borrower's Legal Counsel in connection with the Loan will be:

Name:

SOLNIK & SOLNIK

Address:

2991 DUNDAS STREET WEST.
TORONTO, ONTARIO M1P 1Z4

Telephone Number:

(416) 767 - 7506

Fax Number:

(416) 767 - 4738

e-mail address:

Borrower's Insurance Broker in connection with the Loan will be:

Name:

KIM BRANDON

Address:

C/O JONES BROWN INC.
150 UNIVERSITY AVE. SUITE 1100
TORONTO, ONTARIO M5G 1V2

Telephone Number:

(416) 408 - 5034

Fax Number:

(416) 408 - 4517

e-mail address:

kbrandon@jonesbrown.com

SCHEDULE A - RESERVES

1. **Realty Tax Reserve:** At Loan closing, the Borrower shall pay all realty taxes due and payable within 60 days thereafter. The Borrower shall deposit with the Lender on each payment date 1/12th of the annual realty taxes as estimated by the Lender. On Loan closing, the Borrower will deposit with the Lender a further amount which, when added to such monthly deposits, will result in the Lender having sufficient funds to pay the next realty tax instalment one month in advance. If at any time the deposits are not sufficient to pay realty taxes when due, the Borrower shall pay the deficiency to the Lender within 10 days of written notice. The Borrower shall provide the Lender with all realty tax bills immediately upon receipt.

TIPP Program Exception: If the taxing municipality has a tax instalment payment plan, the Borrower may elect at any time to make the payments required by such payment plan in lieu of the realty tax reserve. The Borrower shall ensure that such payments shall equal or exceed the payments due to the municipality when due. To confirm that such payments have been made, the Borrower shall pay the costs of an independent tax verification service (approximately \$300.00 annually). If the Borrower breaches this provision or if an Event of Default otherwise occurs, the Borrower shall immediately make deposits to the realty tax reserve for the remainder of the Loan term.
2. **Immediate Repair and Environmental Remediations:** If the engineering or environmental reports obtained by the Lender require work to be completed and the Lender and Borrower agree to close the Loan prior to completion of such work, the Borrower shall deposit with the Lender on Loan closing 125% of the cost of immediate repairs and 200% of the cost of environmental remediations to pay for such work.
3. **Replacement Reserves:** The Borrower shall make on-going repairs, replacements and/or improvements to the Property during the term to comply with the standard of maintenance and repair required in the mortgage. In the case of the following, the Borrower shall make monthly deposits with the Lender for (1) multi-family properties (approximately \$250/unit/annum), (2) hospitality properties (4% of total revenues, adjusted annually), (3) mobile home parks/manufactured housing (approximately \$50/pad/annum) and (4) nursing, retirement or other congregate housing projects or homes (as determined by Lender).
4. **Additional Reserves:** Upon an Event of Default and within 10 days' notice from the Lender, the Borrower shall establish additional reserves with the Lender to pay the reasonable costs of insurance premiums, utility charges, and/or the performance of specific maintenance, repairs or capital improvements to the Property or any work for the prevention, clean-up or remediation of environmental, health or safety conditions at the Property, as determined by the Lender acting reasonably.
5. **Leasing Costs:** For non-residential properties, the Lender may require the Borrower to fund a reserve for leasing costs in an amount determined by the Lender for any lease in effect at any time up to 3 years following Loan maturity, which either (i) expires, (ii) requires landlord's work to be completed, (iii) contains early termination rights, or (iv) permits the tenant to "go dark" or to occupy less than all of its leased space.
6. **Disbursement/General Provisions:** Upon completion or payment of any reserve item, the Borrower may submit to the Lender a request for payment or release of any reserved funds in a form specified by the Lender which shall include and certify (a) the item and costs incurred (including evidence of completion or payment), (b) that all related work has been completed in a good and workmanlike manner in compliance with the Loan documents and all applicable laws, and (c) evidence of compliance with all the applicable lien laws, including compliance with all holdback requirements and evidence that no lien is registered against the Property. Provided no Event of Default exists and upon the Lender's verification of the payment request, the Lender shall pay to the Borrower an amount approved by the Lender from the applicable reserve, less any Lender's costs and expenses with respect thereto. The Lender shall not be required to make disbursements of less than \$5,000.00 or more frequently than once monthly. The Lender reserves the right to make any such disbursement directly to the person(s) entitled to receive such payment and the Borrower shall execute and deliver all necessary directions. Upon an Event of Default, the Lender may retain all reserves held and, at its sole option, apply same to the Loan indebtedness, or to any costs and expenses for which the reserve is held, or to cure any Event of Default. The Borrower shall reimburse the Lender and its servicer on demand for all costs and expenses incurred in administering the reserves (which costs and expenses shall bear interest at the interest rate and may be deducted from the reserves). The Lender has the sole right to direct the investment of the reserves. The servicer may hold and administer all reserves for the Lender. All interest accruing on the reserves shall be for the Lender's sole benefit, subject to the following.

Nothing herein limits or restricts the Borrower from entering into an agreement with the Loan servicer from time to time which may provide for payment to the Borrower of interest on certain reserves (other than the realty tax reserve) on terms and conditions and subject to costs or expenses satisfactory to such servicer. The Borrower acknowledges and agrees: (i) Lender makes no representation or warranty that the servicer will enter into any such agreement or as to its terms and conditions, including the rate or amount of any interest that might be paid to the Borrower; (ii) any such agreement shall be a separate and Independent transaction and shall not amend, modify or otherwise affect the rights, obligations and liabilities of the parties under the Loan and the Loan Documents in any way; (iii) the servicer shall be entering into any such agreement solely on its own behalf and not as servicer or agent for or otherwise on behalf of the Lender in any capacity, and the Lender shall not be bound by or have any liability of any kind under such agreement (the Borrower shall have no right of set-off, claim or defense under the Loan or the Loan Documents arising from or relating to such agreement), and (iv) if the servicing is transferred, the new servicer shall not be bound by or have any liability under any such agreement, and the Borrower may enter into a new agreement with such new servicer. Any agreement with the Loan servicer which does not comply with the foregoing terms shall be null and void.

- 7. **Letter of Credit Option:** In lieu of the cash reserves (other than realty tax reserve) required to be made by the Borrower to the Lender or its servicer on account of any reserves and at the Borrower's option, the Borrower may deliver to the Lender upon creation of such reserve an irrevocable demand standby letter of credit from a Canadian chartered bank in the required amount and otherwise in form and content satisfactory to the Lender in its sole discretion. The letter of credit and all proceeds thereof shall be held by the Lender, and the Lender shall be entitled to make demand under such letter of credit from time to time for all such purposes without prior notice to or the consent of the Borrower.

Letter of Credit Requirements: The letter of credit shall permit multiple draws by the Lender and shall be automatically renewable for an additional period of time of no less than one (1) year unless the issuer shall have provided written notification to the Lender no less than sixty (60) days prior to the expiration date of the letter of credit that it shall not renew the letter of credit. If the Lender assigns its interest in the Loan and within ten (10) days' notice of such assignment being given to the Borrower, the Borrower shall forthwith deliver a replacement letter of credit to the Lender's assignee, in form and content satisfactory to such assignee, upon the surrender of the then existing letter of credit. If the letter of credit is not automatically renewed by the issuer within 60 days prior to its expiry, or if a replacement letter of credit is not delivered hereunder when required, the Lender shall be entitled to draw under the letter of credit for the full amount thereof and the proceeds shall be held on account of the applicable reserve.

SCHEDULE B - UNDERWRITING / CLOSING DELIVERIES

On or before Loan closing, the Lender must receive and be satisfied in its sole discretion with each of the following deliveries. Notwithstanding that the Lender will retain and instruct certain third party agents as specified below, the Borrower shall be solely responsible for obtaining, delivering and completing, all at the Borrower's expense, all of the following deliveries and matters, and the Lender shall have no responsibility or liability of any kind if any such deliveries and matters are not made or completed in form and content satisfactory to the Lender.

1. Appraisal report obtained by and acceptable to the Lender establishing the market value of the Property.
2. Environmental report(s) of the Property prepared by an environmental consultant retained by the Lender, confirming to the Lender's satisfaction, that the Property complies with all applicable environmental laws. The Loan documents shall contain detailed environmental representations, warranties and covenants in addition to the environmental indemnity required by the Commitment.
3. Engineering report of the Property prepared by an architect/engineer retained by the Lender and reporting a physical property condition acceptable to the Lender.
4. Seismic Risk Analysis of the Property satisfactory to the Lender, if required.
5. Building location survey/real property report/certificate of location of the Property prepared by a licensed surveyor and satisfactory to the Lender.
6. Complete copies of all existing non-residential leases, together with all related renewals, amendments, assignments or other agreements.
7. Copy of standard lease form.
8. Tenant estoppel certificates for all non-residential leases, signed by each tenant, including tenant's confirmation that it is in possession of its leased premises, paying rent and open for business. The Borrower shall certify the correctness of all estoppel certificates.
9. Copy of the property management agreement (if applicable).
10. Property, liability and other insurance in compliance with the Lender's standard insurance. All insurance shall be in the form and amount and with such deductibles, endorsements and insurers as required by the Lender.
11. Certified or notarized copies of those documents evidencing formation, organization, valid existence, good standing and due authorization of and for each Borrower Entity for the execution, delivery and performance of the Loan documents.
12. All Loan documents required by this Commitment executed and delivered by each Borrower Entity, fully registered in all appropriate registries and in the priority required by the Lender.
13. Corporate opinion from Borrower's counsel with respect to each Borrower Entity, which shall include an enforceability opinion of all Loan documents with respect to each such Borrower Entity.
14. Lender's title insurance policy (from a title insurer and with such endorsements as approved or required by the Lender). Title, zoning and all permitted encumbrances shall be satisfactory to the Lender. If required by the Lender, the Borrower shall provide evidence satisfactory to the Lender that the Property complies with all applicable laws, including all applicable building and zoning by-laws.
15. Such financial and other information, statements and documents as the Lender or its counsel may reasonably require in connection with the underwriting or closing of the Loan.

LOAN INFORMATION FORM

A. BORROWER

1. Proposed Borrower (ENTITY TO BE REGISTERED ON TITLE TO THE PROPERTY):

Name: _____
 Principal Business Address: _____
 Date Formed: _____ Province of Organization: _____
 Borrower Entity Type: Corporation _____ Partnership: Limited _____ No Limited Liability _____
 If Partnership, Name of General Partner: _____
 Is Borrower a single asset corporation, i.e. exists solely for owning this Property? Yes _____ No _____
 Is Borrower a "Bare Trustee", i.e. a nominee corporation holding the Property for other? Yes _____ No _____
 If Borrower is a "Bare Trustee", please provide the Beneficial Owner(s) information:

Names of Beneficial Owners	Single Asset Entity (Y/N)	Canadian Resident Entity (Y/N)

2. Principals of Borrower and Beneficial Owner(s), if applicable:

List principal directors and officers and shareholders/equity investors with 20% or greater ownership interest. Identify whether each is a Principal in the Borrowing Entity or Beneficial Owner.

Name	Principal (Y/N)	Interest	Net Worth	Years in Real Estate

3. Proposed Recourse Guarantor(s) and Indemnitor(s):

Required - No commitment will be accepted without Guarantor(s)/Indemnitor(s) acceptable to Lender

Name	Date of Birth	Home Address	S.I.N.#	Net Worth

4. Current Ownership of the Property is presently held by (Name, Organization, and Phone Number):

5. Ownership Interest to be financed with this Loan is: Fee Simple _____ Ground Lease (attach copy) _____
Note: The cost of review of the ground lease by Lender's counsel will be deducted from Deposit for Third Party Costs.

6. PROPOSED Subordinate Debt (TO BE APPROVED BY THE LENDER IN WRITING)

ARE YOU REQUESTING THE LENDER'S CONSENT to any subordinated debt, debentures, operating credit line or other obligations? Yes _____ No _____ If yes, please describe nature of security in detail and provide copies of all relevant documents.

7. **Litigation, Bankruptcy, Foreclosure Proceedings**

- (a) Are there any judgments, lawsuits or liens pending against or by, or adverse judgments issued within the last three (3) years against the Property, Borrower(s), Beneficial Owner(s), Guarantor(s)/ Indemnitor(s) or any of their Principals or affiliates? Yes _____ No _____
- (b) Have any bankruptcies been filed by or against Property, Borrower(s), Beneficial Owner(s), Guarantor(s)/Indemnitor(s) or any of their Principals or affiliates? Yes _____ No _____
- (c) Has the Property, Borrower(s), Beneficial Owner(s), Guarantor(s)/Indemnitor(s) or any Principals or affiliates ever been involved in foreclosure/ deed-in-lieu of proceedings? Yes _____ No _____

(If yes to (a), (b) and/or (c), describe in box below and attach any supporting documentation)

8. **Three Financial References whom Lender may contact (Name, Organization, Telephone Number):**

1.	
2.	
3.	

9. **Proposed Property Manager Will the Property be Self-Managed?** Yes _____ No _____

Management Co: _____
 Address: _____
 Manager Name: _____ Telephone: _____ Fax No.: _____

B. SECURITY AND LEASE, TENANT, REVENUE ISSUES

1. **Property Municipal Address (please indicate all applicable municipal addresses and tax roll #s)**

Municipal Address(es), City, Province, Postal Code: _____

 Number of separately assessed income-producing properties _____ Tax Roll No(s) _____
 Nearest Intersection: _____ Legal access to Property gained from _____
 Current zoning and use of the Property _____

2. **Improvements**

Apartment Units	Retail	Industrial/Warehouse	Office
Recreation	Hotels	Mobile Home Parks	Self-storage
Other			

No. of Bankruptcies	Year Built	If Hotel	Yes	No
No. of Liens	Year Renovated	Full Service?		
No. Units/Rooms/Rooms	No. Elevators	Owner-operated?		
Net Rentable Area (sq. ft.)	Site Size (acres)	Restaurant?		
		Bar?		

Description of Improvements, including construction, configuration and amenities:

--

3. Environmental Issues: Are there any Environmental Issues? Yes ___ No ___ If yes, please check and describe below:

Asbestos	Lead Paint	Radon/Ground Water	Other (Please Specify)

4. Lease, Tenant, Revenue Issues

- (a) Is there any tenant or other party who has the right or option to purchase the Property?
Yes ___ No ___ (If yes, describe in box below)
- (b) Is there any tenant who, pursuant to their lease, may "go dark" or otherwise fail to operate their business from their leased premises? Yes ___ No ___ (If yes, describe in box below)
- (c) Any special or unusual tenant lease provisions? Yes ___ No ___ (If yes, describe in box below)
- (d) Does any tenant have a right to reduce, or fail to pay, the minimum specified in their lease?
Yes ___ No ___ (If yes, describe in box below)
- (e) Has any tenant requested or indicated the intent to request a modification of any significant lease term in the past 12 months? Yes ___ No ___ (If yes, describe in box below)
- (f) Is any tenant in significant arrears for rental payments? Yes ___ No ___ (If yes, describe in box below)

C. SOURCE AND USE OF LOAN PROCEEDS

1. PURCHASE (Check and complete below and enclose copy of Purchase Contract):

Purchase Price:	\$ _____	Condition Waiver Date:	_____
Estimated Closing Costs	+ _____	Contract Closing Date:	_____
Proposed Loan Amount	- (_____)		
Equity Investment	\$ _____		

2. REFINANCING (Check and complete below):

Original Purchase Date:	_____	Purchase Price at acquisition:	\$ _____
Improvements since purchase:	\$ _____	Describe improvements below:	

Payout of existing debt as follows:

Lender _____	\$ _____
Lender _____	+ _____
Estimated Closing Costs	+ _____
Prepayment Charges	+ _____
Proposed Loan Amount	- (_____)
Equity Investment / (Equity Takeout)	\$ _____

If the existing debt is in default or lender is accepting a discounted pay-off, describe below, and indicate contractually obligated date, if applicable:

**This is Exhibit "F" referred to in the affidavit
of IVAN MITCHEL MERROW, SWORN BEFORE ME
this 14th day of March, 2017**



A COMMISSIONER FOR TAKING AFFIDAVITS

Nahla Khouri, Lawyer
55861Q

TRUST DECLARATION

THIS AGREEMENT made as of the 21st day of September, 2005.

BETWEEN:

1482241 ONTARIO LIMITED

(hereinafter called the "Trustee")

OF THE FIRST PART

- and -

ALAIN CHECROUNE

(hereinafter called the "Beneficiary")

OF THE SECOND PART

FOR GOOD AND VALUABLE CONSIDERATION (the receipt and sufficiency of which are hereby acknowledged by the parties hereto) the parties hereto agree as follows:

1. The Trustee acknowledges and agrees that it holds legal title to the lands and premises more particularly described on Schedule A hereto (the "Property") in trust as a bare trustee for the Beneficiary and that it shall have no beneficial interest whatsoever therein.
2. The Trustee agrees to remit to the Beneficiary or as it may direct all revenue owing from the Property to which it holds legal title in any way arising out of or in connection with the Property.
3. The Trustee agrees that it will from time to time execute and deliver at the request of the Trustee, such instruments or documents as may be required to convey legal title to the Property, and where the Property is comprised of parcels capable of being conveyed separately, then to any of such parcels, to the Beneficiary or as it may direct.
4. The Beneficiary shall fully and completely indemnify and save harmless the Trustee from all liability, claims, charges, encumbrances, obligations, responsibilities or omissions and all costs and expenses, including legal costs and expenses, in connection with the Property and the hotel within which it is situate during the entire period of time that the Trustee holds legal title to the Property pursuant to this Agreement, including, without limitation, payment of taxes and levies, condominium fees and charges, utilities, repairs, insurance, maintenance, mortgage principal and interest.
5. The Trustee agrees to execute and deliver or cause to be executed and delivered to the Beneficiary such instruments as further assurance as may be requested by the Beneficiary to give effect to the terms of this Agreement.
6. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the Trustee and the Beneficiary have executed this Agreement as of the date above first written.

1482241 ONTARIO LIMITED

Per: 
Alain Cheefoune, A.S.O.

"I have the authority to bind the corporation."


ALAIN CHEFOUNE

Schedule "A"

LT 82-83 PL 7607 NORTH YORK; PT LT 84 PL 7607 NORTH YORK PT 2, RS 1284; TORONTO (N YORK), CITY OF TORONTO; and identified as Parcel Identifier Number ("PIN") 100880069 comprising approximately 11,650 m2

**This is Exhibit "G" referred to in the affidavit
of IVAN MITCHEL MERROW, SWORN BEFORE ME
this 14th day of March, 2017.**



A COMMISSIONER FOR TAKING AFFIDAVITS

Nahla Khouri, Lawyer
55861Q

Properties

PIN 10088 - 0069 LT **Interest/Estate** Fee Simple
Description LT 82-83 PL 7607 NORTH YORK; PT LT 84 PL 7607 NORTH YORK PT 2, RS1284;
 TORONTO (N YORK) , CITY OF TORONTO
Address 240 DUNCAN MILL ROAD
 CITY OF TORONTO

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name 1482241 ONTARIO LIMITED
Address for Service 240 Duncan Mill Road
 Suite 201
 Toronto, Ontario
 M3B 3P1

I, Alain Checroune, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)**Capacity****Share**

Name COMPUTERSHARE TRUST COMPANY OF CANADA
Address for Service 100 University Avenue
 12th Floor, South Tower
 Toronto, Ontario
 M5J 2Y1

Provisions

Principal \$11,250,000.00 **Currency** CDN
Calculation Period Semi-Annuaaly, not in advance
Balance Due Date 2015/10/01
Interest Rate 5.419%
Payments \$76,493.00
Interest Adjustment Date 2005 10 01
Payment Date 1st day of each month
First Payment Date 2005 11 01
Last Payment Date 2015 10 01
Standard Charge Terms N/A
Insurance Amount full insurable value
Guarantor

Additional Provisions

See Schedules

Signed By

Patricia A. Harrison 2700 Argentia Rd acting for Chargor(s) Signed 2005 09 29
 Mississauga L5N 5V4
Tel 905-821-8046
Fax 9058217394

Submitted By

FNF CANADA COMPANY 2700 Argentia Rd 2005 09 29
 Mississauga L5N 5V4
Tel 905-821-8046
Fax 9058217394

Fees/Taxes/Payment

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

File Number

Chargee Client File Number : 02-3173-0900-02402

SCHEDULE - ADDITIONAL PROVISIONS

ARTICLE 1 - INTERPRETATION

1.01 Definitions. In this Charge, unless something in the subject matter or context is inconsistent therewith:

"Applicable Laws" means all applicable federal, provincial or municipal laws, statutes, regulations, rules, by-laws, policies and guidelines, orders, permits, licenses, authorization, approvals and all applicable common laws or equitable principles whether now or hereafter in force and effect, whether in Canada, the United States of America or elsewhere.

"Borrower Entity" means the Chargor, each guarantor of all or part of the Loan Indebtedness, each Indemnitor, and any Person having a beneficial ownership interest in all or any part of the Property from time to time.

"Business Day" means any day other than a Saturday, Sunday or any statutory or civic holiday observed in the Province of Ontario.

"Charge" means, for the non-electronic paper based registration system, the Charge/Mortgage of Land (Form 2) to which this Schedule is attached, this Schedule and all other schedules thereto, or for the electronic registration system, the Charge prepared in the electronic format and registered electronically pursuant to Part III of the *Land Registration Reform Act* (Ontario), including this Schedule and all other schedules thereto.

"Chargee" means Computershare Trust Company of Canada, and any person who acquires the right, title and interest of the Chargee under the Loan Documents.

"Chargor" means the Person or Persons named as Chargor in this Charge.

"Commitment Letter" means the commitment letter governing the Loan.

"Costs" means all reasonable fees, costs, charges and expenses of any Lender Entity for or incidental to (i) preparing, executing and registering the Loan Documents and making each advance of the Loan; (ii) collecting, enforcing and realizing on or under the Loan or the Loan Documents; (iii) inspecting, protecting, securing, completing, insuring, repairing, equipping, taking and keeping possession of, managing, selling or leasing the Property, including curing any defaults under or renewing any leasehold interest; (iv) appointing a receiver (under this Charge or otherwise) and such receiver's fees and expenses (including all agents' and legal fees and disbursements); (v) obtaining any environmental audits or other inspections, tests or reports with respect to the Property; (vi) complying with any notices, orders, judgments, directives, permits, licenses, authorizations or approvals with respect to the Property; (vii) performing the obligations of any Borrower Entity under the Loan Documents; (viii) all reasonable legal fees and disbursements in connection with the Loan, on a solicitor and his own client basis, and (ix) any other fees, costs, charges or expenses payable to any Lender Entity under any of the Loan Documents or Applicable Laws. "Costs" include interest at the Interest Rate on all such fees, costs, charges and expenses.

"Environmental Laws" means all present and future Applicable Laws, permits, certificates, licenses, agreements, standards and requirements relating to environmental or occupational health and safety matters, including the presence, release, reporting, investigation, disposal, remediation and clean-up of Hazardous Substances.

"Environmental Proceeding" has the meaning set out in Subsection 4.02(m) of this Charge.

"Equipment" means all machinery, equipment, appliances, furniture, furnishings, chattels, fixtures (including all heating, air conditioning, ventilating, waste disposal, sprinkler and fire and theft protection equipment, plumbing, lighting, communications and elevator fixtures) and other similar property of every kind and nature whatsoever now or hereafter located upon or used in connection with the Property or appurtenant thereto.

"Event of Default" or "default" means any of the following events: (a) any default by the Chargor in payment of all or any portion of the Loan Indebtedness when due or in payment of any reserves due under the Loan Documents; (b) any Borrower Entity defaults in observing or performing any other covenant, condition or obligation under any Loan Document on its part to be observed or performed which default is not cured within the applicable grace or cure period, or if no such period is provided, within thirty (30) days following written notice of such default to such Borrower Entity (but for greater certainty, there shall be no grace or cure period in respect of any other Event of Default expressly enumerated in this definition); (c) any representation or warranty of any Borrower Entity in any Loan Document, or in any financial statement or other document at any time delivered by or on behalf of any such Borrower Entity to any Lender Entity in connection with the Loan, is incorrect or misleading in any material respect; (d) any Borrower Entity becomes insolvent, makes any assignment in bankruptcy, makes any assignment for the benefit of creditors or makes any proposal to or seeks relief from its creditors under any bankruptcy, insolvency, reorganization, liquidation, moratorium, receivership or other similar laws affecting or relating to creditor's rights, any order, declaration or judgement of any court is made adjudging or declaring any Borrower Entity bankrupt or insolvent or ordering the liquidation, winding-up, reorganization or arrangement of any Borrower Entity or granting any Borrower Entity protection from its creditors or appointing any trustee, receiver, receiver and manager, sequestrator or other Person with similar powers in respect of any Borrower Entity or all or any part of its assets, or any proceedings are commenced by or against any Borrower Entity seeking any such order, declaration or judgement; (e) any default by any Borrower Entity under any Lien of all or any part of the Property ranking in

priority to or subsequent to the security of this Charge or the other Loan Documents, or any attainment of rents, power of sale, judicial sale, foreclosure or other enforcement proceedings are commenced against or in respect of any Borrower Entity or any part of the Property under or in respect of such Lien or any holder of such Lien takes possession or control of any part of the Property; (f) any writ of execution, distress, attachment or other similar process is issued or levied against any Borrower Entity or all or any part of its assets, or any judgement or order is made against any Borrower Entity by a court of competent jurisdiction and, in the opinion of the Chargee, such judgement or order would materially and adversely affect the ability of such Borrower Entity to fulfil its obligations to the Chargee under the Loan or the Loan Documents; (g) any part of the Property is condemned or expropriated and, in the opinion of the Chargee in respect of any expropriation, such expropriation materially impairs the value of the Property, the validity, enforceability or priority of the security of the Loan Documents, or the ability of any Borrower Entity to fulfil its obligations to the Chargee in respect of the Loan; or (h) any other Event of Default under any Loan Document.

"Governmental Authority" means any federal, provincial, municipal or other form of government or any political subdivision or agency thereof, any body or authority exercising any functions of government, and any court, whether in Canada, the United States of America or elsewhere.

"Hazardous Substance" means any substance or material that is prohibited, controlled or regulated by any Governmental Authority including any contaminants, pollutants, asbestos, lead, polychlorinated by-phenyl or hydrocarbon products, any materials containing same or derivatives thereof, underground storage tanks, dangerous or toxic substances or materials, controlled products, and hazardous wastes.

"Indemntor" means the Person(s) named as Indemntor in the Commitment Letter.

"Interest Adjustment Date" means the date specified as the Interest Adjustment Date in this Charge.

"Interest Rate" means the interest rate per annum specified as the Interest Rate in this Charge, which rate of interest shall be calculated semi-annually, not in advance, both before and after maturity, demand, default and judgment.

"Leases" means all present and future leases, offers to lease, subleases, concessions, licenses and other contracts and agreements affecting the use, enjoyment or occupancy of the Property or any portion thereof (including, if a hotel, all guest rooms, meeting rooms, restaurants and other food and beverage facilities), together with all related credits, rights, options, claims, causes of action, guarantees, indemnities, security deposits and other security.

"Lender Entity" means each of the Chargee, its servicer, the lender named in the Commitment Letter, each Person having an ownership interest in the Loan from time to time, any receiver and their respective employees, officers and directors.

"Lien" means any mortgage, charge, pledge, hypothec, assignment, lien, lease, sublease, easement, preference, priority, trust or other security interest or encumbrance of any kind or nature whatsoever with respect to any property or asset, including any title reservations, limitations, provisos or conditions.

"Loan" means the loan made by the Chargee to the Chargor in the Principal Amount pursuant to the Loan Documents.

"Loan Documents" means, collectively, all documents, instruments, agreements and opinions now or hereafter evidencing, securing, guaranteeing and/or relating to the Loan and the Loan Indebtedness or any part thereof, including the Commitment Letter and this Charge.

"Loan Indebtedness" means the aggregate of (i) the Principal Amount, (ii) all interest and compound interest at the Interest Rate, (iii) Costs, (iv) the Prepayment Charge, if any, (v) any amount, cost, charge, expense or interest added to the Loan Indebtedness under the Loan Documents or Applicable Laws or which is otherwise due and payable thereunder or secured thereby from time to time, and (vi) the payment, performance, discharge and satisfaction of all other obligations of any Borrower Entity under or in respect of the Loan and Loan Documents.

"Monthly Payment" means each monthly payment of principal and interest to be paid by the Chargor to the Chargee on account of the Loan, each in the amount specified in this Charge (for a Charge in the non-electronic paper based registration system, being the dollar amount specified in Box 9(h) of the Charge/Mortgage of Land (Form 2), or for a Charge in the electronic registration system, being the dollar amount specified as "Payments").

"Payment Date" means the first day of each calendar month in each and every year commencing on the first day of the first calendar month following the Interest Adjustment Date and ending on the Maturity Date.

"Person" means any individual, general or limited partnership, joint venture, sole proprietorship, corporation, unincorporated association, trust, trustee, executor, administrator, legal representative or Governmental Authority.

"Prepayment Charge" means, with respect to any acceleration or prepayment of the Principal Amount, an amount equal to the greater of (A) three (3) months' interest at the Interest Rate on the Principal Amount then outstanding, and (B) the positive difference, if any, between (x) the present value on the date of such acceleration or prepayment of all future monthly payments which the Chargor would otherwise be required to pay under the Loan during the remainder of the term of the Loan absent such prepayment or acceleration, including the unpaid Principal Amount which would otherwise be due upon the Maturity Date absent such acceleration or prepayment, with such present value being determined by the use of a discount rate equal to the yield to maturity, less one-half percent, on the date

of such acceleration or prepayment of Government of Canada bonds having the term to maturity closest to what otherwise would have been the remainder of the term of the Loan absent such acceleration or prepayment, and (y) the Principal Amount on the date of such prepayment. If there is more than one Government of Canada bond with a maturity equally close to what otherwise would have been the remaining term of the Loan absent the repayment by reason of such acceleration or prepayment, as the case may be, the selection of the applicable bond shall be made by the Chargee, acting reasonably.

"Principal Amount" means the principal amount specified in the Charge (for a Charge in the non-electronic paper based registration system, being the dollar amount specified in Box 4 of the Charge/Mortgage of Land (Form 2), or for a Charge in the electronic registration system, being the dollar amount specified in the Charge as "Principal").

"Property" means all legal and beneficial right, title, estate and interest in and to the lands and premises described in this Charge (for a Charge in the non-electronic paper based registration system, being the lands and premises described in Box 5 of the Charge/Mortgage of Land (Form 2) and in any schedule thereto, or for a Charge in the electronic registration system, being the lands and premises described in this Charge as the "Properties"), together with all buildings, structures, fixtures, and improvements of any nature or kind now or hereafter located on such lands, and all Equipment, Leases, Rents and all other appurtenances thereto.

"Rating Agency" shall mean, prior to a Securitization, any one or more (as designated by the Chargee in its sole discretion) of Standard and Poor's Ratings Services, a division of The McGraw Hill Companies, Inc., Moody's Investors Service Inc., Fitch, Inc., and Dominion Bond Ratings Service Limited or any other nationally-recognized statistical rating organization designated by the Chargee in its sole discretion, and, after a Securitization, each Rating Agency which has rated the certificates or other securities that are the subject of the Securitization.

"Rating Confirmation" with respect to the transaction or matter in question, shall mean: (i) if all or any portion of the Loan, by itself or together with other loans, has been the subject of a Securitization, then each applicable Rating Agency shall have confirmed in writing that such transaction or matter shall not result in a downgrade, qualification, or withdrawal of any rating then in effect for any certificate or other securities issued in connection with such Securitization; and (ii) if all of the Loan has not been the subject of a Securitization, then the Chargee shall have determined in its sole discretion (taking into consideration such factors as the Chargee may in good faith determine, including the attributes of the loan pool in which the Loan might reasonably be expected to be securitized) that no rating for any certificate or other securities that would be issued in connection with Securitization of such portion of the Loan will be downgraded, qualified, or withheld by reason of such transaction or matter.

"Realty Taxes" means all taxes, duties, rates, imposts, levies, assessments and other similar charges, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, including municipal taxes, school taxes and local improvement charges, and all related interest, penalties and fines which at any time may be levied, assessed, imposed or be a Lien on the Property or any part thereof.

"Rents" means all revenues, receipts, income, credits, deposits, profits, royalties, rents, additional rents, recoveries, accounts receivable and other receivables of any kind and nature whatsoever arising from or relating to the Property, including, if a hotel, all guest rooms, meeting rooms, restaurants and other food and beverage facilities, vending machines, telephone and television systems, guest laundry and the provision or sale of any goods or services.

"Securitization" shall mean any offering of securities backed by or representing direct or indirect interests in the Loan or any pool of loans which includes the Loan.

"Transfer" shall mean (a) any conveyance, assignment, transfer, sale, granting or creation of an option or trust with respect to, or other disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) any legal or beneficial interest in the Property or any part thereof; or (b) any change in the effective voting control of any Person comprising the Chargor or any beneficial or unregistered owner of any part of the Property from that existing as of the initial Loan advance (including any change of ownership of 50% or more of the voting securities representing an interest in any such Person) and shall include any agreement to do or complete any of the matters referred to in (a) or (b) above.

1.02 Construction. In this Charge: (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders; (b) the word "including" shall mean "including, without limitation,"; (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor statute thereto; (d) any reference to the Commitment Letter, any Loan Document, any Lease or other agreement or instrument shall include all amendments, addenda, modifications, extensions, renewals, restatements, supplements or replacements thereto from time to time; (e) reference to the Chargee, Chargor, Indemnitator, any guarantor, Lender Entity, Borrower Entity, any beneficial owner of the Property, and any other Person shall include their respective heirs, executors, administrators, legal representatives, successors and assigns, and reference to "corporation" shall include a company or other form of body corporate; (f) all dollar amounts are expressed in Canadian dollars; (g) the division of this Charge into separate Articles, Sections, Subsections and Schedule(s), and the insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of this Charge; (h) the Chargee's right to give or withhold any consent or approval, make any determination or exercise any discretion shall be exercised by the Chargee acting reasonably unless otherwise expressly provided, except that following an Event of Default, the Chargee shall be entitled to exercise same in its sole discretion; (i) the Loan Documents are the result of negotiations between the parties hereto and shall not be construed in favour of or against any party by reason of the extent to which any party or its legal counsel participated in its preparation; (j) notwithstanding the actual date of execution or registration of this Charge, this

Charge may be referred to in the Loan Documents as having been executed as of or bearing a formal date of September 16, 2005; (k) if more than one Person is named as, or otherwise becomes liable for or assumes the obligations and liabilities of the Chargor, then the obligations and liabilities of all such Persons shall be joint and several; (l) time shall be of the essence; and (m) all obligations of the Chargor in this Charge will be deemed to be covenants by the Chargor in favour of the Chargee. Where any reference is made in this Charge to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, a trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, the trustee(s) of the trust. In the event of any conflict or inconsistency between any provision of this Charge and the provision of any other Loan Document, the provision of this Charge shall prevail to the extent of any such conflict or inconsistency. This Charge is intended to supplement and not derogate from the other Loan Documents. The delivery of this Charge for registration by direct electronic transmission shall have the same effect for all purposes as if this Charge was in written form, signed by the Chargor and delivered to the Chargee.

1.03 Survival of Representations, Warranties and Covenants. The representations, warranties, covenants and obligations of each Borrower Entity in the Loan Documents shall (i) survive the making of any advance or repayment of the Loan, any full or partial release, termination or discharge of any Loan Document, and any enforcement proceedings taken by any Lender Entity under any Loan Document or Applicable Laws; (ii) enure to the benefit of the Chargee for itself and on behalf of each Lender Entity (including each Person having a beneficial or unregistered ownership interest in the Loan), and (iii) be fully effective and enforceable by the Chargee notwithstanding any due diligence performed by or on behalf of any Lender Entity or any breach by any Borrower Entity of any of its obligations and liabilities in respect of the Loan or other information (to the contrary or otherwise) known to any Lender Entity at any time. Without limiting the foregoing, the representations, warranties, covenants and obligations of the Chargor under the Loan Documents shall be fully binding upon and enforceable against the Chargor when it is the beneficial owner of the Property and when it is a trustee, agent or nominee of the Property for any other Person. The representations and warranties of each Borrower Entity in the Loan Documents are deemed to be made to the Chargee on the date of execution of each Loan Document by such Borrower Entity and are deemed repeated on the date of each Loan advance. The Chargor agrees that all enforcement actions or proceedings may be brought by the Chargee under or in respect of the Loan and the Loan Documents on behalf of all Person(s) having a beneficial or unregistered ownership interest therein and waives any requirement that any such Person(s) be a party thereto.

ARTICLE 2 - CHARGE

2.01 Charge. As security for the payment and performance to the Chargee of the Loan Indebtedness, the Chargor hereby mortgages and charges the Property to and in favour of the Chargee.

2.02 Continuing Security. Without limiting any other provision hereof, this Charge secures, *inter alia*, a current or running account and any portion of the Principal Amount may be advanced or readvanced by the Chargee in one or more sums at any future date or dates and the amount of such advances and readvances when so made will be secured by this Charge and be repayable with interest at the Interest Rate and this Charge will be security for the ultimate balance owing to the Chargee arising from the current and running accounts represented by advances and readvances of the Principal Amount or any part thereof with interest at the Interest Rate and all other amounts secured hereby and notwithstanding any change in the amount, nature and form of the Loan Indebtedness from time to time. If the whole or any part of the Principal Amount or other amount secured hereby is repaid, this Charge shall be and remain valid security for any subsequent advance or readvance by the Chargee to the Chargor until such time as the Chargee has executed and delivered to the Chargor a complete discharge of this Charge. The provisions relating to defeasance contained in Subsection 6(2) of the *Land Registration Reform Act* (Ontario) are hereby expressly excluded from this Charge.

ARTICLE 3 - PAYMENT PROVISIONS

3.01 Covenant to Pay. The Chargor acknowledges itself indebted and promises to pay the Loan Indebtedness to the Chargee as and when provided in this Charge, without set-off, deduction or abatement.

3.02 Interest. The Principal Amount shall bear interest at the Interest Rate both before and after default, demand, maturity and judgment until paid.

3.03 Payment Provisions. The Chargor will pay the Loan Indebtedness to the Chargee as follows: (a) interest at the Interest Rate on the Principal Amount or such portion as may be advanced from time to time, calculated from the respective dates of such advances, shall become due and payable on the first day of each calendar month following the date of advance to and including the Interest Adjustment Date (at the option of the Chargee, such interest may be deducted from such advances); (b) from and after the Interest Adjustment Date, the Principal Amount and interest thereon at the Interest Rate computed from the Interest Adjustment Date will become due and payable by payments each in the amount equal to the Monthly Payment (which shall include principal and interest) on each Payment Date (such payments to be applied as provided in Section 3.09 hereof) and the balance of the Principal Amount with interest at the Interest Rate will become due and payable on the Maturity Date; (c) any part of the Loan Indebtedness that is not principal or interest on principal will be payable on demand with interest

thereon at the Interest Rate; and (d) the balance of the Loan Indebtedness then remaining together with any interest thereon at the Interest Rate will become due and be paid on the Maturity Date.

3.04 Compound Interest. Interest shall accrue on overdue interest at the Interest Rate from time to time, both before and after default, demand, maturity and judgment until paid and shall be due and payable by the Chargor to the Chargee forthwith. If such overdue interest and compound interest are not paid within the interest calculation period (being semi-annually not in advance) provided in this Charge from the time of default, a rest will be made and compound interest at the Interest Rate will be payable on the aggregate amount then due, both before and after maturity, default and judgment, and so on from time to time until paid. All compound interest shall be added to the Loan Indebtedness and secured by this Charge.

3.05 Receipt of Payment. Payment will not be deemed to have been made until the Chargee has actually received such money. The Chargor assumes all risk if payments are lost or delayed. Any payment received after 12:00 o'clock noon Toronto time on any day will be deemed, for the purpose of calculation of interest, to have been made and received on the next Business Day. Payments shall be made to the Chargee at such place as the Chargee may designate from time to time.

3.06 Wire Transfer/Pre-authorized Chequing. The Chargor, on written request from the Chargee, and at the Chargee's option, will make all payments pursuant to this Charge by pre-authorized chequing or electronic debit entry on an account maintained by the Chargor and will execute and provide such written authorizations and sample cheques as the Chargee may require.

3.07 Dishonoured Cheques or Payments. If any of the Chargor's cheques are not honoured when presented for payment or if a pre-authorized payment is not honoured, the Chargor will immediately pay the Chargee a reasonable servicing fee as determined by the Chargee or its servicer to cover the administration costs and expenses arising therefrom. Until paid, such servicing fee, together with interest thereon at the Interest Rate shall be added to the Loan Indebtedness and secured by this Charge.

3.08 No Right of Prepayment. No Borrower Entity or any other Person shall have the right to prepay all or any part of the Principal Amount of the Loan prior to the Maturity Date. If any acceleration (including any acceleration under Section 4.02(d)) or prepayment of all or any portion of the Principal Amount should occur prior to the Maturity Date for any reason whatsoever (whether as a result of any Event of Default, Applicable Law or otherwise), then the Prepayment Charge shall immediately become due and payable by the Chargor to the Chargee, in addition to all other amounts then due and owing to the Chargee. Such Prepayment Charge shall form part of the Loan Indebtedness and shall be secured by the Charge and the other Loan Documents. The Chargor acknowledges that the Prepayment Charge represents reasonable and fair compensation for the loss that the Chargee may sustain from any acceleration or prepayment of the Principal Amount of the Loan prior to the Maturity Date, provided nothing herein shall create any right to prepay all or any portion of the Principal Amount at any time or in any circumstances prior to the Maturity Date.

3.09 Application of Payments. Prior to an Event of Default, all Monthly Payments received by the Chargee on account of the Loan Indebtedness shall be applied as follows, regardless of any other designation of such payments as principal, interest or other charges: first, to the repayment of sums advanced by the Chargee pursuant to this Charge or any other Loan Document for any reason (other than the Principal Amount), including sums advanced to pay Realty Taxes, Costs, insurance premiums or other charges against the Property (together with interest thereon at the Interest Rate from the date of advance until paid), then to the payment of accrued but unpaid interest which is then due and payable, and finally, to reduction of the Principal Amount. Following an Event of Default, all payments received by the Chargee shall be applied by the Chargee to principal, interest and/or such other charges due under this Charge or the other Loan Documents in such order as the Chargee shall determine in its sole discretion.

3.10 Costs. The Chargor covenants to pay all Costs to the Chargee forthwith upon demand whether or not all or any part of the Principal Amount is advanced. Until paid, all Costs together with interest thereon at the Interest Rate shall be added to the Loan Indebtedness and secured by this Charge.

3.11 Deemed Re-investment. There shall be no allowance or deduction for deemed re-investment with respect to any amounts paid to the Chargee on account of interest under the Loan.

3.12 Advance Directed to Pay Reserves and Costs. Notwithstanding any rule of law or equity to the contrary, any amounts directed from any Loan advance by the Chargor to be paid as a reserve under the Commitment Letter or to be paid on account of any Costs shall be considered to be fully and immediately advanced to the Chargor for all purposes, shall bear interest at the Interest Rate from and after the date of such Loan advance, and shall be fully and immediately secured by this Charge in priority to all other Liens.

3.13 Reserves. In addition to the Loan Indebtedness, the Chargor shall pay to the Chargee all reserves required by the Commitment Letter when due.

ARTICLE 4 - REPRESENTATIONS, WARRANTIES AND COVENANTS

4.01 Statutory Covenants. The implied covenants under subsection 7(1) of the *Land Registration Reform Act* (Ontario) are expressly incorporated in this Charge but shall be varied so that they shall apply to the Chargor when it is the beneficial owner of the Property and to the Chargor when it is a trustee of the Property for any other Person. The covenants in this Charge supplement and do not derogate from such implied covenants.

4.02 Representations, Warranties and Covenants. The Chargor represents and warrants to and covenants with the Chargee:

(a) **Authorization.** Each Borrower Entity (i) which is a corporation is a duly organized and validly existing corporation under the laws of its governing jurisdiction; (ii) which is a partnership is a valid and subsisting general or limited partnership, as the case may be, under the laws of its governing jurisdiction; (iii) which owns an interest in the Property has full power, authority and legal right to own the Property and to carry on its business thereon in compliance with all Applicable Laws and is duly licensed, registered or qualified in all jurisdictions where the character of its undertaking, property and assets or the nature of its activities makes such licensing, registration or qualification necessary or desirable; (iv) has full power, authority and legal right to enter into each of the Loan Documents to which it is a party and to do all acts and execute and deliver all other documents as are required to be done, observed or performed by it in accordance with their respective terms; (v) has taken all necessary action and proceedings to authorize the execution, delivery and performance of the Loan Documents to which it is a party and to observe and perform the provisions of each in accordance with its terms; (vi) shall maintain in good standing its existence, capacity, power and authority as a corporation or partnership, as the case may be, and shall not liquidate, dissolve, wind-up, terminate, merge, amalgamate, consolidate, reorganize or restructure or enter into any transaction or take any steps in connection therewith; and (vii) which is the Chargor, is a corporation resident in Canada.

(b) **Enforceability.** The Loan Documents constitute valid and legally binding obligations of each Borrower Entity enforceable against each of them in accordance with their terms and are not subject to any right of rescission, set-off, counterclaim or defence. Neither execution and delivery of the Loan Documents, nor compliance with the terms and conditions of any of them, (i) has resulted or will result in a violation of the constating documents governing any Borrower Entity, including any unanimous shareholders' agreement, or any resolution passed by the board of directors, shareholders or partners, as the case may be, of any Borrower Entity, (ii) has resulted or will result in a breach of or constitute a default under Applicable Laws or any agreement or instrument to which any Borrower Entity is a party or by which it or the Property or any part thereof is bound or (iii) requires any approval or consent of any Person except such as has already been obtained.

(c) **Title and Security.** The Chargor is the sole legal and beneficial owner of the Property. The Chargor has good and marketable title in fee simple to the Property free and clear of all Liens, and this Charge and the other Loan Documents shall be at all times a good and valid mortgage, charge, assignment of and security interest in the Property in priority to all other Liens, except in each case as disclosed by the records of the applicable land registry office and accepted by the Chargee in its sole discretion prior to the Loan advance. The Chargor shall defend title to the Property for the benefit of the Chargee from and against all actions, proceedings and claims of all Persons. The Chargor shall not subject the Property or any part thereof to a condominium regime or any other form of multiple ownership or governance.

(d) **Transfers and Liens.** No Transfer shall be made or permitted to be made without the prior written consent of the Chargee in its sole discretion. No Liens shall be created, issued, incurred or permitted to exist (by operation of law or otherwise and whether prior or subordinate to the security of this Charge and the other Loan Documents) on any part of the Property or any interest therein (except in favour of the Chargee as security for the Loan), without the prior written consent of the Chargee in its sole discretion. Any Lien not permitted hereby shall be vacated and discharged from the Property by the Chargor forthwith. If, without the prior consent of the Chargee, any Transfer or any Lien of any part of the Property or any interest therein is made, created, incurred or permitted to exist, then the Chargee, at its sole option, may declare the Loan Indebtedness (including the Prepayment Charge) to be immediately due and payable by the Chargor to the Chargee. If the Chargee elects to provide its consent to any Transfer in its sole discretion, such consent shall be subject to satisfaction of the following terms and conditions (each of which shall be an obligation of the Chargor to promptly satisfy prior to completion of such Transfer): (i) no Event of Default shall have occurred and be uncured and no event shall have occurred and be uncured which, with the passing of time or the giving of notice or both, would be an Event of Default, (ii) the Chargee shall have approved in its sole discretion the financial condition, managerial capacity and ownership structure of the transferee, (iii) the transferee and each other Borrower Entity shall execute and deliver, in the Chargee's form, an assumption agreement and such other indemnities, confirmations, insurance policies (including title insurance) and opinions as the Chargee may require in its sole discretion, (iv) if required by the Chargee in its sole discretion, delivery by the Chargor to the Chargee, at Chargor's sole expense, of a Rating Confirmation in respect of such Transfer and all related transactions; (v) the Chargor shall pay all fees, costs, expenses, charges and disbursements relating to such Transfer including the reasonable fees, costs, expenses, charges and disbursements of the Chargee, its counsel and its servicer for review of Chargor's compliance with the requirements hereof and the preparation and review and/or recording of any and all documentation, accounting certifications or legal opinions relating thereto, including any governmental or third-party fees, costs, taxes or assessments thereon and all fees, costs, expenses, charges and disbursements charged by the Rating Agencies in connection with their review of such Transfer and all related transactions (whether or not a Rating Confirmation is required or issued), (vi) the Chargor shall pay to the Chargee an assumption fee (not to exceed \$15,000.00), equal to 0.25% of the then-outstanding Principal Amount, and (vii) the Chargor shall satisfy all other conditions imposed by the Chargee in respect of such Transfer in its sole discretion. Following any such Transfer, the Chargor and each beneficial owner of the Property including each transferee, shall be a corporation resident in Canada. No Transfer permitted by this Charge shall in any way affect the validity, priority or enforceability of the Loan Documents or the security thereof or release, discharge, modify or otherwise affect the respective obligations of the transferor or any other Borrower Entity thereunder.

(e) **Realty Taxes and Utility Charges.** The Chargor shall pay or cause to be paid all Realty Taxes and utility charges when due. The Chargor shall deliver to the Chargee receipted invoices or other evidence of payment of (i) Realty Taxes no later than each due date thereof, and (ii) utility charges upon request by the Chargee.

(f) Litigation. There are no existing or threatened actions, proceedings or claims against or relating to the Property or any Borrower Entity except as disclosed to and accepted by the Chargee in writing prior to the initial Loan advance. Upon becoming aware of any threatened or actual action, proceeding or claim against or relating to the Property or any Borrower Entity, the Chargor shall promptly notify and provide the Chargee with such information concerning same as the Chargee may require from time to time.

(g) Property. The Property is in good condition and repair, complies with all Applicable Laws, title encumbrances and material agreements, and the present use and location of the buildings, structures and other improvements are legal conforming uses under all Applicable Laws. No buildings, structures or other improvements have been made, altered or removed from the Property since the date of the survey provided to the Chargee prior to the initial Loan advance and such survey accurately shows the location thereof. The Chargor is not aware of any action, proceedings, notices, judgments, orders or claims by any Person alleging or relating to any non-compliance by the Property with any Applicable Laws, title encumbrances or material agreements or any permits, licenses or approvals and the Chargor shall promptly notify and provide the Chargee with all information concerning same as the Chargee may require from time to time. All services and utilities necessary for the use and operation of the Property are located in the public highway(s) abutting the Property (or within easements disclosed to and approved by the Chargee in writing prior to the initial Loan advance) and are connected and available for use. The Property has unrestricted and unconditional rights of public access to and from public highways (completed and available for public use) abutting the Property at all existing access points. The Chargor is not aware of any existing or threatened expropriation or other similar proceeding in respect of the Property or any part thereof.

(h) Use and Maintenance. The Chargor shall not change the use of or abandon the Property, commit or permit any waste of the Property or remove or permit the removal of any building, structure or other improvement from the Property (other than a tenant's improvements removable by a tenant in accordance with its Lease). The Chargor shall diligently maintain, use, manage, operate and repair the Property in a safe and insurable condition, in accordance with Applicable Laws, title encumbrances, material agreements, permits, licenses and approvals, in a prudent and business-like manner, and in keeping with the highest standards for similar properties in the locality in which the Property is situate. The Chargor shall promptly make or cause to be made at its expense all necessary repairs and replacements to the Property necessary to comply with this Subsection in a good and workmanlike manner and equal or better in quality to the original work, and in compliance with all Applicable Laws, title encumbrances, applicable material agreements, permits, licenses and approvals.

(i) Changes to Property. The Chargor shall not demolish, remove, construct, alter, add to, repair or restore the Property or any portion thereof, nor consent to or permit any such action, without obtaining in each instance the Chargee's prior written consent in its sole discretion (except for repairs and alterations costing One Hundred Thousand Dollars (\$100,000.00) or less to complete).

(j) Management. The manager of the Property and each management agreement shall each be subject to the approval of the Chargee in its sole discretion from time to time. The manager shall not be removed or replaced and the management agreement shall not be terminated or amended without the prior written consent of the Chargee in its sole discretion. Upon an Event of Default, the Chargee may terminate, or require the Chargor to terminate, such management agreement and may retain, or require the Chargor to retain, a new manager approved by the Chargee (in each case at the Chargor's sole expense). Each management agreement shall contain termination provisions consistent with this Subsection.

(k) Right of Inspection. The Chargee, its servicer and their respective agents and employees shall have the right, subject to the rights of tenants under existing Leases, to enter and inspect the Property at all reasonable times and, except in an emergency or following an Event of Default, upon reasonable notice to the Chargor. The Chargee shall not be a mortgagee in possession by reason of its exercise of any such right.

(l) Permits. The Chargor (i) has obtained all necessary permits, agreements, rights, licences, authorizations, approvals, franchises, trademarks, trade names and similar property and rights (collectively "Permits") necessary to permit the lawful construction, occupancy, operation and use of the Property; (ii) is not in default under such Permits and shall maintain all such Permits in good standing and in full force and effect; (iii) has delivered to the Chargee complete copies of each Permit existing as of the date of the initial Loan advance; (iv) shall not terminate, amend or waive any of its rights and privileges under any Permits without the Chargee's prior written consent in its sole discretion; and (v) is not aware of any proposed changes or any notices or proceedings relating to any Permits (including pending cancellation, termination or expiry thereof). The Chargor shall promptly notify and deliver to the Chargee particulars of any such changes, notices or proceedings that may arise from time to time.

(m) Representations Regarding Environmental Matters. The Property and all activities conducted thereon comply with all Environmental Laws. The Property contains no Hazardous Substances, has not been previously subject to any remediation or clean-up of Hazardous Substances and there is no prior, existing or threatened investigation, action, proceeding, notice, order, conviction, fine, judgment, claim, directive or Lien of any nature or kind against or affecting the Property or the Chargor arising under or relating to Environmental Laws (each, an "Environmental Proceeding"). All existing environmental assessments, audits, tests and reports relating to the Property have been delivered to the Chargee. To the best of the Chargor's knowledge and belief, there are no pending or proposed changes to Environmental Laws or any Environmental Proceedings which would render illegal or affect the present use and operation of the Property. Neither the Chargor nor any other Person has used or permitted the use of the Property to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process Hazardous Substances or as a waste disposal site.

(n) Covenants Regarding Environmental Matters. The Chargor shall: (i) ensure that the Property and the Chargor comply with all Environmental Laws at all times; (ii) not permit any Hazardous Substance to be located, manufactured, stored, spilled, discharged or disposed of at, on or under the Property (except in the ordinary course of business of the Chargor or any tenant and in compliance with all Environmental Laws); (iii) notify the Chargee promptly of any threatened or actual Environmental Proceedings that may arise from time to time and provide particulars thereof; (iv) remediate and cure in a timely manner any non-compliance by the Property or the Chargor with Environmental Laws, including removal of any Hazardous Substances; and (v) provide the Chargee promptly upon request with such information and documents and take such other steps (all at the Chargor's expense) as may be required by the Chargee to confirm and/or ensure compliance by the Property and the Chargor with Environmental Laws.

(o) Environmental Indemnity. Without limiting any other provision of any Loan Document, the Chargor shall indemnify and pay, protect, defend and save the Chargee harmless from and against all actions, proceedings, losses, damages, liabilities, claims, demands, judgments, costs and expenses (including legal fees and disbursements on a solicitor and its own client basis) (collectively "Environmental Claims") occurring, imposed on, made against or incurred by the Chargee arising from or relating to, directly or indirectly, whether or not disclosed by any environmental audit obtained by any Lender Entity prior to the initial Loan advance and whether or not caused by the Chargor or within its control: (i) any actual or alleged breach of Environmental Laws relating to or affecting the Property, (ii) the actual or alleged presence, release, discharge or disposition of any Hazardous Substance in, on, over, under, from or affecting all or part of the Property or surrounding lands, including any personal injury or property damage arising therefrom, (iii) any actual or threatened Environmental Proceeding affecting the Property including any settlement thereof, (iv) any assessment, investigation, containment, monitoring, remediation and/or removal of all Hazardous Substances from all or part of the Property or surrounding areas or otherwise complying with Environmental Laws; or (v) any breach by any Borrower Entity of any Loan Document or Applicable Law relating to environmental matters (including Subsections 4.02(m) and (n) above). Notwithstanding any other Loan Document, the Chargor agrees that the Chargee shall have full and unrestricted recourse to the Chargor and all of its property and assets for all such Environmental Claims.

(p) Statement of Disclosure. Each Borrower Entity has received all statements of disclosure in respect of the Loan as required by and in compliance with Applicable Laws.

(q) Estoppel Certificates. Within fifteen (15) days following a request by the Chargee from time to time, the Chargor shall provide the Chargee with a written statement confirming the status of the Loan in form and content required by the Chargee, including the amount of the Loan Indebtedness, interest rate and payment terms and particulars of all existing or alleged defaults, claims, offsets or defences.

(r) Financial and Other Information. All financial statements and other information delivered to any Lender Entity by or on behalf of each Borrower Entity in connection with the Loan are complete and correct in all material respects and include all material facts and circumstances concerning the financial or other condition or status of the Property, each Borrower Entity or its business and operations necessary to ensure all such statements and information so provided are not misleading as of the date of delivery to such Lender Entity or as of such other date specified therein. There has been no subsequent material adverse change in the financial or other condition of the Property, any Borrower Entity or its business and operations. No Borrower Entity has any material liability (contingent or otherwise) or other unusual or forward commitment not reflected in such financial statements. Each Borrower Entity has filed all tax returns required by Applicable Laws and has paid, when due, all taxes, surtaxes, duties, rates, withholdings and other similar charges (including related interest, penalties and fines) imposed on it by Applicable Laws or any Governmental Authority.

(s) Financial Statements. The Chargor shall provide the following financial statements and information to the Chargee, certified by the Chargor or the related Borrower Entity and prepared in accordance with generally accepted accounting principles consistently applied and in form and substance acceptable to the Chargee: (i) an annual operating statement and rent roll within ninety (90) days after the end of each fiscal year; (ii) annual financial statements for each Borrower Entity within ninety (90) days after the end of each fiscal year; and (iii) such other information with respect to the Property and/or any Borrower Entity reasonably requested from time to time by the Chargee. If the Property is a hotel, the Chargor shall provide an occupancy summary for the applicable period in form and substance acceptable to the Chargee in lieu of a rent roll. The Chargee or its agents shall have the right to make such inspections and audits of the Property and the books and records of the Chargor as the Chargee shall determine in its sole discretion at the Chargor's expense and the Chargor shall cooperate fully therewith.

(t) Not a Construction Loan. The Chargor covenants, represents and warrants that the Loan and the proceeds thereof are not to be used for the purpose of securing the financing of any improvement (within the meaning of the *Construction Lien Act (Ontario)*) to the Property or for repaying any charge which was taken to secure the financing of an improvement to the Property.

4.03 Performance of Covenants and Default. The Chargor shall observe and perform and cause to be observed and performed all covenants, provisos and conditions contained in this Charge and the other Loan Documents. The Chargor represents and warrants to the Chargee that no Event of Default has occurred and no event has occurred which with the giving of notice, lapse of time or both would constitute an Event of Default. Upon becoming aware of any such Event of Default or event, the Chargor shall promptly deliver to the Chargee a notice specifying full particulars of same.

ARTICLE 5 - INSURANCE

5.01 Insurance Coverage. The Chargor shall maintain at its sole expense the following insurance coverages with respect to the Property for the benefit of Chargee until the Loan Indebtedness has been fully paid and satisfied: (a) insurance against loss or damage by fire, casualty and other hazards as are now or subsequently covered by an "all risk" policy with such endorsements as the Chargee may reasonably require from time to time, covering one hundred percent (100%) of the full replacement cost of the buildings, structures and improvements comprising the Property (including footings and foundations); (b) rental insurance covering one hundred percent (100%) of the total Rents from the Property for not less than a twelve (12) month period (to be determined once each calendar year); (c) comprehensive broad form boiler and machinery coverage; (d) "Comprehensive General Liability Form" of commercial general liability insurance coverage with the "Broad Form CGL" endorsement, providing coverage on a per occurrence basis in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence; and (e) such other insurance as required by the Chargee from time to time in its sole discretion. The Chargor represents and warrants to the Chargee that all such insurance is in full force and effect from and after the initial Loan advance.

5.02 Policy Terms. All insurance required by this Article shall have a term of not less than one year and shall be in the form and amount and with such deductibles, endorsements and insurers as are acceptable to the Chargee from time to time in its sole discretion. Original or certified copies of all insurance policies and all renewals thereof shall be delivered by the Chargor to the Chargee prior to the initial Loan advance or policy expiry, as the case may be. If insurance certificates or binders evidencing such insurance and acceptable to the Chargee are delivered prior to the initial Loan advance or renewal, as the case may be, the original or certified copies of such insurance policies may be delivered to the Chargee within ninety (90) days thereafter. All property, income and boiler and machinery policies shall (i) contain either a stated amount endorsement or a waiver of any co-insurance provision, (ii) contain Canadian standard mortgage clauses in favour of the Chargee, and (iii) shall name the Chargee (or an insurance trustee on terms approved by the Chargee in its sole discretion) as first loss payee. The Chargor shall not carry separate insurance, concurrent in kind or form or contributing in the event of loss, with any insurance required hereunder. If any insurance required by this Charge is not maintained by the Chargor at any time, the Chargee may (but is not obligated to) effect such insurance in any manner it shall determine in its sole discretion and all costs and expenses incurred by or on behalf of the Chargee in maintaining such insurance shall be payable by the Chargor to the Chargee forthwith on demand. Until paid, such costs and expenses together with interest thereon at the Interest Rate shall be added to the Loan Indebtedness and secured by this Charge. As additional and separate security for payment of the Loan Indebtedness, the Chargor hereby assigns, transfers and sets over to the Chargee, as a first Lien thereon, all legal and beneficial right, title and interest in and to all present and future insurance proceeds and expropriation awards in respect of the Property. The Chargor hereby authorizes and directs the issuer of any such insurance proceeds or expropriation awards to make payment directly to the Chargee. Upon an Event of Default, all insurance proceeds and expropriation awards arising in respect of the Property shall, at the option of the Chargee in its sole discretion, be applied in reduction of the Loan Indebtedness.

5.03 Comply with Insurance Policies. The Chargor shall pay all premiums relating to all insurance required by this Article when due and shall promptly deliver to the Chargee receipted invoices or other evidence of payment. The Chargor shall comply with all the terms of each insurance policy required by this Article and all requirements of the insurer of each such policy. The Chargor shall not by any action or omission invalidate any insurance policy required to be carried hereunder or materially increase the premiums on any such policy above the normal premium charged by the carrier of such policy.

ARTICLE 6 - DAMAGE AND DESTRUCTION

6.01 Damage and Destruction/Restoration. If any damage or destruction occurs to the Property, the Chargor shall: (i) give prompt written notice to the Chargee of any damage or destruction to the Property and cause the Property to be secured in a safe manner; (ii) promptly notify the Chargee of the Chargor's good faith estimate of the cost of the work and materials required to repair or restore such damage or destruction (the "Restoration Work"); (iii) promptly commence and diligently prosecute the Restoration Work to completion in accordance with all Applicable Laws and the provisions of this Article to a standard at least equal to the replacement value and general utility of the Property immediately prior to such damage or destruction; (iv) complete the Restoration Work within nine (9) months after the date of the damage and no later than six (6) months prior to the Maturity Date; (v) ensure that the proceeds of the rental insurance required by this Charge shall offset fully any loss of Rents throughout the completion of the Restoration Work and a reasonable period thereafter for leasing the Property or if not, deposit the amount of any deficiency with the Chargee in cash prior to commencement of the Restoration Work to ensure that funds are available to pay when due all scheduled payments on account of the Loan Indebtedness throughout the Restoration Work and leasing period; (vi) ensure that the use, occupancy and operation of the Property existing as of the Loan advance shall be permitted under all applicable zoning laws (or a legal non-conforming use thereunder) following completion of the Restoration Work; (vii) pay all costs and expenses incurred by any Lender Entity in connection with the recovery and administration of all insurance proceeds and the Restoration Work, including approving plans and specifications, inspecting the Restoration Work, and all reasonable architects', adjusters', lawyers', engineers' and other consultants' fees and disbursements and (viii) promptly furnish at its own expense all necessary proofs of loss and do all necessary acts to ensure that the Chargee receives payment of all insurance proceeds.

6.02 Application of Insurance Proceeds. Provided no Event of Default exists, all insurance proceeds net of all reasonable architects', adjusters', lawyers', and other consultants' fees and disbursements ("Net Proceeds") shall be held by the Chargee and paid out from time to time (but not more frequently than every thirty (30) days) to pay the cost of the Restoration Work performed in accordance with this Article on and subject to satisfaction of the following terms and conditions (each of which shall be an obligation of the Chargor to promptly satisfy): (a) Within ten (10) days of such damage or destruction, Chargor shall (i) deliver to the Chargee a certificate from an architect

approved by the Chargee acting reasonably (the "Architect") estimating the cost of the Restoration Work, (ii) if the estimated cost exceeds the amount of Net Proceeds then held by the Chargee, the Chargor shall deliver to the Chargee an unconditional, irrevocable, demand letter of credit, in form, substance and issued by a bank acceptable to the Chargee in its sole discretion, in the amount of such excess, or a completion bond in form, substance and issued by a surety company acceptable to the Chargee in its sole discretion, (iii) provide to the Chargee evidence satisfactory to it in its sole discretion (including an appraisal and statements of cash flow and debt service) that upon the completion of the Restoration Work, the debt service coverage ratio and loan to value ratio (each as determined by the Chargee in accordance with its then current underwriting practices) shall not be less than the debt service coverage ratio or more than the loan to value ratio specified in the Commitment Letter, and (iv) provide to the Chargee evidence satisfactory to it in its sole discretion, and agree in writing with the Chargee, that the Restoration Work will be completed in accordance with this Article; (b) If the Architect's estimate of the cost of the Restoration Work is equal to or exceeds Fifty Thousand Dollars (\$50,000.00), such Restoration Work shall be performed under the supervision of an Architect and in accordance with plans and specifications approved by the Chargee in its sole discretion; (c) Requests for payment of Net Proceeds held by the Chargee shall be made by the Chargor on not less than ten (10) Business Days prior notice to the Chargee and shall be accompanied by a certificate of an Architect, or if the Restoration Work is not required to be supervised by an Architect, by a certificate of the Chargor addressed to the Chargee, stating or containing (i) a detailed description of the completed Restoration Work for which the request for payment is made, (ii) that such Restoration Work has been completed in compliance with this Article, and has been approved by the Chargor and if applicable, the Architect, (iii) that the requested amount is due, or is required to reimburse the Chargor for payments made to the contractor, subcontractors, materialmen, labourers, engineers, architects or other persons performing the Restoration Work and that when added to all payments previously made from Net Proceeds does not exceed the value of the Restoration Work done to the date, (iv) that title to the personal property included in the request for payment is vested in the Chargor free and clear of all Liens, (v) the remaining cost to complete the Restoration Work, (vi) the amount of all lien holdbacks required or permitted to be maintained under Applicable Laws in respect of such Restoration Work, (vii) the amount of such holdbacks actually maintained by the Chargor, and (viii) that no written notice of a Lien under Applicable Laws has been received by the Chargor or the Architect or registered against the Property; and, (d) Prior to disbursing any Net Proceeds, (i) the Chargee must be satisfied in its sole discretion that all holdbacks required or permitted by Applicable Laws have been maintained and that no Liens under Applicable Laws have been registered against the Property, and (ii) the Chargee shall have the right to inspect the Property to determine that the Restoration Work complies with this Article.

6.03 Holdbacks. Notwithstanding any other provision of this Charge, the Chargee shall be entitled to retain, and not disburse, an amount equal to ten percent (10%) of the cost of the Restoration Work (the "Holdback Amount") until such time as (i) the Restoration Work has been fully completed in accordance with this Article, (ii) the Chargee shall have received copies of any and all final certificates of occupancy or other certificates, licenses, permits and approvals required for the ownership, occupancy and operation of the Property in accordance with all Applicable Laws, (iii) all Liens and holdback obligations under Applicable Laws relating to the Restoration Work have expired, (iv) all costs and expenses of the Restoration Work (including all costs of expenses of any Lender Entity referred to in Section 6.01(vii)) have been fully paid, and (v) no Event of Default exists. If any excess Net Proceeds remain after satisfaction of all of the foregoing matters, such excess proceeds shall be paid to the Chargor.

6.04 Event of Default. If the Chargor fails to comply with any of its obligations under this Article, an Event of Default shall have occurred, and the Chargee shall have the right in its sole discretion to apply all Net Proceeds to the Loan Indebtedness. The Chargee may (but shall have no obligation to) perform or cause to be performed any incomplete Restoration Work, and may take such other steps as it deems advisable in connection therewith. The Chargor hereby waives all actions, proceedings, claims, demands and other rights against each Lender Entity arising out of any act or omission of the Chargee completing the Restoration Work and all matters relating thereto. The Chargee may apply all or any portion of the Net Proceeds (without complying with any requirements of this Article) to pay or reimburse each Lender Entity for all costs of completing the Restoration Work without prior notice to or consent of the Chargor.

6.05 Proceeds of Expropriation. All proceeds of expropriation (if such proceeds do not exceed \$25,000.00) shall be paid to the Chargor and shall be re-invested in the Property. All proceeds of expropriation which exceed \$25,000.00 (or following an Event of Default, all expropriation proceeds) shall be paid to and held by the Chargee and may be applied by the Chargee, in its sole option exercisable in its sole discretion, to reduction of the Loan Indebtedness then due or may be held by the Chargee as security for the Loan Indebtedness.

ARTICLE 7 - EVENT OF DEFAULT AND REMEDIES

7.01 Acceleration. Upon an Event of Default, the entire Loan Indebtedness shall, at the option of the Chargee in its sole discretion, immediately become due and payable, with interest thereon at the Interest Rate to the date of actual payment thereof, all without notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, each of which are hereby expressly waived, and all the Chargee's rights and remedies under this Charge, the other Loan Documents, and otherwise at law and in equity shall immediately become enforceable.

7.02 Power of Sale. After an Event of Default which has continued for the minimum period provided by law, the Chargee, on giving the minimum notice required by law, may enter on, lease or sell the Property. Any sale of the Property by the Chargee may be by public auction or private sale for such price and on such terms as to credit and otherwise with such conditions of sale as the Chargee in its sole discretion deems proper and in accordance with Applicable Laws. If any sale is for credit or for part cash and part credit, the Chargee will not be accountable for or be charged with any moneys until they are actually received. The Chargee may rescind or vary any contract or sale and may buy and re-sell the Property without being answerable for loss occasioned thereby. No purchaser will be bound to inquire into the legality, regularity or propriety of any sale or be affected by notice of any irregularity or impropriety. No lack of default, want of notice or other requirement or any irregularity or impropriety of any kind

will invalidate any sale pursuant to this Charge and the purchaser shall not be responsible for any damage or loss caused thereby. The Chargee may sell without entering into actual possession of the Property and while in possession will be accountable only for moneys which are actually received by it. The Chargee may, subject to the restrictions of Applicable Law, sell parts of the Property from time to time to satisfy any portion of the Loan Indebtedness, leaving the remainder of the Property as security for the balance of the Loan Indebtedness. The Chargee may sell the Property or any portion of the Property subject to the balance of the Loan Indebtedness not yet due at the time of such sale. The costs of any sale proceedings pursuant to this Charge, whether such sale proves abortive or not, including taking, recovering or keeping possession of the Property or enforcing any other remedies pursuant to the Charge, shall be payable upon demand by the Chargor to the Chargee with interest thereon at the Interest Rate and until paid shall be added to the Loan Indebtedness and secured by this Charge.

7.03 General Rights of Chargee. After an Event of Default, the Chargee may, but will not be obligated to, perform or cause to be performed any obligations of the Chargor pursuant to this Charge and the other Loan Documents, and for such purpose may do such things as may be required, including entering upon the Property and doing such things upon or in respect of the Property as the Chargee reasonably considers necessary. No such performance by the Chargee shall relieve the Chargor from any default hereunder. The costs of all such actions taken by the Chargee shall be payable by the Chargor to the Chargee forthwith upon demand. Until paid, such costs together with interest thereon at the Interest Rate shall be added to the Loan Indebtedness and secured by the Charge.

7.04 Possession. Upon an Event of Default, the Chargee may enter into and take possession of the Property and shall be entitled to have, hold, use, occupy, possess and enjoy the Property without let, suit, hindrance, interruption or denial of the Chargor or any other Person. The Chargee may maintain, repair and complete the construction of the Property, inspect, manage, take care of, collect Rents and lease the Property or any part thereof for such terms and for such rents (which may extend beyond the Maturity Date) and on such conditions and provisions (including providing any leasehold improvements and tenant inducements) as the Chargee may determine in its sole discretion, which lease(s) shall have the same effect as if made by the Chargor, and all costs, charges and expenses incurred by the Chargee in the exercise of such rights (including allowances for the time, service or effort of any Person appointed by the Chargee for the above purposes, and all reasonable legal fees and disbursements incurred as between a solicitor and his own client), together with interest thereon at the Interest Rate, shall be payable forthwith by the Chargor to the Chargee, and until paid shall be added to the Loan Indebtedness and shall be secured by this Charge. Each lease or renewal of lease made by the Chargee while in possession of the Property shall continue for its full term notwithstanding the termination of the Chargee's possession. No Lender Entity shall be liable for any loss or damage sustained by the Chargor or any other Person resulting from any lease entered into by the Chargee, any failure to lease the Property, or any part thereof, or from any other act or omission of the Chargee or any receiver in managing the Property, nor shall any Lender Entity be obligated to perform or discharge any obligation or liability of the Chargor under any Lease, Loan Document or otherwise at law or in equity.

7.05 Carry on Business. Upon any Event of Default, the Chargee may in its sole discretion, carry on, or concur in the carrying on of all or any part of the business or undertaking of the Chargor relating to the Property and enter on, occupy and use the Property without charge by any Borrower Entity.

7.06 Borrow on the Security of the Property. Upon an Event of Default, the Chargee may raise money on the security of the Property or any part thereof in priority to this Charge or otherwise, as reasonably required for the purpose of the maintenance, preservation, protection or completion of the Property or any part thereof or to carry on all or any part of the business of the Chargor relating to the Property.

7.07 Receiver. Upon any Event of Default, the Chargee may in its discretion, with or without entering into possession of the Property or any part thereof, by instrument in writing, appoint a "Receiver" (which shall include a receiver, a manager or a receiver and manager) of the Property or any part thereof with or without security and may from time to time remove any Receiver with or without appointing another in his stead, and in making such appointment or appointments or removing a Receiver the Chargee shall be deemed to be acting for the Chargor (provided that no such appointment shall be revocable by the Chargor). Upon the appointment of any such Receiver from time to time, and subject to the provisions of the instrument appointing such Receiver, the following provisions shall apply: (a) such Receiver may, in the discretion of the Chargee and by writing, be vested with all or any of the rights, powers and discretions of the Chargee; (b) such Receiver, so far as concerns the responsibility for his acts or omissions, shall be deemed the agent or attorney of the Chargor and not the agent of the Chargee (unless specifically appointed by the Chargee as the agent of the Chargee); (c) neither the appointment, removal or termination of such Receiver by the Chargee nor any act or omission by such Receiver shall incur or create any liability on the part of the Chargee to the Receiver in any respect or constitute the Chargee a chargee or mortgagee in possession of the Property or any part thereof; (d) such Receiver shall be the irrevocable agent or attorney of the Chargor (unless the Chargee specifically appoints such Receiver as the agent for the Chargee) for the collection of all Rents falling due in respect of the Property or any part thereof; (e) the rights and powers conferred herein in respect of the Receiver are supplemental to and not in substitution of any other rights and powers which the Chargee may have; (f) the Chargee may from time to time fix the remuneration for such Receiver, who shall be entitled to deduct the same out of revenue or sale proceeds of the Property; (g) such Receiver shall have the power from time to time to lease any portion of the Property which may become vacant for such term (which may extend beyond the Maturity Date) and shall have the power to accept surrenders of or terminate any lease, in each case on such terms and conditions as it may determine in its sole discretion and in so doing, such Receiver shall act as the attorney or agent of the Chargor and shall have authority to execute under seal any lease or surrender of any such premises or notice(s) of termination in the name of and on behalf of the Chargor, and the Chargor agrees to ratify and confirm whatever any Receiver may do in the Property; (h) such Receiver may make such arrangements, at such time or times as it may deem necessary without the concurrence of any other persons, for the repairing, completing, adding to, or managing of the Property, including completing the construction of any incomplete building or buildings, structures, services or

improvements on the Property, and constructing or providing for leasehold improvements notwithstanding that the resulting cost may exceed the original Principal Amount; (i) such Receiver shall have full power to manage, operate, amend, repair or alter the Property or any part thereof in the name of the Chargor for the purpose of obtaining rental and other income from the Property or any part thereof; (j) no Receiver shall be liable to the Chargor to account for monies other than monies actually received by it in respect of the Property and out of such monies so received from time to time such Receiver shall pay in the following order: (i) its remuneration aforesaid, (ii) all obligations, costs and expenses made or incurred by it, including any expenditures in connection with the management, operation, amendment, repair, construction or alteration of the Property or any part thereof or any business or undertaking carried on by the Receiver thereon, (iii) interest, principal and other monies which may be or become a Lien upon the Property from time to time in priority to this Charge, including all Realty Taxes, (iv) to the Chargee, all Loan Indebtedness and all reserves payable to the Chargee under the Commitment Letter, to be applied in such order as the Chargee in its discretion shall determine, and (v) at the discretion of the Receiver, interest, principal and other monies which may from time to time constitute a Lien on the Property subsequent in priority or subordinate to the interest of the Chargee under this Charge, and such Receiver may retain in its discretion reasonable reserves to satisfy accruing amounts and anticipated payments in connection with any of the foregoing; (k) the Chargee may at any time and from time to time terminate any receivership by notice in writing to the Chargor and to any Receiver; and (l) the Chargor hereby releases and discharges the Chargee and every Receiver from every claim of every nature, whether sounding in damages for negligence or trespass or otherwise, which may arise or be caused to the Chargor or any Person claiming through or under it by reason or as a result of anything done by the Chargee or any Receiver under the provisions of this paragraph. The Chargor agrees to ratify and confirm all actions of any Receiver taken or made pursuant to this provision and agrees that neither the Receiver nor any other Lender Entity shall be liable for any loss sustained by the Chargor or any other Person resulting from any such action or failure to act.

7.08 Power of Attorney. The Chargor hereby grants to the Chargee, with full power of substitution, an irrevocable power of attorney coupled with an interest for the following purposes: (i) to make any of the leases referred to in Section 7.04, (ii) to obtain, collect and receive any insurance proceeds or expropriation awards however arising with respect to the Property, to compromise or settle any claims relating to such proceeds or awards, to endorse any cheques, drafts or other instruments representing such proceeds or awards, and to execute and deliver all instruments, proofs of loss, receipts, and releases reasonably required in connection therewith, (iii) to correct any mistakes in and otherwise completing and perfecting any Loan Documents, (iv) to protect, perfect, preserve the security of the Loan Documents and, following an Event of Default, to collect, enforce and realize on or under the Loan or the Loan Documents including the exercise of any of the rights, powers, authority and discretion of the Chargor in respect of the Property, including collection of Rents and other money that may become or are now due and owing to the Chargor and (v) without limiting the foregoing, to make all necessary conveyances, deeds, transfers, assurances, receipts and other documents and instruments as may be necessary to transfer good and marketable title to all or any of the Property and to complete all other matters pertaining thereto. The Chargor hereby ratifies all actions of the Chargee pursuant to such power of attorney and confirms that no Lender Entity shall be liable for any loss sustained by the Chargor or any other Person resulting from any such action or any failure to act.

7.09 Concurrent Remedies. The Chargee may exercise all rights and remedies provided for in this Charge, any other Loan Document or otherwise under Applicable Laws concurrently or in such order and at such times as it may see fit and will not be obligated to exhaust any right or remedy before exercising any of its other rights or remedies provided for in this Charge, any other Loan Document or otherwise under Applicable Laws.

7.10 Judgments. The taking of a judgment or judgments against the Chargor or any other Person for breach of its obligations contained in this Charge or any other Loan Document will not merge or extinguish such obligations or affect the Chargee's rights to interest on the Loan Indebtedness at the Interest Rate. Any such judgment may provide that interest thereon will be computed at the Interest Rate until such judgment is fully paid and satisfied.

7.11 Remedies Cumulative. The rights and remedies of the Chargee under the Loan Documents are cumulative and are in addition to and not in substitution for any rights or remedies otherwise provided under Applicable Laws. No right or remedy of the Chargee shall be exclusive of or dependent on any other right or remedy and any one or more of such rights and remedies may be exercised independently or in combination from time to time. Any single or partial exercise by the Chargee of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in any Loan Document shall not waive, alter, affect or prejudice any other right or remedy to which the Chargee may be lawfully entitled for such default or breach.

7.12 Extension of Time and Waiver. Neither any extension of time given by the Chargee to the Chargor or any Person claiming through the Chargor, nor any amendment to any Loan Document or other dealing by the Chargee with a subsequent owner of the Property will in any way affect or prejudice the rights of the Chargee against the Chargor or any other Person or Persons liable for payment of the Loan Indebtedness. The Chargee may waive any Event of Default in its sole discretion. No waiver will extend to a subsequent Event of Default, whether or not the same as or similar to the Event of Default waived, and no act or omission by the Chargee will extend to, or affect, any subsequent Event of Default or the rights of the Chargee arising from such Event of Default. Any such waiver must be in writing and signed by the Chargee. No failure on the part of the Chargee or the Chargor to exercise, and no delay by the Chargee or the Chargor in exercising, any right pursuant to this Charge or any other Loan Document will operate as a waiver of such right. No single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right.

7.13 Discharge of Charge and Release. The Chargee will have a reasonable period of time after full payment and satisfaction of the Loan Indebtedness to prepare and execute a discharge of this Charge. Interest at the Interest Rate will continue to run and accrue on all Loan Indebtedness until full payment has been received by the Chargee.

All reasonable legal and other expenses for the preparation, execution, delivery and registration of the discharge will be paid by the Chargor upon demand. The Chargor shall register such discharge. The Chargee may release in its discretion and at any time any Person or any part or parts of the Property from all or any part of the Loan Indebtedness or any security of the Loan Documents either with or without any consideration and without releasing any other part of the Property or any other Person from the Loan Documents or from any of the covenants contained in the Loan Documents, and without being accountable to the Chargor for the value of the land released or for any money except that actually received by the Chargee. Every part or lot into which the Property is or may hereafter be divided will stand charged with the entire Loan Indebtedness. The Chargee may grant time, renewals, extensions, indulgences, releases and discharges, may take securities from and give the same up, may abstain from taking securities from or from perfecting securities, may accept compositions and proposals, and may otherwise deal with the Chargor and all other Persons and securities as the Chargee may see fit without prejudicing the rights of the Chargee under the Loan or the Loan Documents.

ARTICLE 8 - INDEMNITY

8.01 General Indemnity. Without limiting any other provision of any Loan Document, the Chargor shall indemnify and pay, protect, defend and save harmless the Chargee from and against all actions, proceedings, claims, demands, judgments, losses, damages, liabilities, costs or expenses (including legal fees and disbursements on a solicitor and his own client basis), imposed upon, made against or incurred by the Chargee arising from or relating to directly or indirectly (i) any breach of any Loan Document by any Borrower Entity or any remedial or other proceedings taken by any Lender Entity thereunder or pursuant thereto, (ii) any accident, injury to or death of any person or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, parking areas, streets or ways, (iii) any use, non use or condition in, on or about, or possession, alteration, repair, operation, maintenance or management of, the Property or any part thereof or on the adjoining sidewalks, curbs, parking areas, streets or ways, (iv) performance of any labour or services or the furnishing of any materials or other property in respect of the Property or any part thereof, (v) any claim by brokers, finders or similar Persons claiming to be entitled to a commission in connection with the Loan, any Lease or other transaction involving the Property or any part thereof, (vi) any taxes, fees, costs or expenses attributable to the execution, delivery, filing, or recording of any Loan Document, (vii) any Lien or other claim arising on or against the Property or any part thereof or asserted against any Lender Entity with respect thereto; and/or (viii) the claims of any tenant or other Person arising under or relating to any Lease. Any amounts payable to the Chargee hereunder shall constitute part of the Loan Indebtedness, bear interest at the Interest Rate until paid and shall be secured by this Charge.

ARTICLE 9 - DEFEASANCE

9.01 Defeasance. Provided no Event of Default exists and upon 30 days' prior written notice, the Chargor shall be entitled to obtain on any Payment Date following Securitization of the Loan by the Chargee a release of the security of this Charge and the Chargee's other security from the Property upon delivery of substitute security for the Loan (a "defeasance") upon and subject to compliance by the Chargor with the following terms and conditions at its sole expense and to the satisfaction of the Chargee in its sole discretion: (a) the Chargor shall pay to the Chargee the aggregate of (i) all accrued and unpaid interest and all other sums due under the Loan up to and including the defeasance date, and (ii) all fees, costs, expenses, charges and disbursements incurred by each Lender Entity relating to such defeasance, including all fees, costs, expenses, charges and disbursements of the Chargee, its counsel and servicer for review of the Chargor's compliance with the requirements for and conditions of defeasance and the preparation, review and/or recording of any and all documentation with respect to the defeasance, accounting certificates and legal opinions relating thereto, including any governmental or third party fees, costs, taxes or assessments thereon, and all fees, costs, expenses, charges and disbursements charged by the Rating Agencies in connection with their review of such defeasance transaction (whether or not a Rating Confirmation is required or issued); (b) the Chargor shall execute and deliver or cause to be executed and delivered each the following in form and content satisfactory to the Chargee in its sole discretion: (i) direct, non-callable Government of Canada bonds (the "Defeasance Collateral") which shall provide for payments prior, but as close as possible, to all Payment Dates to and including the Maturity Date with full payment of the balance of all Loan Indebtedness on the Maturity Date, and each such payment (together with the unexpended portion of any prior payment) shall be equal to or greater than the corresponding Loan payment due and payable thereon, (ii) a promissory note made by the Chargor in favour of the Chargee evidencing the continuing indebtedness of the Chargor under the Loan and having the same financial terms as the Loan, (iii) a security agreement creating a first priority Lien in the Defeasance Collateral in favour of the Chargee as security for the Loan Indebtedness, (iv) a certificate of the Chargor certifying that all of the requirements in this Article 9 have been satisfied; (v) an opinion of Chargor's counsel confirming that the Chargee has a perfected first priority Lien in the Defeasance Collateral and that the promissory note and the security agreement are valid and legally binding obligations of the Chargor enforceable against it in accordance with their terms, (vi) such further assurances as the Chargee may require to confirm the continuing liabilities and obligations of each Borrower Entity in respect of the Loan, (vii) a Rating Confirmation in respect of such defeasance transaction, and (viii) a certificate from a chartered accountant who is a member of the Canadian Institute of Chartered Accountants (or certified public accountant that is a member of the American Institute of Certified Public Accountants) that the Defeasance Collateral is sufficient to cover all remaining payments of principal and/or interest when due under the Loan, including full payment of all Loan Indebtedness on the Maturity Date; and (c) the Chargor shall endorse the Defeasance Collateral in favour of the Chargee or as the Chargee may direct and, if required by the Chargee, shall deliver a written transfer of the Defeasance Collateral in favour of the Chargee and other documents, all in form and content satisfactory to the Chargee in order to perfect the Chargee's first priority Lien in the Defeasance Collateral under Applicable Laws. All payments arising from the Defeasance Collateral shall be paid directly to the Chargee to be applied on account of the Loan Indebtedness provided that the Chargor shall be and remain at all times solely responsible to pay all taxes applicable to such payments (from sources other than the Defeasance Collateral).

9.02 Continuing Obligations. The parties agree that the provisions of this Article 9 respecting defeasance shall constitute a substitution of security only for the continuing Loan Indebtedness (and the execution and delivery of the promissory note by the Chargor being solely to evidence such continuing Loan Indebtedness) and shall not constitute, evidence or result in repayment, readvance, accord or satisfaction, release, discharge, modification or novation of all or any part of the Loan, Loan Indebtedness or any obligation or liability of any Borrower Entity under or in respect of any Loan Document or a new loan by the Chargee to the Chargor. Subsequent to any such defeasance, the Chargor shall have no right to prepay the Loan prior to the Maturity Date. When executed and delivered to the Chargee, all documents referred to in this Article 9 shall form part of the Loan Documents and the Chargee's security. After release of the Property from the Chargee's security, the Chargor shall not make or permit any transfer or encumbrance with respect to the Defeasance Collateral, except in favour of the Chargee.

ARTICLE 10 - MISCELLANEOUS

10.01 Notice

(1) Any notice, demand or other communication required or permitted to be given or made to the Chargor pursuant to this Charge may be given or made in any manner permitted or provided by the laws applicable thereto, notwithstanding any provision of any other Loan Document to the contrary. Subject to the foregoing, any such notice, demand or communication may be given or made, at the option of the Chargee by personal delivery, by prepaid ordinary or registered mail (to the address for service of the Chargor set out in this Charge or to the last known address of the Chargor as shown in the Chargee's records) or by facsimile transmission to the facsimile number of the Chargor set out in Subsection 10.01(2) or the last known facsimile number of the Chargor as shown in the Chargee's records. Such notice will be sufficient although not addressed to any Person by name or designation and notwithstanding that any Person to be affected thereby may be unknown, unascertained or under a disability. Subject to Applicable Laws, the giving of such notice in the manner aforesaid will be as effective as if the notice had been personally served on all Persons required to be served therewith.

(2) Subject to Subsection 10.01(1), any demand, notice or communication to be made or given in connection with this Charge or any of the Loan Documents shall be in writing and may be made or given by personal delivery, by registered mail or by facsimile transmission addressed to the recipient as follows:

(i) to the Chargor:

1482241 Ontario Limited
240 Duncan Mill Road
Toronto, Ontario, M3B 3P1

Attention: Alain Checrouno
Facsimile No.: (416) 447-1179

(ii) to the Chargee:

Computershare Trust Company of Canada
100 University Avenue
12th Floor, South Tower
Toronto, Ontario M5J 2Y1

Attention: Manager, Mortgage Backed Securities Department
Facsimile No.: (416) 981-9788

and with a copy to the Chargee's servicer at:

Royal Bank of Canada
320 Front Street West, 11th Floor
Toronto, Ontario M5V 3B6

Attention: CMBS Group
Facsimile No.: (416) 974-4157

or to such other address, individual or facsimile number as any party may designate by notice given to the other(s) in accordance with this Section. Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to have been made or given on the day of actual delivery thereof, and if made or given by registered mail, on the third Business Day following the deposit thereof in the mail, and if made or given by facsimile transmission, on the first Business Day following the transmittal thereof. If the party giving any demand, notice or other communication knows or reasonably ought to know of any difficulties with the postal system that might affect the delivery of mail, such demand, notice or other communication shall not be mailed, but shall be given by personal delivery or by facsimile transmission.

10.02 Severability. If any term, covenant, obligation or agreement contained in this Charge, or the application thereof to any Person or circumstance, shall be invalid or unenforceable to any extent, the remaining provisions of this Charge or the application of such term, covenant, obligation or agreement to such other Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each

term, covenant, obligation or agreement contained herein shall be separately valid and enforceable to the fullest extent permitted by law.

10.03 Governing Law. This Charge shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein without application of any principle of conflict of laws which may result in laws other than the laws in force in Ontario applying to this Charge; and the Chargor consents to the jurisdiction of the courts of the Province of Ontario and irrevocably agrees that, subject to the Chargee's election in its sole discretion, all actions or proceedings arising out of or relating to this Charge shall be litigated in such courts and the Chargor unconditionally accepts the non-exclusive jurisdiction of the said courts and waives any defense of *forum non-conveniens*, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Charge, provided nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of the Chargee to bring proceedings against the Chargor or any other Borrower Entity in the courts of any other jurisdiction.

10.04 Non-Merger. The terms and conditions of the Loan Documents will remain binding and effective on the parties to this Charge and will not merge in this Charge nor in any other Loan Document.

10.05 Successors and Assigns. This Charge will enure to the benefit of and be binding upon the Chargor, the Chargee and their respective heirs, executors, administrators, legal representatives, successors and assigns.

10.06 No Obligation to Advance. Neither the preparation, execution nor registration of this Charge will bind the Chargee to advance all or any part of the Principal Amount. The advance of a part of the Principal Amount will not bind the Chargee to advance any unadvanced portion of the Principal Amount. Each advance of the Loan shall be subject to and governed by the terms and conditions of the Commitment Letter.

10.07 Consent to Disclosure. The Chargor acknowledges and agrees that the Loan (or securities or certificates backed by or representing any interest in the Loan or a pool of loans which includes the Loan) may be sold or securitized into the secondary market without further notice to or the consent of the Chargor or any other Borrower Entity. Each Lender Entity from time to time may release, disclose, exchange, share, transfer and assign as it may determine in its sole discretion, all information and materials (including financial statements and information concerning the status of the Loan, such as existing or potential Loan defaults, lease defaults or other facts or circumstances which might affect the performance of the Loan) provided to or obtained by any Lender Entity relating to any Borrower Entity, the Property or the Loan (both before and after any Loan advance and/or default) without restriction and without notice to or the consent of the Chargor or any other Borrower Entity as follows: (i) to any other Lender Entity; (ii) to any subsequent or proposed purchaser of the Loan, including any subsequent or proposed Lender Entity, and their respective third party advisors and or agents, such as lawyers, accountants, consultants, appraisers, credit verification sources and servicers; (iii) to the public or any private group in any offering memorandum, prospectus or other disclosure document (including all initial and continuing disclosure requirements), regardless of format or scope of distribution; (iv) to the public or other interested Persons, directly or indirectly through information service providers or other market participants, for the purpose of providing market information from time to time relating to the status of the Loan or loan pools or any interest therein regardless of format or scope of distribution; (v) to any Governmental Authority having jurisdiction over such sale or Securitization of the Loan or loan pool or any trade of any interest in the Loan or loan pool; and (vi) to any other Person in connection with the sale, assignment or Securitization of the Loan or in connection with any collection or enforcement proceedings taken under or in respect of the Loan and/or the Loan Documents. The Chargor irrevocably consents to the collection, obtaining, release, disclosure, exchange, sharing, transfer and assignment of all such information and materials.

10.08 Change of Status. After any change affecting the spousal status of the Chargor or the qualification of the Property as a matrimonial home within the meaning of Part II of the *Family Law Act* (Ontario), the Chargor will advise the Chargee and provide the Chargee with the full particulars of such change and such other information as the Chargee may require from time to time.

10.09 Maximum Rate of Return. Notwithstanding any provision of any Loan Document to the contrary, in no event will the aggregate "Interest" (as defined in Section 347 of the *Criminal Code* (Canada)) payable under the Loan exceed the effective annual rate of interest lawfully permitted under that Section and, if any payment, collection or demand pursuant to the Loan in respect of "interest" (as defined in that Section) is determined to be contrary to the provisions of that Section, such payment, collection or demand will be deemed to have been made by mutual mistake of the Chargor and Chargee and the amount of such payment or collection shall either be applied to the Loan Indebtedness (whether or not due and payable), and not to the payment of interest (as defined in Section 347 of the said *Criminal Code*), or be refunded to the Chargor at the option of the Chargee. For purposes of each Loan Document, the effective annual rate of interest will be determined in accordance with generally accepted actuarial practices and principles over the term of the Loan on the basis of annual compounding of the lawfully permitted rate of interest. In the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Chargee will be conclusive for the purposes of such determination.

10.10 Assignment. This Charge may be assigned by the Chargee at any time without prior notice to or consent of the Chargor. The Chargor shall not assign any of its rights and obligations under this Charge.

ARTICLE 11 - OTHER SECURITY

11.01 General Assignment of Rents and Leases. As general and continuing security for payment and performance of the Loan Indebtedness, the Chargor hereby assigns, transfers, grants and sets over to the Chargee, as

and by way of a first fixed and specific assignment and security interest, all legal and beneficial right, title and interest in and to (i) the Rents now or hereafter due and payable with full power and authority to demand, collect, sue for, recover, receive and give receipts for the Rents in the name of the Chargor or the owner from time to time of the Property or in the name of the Chargee, as the Chargee may determine in its sole discretion, and (ii) the Leases with full benefit and advantage thereof including the benefit of all covenants and agreements contained in the Leases on the part of the tenants therein or any guarantor or indemnitor thereof to be observed, performed or kept, including all proceeds of or from any of the foregoing. This assignment and security interest is in addition to and not in substitution for any other general assignment of the Rents and Leases and other security granted by the Chargor to the Chargee to secure the Loan Indebtedness.

11.02. General Security Agreement. As general and continuing security for the payment and performance of the Loan Indebtedness, the Chargor hereby grants to the Chargee a security interest in all present and future undertaking and property of any nature or kind, both real and personal, of the Chargor comprising or otherwise relating to the Property (collectively, the "Collateral") with the right to possess, use or sell the Collateral, in whole or in part, upon an Event of Default, and as further general and continuing security for the payment and performance of the Loan Indebtedness, the Chargor hereby assigns the Collateral to the Chargee and mortgages and charges the Collateral as and by way of a fixed and specific mortgage and charge to the Chargee. Without limiting the foregoing, the Collateral shall include all replacements of, substitutions for and increases, additions and accessions to any real or personal property comprising the Collateral and all proceeds of any Collateral in any form derived directly or indirectly from any dealing with the Collateral or that indemnifies or compensates for the loss of or damage to the Collateral; provided that the said security interest, assignment, mortgage and charge will not (i) extend or apply to the last day of the term of any lease or any agreement therefor now held or hereafter acquired by the Chargor, but should the Chargee enforce the said security interest, assignment, mortgage and charge, the Chargor will thereafter stand possessed of such last day and must hold it in trust to assign the same to any Person acquiring such term in the course of the enforcement of the said assignment and mortgage and charge, or (ii) render the Chargee liable to observe or perform any term, covenant or condition of any agreement, document or instrument to which the Chargor is a party or by which it is bound. This security interest, assignment, mortgage and charge is in addition to and not in substitution for any other general security agreement and other security granted by the Chargor to the Chargee to secure the Loan Indebtedness.

* * * * *

**This is Exhibit "H" referred to in the affidavit
of IVAN MITCHEL MERROW, SWORN BEFORE ME
this 14th day of March, 2017**



A COMMISSIONER FOR TAKING AFFIDAVITS

Nahla Khouri, Lawyer
55861Q

AMENDED TRUST DECLARATION

DATED June 22, 2012.

BETWEEN:

1482241 ONTARIO LIMITED

(hereinafter called the "Trustee")

OF THE FIRST PART

- and -

ALAIN CHECROUNE

OF THE SECOND PART

- and -

JAMSHID HUSSAINI

OF THE THIRD PART

- and -

NEELOFAR AHMADI

OF THE FOURTH PART

WHEREAS the Trustee and Alain Checroune, as beneficiary, entered into a trust declaration dated as of September 21, 2005, as amended (collectively the "**Declaration**");

AND WHEREAS the parties hereto (collectively the "**Parties**") desire to further amend the Declaration as hereinbelow set forth;

NOW THEREFORE, for good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Declaration remains in full force and effect, unamended except as may be indicated herein.
2. Defined terms not otherwise defined herein shall have the meanings attributed thereto in the Declaration.
3. Alain Checroune, being the beneficial owner of one hundred percent (100%) of the interest in the Property, hereby transfers and assigns twenty percent (20%) of his interest in the Property, including the chattels, fixtures, equipment and leases and rental agreements relating thereto (collectively the "**Property and Assets**"), as follows:
 - (a) As to fifteen percent (15%), to Jamshid Hussaini; and

(b) As to five percent (5%) to Neelofar Ahmadi

and does hereby direct the Trustee to record this transaction on its books and records.

4. In view of the foregoing, the Trustee acknowledges and declares that it is now holding:

(a) A fifteen percent (15%) interest in the Property and Assets in trust for Jamshid Hussaini;

(b) A five percent (5%) interest in the Property and Assets in trust for Neelofar Ahmadi; and

(c) An eighty percent (80%) interest in the Property and Assets in trust for Alain Checrone.

5. This agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and assigns.


IN WITNESS WHEREOF the Parties have executed this amendment as of the date above first written.

1482241 ONTARIO LIMITED


Per: 

Alain Checrone, A.S.O.

"I have the authority to bind the corporation."


ALAIN CHECRONE


JAMSHID HUSSAINI


NEELOFAR AHMADI

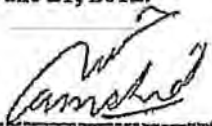
UNDERTAKING

RE Hussaini and Ahmadi purchase from Alain Checroune
Common Shares at 1482241 Ontario Limited
AND RE 240 Duncan Mill Road, Toronto

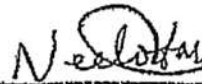
THE purchasers hereby undertake to purchase and the vendor hereby undertakes to sell the remaining balance of the shares of the corporation 1482241 Ontario Limited, the owner of the property at 240 Duncan Mill Road, in the City of Toronto, and 2.4 of the Amended Agreement of Purchase & Sale, and paragraph 2.5 of the Agreement of Purchase & Sale.

The purchase price for the remainder of the shares shall be \$4,800,000.00 and shall be adjusted by the amount that the existing first mortgage as of June 21, 2012 exceeds \$9,000,000.00 or is less than \$9,000,000.00. As an example, if the balance is \$8,900,000.00, the purchase price for the shares shall be \$4,900,000.00; if the balance on the said mortgage is \$9,100,000.00 then the purchase price of the balance of the shares shall be \$4,700,000.00.

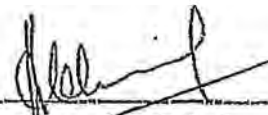
Dated: June 21, 2012.



Jamshid Hussaini (Purchaser)



Neelofar Ahmadi (Purchaser)



Alain Checroune (Seller)

CERTIFICATE FOR
five
Common Shares of

1482241 ONTARIO LIMITED

Issued to: **NEELOFAR AHMADI**
Date: **June 21st, 2012**
Certificate: **C-5**

For Value I received, I hereby assign and transfer unto

_____ **Common Shares**

represented by the within Certificate

DATED _____

In the presence of

CERTIFICATE FOR
thirty
Common Shares of

1482241 ONTARIO LIMITED

Issued to: ALAIN CHECROUNE
Date: June 21, 2012
Certificate: C-6

For Value I received, I hereby assign and transfer unto

_____ Common Shares

represented by the within Certificate

DATED _____

In the presence of

CERT. NO.	C-6	FROM WHOM TRANSFERRED	
FOR	30 SHARES	Checroune, Alain	
ISSUED TO		Dated	June 21, 2001
ALAIN CHECROUNE		No. Original Cert.	C-1
		No. Original Shares	50
DATED	June 21st, 2012	No. of Shares Transferred	30

NO. C-6

INCORPORATED UNDER THE LAWS OF THE PROVINCE OF ONTARIO
Subject to the Business Corporations Act (Ontario)

30 SHARES

1482241 ONTARIO LIMITED

This is to Certify that

ALAIN CHECROUNE
is the registered holder of thirty
Common Shares in the capital of
1482241 ONTARIO LIMITED

The class or series of shares represented by this Certificate has rights, privileges, restrictions or conditions attached thereto and the Corporation will furnish to a shareholder, on demand and without charge, a full copy of the text of:

- (i) the rights, privileges, restrictions and conditions attached to the shares represented by this certificate and to each class authorized to be issued and to each series insofar as the same have been fixed by the directors; and
- (ii) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series, if applicable.

The Corporation has a lien on the shares represented by this Certificate for the indebtedness of the shareholder to the Corporation.
The right of the shareholder to transfer the shares represented by this Certificate is subject to restrictions.

IN WITNESS WHEREOF this Corporation has caused this Certificate to be signed by its duly authorized officers.
DATED this 21st day of June, 2012

President (Alain Checroune)

Secretary (Alain Checroune)

CERTIFICATE FOR
fifteen
Common Shares of

1482241 ONTARIO LIMITED

Issued to: **JAMSHID HUSSAINI**
Date: **June 21st, 2012**
Certificate: **C-4**

For Value I received, I hereby assign and transfer unto

Common Shares

represented by the within Certificate

DATED _____

In the presence of

CERT. NO.	C-5	FROM WHOM TRANSFERRED	
FOR	5 SHARES	Checroune, Alain	
ISSUED TO		Dated	June 21, 2001
NEELOFAR AHMADI		No. Original Cert.	C-1
		No. Original Shares	50
DATED	June 21st, 2012	No. of Shares Transferred	5

NO. C-5

INCORPORATED UNDER THE LAWS OF THE PROVINCE OF ONTARIO
Subject to the Business Corporations Act (Ontario)

5 SHARES

1482241 ONTARIO LIMITED

This is to Certify that

NEELOFAR AHMADI

**is the registered holder of five
Common Shares in the capital of**

1482241 ONTARIO LIMITED

The class or series of shares represented by this Certificate has rights, privileges, restrictions or conditions attached thereto and the Corporation will furnish to a shareholder, on demand and without charge, a full copy of the text of:

- (i) the rights, privileges, restrictions and conditions attached to the shares represented by this certificate and to each class authorized to be issued and to each series insofar as the same have been fixed by the directors; and
- (ii) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series, if applicable.

The Corporation has a lien on the shares represented by this Certificate for the indebtedness of the shareholder to the Corporation.

The right of the shareholder to transfer the shares represented by this Certificate is subject to restrictions.

IN WITNESS WHEREOF this Corporation has caused this Certificate to be signed by its duly authorized officers.

DATED this 21st day of June, 2012

President (Alain Checroune)

Secretary (Alain Checroune)

CERT. NO.	C-4	FROM WHOM TRANSFERRED	
FOR	15 SHARES	Checoune, Alain	
ISSUED TO		Dated	June 21, 2001
JAMSHID HUSSAINI		No. Original Cert.	C-1
		No. Original Shares	50
DATED	June 21st, 2012	No. of Shares Transferred	15

NO. C-4

INCORPORATED UNDER THE LAWS OF THE PROVINCE OF ONTARIO
Subject to the Business Corporations Act (Ontario)

15 SHARES

1482241 ONTARIO LIMITED

This is to Certify that

JAMSHID HUSSAINI

**is the registered holder of fifteen
Common Shares in the capital of**

1482241 ONTARIO LIMITED.

The class or series of shares represented by this Certificate has rights, privileges, restrictions or conditions attached thereto and the Corporation will furnish to a shareholder, on demand and without charge, a full copy of the text of:

- (i) the rights, privileges, restrictions and conditions attached to the shares represented by this certificate and to each class authorized to be issued and to each series insofar as the same have been fixed by the directors; and
- (ii) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series, if applicable.

The Corporation has a lien on the shares represented by this Certificate for the indebtedness of the shareholder to the Corporation.

The right of the shareholder to transfer the shares represented by this Certificate is subject to restrictions.

IN WITNESS WHEREOF this Corporation has caused this Certificate to be signed by its duly authorized officers.

DATED this 21st day of June, 2012

President (Alain Checoune)

Secretary (Alain Checoune)

RESOLUTION OF THE SOLE DIRECTOR

OF

1482241 ONTARIO LIMITED
(the "Corporation")

CONSENT TO TRANSFER OF COMMON SHARES

BE IT RESOLVED THAT:

Pursuant to a Share Purchase Agreement dated June 6, 2012, as amended, the following transfers of Common shares in the capital of the Corporation be and the same are hereby approved of and consented to:

<u>Transfer From</u>	<u>Transfer To</u>	<u>No. & Class</u>
ALAIN CHECROUNE	JAMSHID HUSSAINI	15 Common
ALAIN CHECROUNE	NEELOFAR AHMADI	5 Common

THE FOREGOING RESOLUTION is hereby consented to by the sole director of the Corporation as evidenced by his signature hereto in accordance with the provisions of the *Business Corporations Act* (Ontario), on June 21, 2012.



ALAIN CHECROUNE

TRANSFER OF SHARES

Pursuant to a Share Purchase Agreement dated June 6, 2012, as amended, the undersigned hereby sells, transfers and assigns his right, title and interest in TWENTY (20) common shares in the capital stock of 1482241 Ontario Limited (the "Corporation") owned by the undersigned, to the parties listed below each in accordance with the number of shares set out opposite their name:

<u>Transfer From</u>	<u>Transfer To</u>	<u>No. & Class</u>
ALAIN CHECROUNE	JAMSHID HUSSAINI	15 Common
ALAIN CHECROUNE	NEELOFAR AHMADI	5 Common

The undersigned hereby irrevocably appoints the Secretary of the Corporation as the lawful attorney of the undersigned to record the within transfer in the records of the Corporation.

DATED June 21, 2012.



ALAIN CHECROUNE

WARRANTY

RE Hussaini and Ahmadi purchase from Alain Checroune
Common Shares at 1482241 Ontario Limited

AND RE 240 Duncan Mill Road, Toronto

Unless otherwise defined herein, any defined terms shall have the meaning attributed thereto in the Agreement of purchase and sale dated June 6, 2012, as amended (the "Agreement").

THE VENDOR hereby warrants as follows:

1 The Vendor represents and warrants to the Purchaser as follows, and confirms that the Purchaser is relying upon the accuracy of each of such representations and warranties in connection with the purchase of the Purchased Shares and the completion of the other transactions hereunder:

(1) Corporate Authority and Binding Obligation. The Vendor has good right, full power and absolute authority to enter into the Agreement and to sell, assign and transfer the Purchased Shares to the Purchaser in the manner contemplated herein and to perform all of the Vendor's obligations under the Agreement. The Shareholder has good right, full power and authority to enter into the Agreement and to perform all of the Shareholder's obligations under the Agreement. Each of the Corporation and the Vendor and their respective shareholders and boards of directors have taken all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into of, and the execution, delivery and performance of, the Agreement and the sale and transfer of the Purchased Shares by the Vendor to the Purchaser. The Agreement is a legal, valid and binding obligation of the Vendor and the Shareholder, enforceable against each of them in accordance with its terms subject to:

(a) Bankruptcy, insolvency, moratorium reorganization and other laws, relating to or affecting the enforcement of creditors' rights generally, and

(b) The fact that equitable remedies, including the remedies of specific performance and injunction, may only be granted in the discretion of a court.

(2) No Other Purchase Agreements. No person has any agreement, option, understanding or commitment, or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement, option or commitment, including convertible securities, warrants or convertible obligations of any nature, for :

(a) The purchase, subscription, allotment or issuance of, or conversion into, any of the unissued shares in the capital of the Corporation or any securities of the corporation.

(b) The purchase from the Vendor of any of the Purchased Shares, or

(c) The purchase or other acquisition from the Corporation of any of its undertaking, property or assets, other than in the ordinary course of the Business.

(3) Status, Constatng Documents and Licences.

(a) The Corporation is a corporation duly incorporated and validly subsisting in all respects under the law of the Province of Ontario.

2 The corporation is the registered owner of the property located at 240 Duncan Mill Road in the City of Toronto subject to a mortgage in favour of the Royal Bank of Canada.


Property Tax The vendor warrants that all property taxes on the property will be paid to the date of closing and will be adjusted with the purchaser as of that date. All other

encumbrances and documents registered on title will be discharged by the vendor on or before closing.

3 The corporation has no other debts or liabilities aside from the mortgage to the Royal Bank and is not involved in any litigation except as set out below. The Seller covenants and agrees to pay to the date of closing all utilities, including hydro Water and Gas. The ~~buyer~~ seller shall collect rents and shall be entitled to any excess funds prior to closing as payment in full of any shareholder's loans. Prepaid rent will be credited to the purchaser and deducted from the balance due on closing. Any liabilities arising out of matters occurring before the closing date, or from existing litigation shall remain the responsibility of Alain Checroune, and if not paid may be deducted from the balance due.

4 Work Order There are no work orders affecting the property at 240 Duncan Mills Road.

Dated: June 14 2012



Alain Checroune

**This is Exhibit "I" referred to in the affidavit
of IVAN MITCHEL MERROW, SWORN BEFORE ME
this 14th day of March, 2018**



A COMMISSIONER FOR TAKING AFFIDAVITS

Nahla Khouri, Lawyer
55861Q

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08-07-12 THU 15:48 FAX 416 117 1170 Alain Checrone

AGREEMENT

THIS AGREEMENT made this 6th day of, June 2012

BETWEEN:

Jamshid Mussini and Neelofar Ahmadi
(hereinafter referred to as the "Purchaser")

OF THE FIRST PART

AND

Alain Checrone
(hereinafter referred to as the "Vendor")

OF THE SECOND PART

WHEREAS :

1. The Vendor is the registered and beneficial owner of all the issued and outstanding shares in the capital of 1482241 Ontario Limited
2. 1482241 Ontario Limited is the registered owner of a property located at 240 Duncan Mill Road in the City of Toronto subject to a mortgage in the amount of \$9,000,000.00.
3. The Purchaser wishes to purchase, and the Vendors wish to sell ~~all issued and outstanding~~ shares in the capital of the said corporation:

J.H./N.A.

J.H.
N.A.

NOW THIS AGREEMENT WITNESSES that in consideration of the mutual covenants contained herein, the parties for themselves, their heirs, executors, administrators, successors and assigns respectively, mutually agree as follows:

1. Interpretation

N.A. J.H.

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Alain Chacroune

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1.1 Defined Terms In this agreement and in the Schedules hereto, unless there is something in the subject matter or context inconsistent therewith, the following terms and expressions will have the following meanings:

(a) "Closing Date" means 10 days after the purchaser signs this offer, waives the conditions contained in paragraph 4.1, or such other date as the Vendors and Purchaser may agree upon, the purchaser shall have the right to extend closing for a period of one month at their sole discretion in order to complete their due diligence. If for any reason this transaction does not close, this offer will become null and void and the deposit will be returned to the purchaser without any deduction.

✓
NA
J.H.

(b) "Corporation" means 1482241 Ontario Limited.

1.2 Currency. Unless otherwise indicated, all dollar amounts referred to in this agreement are in lawful money of Canada.

1.3 Choice of law and attorney. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, and the laws of Canada applicable therein.

1.4 Interpretation not affected by headlines or party drafting. The division of this agreement into articles, sections, paragraphs, subsection and clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this agreement. The terms "this agreement", "hereof", "herein", "hereunder" and similar expressions refer to this agreement and the Schedules hereto and not to any particular article, section, paragraph, clause or other portion hereof and include any agreement or instrument supplementary or ancillary hereto. Each party hereto acknowledges

NA
J.H.

that it and its legal counsel have reviewed and participated in settling the terms of this agreement, and the parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this agreement.

1.5 Number and gender. In this agreement, unless there is something in the subject-matter or context inconsistent therewith,

- (a) words in the singular number include the plural and such words shall be construed as if the plural had been used,
- (b) words in the plural include the singular and such words shall be construed as if the singular had been used, and
- (c) words importing the use of any gender shall include all genders where the context or party referred to so requires, and the rest of the sentence shall be construed as if the necessary grammatical and terminological changes had been made.

1.6 Time of essence. Time shall be of the essence hereof.

1.7 Joint and several obligations. If the Vendors are constituted by more than one person, their obligations hereunder as the Vendors are joint and several.

2. Purchase and Sale

2.1 Purchased Shares. On the terms and subject to the fulfilment of the conditions hereof, the Vendor hereby agrees to sell, assign and transfer to the Purchasers, and the Purchasers hereby agree to purchase and accept from the Vendor, 36.67% of the issued shares of 148221 Ontario Limited (the Purchased Shares) with the further 63.33% to be

✓
A. N.A.
J.H.

made available by the vendor to the purchaser and to be transferred after all payments are made as set out below.

2.2 Purchase Price. The price payable by the Purchaser to the Vendor for the Purchased Shares will be based on the sum of \$6,000,000.00 (Six Million Dollars) as the value of the corporation subject to adjustments as set out below.

2.3 Deposit The purchaser shall pay a deposit of \$200,000.00, in trust, to the vendor's lawyer, upon acceptance of this agreement to be held in trust pending completion or other termination of this agreement and to be credited to the Purchase Price upon completion.

2.4 Balance due on closing The purchaser shall pay a further sum of \$2,000,000 (Two Million) upon closing subject to adjustments as set out below. Upon payment of this sum the vendor shall transfer to the purchaser the 36.67% of the shares of the Corporation. The purchaser can thereafter purchase the remaining 63.33% of the shares in the Corporation from the vendor when payment is made as set out below. The purchaser shall have the rights of a 36.67% shareholder following closing, and will be entitled to vote on the election of the board of directors, the appointment of officers of the Corporation, and share in the distribution of profits of the Corporation to the extent of the purchaser's shareholding. Until the purchaser buys the full 100% of the shares in the Corporation as contemplated herein, the purchaser shall not be permitted or entitled to manage the business of the corporation, retain profits, sell or re-mortgage the property owned by the business.

*del M. H
J. H.*

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Alain Checrroue

The vendor shall continue to maintain possession of the premises and operate the business of the Corporation as majority shareholder and in his capacity as director of the Corporation.

The Purchaser shall have the right to manage the property, collect rents, and enter into leases with the sellers written agreement. All Cheques shall require two signatures including the signature of the Vendor and the Purchaser. The Corporation shall not distribute any funds to any shareholder until full payment of shares. ~~except for interest payment required under the promissory note and any funds accumulated shall be used to pay the promissory note when it becomes due. Any money in excess of the amount of the promissory note balance shall be the property of the purchaser.~~ Any funds paid to Corporate Lawyer in association with any and all litigation matters occurred prior to the closing date is to be paid from Alain Checrroue portion and does not require the signature of the Purchaser.

2.5 Promissory Note *N.A./J.H.*

The purchaser shall provide a promissory note to the vendor in the amount of \$2,500,000 to purchase the balance of the shares of the corporation. This promissory note shall bear interest at the rate of 5% per annum calculated monthly. Interest will accrue for the first year which interest will be added to the principal balance of the loan and thereafter will be payable interest only monthly. The principal of loan shall become due and payable two years after the closing of the transaction, however at the option of the purchaser the loan will be extended for a period of one year on the same terms. Upon payment in full of the Shares promissory note the vendor will transfer the balance of the shares in the corporation to the purchaser. This loan shall be fully open for payment of all or part of the principal at any time.

N.A./J.H.

J.H.
N.A.

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Alain Checroute

2.7 The purchase price shall be adjusted by the balance owing to Royal Bank. If the mortgage balance is greater than \$9,000,000 then the purchase price will be reduced by the amount in excess of \$9,000,000.00 and the amount owe of the promissory notes shall be reduced. If the amount owing to The Royal Bank is less than \$9,000,000.00 then the purchase price shall be increased ~~and the amount of the promissory note shall be increased by~~ that amount

[Handwritten initials]
N.A.
2-11

3. Representations and Warranties

3.1 The Vendor represent and warrant to the Purchaser as follows, and confirm that the Purchaser is relying upon the accuracy of each of such representations and warranties in connection with the purchase of the Purchased Shares and the completion of the other transactions hereunder:

(1) Corporate Authority and Binding Obligation. The Vendor has good right, full power and absolute authority to enter into this agreement and to sell, assign and transfer the Purchased Shares to the Purchaser in the manner contemplated herein and to perform all of the Vendor's obligations under this agreement. The Shareholder has good right, full power and authority to enter into this agreement and to perform all of the Shareholder's obligations under this agreement. Each of the Corporation and the Vendor and their respective shareholders and boards of directors have taken all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into of, and the execution, delivery and performance of, this agreement and the sale and transfer of the Purchased Shares by the Vendor to the Purchaser. This agreement is

[Handwritten signature]
N.A.

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Alain Checrone

a legal, valid and binding obligation of the Vendor and the Shareholder, enforceable against each of them in accordance with its terms subject to:

(a) Bankruptcy, insolvency, moratorium reorganization and other laws, relating to or affecting the enforcement of creditors' rights generally, and

(b) The fact that equitable remedies, including the remedies of specific performance and injunction, may only be granted in the discretion of a court.

(2) No Other Purchase Agreements. No person has any agreement, option, understanding or commitment, or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement, option or commitment, including convertible securities, warrants or convertible obligations of any nature, for :

(a) The purchase, subscription, allotment or issuance of, or conversion into, any of the unissued shares in the capital of the Corporation or any securities of the corporation.

(b) The purchase from the Vendor of any of the Purchased Shares, or

(c) The purchase or other acquisition from the Corporation of any of its undertaking, property or assets, other than in the ordinary course of the Business.

(3) Status, Constatng Documents and Licences.

(a) The Corporation is a corporation duly incorporated and validly subsisting in all respects under the law of the Province of Ontario.

J.H. [Signature]
17-19

3.2 The corporation is the registered owner of the property located at 240 Duncan Mill Road in the City of Toronto subject to a mortgage in favour of the Royal Bank of Canada.

Property Tax The vendor warrants that all property taxes on the property will be paid to the date of closing and will be adjusted with the purchaser as of that date. All other encumbrances and documents registered on title will be discharged by the vendor on or before closing.

3.3 The corporation has no other debts or liabilities aside from the mortgage to the Royal Bank and is not involved in any litigation except as set out below. The Seller covenants and agrees to pay to the date of closing all utilities, including hydro Water and Gas. The buyer-seller shall collect rents and shall be entitled to any excess funds prior to closing as payment in full of any shareholder's loans. Prepaid rent will be credited to the purchaser and deducted from the balance due on closing. Any liabilities arising out of matters occurring on or before June 26th, 2012 ^{the closing date} ~~the closing date~~, or from existing litigation shall remain the responsibility of the Alain Checrone vendor, and if not paid may be deducted from the balance due ~~on the Promissory Note~~. ^{J.H./N.A.}

3.4 Work Order There are no work orders affecting the property at 240 Duncan Mills Road.

4. Conditions of the Purchaser

J.H. ^{Handwritten signature}
N.A.

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Alain Checrone

4.1 Within 3 (THREE) days of the execution of this agreement the Vendor agrees to provide to the purchaser the following documents: 2011 financial statements, current monthly financial reports, all invoices, accounts receivables, accounts payable, corporate minute books, tenants list, rent roll, leases, mortgage documents, property tax statements, ~~engineering reports, environmental reports,~~ survey, building plans and drawings, and list of chattels and fixtures, ^{As of 01/13/12} to be inspected at his office at 240 Duncan Mills Rd Unit 802. ~~delivered to the offices of Roger A. Gerbeaux 44 Padua Road, Richmond Hill, ON L4B 4G7.~~ ^{As of 01/13/12} This agreement is conditional upon the purchaser and their advisor's examining these documents and approving them in their sole discretion. Unless the buyer gives notice in writing delivered to the Vendor by 6:00 pm, 7 days after the last of these documents are delivered to them that they are satisfied in their sole discretion, that this condition is fulfilled then this agreement shall be null and void and all deposits shall be returned to the purchaser.

~~4.2 Litigation~~ This offer is conditional upon all litigation involving the Vendor being finally resolved on or before May 10, 2012. ~~If the litigation is not resolved then, at the option of the purchaser, this agreement shall become null and void unless the purchaser gives notice by 6:00 P.M. on May 17, 2012 that they are going to close notwithstanding the litigation.~~ ^{As of 01/13/12} The purchaser agrees to accept title to the shares subject to litigation brought by 214688 Ontario Ltd. Provided the vendor shall pay all costs related to this litigation and any damages resulting from the litigation. The corporation is also involved in collection proceedings against former tenants. The vendor shall be entitled to pursue this litigation at his own expense in the name of the corporation and any money recovered shall be paid to the seller.

Handwritten initials/signature

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Alain Checroune

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~~4.1 Royal Bank of Canada~~ This agreement is conditional upon the approval of the
 sale by the Royal Bank of Canada. If the Royal Bank does not give its approval by June 15,
 2012 then this agreement shall become null and void and all deposits returned without interest
 or deduction. *NA 11/3/11*

~~4.4 Environmental & Engineering~~ If after receiving the environmental or
 engineering reports the purchaser may decide, in his sole discretion to obtain his own
 engineering reports and environmental assessments then the condition contained in
 paragraph 4.1 shall be extended for a further period of thirty days and the vendor shall allow
 the purchaser and his experts access to the premises for the purpose of preparing the reports. *NA 11/3/11*

Acknowledgment Seller & Buyer acknowledge that the Res/Com Real
 Estate Services Inc. is only representing the interest of the Seller in this transaction, and the
 Buyers are Registered Ontario Real Estate practitioners (Broker of Record & Sales Rep).
 Further, the Seller acknowledges that the market value of this property might be higher than
 the purchase price offered.

Entire Agreement This agreement and the Schedules referred to herein
 constitute the entire agreement between the parties hereto and supersede all prior agreements,
 representations, warranties, statements, promises, information, arrangements and
 understandings, whether oral or written, express or implied, with respect to the subject matter
 hereto.

*J.H. [Signature]
 NA*

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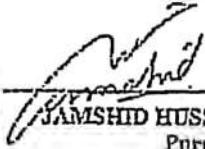
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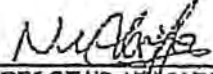
ALAIN CHECROUNE


It is agreed between the parties that every covenant, proviso and agreement in this agreement shall enture to the benefit of and be binding upon the parties, and their heirs, executors, administrators, successors, and assigns, that all covenants in this agreement shall be construed as being joint and several, and that, when the context so requires or permits, the singular number shall be read as if the plural were expressed, and the masculine gender as if the feminine or neuter, as the case may be, were expressed.

IN WITNESS WHEREOF the parties have set their hands and seals (or corporate seal, respectively.

SIGNED, SEALED AND DELIVERED
in the presence of


JAMSHID HUSSAINI
Purchaser


NEELOFAR AHMADI
Purchaser


ALAIN CHECROUNE
Seller

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AMENDMENT TO AGREEMENT

DATED: June 18, 2012.

CONCERNING: 240 Duncan Mill Road, Toronto, Ontario.

PURCHASER: Jamshid Hussaini and Neelofar Ahmadi

VENDOR Alain Checroune

It is hereby understood and agreed between the undersigned parties hereto that the following changes shall be made to the above mentioned agreement, and except for such changes noted below all other terms and conditions in the Agreement shall remain as stated therein:

DELETE:

- 1.1 (a) "Closing Date" means 10 days after the purchaser signs this offer.
- 2.1 Paragraph deleted
- 2.3 Paragraph deleted
- 2.4 Paragraph deleted

INSERT:

1.1. (a) "Closing Date" means Thursday, June 31, 2012, or such earlier date as the parties may agree in writing.

2.1 Purchased Shares On the terms and subject to the fulfilment of the conditions hereof,

the Vendor hereby agrees to sell, assign and transfer to the Purchasers, and the Purchasers hereby agree to purchase and accept from the Vendor 20% of the issued shares of 148221 Ontario Limited (the Purchased Shares) with the further 80% to be made available by the vendor to the purchaser and to be transferred after all payments are made as set out below.

2.4 The purchaser shall pay a total of \$1,200,000.00 (One Million Two Hundred Thousand Dollars), (\$200,000.00 (Two Hundred Thousand Dollars) of which has already been paid to the Vendor, and of which the Vendor acknowledges receipt) upon closing subject to adjustments as set out below. Upon payment of this sum the vendor shall transfer to the purchaser the 20% of the shares of the Corporation. The purchaser can thereafter purchase the remaining 80% of the shares of the Corporation from the vendor when payment is made as set out below. The purchaser shall have the rights of a 20% shareholder following closing, and will be entitled to vote on the election of the board of directors, the appointment of officers of the Corporation, and share in the distribution of profits of the Corporation to the extent of the purchaser's shareholding. Until the purchaser buys the full 100% of the shares in the Corporation as contemplated herein, the purchaser shall not be permitted to be entitled to manage the business of the corporation, retain profits, sell or mortgage the property owned by the business. The vendor shall continue to maintain possession of the premises and operate the business of the Corporation as majority shareholder and in his capacity as director of the Corporation. The Purchaser shall have the right to manage the property, collect rents, and enter into leases with the sellers written agreement. All Cheques shall require two signatures including the signature of the Vendor and the Purchaser. The Corporation shall not distribute any funds to any shareholder until full payment of shares. Any funds paid to the Corporate Lawyer in association with any and all litigation matters occurred prior to the closing date is to be paid from Alain Checrone portion and does not require the signature of the purchaser.

2.5 The closing date for the transfer of the balance of the shares shall be the 1st day of October, 2015; however if the property can be refinanced without penalty then the closing date shall be October 1, 2014.


4.2 All litigation shall be resolved finally by the date of the transfer of the balance of the shares.

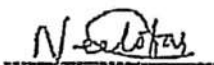
4.5 The purchaser and the vendor hereby agree that the purchasers will, on behalf of their corporation, enter into a new lease with the corporation for the 6th floor of the building on the corporation's standard form lease. The lease shall be for a period of five years commencing August

1, 2012, (rent payment to commence October 1, 2012). The annual rent for the first year shall be \$300,000.00 and this shall be a gross rent. Rent for the second year will be \$360,000.00 gross rent. Rent for the third to the fifth years \$380,000.00, gross rent. The purchasers' corporation can receive a discount of \$60,000.00 towards rent, if they pay their rent six months at a time in advance. Included in the lease for the 6th floor shall be five (unreserved) underground parking spaces, and five surface lot spaces. The purchasers' corporation shall have the right to sublet any part of the 6th floor, without the consent of the landlord, provided that the purchasers' corporation shall solely be responsible for the payment of rent to the landlord corporation.

DATED at Richmond Hill, this 22nd day of June, 2012.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF


Jamshid Hussaini
(Purchaser)


Neelofar Ahmadi
(Purchaser)

DATED at Toronto, this 22 day of June 2012.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF


Alain Chceroune
(Vendor)

**This is Exhibit "J" referred to in the affidavit
of IVAN MITCHEL MERROW, SWORN BEFORE ME
this 14th day of March, 2018**



A COMMISSIONER FOR TAKING AFFIDAVITS

Nahla Khouri, Lawyer
55861Q

AMENDED THIS / MODIFIÉ CE Nov. 14, 2014 PURSUANT TO / CONFORMÉMENT À
 RULE/LA RÈGLE 26.02 (b)

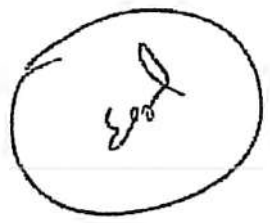
THE ORDER OF / L'ORDONNANCE DU
DATED / FAIT LE _____

Court File No. CV-14-506305

RE/JUDICIAIRE / SUPERIOR COURT OF JUSTICE
GREFFIER / COUR SUPÉRIEURE DE JUSTICE
Ch. Breerton
ONTARIO
SUPERIOR COURT OF JUSTICE
BETWEEN:

JAMSHID HUSSAINI, NEELOFAR AHMADI
and HOMELIFE DREAMS REALTY INC.

Plaintiffs



- and -

ALAIN CHECROUNE and 1482241 ONTARIO LIMITED

Defendants

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: June 13, 2014

Issued by "Angeles Fajardo"
Local registrar

Address of court office 393 University Avenue, Toronto,
Ontario

TO: MR. ALAIN CHECROUNE
240 Duncan Mill Road, Suite 802
Toronto, ON M3B 3S6

AND TO: 1482241 ONTARIO LIMITED
240 Duncan Mill Road, Suite 802
Toronto, ON M3B 3S6

CLAIM

1. The Plaintiffs claim:

- (a) a declaration that pursuant to a bare trust agreement signed the 22nd day of June, 2012 (the "Bare Trust Agreement"), the Plaintiffs Ms. Neelofar Ahmadi and Mr. Jamshid Hussaini are the beneficial owners of a twenty percent (20%) interest in the property located at 240 Duncan Mill Road, in the City of Toronto, in the Municipality of Metropolitan Toronto, more particularly described in Schedule A attached hereto (the "Subject Property");
- (b) a declaration that the Plaintiffs Ms. Ahmadi and Mr. Hussaini own twenty percent (20%) of the shares of the Defendant 1482241 Ontario Limited, pursuant to an agreement entered into the 6th day of June 2012 and amended the 22nd day of June 2012 (the "Agreement of Purchase and Sale");
- (c) an order that the Plaintiffs Ms. Ahmadi and Mr. Hussaini's twenty percent (20%) interest in 240 Duncan Mill Road be recognized on title;
- (d) a declaration that the Agreement of Purchase and Sale entitles the Plaintiffs Ms. Ahmadi and Mr. Hussaini to purchase the remaining shares of the Defendant 1482241 Ontario Limited or the Subject Property from the Defendant Mr. Checroune for \$4,800,000.00, less any amount in damages owing to the Plaintiffs as determined by this Honourable Court;
- (e) a mandatory Order requiring specific performance of the Agreement of Purchase and Sale, allowing the Plaintiffs Ms. Ahmadi and Mr. Hussaini to purchase the remaining shares of the Defendant 1482241 Ontario Limited or the Subject Property from the Defendant Mr. Checroune for \$4,800,000.00, less any amount in damages owing to the Plaintiffs as determined by this Honourable Court;
- (f) a declaration that the Defendant Mr. Checroune's conduct described herein is oppressive, unfairly prejudicial to and unfairly disregards the interests of the Plaintiffs Ms. Ahmadi and Mr. Hussaini, who are the minority shareholders of the Defendant 148224 Ontario Limited;
- (g) in the alternative to (f), an order for the exchange of securities in 148224 Ontario Limited pursuant to the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16, s. 248, to give effect to the Agreement of Purchase and Sale;

- (h) damages for the Defendant's Mr. Checroune's oppressive and unfairly prejudicial conduct towards the Plaintiffs Ms. Ahmadi and Mr. Hussaini as the minority shareholders of the Defendant 148224 Ontario Limited;
- (i) in the further alternative to (f), damages in the amount of \$25,000,000 to put the Plaintiffs in the position they would have been in but for the breach of the Agreement of Purchase and Sale and/or the Bare Trust Agreement by the Defendants;
- (j) an order that the Plaintiffs Ms. Ahmadi and Mr. Hussaini be given leave to issue a certificate of pending litigation against the Subject Property;
- (k) an order for an interim and permanent injunction restraining the Defendants from selling, mortgaging, encumbering or otherwise dealing with the Subject Property without the consent of the Plaintiffs Ms. Ahmadi and Mr. Hussaini, or a Court Order;
- (l) an order for an interim and permanent injunction restraining the Defendants from selling, mortgaging, encumbering or otherwise dealing with the shares in the capital of the Defendant 148224 Ontario Limited without the consent of the Plaintiffs Ms. Ahmadi and Mr. Hussaini, or a Court Order;
- (m) an order for an interim and permanent injunction restraining the Defendants from denying the Plaintiffs, their clients, employees and subtenants, access to the Subject Property;
- (n) an order for an interim and permanent injunction restraining the Defendants from interfering with the quiet enjoyment of the Subject Property by the Plaintiffs, their employees, clients and subtenants, including, without limiting the generality of the foregoing, restraining the Defendants from:
 - (i) locking the Plaintiffs, their employees, clients and subtenants, out of the Subject Property;
 - (ii) turning off the lights in the Subject Property during business hours (Monday to Sunday, 7am to 9pm);
 - (iii) inadequately maintaining the appropriate temperature in the Subject Property;

- (iv) denying access to the elevator(s) during business hours (Monday to Sunday, 7am to 9pm);
- (v) cancelling access cards and parking passes of the Plaintiffs, their employees, clients and subtenants;
- (vi) towing the cars of the Plaintiffs, their employees, clients and subtenants;
- (vii) ticketing the cars of the Plaintiffs, their employees, clients and subtenants;
- (viii) posting notices that the Subject Property is closed;
- (ix) posting unprofessional signs in the Subject Property;
- (x) physically or verbally harassing, threatening or intimidating, the Plaintiffs, their employees, clients and subtenants;
- (xi) in any way disrupting the business of the Plaintiffs and their subtenants;
- (o) an order enforcing the management rights of the Plaintiffs Ms. Ahmadi and Mr. Hussaini pursuant to the Agreement of Purchase and Sale, and appointing Ms. Ahmadi and Mr. Hussaini as managers of the Subject Property;
- (p) an order declaring the Purported Lease (as defined herein) void;
- (q) in the alternative to (p), if necessary, an order for relief from forfeiture in respect of the Purported Lease;
- (r) in the alternative to (p), if necessary, an order determining the rights of the parties pursuant to the Purported Lease;
- (s) a declaration that the Defendant Mr. Checroune is in breach of the Purported Lease and a return of all monies paid thereunder including a \$50,000.00 deposit;
- (t) damages in the amount of \$25,000,000.00 in respect of loss of reputation, loss of business good will, loss of past, current and future income, that the Plaintiffs have suffered, and continue to suffer, as a result of the Defendants' conduct;
- (u) special damages for lost business income caused by the Defendants' economic interference with the Plaintiffs' business interests;
- (v) the Plaintiffs' costs of this action on a substantial indemnity basis; and
- (w) such other and further relief this Honourable Court deems just.

The Parties

2. The Plaintiffs Ms. Ahmadi and Mr. Hussaini reside in the Town of Richmond Hill in the Regional Municipality of York. Mr. Hussaini and Ms. Ahmadi are the principals of the Plaintiff Homelife Dreams Realty Inc., which is a corporation incorporated pursuant to the laws of the Province of Ontario.
3. The Plaintiffs Mr. Ahmadi and Mr. Hussaini were at all material times the purchasers of the shares in the Defendant corporation, 1482241 Ontario Limited, and the Subject Property, pursuant to the Agreement of Purchase and Sale.
4. The Defendant, 1482241 Ontario Limited ("148"), is a corporation incorporated pursuant to the laws of Ontario, and the registered owner of the Subject Property.
5. The Defendant, Mr. Checroune, was at all material times, prior to the parties entering into the Agreement of Purchase and Sale and the Bare Trust Agreement, the beneficial owner of 100% of the issued and outstanding shares of the Defendant, 1482241 Ontario Limited.

Mr. Checroune Agreed to Sell the Subject Property to Ms. Ahmadi and Mr. Hussaini

6. The Plaintiffs Ms. Ahmadi and Mr. Hussaini entered into an agreement to buy the Subject Property with the Defendant Mr. Checroune on the 6th day of June, 2012. The agreement was amended in writing on the 22nd day of June, 2012 (the "Agreement of Purchase and Sale").
7. The Subject Property was a unique business opportunity for the Plaintiffs Ms. Ahmadi, Mr. Hussaini, and their real estate brokerage Homelife. It was located across the street from the Ontario Real Estate Association (OREA) head office where agents conducted training. Accordingly, the location would provide Homelife a competitive advantage against other brokerages.
8. The Agreement of Purchase and Sale had to take into account several unique factors:
 - (a) 148 was the registered owner of the Subject Property;
 - (b) 148 held the Subject Property as bare trustee for Mr. Checroune pursuant to a trust declaration dated September 21, 2005;
 - (c) the Subject Property had a certificate of pending litigation registered on title by a third party named Mr. Claude Bitton (the "Bitton CPL"); and

(d) the mortgage on title to the Subject Property did not mature until October 1, 2015 and had heavy early payment penalties (the "RBC Mortgage").

9. Accordingly, the Agreement of Purchase and Sale was structured as follows:

(a) on June 22, 2012, Ms. Ahmadi and Mr. Hussaini paid the amount of \$1.2 million in exchange for twenty percent (20%) of the shares of the Defendant corporation 148;

(b) Ms. Ahmadi and Mr. Hussaini gained a twenty percent (20%) beneficial interest in the Subject Property by an amendment to the September 21, 2005 trust declaration (the "Bare Trust Agreement");

(c) the Plaintiffs undertook to purchase, and the Defendant Mr. Checroune undertook to sell, the balance of 148's shares on October 1, 2015 to avoid early payment penalties on the RBC Mortgage (the "Undertaking");

(d) the balance of 148's shares would cost the Plaintiffs Ms. Ahmadi and Mr. Hussaini \$4,800,000.00 (subject to mortgage-based adjustments); and

(e) Mr. Checroune had a positive obligation to discharge the Bilton CPL prior to the October 1, 2015 closing to provide clean title to the Plaintiffs Ms. Ahmadi and Mr. Hussaini.

10. The Agreement of Purchase and Sale was negotiated and signed by the Plaintiffs Ms. Ahmadi and Mr. Hussaini and the Defendant Mr. Checroune.

11. The Plaintiffs Ms. Ahmadi and Mr. Hussaini paid to the Defendant Mr. Checroune the sum of \$1,200,000.00. In exchange, the Plaintiffs received 20% of the shares of the Defendant 148 and a 20% beneficial interest in the Subject Property by virtue of the Bare Trust Agreement.

Mr. Checroune Breached the Agreement of Purchase and Sale and Oppressed the Plaintiffs as Shareholders of 148

12. The Agreement of Purchase and Sale provided the Plaintiffs Ms. Ahmadi and Mr. Hussaini with the right to operate and manage the Subject Property until the acquisition was complete. In particular, it was the intention and reasonable expectation of the parties to allow the Plaintiffs to fill vacant space in the building and maximize the value of the Subject Property before the transaction closed on October 1, 2015.

13. The Defendant Mr. Checroune breached the above terms in the Agreement of Purchase and Sale and oppressed the minority shareholder Plaintiffs by:

- (a) refusing to deposit all the income from the Subject Property into a new bank account;
- (b) failing to transfer the Plaintiffs Ms. Ahmadi and Mr. Hussaini management authority over 148 and the Subject Property;
- (c) withholding a commission owed to an agent as part of a lease agreement arranged by Ms. Ahmadi to fill a vacancy on the main floor of the Subject Property, causing Ms. Ahmadi to lose \$50,000.00 in order to close the transaction;
- (d) rejecting most prospective tenants that Ms. Ahmadi and Mr. Hussaini presented in order to fill vacancies in the Subject Property;
- (e) forcing the Plaintiff Ms. Ahmadi to sign a standard form lease, under duress, dated June 20, 2012, but actually signed by Ms. Ahmadi several months later (the "Purported Lease");
- (f) refusing to permit the Plaintiff Ms. Ahmadi to read, negotiate, or seek legal counsel's advice on the Purported Lease; and
- (g) refusing to provide the Plaintiff Mr. Hussaini the opportunity to review or sign the Purported Lease;

14. Among other things, the Purported Lease provided that the Plaintiffs required the Defendants' written consent to sublet, which directly contradicted the negotiated and specific terms of the Agreement of Purchase and Sale. It was not Ms. Ahmadi's intention to sign a document that contradicted the terms of the Agreement of Purchase and Sale.

15. Mr. Checroune's actions directly harmed the financial interests of the Plaintiffs Mr. Hussaini and Ms. Ahmadi. In addition, his actions were unfairly prejudicial and oppressive to Mr. Hussaini and Ms. Ahmadi's shareholder interest in the defendant corporation 148.

Mr. Checroune Received a Better Offer for the Subject Property

16. After entering into the Agreement of Purchase and Sale with the Plaintiffs, the Defendant Mr. Checroune received a better offer for the sale of the Subject Property.

17. Notwithstanding entering into the Agreement of Purchase and Sale, the Bare Trust Agreement and the Undertaking with the Plaintiffs, the Defendant Mr. Checroune began entering into negotiations with other potential purchasers.

18. On a date in or around August 2014, the Defendant Mr. Checroune entered into an agreement with Kartelle Corporation purporting to sell the Subject Property without regard for the fact that he had and continues to have a valid and binding agreement with the Plaintiffs.

19. In doing so, the Defendants flagrantly disregarded:

- (a) the Agreement of Purchase and Sale;
- (b) the Bare Trust Agreement;
- (c) the Undertaking;
- (d) Ms. Ahmadi and Mr. Hussaini's status as minority shareholders in the Defendant 148; and
- (e) Ms. Ahmadi and Mr. Hussaini's beneficial interest in the Subject Property.

20. The Defendants did not disclose any specific sale information to the Plaintiffs. The Defendants attempted to dispose of the Subject Property in a manner that was oppressive to Ms. Ahmadi and Mr. Hussaini, unfairly prejudicial to Ms. Ahmadi and Mr. Hussaini and unfairly disregarded their interest in the Subject Property.

21. The purchaser Kartelle Corporation held itself out to the tenants of the Subject Property as the new owner of the Subject Property. It sent emails to tenants and communicated with the tenants of the Subject Property as the new owner and advising of plans for the Subject Property. Mr. Checroune also approached the tenant on the main floor of the Subject Property with a request to vacate the leased space as the main floor would allegedly be required by Kartelle Corporation.

22. In pursuit of his deal with Kartelle Corporation, Mr. Checroune started a campaign of intimidation, harassment and economic interference to force the Plaintiffs to abandon the

Agreement of Purchase and Sale and abandon their ownership interest in 148 and beneficial interest in the Subject Property.

Mr. Checroune's Campaign of Intimidation, Harassment and Economic Warfare

23. After reaching an agreement with Kartelle Corporation, the Defendant Mr. Checroune:
- (a) brandished a knife towards one of the Plaintiffs' subtenants;
 - (b) threatened the subtenant;
 - (c) physically harassed one of the Plaintiffs' employees;
 - (d) verbally harassed the Plaintiffs' employees, clients and subtenants;
 - (e) advised the Plaintiffs' employees and subtenants, and the other tenants in the Subject Property, that the Subject Property is being sold to another purchaser;
 - (f) turned off the lights in the building during business hours;
 - (g) turned off the heating during the winter months;
 - (h) turned off elevator access during business hours;
 - (i) posted notices that the Subject Property is closed;
 - (j) posted unprofessional signs throughout the Subject Property;
 - (k) canceled valid access cards and parking passes and denies access to parts of the Subject Property;
 - (l) ticketed or towed the cars of the Plaintiffs, their employees, clients and subtenants; and
 - (m) made every possible effort to disrupt the business of the Plaintiffs and that of their subtenants.
24. Mr. Checroune was criminally charged by the police in or around September 2014 for brandishing a knife at one of the Plaintiffs' subtenants. One of Mr. Checroune's bail conditions was that he could not attend at the Subject Property. Mr. Checroune ignored the bail conditions. He attended at the Subject Property in an effort to continue his intimidation and harassment of the Plaintiffs, their employees, subtenants and clients.

25. On October 25, 2014, Mr. Checroune locked the Plaintiffs, their employees, subtenants and clients, out of the Subject Property. He single-handedly brought their business to a halt, damaged their reputation and their business's goodwill. The Plaintiffs attended court on an emergency basis. They were granted access again on October 27, 2014 by the Order of Justice Whitaker.

26. The Honourable Justice Whitaker's October 27, 2014 interim injunction restrained the Defendants' conduct, including but not limited to, blocking access to the Subject Property, turning the lights off, and otherwise harassing the Plaintiffs.

Mr. Checroune Breached the Order of Justice Whitaker

27. Mere weeks after the Honourable Justice Whitaker's October 27, 2014 Order (the "Whitaker Order"), the Defendants breached the Whitaker Order. Specifically, Mr. Checroune:

- (a) turned off the heat during winter months;
- (b) caused pipes to burst in the Subject Property;
- (c) turned off the lights on weekdays during key business hours;
- (d) ticketed and towed parked cars; and
- (e) maintained an unprofessional appearance in the Subject Property.

28. Many of the Plaintiffs' subtenants, and other tenants in the Subject Property, moved their businesses elsewhere because it was so difficult to conduct business in the Subject Property.

29. The few sub-tenants remaining on the sixth floor were lured away by the Defendant offer to lease space at 1/2 to 1/3 market value on a different floor in the Subject Property.

30. The Defendants' conduct has had a negative effect on the Plaintiffs' reputation in the real estate community and caused the Plaintiffs to lose money on a monthly basis.

31. The Plaintiffs' monthly rental revenue collected from subtenants became less than the monthly rental amount the Plaintiffs paid to the Defendants, which is a direct result of the Defendants' unlawful conduct and their unprofessional management of the Subject Property.

32. The Whitaker Order was set for re-hearing on November 3, 2014, but was adjourned several times.

33. The Plaintiffs Ms. Ahmadi and Mr. Hussaini seek an order permanently restraining the Defendants' behaviour pursuant to the Order.

Mr. Checroune was in Anticipatory Breach of the Agreement of Purchase and Sale

34. The Plaintiffs Ms. Ahmadi and Mr. Hussaini expected the Bitton CPL to be removed prior to October 1, 2015 pursuant to the Agreement of Purchase and Sale.

35. Discharging the Bitton CPL was a necessary condition to provide clean title to the Plaintiffs.

36. Mr. Checroune demonstrated that he had no intention of selling the Subject Property to the Plaintiffs. He took no steps to have the Bitton CPL removed from title. By October 1, 2015, Mr. Checroune had not discharged the certificate of pending litigation, and was unable to provide the Plaintiffs clean title to the Subject Property.

37. Mr. Checroune was therefore in anticipatory breach of the Agreement of Purchase and Sale.

38. Mr. Checroune desired to sell the Subject Property to Kartelle Corporation, or other buyers, contrary to the Agreement of Purchase and Sale and Bare Trust Agreement.

39. On the eve of closing, Defendant Mr. Checroune took the position that the Plaintiffs were obligated to close the transaction even though the Bitton CPL remained on title to the Subject Property. The Plaintiffs refused to waive the condition that the Bitton CPL be removed from title prior to closing.

40. The Plaintiffs Ms. Ahmadi and Mr. Hussaini were ready, willing, and able to close the transaction with the Defendant Mr. Checroune on October 1, 2015. Had they been able to receive clean title pursuant to the Agreement of Purchase and Sale, they would have closed.

41. The Plaintiffs remain ready, willing, and able to close the transaction, but now require a court order to do so.

Mr. Checroune Refinanced without the Plaintiffs' Permission in Breach of the Whitaker Order

42. In anticipation of the October 1, 2015 maturity date of the RBC Mortgage, Ms. Ahmadi and Mr. Hussaini consented to vary the Whitaker Order in good faith. The varied Whitaker Order

allowed Mr. Checroune to extend or refinance the RBC Mortgage subject to, *inter alia*, the following conditions:

- (a) Mr. Checroune had to obtain the consent of the Plaintiffs before refinancing;
- (b) the Plaintiffs could not be prejudiced by any extension or refinancing; and
- (c) Mr. Checroune had to disclose all terms of any proposed extension or refinancing to the Plaintiffs.

43. Mr. Checroune was therefore able to obtain a 60-day extension on the RBC Mortgage.

44. By December 1, 2015, Mr. Checroune allowed the RBC Mortgage to go into default.

45. On February 23, 24, and 25, 2016, a trial was held to determine Mr. Checroune's interest in the Subject Property in an entirely different litigation—the very litigation Mr. Checroune promised to resolve prior to the October 1, 2015 closing date. On March 4, 2016, a written decision was released that resolved the litigation affecting the Subject Property in favour of Mr. Checroune. As contemplated by the Agreement of Purchase and Sale, Mr. Checroune resolved the litigation and was then able to provide clean title to the Plaintiffs.

46. Unfortunately, the Plaintiffs learned that RBC had already begun enforcement proceedings.

47. The Subject Property was sold to Kartelle Corporation for \$16,000,000.00 under Power of Sale proceedings initiated by RBC.

48. Before the power of sale was completed, Mr. Checroune obtained financing in order to redeem the mortgage on or around May 2016.

49. Mr. Checroune informed the Plaintiff Ms. Ahmadi that he would eliminate any interest she has in the Subject Property through Power of Sale proceedings.

50. A title search reveals that on June 2, 2016 Mr. Checroune transferred a mortgage charge and rent assignments from Computershare Trust Company of Canada ("Computershare") to Dan Realty Limited, E. Manson Investments Limited and Copperstone Investments Limited. These transfers appear to be part of Mr. Checroune's scheme to eliminate the Plaintiffs' interest in the Subject Property using power of sale proceedings.

51. Mr. Checroune is in breach of the court Order. He has:

- (a) failed to ask for the Plaintiffs' consent to the refinancing; and
- (b) refused to provide any information or details about the refinancing.

52. The Plaintiffs Ms. Ahmadi and Mr. Hussaini state that pursuant to the Agreement of Purchase and Sale, the Bare Trust Agreement and the Undertaking, the Defendant Mr. Checroune has no right to sell the building without their consent and has explicitly relinquished the right to do so.

53. The rights of the Plaintiffs Ms. Ahmadi and Mr. Hussaini as beneficial owners and minority shareholders prevent the Defendant Mr. Checroune from concealing information from them and selling the property.

54. The Plaintiffs Ms. Ahmadi and Mr. Hussaini therefore seek an order enforcing the Whitaker Order and restraining the Defendants from selling the property without their consent.

55. Now that the litigation affecting title to the Subject Property has been resolved, the Plaintiffs Ms. Ahmadi and Mr. Hussaini further seek an order that the Defendants sell the Subject Property to them pursuant to the terms of the Agreement of Purchase and Sale.

The Defendant 148 Acted as Agent for Mr. Checroune

56. Prior to the execution of the Bare Trust Agreement, the Defendant corporation 148 was:

- (a) acting as both trustee and agent for its sole beneficiary, Mr. Checroune;
- (b) entirely controlled by the Defendant Mr. Checroune;
- (c) not bound by any trust terms; and
- (d) operated solely as agent for Mr. Checroune.

57. Prior to the execution of the Bare Trust Agreement, Mr. Checroune was the principal and 148 was acting as his agent. Mr. Checroune is therefore personally liable in contract and tort for the actions of 148.

58. After the Agreement of Purchase and Sale and Bare Trust Agreement was executed Mr. Checroune did not allow the Plaintiffs Ms. Ahmadi or Mr. Hussaini to participate in the management or control of 148. Mr. Checroune has continued and continues to direct 148 as his agent.

The Plaintiffs have an Interest in Land

59. The Plaintiffs Ms. Ahmadi and Mr. Hussaini state that they have an interest in land and are entitled to the issuance of a certificate of pending litigation against the property described in Schedule A attached hereto by virtue of:

- (a) the Bare Trust Agreement that reflects their interest as beneficial owners;
- (b) their position as minority shareholders of the corporation that is the registered owner of the land;
- (c) the Agreement of Purchase and Sale; and
- (d) the Undertaking to purchase the balance of the shares, they have an interest in land.

The Plaintiffs Had No Choice but to Abandon the Subject Property as Tenants

60. After the few remaining sub-tenants had been lured away to other floors by the Defendant Mr. Checroune, the Plaintiffs were forced to leave the Subject Property on or about July 14, 2016.

61. The Plaintiffs had to avoid further financial losses and the toxic environment the Defendants had created.

62. The Plaintiffs seek an order for relief from the Defendants' unfair and prejudicial conduct which has harmed them, their business, their business's goodwill, and deprived them of past and future income from lost business opportunities.

63. The Plaintiff Homelife seeks an order for damages to compensate it for its loss of agents and business income from the disruption caused by the Defendants. The business the Plaintiffs had worked for years to build had crumbled under the weight of the Defendants' oppressive conduct and economic warfare.

64. The Plaintiffs plead and rely upon the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16, s. 248, and the *Commercial Tenancies Act*, R.S.O. 1990, c. L.7, both as amended.

65. The Plaintiffs propose that this action be tried at the City of Toronto.

June 13, 2014

MILLER THOMSON LLP
600, 60 Columbia Way
Markham, Ontario
L3R 0C9

Enzo Di Iorio LSUC#: 36681V
Tel. No. 905.415.6711
Fax: 905.415.6777

Lawyers for the Plaintiffs

SCHEDULE A

Lot 82-83 PL 7607 North York; Pt Lot 84 PL 7607 North York, Part 2 RS1284
Toronto (N York); City of Toronto

240 Duncan Mills Road
North York

PIN 10088-0069 LT

**This is Exhibit "K" referred to in the affidavit
of IVAN MITCHEL MERROW, SWORN BEFORE ME
this 14th day of March, 2017**



A COMMISSIONER FOR TAKING AFFIDAVITS

**Nahla Khouri, Lawyer
55861Q**

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE WHITAKER

) MONDAY, THE 27TH
)
) DAY OF OCTOBER, 2014

BETWEEN:

JAMSHID HUSSAINI, NEELOFAR AHMADI
and HOMELIFE DREAMS REALTY INC.

Plaintiffs

- and -

ALAIN CHECROUNE and 1482241 ONTARIO LIMITED

Defendants



ORDER

THIS MOTION, made by the Plaintiffs for, *inter alia*, an injunction and relief from forfeiture, was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Plaintiffs, including the Notice of Motion and Affidavit of Neelofar Ahmadi, sworn October 24, 2014, and the exhibits thereto, and on hearing the submissions of the lawyer for the Plaintiffs and the lawyer for the Defendants, and for oral reasons given,

1. THIS COURT ORDERS an interlocutory injunction restraining the Defendants from denying the Plaintiffs, their clients, employees and subtenants, access to the property located at 240 Duncan Mill Road, in the City of Toronto; in the Municipality of Metropolitan Toronto more particularly described as (the "Subject Property"):

Lot 82-83 PL 7607 North York; Pt Lot 84 PL 7607 North York, Part 2 RS1284
Toronto (N York); City of Toronto
240 Duncan Mills Road
North York
PIN 10088-0069 LT

2. THIS COURT ORDERS an interlocutory injunction restraining the Defendants from interfering with the quiet enjoyment of the Subject Property by the Plaintiffs, their employees, clients and subtenants, including, without limiting the generality of the foregoing, restraining the Defendants from:

- (a) turning off the lights in the Subject Property during business hours (Monday to Sunday, 7am to 9pm);
- (b) denying access to the elevator(s) during business hours (Monday to Sunday, 7am to 9pm);
- (c) cancelling access cards and parking passes of the Plaintiffs, their employees, clients and subtenants;
- (d) towing the cars of the Plaintiffs, their employees, clients and subtenants;
- (e) posting notices that the building is closed;
- (f) physically or verbally harassing, threatening or intimidating, the Plaintiffs, their employees, clients and subtenants; and
- (g) in any way disrupting the business of the Plaintiffs and their subtenants;

3. THIS COURT ORDERS relief from forfeiture in respect of the Purported Lease (as defined in the Notice of Motion);

4. THIS COURT ORDERS an interlocutory injunction restraining the Defendants from selling, mortgaging, encumbering or otherwise dealing with the Subject Property without the consent of the Plaintiffs Ms. Ahmadi and Mr. Hussaini or Court Order;

5. THIS COURT ORDERS an interlocutory injunction restraining the Defendants from selling, mortgaging, encumbering or otherwise dealing with the shares in the capital of the Defendant 148224 Ontario Limited;

6. THIS COURT ORDERS that this motion return for hearing on November 3, 2014 for one (1) hour;

7. THIS COURT ORDERS that the Defendants may bring a cross motion regarding conflict of interest, if any, on November 3, 2014;

8. THIS COURT ORDERS that costs of today's attendance in the amount of \$1,500 shall be paid by the Defendants to the Plaintiffs forthwith.



BOSCO MASCARENHAS

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

OCT 28 2014

PER / PAR:



ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

ORDER

MILLER THOMSON LLP
600, 60 Columbia Way
Markham, ON, Canada L3R 0C9

Enzo Di Iorio LSUC#: 36681V
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Nahla Khouri LSUC#: 55861Q
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Lawyers for the Plaintiffs

**This is Exhibit "L" referred to in the affidavit
of IVAN MITCHEL MERROW, SWORN BEFORE ME
this 14th day of March, 2017**



A COMMISSIONER FOR TAKING AFFIDAVITS

Nahla Khouri, Lawyer

55861Q

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JAMSHID HUSSAINI, NEELOFAR AHMADI and HOMELIFE DREAMS,
Plaintiffs (Defendants to the Counterclaim)

AND:

ALAIN CHECROUNE and 1482241 ONTARIO LIMITED, Defendants
(Plaintiffs by Counterclaim)

BEFORE: Mr. Justice P.J. Cavanagh

COUNSEL: *Enzo D. Iorio and Ivan M. Merrow* for the Plaintiffs (Defendants to the
Counterclaim)

Christopher Stanek and Natasha Carew, for the Defendants (Plaintiffs by
Counterclaim)

HEARD: March 28, 2017

ENDORSEMENT

Introduction

[1] This action concerns a share purchase agreement made June 6, 2012 and amended June 18, 2012 (the "Share Purchase Agreement"). The Share Purchase Agreement provides for the purchase by the plaintiffs Jamshid Hussaini ("Hussaini") and Neelofar Ahmadi ("Ahmadi") (together, the "Purchasers") from the defendant Alain Checroune ("Checroune") of, first, twenty percent of the shares of the defendant 1482241 Ontario Limited ("148") and, second, the remaining eighty percent of the shares of 148.

[2] 148 is the owner of a commercial property in Toronto (the "Property"). The Purchasers are the principals of Homelife Dreams Realty Inc. ("Homelife"), a real estate brokerage company that operated in Toronto. Homelife was a commercial tenant at the Property until June 2016.

[3] In the action, the Purchasers seek a declaration that they own twenty percent of the shares of 148 and a mandatory order for specific performance of the Share Purchase Agreement allowing them to complete the purchase of the remaining eighty percent of the shares of 148. The plaintiffs also seek additional relief.

[4] The defendants submit that the Purchasers failed to complete the purchase of the remaining eighty percent shares of 148 on the date agreed upon for closing, October 1, 2015 (the

“Closing Date”), and that, by its terms, the Share Purchase Agreement, including provisions for the sale of the initial twenty percent of the shares of 148, is null and void.

[5] The defendants move for summary judgment dismissing the action, together with related relief.

[6] It is common ground that on the Closing Date there was unresolved litigation affecting the property including an action by a company controlled by one Claude Bitton for specific performance of an agreement to purchase the Property (the “Bitton Litigation”). A certificate of pending litigation was that was obtained by the plaintiff in the Bitton Litigation (the Bitton CPL”) was registered on title to the Property.

[7] In my view, the outcome of this motion turns on paragraph 4.2 of the Share Purchase Agreement. Paragraph 4.2 provides that “[A]ll litigation shall be resolved finally by the date of the transfer of the balance of the shares.” The parties agree that this is a condition to completion of the purchase of the remaining eighty percent of the shares of 148. The question that must be decided on this motion is whether, on the evidence before me, there is a genuine issue requiring a trial as to whether Checroune used his best efforts to satisfy this condition by the Closing Date.

[8] The defendants submit that paragraph 4.2 is a true condition precedent that was not satisfied on the Closing Date because the Bitton Litigation was unresolved and, therefore, the Share Purchase Agreement, by its terms, is null and void. They submit that fulfillment of this condition was not within their control, and that there is no evidence that Checroune did anything to delay resolution of the Bitton Action. The defendants submit that the failure of the Purchasers to complete the purchase of the remaining eighty per cent of the shares of 148 on the Closing Date is fatal to their action, and that the action should be summarily dismissed.

[9] The Purchasers submit that Checroune’s failure to resolve the Bitton Litigation by the Closing Date was a breach of the Share Purchase Agreement that relieved them of the obligation to pay the purchase price for the eighty percent balance of the shares of 148. The Purchasers submit that their obligation to close is suspended while the condition in paragraph 4.2 remains unsatisfied, and that they remain willing to complete the purchase of the remaining eighty percent of the shares of 148.

[10] For the following reasons, I have concluded that whether Checroune made best efforts to resolve the Bitton Litigation and clear title to the Property by the Closing Date is a genuine issue requiring a trial and, therefore, that the defendants’ motion for summary judgment must be dismissed.

Summary of Facts

The Original Agreement, Amending Agreement and Other Related Documents

[11] The parties signed an agreement dated June 6, 2012 (the “Original Agreement”) which was amended by a separate agreement dated June 18, 2012 (the “Amendment Agreement”). These agreements, together, are the Share Purchase Agreement.

[12] Under the Share Purchase Agreement there are two closing dates. The closing date for the purchase of the initial 20 percent of the shares of 148 is June 21, 2012 and the closing date for the transfer of the balance of the shares of 148 is October 1, 2015 (defined above as the "Closing Date").

[13] The Amendment Agreement provides for the insertion of paragraph 4.2 that provides that [A]ll litigation shall be resolved finally by the date of the transfer of the balance of the shares."

[14] The Original Agreement provides, in paragraph 1.6, that time shall be of the essence. This did not change after the Amendment Agreement.

[15] The parties agree that the purchase price for all of the shares of 148 was based upon a value of \$15,000,000.

[16] The parties entered into other legal documents on June 22, 2012. These documents included:

- a. Amended Trust Declaration whereby 148, as trustee, acknowledges and declares that it is now holding a fifteen percent interest in the Property, including the chattels, fixtures, equipment and leases and rental agreements relating thereto (collectively, the "Property and Assets") in trust for Hussaini; a five percent interest in the Property and Assets in trust for Ahmadi, and an eighty percent interest in the Property and Assets in trust for Checroune.
- b. Undertaking whereby the Purchasers undertake to purchase and Checroune undertakes to sell the remaining balance of the shares of 148, referencing paragraph 2.4 of the "Amended Agreement of Purchase & Sale", and paragraph 2.5 of the "Agreement of Purchase & Sale". The purchase price for the remainder of the shares was expressed to be \$4,800,000 to be adjusted by the amount that the existing first mortgage as of June 21, 2012 exceeds or is less than \$9 million.
- c. Lease between 148 as landlord and Homelife as tenant for a term of five years from the first day of August 2012 to the last day of July 2017.
- d. Resolution of the sole director of 148 approving of and consenting to the transfer from Checroune to Hussaini of 15 common shares and to Ahmadi of 5 common shares of 148.
- e. Warranty by Checroune that 148 has the corporate authority to enter into the Share Purchase Agreement, there were no other purchase agreements, 148 was duly incorporated and validly subsisting, property taxes will be paid and adjusted on closing and 148 is not involved in any litigation "except as set out below".

[17] Ahmadi provided affidavit evidence that a share certificate for fifteen common shares in the capital of 148 and a share certificate for five common shares in the capital of 148 dated June 21, 2012 were issued by 148 to Hussaini and to Ahmadi, respectively.

[18] In accordance with the Share Purchase Agreement, on or around June 21, 2012 the Purchasers paid Checroune \$1,000,000 in addition to the \$200,000 that had previously been paid. The Purchasers submit that the \$1,000,000 payment, together with the initial \$200,000 deposit, represented payment of the purchase price for 20% of the shares of 148. Checroune submits that the \$1,000,000 payment was an additional deposit for the purchase of 100% of the shares of 148.

[19] Checroune submits that the October 1, 2015 closing date represented a generous period of time, almost three years, within which the defendants would make best efforts to clear title to the Property, including discharging the Bitton CPL. The Purchasers submit that the October 1, 2015 closing date was also selected because the RBC mortgage on the Property was set to mature on October 1, 2015 and, because of heavy penalties for early repayment, it was cost prohibitive for Checroune to retire the mortgage before it fell due.

[20] The Purchasers provided evidence that they required the Bitton Litigation to be resolved by the Closing Date because they intended to use the Property as collateral to obtain mortgage financing to acquire the balance of the shares of 148 and that such financing would be unavailable unless the Bitton CPL was discharged.

Events Following June 21, 2012

[21] After June 21, 2012, a lease was made between 148 as landlord and Homelife as tenant. Disputes arose in relation to the lease, and the Purchasers allege that Checroune began a strategy of causing harm to them and to Homelife. The particulars of the complaints of the Purchasers are in Ahmadi's affidavits sworn October 24, 2014 and June 4, 2015. In these affidavits, Ahmadi asserts that the reason for Checroune's change in behaviour is that he no longer wanted to comply with the Share Purchase Agreement and wanted out of the deal, she says, because he received a better offer for the Property.

[22] According to Ahmadi's October 24, 2014 affidavit, as a result of Checroune's threats to sell the Property to another purchaser, the plaintiff started this action in June 2014. On June 13, 2014 the Purchasers obtained an order from Master Haberman on a motion made without notice granting them leave to issue a Certificate of Pending Litigation against the Property. This Certificate of Pending Litigation (the "Purchasers' CPL") was issued on June 13, 2014 and was registered on title to the Property.

[23] In her October 24, 2014 affidavit, Ahmadi states that she believes that on a date in or around August 2014 Checroune entered into an agreement with Kartelle Corporation ("Kartelle") purporting to sell the Property. She states that Checroune told her that he received an offer for \$17 million for the Property. She states that several tenants in the Property advised her that they received an email from Kartelle Corporation indicating that it has purchased the Property. Ahmadi attached, as an exhibit to her affidavit, an email from Steven Leyzac, the president and CEO of Kartelle dated August 13, 2014 advising that Kartelle "will soon be the new owner/operator of [the Property], our possession date is scheduled for September 30, 2014. Upon completion of the acquisition, a comprehensive renovation will commence, renewing the building to Class 'A' standards".

[24] According to Ahmadi's affidavit evidence, Checroune then began to engage in a campaign of intimidation and harassment so that the Purchasers would no longer wish to purchase the balance of the shares of 148. She stated that Checroune told her that if the Purchasers do not pay the increased amount of \$17,000,000 he would not sell the property to them. The particulars of these statements are contained in Ahmadi's affidavits sworn October 24, 2014 and June 4, 2015.

[25] On October 27, 2014 an interlocutory injunction order was made by Whitaker J. restraining Checroune and 148 from denying the Plaintiffs' access to the Property, restraining them from interfering with the quiet enjoyment of the Property by the Plaintiffs, ordering relief from forfeiture in respect of the "Purported Lease", restraining Checroune and 148 from selling, mortgaging, encumbering or otherwise dealing with the Property without the consent of the Purchasers or court order and restraining Checroune and 148 from selling, mortgaging, encumbering or otherwise dealing with the shares in the capital of 148.

[26] Checroune responded to the statements made in Ahmadi's October 24, 2014 affidavit in an affidavit sworn October 28, 2014 that was appended as an exhibit to Ahmadi's February 10, 2016 affidavit, and he denied the allegations of intimidation and harassment. He did not address in his affidavit the statements in Ahmadi's October 24, 2014 affidavit concerning a sale of the property to Kartelle.

[27] On his cross-examination on his affidavit sworn November 14, 2016 in support of this motion, Checroune denied that there was another transaction with Kartelle and he said that, although he knows Kartelle, he has not dealt with Kartelle or talked to anybody at Kartelle. His evidence was that Kartelle dealt directly with the doctors in the building and not with him, and that what they did was not with his consent. He was asked to produce his lawyers' documents with respect to Kartelle, Mr. Leyzac or any company associated with Kartelle and this request was refused on the ground that it is not relevant to the motion for summary judgment.

Events around October 1, 2015 Closing Date

[28] The Bitton Litigation was not resolved by October 1, 2015. Through correspondence exchanged on September 30, 2015 the lawyers for Checroune and the lawyers for the Purchasers took opposing positions.

[29] The lawyers for the Purchasers took the position that Checroune had failed to satisfy his obligations under the Share Purchase Agreement to resolve outstanding litigation, including the Bitton Litigation, and, therefore, the Purchasers were not required to complete the purchase of the remaining 80 percent of the shares of 148 on the Closing Date.

[30] Checroune, through his lawyers, transmitted forms of legal documents for the closing and took the position that he was ready, willing and able to close. He agreed to have the closing funds held in escrow until determination of issues in relation to the interpretation of the Share Purchase Agreement. He took the position that he is under no obligation to resolve the Bitton Litigation, or any litigation.

[31] The purchase of the remaining 80 percent of the shares of 148 did not close on October 1, 2015. Checroune offered to return the \$1,200,000 that had been paid by the Purchasers, but they refused to accept the return of this money. Checroune applied these funds to the amounts that he says Homelife owes to 148 under the Lease.

[32] After October 1, 2015 the mortgagee of the Property, RBC, commenced power of sale proceedings and the Purchasers engaged in unsuccessful negotiations for the purchase of the Property directly with RBC. Checroune redeemed the RBC mortgage and the power of sale proceedings ended.

[33] Homelife continue to pay rent pursuant to the Lease after October 1, 2015. The Purchasers alleged that Checroune took improper steps to “poach” the remaining subtenants of Homelife and that Homelife had no choice but to leave the Property in July, 2016. 148 has counterclaimed against Homelife for amounts claimed under the Lease.

Adjudication of Bitton Litigation

[34] The trial in the Bitton Litigation was conducted in February 2016. The action by the plaintiff in the Bitton Litigation for specific performance of a condition providing for delivery of documents prior to closing was dismissed by judgment released on March 4, 2016: 2144688 *Ontario Ltd. v. 1482241 Ontario Ltd.*, 2016 ONSC 1475.

Analysis

[35] In my view, the threshold question on this motion is whether there is a genuine issue requiring a trial in relation to whether Checroune failed to use best efforts to resolve the Bitton Litigation by the Closing Date. I regard this as a threshold question because, in my view, if Checroune failed to use his best efforts to do so, this would excuse the Purchasers from an obligation to complete the purchase of the remaining eighty percent of the shares of 148 on October 1, 2015, and would allow them to seek remedies against the defendants in relation to the Share Purchase Agreement.

Defendants' Position

[36] The Share Purchase Agreement provides in paragraph 1.1 (of the Original Agreement) that “If for any reason this transaction does not close, this offer will become null and void and the deposit will be returned to the purchaser without any deduction”. Checroune submits that the October 1, 2015 closing date was agreed to and there was no agreement extending this date. He submits that the parties agreed to a generous period of time, almost three years, within which the defendants would make best efforts to clear title to the Property. Checroune submits that the transaction did not close and, therefore, the plaintiffs have no rights that arise from the Share Purchase Agreement and that their action should be dismissed.

[37] Checroune also takes the position that section 4.2 of the Share Purchase Agreement was a true condition precedent that was not within his control or the control of 148 to satisfy. Checroune submits that he did everything he could to resolve the Bitton Litigation and that there

is no evidence that he did anything to delay its resolution. Checroune submits that as a result of the inability of the defendants to fulfil the true condition precedent, the Share Purchase Agreement was null and void as of October 1, 2015 and that the plaintiffs' action should be dismissed.

Purchasers' Position

[38] The Purchasers submit that paragraph 1.1 of the Original Agreement must be interpreted as part of the Share Purchase Agreement read as a whole. The Purchasers submit that paragraph 1.1(a) of the Original Agreement providing for "this offer" to become null and void upon a failure of "this transaction" to close, properly interpreted, relates only to the initial purchase of twenty percent of the shares of 148 and not to the purchase of the remaining eighty percent of the shares. I do not need to decide whether this interpretation is correct on this motion.

[39] The Purchasers submit that paragraph 4.2 of the Share Purchase Agreement imposed an obligation on Checroune to resolve all litigation affecting the Property by October 1, 2015, and that his failure to satisfy this obligation relieved them of an obligation to complete the purchase of the remaining 80 percent of the shares of 148 on October 1, 2015. The Purchasers submit that their obligation to complete the purchase of the remaining eighty percent of the shares of 148 is suspended until Checroune satisfies the condition in paragraph 4.2 of the Share Purchase Agreement and that they are willing to complete the purchase when this condition is satisfied.

Legal Principles

[40] The defendants rely upon the following passage from the decision of the Supreme Court of Canada in *Zhilka v. Turney*, [1959] S.C.R. 578, at para. 11:

The obligations under the contract, on both sides, depend upon a future uncertain event, the happening of which depends entirely on the will of a third party - the Village council. This is a true condition precedent - an external conditional upon which the existence of the obligation depends. Until the event occurs there is no right to performance on either side.

The defendants submit that as a result of their inability to fulfill the true condition precedent notwithstanding best efforts to do so, the Share Purchase Agreement was null and void as of the Closing Date.

[41] The Purchasers rely upon the decision of the Supreme Court of Canada in *Dynamic Transport Ltd. v. O.K. Detailing Ltd.*, [1978] 2 S.C.R. 1072. In that case, subdivision approval under the *Planning Act* was a condition to an agreement for the sale of land, but the agreement was silent as to whether the vendor or purchaser would obtain this approval. The Supreme Court of Canada referred to the general principle that the court will readily imply a promise on the part of each party to do all that is necessary to secure the performance of a contract and held that the vendor was under a duty to act in good faith and to take all reasonable steps to complete the sale. This included an obligation on the part of the vendor to use his best efforts to obtain the subdivision approval. Dickson J., writing for the Court, concluded at para. 19 that the obligations

of the vendor to sell and of the purchaser to buy “were merely in suspense pending the occurrence of the event constituting the condition precedent”.

[42] The decisions in *Turney* and in *Dynamic Transport* were cited by Blair J. in *Riordan v. Chan* (1991) CarswellOnt 570, an action for specific performance of an agreement for the sale of land. The agreement was conditional upon obtaining a right-of-way that was consented to by the mortgagee bank. The condition was not satisfied at the time of closing and, for this reason, the transaction did not close. Blair J. concluded that the vendor had an obligation to use his reasonable and best efforts to obtain the right-of-way and wrote that the central factual issue at the trial of the action was whether he did so.

[43] I agree with the approach taken by Dickson J. in *Dynamic Transport* and by Blair J. in *Riordan*. Paragraph 4.2 of the Share Purchase Agreement is a condition precedent to completion of the purchase of the remaining eighty percent of the shares of 148, but the defendants (as well as the Purchasers, to the extent that they could do so) were subject to an obligation to use their best efforts to satisfy this condition by the Closing Date.

Evidence Concerning Efforts of Defendants to Resolve Bitton Litigation

[44] The defendants, in their submissions, agreed that in the period of time from the date of the Share Purchase Agreement in June 2012 to the Closing Date in October 2015 they were required to use their best efforts to clear title to the Property by resolving the Bitton Litigation; see paras. 62 and 69 of the defendants’ factum. The defendants submit that they zealously defended the Bitton Litigation and were ultimately successful at trial in 2016. They submit that there is no evidence that they did anything to delay the resolution of the Bitton Litigation.

[45] In support of these submissions, the defendants point to statements in an affidavit sworn by Checroune on October 28, 2014, a copy of which was marked as an exhibit to the affidavit sworn by Ahmadi on February 10, 2017. The defendants rely upon the following statement from the copy of Checroune’s affidavit:

17. The litigation with Bitton has gone through several steps including: examinations, multiple mediations, several interim motions and a motion for summary judgment. Currently, the plaintiffs are bringing a motion in January 2015 to add the matter to the upcoming trial list.

...

28. It is now entirely unlikely that the Bitton Litigation will get resolved by October, 2015.

The defendants submit that the trial in the Bitton Litigation was held in February 2016 as scheduled by the court and that the defendants were successful.

[46] The purchasers rely upon the evidence of Ahmadi that:

- a. Checroune told her that he received an offer for \$17,000,000 for the Property and that if she did not pay the increased amount of \$17,000,000 he would not sell the Property to her.
- b. Tenants in the Property received an email from Kartelle indicating that it has purchased the Property.
- c. Checroune employed a strategy of harassment and intimidation to cause the Purchasers to relinquish their interest in the Property.

[47] In addition, the Purchasers rely upon the following evidence given by Checroune on the cross-examination on his affidavit:

608. Q. Okay. From 2012 to 2015, I take it that you will agree with me that you were working towards discharging the certificate of pending litigation of Mr. Bitton?
A. Not really.
609. Q. You weren't doing anything to remove it?
A. No.
610. Q. Why not?
A. Because we had no obligation.
611. Q. You had no obligation to remove it?
A. Yes.
612. Q. And therefore you took no steps to expedite the removal of the CPL?
A. Absolutely.

At the hearing of this motion, when asked about this passage from the transcript of Checroune's cross-examination, counsel for the defendants submitted that Checroune was mistaken when he gave this evidence and that Checroune had used his best efforts to resolve the Bitton Litigation by the Closing Date.

[48] With respect to the evidence from Ahmadi concerning Kartelle, Checroune on his cross-examination denied that there was another transaction with Kartelle and denied that he had ever dealt with Kartelle or talked to anybody there. He said that Kartelle dealt directly with the doctors in the building, and that what they did was not with his consent. He confirmed that he had not entered into an agreement to sell the Property or shares in 148 to Kartelle.

[49] The following evidence, and absence of evidence, leaves me unable to decide on the record before me whether the defendants satisfied their obligation to use best efforts to resolve the Bitton Litigation by the Closing Date:

- a. The statements from the copy of the Checroune affidavit concerning the steps taken in the Bitton Litigation relate to steps taken in the litigation before October 28, 2014, but not after this date. The missing information bears upon whether best efforts were taken.
- b. There was no evidence of communications with counsel for Bitton, or with the court, concerning attempts to obtain a trial date for the Bitton action that would lead to adjudication of the Bitton Litigation by the Closing Date.
- c. There was no evidence, in re-examination, to clarify Checroune's statements on cross-examination that he was not doing anything to remove the Bitton CPL from 2012 to 2015. This evidence supports the Purchasers' submission that Checroune did not use his best efforts to resolve the Bitton litigation by the Closing Date.
- d. Ahmadi gave evidence that Checroune told her that he would not sell the Property to her unless she paid the increased amount of \$17,000,000 and Checroune did not provide affidavit evidence to respond to this evidence.
- e. It is not clear from the record before me who Kartelle was dealing with in connection with its interest in purchasing the property, or why Kartelle advised tenants that it would soon be the owner of the Property.
- f. Although Checroune said on cross-examination that he knows Kartelle, and he had knowledge that Kartelle dealt with the doctors (who I presume were tenants), he did not explain how he acquired his knowledge of Kartelle's dealings concerning the Property. The defendants refused to produce a copy of their lawyers' file with respect to any dealings with Kartelle, so this evidence is not before the court: transcript of Checroune cross-examination, qq. 654-664.

[50] I therefore do not accept the defendants' submission that the evidentiary record is such that I can and should decide that the defendants used their best efforts to resolve the Bitton Litigation by the Closing Date. I have concluded that this is a genuine issue requiring a trial.

[51] In *Hyrniak v. Mauldin*, 2014 SCC 7, the Supreme Court of Canada wrote that on a motion for summary judgment, the court should first determine if there is a genuine issue for trial based on the evidence before it. If there appears to be a genuine issue for trial, the court should then determine if the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2).

[52] In my view, resolution of the issue of whether the defendants discharged their obligation to use best efforts to resolve the Bitton Litigation by the Closing Date will likely require evidence from several witnesses, including, possibly, Checroune, Ahmadi, the executives at Kartelle, doctors who are tenants at the building who may have dealt with Kartelle, as well as documentary evidence, if available, concerning Kartelle and concerning actions taken by the defendants to secure a date for adjudication of the Bitton Litigation before the Closing Date. Given the nature and extent of this evidence, I exercise my discretion not to use the expanded powers under Rules 20.04(2.1) and (2.2).

[53] The defendants move for alternative orders if I decide to dismiss their motion for summary judgment dismissing the plaintiffs' action. Specifically, the defendants ask for (i) an order discharging the certificate of pending litigation obtained by the plaintiffs; (ii) an order setting aside the interlocutory order of Whitaker J. dated October 27, 2014; and (iii) summary judgment for damages against Homelife for unpaid rent under the Lease.

Motion to Discharge Purchasers' CPL

[54] With respect to the motion to discharge the CPL, subsection 103 (6) of the *Courts of Justice Act* provides that the court may make an order discharging a certificate of pending litigation on grounds set forth in that subsection, including on any other ground that is considered just. Rule 42.02(1) provides that an order discharging a certificate of pending litigation under subsection 103(6) of the *Courts of Justice Act* may be obtained on motion to the court. I accept the submission of the defendants that the court must exercise its discretion in equity and look at all relevant matters between the parties in determining whether the certificate should be discharged.

[55] I have considered the factors identified in *572383 Ontario Inc. v. Dhunna* (1987), 24 C.P.C. 287, at paras. 10-18. With respect to these factors:

- a. Two of the plaintiffs, the Purchasers, are individuals, not shell corporations.
- b. The Purchasers have offered some evidence concerning why the property is unique because of its location, size and parking relative to other nearby commercial buildings. Although Homelife is no longer a tenant at the Property, the Purchasers have provided evidence that this was the result of actions taken by the defendants. Whether this is so will be decided at the trial of the action. I am not able to conclude on the record before me that the Purchasers will not succeed on their claim for specific performance of the Share Purchase Agreement and thereby become the owner of 148 that owns the Property: *2039903 Ontario Inc. v. Parktrail Estates Inc.*, 2008 CarswellOnt 7036 at paras. 35-39.
- c. Although there is an alternative claim in damages, I am not satisfied that damages would necessarily be a satisfactory remedy. This should be decided on a more complete evidentiary record.
- d. Although there is evidence of another willing purchaser, Checroune's evidence on his cross-examination was that he has received many offers to sell the Property, and that he receives offers "all the time", "every week": Transcript of cross-examination of Checroune, qq. 667-675.
- e. The Amended Trust Declaration contains an acknowledgement by 148 that it holds a twenty percent interest in the Property and Assets in trust for the Purchasers. The defendants deny that the Purchasers have any interest in the Property and Assets. Whether the Purchasers have such an interest will be

determined in the action. The Amended Trust Declaration is evidence of an interest in the Property that supports the Purchasers' CPL.

- f. The evidence does not demonstrate that the Purchasers have failed to prosecute this action with sufficient diligence that the Purchasers' CPL should be discharged for this reason. The judgment in the Bitton Litigation was released in March 2016, and this motion for summary judgment by the defendants was then brought. If the plaintiffs do not prosecute the action with sufficient diligence following the release of my decision, it is open to the defendants to move again for a discharge of the Purchasers' CPL.
- g. In balancing the harm done to the defendants if the CPL is allowed to remain against the harm to the plaintiffs if it is removed, I also consider that the defendants did not move to lift the CPL when it was first registered in June 2014. The motion to discharge the CPL was only brought as part of this motion for summary judgment.

[56] If the Purchasers' CPL were to be discharged, the effect would be to limit their claim to damages. Having considered the evidence and the relevant factors, in my view, the Purchasers should not be limited at trial to a remedy in damages. The trial judge may conclude that a remedy of specific performance is not available, but the Purchasers should not be deprived of the opportunity to seek this remedy. I therefore exercise my discretion not to discharge the Purchasers' CPL.

Motion to Set Aside Order of Whitaker J.

[57] The defendants also move for an order that the interlocutory order of Whitaker J. be set aside. They submit that the plaintiffs do not have a valid claim against the Property or the shares of 148 and that the defendants are being materially prejudiced by their inability to deal with the Property. The defendants ask that paragraphs 4 and 5 of the order of Whitaker J. be set aside so that the defendants may proceed with a sale of the Property.

[58] The Purchasers submit that they should not be deprived of the right to seek specific performance of the Share Purchase Agreement that, if successful, would allow them to become the owner of the shares of the company that owns the Property. The Purchasers also submit that there is evidence that Checroune has knowingly contravened the Order of Whitaker J. by allowing 148 to mortgage the Property on September 21, 2016. The Purchasers submit that Checroune lacks clean hands and, for this reason, is not entitled to seek equitable relief from the court.

[59] The Purchasers provided evidence of a charge registered on the Property on September 21, 2016 securing the amount of \$1,420,000 in favour of Janodee Investments ("Janodee") and Meadowshire Investments Ltd. ("Meadowshire") (the "Meadowshire Charge"). The Meadowshire Charge was shown to have been signed by one Harvey Samuel Margel for the chargor, 148. Checroune was shown to be a guarantor.

[60] On his cross-examination, Checroune was asked about the Meadowshire Charge. He said that he did not know Janodee or Meadowshire, and that he was not involved at all in this mortgage transaction. He said that he has not met Mr. Margel or transacted business with him, and that Mr. Margel did not have authority from him to sign the Meadowshire Charge.

[61] It is difficult to reconcile Checroune's position with 148 as controlling shareholder and President and his involvement with the Property with his evidence that he knows nothing about the Meadowshire Charge or the person, Mr. Margel, who signed the Meadowshire Charge on behalf of 148. Nevertheless, without a more complete evidentiary record, I am not able to make the finding of credibility concerning Checroune's knowledge of the Meadowshire Charge that would be necessary for me to conclude that Checroune intentionally contravened the order of Whitaker J. I therefore do not deny the defendants' motion to set aside the order of Whitaker J. because they lack clean hands.

[62] I have already concluded that the Purchasers should not, in the circumstances, be deprived of the right to seek specific performance of the Share Purchase Agreement. For the same reasons, I exercise my discretion not to set aside the order of Whitaker J.

Motion for Summary Judgment on Lease

[63] The defendants submit that the Lease was a requirement of the Share Purchase Agreement, that Homelife has abandoned its obligations under the Lease, and that the unpaid rent through to July 17, 2017 should be set off as against the \$1,200,000 paid by the Purchasers. The defendants provided a statement of amounts due under the Lease as of September 26, 2016 of \$1,541,761.58.

[64] The plaintiffs submit that there are a number of genuine issues that require a trial in respect of the claims under the Lease including factual issues in relation to the signing of the lease, the actions by the defendants that the plaintiffs assert were in breach of the Lease, steps taken or not taken by the defendants to mitigate their damages. More broadly, the plaintiffs submit that the overlap between factual issues in relation to the Lease and those that relate to the Purchasers' claims for remedies under the Share Purchase Agreement is such that partial summary judgment for claims under the Lease should not be granted.

[65] I am mindful of the caution recently expressed by the Court of Appeal in *Canadian Imperial Bank of Commerce v. Deloitte & Touche*, 2016 ONCA 922 concerning motions for partial summary judgment. The Court of Appeal set aside a partial summary judgment and held that the motion judge had erred in concluding that there was no risk of duplicative or inconsistent findings at trial and that granting partial summary judgment was advisable in the context of the litigation as a whole.

[66] In my view, the factual issues relating to the Purchasers' claims in relation to the Share Purchase Agreement are closely intertwined with the factual issues that relate to the defendants' claims under the Lease. There is a risk of duplicative or inconsistent findings if I were to decide summarily the issues relating to the claim under the Lease without regard for the issues to be

decided at the trial of the plaintiffs' claims. I therefore decline to grant summary judgement on the counterclaim made by the defendants in respect of the Lease.

Disposition

[67] For these reasons, the defendants' motion is dismissed.

[68] If the parties are unable to resolve the costs of this motion, the plaintiff may make brief written submission not to exceed 5 pages (not including the costs outline) within 30 days.

The defendants may make a written response with 14 days of receipt of the plaintiffs' submissions (also not to exceed 5 pages) and the plaintiffs, if so advised, may make reply submissions (not to exceed 2 pages) within 7 days of receipt of the defendants' submissions.

Mr. Justice P.J. Cavanagh

Date: April 19, 2017

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. 31-2303814
Estate File No. 31-2303814

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at TORONTO

**AFFIDAVIT OF IVAN MITCHEL MERROW
(SWORN MARCH 14, 2018)**

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IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. 31-2303814
Estate File No. 31-2303818

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

RESPONDING MOTION RECORD OF THE
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