

Court File No.

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

B E T W E E N:

**DONALD DAL BIANCO**

Applicant

- and -

**DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.**

Respondents

**APPLICATION UNDER** Section 243(1) of the *Bankruptcy and Insolvency Act*  
and Section 101 of the *Courts of Justice Act*

**APPLICATION RECORD - VOLUME 1  
(Re Receivership Hearing Returnable May 30, 2018)**

May 28, 2018

**BLANEY MCMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5

**David T. Ullmann** (LSUC #42357I)  
Tel: (416) 596-4289  
Fax: (416) 594-2437

**John Wolf** (LSUC #30165B)  
Tel: (416) 593-2994  
Fax: (416) 596-2044

**Alexandra Teodorescu** (LSUC #63889D)  
Tel: (416) 596-4279  
Fax: (416) 594-2437

*Lawyers for the Applicant*

Court File No.

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

B E T W E E N:

**DONALD DAL BIANCO**

Applicant

- and -

**DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.**

Respondents

**APPLICATION UNDER** Section 243(1) of the *Bankruptcy and Insolvency Act*  
and Section 101 of the *Courts of Justice Act*

**SERVICE LIST  
(as of May 28, 2018)**

**TO:** **WAGNER SIDLOFSKY LLP**  
181 University Avenue, Suite 1800  
Toronto, ON M5H 3M7

**Bradley Phillips**  
Tel: (416) 366-3153  
Fax: (416) 364-6579  
Email: [bphillips@wagnersidlofsky.com](mailto:bphillips@wagnersidlofsky.com)

*Lawyers for the Respondents, Deem Management Services Limited and The Uptown Inc.*

**AND TO:** **CROWE SOBERMAN LLP**  
2 St. Clair Avenue East, Suite 1100  
Toronto, ON M4T 2T5

**Hans Rizarri**  
Tel: (416) 963-7175

Fax: (416) 929-2555  
Email: [hans.rizarri@crowesoberman.com](mailto:hans.rizarri@crowesoberman.com)

*Proposed Receiver*

**AND TO:** **GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto, ON M5G 1V2

**R. Brendan Bissell**  
Tel: (416) 597-6489  
Fax: (416) 597-3370  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

*Lawyers for the Proposed Receiver, Crowe Soberman LLP*

**AND TO:** **BATTISTON & ASSOCIATES**  
Barristers & Solicitors  
1013 Wilson Avenue, Suite 202  
Toronto, ON M3K 1G1

**Flavio Battiston**  
Tel: (416) 630-7151 ext. 229  
Fax: (416) 630-7472  
Email: [f.battiston@battistonlaw.com](mailto:f.battiston@battistonlaw.com)

*Lawyers for Deep Foundations Contractors Inc.*

**AND TO:** **OLDFIELD, GREAVES, D'AGOSTINO & SCRIVEN**  
172 King Street South  
Waterloo, ON N2J 1P8

**Edward L. D'Agostino**  
Tel: (519) 576-7200  
Fax: (519) 576-0131  
Email: [edagostino@watlaw.com](mailto:edagostino@watlaw.com)

*Lawyers for Kieswetter Excavating Inc.*

**AND TO:** **FRANK A. SOPPELSA PROFESSIONAL CORPORATION**  
3700 Steeles Avenue West, Suite 600  
Woodbridge, ON L4L 8K8

**Frank Miceli**  
Tel: (905) 856-3700  
Fax: (905) 856-1213

*Lawyers for OneSpace Unlimited Inc.*

**AND TO:** **MAXION MANAGEMENT SERVICES INC.**  
92 Saunders Road, Unit 1  
Barrie, ON L4N 9A8

**Paul Michelin**  
Fax: (705) 728-4612  
Email: [pmichelin@maxion.ca](mailto:pmichelin@maxion.ca)

**AND TO:** **ROSE, PERSIKO, RAKOWSKY, MELVIN LLP**  
390 Bay Street, Suite 600  
Toronto, ON M5H 2Y2

**Ronald B. Melvin**  
Tel: (416) 868-1908  
Fax: (416) 868-1708  
Email: [rbmelvin@rprlaw.com](mailto:rbmelvin@rprlaw.com)

*Lawyers for Institutional Mortgage Capital Canada Inc.*

**AND TO:** **DEPARTMENT OF JUSTICE**  
The Exchange Tower  
130 King Street West, Suite 3400  
Toronto, ON M5X 1K6

**Diane Winters**  
Tel: (416) 973-3172  
Fax: (416) 973-0810  
Email: [diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca)

**AND TO:** **HER MAJESTY THE QUEEN IN  
RIGHT OF THE PROVINCE OF ONTARIO  
AS REPRESENTED BY THE MINISTER OF FINANCE**  
Legal Services Branch  
777 Bay Street, 11<sup>th</sup> Floor  
Toronto, ON M5G 2C8

**Kevin J. O'Hara**  
Tel: 416.327.8463  
Fax: 416.325.1460  
Email: [kevin.ohara@ontario.ca](mailto:kevin.ohara@ontario.ca)

# INDEX

Court File No.

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

B E T W E E N:

**DONALD DAL BIANCO**

Applicant

- and -

**DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.**

Respondents

**APPLICATION UNDER** Section 243(1) of the *Bankruptcy and Insolvency Act*  
and Section 101 of the *Courts of Justice Act*

**INDEX**

<b>Tab</b>	<b>Document</b>
<b>Volume 1</b>	
<b>1</b>	Notice of Application, issued May 28, 2018
<b>2</b>	Affidavit of Donald Dal Bianco, sworn May 27, 2018
<b>A</b>	Exhibit A - Excerpt from Uptown's website
<b>B</b>	Exhibit B - Parcel Register Printout, dated May 24, 2018
<b>C</b>	Exhibit C - Instrument WR888817 Dal Bianco Mortgage
<b>D</b>	Exhibit D - Instrument WR1030186 Amending Charge
<b>E</b>	Exhibit E - Instrument WR1030622 IMC Mortgage
<b>F</b>	Exhibit F - Instrument WR1030648 Postponement of Interest

<b>G</b>	Exhibit G - Instrument WR1099051 Second Bianco Mortgage
<b>H</b>	Exhibit H - GSA, Uptown Guarantee and Uptown GSA
<b>Volume 2</b>	
<b>I</b>	Exhibit I - PPSA searched against Deem and Uptown
<b>J</b>	Exhibit J - Demand letter, dated January 30, 2018
<b>K</b>	Exhibit K - BIA Notices and termination letter
<b>L</b>	Exhibit L - Listing Agreement
<b>M</b>	Exhibit M - Demand letter, dated March 22, 2018
<b>3</b>	Consent of Crowe Soberman to act as Receiver
<b>4</b>	Draft Order

**TAB 1**

Court File No.

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

B E T W E E N:

**DONALD DAL BIANCO**

Applicant

- and -

**DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.**

Respondents

**APPLICATION UNDER** Section 243(1) of the *Bankruptcy and Insolvency Act*  
and Section 101 of the *Courts of Justice Act*

**NOTICE OF APPLICATION**

**TO THE RESPONDENT(S)**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicant. The claim made by the Applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing on **Wednesday May 30, 2018**, at 10:00 a.m., before a judge presiding over the Commercial List at 330 University Avenue, 8th Floor, Toronto ON, M5G 1R7.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does

not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date \_\_\_\_\_ Issued by \_\_\_\_\_ Local Registrar

Address of  
court office: Superior Court of Justice  
330 University Avenue, 7th Floor  
Toronto, ON M5G 1R7

**TO: ATTACHED SERVICE LIST**

Court File No.

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

B E T W E E N:

**DONALD DAL BIANCO**

Applicant

- and -

**DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.**

Respondents

**APPLICATION UNDER** Section 243(1) of the *Bankruptcy and Insolvency Act*  
and Section 101 of the *Courts of Justice Act*

**NOTICE OF APPLICATION**

**TO THE RESPONDENT(S)**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicant. The claim made by the Applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing on **Wednesday May 30, 2018**, at 10:00 a.m., before a judge presiding over the Commercial List at 330 University Avenue, 8th Floor, Toronto ON, M5G 1R7.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does

not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date \_\_\_\_\_ Issued by \_\_\_\_\_ Local Registrar

Address of Superior Court of Justice  
court office: 330 University Avenue, 7th Floor  
Toronto, ON M5G 1R7

**TO: ATTACHED SERVICE LIST**

## APPLICATION

1. The Applicant, Donald Dal Bianco (the “**Applicant**”), makes application for:
  - (a) if necessary, an order abridging the time for service and filing of this Notice of Application and the Application Record, validating service effected to date, and an order dispensing with service thereof on any party other than the persons served;
  - (b) an order appointing Crowe Soberman LLP (“**Crowe Soberman**”) as receiver (in such capacity, the “**Receiver**”), without security of certain real property and related assets of the Respondent, Deem Management Services Limited (“**Deem Management**”), and the property, assets and undertaking of The Uptown Inc. (“**Uptown**”) as further described below;
  - (c) against the Respondents, the costs of this application, plus all applicable taxes, on a full indemnity basis; and
  - (d) such further and other relief as to this Honourable Court may seem just.
2. **THE GROUNDS FOR THE APPLICATION ARE:**

### **Background**

- (a) the Respondent, Deem Management, is a property holding and real estate development company. It is the registered owner of the property municipally known as 229 Lexington Road, Waterloo, Ontario (“**Real Property**”);

- (b) a portion of the Real Property is vacant land. There is also a nursing home, known as the Pinehaven Nursing Home ("Nursing Home"), which is also located on the Real Property;
- (c) the business of Deem Management includes collecting rent from the Nursing Home. There is currently no construction or development work underway on the Real Property;
- (d) the Respondent, Uptown, operates a presentation centre located on the Real Property and is engaged in planning related to the possible redevelopment and sale of the Real Property. Uptown may hold assets such as plans, permits, contracts with prospective purchasers and similar intangibles relating to the Real Property;
- (e) the Applicant is an individual residing in Oakville, Ontario, who has advanced in excess of \$13 million to Deem Management, which advances are secured by, among other things, two real property mortgages, a general security agreement from Deem Management, and a general security agreement from Uptown;
- (f) on or about June 25, 2015, a charge on the Real Property in the amount of \$4,517,511 was registered in favour of the Applicant ("First Charge");
- (g) a second charge on the Real Property in the amount of \$8,255,000 was registered in favour of Institutional Mortgage Capital Canada Inc. ("IMC") on or about May 9, 2017 ("IMC Charge"). The First Charge was postponed to the IMC Charge by way of agreement;

### **Demand and Forbearance**

- (h) on or about January 26, 2018, Deem Management was further indebted, beyond the amount secured by the First Mortgage, to the Applicant in the principal amount of in excess of \$9,500,000 (collectively, the “**Indebtedness**”);
- (i) on January 30, 2018, the Applicant demanded repayment of the Indebtedness from Deem Management. Despite the written demand, Deem Management failed to pay the amounts outstanding to the Applicant;
- (j) the Applicant entered into a Forbearance Agreement with, among other entities, Deem Management and Uptown on February 14, 2018 (“**Forbearance Agreement**”);
- (k) under the Forbearance Agreement, the Applicant agreed to refrain from exercising his rights and remedies to seek recovery of the Indebtedness and to agree to a permanent reduction in the amount owed in exchange for the delivery of additional and collateral security, including a charge in favour of the Applicant in the amount of \$7,979,753.45 registered on title to the Real Property, a general security agreement from Deem Management, and a general security agreement from Uptown (together with the First Charge, the “**Security**”);

### **Default under Forbearance Agreement**

- (l) in March 2018, four construction liens totalling in excess of \$7 million were registered on title to the Real Property (“**Liens**”). The registration of the Liens constituted an event of default under the Forbearance Agreement;

- (m) the Security held by the Applicant provides for the appointment of a receiver upon an event of default without further notice, to which Deem Management and Uptown consented under the Forbearance Agreement;
- (n) on or about May 25, 2018, counsel for the Applicant advised counsel for Deem Management and Uptown and its principal that the Forbearance Agreement was terminated, and that this application would be brought. Notice under the Bankruptcy and Insolvency Act in accordance with section 244 was also provided
- (o) on or about May 26<sup>th</sup>, 2018, Deem Management and Uptown consented to the appointment of the receiver;

**Need for Court Appointed Receiver**

- (p) on or about April 24<sup>th</sup>, 2018, Deem Management entered into a listing agreement with Cushman Wakefield to list the Real Property for sale. The listing agreement contemplated a possible receivership;
- (q) the proposed Receiver has begun preliminary discussions with Cushman Wakefield and is in the process of evaluating the sales process currently in place. The appointment of a receiver will stop the marketing of the Real Property by Cushman Wakefield. The Receiver will return to Court following its appointment to seek a Court order approving a sale process for the Real Property and related assets. In the interim, Cushman Wakefield will continue to canvass the market but will not enter into any binding agreements with anyone regarding the Real Property;

- (r) Given the process underway by Cushman Wakefield and the Liens, it is appropriate that the Applicant seek the appointment of a receiver over the Property so that a judicial sale of the Real Property can be conducted;
- (s) IMC made demand on Deem Management and issued a notice under the *Bankruptcy and Insolvency Act* on or about March 22, 2018.
- (t) Following the demand, the principal of Deem Management, Rob Dal Bianco, spoke to IMC and pledged to keep the IMC mortgage current, which it has done. IMC has taken no further enforcement steps;
- (u) the next payment is due to IMC under the IMC on June 1, 2018. Deem has insufficient funds to make this payment.
- (v) It is contemplated that the Receiver will be authorized to borrow money and issue Receiver's Certificates in order to keep IMC current during the receivership on a secured basis through this mechanism;
- (w) IMC has been advised as to the pending receivership application;
- (x) the receivership provides a mechanism for the IMC Charge to be kept in good standing and for the determination of the rights of the Lien claimants;
- (y) the receivership is the best way to realize the highest value for the Real Property and related assets;
- (z) Crowe Soberman has consented to act as Receiver of the Property and Uptown;

- (aa) Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- (bb) Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C43, as amended;
- (cc) Rules 1.04, 2.03, 3.02 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (dd) such further and other grounds as counsel may advise or as are set out in this Application Record.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- (a) Affidavit of Don Dal Bianco and the exhibits thereto sworn May 27<sup>th</sup>, 2018;
- (b) Consent of Crowe Soberman to act as Receiver;
- (c) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 28, 2018

**BLANEY MCMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5

**David T. Ullmann** (LSUC #42357I)  
Tel: (416) 596-4289  
Fax: (416) 594-2437

**John Wolf** (LSUC #30165B)  
Tel: (416) 593-2994  
Fax: (416) 596-2044

**Alexandra Teodorescu** (LSUC #63889D)  
Tel: (416) 596-4279  
Fax: (416) 594-2437

*Lawyers for the Applicant*

**TAB 2**

Court File No. \_\_\_\_\_

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

**DONALD DAL BIANCO**

**Applicant**

**- and -**

**DEEM MANAGEMENT SERVICES LIMITED and  
THE UPTOWN INC.**

**Respondents**

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS  
47(1) AND 243 (1) OF THE *BANKRUPTCY ACT AND INSOLVENCY ACT*  
R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS  
OF JUSTICE ACT*, R.S.O. 1990, c. C43, AS AMENDED**

**AFFIDAVIT OF DONALD DAL BIANCO**

(Motion Returnable May 30, 2018)

I, **DONALD DAL BIANCO**, of the Town of Burlington, in the Province of Ontario,

**MAKE OATH AND SAY:**

**Overview**

1. I am a secured lender to Deem Management Services Limited (“**Deem**”), and am owed in excess of \$13,100,000 as is further set out in this affidavit. As such I have personal knowledge of the matters deposed to in my affidavit, except where I have indicated that I have obtained facts from other sources. Where I have obtained facts from other sources, I have identified those sources and believe those facts to be true.

2. Over time, I have made a series of advances to Deem in order to assist it with operations and with its development plans for a seniors retirement residence project called the Uptown Residences.

3. I hold two mortgages and a general security agreement from Deem and a general security agreement from The Uptown Inc (“Uptown”), as collateral security for these loans, in addition to other security set out below.

4. Both Deem and the Uptown are owned by my son Rob Dal Bianco who is also the sole director of each company.

5. Deem is in default of its security and lending arrangements with me, including as a result of allowing in excess of \$7,000,000 worth of construction liens to be registered on the property municipally known as 215 and 229 Lexington Road in Waterloo (the “**Property**”) within the last several months, as I further describe below.

6. The recent construction liens filed against the Property are endangering my collateral. I also understand from Rob Dal Bianco that Deem is in dire need of immediate funding, failing which it will be unable to pay its creditors when due.

7. As a result of the foregoing, I have completely lost confidence in Deem’s ability to repay its indebtedness to me.

8. I make this affidavit in support of my application to appoint Crowe Soberman as receiver (the “**Receiver**”) over the Property and to appoint the Receiver over the property, assets and undertaking of The Uptown Inc. (“**Uptown**”), a company further described by me below, in order to attend to the orderly sale of the Property.

**Background and the Operations of Deem and Uptown**

9. Deem is a company that has been working for many decades in the Ontario nursing home and retirement home sector.

10. Deem's most material asset is the Property, and two other properties in which Deem has ownership interests subject to mortgage debt and in one case a one third partner.

11. The Property is composed of Pinehaven nursing home ("Pinehaven") and land intended for the Uptown's development.

12. Pinehaven, is operated by an unrelated third party nursing home business. It leases the building from Deem. Notice of the lease is registered on title to the Property. I understand from my counsel Blaney McMurtry LLP that any time after January 1<sup>st</sup>, 2019 the Pinehaven lease can be terminated by giving two years notice.

13. It is my intention that this receivership not interfere in any way with the operation of Pinehaven.

14. Deem had plans to develop the Property, but I am advised by Rob Dal Bianco that he instructed his contractor Paul Michelin to cease construction in or about late January 2018 or early February 2018.

15. Uptown was intended to be the sales and development arm of Deem in respect of the Uptown residences. It is my understanding that Uptown has engaged in planning related to the possible redevelopment of the Property, and in discussing with prospective purchasers the sale and redevelopment of the Property. Attached hereto as **Exhibit "A"** is an excerpt from Uptown's website displaying its future plans for the development on the Property.

16. I am advised by the Rob Dal Bianco that various reports, documentation and other intangibles related to the planned future development related to the Property, are owned by Uptown. In order to maximize the potential sale value of the Property, the Receiver should be able to offer for sale the assets of Uptown, if required.

17. Uptown is named as a defendant in two of the lien actions, as further described below.

**Security and Liens**

18. The Property is encumbered by three registered mortgages and five construction liens. Attached hereto as **Exhibit “B”** is a parcel register printout for the Property dated May 24<sup>th</sup>, 2018 showing these registrations.

19. Between the period from in or about April 1<sup>s</sup>, 2012 to January, 2015, I provided loans to Deem, including a loans in the amount of \$4,517,511.41. A first mortgage was registered against title to the Property on June 25<sup>th</sup>, 2015 as Instrument No. WR888817 to secure that amount (the “**Dal Bianco Mortgage**”). Attached hereto as **Exhibit “C”** is a copy of the Dal Bianco Mortgage.

20. The Dal Bianco Mortgage had a maturity date of June 1<sup>st</sup>, 2017. Deem requested an extension of the mortgage term, to which I agreed. The parties entered into an Agreement Extending and Amending Charge dated May 4<sup>th</sup>, 2017, extending the term of the mortgage to March 1<sup>st</sup>, 2019. On May 8<sup>th</sup>, 2017, a Notice containing the Agreement Extending and Amending Charge was registered against title to the Property as Instrument No. WR1030186. Attached hereto as **Exhibit “D”** is a copy of the Notice.

21. Another lender, Institutional Mortgage Capital Canada Inc. (“**IMC**”) registered a second mortgage against title to the Property on May 9<sup>th</sup>, 2017 as Instrument No. WR1030622, securing

the principal sum of \$8,255,000.00 (the “**IMC Mortgage**”). Attached hereto as **Exhibit “E”** is a copy of the Charge.

22. I agreed to postpone my rights under the Dal Bianco Mortgage to the IMC Mortgage. Attached hereto as **Exhibit “F”** is a copy of the Postponement of Interest registered against title to the Property on May 9<sup>th</sup>, 2017 as Instrument No. WR1030648.

23. In addition to the funds advanced to Deem and secured by the Dal Bianco Mortgage, I made other loan advances to Deem in the period between April 2012 and January 2015 totalling \$7,978,753.45.

24. Deem granted me a third mortgage in the principal amount of \$7,978,753.45, plus accrued interest in the amount of \$689,461.20 and further interest accruing thereafter, which was registered against title to the Property on February 23<sup>rd</sup>, 2018 as Instrument No. WR1099051 (the “**Second Dal Bianco Mortgage**”). Attached hereto as **Exhibit “G”** is a copy of the Second Dal Bianco Mortgage, minus its attachments.

25. Deem granted other security to me at that time including, but not limited to a General Security Agreement (“**GSA**”), a Guarantee of Deem’s obligations from Uptown (the “**Uptown Guarantee**”) and a General Security Agreement granted by Uptown in my favour as collateral security (the “**Uptown GSA**”). Attached hereto as **Exhibit “H”** is a copy of the GSA, the Uptown Guarantee and the Uptown GSA.

26. The Dal Bianco Mortgage, Second Dal Bianco Mortgage, the GSA, and the Uptown GSA provide for the appointment of a receiver upon default.

27. Attached as **Exhibit "I"** are PPSA searches against each of Deem and The Uptown disclosing, IMC and I have registered financing statements against each of the Uptown and Deem.

28. There are five construction liens registered against title to the Property totalling \$7,673,672.48, with the first being registered on March 7<sup>th</sup>, 2018, as follows:.

- (i) Kieswetter Excavating Inc. - \$1,827,408.68 (site clearing, excavation etc.);
- (ii) Deep Foundations Contractors Inc. - \$918,432.38 (shoring and caissons);
- (iii) Onespace Unlimited Inc. - \$68,580.02 (architectural services);
- (iv) Maxion Management Services Inc. - \$4,522,597.28 (development management services; and
- (v) EXP Services Inc. - \$336,654.12 (engineering services).

**Forbearance Agreement**

29. By Fall 2017 I was becoming increasingly concerned as numerous almost weekly updates from Deem representing that construction financing would be obtained and funded within a matter of weeks that would repay my indebtedness had failed to materialize on every single occasion.

30. On January 30<sup>th</sup>, 2018, I made demand for the repayment of the unsecured indebtedness owing to me from Deem, plus accrued interest. Attached hereto as **Exhibit "J"** is a copy of that demand letter demanding payment of \$9,765,538.94.

31. I was advised shortly thereafter by Rob Dal Bianco that Deem was unable to make the payment of the demand. However, Rob Dal Bianco requested I forbear from enforcing my debt and security against Deem or its assets while Deem continued to further investigate sales and financing options related to the Property.

32. I agreed to so forbear in exchange for the execution of a formal forbearance agreement which included the delivery of additional security over the Property and various other collateral security, including the security provided over the Uptown.

33. Among the points negotiated was the amount of interest payable on the loan. I agreed to a material reduction in the accrued interest, resulting in the debt in question being reduced from the amount demanded of \$9,765,538.94 to \$8,668,214.

34. In March 2018 various construction liens were registered against the Property. Also, to the best of my knowledge, nothing materialized to the date of swearing this affidavit from the hoped for refinancing efforts, despite various encouraging updates from Deem about joint venture partners and construction financing opportunities.

35. The registration of these liens constituted an event of default under the Forbearance Agreement.

36. My counsel, Blaney McMurtry LLP sent letters to Deem, Uptown and Rob Dal Bianco and his counsel on May 25<sup>th</sup>, 2018 advising of the termination followed by notices of intent to enforce security in accordance with section 244 of the Bankruptcy and Insolvency Act (a “BIA Notice”).

37. Attached hereto as **Exhibit “K”**, along with the BIA notices, is the termination letter which states, among other things the following: “As a result of the defaults set-out above, please

be advised that our client is hereby giving you notice of his intention to enforce his security forthwith, including without limitation bringing a Receivership Application before the Court of the Commercial List in Toronto for the purpose of appointing a Receiver over the Pinehaven property and over the property, assets and undertaking of the Uptown Inc.”

38. On May 26<sup>th</sup>, 2018, Deem and Uptown advised, through their counsel, that they would consent to this receivership application.

**Sale Process**

39. On April 24<sup>th</sup>, 2018, Deem entered into a listing agreement (“**Listing Agreement**”) with Cushman Wakefield to enlist the Property for sale. A copy of the listing agreement is attached hereto as **Exhibit “L”**.

40. I am advised by counsel that Cushman Wakefield has conducted conversations with a number of potential purchasers and, although those conversations are preliminary and confidential, it is confident that a value can be realized for the Property in its current condition, which would be materially in excess of the debt owing to IMC (as discussed below). Notwithstanding the foregoing, I anticipate, based on those preliminary discussions held by Cushman Wakefield which have been relayed to me by my counsel, that the Property value is likely insufficient to satisfy all the outstanding secured mortgages and the construction liens.

41. Cushman Wakefield included in its listing agreement that the sale process could be subject to a receivership proceeding.

42. I am also advised by counsel that it is very unlikely that anyone would complete a purchase of a Property such as this, with the liens registered on title, without the use of a court process.

43. I am advised by counsel that Crowe Soberman Inc., the proposed Receiver, has had the opportunity to begin discussions with Cushman Wakefield and to review the sale process, which they have entered into. I am advised by counsel to anticipate that after the Receiver is appointed it will return to Court shortly following its appointment to provide a report on the efforts of Cushman Wakefield to date, and to seek an order approving a sale process which could also include the sale of Uptown's assets.

44. Pending the completion by the Receiver of its assessment of the Cushman Wakefield sales process, I believe it is appropriate that Cushman Wakefield be allowed to continue their discussions with potential purchasers, provided they: a) not enter into any binding agreements hereafter without further authorization of the receiver, b) advise all such parties of the receivership and c) direct any parties with questions about the receivership to the receiver for it to respond.

#### **Urgency - Further Financing and IMC**

45. IMC holds the defacto first mortgage on the Property and made demand and issued a notice pursuant to section 244 of the Bankruptcy and Insolvency Act to the company on March 22<sup>nd</sup>, 2018. The amount demanded was approximately \$8,300,000. A copy of the demand is attached hereto as **Exhibit "M"**.

46. Following the receipt of the demand, I am advised by Rob Dal Bianco that he has spoken with the principals of IMC on several occasions and pledged to them that Deem would continue to keep their mortgage current while Deem sought a purchaser for the Property.

47. I am advised by Rob Dal Bianco that since that time, Deem has continued to keep the IMC mortgage current until the payment due for June 2018.

48. On May 26<sup>th</sup>, IMC and its counsel attended a conference call with Deem and its counsel Bradley Phillips of Sidlofsky as well as my counsel, and IMC was advised of my intention to apply for the appointment of a receiver as set out herein.

49. I am advised by Rob Dal Bianco that Deem will not pay the IMC mortgage after May 2018.

50. I am advised by Blaney McMurtry LLP that there is a common mechanism used in receivership proceedings under which funds can be advanced in exchange for receiver certificates, and on that basis, those funds are secured in first priority to all creditors, including without limitation in this case, the construction liens and the existing mortgages. The appointment of a receiver will therefore provide for this mechanism to advance further funds and keep IMC current.

51. The next payment is due to IMC on June 1<sup>st</sup>, 2018.

52. I am bringing this receivership application on an urgent basis in order to institute a mechanism that allows for payment to IMC of monies which are advanced through the Receiver.

53. I will require that the rate of interest in the Receiver's Certificate be at the same rate of interest as in my loan agreement with Deem, being 5% per annum.

54. I have selected Crowe Soberman to be the receiver in this matter because of their extensive insolvency experience and in particular upon being advised that they recently acted on the sale of a building of similar value in respect of which Cushman Wakefield was also used as the real estate agent.

### **Conclusion**

55. It is my belief that there is still material value in the Property, especially if that Property is sold in combination with the soft assets which may be owned by Uptown. I believe a receivership is the best way to realize the highest value for the creditors, to provide a mechanism for the determination of the respected rights of the construction lien claimants, to provide a mechanism to allow for the mortgages to be kept in good standing, and to inject confidence and transparency into the completion of this sale process.

56. I make this affidavit in support of an application for the appointment of a receiver over the Property and over the property assets and undertaking of The Uptown Inc. and for no other or improper purpose.

## SWORN BEFORE ME

at the City of ,  
in the Province of Ontario,  
on May 29, 2018

A Commissioner for Taking Affidavits  
**John Wolf**

**TAB A**

This is Exhibit "A" referred to in the Affidavit of Donald Dal  
Bianco sworn before me this 27<sup>th</sup> day of May, 2018.

A handwritten signature in blue ink that reads "Al C. Wolf".

---

*A Commissioner for Taking Oaths, Affidavits (or as may be) in  
Ontario*



## Project Description

---

**Client:** The Uptown Suites

**Location:** Waterloo, Ontario

**Status:** Development Stage

**Architect:** Onespace Unlimited INC.

**Website:** [www.theuptown.ca](http://www.theuptown.ca)

The Uptown Suites has been designed in recognition of longer life-spans by upcoming generations, with greater input by residents into their living space in a secure and well-maintained environment. Whether residents are living in or traveling, they are relieved of responsibilities associated with maintenance. If they require prepared meals, they are available. Social stimulation, health care and professional services are all available at whatever level the residents require. The Uptown Suites is a planned facility strategically designed to address the changing needs and sequential level of care required by our senior population. The options for accommodations have been planned to better address changing health and care requirements through the aging process. This project offers increasing levels of care from independent living in a condo-like environment for individuals and couples who are healthy enough to manage their lives with minimal help through to Assisted Living in simpler, homelike suites to full and maximum care for individuals requiring round the clock nursing and personal care. The Uptown project's three phases are tailored for these changing needs. Significantly, we have achieved this within one campus-style facility that makes the transitions easier. Moving from Independent Living to Assisted Living to Maximum Care can be seamlessly accomplished in one location so friendships are maintained within the complex and when couples require different levels of care, they are not geographically separated. The project recognizes the importance of keeping family members as well as friends in familiar, accessible and convenient homelike surroundings. The site provides not only amenities for a comfortable daily life, but also access to the natural environment outside the walls of the buildings with gardens, trees, walkways and sitting areas which are an important component of maintaining a healthy lifestyle. This project has undergone several iterations before arriving at the optimal program. Several years of planning, changing, improving and fine-tuning the design, functional deliverables, operational systems and business metrics have gone into the final product, which I am pleased to say is ready to proceed. The concerns and priorities of all stakeholders have been taken into consideration and we anticipate that with the combined experience between The Maxion Group and Deem Management Services, The Uptown Suites will serve as a model for future growth in this market.

## ABOUT COMPANY

**TAB B**

This is Exhibit "B" referred to in the Affidavit of Donald Dal  
Bianco sworn before me this 21 day of May, 2018.

JLW/JLW

*A Commissioner for Taking Oaths, Affidavits (or as may be) in  
Ontario*



## PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 1 OF 4  
PREPARED FOR gcampbell1  
ON 2018/05/24 AT 12:37:09

PROPERTY DESCRIPTION:	PT. BLOCK A PLAN 1313, BEING PTS. 1, 4, 5 ON 58R-6774 & PT. 3 ON 58R-2194. S/T EASEMENT IN GROSS OVER PT. 1 ON 58R-17857, AS IN WR853469; CITY OF WATERLOO				
PROPERTY REMARKS:	PLANNING ACT CONSENT AS IN 454112. PLANNING ACT CONSENT AS IN 315407. PLANNING ACT CONSENT AS IN 278395.				
ESTATE/QUALIFIER:	RECENTLY; EE SIMPLE LT CONVERSION QUALIFIED				
OWNERS' NAMES:	DEEM MANAGEMENT SERVICES LIMITED				
REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
** PRINTOUT	INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2015/02/20 **				
** SUBJECT,	ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO;				
**	SUBSECTION 41(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *				
**	AND ESCHATS OR FORFEITURE TO THE CROWN.				
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF				
**	LT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY				
**	CONVENTION.				
**	ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.				
** DATE OF CONVERSION TO LAND TITLES:	2002/10/21 **				
412976	1970/08/05	AGREEMENT		THE CORPORATION OF THE CITY OF WATERLOO	C
58R2194	1978/01/04	PLAN REFERENCE			C
620622	1978/02/08	AGREEMENT		THE CORPORATION OF THE CITY OF WATERLOO	C
620623	1978/02/08	AGREEMENT		THE CORP N. OF THE CITY OF WATERLOO	C
620634	1978/02/08	TRANSFER	\$1	DEEM MANAGEMENT SERVICES LIMITED	C
952613	1988/07/22	AGREEMENT		THE REGIONAL MUNICIPALITY OF WATERLOO	C
956866	1988/08/18	AGREEMENT		THE CORPORATION OF THE CITY OF WATERLOO	C
58R6774	1989/07/07	PLAN REFERENCE		LEXINGTON HOLDINGS LIMITED	C
1000705	1989/07/19	CERTIFICATE TITLE			C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



## PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 4  
 PREPARED FOR gcampbell1  
 ON 2018/05/24 AT 12:37:09  
 OFFICE #58  
 \* 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
WR157723	2005/09/21	CHARGE		*** DELETED AGAINST THIS PROPERTY *** DEEM MANAGEMENT SERVICES LIMITED	MONTROSE MORTGAGE CORPORATION LTD.	C
WR157724	2005/09/21	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** DEEM MANAGEMENT SERVICES LIMITED	MONTROSE MORTGAGE CORPORATION LTD.	C
WR276832	2007/02/08	CAU AGR PUR & SALE		*** DELETED AGAINST THIS PROPERTY *** LEXINGTON HOLDINGS LIMITED	2126826 ONTARIO INC.	C
		REMARKS: EXPIRES 60 DAYS FROM 2007/02/12 (DELETED 2013/03/16)				
WR278215	2007/02/16	TRANSFER	\$1,050,000	LEXINGTON HOLDINGS LIMITED	2126826 ONTARIO INC.	C
		REMARKS: PLANNING ACT STATEMENTS				
WR440869	2009/01/22	CHARGE		*** DELETED AGAINST THIS PROPERTY *** 2126826 ONTARIO INC.	DAL BIANCO, DON	C
WR440870	2009/01/22	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** 2126826 ONTARIO INC.	DAL BIANCO, DON	C
		REMARKS: WR440869				
WR592614	2011/01/18	NOTICE		*** DELETED AGAINST THIS PROPERTY *** DEEM MANAGEMENT SERVICES LIMITED	MONTROSE MORTGAGE CORPORATION LTD.	C
		REMARKS: WR157723				
WR597847	2011/02/17	APL CH NAME OWNER		2126826 ONTARIO INC.	DEEM MANAGEMENT SERVICES LIMITED	C
WR677225	2012/03/22	APL CONSOLIDATE			WATERLOO NORTH HYDRO INC.	C
58R17857	2013/06/28	PLAN REFERENCE			WATERLOO NORTH HYDRO INC.	C
WR853469	2014/11/27	TRANSFER EASEMENT	\$2	DEEM MANAGEMENT SERVICES LIMITED	WATERLOO NORTH HYDRO INC.	C
WR853683	2014/11/27	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** MONTROSE MORTGAGE CORPORATION LTD.	WATERLOO NORTH HYDRO INC.	C
		REMARKS: WR157723 TO WR853469				
WR853684	2014/11/27	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** DAL BIANCO, DON	WATERLOO NORTH HYDRO INC.	C
		REMARKS: WR440869 TO WR853469				
WR875231	2015/04/10	NOTICE		THE CORPORATION OF THE CITY OF WATERLOO	DEEM MANAGEMENT SERVICES LIMITED	C
		REMARKS: WR440869				

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
 NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



## PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

## LAND

## REGISTRY

## OFFICE #58

## 22291-0628 (LT)

PAGE 3 OF 4  
PREPARED FOR gcampbell1  
ON 2018/05/24 AT 12:37:09  
\* 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/ CHK#
WR875232	2015/04/10	POSTPONEMENT		*** COMPLETELY DELETED ***	THE CORPORATION OF THE CITY OF WATERLOO	
WR875233	2015/04/10	POSTPONEMENT		*** COMPLETELY DELETED ***	THE CORPORATION OF THE CITY OF WATERLOO	
WR888817	2015/06/25	CHARGE	\$4,517.511	DEEM MANAGEMENT SERVICES LIMITED	DAL BIANCO, DONALD	C
WR888818	2015/06/25	NO ASN/ RENT GEN		DEEM MANAGEMENT SERVICES LIMITED	DAL BIANCO, DONALD	C
WR888819	2015/06/25	POSTPONEMENT		*** COMPLETELY DELETED ***	DAL BIANCO, DONALD	
WR888820	2015/06/25	POSTPONEMENT		*** COMPLETELY DELETED ***	DAL BIANCO, DONALD	
WR888821	2015/06/25	DISCH OF CHARGE		*** COMPLETELY DELETED ***	DAL BIANCO, DONALD	
WR888822	2015/06/25	DISCH OF CHARGE		*** COMPLETELY DELETED ***	DAL BIANCO, DONALD	
WR931210	2016/01/18	CHARGE		*** COMPLETELY DELETED ***	DEEM MANAGEMENT SERVICES LIMITED	
WR931211	2016/01/18	NO ASN/ RENT GEN		*** COMPLETELY DELETED ***	DEEM MANAGEMENT SERVICES LIMITED	
WR932527	2016/01/22	POSTPONEMENT		*** COMPLETELY DELETED ***	VECTOR FINANCIAL SERVICES LIMITED	
WR1030186	2017/05/08	NOTICE		\$2 DEEM MANAGEMENT SERVICES LIMITED	DAL BIANCO, DONALD	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



## PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

## LAND

## REGISTRY

## OFFICE #58

## REMARKS: \* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PAGE 4 OF 4  
PREPARED FOR qcampbell1  
ON 2018/05/24 AT 12:37:09

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
WR1030548	2017/05/09	NOTICE OF LEASE		DEEM MANAGEMENT SERVICES LIMITED	SCHLEGEL VILLAGES INC.	C
WR1030622	2017/05/09	CHARGE	\$8,255,000	DEEM MANAGEMENT SERVICES LIMITED	INSTITUTIONAL MORTGAGE CAPITAL CANADA INC.	C
WR1030648	2017/05/09	POSTPONEMENT		DAL BIANCO, DONALD	INSTITUTIONAL MORTGAGE CAPITAL CANADA INC.	C
REMARKS: WR88817 TO WR1030622						
WR1030974	2017/05/10	DISCH OF CHARGE		*** COMPLETELY DELETED *** VECTOR FINANCIAL SERVICES LIMITED		
REMARKS: WR93110.						
WR1099051	2018/02/23	CHARGE	\$7,978,753	DEEM MANAGEMENT SERVICES LIMITED	DAL BIANCO, DONALD	C
WR1100946	2018/03/07	CONSTRUCTION LIEN	\$1,827,409	KIESWETTER EXCAVATING INC.	C	
WR1101611	2018/03/12	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** CRH CANADA GROUP INC.		
WR1102134	2018/03/14	CONSTRUCTION LIEN				
WR1102417	2018/03/15	APL DEL CONST LIEN				
REMARKS: WR1101611.				*** COMPLETELY DELETED *** CRH CANADA GROUP INC.		
WR1102923	2018/03/19	CONSTRUCTION LIEN	\$68,580	ONESPACE UNLIMITED INC.	C	
WR1104680	2018/03/29	CONSTRUCTION LIEN	\$4,522,597	MAXION MANAGEMENT SERVICES INC.	C	
WR1106904	2018/04/12	CONSTRUCTION LIEN	\$336,654	EXP SERVICES INC.	C	
WR1107271	2018/04/16	CERTIFICATE		KIESWETTER EXCAVATING INC.	C	
REMARKS: WR1100946						
WR1107360	2018/04/16	CERTIFICATE		DEEP FOUNDATIONS CONTRACTORS INC.	C	
REMARKS: WR1102134						
WR1110511	2018/05/02	CERTIFICATE		ONESPACE UNLIMITED INC.	C	
REMARKS: WR1102423						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

**TAB C**

This is Exhibit "C" referred to in the Affidavit of Donald Dal  
Bianco sworn before me this 27<sup>th</sup> day of May, 2018.

A handwritten signature in blue ink that reads "J. Wolf". The "J" is a simple initial, and "Wolf" is written in a cursive script.

---

*A Commissioner for Taking Oaths, Affidavits (or as may be) in  
Ontario*

**Properties**

**PIN** 22291 - 0628 LT **Interest/Estate** Fee Simple  
**Description** PT. BLOCK A PLAN 1313, BEING PTS. 1, 4, 5 ON 58R-6774 & PT. 3 ON 58R-2194.  
 S/T EASEMENT IN GROSS OVER PT. 1 ON 58R-17857, AS IN WR853469; CITY OF  
 WATERLOO  
**Address** 229 LEXINGTON ROAD  
 WATERLOO

**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** DEEM MANAGEMENT SERVICES LIMITED  
**Address for Service** 229 Lexington Road,  
 Waterloo, Ontario, N2K 2E1

I, ROBERT DAL BIANCO, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

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

**Name** DAL BIANCO, DONALD  
**Address for Service** 87 Huron Street,  
 Southampton, Ontario, L9Y 1C7

**Statements**

Schedule: See Schedules

**Provisions**

<b>Principal</b>	\$4,517,511.41	<b>Currency</b>	CDN
<b>Calculation Period</b>	monthly		
<b>Balance Due Date</b>	2017/06/01		
<b>Interest Rate</b>	8% interest only monthly		
<b>Payments</b>	\$30,116.74		
<b>Interest Adjustment Date</b>	2015 06 01		
<b>Payment Date</b>	monthly on the first day of each month		
<b>First Payment Date</b>	2015 07 01		
<b>Last Payment Date</b>	2017 06 01		
<b>Standard Charge Terms</b>	200033		
<b>Insurance Amount</b>	full insurable value		
<b>Guarantor</b>	Robert DAL BIANCO		

**Signed By**

Raymond Murray Grosberg 20 Toronto Street Suite 410 acting for Chargor Signed 2015 06 25  
 Tel 416-366-7828  
 Fax 416-366-3513  
 (s)

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

SOLOMON, GROSBERG LLP 20 Toronto Street Suite 410 2015 06 25  
 Tel 416-366-7828  
 Fax 416-366-3513  
 20 Toronto Street Suite 410  
 Toronto  
 M5C 2B8

LRO # 58 Charge/Mortgage

*The applicant(s) hereby applies to the Land Registrar.*

Registered as WR888817 on 2015 06 25 at 12:00

yyyy mm dd Page 2 of 20

**Fees/Taxes/Payment**

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

**File Number**

Chargor Client File Number : 70-819

**SCHEDULE "A"**

**ADDITIONAL PROVISIONS:**

**PROVIDED** that the Chargor shall supply a series of twelve (12) post-dated cheques payable to each and every Chargee or the Chargee's administrator, if so appointed, on or before the date of advance under this Charge, and for each subsequent year not less than ten (10) days prior to each subsequent anniversary date of this Charge. In the alternative, and at the option of the Chargee, the Chargor shall provide the Chargee with a Pre-Authorized Debit form (PAD) for the purpose of obtaining the monthly mortgage payments.

**IN THE EVENT** that any of the Chargor's cheques are not received on the day of each month they are due or are not honoured when presented for payment to the bank, trust company or any other paying institution on which they are drawn, the Chargor shall pay to the Chargee for each such returned cheque and request for late payment a servicing fee of \$150.00 as a liquidated amount to cover the Chargee's administration costs with respect to each dishonoured cheque and \$150.00 with respect to each late payment.

**PROVIDED** that when a discharge of charge is required for this Charge then the Chargee's solicitor shall prepare the discharge documentation for execution by the Chargee, which costs shall be at the Chargor's expense, and the parties herein agree that payment to discharge this Charge must be made by certified cheque.

**PROVIDED** the Chargor shall pay to the Chargee the sum of \$150.00 for every statement requested by the Chargor, or any party on behalf of the Chargor or any party interested in the Charged Property and provided by the Chargee.

**THE CHARGOR** covenants and agrees that all payments under this Charge must be at the Chargee's address for service or the Chargee's solicitor's office prior to 1:00 p.m. on the day of payment, failing which, such payment shall be deemed to be received on the next Banking Business Day. A "Banking Business Day" shall be a day when the Main Branch at Toronto of the Royal Bank of Canada is open for the transaction of normal banking business.

**THE PARTIES** hereto acknowledge and agree that the Chargee shall not be deemed to reinvest any monthly or other payments received by it hereunder.

**PROVIDED** the Chargor shall pay to the Chargee the sum of \$500.00 for each and every instance the Chargee is required to institute default or enforcement proceedings under this Charge.

**PROVIDED** that should the charged property be transferred or sold, or should there be a change in the beneficial owner, then all monies due and owing under this Charge shall, at the Chargee's option, forthwith become due and payable and without limiting the generality of the foregoing, said sum to include all outstanding principal, accrued interest, and bonus interest as set out herein.

**PROVIDED** the Chargor shall deliver to the Chargee on or before the 31<sup>st</sup> of each January, satisfactory written evidence that the realty taxes for the Charged Property have been paid in full for the calendar previous to the 31<sup>st</sup> of January. In the event such evidence is not provided by January 31<sup>st</sup>, the Chargee shall be entitled to obtain such information directly from the municipal Tax Department where the Charged Property is located and the Chargor shall thereafter be obligated and owe to the Chargee the amount of \$300.00 as a liquidated amount cover the Chargee's administration costs in respect to obtaining the realty tax information plus the cost of a tax certificate if required.

**PROVIDED** that in the event the loan is not repaid at the time or times provided within the Charge, the Chargee will not be required to accept payment of principal monies owing without first receiving three (3) months notice in writing or receiving three (3) months interest bonus in advance of the payment of the principal monies owing together with Chargee's solicitor's discharge fees, registration costs, disbursements and applicable HST.

**PROVIDED** that in the event that the Chargee assigns, transfers or otherwise conveys it's interest hereunder, and upon the delivery of notice of same to the Chargor, the Chargor, if so requested, shall, without cost, at any time and from time to time, execute an acknowledgment with respect to the terms and conditions of the Charge and the amount outstanding thereunder within seven (7) days of delivery of such request at the Chargee's address for service as set out in this Charge. Failure to execute the acknowledgment shall be deemed to be default by the Chargor under the Charge.

**PROVIDED** that in the event power of sale proceedings are taken, the Chargee, as vendor, may sell the property on terms, and if the result is that any charges taken back are at a rate lower than the rate for the first and/or second charges in the industry then the Chargee shall be entitled to sell these charges at a discount and the discount shall form part of the loss incurred by the Chargee and be recoverable against the Chargor.

**PROVIDED** that the Chargor, when not in default, shall have the privilege of prepaying any part or parts of the principal sum outstanding at any time or times without notice or bonus.

**PROVIDED** that in the event of default, a manager should be appointed as the Chargee's Manager, and the Chargee's Manager shall be entitled to a fee of \$150.00 per hour for its services and applicable taxes, and such fee shall be charged to the Chargor's account.

**PROVIDED** that in the event of default, the Chargee shall be entitled to a fee of \$250.00 for its time and effort to inspect to Charged Property, such inspections not to be more often than monthly unless the circumstances warrant more attendances which determination shall be in the Chargee's sole and absolute discretion and such inspection fee shall be charged to the Chargor's account.

**PROVIDED** that upon the balance due date of the principal and interest secured hereunder or any renewal thereof, the Chargor shall be deemed to have requested the Chargee's solicitor to prepare the discharge documents, including where applicable the electronic registration of the discharge for this Charge, and shall pay the discharge legal fee, disbursements and GST or HST to the Chargee's solicitor.

**THE PARTIES** herein agree that the payment to discharge this Charge must be made by certified cheque or bank draft.

**IN THE EVENT** the Chargee shall, without fault on its part, be made a party to any litigation commenced by or against the Chargor, the Chargor shall protect and hold the Chargee harmless therefrom and shall pay all costs, expenses and solicitor's and counsel's fees on a solicitor and his own client basis. Such costs shall be a charge on the lands and may be added to the loan secured hereby.

SCHEDULE "B"

GENERAL CONDITIONS

**1. EXCLUSION OF STATUTORY COVENANTS**

The implied covenants deemed to be included in a charge under sub-section 7(1) of the *Land Registration Reform Act*, R.S.O. 1990 Chapter L.4, and shown as paragraphs 1 and 2 of the said sub-section 7(1), shall be and are hereby expressly excluded and replaced by the provisions of this Charge which are covenants by the Chargor, for the Chargor and the Chargor's successors, with the Chargees and the Chargees' successors and assigns.

**2. COMPOUND INTEREST**

In case default shall be made in payment of any sum to become due for interest at any time appointed for payment in this Charge, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity and judgment, shall bear interest at the rate provided for in this Charge. In case the interest and compound interest are not paid in one month from the time of default, a rest shall be made, and compound interest at the rate provided for in this Charge shall be payable on the aggregate amount then due, as well after as before maturity and judgment, and so on from time to time, and all such interest and compound interest shall be a charge upon the Charged Property.

**3. ADVANCE OF CHARGE MONEYS**

Neither the preparation, execution, nor registration of this Charge shall bind the Chargees to advance the principal amount secured, nor shall the advance of a part of the moneys secured hereby bind the Chargees to advance any unadvanced portion thereof, but nevertheless the estate hereby conveyed shall take effect forthwith upon the execution of these presents by the Chargor. The expenses of the examination of the title and of this Charge and valuation are to be secured hereby in the event of the whole or any balance of the principal sum not being advanced, the same to be charged hereby on the said Charged Property, and shall be without demand thereof, payable forthwith with interest at the rate provided for in this Charge, and in default the said Chargees' power of sale hereby given, and all other remedies hereunder, shall be exercisable.

The Chargees shall have the right to deduct from any advance, interest from the date of advance to the interest adjustment date.

**4. TITLE COVENANTS**

The Chargor, at the time of the execution and delivery of this Charge, is, and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible estate of inheritance, in fee simple, of and in the Charged Property and in every part and parcel thereof without any manner of trusts, reservations, limitations, provisos, conditions or any other matter or thing to alter, charge, change, encumber or defeat the same, except those contained in the original grant thereof from the Crown.

The Chargor now has good right, full power and lawful and absolute authority to charge the Charged Property to give the Charge to the Chargees upon the covenants contained in this Charge.

The Chargor has not done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the Charged Property, or any part or parcel thereof, is or shall or may be in any way impeached, charged, affected or encumbered in title, estate or otherwise, except as the records of the land registry office disclose.

The Chargor will pay or cause to be paid to the Chargees the full principal amount and interest secured by this Charge in the manner of payment provided by this Charge, without any deduction or abatement, and shall do, observe, perform, fulfil and keep all the provisions, covenants, agreements and stipulations contained in this Charge and shall pay as they fall due all taxes, rates and assessments, municipal, local, parliamentary and otherwise which now are or may hereafter be imposed, charged or levied upon the Charged Property and when required shall produce for the Chargees receipt evidencing payment of same.

AND that the said Chargor will execute such further assurances on the Charged Property as may be requisite.

#### **5. QUIET POSSESSION UPON DEFAULT**

On default, the Chargees shall have quiet possession of the Charged Property free from all encumbrances.

#### **6. INSURANCE**

Without limiting the generality of any provision of this Charge, the Chargor shall carry such liability, rental, boiler, fire and other insurance coverage in such amounts as required by the Chargees. Written evidence of continuance of such insurance from the insurer under such policy or policies to the effect that coverage has been extended for a minimum of at least one year and all premiums with respect to such extended term of such coverage have been paid for in full shall be produced to the Chargees at least thirty (30) days before expiration of any term of such respective policy; otherwise the Chargees may provide therefor and charge the premium paid and interest thereon at the rate provided in this Charge to the Chargor and the same shall be payable forthwith and shall also be a charge upon the Charged Property. It is further agreed that the Chargees may at any time require any insurance on the buildings to be cancelled and new insurance effected with a company to be named by the Chargees and also of their own accord may effect or maintain any insurance herein provided for and any amount paid by the Chargees therefor shall be payable forthwith by the Chargor (together with any costs of the Chargees as hereinafter set out) with interest at the rate provided for in this Charge and shall also be a charge upon the Charged Property.

In the event that the evidence of continuation of such insurance as herein required has not been delivered to the Chargees within the required time, the Chargees shall be entitled to a servicing fee for each written enquiry which the Chargees shall make to the insurer pertaining to such renewal (or resulting from the Chargor's non-performance of the within covenant). In the event that the Chargees, shall pursuant to the within provision arrange insurance coverage with respect to the Charged Property, the Chargees, in addition to the aforementioned servicing fee, shall be entitled to a further servicing fee for arranging the necessary insurance coverage.

Notwithstanding any other provision to the contrary, statutory or otherwise, in the event of any moneys becoming payable pursuant to an insurance policy with respect to buildings located on the Charged Property, the Chargees may at their option require the said moneys to be applied by the Chargor in making good the loss or damage in respect of which the money is received, or in the alternative, may require that any or all of the moneys so received be applied in or towards satisfaction of any or all of the indebtedness secured hereunder whether or not the same has become due.

The Chargor, upon demand, shall transfer all policies of insurance effected upon the buildings, erections or fixtures on the Charged Property (with the mortgage clause in a form approved by the Chargees attached) and the indemnity which may become due therefrom to the Chargees, and the Chargees shall have a lien for their Charge debt on all insurance on the said buildings, erections or fixtures and may elect to have these insurance moneys applied in reinstatement or towards payment of moneys secured hereby whether due or not but shall not be bound to accept the said moneys in payment of any principal not yet due.

**PROVIDED** also that the covenant for insurance hereinbefore contained shall provide that loss, if any, shall be payable to the said Chargees, as their interest may appear, subject to the Chargees' standard form of mortgage clause or the standard form of mortgage clause approved by the Insurance Bureau of Canada which shall be attached to the policy of insurance and form

part thereof.

**PROVIDED** that all policies of insurance shall provide that the Chargees shall be given not less than thirty days prior notice in writing in the event that any insurer shall choose or elect to cancel or not to renew any policy.

**PROVIDED** that in the event that any policy of insurance shall contain any co-insurance clause or provision, the Chargor shall cause such clause or provision to be waived by the insurer.

**PROVIDED** further that the covenant for insurance hereinbefore contained shall apply to all buildings, whether now or hereafter erected on the Charged Property.

**PROVIDED** further that the covenant for insurance hereinbefore contained shall be affected on such terms and with such insurer as may be approved by the Chargees.

#### **7. CHARGOR'S RELEASE**

AND the said Chargor doth release to the Chargees all their claims upon the Charged Property subject to the said proviso.

#### **8. DEFAULT**

**PROVIDED** that the Chargor covenants and agrees with the Chargees that the entire balance of the principal sum or any other advances, interest and all of the costs or charges secured under this Charge shall, at the option of the Chargees, become immediately due and payable in each of the following events:

- (a) there is default in the payment of any instalment of principal, interest or any other sums due under this Charge or any other charge or mortgage ranking in priority or subsequent to this Charge;
- (b) there is a breach of any of the Chargor's covenants and other obligations contained herein or in any instrument providing additional security for the moneys secured hereby or any part thereof or under the provisions of any mortgage or other charge ranking in priority or subsequent to this Charge;
- (c) the Chargor becomes bankrupt or insolvent or is subjected to the provisions of the *Bankruptcy Act (Canada)* or any other Act for the benefit of creditors or goes into voluntary or compulsory liquidation or makes an assignment for the benefit of creditors or makes a proposal under the *Bankruptcy Act (Canada)* or if a petition in bankruptcy is filed against the Chargor or if a creditor enters judgment against any of them and a bona fide appeal from such judgment is not being diligently prosecuted and a stay of execution has not been obtained, or if any of them otherwise acknowledges its insolvency;
- (d) an encumbrancer takes possession of any part of the Charged Property or if a liquidator or receiver be appointed or an application for such appointment shall be brought with respect to all or any part of the undertaking, property or assets of the Chargor;
- (e) should the whole or any material part of the Charged Property be expropriated by any authority having jurisdiction upon which event three months interest shall be payable on the outstanding principal amount in addition to the other moneys payable under this Paragraph;
- (f) any representation or warranty made by or on behalf of the Chargor in connection with this Charge is or becomes untrue; and
- (g) should the Chargor at any time default under any of its obligations as lessor under any leases affecting the Charged Property from time to time.

**PROVIDED** that the Chargees may on default of the Chargor, in addition to any other rights or remedies which the Chargees may have pursuant to this Charge or at law or in equity, enter on, take possession of, lease and enforce any right or remedy it has with respect to the Charged Property or on default of payment or default in the performance of any covenant in this Charge contained or implied by law or statute for at least fifteen (15) days may on at least thirty-five (35) days notice, sell the Charged Property. Such notice shall be given to such persons and in such manner and form and within such time as provided in the *Mortgages Act*, R.S.O. 1990 Chapter M.40 as amended. In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, it is agreed that notice may be

effectually given by leaving it with a grown-up person on the Charged Property, if occupied, or by placing it on the Charged Property if unoccupied, or at the option of the Chargees, by mailing it in a registered letter addressed to the Chargor at its last known address, or by publishing it once in a newspaper published in the county or district in which the Charged Property is situate, and such notice shall be sufficient although not addressed to any person or persons by name or designation; and notwithstanding that any person to be affected thereby may be unknown, unascertained or under disability.

**PROVIDED FURTHER**, without prejudice to the statutory powers of the Chargees under the foregoing proviso, that in case default be made in the payment of the said principal or interest or any part thereof and such default continues for two months after any payment of either falls due, then the Chargees may exercise the foregoing powers of entering, leasing or selling or any of them without any notice, it being understood and agreed, however, that if the giving of notice by the Chargees shall be required by law then notice shall be given to such persons and in such manner and form and within such time as so required by law. **AND** it is hereby further agreed that the whole or any part or parts of the Charged Property may be sold by public auction or private contract, or partly one or partly the other; and that the proceeds of any sale hereunder may be applied in payment of any costs, charges and expenses incurred in taking, recovering or keeping possession of the Charged Property or by reason of non-payment or procuring payment of moneys, secured hereby or otherwise, and that the Chargees may sell any of the Charged Property on such terms as to credit and otherwise as shall appear to it most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to title or evidence or commencement of title or otherwise which it shall deem proper and may buy in or rescind or vary any contract for the sale of the whole or any part of the Charged Property and resell without being answerable for loss occasioned thereby, and in the case of a sale for credit, the Chargees shall be bound to pay the Chargor only such moneys as have been actually received from purchasers after the satisfaction of the claims of the Chargees and for any of said purposes may make and execute agreements and assurance as it shall deem fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required shall invalidate any sale or lease hereunder.

**PROVIDED** that wherever a power of sale is hereby conferred upon the Chargees, all provisions hereof relating to exercising such power including, without in any way limiting the generality of the foregoing, the persons to whom notice of exercising such power shall be given and the manner of giving such notice, shall be deemed to have been amended so as to comply with the requirements of law from time to time in force with respect to exercising such power of sale, and wherever there shall be a conflict between the provisions of this Charge relating to exercising such power of sale and the requirements of such law, the provisions of such law shall govern. Insofar as there is no such conflict, the provisions of this Charge shall remain unchanged.

**PROVIDED** that if the Chargor shall make default in payment of any part of the interest payable under the Charge at any of the dates or times fixed for the payment thereof it shall be lawful for the Chargees to distrain therefor upon the Charged Property or any part thereof and by distress warrant, to recover by way of rent reserved, as in the case of a demise of the Charged Property, so much of such interest as shall from time to time be or remain in arrears and unpaid, together with all costs, charges and expenses attending such levy or distress, as in like cases of distress for rent. **PROVIDED** that the Chargees may distrain for arrears of monthly payments of taxes, if required, in the same manner as if the same were arrears of interest. **PROVIDED** that the Chargees may distrain for arrears of principal in the same manner as if the same were arrears of interest.

**PROVIDED** that in default of the payment of the interest hereby secured, the principal hereby secured shall become payable at the option of the Chargees. **PROVIDED** that upon default of payment of instalments of principal promptly as the same mature, the balance of the principal and interest shall immediately become due and payable at the option of the Chargees.

**PROVIDED** that the Chargees may in writing at any time or times after default waive such default and upon such waiver the time or times for payment of said principal shall be as set out in the above proviso for redemption. **PROVIDED FURTHER** that any such waiver shall apply only to the particular default waived and shall not operate as a waiver of any other or future default.

**AND** it is further agreed by and between the parties that the Chargees may at their discretion at all times release any part or parts of the Charged Property or any other security or any surety for the money hereby secured under this Charge either with or without any sufficient consideration therefor, without responsibility therefor, and without thereby releasing any other part of the

Charged Property or any person from this Charge or from any of the covenants contained in this Charge and without being accountable to the Chargor for the value thereof, or for any moneys except those actually received by the Chargees. It is agreed that every part or lot into which the Charged Property is or may hereafter be divided does and shall stand charged with the whole money hereby secured under this Charge and no person shall have the right to require the money hereby secured to be apportioned.

**PROVIDED** further that no sale or other dealing by the Chargor with the equity of redemption in the Charged Property or any part thereof shall in any way change the liability of the Chargor or in any way alter the rights of the Chargees as against the Chargor or any other person liable for payment of the moneys hereby secured.

In the event of the non-payment of the principal or any part thereof at the time provided in this Charge whether with or without the consent of the Chargees, the Chargor shall not be entitled to require the Chargees to accept payment of the principal or such part thereof that is overdue except upon payment to the Chargees of all accrued interest plus three months interest on the principal money so in arrears, as a bonus, such bonus to be in lieu of notice of intention to pay, the right to give or receive which is hereby waived. **Provided** that nothing contained in this Charge shall affect or limit the right of the Chargees to recover by action or otherwise the principal so in arrears after default has been made.

The Chargor covenants with the Chargees that the Chargor will reimburse the Chargees without limitation for legal fees and disbursements, real estate commissions, appraisal fees and other costs incurred by the Chargees in exercising the powers of sale herein contained. It is further agreed that the Chargees may exercise all remedies provided for herein concurrently or in such order as it may deem fit, and shall not be obligated to exhaust any remedy or remedies before exercising their rights under any other provision contained herein.

#### **9. RENEWAL OR EXTENSION OF TIME**

**PROVIDED** that no extension of time given by the Chargees to the Chargor, or any one claiming under it, or any other dealing by the Chargees with the owner or owners of the equity of redemption of Charged Property or of any part thereof, shall in any way affect or prejudice the rights of the Chargees against the Chargor or any other person liable for the payment of the money hereby secured, and that this Charge may be renewed by an agreement in writing at maturity for any term or terms with or without an increased rate of interest notwithstanding that there may be subsequent encumbraances. And it shall not be necessary to register any such agreement in order to retain priority for this Charge so altered over any instrument registered subsequently to this Charge. **PROVIDED** that nothing contained in this paragraph shall confer any right of renewal upon the Chargor.

#### **10. OBLIGATION TO REPAIR**

The Chargor shall keep the Charged Property and buildings, erections and improvements thereon in good condition and repair according to the nature and description thereof, respectively, and the Chargees may, whenever it deems necessary, by their agent, enter upon and inspect the Charged Property and make such repairs as it deems necessary, and the reasonable cost of such inspection and repairs with interest at the rate aforesaid shall be added to the Charge debt and be payable forthwith and be a charge upon the Charged Property prior to all claims thereon subsequent to this Charge. And that if the Chargor shall neglect to keep the Charged Property in good condition and repair, or commit or permit any act of waste on the Charged Property (as to which the Chargees shall be sole judge) or make default as to any of the covenants, provisos, agreements or conditions contained in this Charge or in any charge or other encumbrance to which this Charge is subject, all moneys hereby secured shall at the option of the Chargees forthwith become due and payable, and in default of payment of same with interest as in the case of payment before maturity the powers of entering upon and leasing or selling hereby given and all other remedies herein contained may be exercised forthwith.

#### **11. ALTERATIONS AND ADDITIONS**

The Chargor covenants with the Chargees that it will not make or permit to be made any alterations or additions to the Charged Property without the written consent of the Chargees, and that he will promptly observe, perform, execute and comply with all legislation, laws, rules, requirements, orders, directions, ordinances and regulations of every governmental authority or agency having jurisdiction over the Charged Property or any portion thereof, including without restriction, those dealing with zoning, use, occupancy, subdivision, parking, fire, access, loading facilities, landscaped area, pollution of the environment, building construction, public health and

safety, and all private covenants and restrictions affecting the Charged Property or any portion thereof, and the Chargor will at its own cost and expense make any and all improvements thereon or alterations thereto, structural or otherwise, ordinary or extraordinary, and take any and all other steps which may be required at any time by such present or future law, rule, requirement, order, direction, ordinance or regulation. The Chargor shall, from time to time, upon the request of the Chargees, provide to the Chargees evidence of such observation and compliance.

#### **12. PAYMENTS BY CHARGEES**

And it is hereby agreed between the parties hereto that the Chargees may pay all premiums of insurance and all taxes, rates, utility and heating charges which shall from time to time fall due and be unpaid in respect of the Charged Property, and that such payments, together with all costs, charges, legal fees (as between solicitor and client) and expenses which may be incurred in taking, recovering and keeping possession of the Charged Property, and of negotiating this loan, investigating title and registering the Charge and other necessary deeds and generally in any other proceedings taken in connection with or to realize this security (including legal fees and real estate commissions and other costs incurred in leasing or selling the Charged Property or in exercising the power of entering, lease and sale herein contained) shall be, with interest at the rate aforesaid, a charge upon the Charged Property in favour of the Chargees, and that the Chargees may pay or satisfy any lien, charge or encumbrance now existing or hereafter created or claimed upon the Charged Lands, which payments with interest at the rate aforesaid shall likewise be a charge upon the Charged Property in favour of the Chargees. **PROVIDED**, and it is hereby further agreed, that all amounts paid by the Chargees as aforesaid shall be added to the debt hereby secured and shall be payable forthwith with interest at the rate aforesaid and in default, this Charge shall immediately become due and payable at the option of the Chargees, and all powers in this Charge conferred shall become exercisable.

#### **13. QUIET POSSESSION**

Until default of payment, the Chargor shall have quiet possession of the Charged Property.

#### **14. TAKING OF JUDGMENTS NOT A MERGER**

The taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Chargees' right to interest at the rate and times herein provided. **PROVIDED FURTHER** that the said judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as herein provided until the judgment shall have been fully paid and satisfied.

#### **15. FIXTURES**

The Chargor agrees that all erections and improvements fixed or otherwise now on or hereafter put upon the Charged Property, including but without limiting the generality of the foregoing, all fences, heating, piping, plumbing, serials, air-conditioning, ventilating, lighting and water heating equipment, cooking and refrigeration equipment, window blinds, radiators and covers, fixed mirrors, fitted blinds, storm windows and storm doors, window screens and screen doors, shutters and awnings, floor coverings and all apparatus and equipment appurtenant thereto shall for all purposes of this Charge be fixtures and form part of the Charged Property whether or not affixed in law to the Charged Property.

#### **16. MONTHLY TAX PAYMENTS**

With respect to municipal taxes, school taxes and local improvement rates (hereinafter referred to as "Taxes") chargeable against the Charged Property, the Chargor covenants and agrees with the Chargees that:

- (a) The Chargees may deduct from any advance of the moneys secured by this Charge an amount sufficient to pay the Taxes which have become due and payable during any calendar year;
- (b) The Chargees may at their sole option estimate the amount of the Taxes chargeable against the Charged Property payable in each year and the Chargor shall forthwith upon demand of the Chargees pay to the Chargees one-twelfth (1/12) of the estimated annual amount of such Taxes on the dates on which instalments of principal and interest are payable during the term of this Charge commencing with the 1st day of the first full month of the term of this Charge. The Chargees may at their option apply such payments to the Taxes so long as the Chargor is not in

default under any covenant or agreement contained in this Charge, but nothing herein contained shall obligate the Chargees to apply such payments on account of Taxes more often than yearly. Provided, however, that if the Chargor shall pay any sum or sums to the Chargees to apply on account of Taxes, and if before the same shall have been so applied, there shall be default by the Chargor in respect of any payment of principal or interest as herein provided, the Chargees may at their option apply such sum or sums in or towards payment of the principal and/or interest in default. If the Chargor desires to take advantage of any discounts or avoid any penalties in connection with the payment of Taxes, the Chargor may pay to the Chargees such additional amounts as are required for that purpose.

(c) In the event that the Taxes actually charged in one (1) calendar year, together with any interest and penalties thereon, exceed the estimated amount, the Chargor shall pay to the Chargees on demand the amount required to make up the deficiency. The Chargees may at their option, pay any of the Taxes when payable, either before or after they are due, without notice, or may make advances therefor in excess of the then amount of any credit held by the Chargees for the said Taxes. Any excess amount advanced by the Chargees shall be secured as an additional principal sum under this Charge and shall bear the same rate of interest as aforesaid until repaid by the Chargor.

(d) The Chargor shall transmit to the Chargees forthwith after receipt of same the assessment notices, Tax bills and other notices affecting the imposition of Taxes upon the Charged Property.

(e) In no event shall the Chargees be liable for any interest on any amount paid to it as hereinbefore required and the moneys so received may be held with their own funds pending payment or application thereof as hereinbefore provided, provided that in the event that the Chargees do not utilize the funds received on account of Taxes in any calendar year, such amount or amounts may be held by the Chargees on account of any pre-estimate of Taxes required for the next succeeding calendar year, or at the Chargees' option the Chargees may repay such amount to the Chargor without any interest.

(f) The Chargor shall in all instances be responsible for the payment of any and all penalties resulting out of any late payment of current Tax instalments or any arrears of Taxes, and at no time shall such penalty be the responsibility of the Chargees.

(g) The Chargor shall deliver to the Chargees on or before December 31<sup>st</sup> in each such calendar year, written evidence from the taxing authority having jurisdiction with respect to the municipal realty Taxes levied and assessed against the Charged Property, such evidence to be to the effect that all Taxes for the current calendar year and any preceding calendar year have been paid in full. In the event of the failure of the Chargor to comply with the covenant as aforementioned, the Chargees shall be entitled to charge a servicing fee for each written enquiry directed to such taxing authority or the relevant taxation office for the purpose of ascertaining the status of the Tax account pertaining to the Charged Property, together with any costs payable to the taxing authority for such information. Such servicing fee is hereby agreed to be a fair and equitable one under the circumstances and is intended to cover the Chargees' administrative costs and shall not be deemed a penalty.

#### **17. SALE, CHANGE OF CONTROL OR ENCUMBERING**

##### **PROVIDED THAT:**

(a) in the event of the Chargor selling, conveying, transferring, optioning or entering into any agreement of sale or transfer of title of the Charged Property;

(b) in the event of a change in control of the Chargor or a change in the beneficial ownership of the Charged Property;

(c) in the event that the Chargor shall without the prior written consent of the Chargees grant, permit or cause any mortgage, charge or encumbrance whatsoever or lien other than any prior mortgage or charge to which this Charge is expressly made subject, to be registered or acquired against the Charged Property;

then, and in each of such events, at the option of the Chargees, all moneys hereby secured, with accrued interest thereon and unearned interest thereon until maturity, shall forthwith become due and payable.

**18. INSPECTION**

The Chargees shall have access to and the right to inspect the Charged Property at all reasonable times.

**19. CHARGE STATEMENTS**

**PROVIDED** that if and whenever the Chargees request an acknowledgment from the Chargor as to the status of the Charge account or the status of the terms or covenants of this Charge, the Chargor shall execute such an acknowledgment in the Chargees' standard form provided that same be true, and shall do so forthwith upon request and without cost to the Chargees and shall return the acknowledgment duly executed within seventy-two (72) hours. Failure to do so shall be considered an act of default within the meaning of this Charge.

**20. ASSIGNMENT OF RENTS**

**PROVIDED** that to further secure the indebtedness secured hereunder, from and upon default hereunder, the Chargor hereby assigns and transfers unto the Chargees all rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal or any letting of, or of any agreement for the use or occupancy of the Charged Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to, or which may be granted, it being the intention of the parties to establish an absolute transfer and assignment of all such rents, issues and profits under such leases and agreements and all the avails thereunder unto the Chargees.

AND the Chargor further covenants and agrees to execute and deliver at the request of the Chargees all such further assurances and assignments with respect to such tenancies as the Chargees shall from time to time require, and shall do all other acts with respect to such tenancies as requested by the Chargees.

AND in the event that the Chargees collect any payments of rent due to the Chargor's default, the Chargees shall be entitled to receive from such rent a management fee of five percent (5%) of all the gross receipts from such rent, it being understood for greater certainty that the Chargor and the Chargees have agreed that in the circumstances a management fee equal to five percent (5%) of gross receipts received by the Chargees in the collection of such rents is a just and equitable fee having regard to the circumstances.

AND the Chargor covenants and agrees that no rent has been or will be paid by any person in possession of any portion of the Charged Property, in advance and that no payment of rents to accrue for any portion of the Charged Property have been or will be waived, released, reduced, discounted or otherwise discharged or compromised by the Chargor.

**PROVIDED FURTHER** that the Chargor will not perform any act or do any thing or omit to do any thing which will cause the default of any lease in the buildings erected or hereafter erected on the Charged Property, unless consented to by the Chargees.

AND the Chargor agrees that all leases, offers to lease and agreements to lease shall be bona fide and shall be at rates and on terms consistent with comparable space in the area of the Charged Property and provided further that the Chargor shall obtain the consent of the Chargees prior to the execution of any lease, offer or agreement to lease or any tenancy agreement.

Nothing contained under this paragraph shall have the effect of making the Chargees chargees in possession.

**21. EXPROPRIATION**

In the event that all or any part of the Charged Property shall be condemned, taken or expropriated by any legally constituted power or authority, the Chargees shall be subrogated and entitled to all of the rights of the Chargor to receive compensation, damages and other moneys (which such rights are hereby assigned to the Chargees) in respect of such condemnation, taking or expropriation, provided that the costs, charges and expenses incurred by the Chargees in pursuing any of such rights of the Chargor shall be added to the moneys secured by this Charge or, at the option of the Chargees, deducted and paid out of the amounts of compensation, damages and other moneys received by the Chargees in respect of any such condemnation, taking or expropriation; and the Chargees shall be entitled to notice of, and to take part in all proceedings connected with, any such condemnation, taking or expropriation and the Chargor

will not settle or agree upon any amount of compensation, damages or other moneys or waive any of their rights thereto without the prior written consent of the Chargees. Subject to the right of the Chargees to deduct therefrom their costs, charges and expenses incurred as aforesaid, all of the amounts of compensation, damages and other moneys so received by the Chargees shall be at the option of the Chargees, either applied to the prepayment of this Charge in accordance with the provisions hereof or paid to the Chargor to be contemporaneously applied to the restoration or rebuilding of the Charged Property necessitated by such condemnation, taking or expropriation and until so applied shall be held by the Chargees as additional security for the moneys secured hereby.

## **22. ADDITIONAL SECURITIES**

In the event that the Chargees, in addition to the Charged Property, holds further or additional securities on account of the indebtedness secured hereby, it is agreed that no single or partial exercise of any of the Chargees' powers hereunder or under any of such securities shall preclude other and further exercise of any other right, power or remedy pursuant to any of such securities. The Chargees shall at all times have the right to proceed against all, or any portion of such security or securities, in such order and in such manner as it shall in their sole discretion deem fit, without waiving any rights which the Chargees may have with respect to any and all of such securities, and the exercise of any such powers or remedies from time to time shall in no way affect the liability of the Chargor under the remaining securities.

## **23. INTERPRETATION**

If any of the forms of words contained herein are also contained in Column One of Schedule B of the *Short Forms of Mortgages Act* and distinguished by a number therein, this Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column Two of Schedule B of the said Act distinguished by the same number, and this Charge shall be interpreted as if the *Short Forms of Mortgages Act* were still in full force and effect.

## **24. CHARGEES MAY ENTER**

Upon default in payment of principal or interest under this Charge, or in performance of any of the terms and conditions hereof, the Chargees may enter into and take possession of the Charged Property hereby charged free from all manner of former conveyances, mortgages, charges or encumbrances without the let, suit, hindrance, interruption or denial of the Chargor or any other person whatsoever.

## **25. CONSTRUCTION LIENS**

**PROVIDED** also that upon the registration of any lien pursuant to the *Construction Lien Act*, R.S.O. 1990 Chapter C.30, as amended from time to time, against the Charged Property, and the Chargor having been given notice by the Chargees to remedy same and default having continued for a further period of ten (10) days beyond such notice, then in such event the principal and interest hereby secured shall, at the option of the Chargees, forthwith become due and payable.

## **26. BUILDING CHARGE**

**PROVIDED** that the Chargor and the Chargees agree that if the purpose of this Charge is to finance improvements on the Charged Property, the following conditions shall apply:

All construction on the Charged Property shall be carried out by reputable contractors with sufficient experience in a project of this nature and size, which contracts must be prior approved by the Chargees in writing, such approval not to be unreasonably withheld.

All construction shall be carried on in a good and workmanlike manner, with all due diligence and in accordance with the Plans and Specifications delivered to and approved by the Chargees and to the satisfaction of all governmental and regulatory authorities having jurisdiction.

**PROVIDED** that should construction on the project on the Charged Property cease for any reason whatsoever (strikes, material shortages and weather conditions beyond the control of the Chargor excepted) for a period of ten (10) consecutive days (Saturdays, Sundays and statutory holidays excepted), then this Charge, at the option of the Chargees shall immediately become due and payable. In the event that construction does cease, then the Chargees shall have the right, at their sole option, to assume complete control of the construction of the said project in such manner and on such terms as it deems advisable. The cost of completion of the said project by the Chargees and all expense incidental thereto shall be added to the principal amount of this

Charge, together with a management fee of fifteen percent (15%) added to the principal amount of this Charge, shall bear interest at the rate as herein provided for and shall form part of the principal sum herein and the Chargees shall have the same rights and remedies with respect to collection of same as it would have with respect to collection of principal and interest hereunder or at law.

At all times there shall be sufficient funds unadvanced under this Charge and retained by the Chargees to complete the construction and/or renovation of the project on the Charged Property as well as a holdback of ten percent (10%) with respect to work already completed.

All advances which are made from time to time hereunder shall be based on Certificates of an Architect satisfactory to the Chargees and/or retained by the Chargees at the expense of the Chargor, which Certificates shall without limitation certify the value of the work completed and the estimated costs of any uncompleted work and such Certificates shall further certify that such completed construction and/or renovation to the date of such Certificate shall be in accordance with the approved Plans and Specifications for the said construction and further, in accordance with the Building Permits issued for such construction and in accordance with all municipal and other governmental requirements of all authorities having jurisdiction pertaining to such construction and that there shall be no outstanding work orders or other requirements pertaining to construction on the Charged Property. Such Certificates with respect to any values shall not include materials on the site which are not incorporated into the building(s).

The Chargor covenants and agrees either before or after completion of the project to be erected on the Charged Property to deliver as further security for the loan hereby secured, a Chattel Mortgage or Security Agreement covering the goods, equipment and chattels to be installed in the said building(s), the said Chattel Mortgage or Security Agreement to be in a form approved by the solicitors for the Chargees.

## **27. APPOINTMENT OF A RECEIVER**

**NOTWITHSTANDING** anything herein contained, it is declared and agreed that at any time, and from time to time, when there shall be default under the provisions of these presents, the Chargees may at such time, and from time to time, and with or without entering into possession of the Charged Property appoint in writing a receiver (the "Receiver" which term shall include a receiver/manager) of the Charged Property, or any part thereof, and of the rents and profits thereof and with or without security and may from time to time by similar writing remove any such Receiver and appoint another in their place and stead, and in the making of any such appointment or removal, the Chargees shall be deemed to be acting as the agent or attorney for the Chargor. The Chargor hereby agrees and consents to the appointment of the Receiver of the Chargees' choice and without limitation, whether pursuant to this Charge, the *Mortgages Act*, the *Construction Lien Act* or pursuant to the *Courts of Justice Act* (as the Chargees may at their sole option require). Without limitation, the purpose of such appointment shall be the orderly management, administration and/or sale of the Charged Property and every part thereof.

Upon the appointment of any such Receiver or Receivers from time to time the following provisions shall apply:

- (i) a statutory declaration of an officer of the Chargees as to default under the provisions of these presents shall be conclusive evidence thereof;
- (ii) every such Receiver shall be the irrevocable agent or attorney of the Chargor for the collection of all rents falling due with respect to the Charged Property, and every part thereof, whether in respect of any tenancies created in priority to these presents or subsequent thereto;
- (iii) the Chargees may from time to time fix the remuneration of every such Receiver who shall be entitled to deduct same out of the Charged Property or the proceeds thereof;
- (iv) each such Receiver shall, so far as concerns responsibility and liability for its acts or omissions, be deemed to be the agent or attorney of the Chargor and in no event the agent of the Chargees;
- (v) the appointment of every such Receiver by the Chargees shall not incur or create any liability on the part of the Chargees to the Receiver in any respect and such appointment or anything which may be done by any such Receiver or the removal of any such Receiver or the termination of any such Receivership shall not have the effect of constituting the Chargees charges in possession with respect to the Charged Property or any part thereof;

(vi) the Receiver shall have the power to rent any portion of the Charged Property for such terms and subject to such provisions as it may deem advisable or expedient and in so doing such Receiver shall be acting as the attorney or agent of the Chargor and shall have the authority to execute any lease of any such premises in the name and on behalf of the Chargor and the Chargor undertakes to ratify and confirm whatever acts such Receiver may do in the Charged Property;

(vii) every such Receiver shall have full power to complete any unfinished construction upon the Charged Property;

(viii) any such Receiver shall have full power to carry on or concur in the carrying on of the business of the Chargor, and to employ and discharge such agents, workmen, accountants and other individuals or companies as are required to carry on the said business, upon such terms and with such salaries, wages or remuneration as it shall think proper, and to repair and keep in repair the Charged Property and to do all necessary acts and things for the carrying on of the business of the Chargor and the protection of the Charged Property;

(ix) any such Receiver shall have the power to sell or lease or concur in selling or leasing the Charged Property, or any part thereof, and to carry any such sale or lease into effect by conveying in the name of or on behalf of the Chargor or otherwise; and any such sale may be made either at public auction or private sale as to the Receiver may seem best and any such sale may be made from time to time as to the whole or any part of the Charged Property; and the Receiver may make any stipulations as to title or conveyance or commencement of title or otherwise as it shall deem proper;

(x) any such Receiver shall have the power to borrow money to carry on the business of the Chargor or to maintain the whole or any part of the Charged Property, in such amounts as the Receiver may from time to time deem necessary and in so doing, the Receiver may issue certificates that may be payable when the Receiver thinks expedient and shall bear interest as stated therein and the amounts from time to time payable under such certificates shall charge the Charged Property in priority to this Charge;

(xi) any such Receiver shall have the power to execute and prosecute all suits, proceedings and actions which the Receiver in its opinion considers necessary for the proper protection of the Charged Property, to defend all suits, proceedings and actions against the Chargor or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and to appeal any suit, proceeding or action;

(xii) any such Receiver shall have the full power to manage, operate, amend, repair, alter or extend the Charged Property, or any part thereof, in the name of the Chargor for the purpose of securing the payment of rentals from the Charged Property or any part thereof;

(xiii) any such Receiver shall not be liable to the Chargor to account for moneys or damages other than cash received by it with respect to the Charged Property or any part thereof and out of such cash so received every such Receiver shall pay in the following order:

(a) its remuneration;

(b) all payments made or incurred by the Receiver in connection with the management, operation, amendment, repair, alteration or extension of the Charged Property or any part thereof;

(c) in payment of interest, principal and other money which may from time to time be or become a charge upon the Charged Property in priority to moneys owing hereunder and all taxes, insurance premiums and every other proper expenditure made or incurred by it with respect to the Charged Property or any part thereof;

(d) in payment of all interest and arrears of interest and any other moneys remaining unpaid hereunder;

(e) the residue of any money so received by the Receiver shall be applied to the principal sum or any other amounts from time to time owing under this Charge;

(f) subject to subparagraph (e) above, in the discretion of the Receiver, interest, principal and other moneys which may from time to time constitute a charge or encumbrance on the Charged Property subsequent in priority or subordinate to the interest of the Chargees under this Charge;

and that such Receiver may in its discretion retain reasonable reserves to meet accruing amounts and anticipated payments in connection with any of the foregoing, and further, that any surplus remaining in the hands of the Receiver, after payments made and such reasonable reserves retained as aforesaid, shall be payable to the Chargor.

**PROVIDED** that save as to moneys payable to the Chargor pursuant to subparagraph (xiii) of this Paragraph, the Chargor hereby releases and discharges the Chargees and every such 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 Chargees or any such Receiver under the provisions of this Paragraph, unless such claim be the direct and proximate result of bad faith or gross neglect.

The Chargor hereby irrevocably appoints the Chargees as its attorneys to execute such consent or consents and all such documents as may be required in the sole discretion of the Chargees and/or their solicitor so as to give effect to the foregoing provisions and the signature of such attorney shall be valid and binding on the Chargor and all parties dealing with the Chargor, the Chargees and/or Receiver and/or with respect to the Charged Property in the same manner as if such documentation was duly executed by the Chargor itself.

#### **28. FINANCIAL STATEMENTS**

At the option of the Chargees, the Chargor shall within one hundred and twenty (120) days of the end of each fiscal year of the Chargor furnish to the Chargees audited financial statements prepared at the expense of the Chargor and, in addition, shall within one hundred and twenty (120) days of the end of the fiscal year of the operation of the Charged Property by the Chargor, furnish to the Chargees an audited annual operating statement prepared at the expense of the Chargor, which statement, notwithstanding the generality of the foregoing, shall set forth the gross rents and other revenue derived by the Chargor from the Charged Property, the costs and expenses of the operation and maintenance of the Charged Property and such information and explanation in respect of the foregoing as may be required by the Chargees and such statements shall be required to be prepared by a duly qualified chartered accountant and/or certified public accountant suitable to the Chargees and the correctness of such statements shall be duly supported by the affidavit of a director or officer of the Chargor.

#### **29. DISCHARGE**

The Chargees shall have a reasonable period of time after payment of the moneys secured hereby in full within which to prepare and execute a cessation or discharge of this Charge and interest as aforesaid shall continue to run and accrue until actual payment in full has been received by the Chargees and all legal and other expenses for the preparation and execution of such cessation or discharge shall be borne by the Chargor.

#### **30. PAYMENTS**

Any payment of principal, interest, principal and interest combined or otherwise required pursuant to this Charge made after 1:00 P.M. on a bank business day or on a day which is not a bank business day shall be deemed, for the purpose of calculation of interest, to have been made and received on the next bank business day.

Any payment to be made hereunder which is not made by the Chargor within the time limited for such payment hereunder shall be added to the debt hereby secured and shall be payable forthwith, with interest, at the rate aforesaid and in default, this Charge shall immediately become due and payable at the option of the Chargees and all powers in this Charge conferred shall become exercisable.

Any payment made by the Chargees on account of realty taxes, insurance premiums, or otherwise, as provided in this Charge, shall be added to the debt hereby secured and shall be payable forthwith, with interest, at the rate aforesaid and in default, this Charge shall immediately become due and payable at the option of the Chargees and all powers in this Charge conferred shall become exercisable.

All payments shall be applied firstly on account of interest calculated as aforesaid on the balance of the principal amount outstanding from time to time and the balance of each payment shall be applied on account of principal except that in the case of default hereunder, the Chargees may then apply any payment(s) received during default in whatever order it may elect as between

taxes, interest, repairs, insurance, legal fees (on a solicitor and client basis) or any other payments made on behalf of the Chargor.

**31. NOTICE**

Any notice, election, demand, declaration or request which may or is required to be given or made pursuant to this Charge, shall (unless otherwise required by law or set out in this Charge) be given or made in writing and shall be served personally upon an individual party for whom it is intended or upon any executive officer of a corporate party for whom it is intended or mailed by prepaid registered mail:

(a) in the case of the Chargor addressed to:

\*\*

(b) in the case of Chargees at:

\*\*c/o 1670 Bayview Avenue, Suite 400, Toronto, Ontario, M4G 3C2

or such other address (or in the case of a corporate party in care of such other officer) as any party may from time to time advise the other parties hereto by notice in writing as aforesaid. The date of receipt of any such notice, election, demand, declaration or request, shall be the date of delivery of such notice, election, demand or request if delivered personally or if mailed as aforesaid shall be deemed to be the third juridical day next following the date of such mailing. If at the date of any such mailing there is a general interruption in the operation of the postal service in the Province of Ontario which does or is likely to delay the delivery by mail of such notice, election, demand or request, it shall be served personally.

**32. HEADINGS**

The headings with respect to the various paragraphs of this Charge are intended to be for identification of the various provisions of this Charge only, and the wording of such headings is not intended to have any legal effect.

**33. INVALIDITY**

If any of the terms, covenants or conditions of this Charge shall be void for any reason, it shall be severed from the remainder of the provisions hereof and the remaining provisions shall remain in full force and effect notwithstanding such severance.

**34. GENDER AND NUMBER**

In construing these covenants, the words "Charge", "Chargee", "Chargor", "land" and "successor" shall have the meanings assigned to them in Section 1 of the *Land Registration Reform Act* and the words "Chargor" and "Chargee" and the personal pronouns "he" and "his" relating thereto and used therewith, shall be read and construed as "Chargor" or "Chargors", "Chargee" or "Chargees" and "he", "she", "they" or "it", "his", "her", "their" or "its", respectively as the number and gender of the parties referred to in each case requires, and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted. And that all rights, advantages, privileges, immunities, powers and things hereby secured to the Chargor or Chargors, Chargee or Chargees, shall be equally secured to and exercisable by his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be. And that all covenants, liabilities and obligations entered into or imposed hereunder upon the Chargor or Chargors, Chargee or Chargees, shall be equally binding upon his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be, and that all such covenants and liabilities and obligations shall be joint and several.

SCHEDULE "C"

GUARANTEE

In consideration of the making by Donald Dal Bianco (the "Chargee") to Deem Management Services Limited (the "Chargor") of the loan hereby secured against the lands and premises municipally known as 229 Lexington Road, Waterloo, Ontario, N2K 2E1 (the "Charged Property"), Robert Dal Bianco (sometimes hereinafter referred to as the "Additional Covenantor") does hereby covenant, promise and agree, as principal debtor and not as surety, to and with the Chargee, their heirs, successors and assigns, as follows:

- (a) The Additional Covenantor shall be liable with the Chargor as principal debtor and not as Surety for the due payment of all the moneys payable under this Charge at the times and in the manner herein provided;
- (b) It is the express intention of the parties hereto that the Additional Covenantor is and shall be liable to the Chargee in the same manner and to the same extent as if the Additional Covenantor had executed this Charge as Chargor;
- (c) To guarantee the full performance and discharge of all of the obligations to be fulfilled by the Chargor pursuant to the provisions hereof at the times and in the manner herein provided;
- (d) To indemnify and save harmless the Chargee against and from all losses, damages, costs and expenses which the Chargee may sustain, incur or be or become liable for by reason of the failure, for any reason whatsoever, of the Chargor either to pay the moneys expressed to be payable pursuant to the provisions of this Charge or to do and perform any other act, matter or thing pursuant to the provisions of this Charge;
- (e) That the Chargee may at any time and from time to time and without notice to, or any consent or concurrence by the Additional Covenantor, make any settlement or variation in the terms of this Charge or grant any extension of time or other indulgence, or accept the surrender of any security, and that no such thing done by the Chargee, nor any carelessness or neglect by the Chargee in asserting or preserving their rights, nor the loss by operation of law of any right of the Chargee against the Chargor, nor the bankruptcy or insolvency of the Chargor, nor the loss or destruction of any security, shall in any way release or diminish the liability of the Additional Covenantor hereunder, so long as any moneys expressed by this Charge to be payable remain unpaid or the Chargee has not been reimbursed for all such losses, damages, costs, charges and expenses as aforesaid;
- (f) That the Chargee shall not be obliged to proceed against the Chargor or to enforce or exhaust any security before proceeding to enforce the obligations herein set out and that enforcement of such obligations may take place before, after or contemporaneously with the enforcement of any debt or obligation of the Chargor or the enforcement of any security for any such debt or obligation;
- (g) That nothing but payment and satisfaction in full of all moneys secured by this Charge and the due performance and observation of all covenants, agreements and provisos in this Charge and any other security to be given to the Chargee shall release the Additional Covenantor from this covenant;
- (h) That this covenant shall be assignable by the Chargee and that the assignment of this Charge shall constitute an assignment of this covenant and that this covenant shall not be deemed to have been waived, released, discharged, impaired or affected by reason of the assignment and/or reassignment of the Charge at any time;

- (i) That upon any breach or default by the Chargor, this covenant shall be deemed to have been breached;
- (j) That the Additional Covenantor expressly waives all notice of default, non-performance, non-payment and non-observance on the part of the Chargor of the terms, covenants and provisoies contained in this Charge;
- (k) That this Charge would not have been entered into by the Chargee without this covenant, and the Additional Covenantor acknowledges the foregoing;
- (l) That any liability under this covenant shall not be impaired or discharged by reason of the Chargee taking further or other security for payment of the moneys due or to become due under this Charge, by the Chargee at any time releasing any security or partial security hereunder, or the release or partial release of the Additional Covenantors hereto whether by the Chargee or by operation of law, or by any other act or thing whereby as guarantor, the Additional Covenantor would or might be released in whole or in part; and,
- (m) That any payment by the Additional Covenantor of any moneys under this covenant shall not in any event be taken to affect the liability of the Chargor for payment thereof, and such liability shall remain unimpaired and enforceable by such Additional Covenantor against the Chargor and such Additional Covenantor shall, to the extent of any such payments made by it in addition to all other remedies, be subrogated as against the Chargor to all the rights, privileges and powers to which the Chargee was entitled prior to payment by such Additional Covenantor, provided, however, that the Additional Covenantor shall not be entitled in any event to rank for payment against the Charged Property or any collateral security, in competition with the Chargee and shall not unless and until the whole of the principal, interest and other moneys owing on the security for this Charge shall have been paid, be entitled to any rights or remedies whatsoever in subrogation to the Chargee.

It is hereby expressly declared that although as between the Additional Covenantor and the Chargor, the Additional Covenantor is only a surety for the payment by the Chargor of the moneys hereby guaranteed, yet as between the Additional Covenantor and the Chargee, the Additional Covenantor shall be considered as primarily liable therefore and that no release or releases of any portion or portions of the Charged Property, and no indulgence shown by the Chargee with respect to any default by the Chargor or any successor which may arise under this Charge, and that no extension or extensions granted by the Chargee to the Chargor or any successor for payment of the Charge moneys hereby secured or for the doing, observing or performing of any covenant, agreement, matter or thing herein contained, to be done, observed or performed by the Chargor or any successor nor any variation in or departure from the provisions of this Charge nor any other dealings between the Chargor or any successor and the Chargee nor any release of the Chargor or any other thing whatsoever whereby the Additional Covenantor as surety only would or might have been released shall in any way modify, alter, vary or in any way prejudice the Chargee or affect the liability of the Additional Covenantor in any way under this covenant, which shall continue and be binding on the Additional Covenantor, and as well after as before default and after as before maturity of this Charge, until the said Charge moneys are fully paid and satisfied. And it is hereby further expressly declared that the Chargee shall not be bound to exhaust their recourse against the Chargor or the Charged Property before being entitled to payment from the Additional Covenantor of the amount hereby guaranteed by the Additional Covenantor.

All covenants, agreements, liabilities and obligations entered into or imposed hereunder upon the Additional Covenantor shall be equally binding upon their respective heirs, executors, administrators, successors and assigns.

Receipt of a copy hereof is hereby acknowledged by the Additional Covenantor.

IN WITNESS WHEREOF the Additional Covenantor has hereunto executed these presents.

DATED at Toronto, Ontario, this 10<sup>th</sup> day of June, 2015.

**SIGNED, SEALED AND DELIVERED**  
in the presence of

Robert Dal Bianco

**TAB D**

This is Exhibit "D" referred to in the Affidavit of Donald Dal  
Bianco sworn before me this 21<sup>st</sup> day of May, 2018.

A handwritten signature in blue ink that reads "jul c wolf".

---

*A Commissioner for Taking Oaths, Affidavits (or as may be) in Ontario*

**Properties**

**PIN** 22291 - 0628 LT  
**Description** PT. BLOCK A PLAN 1313, BEING PTS. 1, 4, 5 ON 58R-6774 & PT. 3 ON 58R-2194. S/T  
 EASEMENT IN GROSS OVER PT. 1 ON 58R-17857, AS IN WR853469; CITY OF  
 WATERLOO  
**Address** 229 LEXINGTON ROAD  
 WATERLOO

**Consideration**

**Consideration** \$2.00

**Applicant(s)**

The notice is based on or affects a valid and existing estate, right, interest or equity in land

**Name** DEEM MANAGEMENT SERVICES LIMITED  
**Address for Service** 229 Lexington Road  
 Waterloo, Ontario  
 N2K 2E1

I, Robert Del Bianco, President, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

**Party To(s)****Capacity****Share**

**Name** DAL BIANCO, DONALD  
**Address for Service** 87 Huron Street  
 Southampton, Ontario  
 L9Y 1C7

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

**Statements**

This notice is pursuant to Section 71 of the Land Titles Act.

This notice may be deleted by the Land Registrar when the registered instrument, WR888817 registered on 2015/06/25 to which this notice relates is deleted

Schedule: See Schedules

This document relates to registration number(s) WR888817

**Signed By**

Raymond Murray Grosberg 20 Toronto Street Suite 410 Signed 2017 05 08  
 Toronto  
 M5C 2B8  
 acting for  
 Applicant(s)

Tel 416-366-7828

Fax 416-366-3513

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

SOLOMON, GROSBERG LLP 20 Toronto Street Suite 410 2017 05 08  
 Toronto  
 M5C 2B8

Tel 416-366-7828

Fax 416-366-3513

**Fees/Taxes/Payment**

<b>Statutory Registration Fee</b>	\$63.35
<b>Total Paid</b>	\$63.35

**File Number**

Applicant Client File Number: 71-306

**AGREEMENT EXTENDING AND AMENDING CHARGE**

This Agreement made as of this 4<sup>th</sup> day of May, 2017.

BETWEEN:

**DEEM MANAGEMENT SERVICES LIMITED**  
(hereinafter called the "Chargor")

OF THE FIRST PART

- and -

**DONALD DAL BIANCO**  
(hereinafter called the "Chargee")

OF THE SECOND PART

- and -

**ROBERT DAL BIANCO**  
(hereinafter called the "Guarantor")

OF THE THIRD PART

WHEREAS by a Charge/Mortgage dated the 25<sup>th</sup> day of June, 2015, and registered in the Land Registry Office for the Land Registry/Titles Division of Waterloo No. 58 on the 25<sup>th</sup> day of June, 2015 as Registration No. WR888817 (hereinafter called the "Charge"); the mortgagor did charge or mortgage those lands and premises described herein and municipally known as 229 Lexington Road, Waterloo, Ontario, UNTO Deem Management Services Limited for securing the payment of principal money in the amount of \$4,517,511.41, with interest to be paid at the times and in the manner therein set forth;

AND WHEREAS all payments due under the Charge, including the payment of interest due on May 1, 2017, have been made, and the Charge now matures on the 1<sup>st</sup> day of June, 2017.

AND WHEREAS there is now owing on account of principal money the sum of \$4,517,511.41 together with interest thereon at the rate of eight (8.0%) interest only monthly computed from the 1<sup>st</sup> day of May, 2017;

AND WHEREAS the Chargor has applied to the Chargee for an extension of time for payment of the principal money and to reduce the interest rate payable under the Charge upon the terms and conditions hereinafter set forth, and the Chargee has agreed thereto;

AND WHEREAS the Guarantor has guaranteed the Charge by guarantee in writing dated the 10<sup>th</sup> day of June, 2015;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

I      The recitals contained herein are true in substance and in fact.

2 In consideration of the sum of TWO (\$2.00) DOLLARS paid by the Chargor and Guarantor to the Chargee (the receipt and sufficiency of which is hereby acknowledged by the Chargee), and subject to the terms hereinafter set forth, the Chargee GRANTS AND EXTENDS to the Chargor time for payment of the principal money as follows:

The term of the Charge shall be extended for a further one (1) year and nine (9) months term from the date of maturity, being the 1<sup>st</sup> day of June, 2017, such that the outstanding principal money shall now become due and payable on the 1<sup>st</sup> day of March, 2019, the Chargor in the meantime, and until final payment of the said principal money outstanding, shall pay interest on the unpaid principal on the 1<sup>st</sup> day of each month in each year at the rate of six (6.0%) percent per annum calculated monthly, not in advance, as well after as before maturity and both before and after default; the first payment of such interest to be computed from the 1<sup>st</sup> day of June, 2017 and be paid on the 1<sup>st</sup> day of March, 2019.

3 The Chargor, Guarantor and Chargee agree all other terms of the Charge shall remain the same, including the payment of interest due on June 1, 2017.

4 The Chargor and Guarantor covenant with the Chargee to pay said principal money and interest at the rate and in the manner hereinbefore mentioned, and to well and truly keep, observe, perform and fulfill all the covenants, provisos, and agreements in said Charge contained.

5 It is expressly declared and agreed that if at any time during the extended term the Chargor or Guarantor shall make default in payment of the principal money and/or interest secured by the Charge or any part thereof, or in the performance of any of the covenants contained in the Charge, the extension herein given shall, if the Chargee so elects, become void, and the said principal money and interest, and every part thereof shall become due and payable, and the Chargee shall be at liberty to take any proceedings they may see fit for the purpose of enforcing payment of the principal money and interest, or of the interest only, and performance of the said covenants in like manner as if these presents had not been executed.

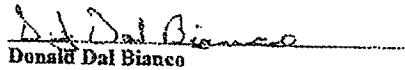
NOTHING herein contained shall in any way affect or prejudice the rights of the Chargee as against the Chargor or Guarantor, their heirs, executors, administrators, successors and assigns, or as against any party to the Charge or as against any surety or other person whomsoever for the principal money or any part thereof or as against any collateral which the Chargee may now or hereafter hold against the principal money or any part thereof.

IN construing these presents, the words Chargor and Chargee and the pronouns he, his, or him relating thereto and used therewith shall be read and construed as Chargor or Chargee and, he, she, it or they, his, her, it or their, and him, her, it, or them, respectively, as the number and gender of the party or parties referred to in each case require, and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted. And that all rights, advantages, privileges, immunities, powers and things hereby secured to the Chargor and Guarantor or Chargee shall be equally secured to and exercisable by his, her, its or their heirs, executors, administrators and assigns, or successors and assigns as the case may be. And that all covenants, liabilities and obligations entered into or imposed hereunder upon the Chargor and Guarantor or

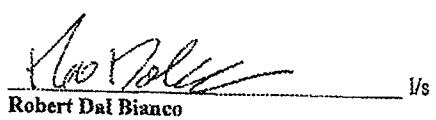
Chargee shall be equally binding upon his, her, its or their heirs, executors, administrators and assigns, or successors and assigns as the case may be, and that all such covenants and liabilities and obligations shall be joint and several unless the Charge otherwise provides.

IN THE WITNESS WHEREOF the parties have duly executed and sealed this Agreement on the date above written.

Chargee:

  
Donald Dal Bianco

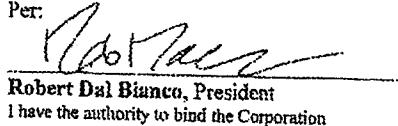
Guarantor:

  
Robert Dal Bianco l/s

Charger:

DEEM MANAGEMENT SERVICES LIMITED

Per:

  
Robert Dal Bianco, President  
I have the authority to bind the Corporation

# TABLE

This is Exhibit "E" referred to in the Affidavit of Donald Dal Bianco  
sworn before me this 27<sup>th</sup> day of May, 2018.

A handwritten signature in blue ink that reads "Julie Wolf".

---

*A Commissioner for Taking Oaths, Affidavits (or as may be) in  
Ontario*

**Properties**

**PIN** 22291 - 0628 LT **Interest/Estate** Fee Simple  
**Description** PT. BLOCK A PLAN 1313, BEING PTS. 1, 4, 5 ON 58R-8774 & PT. 3 ON 58R-2194. S/T  
 EASEMENT IN GROSS OVER PT. 1 ON 58R-17857, AS IN WR853469; CITY OF  
 WATERLOO  
**Address** 215 & 228 LEXINGTON ROAD  
 WATERLOO

**Charger(s)**

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

**Name** DEEM MANAGEMENT SERVICES LIMITED  
**Address for Service** 209 Lexington Rd, Unit F2  
 Waterloo, Ontario  
 N2K 2E1

I, ROBERT DAL BIANCO, President, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

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

<b>Name</b>	INSTITUTIONAL MORTGAGE CAPITAL CANADA INC.
<b>Address for Service</b>	TD Centre, TD North Tower 77 King Street West P. O. Box 117, Suite 4120 Toronto, Ontario M5K 1G8 ("The Uptown" - Primary Charge)

**Provisions**

<b>Principal</b>	\$8,255,000.00	<b>Currency</b>	CDN
<b>Calculation Period</b>	Monthly, not in advance		
<b>Balance Due Date</b>	2019/03/01		
<b>Interest Rate</b>	SEE SCHEDULE		
<b>Payments</b>			
<b>Interest Adjustment Date</b>	2017 06 01		
<b>Payment Date</b>	1st day of each month		
<b>First Payment Date</b>	2017 07 01		
<b>Last Payment Date</b>	2019 03 01		
<b>Standard Charge Terms</b>	N/A		
<b>Insurance Amount</b>	full insurable value		
<b>Guarantor</b>			

**Additional Provisions**

See Schedules

**Signed By**

Janet Lynn Leithwood	55 Superior Boulevard Mississauga L5T 2X9	acting for Charger(s)	Signed 2017 05 09
----------------------	---	--------------------------	-------------------

Tel 877-828-8046

Fax 800-318-6884

I have the authority to sign and register the document on behalf of the Charger(s).

**Submitted By**

FNF CANADA COMPANY

55 Superior Boulevard  
 Mississauga

2017 05 09

**Submitted By**

L5T 2X9

Tel 877-828-8046  
Fax 800-316-6884

**Fees/Taxes/Payment**

Statutory Registration Fee	\$63.36
Total Paid	\$63.35

**File Number**

Chargee Client File Number : 20170088 - UPTOWN PRIMARY CHARGE

**SCHEDULE - ADDITIONAL PROVISIONS - PRIMARY PROPERTY**  
("The Uptown")

**ARTICLE 1 - INTERPRETATION AND CONSTRUCTION**

**Section 1.01 Definitions.**

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

**"Affiliate"** or **"affiliate"** of any Person means any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such first-mentioned Person; and **"Affiliated"** or **"affiliated"** shall have the corresponding meaning.

**"Applicable Laws"** means all applicable federal, provincial, state and municipal laws, statutes, regulations, rules, by-laws, orders, permits, licenses, authorizations, 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 Indemnitor, each Guarantor (if any), and each Person having any registered, unregistered or beneficial ownership interest in all or any part of the Property from time to time, including if any Borrower Entity is a general or limited partnership, each general partner and limited partner comprising such partnership.

**"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 Institutional Mortgage Capital Canada Inc., in its capacity as general partner for and on behalf of IMC Limited Partnership, and each Person who acquires the right, title and interest of the Chargee under the Loan Documents.

**"Chargor"** means, individually and collectively, each Person named as Chargor in this Charge.

**"Commercial Leases"** means, collectively, all present and future leases, agreements to lease, subleases, concessions, licenses and other similar agreements by which the use and occupancy of the Property or any part thereof are granted to any Person for any purpose (excluding Residential Leases but including any ground lease or head lease of any kind and for any purposes), together with all related credits, rights, options, claims, causes of action, guarantees, indemnities, security deposits and other security related thereto, including each Material Commercial Lease.

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

**"control"** means the possession or ownership, either directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, partnership interests, trust unit or other instruments having the capacity to elect the directors, trustee or committees responsible for the control, management and direction of any Person or to otherwise control, manage or direct any Person, by contract or otherwise; and **"controlled"** and **"controlling"** shall have the corresponding meanings.

**"Costs"** means all 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, including any workout or modification of the Loan or the Loan Documents agreed to by the Chargee in its sole discretion; (iii) inspecting, protecting, securing, completing, insuring, repairing, equipping, taking and keeping possession of, administering, managing, selling or leasing the Property, including curing any defaults under or renewing any leasehold interest, and all other protective disbursements or just allowances which may be added to principal or otherwise secured by this Charge under Applicable Laws; (iv) appointing a receiver, receiver and manager or other Person with similar powers (under the Loan Documents, Applicable Laws or otherwise) and all fees, costs and expenses of such receiver, receiver and manager or other Person and their respective agents; (v) conducting and/or 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 and/or the Subordinate Mortgage Loan Documents; (viii) all legal fees and disbursements in connection with any of the foregoing matters, on a full indemnity or equivalent basis; (ix) allowances for the time, service, work or effort of any Lender Entity in connection with any of the foregoing matters; (x) terminating and/or replacing any manager of the Property and/or any management agreement relating to the Property as provided in the Loan Documents; (xi) without limiting the foregoing, any other amounts, fees, costs, charges or expenses payable or reimbursable to any Lender Entity under any of the Loan Documents or Applicable Laws; and (xii) all applicable taxes on all amounts, fees, costs, charges and expenses otherwise included in **"Costs"**. **"Costs"** also include interest at the Interest Rate on all such fees, costs, charges and expenses (and applicable taxes) from the date incurred until paid to the Chargee.

**"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 Section 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, excluding any such personal or moveable property which is owned by a Tenant.

**"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 Loan reserves when due under the Loan Documents; (b) if any Transfer occurs in breach or violation of the provisions of any of the Loan Documents; (c) if any Lien is made, created, issued, incurred or permitted to exist in respect of, or registered against, all or any part of the Property in breach or violation of the provisions of any of the Loan Documents (whether or not having priority over the security therefor); (d) any failure by any Borrower Entity to comply with its obligations under any of the Loan Documents with respect to insurance, including the provisions of Article 5 of this Charge; (e) any utility charges and Realty Taxes in respect of the Property are not paid when due; (f) 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 notice, grace or cure period, or if no such period is provided and is not expressly excluded, within thirty (30) days following written notice of such default to such Borrower Entity (but for greater certainty, there is no such notice, grace or cure period in respect of any other Event of Default separately enumerated in this definition or which is expressly stated in any Loan Document to be immediate or to have no applicable notice, grace or cure period); (g) 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 that is incorrect or misleading in any material respect as of the date of delivery to such Lender Entity or as of such other date specified therein; (h) 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, administrator, 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; (i) any default by any Borrower Entity under any mortgage, charge, hypothec, security interest or other financial encumbrance of all or any part of the Property (including the Subordinate Mortgage Loan Documents) ranking in priority to or subsequent to the security of the Loan Documents which is not cured within any cure periods applicable thereto; (j) any attornment of rents or withdrawal of consent to collect rents, power of sale or other sale by creditor, judicial sale, foreclosure, taking payment, taking possession or other enforcement or realization (whether or not permitted hereunder) proceedings are commenced against or in respect of any Borrower Entity, the Property or any part thereof under or in respect of such mortgage, charge, hypothec, security interest or other financial encumbrance or any holder thereof takes possession or control of any part of the Property; (k) 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 such writ, distress, attachment, process, judgment or order either (i) relates to or includes the Property or any part thereof, or (ii) in the opinion of the Chargee in its sole discretion, has or could be expected to have a Material Adverse Effect; (l) any part of the Property is expropriated and, in the opinion of the Chargee in its sole discretion, such expropriation has or could be expected to have a Material Adverse Effect; (m) any event of default under the Subordinate Mortgage Loan and/or any of the Subordinate Mortgage Loan Documents or the occurrence of any event which, with the passing of time or the giving of notice or both, would be a default or event of default by any Borrower Entity under the Subordinate Mortgage Loan or any of the Subordinate Mortgage Loan Documents, or (n) any other Event of Default expressly provided under any Loan Document.

**"Governmental Authority"** means any federal, provincial, state, 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.

**"Guarantor"** means each Person named as Guarantor under any guarantee forming part of the Loan Documents.

**"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.

**"Indemnitor"** means each Person named as Indemnitor under any indemnity forming part of the Loan Documents.

**"Interest Accrual Period"** means a calendar month of the Term, commencing on the first day of each calendar month to and including the last day of the same calendar month, provided that the first Interest Accrual Period shall mean the period from and including the date of the initial Loan advance to and including the last day of the same calendar month.

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

**"Interest Rate"** means the following annual rates of interest applicable during each period set out below, which rates of interest shall be compounded and payable monthly, not in advance, both before and after demand, default and judgment:

- (a) for the period commencing on the date of initial Loan advance to and including the last day of the sixth (6th) Interest Accrual Period, the rate of 9.15% per annum;
- (b) for the period commencing on the first day of the seventh (7th) Interest Accrual Period to and including the last day of the ninth (9th) Interest Accrual Period, the variable annual rate of interest which is the greater of (i) the Prime Rate plus 6.45%, and (ii) 9.15%;

- (c) for the period commencing on the first day of the tenth (10th) Interest Accrual Period to and including the last day of the eighteenth (18) Interest Accrual Period, the variable annual rate of interest which is the greater of (i) the Prime Rate plus 7.55%, and (ii) 10.25%; and
- (d) for the period commencing on the first day of the nineteenth (19th) Interest Accrual Period to and including the date upon which the Loan Indebtedness is paid in full to the Chargee, the variable annual rate of interest which is the greater of (i) the Prime Rate plus 11.05%, and (ii) 13.75%.

**"Lands"** means 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").

**"Leases"** means, collectively, all Commercial Leases and Residential Leases.

**"Lender Entity"** means each of the Chargee, the Loan servicer, the "Lender" named in the Commitment Letter, each Person having an ownership interest in the Loan from time to time, any receiver, receiver and manager, administrator or other Person with similar powers appointed by the Chargee, the issuer of any securities backed by or representing any direct or indirect interest in the Loan or any pool of loans that includes the Loan, and their respective employees, officers, directors, partners, agents and consultants.

**"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, and includes the Subordinate Mortgage Loan Documents.

**"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 creating, evidencing, securing, guaranteeing and/or relating to the Loan and the Loan Indebtedness or any part thereof from time to time, 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 applicable, (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) all other monetary obligations of any Borrower Entity under or in respect of the Loan and the Loan Documents.

**"Material Adverse Effect"** means a material adverse effect on any of (i) the value or marketability of all or any part of the Property, or the servicing, development, construction, use, leasing, operation or management thereof by any Person; or (ii) the ability of any Borrower Entity to observe and perform any of its respective covenants and obligations to the Chargee under or in respect of the Loan and the Loan Documents when due, or (iii) the validity, enforceability or priority of any of the Loan Documents, any of the respective covenants, obligations and liabilities of any Borrower Entity thereunder, or any of the rights and remedies of the Chargee thereunder, or (iv) the business, assets, property or financial condition of any Borrower Entity, taken as a whole.

**"Material Agreement"** means (i) each agreement or contract to which any Borrower Entity is a party or which it is bound or may hereafter become a party or be bound which is material and which relates to the ownership, use, operation and/or financing of the Property, or which, if breached or contravened by such Borrower Entity or if terminated, could reasonably be expected to have a Material Adverse Effect, and (ii) each of the Loan Documents and the Subordinate Mortgage Loan Documents, and (iii) each Material Commercial Lease.

**"Material Commercial Lease"** means each Commercial Lease which is (i) for premises comprising 5,000 square feet or more, or (ii) for premises comprising greater than 1,000 square feet, but less than 5,000 square feet, and having a term (inclusive of all renewal and extension options, whether or not exercised) of ten (10) years or more.

**"Maturity Date"** means the date specified as the Balance Due Date in this Charge.

**"Minimum Interest Amount"** means the amount of \$377,670.00 payable by the Chargor on account of regular interest (and not including any compound interest) on the outstanding Principal Amount from the date of the initial Loan advance until the date of any acceleration or prepayment of the Principal Amount occurring prior to the Maturity Date (including any acceleration as a result of an Event of Default).

**"Monthly Payment"** means each monthly payment of interest only payable by the Chargor to the Chargee on account of the Loan on each Payment Date up to and including the Maturity Date.

**"Obligations"** has the meaning set out in Section 11.01.

**"Organization Documents"** means, collectively, in respect of any Person other than a natural Person, all of the constituting or organizational documents and instruments governing or giving rise to the creation, formation, existence, organization and operation of such Person from time to time, including (i) in respect of a corporation, its articles of incorporation, memorandum of association, articles of association, any amendments thereto and other similar or related documents and instruments, or (ii) in respect of any partnership, its partnership agreement, any amendments thereto, registrations and other similar or related documents and instruments; and (iii) in respect of a trust, its deed of trust or declaration of trust, any amendments thereto and other similar or related documents and instruments.

**"Payment Date"** means the first day of each calendar month occurring during the Term commencing on the first day of the first calendar month following the Interest Adjustment Date and ending on the Maturity Date.

**"Permitted Encumbrances"** means, as of any particular time and in respect of the Property, each of the following encumbrances: (i) all Commercial Leases which are either disclosed to and accepted by the Chargee in its sole discretion prior to the initial Loan advance or entered into subsequent to the initial Loan advance in compliance with the Loan Documents, (ii) all Residential Leases; (iii) Liens specifically set out as exceptions to title in Schedule B to the title insurance policy issued to the Chargee in respect of this Charge and accepted by the Chargee in its sole discretion prior to the initial Loan advance; (iv) Liens otherwise expressly permitted under the terms of the Loan Documents; (v) the Subordinate Mortgage Loan Documents; and (vi) such other title exceptions disclosed to and accepted by the Chargee in its sole discretion and in writing from time to time; provided that in the opinion of the Chargee in its sole discretion, all such Permitted Encumbrances, in the aggregate, do not have and could not be expected to have a Material Adverse Effect.

**"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 occurring prior to the Maturity Date (including any acceleration as a result of an Event of Default), the amount which is equal to the positive difference, if any, between the Minimum Interest Amount and the aggregate amount paid by the Chargor on account of regular interest (and not including any compound interest) on the outstanding Principal Amount from the date of the initial Loan advance until the date of such acceleration or prepayment. The Prepayment Charge will be calculated by the Chargee in accordance with its standard methodology two (2) Business Days immediately prior to the proposed or anticipated date of prepayment or acceleration.

**"Prime Rate"** means, at any time, the annual rate of interest established from time to time by TD Canada Trust, at its head office location in Toronto, Ontario, as a reference rate then in effect for determining interest rates that TD Canada Trust will charge its customers of varying degrees of creditworthiness in Canada on Canadian dollar demand loans.

**"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 in fee simple, including any leasehold interest of the Chargor in the Lands, together with all buildings, structures, fixtures, and improvements of any nature and kind now or hereafter located on such Lands, and all Equipment, Leases, Rents and all other appurtenances thereto. Without limiting the foregoing, "Property" also includes all of the following real and personal property, rights and claims and in each case, both present and after-acquired: (i) all Permitted Encumbrances, Material Agreements and permits, licenses or approvals relating to such Property or its management or operation; (ii) all reserves held by the Chargee (or its Loan servicer) under the Loan Documents and all reserves held by the Subordinate Mortgagor (or its Loan servicer) under the Subordinate Mortgage Loan Documents, (iii) all proceeds, awards or payments of any nature or kind, together with any interest thereon, relating to any part of such Property; (iv) all expropriation proceeds relating to such Property; (v) all insurance proceeds and any unearned insurance premiums and all refunds or rebates of Realty Taxes relating to such Property; (vi) all claims and rights relating to such Property, including any claims for loss or damage to, or diminution of value of, any part of such Property; (vii) all deposits, security or advance payments of any nature or kind relating to such Property; (viii) all surveys, drawings, designs, reports, studies, tests, plans and specifications relating to such Property; (ix) any other property subject to (or required to be subject to) the security in favour of the Chargor for the Loan Indebtedness from time to time, including any cash deposit paid to the Chargee under Section 6.01(v) of this Charge and any similar cash deposit paid to the Subordinate Mortgage Lender pursuant to the Subordinate Mortgage Loan Documents; and (x) all renewals, substitutions, improvements, accessions, attachments, additions, replacements and proceeds to, of or from each of the foregoing components of the Property or any part thereof and all conversions of such Property or the security constituted thereby, so that immediately upon the acquisition, construction, assemblage, placement or conversion of same, each of the foregoing shall be deemed a part of the Property and shall automatically become subject to the security of the Loan Documents as fully and completely and with the same priority and effect as if now owned by the Chargor and specifically described herein, without any further mortgage, charge or hypothecation by the Chargor.

**"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 all or any part of the Property.

**"Receiver"** has the meaning set out in Section 7.07.

**"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 or any part thereof, including all amounts payable under any Lease and all amounts arising from or relating to any guest rooms, parking or other facilities and services, meeting rooms, common areas, restaurants or other food and beverage facilities and services, vending machines, telephone, television, cable and internet services, laundry and housekeeping facilities and services, and the provision or sale of any other goods and services, and any payment, consideration or compensation of any kind to which any Borrower Entity is or becomes entitled relating to or arising from, directly or indirectly, the full or partial termination, cancellation, amendment, modification or release of any Lease or any Tenant in respect thereof.

**"Residential Leases"** means, collectively, all present and future leases, agreements to lease, subleases, concessions, licences and other similar agreements by which the use and occupancy of one or more residential units, rooms or beds comprising the Property are granted to any Person for residential purposes (including a hotel, motel, manufactured home community, or other similar use) or any uses ancillary thereto (but excluding any ground lease or head lease of any kind

and for any purpose, which will be considered a Commercial Lease for all purposes), together with all related credits, rights, options, claims, causes of action, guarantees, indemnities, security deposits and other security related thereto.

**"Subordinate Mortgage"** means the second priority mortgage of the Property made by the Chargor in favour of the Subordinate Mortgage Lender.

**"Subordinate Mortgage Lender"** means, individually and collectively, DONALD DAL BIANCO in his capacity as the initial lender under the Subordinate Mortgage Loan, any successor lender under the Subordinate Mortgage Loan from time to time, and each Person who acquires any right, title or interest of the initial lender under the Subordinate Mortgage Loan Documents from time to time.

**"Subordinate Mortgage Loan"** means the loan in the principal amount of \$4,517,511 as secured by the Subordinate Mortgage and other Subordinate Mortgage Loan Documents.

**"Subordinate Mortgage Loan Documents"** means the Subordinate Mortgage and all other documents, instruments and agreements creating, evidencing, securing, guaranteeing and/or relating to the Subordinate Mortgage Loan.

**"Tenant"** means any lessee, sublessee, licensee or grantee of a right of occupation under a Lease and each guarantor, indemnitor or other obligor thereunder or in respect thereof.

**"Term"** means the term of the Loan up to and including the Maturity Date.

**"Transfer"** means: (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 registered, unregistered or beneficial interest in the Property or any part thereof (but excluding any expropriation); or (b) any change in the effective voting control of any Person comprising the Chargor or any Person having any registered, unregistered or beneficial ownership interest of any part of the Property from the effective voting control of such Person existing as of the initial Loan advance (including any change of ownership more than 50% of the voting securities in the capital structure of any such Person); or (c) any agreement to do or complete any of the matters referred to in (a) or (b) above which is not conditional upon compliance with Subsection 4.02(d) hereof.

#### **Section 1.02 Interpretation and Construction.**

In each of the Loan Documents, including 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" means "including, without limitation"; (c) any reference to a statute means 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 or replacement statute thereto; (d) any reference to the Commitment Letter, any Loan Document, any Lease or other agreement or instrument includes all amendments, addenda, modifications, extensions, renewals, restatements, supplements or replacements thereto from time to time; (e) reference to the Chargee, Chargor (including equivalent references to such Persons, such as "Lender" and "Borrower"), Indemnitor, any Guarantor, any Lender Entity or Borrower Entity, and any other Person includes their respective heirs, executors, administrators, legal representatives, successors and permitted assigns, and reference to "corporation" includes a company or other form of body corporate; (f) all dollar amounts are expressed in Canadian dollars; (g) 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 does not affect the construction or interpretation of such Loan Document; (h) the Chargee's right to give or withhold any consent or approval, make any determination or exercise any discretion will be exercised by the Chargor acting reasonably (unless otherwise expressly provided in the Loan Documents), except that following an Event of Default and notwithstanding the foregoing and any other provision of any Loan Document or Applicable Laws to the contrary, the Chargee will be entitled to give, withhold, exercise or make all such rights, determinations or discretions in its sole discretion at all times (even if such Loan Document expressly requires the Chargee to act reasonably); (i) notwithstanding any other provision of the Loan Documents or any Applicable Laws to the contrary, the words "sole discretion" mean the giving, withholding, exercising or making of the applicable right, determination or discretion in a manner that is completely and absolutely subjective in all respects and that the Person giving, withholding, exercising or making such right, determination or discretion has no duty or obligation at any time to act objectively or to apply any objective criteria or to conform to any other standard, it being the intention that the exercise of "sole discretion" by any Person will not be subject to any restriction, limitation, challenge or review of any kind whatsoever at any time by any Borrower Entity, any court or any other Person; (j) the Loan Documents are the result of negotiations between the parties thereto and will 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; (k) 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 **May [REDACTED] 2017**; (l) if more than one Person is named as, or otherwise becomes liable for or assumes the obligations and liabilities of, the Chargor or any other Borrower Entity under any of the Loan Documents, then all such obligations and liabilities of all such Persons so named or who subsequently become liable for such obligations and liabilities are joint and several; (m) time is of the essence; (n) all obligations of the Chargor in the Loan Documents are deemed to be covenants by the Chargor in favour of the Chargee; (o) any reference to the knowledge, belief or awareness of the Chargor includes (and is deemed to include) the knowledge, belief and/or awareness of each Person comprising the Chargor and each Person having any registered, unregistered or beneficial ownership interest in the Property or any part thereof from time to time and their respective directors, officers, partners and employees; (p) where any reference is made in any of the Loan Documents 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 will 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; (q) if there is any conflict or inconsistency between any provision of this Charge and the provision of any other Loan Document, the provision of this Charge will prevail to the extent of any such conflict or inconsistency; (r) this Charge is intended by the parties to have been executed by the Chargor

under seal for all purposes with the intention that this Charge be a specialty under Applicable Laws, whether or not a seal is actually affixed hereto; and (5) unless the Chargee otherwise elects at any time in writing and in its sole discretion, the mortgage, charge, assignment or security interest created by this Charge and any other Loan Document will not (i) extend or apply to the last day of any lease or agreement to lease in respect of real property now held or hereafter acquired by the Chargor or any other Borrower Entity as lessee, but the Chargor (for itself and on behalf of each Borrower Entity holding such leasehold interest) agrees that such last day will be held in trust for the Chargee, and if the Chargee elects to enforce such mortgage, charge, assignment or security interest in respect of such lease or agreement to lease, such last day will be assigned by the Chargor or such other Borrower Entity holding same to the Person acquiring such lease or agreement to lease from the Chargee or as the Chargee may otherwise expressly direct, (ii) extend to or apply to consumer goods or the shares of any unlimited company or unlimited liability corporation, or (iii) render the Chargee liable to observe or perform any term, covenant or condition of any agreement, document or instrument to which the Chargor or any Borrower Entity is party or by which it is bound. This Charge is intended to supplement and not derogate from the other Loan Documents and the existence of additional terms, conditions or provisions (including any rights, remedies, representations and warranties) contained in this Charge will not be construed as being or deemed to be in conflict with such other Loan Documents. The delivery of this Charge for registration by direct electronic transmission will have the same effect for all purposes as if this Charge was in written form, signed by the Chargor and delivered to the Chargee. For the purposes of this Charge and each of the other Loan Documents, reference to the terms "Charge", "charge", "Chargor" and "Chargee" shall mean "Mortgage", "mortgage", "Mortgagor" and "Mortgagee" respectively and vice versa.

#### Section 1.03 Survival of Representations, Warranties and Covenants.

The representations, warranties, covenants and obligations of each Borrower Entity in the Loan Documents (i) will survive the making of any advance or full or partial repayment of the Loan, any full or partial release, termination or discharge of any Loan Document, and any enforcement or realization proceedings taken by any Lender Entity under any such Loan Document or Applicable Laws; (ii) will enure to the benefit of the Chargee for itself and on behalf of each Lender Entity, (iii) will 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 any other information (to the contrary or otherwise) known to any Lender Entity at any time; and (iv) will not be released, discharged or otherwise affected by the bankruptcy, winding-up, liquidation, dissolution or insolvency of, or any change in, any Borrower Entity, Lender Entity or any other Person that is a party to any agreement with any Lender Entity, including any change in the constitution of any partnership constituting any Lender Entity, Borrower Entity or other Person. Without limiting the foregoing, the representations, warranties, covenants and obligations of the Chargor under the Loan Documents will 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, for itself and for the benefit of each Lender Entity, on the date of execution of each Loan Document by such Borrower Entity and are deemed repeated by each such Borrower Entity on the date of each Loan advance (in each case, whether or not expressly stated in any Loan Document). The Chargor acknowledges and agrees that (i) each reference to Institutional Mortgage Capital Canada Inc., as Chargee under this Charge and in its other capacities and/or designations under each of the other Loan Documents, refers to Institutional Mortgage Capital Canada Inc. in its capacity as general partner for and on behalf of IMC Limited Partnership, and (ii) IMC Limited Partnership holds the Loan, the Loan Indebtedness and Loan Documents as custodian and agent for and on behalf of one or more investors therein from time to time and its or their respective successors and assigns from time to time. The Chargee has the sole and exclusive right to hold, receive, exercise, enforce and/or otherwise deal with, at all times in its sole discretion and without restriction, either directly or through a Loan servicer appointed by it, all of the rights, remedies, benefits and privileges of the Chargee under the Loan, Loan Documents and Applicable Laws as agent and custodian for and on behalf of all Persons having an ownership interest in the Loan from time to time. The Chargee may appoint a Loan servicer from time to time in its sole discretion, without notice to or the consent of any Borrower Entity, to collect and receive all Loan payments and proceeds, and to exercise and enforce any or all rights, remedies or benefits, or perform any or all obligations, of the Chargee under or in respect of the Loan, the Loan Documents and/or Applicable Laws, and such Loan servicer may appoint a sub-servicer from time to time in respect of any such matters. Each Borrower Entity will deal exclusively and at all times with the Chargee or its Loan servicer in respect of all matters relating to the Loan and the Loan Documents. Without limiting the foregoing, all enforcement actions or proceedings may be brought by the Chargee and/or the Loan servicer under or in respect of the Loan and the Loan Documents on behalf of each Lender Entity and the Chargor (for itself and on behalf of each Borrower Entity) irrevocably waives any requirement that any Person(s) having an ownership interest in the Loan from time to time be a party thereto. Notwithstanding any provision of the Loan Documents or Applicable Laws to the contrary, all claims, losses, costs or other amounts for which the Chargee is entitled to indemnity under any of the Loan Documents include claims, losses, costs or other amounts made against or incurred by the Chargee, the Loan servicer and/or each Person having an ownership interest in the Loan from time to time (whether or not specifically stated) and each such indemnity shall enure to the benefit of the Chargee, the Loan servicer and each such Person, and their respective successors and assigns. To the extent that any Lender Entity is entitled to indemnity for or in respect of any matter under any of the Loan Documents but is not a party thereto, such indemnity will be a valid and effective indemnity in favour of such Lender Entity for all purposes and the Chargee will hold and be entitled to enforce the full benefit of such indemnity on behalf of all such Lender Entities.

#### Section 1.04 Recourse.

Notwithstanding any other provision in any Loan Document to the contrary, the respective obligations and liabilities of each Borrower Entity under the Loan and each of the Loan Documents are full recourse to each such Borrower Entity and all of its respective property and assets at all times without limitation or restriction of any kind.

#### Section 1.05 REIT Provision.

Notwithstanding any other provision of this Charge or any other Loan Document, if any Borrower Entity is a real estate investment trust (a "REIT"), the obligations of the REIT under the Loan Documents are not personally binding upon, and resort will not be had to, nor will recourse or satisfaction be sought from, the private property of any of: (a) the unit holders of the REIT; (b) annuitants or beneficiaries under a plan of which a unit holder of the REIT acts as a trustee or carrier; and (c) trustees, officers or employees of the REIT, provided that the Property will remain bound by and subject to this Charge and the other Loan Documents, and the Chargee will have full recourse to the Property, at all times and without limitation or restriction of any kind. Any obligation of the REIT set out in the Loan Documents will, to the extent

necessary to give effect to such obligation, be deemed to constitute, subject to the provisions of the previous sentence, an obligation of the trustees of the REIT in their capacity as trustees of the REIT. Nothing herein will (i) constitute a bar to any action against the REIT for specific performance of any of its obligations under any Loan Document, or (ii) limit, restrict or otherwise affect the validity or enforceability of the obligations and liabilities of any Borrower Entity under this Charge or any other Loan Document.

## ARTICLE 2 - CHARGE

### Section 2.01 Charge.

As security for the payment and performance to the Chargee of the Loan Indebtedness and the observance and performance by the Chargor of all of its other covenants and obligations hereunder and under the other Loan Documents, the Chargor hereby mortgages, charges, assigns and grants a security interest in the Property to and in favour of the Chargee.

### Section 2.02 Continuing Security.

This Charge will operate until all Loan Indebtedness has been fully paid to the Chargee and all other obligations of the Chargor under the Loan Documents have been fully performed, each in the manner contemplated by this Charge and the other Loan Documents, and a discharge of this Charge is executed and delivered by the Chargee to the Chargor pursuant to Section 7.13. 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 or 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 or 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 or 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 will be and remain valid security for any subsequent advance or readvance of any part of the Loan Indebtedness 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

### Section 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 legal or equitable set-off, deduction, abatement, defence or claim of any kind.

### Section 3.02 Interest.

The Principal Amount advanced to the Chargor from time to time will bear interest at a rate per annum equal to the Interest Rate in effect for each Interest Accrual Period, which interest shall be compounded and payable monthly, not in advance, both before and after default, demand, maturity and judgment until paid. As applicable, the Interest Rate for each Interest Accrual Period will be set by the Chargee on the last Business Day of the immediately preceding calendar month. Interest shall be charged on the actual number of days elapsed in each Interest Accrual Period and, except as otherwise provided in Section 3.03(a), shall be payable in arrears. The establishment of the Prime Rate and the determination by the Chargee of the Interest Rate for each Interest Accrual Period, as applicable, shall be final and binding on each Borrower Entity subject only to manifest error.

The Chargor acknowledges and agrees, both for itself and on behalf of each Borrower Entity, that each increase in the Interest Rate occurs solely by reason of the passage of time, and not as a result of the occurrence of any default or Event of Default.

### Section 3.03 Payment Provisions.

The Chargor will pay the Loan Indebtedness to the Chargee as follows: (a) on the date of the initial Loan advance, the Chargor shall pay to the Chargee, in advance, interest on the outstanding Principal Amount at the Interest Rate for the initial Interest Accrual Period (at the option of the Chargee, such interest may be deducted from the initial Loan advance); (b) on each Payment Date following the Interest Adjustment Date and until and including the Maturity Date, the Chargor shall make monthly payments of interest only each in an amount equal to the interest accrued on the outstanding Principal Amount during the Interest Accrual Period ending on the day immediately prior to such Payment Date at the Interest Rate in effect for such Interest Accrual Period; (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 including the outstanding Principal Amount together with any interest thereon at the Interest Rate will become due and be paid on the Maturity Date.

### Section 3.04 Compound Interest.

Interest will 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 interest and compound interest are not paid on or before the next Payment Date, 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 will be added to the Loan Indebtedness and will be secured by this Charge and the Loan Documents.

**Section 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 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 will be made to the Chargee at such place as the Chargee may designate from time to time by notice to the Chargor.

**Section 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.

**Section 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, will be added to the Loan Indebtedness and will be secured by the Loan Documents.

**Section 3.08 No Right of Prepayment.**

Except as expressly provided in this Section 3.08 or elsewhere in this Charge, the Loan Indebtedness may not be prepaid in whole or in part at any time prior to the Maturity Date.

The Chargor may prepay all (but not less than all) of the outstanding Loan Indebtedness at any time during the Term, subject to the satisfaction of the following terms and conditions:

- (a) the Chargor shall either (i) give the Chargee not less than ninety (90) days prior written notice of such prepayment (which notice shall be irrevocable by the Chargor and will specify the date on which such prepayment will be made), or (ii) make payment to the Chargee of ninety (90) days interest in lieu of the notice required pursuant to subsection (i), such interest to be calculated using the Interest Rate in effect for the Interest Accrual Period during which such prepayment is made;
- (b) the Chargor shall concurrently pay to the Chargee:
  - (a) the outstanding Principal Amount;
  - (b) all accrued and unpaid interest (including any additional interest payable pursuant to subsection 3.08(a)(ii) hereof, if applicable);
  - (c) if such prepayment is not made on a Payment Date, in addition to all other amounts, an amount equal to all interest that would have accrued, absent such prepayment, on the Principal Amount at the applicable Interest Rate up to and including the next regularly scheduled Payment Date;
  - (d) if such prepayment occurs prior to payment of the Minimum Interest Amount and in addition to all other amounts, the Prepayment Charge; and
  - (e) all other outstanding Loan Indebtedness.

Any failure by the Chargor to pay to the Chargee such prepayment on the date specified in any notice given by the Chargor hereunder shall be an immediate Event of Default.

If any acceleration (including any acceleration under Section 4.02(d) hereof) or prepayment of all or any part of the Principal Amount should occur for any reason whatsoever (whether as a result of any Event of Default, Applicable Laws or otherwise) prior to payment of the Minimum Interest Amount, then the Prepayment Charge will immediately become due and payable by the Chargor to the Chargee, in addition to all other Loan Indebtedness. Such Prepayment Charge will be added to the Loan Indebtedness and until paid, will bear interest at the Interest Rate and will be secured by the Loan Documents.

The Chargor acknowledges and agrees that the Prepayment Charge represents fair and reasonable compensation for the loss that the Chargee (and any Person having an ownership interest in the Loan) may sustain from any acceleration or prepayment of the Principal Amount prior to payment of the Minimum Interest Amount and that such Prepayment Charge is commercially reasonable and a genuine pre-estimate of such loss and is not a penalty. Nothing in this paragraph creates any right of prepayment of all or any part of the Loan Indebtedness in favour of the Chargor or any other Person at any time. The Chargor agrees to indemnify, pay and save each Lender Entity harmless from and against all actions, proceedings, claims, demands, judgments, losses, damages, liabilities, costs or expenses (including legal fees) made against or incurred by such Lender Entity arising from or relating directly or indirectly to (i) the failure of the Chargor to pay such Prepayment Charge to the Chargee upon any acceleration or prepayment of the Loan (including any acceleration as a result of an Event of Default) and/or (ii) any claim, action or proceeding alleging that such Prepayment Charge is not payable to or enforceable by the Chargee under Applicable Laws for any reason. Until paid, any amounts payable to any Lender Entity hereunder, together with interest thereon at the Interest Rate, will be added to the Loan Indebtedness and will be secured by the Loan Documents.

**Section 3.09 Application of Payments.**

Prior to an Event of Default, all amounts (including Monthly Payments) received by the Chargee on account of the Loan Indebtedness will 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 the Loan or any 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 Chargor (regardless of any designation or allocation of such payments by any Borrower Entity as principal, interest or otherwise) will 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 determines in its sole discretion.

**Section 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 will be added to the Loan Indebtedness and will be secured by the Loan Documents. The Chargor, for itself and on behalf of each Borrower Entity, agrees that any recovery fee, workout fee and all special servicing fees which become payable to any Loan servicer in respect of the Loan at any time during the Term and which are included in Costs are fair and commercially reasonable costs and expenses incurred by the Chargee and do not constitute a fine, penalty or default interest charged on arrears of principal or interest.

**Section 3.11 Deemed Re-investment.**

There will 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.

**Section 3.12 Advance Directed to Pay Reserves and Costs.**

Notwithstanding any Applicable Laws to the contrary, any amounts directed from any Loan advance by the Chargor to be paid as a reserve under the Loan Documents or to be paid on account of any Costs will be considered to be fully and immediately advanced to the Chargor for all purposes, will bear interest at the Interest Rate from and after the date of such Loan advance, and shall be fully and immediately secured by the Loan Documents in priority to all other Liens.

**Section 3.13 Reserves.**

In addition to the Loan Indebtedness, the Chargor must pay to the Chargee all Loan reserves required by the Loan Documents when due.

**Section 3.14 Servicing Fees**

The Chargor, for itself and on behalf of each Borrower Entity, acknowledges and agrees that (i) at all times following an Event of Default, the Chargor will pay to the Chargee all amounts equal to any special servicing fee payable by the Chargee to its Loan servicer from time to time (calculated at a rate of 0.25% (25 basis points) per annum multiplied by the then-outstanding Principal Amount of the Loan, payable monthly) and any recovery fee payable by the Chargee to its Loan servicer from time to time (calculated at a rate equal to 1% of all Loan Indebtedness that is paid to or recovered by the Chargee on account of the Loan following an Event of Default (whether or not such Event of Default is subsequently cured, and regardless of how such Loan Indebtedness is paid to or recovered by the Chargee, including all payments subsequently made by the Chargor and applicable taxes thereon); and (ii) all such servicing fees are fair and commercially reasonable costs and expenses incurred by the Chargee in connection with the Loan and do not constitute a fine, penalty or default interest charged on arrears of principal or interest. Until paid by the Chargor to the Chargee, all amounts payable by the Chargor to the Chargee on account of such servicing fees (and applicable taxes) will be Costs, and together with interest thereon at the Interest Rate, will be added to the Loan Indebtedness and will be secured by the Loan Documents.

## **ARTICLE 4 - REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 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 are varied so that they 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.

**Section 4.02 Representations, Warranties and Covenants.**

The Chargor, for itself and on behalf of each Borrower Entity, represents and warrants to and covenants with the Chargee, for itself and for the benefit of each Lender Entity, as follows:

- (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 or trust, is a valid and subsisting partnership or trust, as the case may be, under the laws of its governing jurisdiction; (iii) to the extent it owns any registered, unregistered or beneficial interest in the Property, has full power, authority and legal right to own its interest in the Property and to carry on its business with respect to the Property 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) will maintain in good standing its existence, capacity, power and authority as a corporation, partnership or trust, 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; (vii) will not make or permit any amendment to its

Organizational Documents or continue into any other jurisdiction outside of Canada (from that existing as of the initial Loan advance) in each case without the prior written consent of the Chargee in its sole discretion; (viii) will not change its name, chief executive office, principal place of business or domicile or continue into any other jurisdiction within Canada without giving the Chargee 30 days' prior written notice, and (ix) which is the Chargor, is a corporation resident in Canada for the purposes of the *Income Tax Act* (Canada).

(b) Enforceability. The Loan Documents constitute valid and legally binding obligations of each Borrower Entity which is a party thereto enforceable against each of them in accordance with their respective terms and are not subject to any right of rescission, set-off (legal or equitable), 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 breach or violation of the Organizational Documents governing 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, including the Subordinate Mortgage Loan and the Subordinate Mortgage Loan Documents, 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 registered, legal and beneficial owner of the Property and no other Person has any registered, unregistered or beneficial ownership interest therein. The Chargor has good and marketable title to the Property free and clear of all Liens other than Permitted Encumbrances. This Charge and the other Loan Documents will be at all times a good and valid first priority mortgage, charge, assignment of and security interest in and of the entire legal and beneficial ownership interest in the Property in priority to all other Liens other than Permitted Encumbrances. The Chargor will defend title to the Property for the benefit of the Chargee from and against all actions, proceedings and claims of all Persons. The Chargor will not permit the Property or any part thereof to be subject to or included in any condominium or strata title regime or any other form of multiple ownership or governance.

(d) Transfers and Liens. No Transfer will be made or permitted to be made without the prior written consent of the Chargee in its sole discretion. Other than Permitted Encumbrances, no Liens will be created, issued, incurred or permitted to exist (by operation of law or otherwise and whether prior to, pari passu with or subordinate to this Charge or the other Loan Documents or the security thereof) in respect of, or registered against, 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 at its sole option exercisable in its sole discretion. Any Lien not permitted hereby must be fully vacated and discharged from the Property by the Chargor forthwith. If, without the prior written consent of the Chargee, any Transfer or Lien of any part of the Property or any interest therein (other than a Transfer or Lien otherwise expressly permitted under the terms hereof) is made, created, incurred, taken or permitted to exist, then the Chargee, at its sole option exercisable in its sole discretion and without limiting its other rights and remedies hereunder, may declare an Event of Default to have occurred and the Loan Indebtedness (including the Prepayment Charge) to be immediately due and payable by the Chargor to the Chargee, in which event all of the Chargee's rights and remedies under this Charge, the other Loan Documents and Applicable Laws will become immediately enforceable. Notwithstanding the foregoing, if the Chargee elects to provide its consent to any Transfer or Lien, then notwithstanding such consent, such Transfer or Lien will be subject at all times to the satisfaction by the Chargor of each of the following terms and conditions prior to the completion of such Transfer, in each case at the Chargor's sole cost and expense and to the satisfaction of the Chargee in its sole discretion: (i) no Event of Default has occurred and is uncured and no event has occurred and is uncured which, with the passing of time or the giving of notice or both, would be an Event of Default, (ii) the Chargee has approved in its sole discretion the financial condition, managerial capacity and ownership structure of the transferee, (iii) the transferee and each other Borrower Entity must 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) INTENTIONALLY DELETED; (v) the Chargor must pay all fees, costs and expenses (plus applicable taxes) of the Chargee, the Loan servicer and its legal counsel relating to such Transfer, its review of Chargor's compliance with these terms and conditions, the preparation and review and/or recording of any and all documents and legal opinions relating thereto, including any governmental or third-party fees, costs, taxes or assessments thereon, (vi) the Chargor must pay to the Chargee an assumption fee with respect to such Transfer equal to 0.50% of the Principal Amount (such fee not to exceed \$25,000.00), plus applicable taxes, (vii) registered title to the Property must be held at all times by a corporation resident in Canada for the purposes of the *Income Tax Act* (Canada), and (viii) the Chargor must satisfy all other conditions imposed by the Chargee in respect of such Transfer.

Notwithstanding any other provision of any Loan Documents to the contrary, no Transfer otherwise permitted by this Charge will be permitted, and the Chargee may withhold its consent to such Transfer, if, in the opinion of the Chargee or its legal counsel in its sole discretion, it would result in a novation of the Loan under Applicable Laws or if it has or could be expected to have a Material Adverse Effect. This Section 4.02(d) supersedes all provisions governing Transfers set out in the Commitment Letter and any addenda thereto.

Notwithstanding the restrictions contained in the first paragraph of this Section 4.02(d), and provided no Event of Default has occurred and is uncured and no event has occurred and is uncured which, with the passing of time or the giving of notice or both, would be an Event of Default, a Transfer of a registered, unregistered and/or beneficial interest in the Property to The Uptown Inc. (the "Permitted Transfer") will be permitted without the prior written consent of, but with prior written notice to, the Chargee, and no assumption fee shall be payable to the Chargee in connection with any Permitted Transfer, provided that each such Permitted Transfer will be subject to the satisfaction of each of the following terms and conditions prior to the completion thereof, in each case at the Chargor's sole cost and expense and to the

satisfaction of the Chargee in its sole discretion: (i) the Chargor must demonstrate to the Chargee's satisfaction that such Transfer is a Permitted Transfer; (ii) the Chargor, either directly or through an affiliate, must retain control over the management and operation of the Property at all times following such Permitted Transfer; and (iii) each of the other terms and conditions of a Transfer set out in the first paragraph of this Section 4.02(d) (other than the requirements for Chargee approval in clause (ii) and payment of an assumption fee to the Chargee in clause (vi) of such first paragraph) must be satisfied by the Chargor and/or The Uptown Inc.

Notwithstanding the restrictions contained in the first paragraph of this Section 4.02(d), and provided no Event of Default has occurred and is uncured and no event has occurred and is uncured which, with the passing of time or the giving of notice or both, would be an Event of Default, the Chargor may place the Subordinate Mortgage Loan Documents on the Property in favour of the Subordinate Mortgage Lender subject to the satisfaction of each of the following conditions prior to the granting of such subordinate Lien, in each case at the Chargor's sole cost and expense and to the satisfaction of the Chargee in its sole discretion: (i) there are no insolvency issues with respect to any Borrower Entity; (ii) the Subordinate Mortgage Lender must execute and deliver to the Chargee a subordination and standstill agreement in the Chargee's required form, which agreement must include a full subordination and postponement of the Subordinate Mortgage Loan, the Subordinate Mortgage Loan Documents and all indebtedness secured thereby to the Loan Documents, all Loan Indebtedness and all Loan reserves, restrictions on payment of the Subordinate Mortgage Loan from Property cash flow, and complete standstill provisions restricting the enforcement by the Subordinate Mortgage Lender of all of its rights and remedies under or in respect of the Subordinate Mortgage Loan Documents and all indebtedness secured thereby without the Chargee's prior written consent in its sole discretion; and (iii) the Chargor must pay all fees, costs and expenses (plus applicable taxes) of the Chargee, the Loan Servicer and its legal counsel relating to the Chargee's review and approval of the Subordinate Mortgage Loan, its review of Chargor's compliance with these terms and conditions and the preparation and review and/or recording of any and all documents and legal opinions relating thereto, including any governmental or third-party fees, costs, taxes or assessments thereon.

- (c) **Realty Taxes and Utility Charges.** The Chargor will pay or cause to be paid all Realty Taxes and utility charges relating to the Property when due. Without limiting the foregoing, the Chargor will also comply with its obligations under the Commitment Letter and the Subordinate Mortgage Loan Documents with respect to Realty Tax reserves and any applicable tax instalment payment plan applicable to the Property, including making all payments thereunder when due. The Chargor will deliver to the Chargee receipted invoices or other evidence of payment of (i) Realty Taxes as set out in the Commitment Letter, 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 or, to the Chargor's knowledge, any prior owner of the Property, except in each case 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 or any prior owner of the Property, the Chargor will 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, Permitted Encumbrances, Material Agreements, permits, licenses and approvals, and the current location, occupancy, operation and use of the buildings, structures and other improvements on the Property (including all existing and permitted uses of the Property by Tenants) either comply with all Applicable Laws, or to the extent of any non-compliance, such non-compliance is legally permitted under 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. Except as expressly disclosed as exceptions to title in Schedule B to the title insurance policy issued to the Chargee in connection with the initial Loan advance and accepted by the Chargee in its sole discretion, 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, Permitted Encumbrances, Material Agreements or any permits, licenses or approvals and the Chargor shall promptly notify and provide the Chargee with particulars of any default thereunder and any other information 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. There is no existing or threatened expropriation or other similar proceeding in respect of the Property or any part thereof.
- (h) **Use and Maintenance.** Neither the Chargor nor any other Borrower Entity will change the use of or abandon the Property. The Chargor will diligently maintain, use, manage, operate and repair the Property in a safe and insurable condition, in accordance with Applicable Laws, Permitted 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 situated.
- (i) **Intentionally Deleted.**
- (j) **Management.** The manager of the Property and each management agreement will each be subject to the prior written approval of the Chargee in its sole discretion from time to time. The manager will 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, any such management agreement and/or manager of the Property and may retain, or require the Chargor to retain, a new manager of the Property approved by the Chargee (in each case at the Chargor's sole expense). Each management agreement must contain termination provisions consistent with this Subsection.

(k) **Right of Inspection.** The Chargee, the Loan servicer and their respective agents and employees will have the right, subject to the rights of Tenants under existing Leases, to enter and inspect the Property and/or make any environmental tests and inspections at all reasonable times and, except in an emergency or following an Event of Default, upon reasonable notice (which notice shall not be required to be writing) to the Chargor. The Chargee will not be considered to have taken possession of the Property or to otherwise become a mortgagee or chargee in possession of the Property by reason of its exercise of any such right.

(l) **Permits.** The Chargor (i) has obtained all permits, agreements, rights, licences, authorizations, approvals, franchises, trademarks, trade names and similar property and rights (collectively "Permits") necessary to permit the lawful construction and the current occupancy, operation and use of the Property; (ii) is not in default under such Permits and will maintain all such Permits in good standing and in full force and effect; (iii) will 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 (iv) 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 will 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 is not and will not be used at any time for the purpose of manufacturing or storing Hazardous Substances. The Property contains no Hazardous Substances (except those used incidentally in the ordinary course of business of the Chargor or any Tenant and in compliance with all Applicable Laws), has not been previously, and is not currently, subject to any remediation or clean-up of Hazardous Substances and there has not been and 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 will: (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 those used incidentally in the ordinary course of business of the Chargor or any Tenant and in compliance with all Environmental Laws); (iii) ensure that any Hazardous Substance brought onto the Property or used by any person on the Property shall be transported, used and stored only in accordance with Environmental Laws; (iv) notify the Chargee promptly of any actual, threatened or potential escape, seepage, leakage, spillage, release or discharge of any Hazardous Substance on, from, or under the Property; (v) notify the Chargee promptly of any threatened or actual Environmental Proceedings that may arise from time to time and provide particulars thereof; (vi) 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 (vii) 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, the Chargor and each Tenant of the Property with Environmental Laws.

(o) **Environmental Indemnity.** Without limiting any other provision of any Loan Document, the Chargor will indemnify and pay, protect, defend and save each Lender Entity harmless from and against all actions, proceedings, losses, damages, liabilities, claims, demands, judgments, costs and expenses (including legal fees and disbursements on a full indemnity or equivalent basis) (collectively "Environmental Claims") occurring, imposed on, made against or incurred by such Lender Entity arising from or relating to, directly or indirectly, whether or not disclosed by any environmental assessment 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 Laws relating to environmental matters (including Section 4.02(m) and Section 4.02(n) above). Notwithstanding any other provision of this Charge or any other Loan Document, the Chargor agrees that each Lender Entity will have full and unrestricted recourse to the Chargor, each Indemnitee and all of their respective property and assets for all such Environmental Claims.

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

(q) **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 as of the date of delivery to such Lender Entity or as of such other date specified therein, 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 material adverse change in the financial or other condition of the Property, any Borrower Entity or its business and operations since the date such statements and information were delivered to such Lender Entity or since the date specified therein, as applicable. 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, all source deductions (for income tax, employment insurance and other matters) and other similar charges (including related interest, penalties and fines) imposed on it or required to be made by Applicable Laws or any Governmental Authority.

(r) **Financial Statements.** The Chargor will 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) on the first day of each quarter year (commencing on the first day of any month as determined by the Chargee in its sole discretion and which may not correspond to the calendar quarter years), a written update on the status of the Chargor's intended development or redevelopment of the Property and progress thereon during the immediately preceding quarter year; (ii) annual financial statements for each Borrower Entity within ninety (90) days after the end of each fiscal year of each such Person; and (iii) such other information with respect to the Property and/or any Borrower Entity reasonably requested from time to time by the Chargee. The Chargee, the Loan servicer and/or their respective agents have the right to make inspections and audits of the Property and all books and records relating to the Property and each Borrower Entity at such time(s) as the Chargee may determine in its sole discretion and at the Chargor's expense, and the Chargor will cooperate and will cause each other Borrower Entity to cooperate fully therewith.

(s) **Intentionally Deleted.**

(t) **Subordinate Mortgage Loan.** The Chargor covenants to observe and perform, and to cause each other Borrower Entity to observe and perform, all of its respective covenants, obligations and liabilities to the Subordinate Mortgage Lender under the Subordinate Mortgage Loan and the Subordinate Mortgage Loan Documents. All information delivered to any Lender Entity by or on behalf of each Borrower Entity relating to the Subordinate Mortgage Loan and/or the Subordinate Mortgage Loan Documents is true, correct and complete in all respects. No Borrower Entity will amend, modify, supplement, restate and/or replace any term or provision of the Subordinate Mortgage Loan, any of the Subordinate Mortgage Loan Documents and/or any of its obligations, liabilities, covenants and/or any security granted thereunder to the Subordinate Mortgage Lender at any time without the prior written consent of the Chargee in its sole discretion. The Chargor covenants and agrees that no Borrower Entity, and no Affiliate of any Borrower Entity, will become the Subordinate Mortgage Lender, acquire any ownership interest in the Subordinate Mortgage Loan, or acquire, assume or exercise (directly or indirectly) any right to control or direct all or any part of the servicing, administration or enforcement of, or any other actions or decisions required or permitted to be made by the Subordinate Mortgage Lender or its loan servicer relating to, the Subordinate Mortgage Loan and/or the Subordinate Mortgage Loan Documents, in each case at any time without the prior written consent of the Chargee in its sole discretion.

#### Section 4.03 Performance of Covenants and Default.

The Chargor will observe and perform and cause to be observed and performed all covenants, provisions and conditions contained in this Charge and the other Loan Documents. The Chargor represents and warrants to the Chargee, as of the date of each Loan advance, 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 will promptly deliver to the Chargee a notice specifying full particulars of same.

#### Section 4.04 Required Notices.

Without limiting (and in addition to) any other notices required to be provided by any Borrower Entity to the Chargee pursuant to this Charge or any of the other Loan Documents, the Chargor will give prompt written notice to the Chargee of each of the following matters or events (in each case, not later than time period specified in this Section 4.04, or if no time period is specified, then no later than five (5) Business Days following the occurrence of such specified matter or event): (i) any Event of Default or any other event which has occurred and is uncured which, with the passing of time or the giving of notice or both, would be an Event of Default, together with full particulars of same; (ii) any Transfer (whether or not permitted by the Loan Documents) however arising; (iii) the existence of any Lien, however arising, on all or any part of the Property in breach of Section 4.02(d) of this Charge; (iv) any condition, event, action, omission, activity, occurrence or incident that is, or could reasonably be considered to result in or give rise to, a breach of any provision of Section 4.02(m) or Section 4.02(n) of this Charge; (v) any notice or claim of any kind received by or on behalf of any Borrower Entity from or on behalf of any Governmental Authority or other Person relating to any actual, potential or alleged non-compliance by the Property or any Borrower Entity of any Environmental Laws; (vi) any notice or claim of any kind received by or on behalf of any Borrower Entity from any Person relating to any actual, potential or alleged default by

any Borrower Entity under, or any dispute relating to, any of the Material Agreements, Permitted Encumbrances or Leases, and/or the Property or any part thereof; (vii) any damage or destruction to, or any actual or threatened expropriation proceedings with respect to, all or any part of the Property; (viii) any actual or threatened cancellation or termination of any insurance required to be maintained by this Charge; (ix) any actual or threatened litigation, dispute, arbitration or other proceeding relating to the Property or any Borrower Entity, and all material events and developments in any such proceedings (and the Chargor shall provide the Chargee all information requested by the Chargee from time to time concerning the status of such proceedings); (x) any change in any banking arrangements of each Borrower Entity relating to the Property (including any change in the bank or bank branch with whom any Borrower Entity maintains any bank account to which any Rents or other proceeds of the Property are or will be deposited or held from time to time); (xi) copies of any Material Agreements, Permitted Encumbrances or Leases (to the extent not previously delivered to the Chargee prior to the initial Loan advance) and all amendments to any Material Agreements, Permitted Encumbrances or Leases; and (xii) copies of any notices or other correspondence received by or on behalf of the Chargor or any other Borrower Entity in respect of any actual or alleged defaults, events of default or breaches by the Chargor or any Borrower Entity under or in respect of the Subordinate Mortgage Loan and/or any of the Subordinate Mortgage Loan Documents, including any such notices or correspondence relating to any actual or threatened enforcement proceedings by or on behalf of the Subordinate Mortgage Lender under or in respect of the Subordinate Mortgage Loan and/or any of the Subordinate Mortgage Loan Documents.

#### **Section 4.05      Construction Liens.**

The Chargee may, at its option, withhold from any advance or releasable Loan reserve for which the Chargor may have qualified such amounts as the Chargee, in its sole discretion, considers advisable so as to ensure the priority of all advances and released reserves over all liens arising under any construction lien legislation until such time as the Chargee is fully satisfied that all lien periods have expired and that there are no preserved or perfected liens outstanding. Nothing in this Charge shall be construed to make the Chargee an "owner" or "payer" as defined under any construction lien legislation, nor shall there be or be deemed to be any obligation by the Chargee to retain any holdback which may be required by the said legislation. Any holdback which may be required to be retained by the "owner" or "payer" pursuant to any construction lien legislation shall remain solely the Chargor's obligation. The Chargor hereby covenants and agrees to comply in all respects with the provisions of all construction lien legislation.

### **ARTICLE 5 - INSURANCE**

#### **Section 5.01      Insurance Coverage.**

The Chargor must maintain at its sole expense the following insurance coverages with respect to the Property for the benefit of the Chargee (for itself and on behalf of each Person having an ownership interest in the Loan from time to time) 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 an eighteen (18) 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; (e) during such time or times as there is construction of any buildings or other improvements on the Property (it being acknowledged that such construction is subject to the prior written approval of the Chargee in its sole discretion), builders' all risk insurance; and (f) 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.

#### **Section 5.02      Policy Terms.**

All insurance required by this Article must have a term of not less than one year and must be in the form and amount and with such deductibles, endorsements and with such insurers as are acceptable to the Chargee from time to time in its sole discretion. Original or certified copies of all insurance policies will be delivered by the Chargor to the Chargee immediately and evidence of its renewal or replacement must be delivered not less than thirty (30) days before any policy expires or is terminated. 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 will, in a manner satisfactory to the Chargee (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) name the Chargee, on behalf of itself and any other Person having an ownership interest in the Loan from time to time, as first loss payee. The Chargor will 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 will 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 will be added to the Loan Indebtedness and will be secured by the Loan Documents. As additional and separate security for payment and performance of the Loan Indebtedness and all of its other covenants and obligations under the Loan and the Loan Documents, the Chargor hereby assigns, transfers, grants a security interest in and sets over to the Chargee, as a first priority Lien thereof, 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 irrevocably and unconditionally 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 will, at the option of the Chargee in its sole discretion, be applied in reduction of the Loan Indebtedness.

**Section 5.03 Comply with Insurance Policies.**

The Chargor will 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 will comply with all the terms of each insurance policy required by this Charge and all requirements of the insurer of each such policy. The Chargor will 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**

**Section 6.01 Damage and Destruction/Restoration.**

If any damage or destruction occurs to the Property, the Chargor will: (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, prior to the commencement of such Restoration Work, deposit with the Chargee in cash an amount equal to any deficiency (as estimated by the Chargee and calculated to the end of the period during which the Restoration Work and lease-up will be completed), to ensure that funds are available to pay when due all scheduled payments on account of the Loan Indebtedness throughout such period and the Chargor hereby grants a first priority security interest in such cash deposit and all proceeds of any such letter of credit to the Chargee as security for the payment and performance of the Loan and the Loan Indebtedness and all of its other covenants and obligations under the Loan and the Loan Documents; (vi) ensure that following completion of such Restoration Work, the same location, density, occupation, operation and use of the Property that existed at the time of the initial Loan advance will be legally permitted under all Applicable Laws (or a legal non-conforming use), unless otherwise approved by the Chargee in its sole discretion; (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.

**Section 6.02 Application of Insurance Proceeds.**

Provided no Event of Default exists, all insurance proceeds arising or relating to any damage or destruction to the Property net of all reasonable architects', adjusters', lawyers', and other consultants' fees and disbursements ("Net Proceeds") will 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 will (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) will 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 \$300,000.00, such Restoration Work will 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 must be made by the Chargor on not less than ten (10) Business Days prior notice to the Chargee and must 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, suppliers, 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 (if required by the Chargee, the payment of the requested amount shall be made directly to such Persons pursuant to a written direction of the Chargor); (iv) that title to the personal property included in the request for payment is vested in the Chargor free and clear of all Liens, together with confirmation satisfactory to the Chargee in its sole discretion that such personal property is subject to the Chargee's security as a first priority security interest therein, (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, (viii) that except for such actual holdbacks and the amount of the requested payment required to be paid to such Persons, all contractors, subcontractors, materialmen, suppliers, labourer, engineers, architects and other Persons performing such Restoration Work have been paid in full, and (ix) that no written notice of a construction lien, mechanics lien or other similar 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 construction lien, mechanics lien or other similar Lien under Applicable Laws have been registered against the Property, and (ii) the Chargee has the right to inspect the Property to determine that the Restoration Work complies with this Article. The Chargor irrevocably waives any requirement of Applicable Laws which may require the Net Proceeds to

be used to restore or rebuild the Property. Notwithstanding the foregoing and provided that no Event of Default has occurred and is continuing, if the insurance proceeds from any damage or destruction do not exceed \$25,000.00 in the aggregate, such proceeds may be paid to and held by the Chargor provided that all such proceeds must be applied by the Chargor solely to the repair or restoration of such damage or destruction.

**Section 6.03 Holdbacks.**

Notwithstanding any other provision of this Charge, the Chargee is entitled to retain, and not disburse, from any payment of Net Proceeds pursuant to Section 6.02 in connection with any Restoration Work, a holdback or holdbacks from time to time in such amount(s) and for such period(s) of time as determined by the Chargee, in its sole discretion, in order to maintain and ensure the priority of this Charge as a first priority Lien of the Property at all times, to comply with all Applicable Laws and to ensure that all holdback and other related financial obligations and liabilities of the Chargee under Applicable Laws relating to or directly or indirectly arising from with the Restoration Work are and will continue to be fully satisfied solely by or from such holdbacks. Such holdback(s) will be retained by the Chargee until such time as (i) the Restoration Work has been fully completed in accordance with this Article with no material deficiency or defect, (ii) the Chargee will 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) the Chargee is satisfied in its sole discretion that the priority of this Charge as a first priority Lien of the Property will not be impaired or otherwise affected by the release of such holdback(s) and that all construction liens, mechanics liens or other similar Liens and all holdback and other related financial obligations and liabilities of the Chargee under Applicable Laws relating to directly or indirectly arising from such Restoration Work have either fully expired or have otherwise been fully satisfied, (iv) all costs and expenses of the Restoration Work (including all costs and expenses of any Lender Entity referred to in Section 6.01(vii)) have been fully paid, (v) there are no outstanding claims or disputes with respect to the Restoration Work, and (vi) no Event of Default exists. Provided no Event of Default exists, if any excess Net Proceeds held by the Chargee remain after satisfaction of all of the foregoing matters, such excess proceeds shall be paid to the Chargor.

**Section 6.04 Event of Default.**

If the Chargor fails to comply with any of its obligations under this Article, an Event of Default will have occurred, and notwithstanding any other provision hereof, the Chargee will have the right exercisable in its sole discretion to receive all Net Proceeds and to apply all Net Proceeds so received 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 or any contractor or other Person retained by any Lender Entity for all costs of completing the Restoration Work without prior notice to or consent of the Chargor or any other Person. Any costs and expenses incurred by or on behalf of the Chargee in completing any Restoration Work will be Costs and shall be payable by the Chargor forthwith upon demand. Until paid, such costs and expenses, together with interest thereon at the Interest Rate, will be added to the Loan Indebtedness and will be secured by the Loan Documents.

**Section 6.05 Proceeds of Expropriation.**

Prior to an Event of Default, all proceeds of expropriation up to \$25,000 will be paid to the Chargor and must be re-invested by the Chargor in the Property. All proceeds of expropriation which exceed \$25,000 (or following an Event of Default, all expropriation proceeds) will 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**

**Section 7.01 Acceleration.**

Upon the occurrence of an Event of Default, the entire Loan Indebtedness will, 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 under Applicable Laws will immediately become enforceable.

**Section 7.02 Power of Sale.**

After the occurrence of 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. If permitted by law, the Chargee may enter on, lease or sell the Property without notice. 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 in cash. The Chargee may rescind or vary any contract or sale and may buy and re-sell the Property, in each case in its sole discretion and 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 or other enforcement or realization proceedings pursuant to this Charge, the other Loan Documents and/or Applicable Laws, whether such sale or other proceeding proves

abortive or not, including taking, recovering or keeping possession of the Property or enforcing any other remedies pursuant to this Charge, the other Loan Documents and/or Applicable Laws will be payable by the Chargor to the Chargee forthwith upon demand. Until paid, such costs will be Costs, and together with interest thereon at the Interest Rate, will be added to the Loan Indebtedness and will be secured by the Loan Documents.

**Section 7.03 General Rights of Chargee.**

After the occurrence of 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 the 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 considers necessary, including any environmental testing, site assessment, investigation or study. 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 will be Costs and, together with interest thereon at the Interest Rate, will be added to the Loan Indebtedness and will be secured by the Loan Documents.

In the event of a default by Chargor in payment of any amount due under any Lien against the Property, the Chargee may, in its sole discretion, pay such amount and any such amount incurred by the Chargee will be payable by the Chargor to the Chargee forthwith upon demand. Until paid, any amount so incurred by the Chargee will be Costs, and together with interest thereon at the Interest Rate, will be added to the Loan Indebtedness and will be secured by the Loan Documents, and in which event, the Chargee may, at its option, be subrogated to all the rights of and stand in the position of and be entitled to all the equities of the party so paid whether or not such Lien has or has not been discharged. The decision of the Chargee as to the validity or amount of any amount so paid will be final and binding on the Chargor.

**Section 7.04 Possession.**

Upon the occurrence of an Event of Default, the Chargee may enter into and take possession of the Property, as and when it may determine in its sole discretion, and each of the Chargee and each purchaser or lessee from the Chargee of the Property or any part thereof 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 Borrower Entity or 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 (provided the Chargee has no obligation to perform, undertake or continue (if commenced) any of the foregoing actions) for such term (which may extend beyond the Maturity Date) and such rents and on such other terms and conditions (including providing any leasehold improvements and tenant inducements) as the Chargee may determine in its sole discretion, which lease(s) will have the same effect as if made by the Chargor, and the Chargee will have the power to amend, accept surrenders of or terminate any lease, in each case on such terms and conditions as it may determine in its sole discretion and all costs, charges and expenses incurred by the Chargee in the exercise of such rights (including allowances for the time, service, work or effort of the Chargee or any other Lender Entity in connection therewith, and all legal fees and disbursements incurred on a full indemnity or equivalent basis), will be payable by the Chargor to the Chargee forthwith on demand. Until paid, all such costs, charges and expenses will be Costs and, together with interest thereon at the Interest Rate, will be added to the Loan Indebtedness and will be secured by the Loan Documents. Each lease or renewal of lease made by the Chargee while in possession of the Property will continue for its full term notwithstanding the termination of the Chargee's possession and will be subject to the security of the Loan Documents at all times. The Chargor covenants and agrees that no Lender Entity will be liable for any loss or damage sustained by any Borrower Entity 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, receiver and manager, administrator or other Person with similar powers in managing the Property, and that no Lender Entity will be obligated to perform or discharge any obligation or liability of the Chargor to any other Borrower Entity or Person under any Lease, Loan Document or otherwise under Applicable Laws.

**Section 7.05 Carry on Business.**

Upon the occurrence of an 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 each Borrower Entity relating to the Property and enter on, occupy and use the Property (without charge by any Borrower Entity) in each case as and when the Chargee may determine in its sole discretion.

**Section 7.06 Borrow on the Security of the Property.**

Upon the occurrence of an Event of Default, the Chargee may raise money on the security of the Property or any part thereof in priority to the security of the Loan Documents or otherwise, as 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 each Borrower Entity relating to the Property, and in each case on such terms and conditions as the Chargee may determine in its sole discretion.

**Section 7.07 Receiver.**

Upon the occurrence of an 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, a receiver and manager, administrator or other Person with similar powers) 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 will be deemed to be acting for the Chargor (provided that no such appointment will be revocable by any Borrower Entity). 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 will 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, including the full right and power to enter, lease and sell the Property; (b) such Receiver, so far as concerns the responsibility for his acts or omissions, will 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 will 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 will 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) without creating any liability on the part of the Chargee, 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 will 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 will have the power to amend, 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 (unless the Chargee specifically appoints such Receiver as agent for the Chargee), such Receiver will act as the attorney or agent of the Chargor and will 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 each such Borrower Entity, 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 of the Loan; (i) such Receiver will 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 will be liable to any Borrower Entity 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 will 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, leasing, maintenance, 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 Loan Documents, to be applied in such order as the Chargee determines in its sole discretion, 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 irrevocably 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 will be liable for any loss sustained by the Chargor or any other Borrower Entity or Person resulting from any such action or failure to act.

#### **Section 7.08 Power of Attorney.**

The Chargor hereby grants to each of the Chargee and to any Receiver, with full power of substitution, an irrevocable power of attorney coupled with an interest for the following purposes and which may be exercised at any time or times following the occurrence of an Event of Default: (i) to make any of the leases referred to in Section 7.04 and to assign any existing Lease or sell the unexpired term, (ii) to obtain, collect and receive any insurance proceeds or expropriation proceeds however arising with respect to the Property, to compromise or settle any claims relating to such proceeds, 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 to collect, enforce and realize on or under the Loan, this Charge and/or the other Loan Documents and the security thereof 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 title to all or any of the Property to any purchaser thereof and to complete all other matters pertaining thereto. The Chargor hereby ratifies all actions of the Chargee and any Receiver pursuant to each such power of attorney and confirms that no Lender Entity shall be liable for any loss sustained by any Borrower Entity or any other Person resulting from any such action or any failure to act.

#### **Section 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.

#### **Section 7.10 Judgments.**

Neither the granting of this Charge or any other Loan Document, nor any proceeding or judgment taken or obtained against any Borrower Entity or any other Person for breach of its obligations contained in or secured by this Charge or any other Loan Document will merge or extinguish any such obligations, affect the Chargee's rights to receive interest on the Loan Indebtedness at the Interest Rate or suspend, impair or otherwise affect in any way any of the rights, remedies or powers of the Chargee under any of the Loan Documents or otherwise under Applicable Laws. Any such judgment may provide that interest thereon will be computed at the Interest Rate until such judgment is fully paid and satisfied.

#### **Section 7.11 Remedies Cumulative.**

The rights and remedies of the Chargee under this Charge and each of the other the Loan Documents are cumulative and are in addition to and not in substitution for any rights or remedies otherwise provided under any of the other Loan Documents or Applicable Laws. No right or remedy of the Chargee will 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 in such order and at such times as the Chargee may see fit, and Chargee will not be obligated to exhaust any right or remedy before exercising any of its other rights and remedies pursuant to the Loan Document or under Applicable Laws. 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 or under Applicable Laws will not waive, alter, affect or prejudice any other right or remedy to which the Chargee may be lawfully entitled for such default or breach.

**Section 7.12 Extension of Time and Waiver.**

Neither any extension of time given by the Chargee to the Chargor or any other Borrower Entity or Person claiming through the Chargor or any other Borrower Entity, nor any amendment to any Loan Document or any Subordinate Mortgage Loan Document or other dealing by the Chargee with a subsequent owner of the Property or any other Person 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, any Loan Document or Applicable Laws 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.

**Section 7.13 Discharge of Charge and Release.**

Interest at the Interest Rate will continue to run and accrue on all Loan Indebtedness until full payment of such Loan Indebtedness has been received by the Chargee. The Chargee will have a reasonable period of time after full payment and satisfaction of the Loan Indebtedness to execute and deliver to the Chargor a discharge of this Charge from the Property. All reasonable legal and other expenses for the preparation, execution, delivery and registration of the discharge will be paid by the Chargor upon demand (unless prohibited by Applicable Laws). The Chargor will 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 any Borrower Entity 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 and neither the Chargor nor any other Person will have any right to require that the Loan Indebtedness be apportioned with respect thereto. 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. No such release or other action will constitute, evidence or result in prepayment, repayment, readvance, accord and satisfaction, novation, nor, except as expressly provided in such release or discharge, a release or discharge of all or any part of the Loan Indebtedness, the Loan Documents or the security thereof, or a release of any of the other covenants, obligations or liabilities of any Borrower Entity in respect of the Loan. No such release or other action will be binding on the Chargee unless it is made in writing and executed and delivered by the Chargee.

## ARTICLE 8 - INDEMNITY

**Section 8.01 General Indemnity.**

Without limiting any other provision of any Loan Document, the Chargor hereby agrees to indemnify and pay, protect, defend and save harmless each Lender Entity from and against all actions, proceedings, claims, demands, judgments, losses, damages, liabilities, costs or expenses (including legal fees and disbursements on a full indemnity or equivalent basis and, if the Loan has been securitized, including any recovery fee, workout fee and special servicing fees that become payable to the Loan servicer following an Event of Default), imposed upon, made against or incurred by such Lender Entity directly or indirectly arising from or relating to any of the following (collectively, "Claims") (i) any default under or breach of any of the Loan Documents by any Borrower Entity or other Person, 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. Until paid, all such amounts payable to any Lender Entity hereunder will be Costs and, together with interest thereon at the Interest Rate, will be added to the Loan Indebtedness and will be secured by the Loan Documents.

## ARTICLE 9 - INTENTIONALLY DELETED

## ARTICLE 10 - MISCELLANEOUS

### Section 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 Applicable Laws, 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 Section 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 Section 10.01(1), any demand, notice or communication to be made or given to the Chargor in connection with this Charge or any of the other 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 Chargor at 209 Lexington Rd, Unit F2, Waterloo, Ontario, N2K 2E1, Fax No. 519-772-1034, Attention: The President, or to such other address or facsimile number as the Chargor may designate by written notice given to the Chargee. 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.

### Section 10.02 Severability.

If any term, covenant, obligation or agreement contained in this Charge, or the application thereof to any Person or circumstance, will 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 will be separately valid and enforceable to the fullest extent permitted by Applicable Laws.

### Section 10.03 Governing Law.

This Charge is governed by and will be construed in accordance with 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. 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 to the contrary, all actions and proceedings arising out of or relating to the Loan and the Loan Documents will be litigated in such courts and the Chargor unconditionally accepts the non-exclusive jurisdiction of the said courts and irrevocably waives any defense of *forum non-conveniens*, and irrevocably agrees to be bound by any judgment rendered thereby in connection with the Loan and the Loan Documents, provided nothing herein shall affect the right to serve process in any other manner permitted by Applicable Laws or shall limit the right of the Chargee to bring any action or proceeding in connection with the Loan or any Loan Documents against the Chargor or any other Borrower Entity in the courts of any other jurisdiction.

### Section 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.

### Section 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.

### Section 10.06 No Obligation to Advance.

Neither the preparation, execution nor registration of any Loan Document 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.

### Section 10.07 Consent to Disclosure.

The Chargor acknowledges and agrees that the Loan may be sold or syndicated without restriction and without the consent of the Chargor or any other Borrower Entity, but with notice to the Chargor. 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, Tenants 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 existing or proposed Lender Entity; (ii) to any subsequent or proposed purchaser of or investor in the Loan or any interest therein; (iii) INTENTIONALLY DELETED; (v) to any Governmental Authority having jurisdiction over such sale or syndication of the Loan; (vi) to any other Person in connection with the sale

or syndication 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; and (vii) to any third party advisors and agents of any of the foregoing Persons, such as lawyers, accountants, consultants, appraisers, credit verification sources and service providers. The Chargor irrevocably consents to the collection, obtaining, release, disclosure, exchange, sharing, transfer and assignment of all such information and materials.

The Chargor acknowledges that certain Lender Entities may collect or come into possession of personal information relating to certain individuals either comprising or otherwise related to any Borrower Entity, including their respective directors, officers, shareholders, partners and principals. The Chargor acknowledges and agrees that such personal information may be used by Lender Entities in connection with the processing, approving, funding, servicing and administering the Loan and any sale or syndication of the Loan, and in so doing each Lender Entity may disclose and otherwise deal with personal information in the same manner and to the same Persons as provided in the preceding paragraph of this Section without restriction and without notice to or the consent of any Borrower Entity or any related individual. The Chargor, for itself and on behalf of its directors, officers, shareholders, partners and principals, hereby consents to and authorizes such use and disclosure of all such personal information by each Lender Entity and represents and warrants that it has full power and authority to give such consent and authorization.

#### Section 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.

#### Section 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.

#### Section 10.10 Extension, Renewal or Amendment of Charge.

This Charge, the Loan, or any terms hereof or thereof, may from time to time be extended, renewed or amended by one or more written agreements between the Chargee and the Chargor, or with any successor or successors in title to the Chargor, with or without any changes in the applicable interest rate, amortization period, principal amount, payment amount, maturity date or other financial terms. Whether or not there are any other Liens registered on title to the Property after this Charge at the time any such written agreement is entered into (each such Lien, a "Subsequent Encumbrance"), it will not be necessary for the Chargee to register the written agreement on title to the Property in order for such agreement to be legally binding upon the Chargor (and any other Borrower Entity which is a party thereto) or to retain priority for this Charge, as extended, renewed or amended, as a first priority Lien of the Property over such Subsequent Encumbrance(s). The Chargor, forthwith upon request therefor by the Chargee and at the Chargor's sole cost and expense, will obtain all such postponements and/or discharges of each Subsequent Encumbrance and such other assurances from the holder thereof as may be required by the Chargor in its sole discretion to ensure the priority of this Charge as a first priority Lien of the Property and full compliance by the Chargor and each other Borrower Entity with the provisions of this Charge and the other Loan Documents. The Chargor acknowledges that the provisions of this Section do not confer upon the Chargor or any other Borrower Entity or Person any right of extension, renewal or amendment, or any right to grant a Subsequent Encumbrance contrary to the other provisions of this Charge and the other Loan Documents. The execution and delivery of any such agreement by the Chargor granting any such extension, renewal or amendment will be in its sole discretion. The Chargor, for itself and on behalf of each Borrower Entity, hereby irrevocably consents to any extension, renewal or amendment of this Charge and the other Loan Documents, whether or not made or agreed to by the Chargor, any unregistered or beneficial owner of the Property or any part thereof or any successor in title to any such Person, and hereby irrevocably agrees that no such extension, renewal or amendment shall release, discharge, impair or otherwise affect, or render unenforceable, any of the covenants, obligations or liabilities of any Borrower Entity (including each original Chargor and each original unregistered or beneficial owner of the Property or any part thereof named in the Loan Documents) under the Loan Documents, which covenants, obligations and liabilities are hereby confirmed and continue in full force and effect, as extended, renewed or amended, as the case may be.

#### Section 10.11 Assignment.

The Chargee and any Person having or acquiring any ownership interest in the Loan from time to time may sell, transfer and/or assign the Loan, the Loan Indebtedness, the Loan Documents or any interest therein at any time and to any Person as it may determine in its sole discretion without prior notice to or the consent of any Borrower Entity or any other Person. No Borrower Entity may assign any of its rights and obligations under or in respect of the Loan, the Loan Indebtedness or any of the Loan Documents.

### ARTICLE 11 - OTHER SECURITY

#### Section 11.01 General Assignment of Rents and Leases.

(1) **Assignment.** As general and continuing security for payment and performance to the Chargee of the Loan Indebtedness and the observance and performance by each of the Chargor and any unregistered or beneficial owner of the Property of all of its other covenants and obligations under this Charge and the other Loan

Documents (the Loan Indebtedness, together with such covenants and obligations, are collectively called the "Obligations"), the Chargor hereby assigns, transfers, grants and sets over to the Chargee, as and by way of a fixed and specific first priority 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 therefrom 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 and any other Borrower Entity to the Chargee to secure the payment and performance of the Obligations or any part thereof.

(2) **Continuing Security.** This assignment and security interest is given as general and continuing security for the payment and performance to the Chargee of the Obligations and not in substitution for or in satisfaction therefor. There is no agreement between the parties hereto, express or implied, to postpone the attachment of this assignment and security interest created hereby. The terms and conditions of this assignment and security interest in the Rents and Leases will remain binding and effective on the parties hereto and will not merge in or be extinguished by any other Loan Document or any judgment taken against the Chargor or any other Borrower Entity or Person for breach of its obligations under this Charge or any other Loan Document.

(3) **Representations.** The Chargor represents and warrants to the Chargee as follows: (i) the Chargor has good right, full power and absolute authority to assign the Rents and Leases to the Chargee as a first priority assignment and security interest therein (subject only to Permitted Encumbrances), and has granted no prior assignment, transfer or Lien in, or on or of any of the Rents or Leases that remains outstanding from and after the date hereof; (ii) the Leases are in full force and effect and are valid and binding obligations of each of the Tenants thereunder; (iii) INTENTIONALLY DELETED; (iv) except as expressly disclosed to the Chargee in writing prior to the initial Loan advance, no Rents have been prepaid under any Lease (except for security deposits and first and last months' rent paid in accordance with the provisions of the applicable Lease), discounted, released, waived, compromised or otherwise discharged; (v) to the best of the Chargor's knowledge after having made reasonable inquiry, there is no default by any Person now existing under any of the Leases, nor circumstances existing which, with the giving of notice or lapse of time or both, would constitute any such default; (vi) except as expressly disclosed to the Lender in writing prior to the initial Loan advance, each Commercial Lease requires the related Tenant to attorn and become bound to the Chargee as tenant of its premises upon the Chargee's request from time to time for the unexpired residue of the term of such Commercial Lease and on the terms and conditions of such Commercial Lease; (vii) no notice, order or claim has been given or received by or on behalf of the Chargor or any other Borrower Entity alleging or relating to any default, circumstance or other dispute under any Lease or claiming any rebate, reduction, refund, set-off or other impairment of any of the Rents or relating to any dispute under a Lease; and (viii) all Rents previously and hereafter charged and collected in respect of each Lease have complied with and will comply with the Lease and all Applicable Laws. The Chargor will deliver to the Chargee, within ten (10) days after the Chargee's request from time to time, a true and complete copy of each Lease and a complete list of the Leases, as certified by the Chargor, setting out, in respect of each Lease, the demised premises, the name of the Tenant, the Rents payable and the date to which such Rents have been paid, the key terms of the Leases, the date of occupancy, the date of expiration, any rent concessions and other inducements granted to the Tenants, and any renewal options. The Chargor will promptly deliver to the Chargee any request, notice, order or claim of any kind given or received by any Borrower Entity from time to time in respect of any Material Commercial Lease and, with respect to any other Lease, any request, notice, order or claim given or received by any Borrower Entity relating to any matter or thing which has or could reasonably be expected to have or result in a Material Adverse Effect.

**Restrictions on Leases and Renewals.** Each new Lease or renewal or extension of an existing Lease (other than any extension or renewal of an existing Lease which is exercised pursuant to, and the terms of which are governed by, such existing Lease) (i) must be a commercially reasonable arm's-length transaction made in the ordinary course of business and in accordance with prudent property management and leasing standards and practices, (ii) must provide for rental rates and other terms and conditions consistent with prevailing market rates, terms and conditions, (iii) INTENTIONALLY DELETED, (iv) if it is a Commercial Lease, must provide that in the event enforcement proceedings are commenced by the Chargee following an Event of Default, the Tenant must attorn to the Chargee and become bound to it as tenant of its premises for the then unexpired residue of the term of such Commercial Lease and upon the terms and conditions contained in such Commercial Lease; (v) INTENTIONALLY DELETED; and (vi) must not contain termination rights in favour of the Tenant or any other Person (other than the landlord) except for landlord default. Unless otherwise agreed by the Chargee in writing, the Chargor will require the Tenant under each Commercial Lease to execute and deliver to the Chargee an agreement, in the Chargee's form, confirming the attornement referred to in Subsection (iv) concurrently with the execution and delivery of each new Commercial Lease and any renewal or extension of an existing Commercial Lease.

(4) **Chargee Right to Consent to Material Commercial Leases.** The Chargor must obtain the Chargee's prior written consent to enter into, renew or extend any Material Commercial Lease, which consent will not be unreasonably withheld or delayed by the Chargee, provided that such Material Commercial Lease, and any extension or renewal thereof, complies with all requirements of this Charge and the other Loan Documents governing new Leases and renewals and extensions of existing Leases and provided further that the Chargee will be entitled to a minimum of ten (10) Business Days following receipt of the Chargor's written request and all reasonably required supporting documentation to decide whether or not to give or withhold such consent. This provision does not apply to any renewal or extension of an existing Material Commercial Lease which is exercised pursuant to, and the terms of which are governed by, such existing Material Commercial Lease. Notwithstanding the foregoing, following the occurrence of an Event of Default, the Chargor must obtain the Chargee's prior written consent to enter into, renew or extend any Lease (including each Material Commercial Lease), which consent may be given or withheld by the Chargee in its sole discretion.

(5) **Covenants.** Neither the Chargor nor any other Borrower Entity will, without the prior written consent of the Chargee in its sole discretion: (i) accept or permit payment of the Rents or any part thereof under any Lease in advance (except for security deposits and first and last months' rent paid in accordance with the provisions of the applicable Lease); (ii) amend, modify, cancel or terminate any Lease in whole or in part, or accept the surrender of any Lease, or take or omit to take any action or exercise any right or option which would permit the Tenant under any Lease to cancel, terminate or surrender any Lease; (iii) discount, release, waive, compromise or otherwise discharge any Rents payable under any Lease or other obligations of any Tenant or other Person under any Lease, or (iv) assign, transfer or grant a Lien in, on or of all or any part of the Rents or Leases. Provided no Event of Default has occurred, the Chargee's consent for any action referred to in Subsections (ii) and (iii) is not required in respect of any Lease or a renewal or extension thereof (except any such action relating to any Material Commercial Lease or a renewal or extension thereof, which for greater certainty, will require the Chargee's prior written consent in its sole discretion), provided in each case such action is a commercially reasonable arm's length transaction in the ordinary course of business and in accordance with prudent property management and leasing standards and practices, and provided further that prompt written notice thereof is given to the Chargee.

(6) **Performance of Obligations.** The Chargor will observe and perform at all times all covenants and agreements contained in the Leases on the part of the landlord to be observed and performed and shall cause the Tenants under the Leases to observe and perform their respective covenants, obligations and undertakings thereunder. Neither the execution or delivery of this Charge or the other Loan Documents, nor the collection of the Rents nor the exercise of any right, remedy or other action or omission by the Chargee in respect of any of the Rents or Leases shall make any Lender Entity or any other Person for whom the Chargee is responsible under Applicable Laws (i) liable for the collection of any of the Rents or for the observance or performance of any of the covenants, terms, conditions or agreements contained in any of the Leases on the part of any party to be observed and performed, (ii) a mortgagee or chargee in possession, or (iii) liable for any action, proceeding, claim, demand, loss, damage, cost, expense of any nature and kind by the Chargor or any other Borrower Entity or Person.

(7) **Event of Default.** Prior to the occurrence of an Event of Default, the Chargor may demand, receive, collect and apply the Rents, but only as the same fall due and payable according to the terms of each of the Leases, provided that nothing herein shall release, discharge, postpone, amend or otherwise affect the present assignment and security interest granted to the Chargee in and to the Rents and Leases and the immediate attachment thereof and provided further that unless otherwise agreed by the Chargee in advance and in writing, any payment, consideration, compensation or other benefit of any kind which any Borrower Entity is or subsequently becomes entitled to receive relating to or otherwise arising from, directly or indirectly, the full or partial termination, cancellation, amendment, modification or release of any Lease or any Tenant in respect thereof shall be paid by the related Tenant (or related payor) or any Borrower Entity (forthwith upon receipt by it) to and held by the Chargee and may be applied by the Chargee, in its sole discretion, to reduction of the Loan Indebtedness when due or may be held by the Chargee as security for the Obligations without releasing or affecting any of the other obligations and liabilities of the Chargor or any other Borrower Entity under any of the Loan Documents. Upon the occurrence of an Event of Default and for so long as any Event of Default exists, the Chargee may immediately deliver a written notice to each Tenant directing it to pay all Rents to the Chargee and such notice shall be good and sufficient authority for so doing. Any payment of Rent to the Chargee after such notice is given to any Tenant shall not constitute a default by such Tenant under its Lease.

(8) **Rights of Chargee.** Upon the occurrence of an Event of Default and for so long as any Event of Default exists, the Chargee, its agents and employees, will have the right to enter the Property for the purpose of demanding, collecting, suing for, recovering, receiving or compromising the Rents, giving receipts therefor, enforcing the Leases and inspecting, protecting, operating and maintaining the Property and without being a chargee or mortgagee in possession. The Chargor hereby authorizes the Chargee to perform all such acts and do all things in connection with any of the foregoing matters or the exercise of any other rights and remedies in respect of the Rents and Leases available hereunder or under any other Loan Document or Applicable Laws, including making of payments to encumbrancers whether prior to, pari passu with or subsequent to this Charge, paying any costs and expenses in connection with such acts and things and any acts by way of enforcement of the covenants and exercising of the rights of the Chargor under or in respect of the Leases or otherwise, as, when and in such manner as the Chargee may determine in its sole discretion, which acts and things may be performed or done in the name of the Chargor or in the name of the Chargee, as the Chargee may determine in its sole discretion. Nothing herein shall require the Chargee to collect or recover any of the Rents or to take any action or exercise any remedy or serve any notice upon any Tenant under its Lease upon any default or breach by such Tenant thereunder. The Chargor hereby irrevocably appoints the Chargee as its attorney and agent coupled with an interest and with full power of substitution to exercise any of the rights, powers, authority and discretion granted to the Chargor under each Lease upon the occurrence and during the continuation of an Event of Default. The Chargee shall be liable to account for only such moneys as may actually come into its hands by virtue of this Section. Upon the occurrence of an Event of Default, but subject to the provisions of the other Loan Documents, the Chargee may, after payment of all costs and expenses incurred by or on behalf of the Chargee in exercising any of its rights and remedies hereunder, credit the remainder of the moneys which it may receive in connection with the Property to payment of any amount or amounts due to the Chargee on account of Loan Indebtedness and to payment of any reserves and the manner of the application of such remainder and the item or items to which it shall be credited from time to time by the Chargee shall be in the sole discretion of the Chargee and until such moneys have been so applied or credited same shall be subject to this assignment and all other security held by the Chargee for the Obligations.

(9) **Concurrent Remedies.** The Chargee may exercise all rights and remedies provided for in this Section, separately and independently of any other rights and remedies provided in any Loan Document and/or under Applicable Laws or concurrently with such other rights and remedies or in such combination or in such order and at such times as it may determine in its sole discretion and will not be required to exhaust any right or remedy before exercising any of its rights and remedies in respect thereof

**TAB F**

This is Exhibit "F" referred to in the Affidavit of Donald Dal Bianco  
sworn before me this 27<sup>th</sup> day of May, 2018.

*SLC/L*  
A Commissioner for Taking Oaths, Affidavits (or as may be) in  
Ontario

**Properties**

**PIN** 22291 - 0628 LT  
**Description** PT. BLOCK A PLAN 1313, BEING PTS. 1, 4, 5 ON 58R-6774 & PT. 3 ON 58R-2194. S/T  
 EASEMENT IN GROSS OVER PT. 1 ON 58R-17857, AS IN WR853469; CITY OF  
 WATERLOO  
**Address** 215 & 228 LEXINGTON ROAD  
 WATERLOO

**Source Instruments**

Registration No.	Date	Type of Instrument
WR888817	2015 06 26	Charge/Mortgage

**Party From(s)**

**Name** DAL BIANCO, DONALD  
**Address for Service** 87 Huron Street  
 Southampton, Ontario  
 L9Y 1C7

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

**Party To(s)****Capacity****Share**

<b>Name</b>	INSTITUTIONAL MORTGAGE CAPITAL CANADA INC.
<b>Address for Service</b>	TD Centre, TD North Tower 77 King Street West P. O. Box 117, Suite 4120 Toronto, Ontario M5K 1G8 ("The Uptown" - Primary Charge)

**Statements**

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number WR1030622 registered on 2017/05/09

Schedule: The Applicant also postpones the rights under Instrument Nos. WR888818 and WR1030186 to the rights under Instrument No. WR1030622

The rights postponed hereby include postponement to all future advances under instrument No. WR1030622

**Signed By**

Helena Clara	600-390 Bay Street Toronto M5H 2Y2	acting for Party From(s)	Signed 2017 05 09
Tel 416-868-1900			
Fax 416-868-1708			

I have the authority to sign and register the document on behalf of the Party From(s).

**Submitted By**

ROSE, PERSIKO, RAKOWSKY, MELVIN LLP	600-390 Bay Street Toronto M5H 2Y2	2017 05 09
Tel 416-868-1900		
Fax 416-868-1708		

**Fees/Taxes/Payment**

Statutory Registration Fee	\$63.35
Total Paid	\$63.35

LRO # 58 Postponement Of Interest

*The applicant(s) hereby applies to the Land Registrar.*

Registered as WR1030648 on 2017 05 09 at 15:54

yyyy mm dd Page 2 of 2

**File Number**

Party To Client File Number : 20170098 - UPTOWN POSTPM DAL BIANCO

# **TAB G**

This is Exhibit "G" referred to in the Affidavit of Donald Dal  
Bianco sworn before me this 24 day of May, 2018.

gjcwj

---

*A Commissioner for Taking Oaths, Affidavits (or as may be) in  
Ontario*

**Properties**

**PIN** 22291 - 0628 LT **Interest/Estate** Fee Simple  
**Description** PT. BLOCK A PLAN 1313, BEING PTS. 1, 4, 5 ON 58R-6774 & PT. 3 ON 58R-2194. S/T  
 EASEMENT IN GROSS OVER PT. 1 ON 58R-17857, AS IN WR853489; CITY OF  
 WATERLOO  
**Address** 229 LEXINGTON ROAD  
 WATERLOO

**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** DEEM MANAGEMENT SERVICES LIMITED  
**Address for Service** 121 Oak Park Drive, Waterloo, Ontario,  
 N2K 0B3

I, Robert Dal Bianco, have the authority to bind the corporation.

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

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

**Name** DAL BIANCO, DONALD  
**Address for Service** 87 Huron Street, Saugeen Shores, Ontario, N0H 2L0

**Statements**

Schedule: See Schedules

**Provisions**

<b>Principal</b>	\$7,878,753.45	<b>Currency</b>	CDN
<b>Calculation Period</b>	not in advance		
<b>Balance Due Date</b>	On Demand		
<b>Interest Rate</b>	5% compounded monthly, calculated daily		
<b>Payments</b>			
<b>Interest Adjustment Date</b>	2012 04 02		
<b>Payment Date</b>			
<b>First Payment Date</b>			
<b>Last Payment Date</b>			
<b>Standard Charge Terms</b>	200033		
<b>Insurance Amount</b>	Full insurable value		
<b>Guarantor</b>	Robert Dal Bianco		

**Additional Provisions**

The mortgages, charges and security interests granted hereby secures payment to the Charges of the principal amount of \$7,878,753.45 plus interest thereon as set out herein, calculated monthly, not in advance, both before and after maturity, default and judgment. Interest in the amount of \$689,461.20 has accrued on the outstanding principal amount secured by this Charge from April 1, 2012 to January 26, 2018 at the rate of 5% per annum, calculated monthly, not in advance, and is secured by this Charge. From and after January 26, 2018, interest shall accrue on the outstanding principal amount secured by this Charge at the Prime Rate plus 2% per annum, calculated monthly, not in advance, and shall be secured by this Charge. For the purposes hereof, the Prime Rate means the minimum or prime lending rate of interest per annum as disclosed by The Toronto-Dominion Bank from time to time and used by it as a reference rate of interest for Canadian dollar loans made by it in Canada and adjusted automatically upon any change by The Toronto-Dominion Bank. Interest shall be paid by the Chargor on demand at the same time that the Chargee makes demand on the Chargor for repayment of the outstanding principal amount secured by this Charge.

**Signed By**

Joanne Morin	31-3455 Harvester Road Burlington L7N 3P2	acting for Chargor(s)	Signed 2018 02 23
--------------	---	--------------------------	-------------------

Tel 905-632-7744

Fax 905-632-9076

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

CASS & BISHOP PROFESSIONAL CORPORATION 31-3455 Harvester Road  
Burlington  
L7N 3P2  
2018 02 23  
Tel 905-632-7744  
Fax 905-632-9076

**Fees/Taxes/Payment**

Statutory Registration Fee	\$63.65
Total Paid	\$63.65

**File Number**

Chargee Client File Number : 042913002

**TAB H**

This is Exhibit "H" referred to in the Affidavit of Donald Dal  
Bianco sworn before me this 21<sup>st</sup> day of May, 2018.

M. Wolf

---

*A Commissioner for Taking Oaths, Affidavits (or as may be) in  
Ontario*

## SECURITY AGREEMENT

### (GENERAL)

February 14, 2018.

#### 1. Secured Interest in Collateral

**ROBERT P. DAL BIANCO**, of the City of Waterloo, in the Province of Ontario (the "Debtor") for valuable consideration grants, assigns, transfers, sets over, mortgages and charges

to **Donald Dal Bianco**, a resident of the Province of Ontario (the "Secured Party"), as and by way of a fixed and specific mortgage and charge, and grants to the Secured Party a security interest in the present and future undertaking, property and assets of the Debtor including without limitation the following property (the "Collateral"):

- (a) all goods now or hereafter comprising part of the inventory of the Debtor including but not limited to goods now or hereafter held for sale or lease or furnished or to be furnished under a contract of service or that are raw materials, work in process or materials used or consumed in a business or profession or finished goods;
- (b) all goods now or hereafter used or intended to be used in any business of the debtor (and which are not inventory including but not limited to fixtures, equipment, machinery, vehicles and other tangible personal property, whether described in Schedule "A" hereto or not;
- (c) all debts, demands and choices in action which are now due owing or accruing due to the Debtor, and all claims of any kind which the Debtor now has or may hereafter have including but not limited to claims against the Crown and claims under insurance policies;
- (d) all chattel paper now or hereafter owned by the Debtor;
- (e) all warehouse receipts, bills of lading and other documents of title, whether negotiable or non-negotiable, now or hereafter owned by the Debtor;
- (f) with respect to the personal property described in subparagraphs (c), (d), and (e), all books, accounts, invoices, letters, papers, documents and other records in any form evidencing or relating thereto and all contracts, securities, instruments and other rights and benefits in respect thereof;
- (g) all shares, stock, warrants, bonds, debentures, debenture stock or other securities now or hereafter owned by the Debtor;
- (h) all goodwill, stock, warrants, bonds, debentures, debenture stock or other securities now or hereafter owned by the Debtor;

- (i) with respect to the personal property described in subparagraphs (a) to (h) inclusive, all substitutions and replacements thereof, increases, additions and accessions thereto and any interest of the Debtor therein;
- (j) with respect to the personal property described in subparagraphs (a) to (i) inclusive, personal property in any form or fixtures derived directly or indirectly from any dealing with such property or that indemnifies or compensates for such property destroyed or damaged;
- (k) all of the right, title and interest of the Debtor in any real property including, without limitation, all of the right, title and interest of the Debtor in the real property listed in Schedule "B" attached hereto.

In this paragraph, the words "goods", "inventory", "equipment", "chattel paper", "document of title", "instrument", "securities", "intangible" and "accessions" shall have the same meanings as their defined meanings in the Personal Property Security Act of Ontario including all amendments thereto (the "PPSA"). In this Agreement, any reference to "Collateral" shall, unless the context otherwise requires, refer to "Collateral or any part thereof". In this Agreement, "Collateral" shall include the proceeds thereof.

## 2. Obligations Secured

The fixed and specific mortgages, charges and security interest granted hereby secures payment to the Secured Party of the aggregate of all of the indebtedness, obligations and liabilities of the Debtor to the Secured Party, whether incurred prior to, at the time of, or subsequent to the execution hereof, including extensions and renewals, and including, without limitation, all advances and shareholder loans made by the Secured Party to the Debtor; letters of credit and letters of guarantee issued by the Secured Party on behalf of the Debtor, whether or not drawn upon; bankers' acceptances of the Debtor which have been accepted by the Secured Party; obligations and liabilities of the Debtor to third parties financed or guaranteed by the Secured Party; all interest payable by the Debtor to the Secured Party; all obligations and liabilities of the Debtor under any present or future guarantee by the Debtor of the payment or performance or both of the debts, obligations and liabilities of a third party to the Secured Party; and all of the debts, obligations and liabilities of the Debtor to the Secured Party under any agreement with the Secured Party including, without limitation, all of the indebtedness, obligations and liabilities of the Debtor to the Secured Party under a guarantee by the Debtor to and in favour of the Secured Party of all of the obligations of Deem Management Services Limited to the Secured Party under a Loan Agreement between the Debtor and the Secured Party dated of even date herewith with effect as of April 1, 2012 and other security documents as amended from time to time (all of the foregoing being collectively referred to herein as the "Obligations").

## 3. Representations and Warranties

The Debtor represents and warrants as follows:

- (a) the Debtor is, or is to become, the beneficial owner of the Collateral;

- (b) the Debtor has, or will have when the Collateral is acquired, the right to create mortgages and charges of, and grant a security interest in, the Collateral in favour of the Secured Party; and
- (c) this Agreement has been duly and properly authorized by all necessary action and constitutes a legal, valid and binding obligation of the Debtor.

#### 4. Covenants

The Debtor hereby agrees that:

- (a) Maintain, Use, etc. - the Debtor shall diligently maintain, use and operate the Collateral and shall carry on and conduct its business in a proper and efficient manner so as to preserve and protect the Collateral and the earnings, incomes, rents, issues and profits thereof;
- (b) Insurance - the Debtor shall cause all of the Collateral which is of a character usually insured by businesses operating Collateral of a similar nature to be properly insured and kept insured with reputable insurers against loss or damage by fire or other hazards of the nature of and to the extent that such Collateral is usually insured by businesses operating or using Collateral of a similar nature in the same or similar localities and shall maintain such insurance with loss if any payable to the Secured Party and shall deliver to the Secured Party evidence of such insurance satisfactory to the Secured Party;
- (c) Rent, Taxes, Etc. - the Debtor shall pay all rents, taxes, rates, levies, assessments and government fees or dues lawfully levied, assessed or imposed in respect of the Collateral or any part thereof as and when the same shall become due and payable, and shall exhibit to the Secured Party, when required, the receipts and vouchers establishing such payments;
- (d) Observe Law - the Debtor shall duly observe and conform to all valid requirements of any governmental authority relative to any of the Collateral and all covenants, terms and conditions upon or under which the Collateral is held;
- (e) Books, Records - the Debtor shall keep proper books of accounts in accordance with sound accounting practice and if in default the Debtor shall furnish to the Secured Party such financial information and statements relating to its business and the Collateral as the Secured Party may from time to time require and the Debtor if in default shall permit the Secured Party or its authorized agent at any time at the expense of the Debtor to examine the Collateral and to examine the books of accounts and other financial records and reports of the Debtor including but not limited to books of accounts and other financial records and reports relating to the Collateral and to make copies thereof and take extracts therefrom;
- (f) Information - the Debtor shall furnish to the Secured Party such information with respect to the Collateral and the insurance thereon as the Secured Party may from time to time require and the Debtor shall give written notice to the Secured Party

of all litigation before any court, administrative board or other tribunal affecting the Debtor or the Collateral;

- (g) Other Encumbrances - the Debtor shall not, after the date hereof, without the prior consent in writing of the Secured Party, create any security interest, mortgage, hypothec, charge, lien or other encumbrance upon the Collateral or any part thereof;
- (h) Defend Title - the Debtor shall defend the title to the Collateral against all persons and shall, upon demand by the Secured Party furnish further assurance of title and further security for the Obligations and execute any written instruments or do any other acts necessary, to make effective the purposes and provisions of this Agreement; and
- (i) Change of Name - the Debtor shall not change its name or sell, exchange, assign or lease or otherwise dispose of the Collateral or any interest therein without the prior written consent of the Secured Party except that until an event of default as described in paragraph 6 occurs, the Debtor may sell or lease inventory in the ordinary course of its business.

#### 5. Immediate Possession

Upon failure by the Debtor to perform any of the agreements described in paragraph 4 hereof, the Secured Party is authorized and has the option to take possession of the Collateral and, whether it has taken possession or not, to perform any of the agreements in any manner deemed proper by the Secured Party, without waiving any rights to enforce this Agreement. The reasonable expenses (including the cost of any insurance and payment of taxes or other charges and reasonable solicitors' costs and legal expenses) incurred by the Secured Party in respect of the custody, preservation, use or operation of the Collateral shall be deemed advanced to the Debtor by the Secured Party, shall bear interest at the rate of 20% per annum, and shall be secured by this Agreement.

#### 6. Events of Default

At the option of the Secured Party, the Obligations shall immediately become due and payable in full upon the happening of any of the following events:

- (a) if the Debtor shall fail to pay or perform when due any of the Obligations or any amount due and owing on any debt secured by its assets;
- (b) if the Debtor shall fail to perform any provisions of this Agreement or of any other agreement to which the Debtor and the Secured Party are parties and such failure to perform persists beyond the expiry of any applicable cure periods;
- (c) if any of the representations and warranties herein is or becomes incorrect in any material respect at any time;

- (d) if the Debtor or any guarantor of any of the Obligations ceases or threatens to cease to carry on its business, commits an act of bankruptcy, becomes insolvent, makes an assignment or bulk sale of its assets, or proposes a compromise or arrangement to its creditors;
- (e) if any proceeding is taken with respect to a compromise or arrangement, or to have the Debtor or any guarantor of any of the Obligations declared bankrupt or would wind up, or to have a receiver appointed in respect of the Debtor or of any guarantor of any of the Obligations or of any part of the Collateral or if any encumbrancer takes possession of any part thereof;
- (f) if any execution, sequestration or extent or any other process of any court becomes enforceable against the debtor or any guarantor of any of the Obligations or if any distress or analogous process is levied upon the Collateral or any part thereof;
- (g) if the Secured Party in good faith believes that the prospect of payment or performance of any of the obligations is impaired;
- (h) there is default by Deem Management Services Limited under its Loan Agreement with the Secured Party; or
- (i) demand is made by the Secured Party under the terms of the Loan Agreement between Deem Management Services Limited and the Secured Party.

## 7. Remedies

If pursuant to paragraph 6 hereof, the Secured Party declares that the Obligations shall immediately become due and payable in full, the Debtor and the Secured Party shall have, in addition to any other rights and remedies provided by law, the rights and remedies of a Debtor and a Secured Party respectively under the PPSA and those provided by this Agreement. The Secured Party may take immediate possession of the Collateral and enforce any rights of the Debtor in respect of the Collateral by any manner permitted by law and may require the Debtor to assemble and deliver the Collateral or make the Collateral available to the Secured Party at a reasonably convenient place designated by the Secured Party. The Secured Party may take proceedings in any court of competent jurisdiction for the appointment of a receiver (which term shall include a receiver and manager) of the Collateral or of any part thereof or may by instrument in writing appoint any person to be a receiver of the Collateral or of any part thereof and may remove any receiver so appointed by the Secured Party and appoint another in his stead; and any such receiver appointed by instrument in writing shall have power (a) to take possession of the Collateral or any part thereof, (b) to carry on the business of the Debtor, (c) to borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or for the carrying on of the business of the Debtor on the security of the Collateral in priority to the mortgage and charge and security interest created under this Agreement, and (d) to sell, lease or otherwise dispose of the whole or any part of the Collateral at public auction, by public tender or by private sale, either for cash or upon credit, at such time and upon such terms and conditions as the receiver may determine; provided that any such receiver shall be deemed

the agent of the Debtor and the Secured Party shall not be in any way responsible for any misconduct or negligence of any such receiver.

Further, if pursuant to paragraph 6 hereof, the Secured Party declares that the Obligations shall immediately become due and payable in full, the Secured Party has the right to register notice of this Agreement on title to the properties listed in Schedule "A".

8. Expenses

Any proceeds of any disposition of any of the Collateral may be applied by the Secured Party to the payment of expenses incurred in connection with the retaking, holding, repairing, processing, preparing for disposition and disposing of the Collateral (including reasonable solicitors' fees and legal expenses and any other reasonable expenses), and any balance of such proceeds may be applied by the Secured Party towards the payment of the Obligations in such order of application as the Secured Party may from time to time effect. All such expenses and all amounts borrowed on the security of the Collateral under paragraph 7 hereof shall bear interest at the prime commercial lending rate of The Toronto-Dominion Bank plus 2% per annum and shall be Obligations under this Agreement. If the disposition of the Collateral fails to satisfy the Obligations and the expenses incurred by the Secured Party, the Debtor shall be liable to pay for any deficiency on demand.

9 Miscellaneous

The Debtor further agrees that:

- a. the Debtor shall not be discharged by any extension of time, additional advances, renewals and extensions, the taking of further security, releasing security, extinguishment of the security interest as to all or any part of the Collateral, or any other act except a release or discharge of the security interest upon the payment in full of the Obligations including charges, expenses, fees, costs and interest;
- b. any failure by the Secured Party to exercise any right set out in this Agreement shall not constitute a waiver thereof; nothing in this Agreement or in the Obligations shall preclude any other remedy by action or otherwise for the enforcement of this Agreement or the payment in full of the Obligations secured by this Agreement;
- c. all rights of the Secured Party hereunder shall be assignable and in any action brought by an assignee to enforce such rights, the Debtor shall not assert against the assignee any claim or defence which the Debtor now has or may hereafter have against the Secured Party;
- d. all rights of the Secured Party hereunder shall enure to the benefit of its successors and assigns and all obligations of the Debtor hereunder shall bind the Debtor, his heirs, executors, administrators, successors and assigns;

- e. if more than one person executes this Agreement as Debtor, their obligations under this Agreement shall be joint and several;
- f. this Agreement shall be governed in all respects by the laws of the Province of Ontario;
- g. the Debtor hereby acknowledges receipt of a copy of this Agreement;
- h. the Agreement shall become effective when it is signed by the Debtor;
- i. the Debtor acknowledges receiving an executed copy of this Agreement; and
- j. All or any part of the principal sum may be repaid at any time or times without notice or bonus.

IN WITNESS WHEREOF THE PARTIES HAVE HERETO AFFIXED THEIR HANDS AND  
SEALS.

SIGNED, SEALED AND DELIVERED )

in the presence of:

essence of.

160 RDB -

---

Robert Dal Bianco

---

D. L. Dal Bianco

---

Donald Dal Bianco (Secured Party)

SCHEDULE "A"

**Firstly (121 Oak Park Drive, Waterloo, Ontario):**

Lot 168, Plan 58M506,  
Together with an undivided common interest in  
Waterloo Common Elements Condominium Corporation No. 537,  
Subject to an easement in gross as in Instrument No. WR574133,  
Subject to an easement in gross as in Instrument No. WR574226,  
Subject to an easement in gross as in Instrument No. WR668896,  
Subject to an easement over Parts 19 and 20, Plan 58R17508  
in favour of Lots 169 and 170, Plan 58M-506 as in Instrument No. WR712233,  
City of Waterloo,  
being all of PIN 22709-0595(LT).

**Secondly (Suite S1009, 120 Bayview Avenue, Toronto):**

Unit 30, Level 10, Unit 80, Level B, and Unit 223, Level B,  
Toronto Standard Condominium Plan No. 2548, and its appurtenant interest  
Subject to and together with easements as set out in Schedule A as in Instrument No. AT4384021,  
City of Toronto,  
being all of PINs 76548-0401(LT), 76548-0935(LT) and 76548-1078(LT).

**Thirdly (Bell Island):**

PCL 16415, Section NIP,  
Summer Resort Location HS2018 Strathcona,  
being Part of Island 25 in Lake Timagami in the Timagami Provincial Forest,  
as in Instrument No. NP8714,  
Municipality of Temagami,  
District of Nipissing,  
being all of PIN 49012-0056(LT).

**Fourthly (Canton Island):**

PCL 20395, Section NIP,  
Summer Resort Location Island 1256 in Lake Timagami Canton,  
Municipality of Temagami,  
District of Nipissing,  
being all of PIN 49000-0005(LT).

**Fifthly:**

SRO Part of the Townships of Strathcona and Strathy,  
being Part 30 on Plan 36R-13206,  
Together with an easement over Parts 23, 25 and 28 on Plan 36R-13206 as in LT327554,  
Together with an easement over Parts 1 to 21 on Plan 36R-13206 as in BS98670,  
Together with an easement over Parts 22 to 29 on Plan 36R-13206 as in BS102576,  
Together with an easement over Part 3 on Plan 36R-9321 as in LT327554,  
Municipality of Temagami,  
being all of PIN 49012-0245(LT).

## SECURITY AGREEMENT

### (GENERAL)

February 1<sup>st</sup>, 2018.

#### 1. Secured Interest in Collateral

**The Uptown Inc.**, a corporation incorporated under the laws of the Province of Ontario (the "Debtor") for valuable consideration grants, assigns, transfers, sets over, mortgages and charges

to **Donald Dal Bianco**, a resident of the Province of Ontario (the "Secured Party"), as and by way of a fixed and specific mortgage and charge, and grants to the Secured Party a security interest in the present and future undertaking, property and assets of the Debtor including without limitation the following property (the "Collateral"):

- (a) all goods now or hereafter comprising part of the inventory of the Debtor including but not limited to goods now or hereafter held for sale or lease or furnished or to be furnished under a contract of service or that are raw materials, work in process or materials used or consumed in a business or profession or finished goods;
- (b) all goods now or hereafter used or intended to be used in any business of the debtor (and which are not inventory including but not limited to fixtures, equipment, machinery, vehicles and other tangible personal property, whether described in Schedule "A" hereto or not);
- (c) all debts, demands and choices in action which are now due owing or accruing due to the Debtor, and all claims of any kind which the Debtor now has or may hereafter have including but not limited to claims against the Crown and claims under insurance policies;
- (d) all chattel paper now or hereafter owned by the Debtor;
- (e) all warehouse receipts, bills of lading and other documents of title, whether negotiable or non-negotiable, now or hereafter owned by the Debtor;
- (f) with respect to the personal property described in subparagraphs (c), (d), and (e), all books, accounts, invoices, letters, papers, documents and other records in any form evidencing or relating thereto and all contracts, securities, instruments and other rights and benefits in respect thereof;
- (g) all shares, stock, warrants, bonds, debentures, debenture stock or other securities now or hereafter owned by the Debtor;
- (h) all goodwill, stock, warrants, bonds, debentures, debenture stock or other securities now or hereafter owned by the Debtor;

- (i) with respect to the personal property described in subparagraphs (a) to (h) inclusive, all substitutions and replacements thereof, increases, additions and accessions thereto and any interest of the Debtor therein; and
- (j) with respect to the personal property described in subparagraphs (a) to (i) inclusive, personal property in any form or fixtures derived directly or indirectly from any dealing with such property or that indemnifies or compensates for such property destroyed or damaged.

In this paragraph, the words "goods", "inventory", "equipment", "chattel paper", "document of title", "instrument", "securities", "intangible" and "accessions" shall have the same meanings as their defined meanings in the Personal Property Security Act of Ontario including all amendments thereto (the "PPSA"). In this Agreement, any reference to "Collateral" shall, unless the context otherwise requires, refer to "Collateral or any part thereof". In this Agreement, "Collateral" shall include the proceeds thereof.

## 2. Obligations Secured

The fixed and specific mortgages, charges and security interest granted hereby secures payment to the Secured Party of the aggregate of all of the indebtedness, obligations and liabilities of the Debtor to the Secured Party, whether incurred prior to, at the time of, or subsequent to the execution hereof, including extensions and renewals, and including, without limitation, all advances and shareholder loans made by the Secured Party to the Debtor; letters of credit and letters of guarantee issued by the Secured Party on behalf of the Debtor, whether or not drawn upon; bankers' acceptances of the Debtor which have been accepted by the Secured Party; obligations and liabilities of the Debtor to third parties financed or guaranteed by the Secured Party; all interest payable by the Debtor to the Secured Party; all obligations and liabilities of the Debtor under any present or future guarantee by the Debtor of the payment or performance or both of the debts, obligations and liabilities of a third party to the Secured Party; and all of the debts, obligations and liabilities of the Debtor to the Secured Party under any agreement with the Secured Party including, without limitation, all of the indebtedness, obligations and liabilities of the Debtor to the Secured Party under a guarantee by the Debtor to and in favour of the Secured Party of all of the obligations of Deem Management Services Limited to the Secured Party under a Loan Agreement between the Debtor and the Secured Party dated of even date herewith with effect as of April 1, 2012 and other security documents as amended from time to time (all of the foregoing being collectively referred to herein as the "Obligations").

## 3. Representations and Warranties

The Debtor represents and warrants as follows:

- (a) the Debtor is, or is to become, the beneficial owner of the Collateral;
- (b) the Debtor has, or will have when the Collateral is acquired, the right to create mortgages and charges of, and grant a security interest in, the Collateral in favour of the Secured Party; and

(c) this Agreement has been duly and properly authorized by all necessary action and constitutes a legal, valid and binding obligation of the Debtor.

4. Covenants

The Debtor hereby agrees that:

- (a) Maintain, Use, etc. - the Debtor shall diligently maintain, use and operate the Collateral and shall carry on and conduct its business in a proper and efficient manner so as to preserve and protect the Collateral and the earnings, incomes, rents, issues and profits thereof;
- (b) Insurance - the Debtor shall cause all of the Collateral which is of a character usually insured by businesses operating Collateral of a similar nature to be properly insured and kept insured with reputable insurers against loss or damage by fire or other hazards of the nature of and to the extent that such Collateral is usually insured by businesses operating or using Collateral of a similar nature in the same or similar localities and shall maintain such insurance with loss if any payable to the Secured Party and shall deliver to the Secured Party evidence of such insurance satisfactory to the Secured Party;
- (c) Rent, Taxes, Etc. - the Debtor shall pay all rents, taxes, rates, levies, assessments and government fees or dues lawfully levied, assessed or imposed in respect of the Collateral or any part thereof as and when the same shall become due and payable, and shall exhibit to the Secured Party, when required, the receipts and vouchers establishing such payments;
- (d) Observe Law - the Debtor shall duly observe and conform to all valid requirements of any governmental authority relative to any of the Collateral and all covenants, terms and conditions upon or under which the Collateral is held;
- (e) Books, Records - the Debtor shall keep proper books of accounts in accordance with sound accounting practice and if in default the Debtor shall furnish to the Secured Party such financial information and statements relating to its business and the Collateral as the Secured Party may from time to time require and the Debtor if in default shall permit the Secured Party or its authorized agent at any time at the expense of the Debtor to examine the Collateral and to examine the books of accounts and other financial records and reports of the Debtor including but not limited to books of accounts and other financial records and reports relating to the Collateral and to make copies thereof and take extracts therefrom;
- (f) Information - the Debtor shall furnish to the Secured Party such information with respect to the Collateral and the insurance thereon as the Secured Party may from time to time require and the Debtor shall give written notice to the Secured Party of all litigation before any court, administrative board or other tribunal affecting the Debtor or the Collateral;

- (g) Other Encumbrances - the Debtor shall not, after the date hereof, without the prior consent in writing of the Secured Party, create any security interest, mortgage, hypothec, charge, lien or other encumbrance upon the Collateral or any part thereof; and
- (h) Defend Title - the Debtor shall defend the title to the Collateral against all persons and shall, upon demand by the Secured Party furnish further assurance of title and further security for the Obligations and execute any written instruments or do any other acts necessary, to make effective the purposes and provisions of this Agreement; and
- (i) Change of Name - the Debtor shall not change its name or sell, exchange, assign or lease or otherwise dispose of the Collateral or any interest therein without the prior written consent of the Secured Party except that until an event of default as described in paragraph 6 occurs, the Debtor may sell or lease inventory in the ordinary course of its business.

5. Immediate Possession

Upon failure by the Debtor to perform any of the agreements described in paragraph 4 hereof, the Secured Party is authorized and has the option to take possession of the Collateral and, whether it has taken possession or not, to perform any of the agreements in any manner deemed proper by the Secured Party, without waiving any rights to enforce this Agreement. The reasonable expenses (including the cost of any insurance and payment of taxes or other charges and reasonable solicitors' costs and legal expenses) incurred by the Secured Party in respect of the custody, preservation, use or operation of the Collateral shall be deemed advanced to the Debtor by the Secured Party, shall bear interest at the rate of 20% per annum, and shall be secured by this Agreement.

6. Events of Default

At the option of the Secured Party, the Obligations shall immediately become due and payable in full upon the happening of any of the following events:

- (a) if the Debtor shall fail to pay or perform when due any of the Obligations or any amount due and owing on any debt secured by its assets;
- (b) if the Debtor shall fail to perform any provisions of this Agreement or of any other agreement to which the Debtor and the Secured Party are parties and such failure to perform persists beyond the expiry of any applicable cure periods;
- (c) if any of the representations and warranties herein is or becomes incorrect in any material respect at any time;
- (d) if the Debtor or any guarantor of any of the Obligations ceases or threatens to cease to carry on its business, commits an act of bankruptcy, becomes insolvent, makes an assignment or bulk sale of its assets, or proposes a compromise or arrangement to its creditors;

- (e) if any proceeding is taken with respect to a compromise or arrangement, or to have the Debtor or any guarantor of any of the Obligations declared bankrupt or would up, or to have a receiver appointed in respect of the Debtor or of any guarantor of any of the Obligations or of any part of the Collateral or if any encumbrancer takes possession of any part thereof;
- (f) if any execution, sequestration or extent or any other process of any court becomes enforceable against the debtor or any guarantor of any of the Obligations or if any distress or analogous process is levied upon the Collateral or any part thereof;
- (g) if the Secured Party in good faith believes that the prospect of payment or performance of any of the obligations is impaired.

7. Remedies

If pursuant to paragraph 6 hereof, the Secured Party declares that the Obligations shall immediately become due and payable in full, the Debtor and the Secured Party shall have, in addition to any other rights and remedies provided by law, the rights and remedies of a Debtor and a Secured Party respectively under the PPSA and those provided by this Agreement. The Secured Party may take immediate possession of the Collateral and enforce any rights of the Debtor in respect of the Collateral by any manner permitted by law and may require the Debtor to assemble and deliver the Collateral or make the Collateral available to the Secured Party at a reasonably convenient place designated by the Secured Party. The Secured Party may take proceedings in any court of competent jurisdiction for the appointment of a receiver (which term shall include a receiver and manager) of the Collateral or of any part thereof or may by instrument in writing appoint any person to be a receiver of the Collateral or of any part thereof and may remove any receiver so appointed by the Secured Party and appoint another in his stead; and any such receiver appointed by instrument in writing shall have power (a) to take possession of the Collateral or any part thereof, (b) to carry on the business of the Debtor, (c) to borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or for the carrying on of the business of the Debtor on the security of the Collateral in priority to the mortgage and charge and security interest created under this Agreement, and (d) to sell, lease or otherwise dispose of the whole or any part of the Collateral at public auction, by public tender or by private sale, either for cash or upon credit, at such time and upon such terms and conditions as the receiver may determine; provided that any such receiver shall be deemed the agent of the Debtor and the Secured Party shall not be in any way responsible for any misconduct or negligence of any such receiver.

8. Expenses

Any proceeds of any disposition of any of the Collateral may be applied by the Secured Party to the payment of expenses incurred in connection with the retaking, holding, repairing, processing, preparing for disposition and disposing of the Collateral (including reasonable solicitors' fees and legal expenses and any other reasonable expenses), and any balance of such proceeds may be applied by the Secured Party towards the payment of the Obligations in such order of application as the Secured Party may from time to time effect. All such expenses and all amounts borrowed

on the security of the Collateral under paragraph 7 hereof shall bear interest at the prime commercial lending rate of The Toronto-Dominion Bank plus 2% per annum and shall be Obligations under this Agreement. If the disposition of the Collateral fails to satisfy the Obligations and the expenses incurred by the Secured Party, the Debtor shall be liable to pay for any deficiency on demand.

## 9 Miscellaneous

The Debtor further agrees that:

- a. the Debtor shall not be discharged by any extension of time, additional advances, renewals and extensions, the taking of further security, releasing security, extinguishment of the security interest as to all or any part of the Collateral, or any other act except a release or discharge of the security interest upon the payment in full of the Obligations including charges, expenses, fees, costs and interest;
- b. any failure by the Secured Party to exercise any right set out in this Agreement shall not constitute a waiver thereof; nothing in this Agreement or in the Obligations shall preclude any other remedy by action or otherwise for the enforcement of this Agreement or the payment in full of the Obligations secured by this Agreement;
- c. all rights of the Secured Party hereunder shall be assignable and in any action brought by an assignee to enforce such rights, the Debtor shall not assert against the assignee any claim or defence which the Debtor now has or may hereafter have against the Secured Party;
- d. all rights of the Secured Party hereunder shall enure to the benefit of its successors and assigns and all obligations of the Debtor hereunder shall bind the Debtor, his heirs, executors, administrators, successors and assigns;
- e. if more than one person executes this Agreement as Debtor, their obligations under this Agreement shall be joint and several;
- f. this Agreement shall be governed in all respects by the laws of the Province of Ontario;
- g. the Debtor hereby acknowledges receipt of a copy of this Agreement;
- h. the Agreement shall become effective when it is signed by the Debtor;
- i. the Debtor acknowledges receiving an executed copy of this Agreement; and
- j. All or any part of the principal sum may be repaid at any time or times without notice or bonus.

IN WITNESS WHEREOF THE PARTIES HAVE HERETO AFFIXED THEIR HANDS AND  
SEALS.

SIGNED, SEALED AND DELIVERED ) The Uptown Inc.  
in the presence of: ) Per: Robert Dal Bianco  
 ) Robert Dal Bianco Director ("Debtor")  
 )  
 )  
 ) I have authority to bind the corporation  
 )  
 )  
 )  
 ) Donald Dal Bianco  
 ) Donald Dal Bianco ("Secured Party")

## GUARANTEE

THIS GUARANTEE dated as of the 1<sup>st</sup> day of February, 2018, is made by **The Uptown Inc.** (herein referred to as the "Guarantor"), in favour of **Donald Dal Bianco** (herein referred to as the "Lender").

### WHEREAS:

- A. DEEM MANAGEMENT SERVICES LIMITED, a corporation duly incorporated pursuant to the laws of the Province of Ontario (herein referred to as the "Borrower"), has issued in favour of the Lender a Loan Agreement dated of even date herewith with effective as of April 1<sup>st</sup>, 2012 (such Loan Agreement as it may hereafter be amended, modified, supplemented, renewed, substituted or replaced from time to time is herein referred to as the "Loan Agreement") pursuant to which the Borrower has agreed to repay its indebtedness to the Lender.
- B. The Borrower has provided a General Security Agreement in favour of the Lender to secure the indebtedness owed by it to the Lender, copy attached as Schedule "A";
- C. Robert Dal Bianco ("Robert") has provided a Guarantee in favour of the Lender as additional security for the indebtedness owed by the Borrower under the Loan Agreement to the Lender, copy attached as Schedule "B";
- D. The Guarantor has provided a General Security Agreement in favour of the Lender and wishes the Borrower to repay the indebtedness in accordance with the terms set out in the Loan Agreement and General Security Agreements provided by them in favour of the Lender and, therefore, it is willing to execute and deliver this Guarantee to the Lender.

NOW THEREFORE in consideration of the Lender amending repayment of the indebtedness in accordance with the Loan Agreement, granting forbearance under an agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Guarantor, the Guarantor agrees as follows:

1. **Interpretation.** All terms defined in the Loan Agreement and not otherwise defined herein and used in this Guarantee shall have the meanings ascribed thereto in the Loan Agreement.
2. **Guarantee.** The Guarantor hereby unconditionally and irrevocably guarantees, as a continuing obligation, payment to the Lender forthwith upon demand therefor of all present and future indebtedness, obligations and liabilities of any kind whatsoever which the Borrower has incurred or may incur to the Lender arising under

or in connection with the Loan Agreement (herein collectively referred to as the "obligations"). All amounts payable by the Guarantor hereunder shall be paid to the Lender at their address as aforesaid or as otherwise directed by the Lender. For greater certainty, this shall be a continuing, guarantee and shall cover all of the obligations now or hereafter existing and shall apply to and secure any ultimate balance due or remaining due to the Lender.

3. **Dealings With Borrower.** The Lender may make advances, grant accommodations, make payments, grant extensions of time, renewals or indulgences, take and give up securities including other guarantees, abstain from taking securities or from perfecting securities, cease or refrain from giving credit or making loans or advances, accept compositions, grant releases and discharges and otherwise deal with the Borrowers and with other parties and securities as the Lender sees fit, and apply all monies received from the Borrowers or others or from security upon such part of the obligations as it, in its absolute discretion, may think best, without the consent of, or notice to, the Guarantor and without prejudice to, or in any way limiting or lessening, the liability of the Guarantor hereunder. Without limiting the generality of the foregoing, the Guarantor hereby authorizes and empowers the Lender, in its sole and unfettered discretion, without any notice to the Guarantor or any other person, to exercise any right or remedy which the Lender may have against the Borrower or with respect to any security, whether real, personal or intangible, for the obligations, including judicial and non-judicial foreclosure, without affecting in any way the liability of the Guarantor hereunder and the Guarantor shall be liable to the Lender for any deficiency resulting from the exercise by the Lender of any such right or remedy, even though any rights or remedies which the Guarantor may have against the Borrowers or any other person may have been altered or diminished by the exercise of any such right or remedy.
4. **Recourse Against Borrower.** The Lender shall not be bound to exercise all or any of its rights and remedies or to exhaust its recourse against the Borrower or others or any security before being entitled to payment from the Guarantor under this Guarantee.
5. **Loss of Securities.** Any loss of, or neglect or omission with respect to any security held by the Lender, whether occasioned through the fault of the Lender or otherwise, shall not discharge in whole or in part, or limit or lessen the liability of the Guarantor hereunder.
6. **Settlement of Accounts.** Any account settled or stated between the Lender and the Borrower or admitted by or on behalf of the Borrower shall be accepted by the Guarantor as conclusive evidence that the amount thereby appearing due by the Borrower to the Lender is so due.

7. **Change in Composition of Borrower.** Neither change in the name, objects, capital structure or constitution, membership, ownership or control of the Borrower nor any other circumstance including, without limitation, the amalgamation of the Borrowers with another corporation, any defect in, omission from, failure to file or register or defective filings or registrations of any instrument under which the Lender has taken any security or collateral for payment of any of the Obligations or the performance or observance of any obligation of the Guarantor to the Lender or any circumstance affecting the Borrower or the Guarantor, which might otherwise afford a legal or equitable defence to the Guarantor or a discharge of the Guarantee shall affect or in any way limit or lessen the liability of the Guarantor hereunder.
8. **Waiver.** No delay on the part of the Lender in exercising any of its options, powers or rights, or partial or single exercise thereof, shall constitute a waiver thereof. No waiver of any of its rights hereunder, and no modification or amendment of this Guarantee, shall be deemed to be made by the Lender unless the same shall be in writing, duly signed on behalf of the Lender, and each such waiver, if any, shall apply with respect to the specific instance involved, and shall in no way impair the rights of the Lender or the obligations of the Guarantor to the Lender in any other respect at any other time.
9. **Guarantee of All Monies Borrowed.** All monies, advances, renewals and credits in fact borrowed or obtained by the Borrower from the Lender under or in connection with the Loan Agreement shall be deemed to form part of the obligations notwithstanding any incapacity, disability or lack of limitation of status or power of the Borrower or any of its directors, officers, employees, partners or agents thereof, or that the Borrower may not be a legal or sueable entity, or any irregularity, defect or informality in the borrowing or obtaining of such monies, advances, renewals or credits, whether known to the Lender or not. The Lender shall not be obliged to enquire into the powers of the Borrower or its directors, partners or agents acting or purporting to act on its behalf, and monies, advances, renewals or credits in fact borrowed or obtained from the Lender in the professed exercise of any power of the Borrower or its directors, partners or agents shall be deemed to form part of the obligations hereby guaranteed even though the incurring of such monies, advances, renewals or credits was irregular, fraudulent, defective or informally effected or exceeded the powers of the Borrower or its directors, partners, or agents. Any part of the obligations which may not be recoverable from the Guarantor by the Lender on the basis of a guarantee shall be recoverable by the Lender from the Guarantor as principal debtor in respect thereof and shall be paid to the Lender forthwith after demand therefor as herein provided.

10. **Assignment by Lender.** The Lender may from time to time and without notice to, or the consent of the Guarantor assign or transfer all or any of the obligations or any interest therein to any person and, notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, any such obligation or part thereof so transferred or assigned shall be and shall remain an obligation for the purpose of this Guarantee and any immediate and successive assignee or transferee of any obligation or any interest therein shall, to the extent of the interest so assigned or transferred, be entitled to the benefit of, and the right to enforce this Guarantee to the same extent as if such person were the Lender. In the event of any such assignment or transfer, the Lender shall retain the right to enforce this Guarantee for its own benefit as to any obligation which has not been so assigned or transferred.
11. **Revival of Indebtedness.** The Guarantor agrees that, if at any time all or any part of any payment previously applied by the Lender to any obligation is or must be rescinded or returned by the Lender for any reason whatsoever (including, without limitation, the insolvency, bankruptcy or reorganization of the Borrower), such obligation shall, for the purpose of this Guarantee, to the extent that such payment is or must be rescinded or returned, be deemed to have continued in existence, notwithstanding such application by the Lender, and this Guarantee shall continue to be effective or be reinstated, as the case may be, as to such Obligation, all as though such application by the Lender had not been made.
12. **Postponement.** If the Lender receives from the Guarantor a payment or payments in full or on account of the liability of the Guarantor hereunder, then the Guarantor shall not be entitled to claim repayment against the Borrower until the Lender's claim against the Borrower has been paid in full. In case of liquidation, winding-up or bankruptcy of the Borrowers (whether voluntary or involuntary) or if the Borrowers shall make a bulk sale of any of its assets within the bulk transfer provisions of any applicable legislation or any composition with creditors or scheme of arrangement, the Lender shall have the right to rank for its full claim and receive all dividends or other payments in respect thereof in priority to the Guarantor until the Lender's claim has been paid in full, and the Guarantor shall continue to be liable hereunder up to the amount guaranteed, less any payments made by the Guarantor, for any balance which may be owing the Lender by the Borrower. In the event of the valuation by the Lender of any of its security and/or the retention thereof by the Lender, such valuation and/or retention shall not, as between the Lender and the Guarantor, be considered as a purchase of such security or as payment or satisfaction or reduction of the obligations or any part thereof. Any and all rights the Guarantor may have as

surety, whether at law, in equity or otherwise, that are inconsistent with any of the provisions contained in this Guarantee are hereby waived. The foregoing provisions of this paragraph shall not in any way limit or lessen the liability of the Guarantor under any other paragraph of this Guarantee.

13. **Legal Expenses.** The Guarantor shall from time to time upon demand by the Lender forthwith pay to the Lender all expenses (including reasonable legal fees) incurred by the Lender in the preparation of this Guarantee and the preservation or enforcement of any of its rights hereunder.
14. **Additional Security.** This Guarantee is, in addition to, and not in substitution for, and without prejudice to, any security of any kind (including, without limitation, other guarantees) now or hereafter held by the Lender and any other rights or remedies that the Lender might have.
15. **Taxes and Set-off.** All payments to be made by the Guarantor hereunder shall be made without set-off or counterclaim and without deduction for any taxes, levies, duties, fees, deductions, withholdings, restrictions or conditions or any nature whatsoever. If, at any time, any applicable law, regulation or international agreement requires the Guarantor to make any such deduction or withholding from any such payment, the sum due from the Guarantor in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Lender receives a net sum equal to the sum which it would have received had no deduction or withholding been required.
16. **Demand for Payment.** A demand for payment shall be deemed to have been given where a notice in writing containing such a demand is sent by registered and receipted mail or prepaid courier to the Guarantor at the address of the Guarantor as supplied to the Lender from time to time. Any such notice shall be deemed to have been received on the date of delivery.
17. **Responsibility to Keep Informed.** So long as any of the obligations remain unpaid or outstanding, the Guarantor assumes all responsibility for being and keeping himself informed of the financial condition of the Borrower and of all circumstances bearing upon the nature, scope and extent of the risk which the Guarantor assumes and incurs under this Guarantee.
18. **No Escrow.** Possession of this Guarantee by the Lender shall be conclusive evidence against the Guarantor that this Guarantee was not delivered in escrow or pursuant to any agreement that it should not be effective until any conditions precedent or subsequent have been complied with unless, at the time or receipt of this Guarantee by the

Lender, the Guarantor obtains from the Lender a letter setting out the terms and conditions under which this Guarantee was delivered and the conditions, if any, to be observed before it becomes effective.

19. **Governing Law and Submission to Jurisdiction.** This Guarantee shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the Guarantor hereby accepts and irrevocably submits to the jurisdiction of the courts of the Province of Ontario and acknowledges their competence and agrees to be bound by any judgment thereof except that nothing herein shall limit the Lender's right to bring proceedings against the Guarantor elsewhere.
20. **Successors and Assigns.** This Guarantee shall extend and enure to the benefit of the Lender and its administrators, successors and assigns and shall be binding upon the Guarantor and his executors, administrators, successors and permitted assigns.
21. **Time.** Time is of the essence with respect to the terms and provisions of this Guarantee and the times for performance of the obligations of the Guarantor under this Guarantee are to be strictly construed.

**IN WITNESS WHEREOF**, this Guarantee has been made and delivered under seal as of the date first above written.

THE UPTOWN INC.

Per: Leb Datsino  
Authorized Signing Officer

**DONALD DAL BIANCO**

and

Court File No.  
**DEEM MANAGEMENT SERVICES LIMITED and THE  
UPTOWN INC.**

Applicant

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

Proceeding commenced at Toronto

**APPLICATION RECORD - VOLUME 1  
(Re Receivership Hearing Returnable May 30, 2018)**

**BLANEY MCMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5

**David T. Ullmann** (LSUC #423571)  
Tel: (416) 596-4289  
Fax: (416) 594-2437

**John Wolf** (LSUC #30165B)  
Tel: (416) 593-2994  
Fax: (416) 596-2044

**Alexandra Teodorescu** (LSUC #63889D)  
Tel: (416) 596-4279  
Fax: (416) 594-2437

*Lawyers for the Applicant*