

## **SCHEDULE - ADDITIONAL PROVISIONS**

(Commercial Mortgage Loans)

### **ARTICLE 1 - INTERPRETATION**

Any reference to the “Computer Field” in this Charge means a computer data entry field in a charge registered pursuant to Part III of the *Land Registration Reform Act* (Ontario) into which the terms and conditions of this Charge may be inserted.

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

“**Applicable Laws**” means all applicable federal, provincial or municipal laws, statutes, regulations, rules, by-laws, policies and guidelines, orders, permits, licences, authorizations and approvals.

“**Borrower Entity**” means the Chargor, each Guarantor, each Indemnitor, and any Person having a beneficial ownership interest in all or any part of the Property from time to time.

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

“**Calculation Period**” means the period indicated in the Computer Field of this Charge entitled “Calculation Period.”

“**Charge**” means 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 DUCA Financial Services Credit Union Ltd., and any Person who acquires the right, title and interest of the Chargee under the Loan Documents.

“**Chargor**” means the Person or Persons indicated in the Computer Field of this Charge entitled “Chargor/s”.

“**Commitment Letter**” means the commitment letter governing the Loan between the Chargor and the Chargee.

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

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

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

“**Equipment**” means all machinery, equipment, appliances, furniture, furnishings, chattels, fixtures (including all heating, air conditioning, ventilating, waste disposal, sprinkler and fire and theft protection equipment, plumbing, lighting, communications and elevator fixtures) and other

similar property of every kind and nature whatsoever now or hereafter located upon or used in connection with the Property or appurtenant thereto.

**“Event of Default”** or **“default”** means any of the following events: (a) any default by the Chargor in payment of all or any portion of the Loan Indebtedness when due or in payment of any other monies due under the Loan Documents; (b) any Borrower Entity defaults in observing or performing any other covenant, condition or obligation under any Loan Document on its part to be observed or performed, which default is not cured within the applicable grace or cure period, or if no such period is provided, within 30 days following written notice of such default to such Borrower Entity; for greater certainty, there shall be no grace or cure period in respect of any other Event of Default expressly enumerated in this definition; (c) any representation or warranty of any Borrower Entity in any Loan Document, or in any financial statement or other document at any time delivered by or on behalf of any such Borrower Entity to any Lender Entity in connection with the Loan, is incorrect or misleading in any material respect; (d) any Borrower Entity becomes insolvent, makes any assignment in bankruptcy, makes any assignment for the benefit of creditors or makes any proposal to or seeks relief from its creditors under any bankruptcy, insolvency, reorganization, liquidation, moratorium, receivership or other similar laws affecting or relating to creditors’ rights, any order, declaration or judgment 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 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 judgment; (e) any default by any Borrower Entity under any Lien of all or any part of the Property ranking in priority to or subsequent to the security of this Charge or the other Loan Documents, or any attornment of rents, power of sale, judicial sale, foreclosure or other enforcement proceedings are commenced against or in respect of any Borrower Entity or any part of the Property under or in respect of such Lien or any holder of such Lien takes possession or control of any part of the Property; (f) any writ of execution, distress, attachment or other similar process is issued or levied against any Borrower Entity or all or any part of its assets, or any judgment or order is made against any Borrower Entity by a court of competent jurisdiction and, in the opinion of the Chargee, such judgment or order would materially and adversely affect the ability of such Borrower Entity to fulfil its obligations to the Chargee under the Loan or the Loan Documents; (g) any part of the Property is condemned or expropriated and, in the opinion of the Chargee in respect of any expropriation, such expropriation materially impairs the value of the Property, the validity, enforceability or priority of the security of the Loan Documents, or the ability of any Borrower Entity to fulfil its obligations to the Chargee in respect of the Loan; or (h) any other Event of Default under any Loan Document.

**“First Payment Date”** means the date indicated in the Computer Field of this Charge entitled “First Payment Date”.

**“Governmental Authority”** means any federal, provincial, municipal or other form of government or any political subdivision or agency thereof, any body or authority exercising any functions of government, and any court.

**“Guarantor”** means the Person or Persons named as guarantor of all or any part of the Loan Indebtedness in the Commitment Letter.

**“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 the same or derivatives thereof, underground storage tanks, dangerous or toxic substances or materials, controlled products, and hazardous wastes.

**“Indemnitor”** means the Person or Persons named as indemnitor in the Commitment Letter.

**“Interest Adjustment Date”** means the date indicated in the Computer Field of this Charge entitled “Interest Adjustment Date”.

**“Interest Rate”** means the interest rate per annum indicated in the Computer Field of this Charge entitled “Interest Rate”, which rate of interest shall be calculated in accordance with the Calculation Period, both before and after maturity, demand, default and judgment.

**“Last Payment Date”** means the date indicated in the Computer Field of this Charge entitled “Last Payment Date”.

**“Leases”** means all present and future leases, offers to lease, subleases, concessions, licences and other contracts and agreements affecting the use, enjoyment or occupancy of the Property or any portion thereof together with all related credits, rights, options, claims, causes of action, guarantees, indemnities, security deposits and other security.

**“Lender Entity”** means each of the Chargee, each Person having an ownership interest in the Loan from time to time, any receiver and their respective employees, officers and directors.

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

**“Loan”** means the loan made by the Chargee to the Chargor in the Principal Amount pursuant to the Loan Documents.

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

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

**“Maturity Date”** means the date indicated in the Computer Field of this Charge entitled “Balance Due Date”.

**“Payments”** means the payments to be paid by the Chargor to the Chargee on account of the Loan in accordance with the Commitment Letter, each in the amount indicated in the Computer Field of this Charge entitled “Payments”. If the Payments are interest only, they will vary with each change in the Prime Rate.

**“Payment Date”** means the date indicated in the Computer Field of this Charge entitled “Payment Date”.

**“Person”** means any individual, general or limited partnership, joint venture, sole proprietorship, corporation, unincorporated association, trust, trustee, estate trustee, legal representative or Governmental Authority.

**“Prepayment Charge”** means, with respect to any acceleration or prepayment of the Loan, an amount equal to three months’ interest at the Interest Rate on the Principal Amount then outstanding.

**“Prime Rate”** or **“Prime”** when indicated in the Computer Field of this Charge entitled “Interest Rate” means the annual rate of interest announced from time to time by DUCA Financials Services Credit Union Ltd. a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada and designated by the Chargee as its prime rate.

**“Principal Amount”** means the amount indicated in the Computer Field of this Charge entitled “Principal”.

**“Property”** means all legal and beneficial right, title, estate and interest in and to the lands and premises described in this Charge, together with all buildings, structures, fixtures, and improvements of any nature or kind now or hereafter located on such lands, and all Equipment, Leases, Rents and all other appurtenances thereto.

**“Realty Taxes”** means all taxes, duties, rates, imposts, levies, assessments and other similar charges, whether general or special, ordinary or extraordinary, or foreseen or unforeseen,

including municipal taxes, school taxes and local improvement charges, and all related interest, penalties and fines which at any time may be levied, assessed, imposed or be a Lien on the Property or any part thereof.

**“Rents”** means all revenues, receipts, income, credits, deposits, profits, royalties, rents, additional rents, recoveries, accounts receivable and other receivables of any kind and nature whatsoever arising from or relating to the Property.

**“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 legal or beneficial interest in the Property or any part thereof; or (b) any change in the effective voting control of any Person comprising the Chargor or any beneficial or unregistered owner of any part of the Property from that existing as of the initial Loan advance (including any change of ownership of 50%, or such other percentage as may be specified in the Commitment Letter, or more of the voting securities representing an interest in any such Person) and shall include any agreement to do or complete any of the matters referred to in (a) or (b) above.

**1.02 Construction.** In this Charge (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders; (b) the words “including”, “includes” and “include” shall mean “including without limitation,” “includes without limitation” and “include without limitation” respectively; (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor statute thereto; (d) any reference to the Commitment Letter, any Loan Document, any Lease or other agreement or instrument shall include all amendments, addenda, modifications, extensions, renewals, restatements, supplements or replacements thereto from time to time; (e) reference to the Chargee, Chargor, Indemnitor, Guarantor, Lender Entity, Borrower Entity, any beneficial owner of the Property, and any other Person shall include their respective heirs, estate trustees, legal representatives, successors and assigns, and reference to a “corporation” shall include a company or other form of body corporate; (f) all dollar amounts are expressed in Canadian dollars; (g) the division of this Charge into separate Articles, Sections, Subsections and Schedules, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Charge; (h) the Chargee’s right to give or withhold any consent or approval, make any determination or exercise any discretion shall be exercised by the Chargee acting reasonably unless otherwise expressly provided, except that following an Event of Default, the Chargee shall be entitled to exercise the same in its sole discretion; (i) the Loan Documents are the result of negotiations between the parties hereto and shall not be construed in favour of or against any party by reason of the extent to which any party or its legal counsel participated in its preparation; (j) if more than one Person is named as Chargor, or otherwise becomes liable for or assumes the obligations and liabilities of the Chargor, then the obligations and liabilities of all such Persons shall be joint and several; (k) time shall be of the essence; and (l) all obligations of the Chargor in this Charge will be deemed to be covenants by the Chargor in favour of the Chargee. Where any reference is made in this Charge to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to a trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to the trustees of the trust. In the event of any conflict or inconsistency between any provision of this Charge and the provision of any other Loan Document, the provision of this Charge shall prevail to the extent of any such conflict or inconsistency. This Charge is intended to supplement and not derogate from the other Loan Documents. The delivery of this Charge for registration by direct electronic transmission shall have the same effect for all purposes as if this Charge was in written form, signed by the Chargor and delivered to the Chargee.

**1.03 Survival of Representations, Warranties and Covenants.** The representations, warranties, covenants and obligations of each Borrower Entity in the Loan Documents shall (i) survive the making of any advance or repayment of the Loan, any full or partial release,

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

## **ARTICLE 2 - CHARGE**

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

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

## **ARTICLE 3 - PAYMENT PROVISIONS**

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

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

**3.03 Payment Provisions.** The Chargor will pay the Loan Indebtedness to the Chargee as follows: (a) interest at the Interest Rate on the Principal Amount or such portion as may be advanced from time to time, calculated from the respective dates of such advances, shall become due and payable on the Interest Adjustment Date (at the option of the Chargee, such interest may be deducted from such advances); (b) from and after the Interest Adjustment Date, Payments will become due and payable on each Payment Date from and including the First Payment Date to and including the Last Payment Date; (c) the Principal Amount or the balance thereof with interest at the Interest Rate will become due and payable on the Maturity Date; (d) 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 (e) the balance of the Loan Indebtedness then remaining together with any interest thereon at the Interest Rate will become due and be paid on the Maturity Date.

**3.04 Compound Interest.** Interest shall accrue on overdue interest at the Interest Rate from time to time, both before and after default, demand, maturity and judgment until paid and shall

be due and payable by the Chargor to the Chargee forthwith. If such overdue interest and compound interest are not paid within the Calculation Period from the time of default, a rest will be made and compound interest at the Interest Rate will be payable on the aggregate amount then due, both before and after maturity, default and judgment, and so on from time to time until paid. All compound interest shall be added to the Loan Indebtedness and secured by this Charge.

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

**3.06 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 on an account maintained by the Chargor with the Chargee, and will execute and provide such written authorizations and sample cheques as the Chargee may require.

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

**3.08 No Right of Prepayment.** Except as otherwise provided by the Commitment Letter, neither any Borrower Entity nor any other Person shall have the right to prepay the Loan. If any acceleration (including any acceleration under Section 4.02(d)) or prepayment of all or any portion of the Loan should occur prior to the Maturity Date for any reason whatsoever (whether as a result of any Event of Default, Applicable Laws or otherwise), then the Prepayment Charge shall immediately become due and payable by the Chargor to the Chargee, in addition to all other amounts then due and owing to the Chargee. Such Prepayment Charge shall form part of the Loan Indebtedness and shall be secured by the Charge and the Loan Documents. The Chargor acknowledges that the Prepayment Charge represents reasonable and fair compensation for the loss that the Chargee may sustain from any acceleration or prepayment of the Loan prior to the Maturity Date, provided nothing herein shall create any right to prepay all or any portion of the Loan at any time or in any circumstances prior to the Maturity Date, except as otherwise provided by the Commitment Letter.

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

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

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

**3.12 Advance Directed to Pay Reserves and Costs.** Notwithstanding any rule of law or equity to the contrary, any amounts directed from any Loan advance by the Chargor to be paid on account of any Costs shall be considered to be fully and immediately advanced to the Chargor

for all purposes, shall bear interest at the Interest Rate from and after the date of such Loan advance, and shall be fully and immediately secured by this Charge in priority to all other Liens.

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

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

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

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

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

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

(c) **Title and Security.** The Chargor has good and marketable title in fee simple to the Property free and clear of all Liens, and this Charge and the Loan Documents shall be at all times a good and valid mortgage, charge, assignment of and security interest in the Property in priority to all other Liens, except in each case as disclosed by the records of the applicable land registry office and accepted by the Chargee in its sole discretion prior to the Loan advance. The Chargor shall defend title to the Property for the benefit of the Chargee from and against all actions, proceedings and claims of all Persons. The Chargor shall not subject the Property or any part thereof to a condominium regime or any other form of multiple ownership or governance, without the prior written consent of the Chargee.

(d) **Transfers and Liens.** No Transfer shall be made or permitted to be made without the prior written consent of the Chargee in its sole discretion. No Liens shall be created, issued, incurred or permitted to exist (by operation of law or otherwise and whether prior or subordinate to the security of this Charge and the Loan Documents) on any part of the Property or any interest therein (except in favour of the Chargee as security for the Loan), without the prior written consent of the Chargee in its sole discretion. Any Lien not permitted hereby shall be

vacated and discharged from the Property by the Chargor forthwith. If, without the prior consent of the Chargee, any Transfer or any Lien of any part of the Property or any interest therein is made, created, incurred or permitted to exist, then the Chargee, at its sole option, may declare the Loan Indebtedness (including the Prepayment Charge) to be immediately due and payable by the Chargor to the Chargee. If the Chargee elects to provide its consent to any Transfer in its sole discretion, such consent shall be subject to satisfaction of the following terms and conditions (each of which shall be an obligation of the Chargor to promptly satisfy prior to completion of such Transfer): (i) no Event of Default shall have occurred and be uncured and no event shall have occurred and be uncured which, with the passing of time or the giving of notice or both, would be an Event of Default; (ii) the Chargee shall have approved in its sole discretion the financial condition, managerial capacity and ownership structure of the transferee; (iii) the transferee and each other Borrower Entity shall execute and deliver, in the Chargee's form, an assumption agreement and such other indemnities, confirmations, insurance policies (including title insurance) and opinions as the Chargee may require in its sole discretion; (iv) the Chargor shall pay all fees, costs, expenses, charges and disbursements relating to such Transfer including the reasonable fees, costs, expenses, charges and disbursements of the Chargee and its counsel for review of the Chargor's compliance with the requirements hereof and the preparation and review and/or recording of any and all documentation, accounting certifications or legal opinions relating thereto, including any governmental or third-party fees, costs, taxes or assessments thereon; (v) the Chargor shall pay to the Chargee an assumption fee (not to be less than \$2,500.00) equal to 0.25% of the then outstanding Principal Amount; and (vi) the Chargor shall satisfy all other conditions imposed by the Chargee in respect of such Transfer in its sole discretion. Following any such Transfer, the Chargor and each beneficial owner of the Property including each transferee, shall be a corporation resident in Canada. No Transfer permitted by this Charge shall in any way affect the validity, priority or enforceability of the Loan Documents or the security thereof or release, discharge, modify or otherwise affect the respective obligations of the transferor or any other Borrower Entity thereunder.

Notwithstanding the foregoing and provided no Event of Default shall have occurred and be uncured and no event shall have occurred and be uncured which, with the passing of time or the giving of notice or both, would be an Event of Default, the Chargor may place subordinate Liens on the Property in favour of subordinate lenders provided the Chargor obtains the Chargee's prior written consent in its sole discretion to such subordinate Liens and subordinate lenders and completes the following conditions to the satisfaction of the Chargee in its sole discretion (upon satisfaction of all such conditions in respect of a subordinate Lien, such subordinate Lien shall be a "**Permitted Subordinated Lien**"):

- (i) execution and delivery by the subordinate lender to the Chargee of a subordination and standstill agreement in the Chargee's required form, such agreement to include a full subordination and postponement of the subordinate Liens and all indebtedness secured thereby to the Loan Documents and all Loan Indebtedness and any reserves, restrictions satisfactory to the Chargee in its sole discretion on payment of such subordinated indebtedness from Property cash flow and complete standstill provisions restricting the enforcement by the subordinate lender of all of its rights and remedies under or in respect of the subordinate Liens and all indebtedness secured thereby without the Chargee's prior written consent in its sole discretion;
- (ii) demonstration by the Chargor to the Chargee's satisfaction of (A) the Chargor's ability to make all payments required to be made under the indebtedness secured by the subordinate Liens from Property cash flow after all payments due on account of the Loan Indebtedness, any reserves and Property expenses (both capital and non-capital) are made; (B) that the aggregate loan to value ratio and minimum debt service coverage ratio shall be acceptable to the Chargee, in each case as calculated by the Chargee in accordance with its then current underwriting standards; and (C) that there are no insolvency issues with respect to any Borrower Entity; and
- (iii) payment by the Chargor of all fees, costs, expenses, charges and disbursements relating to the subordinate Liens, including the reasonable fees, costs, expenses, charges and disbursements of the Chargee and its counsel for review of the Chargor's compliance with the requirements hereof and the preparation and review and/or recording of any and all documentation, accounting certifications or

legal opinions relating thereto, including any governmental or third-party fees, costs, taxes or assessments thereon.

In conjunction with the Chargor's request for approval of a transfer or sale of the Property and provided the Chargee approves, in its sole discretion, a substitute indemnitor and substitute guarantor (the "**Substitute Indemnitor and Guarantor**") following review of the proposed Substitute Indemnitor and Guarantor's financial condition, and the Substitute Indemnitor and Guarantor shall execute and deliver to the Chargee an indemnity agreement in the same form and content as the indemnity (the "**Original Indemnity**") executed and delivered by the Indemnitor at the time of the Loan advance, and a full recourse guarantee in the same form and content as the guarantee (the "**Original Guarantee**") executed and delivered by the Guarantor at the time of the Loan advance, together with a legal opinion with respect to the authorization and enforceability of the same in form and content satisfactory to the Chargee acting reasonably, the Chargee agrees it shall release the Indemnitor or Guarantor or both from all of its or their obligations under the Original Indemnity and Original Guarantee arising subsequent to the date of transfer or sale of the Property, provided that no such release shall be effective unless and until (i) the Chargor has satisfied all terms and conditions relating to such transfer or sale of the Property set out herein or otherwise imposed by the Chargee; and (ii) the Chargee executes and delivers a written release and each other Borrower Entity has confirmed in writing its continuing obligations under the Loan Documents in form and content satisfactory to the Chargee in its sole discretion. No such release shall in any way affect the validity, priority or enforceability of any Loan Documents or the security thereof or release, modify, or otherwise affect the respective obligations of any other Borrower Entity thereunder.

(e) Realty Taxes. With respect to Realty Taxes (a) the Chargee may deduct from any Loan advance an amount sufficient to pay the Realty Taxes which have become or will become due and payable at the Interest Adjustment Date and are unpaid at the date of such advance; (b) the Chargor pay all Realty Taxes as they fall due and will provide the Chargee with receipts confirming payment of same as it may require; (c) the Chargor shall, if directed by the Chargee, pay to the Chargee in monthly instalments on the dates on Payment Dates, sums which in the sole opinion of the Chargee will be sufficient to enable it to pay the whole amount of Realty Taxes on or before the due date for payment thereof or, if such amount is payable in instalments, on or before the due date for payment of the first instalment thereof; (d) the Chargee shall apply such deduction and payments to the Realty Taxes so long as the Chargor is not in default under this Charge, but nothing herein contained shall obligate the Chargee to apply such payments on account of Realty Taxes more often than yearly; provided, however, that if before any sum so paid to the Chargee shall have been so applied, there shall be default by the Chargor in respect of any monthly Payment, the Chargee may apply such sum in or towards payment of the principal and/or interest in default. The Chargor shall transmit to the Chargee the assessment notices, tax bills and other notices affecting the imposition of Realty Taxes forthwith upon receipt; and (e) the Chargee shall allow the Chargor interest on the average monthly balance standing in the account from time to time to the credit of the Chargor for payment of Realty Taxes, at a rate per annum and at such times as the Chargee may determine in its sole discretion, and the Chargor shall be charged interest at the Interest Rate on the debit balance, if any, of Realty Taxes in the account outstanding after payment of Realty Taxes by the Chargee until such debit balance is fully repaid.

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

(g) Property. The Property is in good condition and repair, complies with all Applicable Laws, title encumbrances and material agreements, and the present use and location of the buildings, structures and other improvements are legal conforming uses under all Applicable Laws. No buildings, structures or other improvements have been made, altered or removed from the Property since the date of any survey provided to the Chargee prior to the initial Loan advance and such survey accurately shows the location thereof. The Chargor is not aware of any actions, proceedings, notices, judgments, orders or claims by any Person alleging or relating to any non-compliance by the Property with any Applicable Laws, title encumbrances or material agreements or any permits, licences or approvals, and the Chargor shall promptly notify and provide the Chargee with all information concerning the same as the Chargee may require from

time to time. All services and utilities necessary for the use and operation of the Property are located in the public highways abutting the Property (or within easements disclosed to and approved by the Chargee in writing prior to the initial Loan advance) and are connected and available for use. The Property has unrestricted and unconditional rights of public access to and from public highways (completed and available for public use) abutting the Property at all existing access points. The Chargor is not aware of any existing or threatened expropriation or other similar proceeding in respect of the Property or any part thereof.

(h) Use and Maintenance. The Chargor shall not change the use of or abandon the Property, commit or permit any waste of the Property or, unless permitted by the Chargee, remove or allow the removal of any building, structure or other improvement from the Property (other than a tenant's improvements removable by a tenant in accordance with its Lease). The Chargor shall diligently maintain, use, manage, operate and repair the Property in a safe and insurable condition, in accordance with Applicable Laws, title encumbrances, material agreements, permits, licences 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. The Chargor shall promptly make or cause to be made at its expense all necessary repairs and replacements to the Property necessary to comply with this subsection in a good and workmanlike manner and equal or better in quality to the original work, and in compliance with all Applicable Laws, title encumbrances, applicable material agreements, permits, licences and approvals.

(i) Changes to Property. The Chargor shall not demolish, remove, construct, alter, add to, repair or restore the Property or any portion thereof, nor consent to or permit any such action, without obtaining in each instance the Chargee's prior written consent in its sole discretion.

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

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

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

(m) Representations Regarding Environmental Matters. The Property and all activities conducted thereon comply with all Environmental Laws. The Property contains no Hazardous Substances, has not been previously subject to any remediation or clean-up of Hazardous Substances and there is no prior, existing or threatened investigation, action, proceeding, notice, order, conviction, fine, judgment, claim, directive or Lien of any nature or kind against or affecting the Property or the Chargor arising under or relating to Environmental Laws (each, an "**Environmental Proceeding**"). All existing environmental assessments, audits, tests and reports relating to the Property have been delivered to the Chargee. To the best of the Chargor's knowledge and belief, there are no pending or proposed changes to Environmental Laws or any Environmental Proceedings which would render illegal or affect the present use and operation of

the Property. Neither the Chargor nor any other Person has used or permitted the use of the Property to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process Hazardous Substances or as a waste disposal site.

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

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

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

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

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

**4.03 Performance of Covenants and Default.** The Chargor shall observe and perform and cause to be observed and performed all covenants, provisos and conditions contained in this Charge and the Loan Documents. The Chargor represents and warrants to the Chargee that no

Event of Default has occurred and no event has occurred which with the giving of notice, lapse of time or both would constitute an Event of Default. Upon becoming aware of any such Event of Default or event, the Chargor shall promptly deliver to the Chargee a notice specifying full particulars of same.

#### **ARTICLE 5 - INSURANCE**

**5.01 Insurance Coverage.** The Chargor shall maintain at its sole expense the following insurance coverages with respect to the Property for the benefit of Chargee until the Loan Indebtedness has been fully paid and satisfied, in each case to the extent applicable: (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 100% of the full replacement cost of the buildings, structures and improvements comprising the Property (including footings and foundations); (b) rental insurance covering 100% of the total Rents from the Property for not less than a twelve 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 \$2,000,000.00 per occurrence, or such other amount as may be specified in the Commitment Letter; and (e) such other insurance as required by the Chargee from time to time in its sole discretion. The Chargor represents and warrants to the Chargee that all such insurance is in full force and effect from and after the initial Loan advance.

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

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

#### **ARTICLE 6 - DAMAGE AND DESTRUCTION**

**6.01 Damage and Destruction and Restoration.** If any damage or destruction occurs to the Property, the Chargor shall (i) give prompt written notice to the Chargee of any damage or

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

**6.02 Application of Insurance Proceeds.** Provided no Event of Default exists, all insurance proceeds net of all reasonable architects', adjusters', lawyers', and other consultants' fees and disbursements ("**Net Proceeds**") shall be held by the Chargee and paid out from time to time (but not more frequently than every 30 days) to pay the cost of the Restoration Work performed in accordance with this Article upon 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 days of such damage or destruction, the Chargor shall (i) deliver to the Chargee a certificate from an architect or cost consultant approved by the Chargee acting reasonably ("**Architect**") estimating the cost of the Restoration Work; (ii) if the estimated cost exceeds the amount of Net Proceeds then held by the Chargee, the Chargor shall deliver to the Chargee an unconditional, irrevocable, demand letter of credit, in form, substance and issued by a bank acceptable to the Chargee in its sole discretion, in the amount of such excess, or a completion bond in form, substance and issued by a surety company acceptable to the Chargee in its sole discretion; (iii) provide to the Chargee evidence satisfactory to it in its sole discretion (including an appraisal and statements of cash flow and debt service) that upon the completion of the Restoration Work, the debt service coverage ratio and loan to value ratio (each as determined by the Chargee in accordance with its then current underwriting practices) shall not be less than the debt service coverage ratio or more than the loan to value ratio specified in the Commitment Letter; and (iv) provide to the Chargee evidence satisfactory to it in its sole discretion, and agree in writing with the Chargee, that the Restoration Work will be completed in accordance with this Article; (b) if the Architect's estimate of the cost of the Restoration Work is equal to or exceeds \$50,000.00, such Restoration Work shall be performed under the supervision of an Architect and in accordance with plans and specifications approved by the Chargee in its sole discretion; (c) requests for payment of Net Proceeds held by the Chargee shall be made by the Chargor on not less than ten Business Days' prior notice to the Chargee and shall be accompanied by a certificate of an Architect, or if the Restoration Work is not required to be supervised by an Architect, by a certificate of the Chargor addressed to the Chargee, stating or containing (i) a detailed description of the completed Restoration Work for which the request for payment is made; (ii) that such Restoration Work has been completed in compliance with this Article, and has been approved by the Chargor and if applicable, the Architect; (iii) that the requested amount is due, or is required to reimburse the Chargor for payments made to the contractor, subcontractors, materialmen, labourers, engineers, architects or other persons performing the Restoration Work and that when added to all payments previously made from Net Proceeds does not exceed the value of the Restoration Work done to the date; (iv) that title to the personal property included in the request for payment is vested in the Chargor free and clear of all Liens; (v) the remaining cost to complete the Restoration Work; (vi) the amount of all lien holdbacks required or permitted to be maintained under Applicable Laws in respect of such Restoration Work; (vii) the amount of such holdbacks actually maintained by the Chargor; and (viii) that no written notice of a Lien under Applicable Laws has been received by the Chargor or the Architect or registered against the Property; and (d) prior to disbursing any Net Proceeds (i) the

Chargee must be satisfied in its sole discretion that all holdbacks required or permitted by Applicable Laws have been maintained and that no Liens under Applicable Laws have been registered against the Property; and (ii) the Chargee shall have the right to inspect the Property to determine that the Restoration Work complies with this Article.

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

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

**6.05 Proceeds of Expropriation.** All proceeds of expropriation which are less than \$25,000.00 shall be paid to the Chargor and shall be re-invested in the Property. All proceeds of expropriation which exceed \$25,000.00 (or following an Event of Default, all expropriation proceeds) shall be paid to and held by the Chargee and may be applied by the Chargee, at its sole option exercisable in its sole discretion, to reduction of the Loan Indebtedness then due or may be held by the Chargee as security for the Loan Indebtedness.

## **ARTICLE 7 - EVENT OF DEFAULT AND REMEDIES**

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

**7.02 Power of Sale.** After an Event of Default which has continued for the minimum period provided by law, the Chargee, on giving the minimum notice required by law, may enter on, lease or sell the Property. Any sale of the Property by the Chargee may be by public auction or private sale for such price and on such terms as to credit and otherwise with such conditions of sale as the Chargee in its sole discretion deems proper and in accordance with Applicable Laws. If any sale is for credit or for part cash and part credit, the Chargee will not be accountable for or be charged with any monies until they are actually received. The Chargee may rescind or vary any contract or sale and may buy and re-sell the Property without being answerable for loss occasioned thereby. No purchaser will be bound to inquire into the legality, regularity or propriety of any sale or be affected by notice of any irregularity or impropriety. No lack of default, want of notice or other requirement or any irregularity or impropriety of any kind will invalidate any sale pursuant to this Charge and the purchaser shall not be responsible for any damage or loss caused thereby. The Chargee may sell without entering into actual possession of the Property and while in possession will be accountable only for monies which are actually received by it. The Chargee may, subject to the restrictions of Applicable Laws, 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 thereof subject to the balance of the Loan Indebtedness not yet due at the time of such sale. The costs of any sale proceedings pursuant to this Charge, whether such sale

proves abortive or not, including taking, recovering or keeping possession of the Property or enforcing any other remedies pursuant to this Charge, shall be payable upon demand by the Chargor to the Chargee with interest thereon at the Interest Rate and until paid shall be added to the Loan Indebtedness and secured by this Charge.

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

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

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

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

**7.07 Receiver.** Upon any Event of Default, the Chargee may in its discretion, with or without entering into possession of the Property or any part thereof, by instrument in writing, appoint a receiver (which shall include a receiver, a manager or a receiver and manager) of the Property or any part thereof ("**Receiver**") with or without security and may from time to time remove any Receiver with or without appointing another in his stead, and in making such appointment or appointments or removing a Receiver the Chargee shall be deemed to be acting for the Chargor (provided that no such appointment shall be revocable by the Chargor). Upon the appointment of any such Receiver from time to time, and subject to the provisions of the instrument appointing such Receiver, the following provisions shall apply: (a) such Receiver may, in the discretion of the Chargee and by writing, be vested with all or any of the rights, powers and discretions of the Chargee; (b) such Receiver, so far as concerns the responsibility for his acts or omissions, shall be deemed the agent or attorney of the Chargor and not the agent of the Chargee (unless specifically appointed by the Chargee as the agent of the Chargee); (c) neither the appointment, removal or termination of such Receiver by the Chargee nor any act or omission by such Receiver shall incur or create any liability on the part of the Chargee to the Receiver in any

respect or constitute the Chargee a chargee or mortgagee in possession of the Property or any part thereof; (d) such Receiver shall be the irrevocable agent or attorney of the Chargor (unless the Chargee specifically appoints such Receiver as the agent for the Chargee) for the collection of all Rents falling due in respect of the Property or any part thereof; (e) the rights and powers conferred herein in respect of the Receiver are supplemental to and not in substitution of any other rights and powers which the Chargee may have; (f) the Chargee may from time to time fix the remuneration for such Receiver, who shall be entitled to deduct the same out of revenue or sale proceeds of the Property; (g) such Receiver shall have the power from time to time to lease any portion of the Property which may become vacant for such term (which may extend beyond the Maturity Date) and shall have the power to accept surrenders of or terminate any lease, in each case on such terms and conditions as it may determine in its sole discretion and in so doing such Receiver shall act as the attorney or agent of the Chargor and shall have authority to execute under seal any lease or surrender of any such premises or notices of termination in the name of and on behalf of the Chargor, and the Chargor agrees to ratify and confirm whatever any Receiver may do in respect of 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 Person, for the repairing, completing, adding to, or managing of the Property, including completing the construction of any incomplete building or buildings, structures, services or improvements on the Property, and constructing or providing for leasehold improvements notwithstanding that the resulting cost may exceed the original Principal Amount; (i) such Receiver shall have full power to manage, operate, amend, repair or alter the Property or any part thereof in the name of the Chargor for the purpose of obtaining rental and other income from the Property or any part thereof; (j) no Receiver shall be liable to the Chargor to account for monies other than monies actually received by it in respect of the Property and out of such monies so received from time to time such Receiver shall pay in the following order: (i) its remuneration aforesaid; (ii) all obligations, costs and expenses made or incurred by it, including any expenditures in connection with the management, operation, amendment, repair, construction or alteration of the Property or any part thereof or any business or undertaking carried on by the Receiver thereon; (iii) interest, principal and other monies which may be or become a Lien upon the Property from time to time in priority to this Charge, including all Realty Taxes; (iv) to the Chargee, all Loan Indebtedness and any reserves payable to the Chargee under the Commitment Letter, to be applied in such order as the Chargee in its discretion shall determine; and (v) at the discretion of the Receiver, interest, principal and other monies which may from time to time constitute a Lien on the Property subsequent in priority or subordinate to the interest of the Chargee under this Charge, and such Receiver may retain in its discretion reasonable reserves to satisfy accruing amounts and anticipated payments in connection with any of the foregoing; (k) the Chargee may at any time and from time to time terminate any receivership by notice in writing to the Chargor and to any Receiver; and (l) the Chargor hereby releases and discharges the Chargee and every Receiver from every claim of every nature, whether sounding in damages for negligence or trespass or otherwise, which may arise or be caused to the Chargor or any Person claiming through or under it by reason or as a result of anything done by the Chargee or any Receiver under the provisions of this section. The Chargor agrees to ratify and confirm all actions of any Receiver taken or made pursuant to this provision and agrees that neither the Receiver nor any other Lender Entity shall be liable for any loss sustained by the Chargor or any other Person resulting from any such action or failure to act.

**7.08 Power of Attorney.** The Chargor hereby grants to the Chargee, with full power of substitution, an irrevocable power of attorney coupled with an interest for the following purposes: (i) to make any of the leases referred to in Section 7.04; (ii) to obtain, collect and receive any insurance proceeds or expropriation awards however arising with respect to the Property, to compromise or settle any claims relating to such proceeds or awards, to endorse any cheques, drafts or other instruments representing such proceeds or awards, and to execute and deliver all instruments, proofs of loss, receipts, and releases reasonably required in connection therewith; (iii) to correct any mistakes in and otherwise completing and perfecting any Loan Documents; (iv) to protect, perfect, preserve the security of the Loan Documents and, following an Event of Default, to collect, enforce and realize on or under the Loan or the Loan Documents including the exercise of any of the rights, powers, authority and discretion of the Chargor in respect of the Property, including collection of Rents and other money that may become or are now due and owing to the Chargor; and (v) without limiting the foregoing, to make all necessary conveyances, deeds, transfers, assurances, receipts and other documents and instruments as may be necessary to transfer good and marketable title to all or any of the Property and to complete all other matters pertaining thereto. The Chargor hereby ratifies all actions of the Chargee

pursuant to such power of attorney and confirms that no Lender Entity shall be liable for any loss sustained by the Chargor or any other Person resulting from any such action or any failure to act.

**7.09 Concurrent Remedies.** The Chargee may exercise all rights and remedies provided for in this Charge, any 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 Loan Document or otherwise under Applicable Laws.

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

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

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

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

## **ARTICLE 8 - INDEMNITY**

**8.01 General Indemnity.** Without limiting any other provision of any Loan Document, the Chargor shall indemnify and pay, protect, defend and save harmless the Chargee from and against all actions, proceedings, claims, demands, judgments, losses, damages, liabilities, costs

or expenses (including legal fees and disbursements on a full indemnity basis), imposed upon, made against or incurred by the Chargee arising from or relating to directly or indirectly (i) any breach of any Loan Document by any Borrower Entity or any remedial or other proceedings taken by any Lender Entity thereunder or pursuant thereto; (ii) any accident, injury to or death of any person or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, parking areas, streets or ways; (iii) any use, non-use or condition in, on or about, or possession, alteration, repair, operation, maintenance or management of, the Property or any part thereof or on the adjoining sidewalks, curbs, parking areas, streets or ways; (iv) performance of any labour or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (v) any claim by brokers, finders or similar Persons claiming to be entitled to a commission in connection with the Loan, any Lease or other transaction involving the Property or any part thereof; (vi) any taxes, fees, costs or expenses attributable to the execution, delivery, filing, or recording of any Loan Document; (vii) any Lien or other claim arising on or against the Property or any part thereof or asserted against any Lender Entity with respect thereto; and/or (viii) the claims of any tenant or other Person arising under or relating to any Lease. Any amounts payable to the Chargee hereunder shall constitute part of the Loan Indebtedness, bear interest at the Interest Rate until paid and shall be secured by this Charge.

## **ARTICLE 9 - OTHER SECURITY**

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

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

## **ARTICLE 10 - MISCELLANEOUS**

**10.01 Notice**

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

(2) Subject to Subsection 10.01(1), any demand, notice or communication to be made or given in connection with this Charge or any of the Loan Documents shall be in writing and may be made or given by personal delivery, by registered mail or by facsimile transmission addressed to the Chargor or the Chargee at its address for service indicated in the Computer Field of this Charge entitled "Chargor/s" and "Chargee/s" respectively, or to such other address, individual or facsimile number as any party may designate by notice given to the others in accordance with this section. Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to have been made or given on the day of actual delivery thereof, and if made or given by registered mail, on the third Business Day following the deposit thereof in the mail, and if made or given by facsimile transmission, on the first Business Day following the transmittal thereof. If the party giving any demand, notice or other communication knows or reasonably ought to know of any difficulties with the postal system that might affect the delivery of mail, such demand, notice or other communication shall not be mailed, but shall be given by personal delivery or by facsimile transmission.

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

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

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

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

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

**10.07 Consent to Disclosure.** The Chargor acknowledges and agrees that the Loan may be syndicated without further notice to or the consent of the Chargor or any other Borrower Entity. Each Lender Entity from time to time may release, disclose, exchange, share, transfer and assign as it may determine in its sole discretion, all information and materials (including financial statements and information concerning the status of the Loan, such as existing or potential Loan defaults, lease defaults or other facts or circumstances which might affect the performance of the Loan) provided to or obtained by any Lender Entity relating to any Borrower Entity, the Property or the Loan (both before and after any Loan advance and/or default) without restriction and without notice to or the consent of the Chargor or any other Borrower Entity as follows: (i) to any other Lender Entity; (ii) to any subsequent or proposed purchaser of the Loan, including any subsequent or proposed Lender Entity, and its respective third party advisers and or agents, such as lawyers, accountants, consultants, appraisers and credit verification sources; and (iii) to any other Person in connection with the sale or assignment of the Loan or in connection with any collection or enforcement proceedings taken under or in respect of the Loan and/or the Loan Documents. The Chargor irrevocably consents to the collection, obtaining, release, disclosure, exchange, sharing, transfer and assignment of all such information and materials.

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

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

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

**10.11 Condominium Provisions.** If any part the Property is a condominium unit (a) the Chargor shall promptly observe and perform all of its covenants, duties and obligations under or pursuant to the *Condominium Act* (Ontario) and the declaration, by-laws and rules of the condominium corporation created by registration of the declaration and the description relating thereto of which the condominium unit forms part (the "**Condominium Corporation**"); (b) the Chargor will pay promptly when due any and all contributions to common expenses and all other levies, charges and assessments made, assessed or levied by or on behalf of the Condominium Corporation payable in respect of, or charged to the owner of, the Property (all such common expenses, levies, charges, assessments are called "**unit charges**"); (c) upon request by the Chargee from time to time, the Chargor shall provide satisfactory proof to the Chargee that all unit charges have been paid in full; (d) if the Chargor does not pay any unit charges when due, then, without limiting any of other rights and remedies of the Chargee hereunder or otherwise at law or in equity, the Chargee may (but shall not obligated to do so) pay the same and the amount so paid together with interest thereon at the Interest Rate shall be added to the Loan Indebtedness and secured by this Charge and shall be payable forthwith to the Chargee upon demand; (e) promptly following receipt thereof, the Chargor shall deliver to the Chargee copies of every notice, assessment, request, claim or demand, notice of meeting and all other documentation or information of any kind relating to the condominium unit or the Condominium Corporation received by the Chargor so that the Chargee receives them at least ten days prior to the date that any response, payment or other action is required; (f) any default by the Chargor under this

section (regardless of any action or proceedings taken or proposed by the Condominium Corporation) shall be an Event of Default under this Charge; (g) the Chargor hereby irrevocably assigns to the Chargee, and irrevocably authorizes and empowers the Chargee to exercise, all rights of the Chargor as the owner of the Property to vote or to consent to all matters relating to the affairs of the Condominium Corporation, provided however that (i) the Chargee may at any time and from time to time give notice in writing to the Chargor and to the Condominium Corporation that the Chargee does not intend to exercise the said right to vote or consent and in that event until the Chargee revokes such notice the Chargor may exercise the right to vote or consent in respect of all matters not requiring a unanimous resolution (any such notice may be for an indeterminate period of time or for a specific meeting or matter); (ii) the Chargee's right to vote and consent do not impose any obligation on the Chargee to consult with the Chargor as to the manner in which such right to vote or consent will be exercised or not exercised or to protect the Chargor's interests and the Chargee shall not be responsible for any exercise or failure to exercise the right to vote or consent; and (iii) neither this assignment and authorization in favour of the Chargee nor the exercise by the Chargee of the right to vote or consent shall constitute the Chargee a mortgagee in possession nor give rise to any liability on the part of the Chargee; (h) this Charge includes a mortgage, charge, assignment and sublease in favour of the Chargee of any lease or rights to occupy any parking space or spaces in the building of which the Property forms part demised to or reserved or designated for exclusive use by the Chargor or its condominium unit and of any lease or right to exclusive use of any common property or special privileges in respect thereof granted to the Chargor or its condominium unit; (i) without limiting the obligations of the Chargor under Article 5 hereof, the Chargor shall cause the Condominium Corporation to maintain the insurance required by Article 5 of this Charge with respect to all of the Property which is governed by the *Condominium Act* (Ontario) for the benefit of the Chargee and shall cause the Condominium Corporation to comply fully with the terms of the required policies of insurance and the insurance provisions of the *Condominium Act* (Ontario) and the declaration, by-laws and rules of the Condominium Corporation; (j) in addition to the Events of Default defined in Section 1.01, it shall be an Event of Default if (i) the government of the Property by the Condominium Corporation or any part thereof by the *Condominium Act* (Ontario) is terminated; or (ii) a vote of the Condominium Corporation authorizes the sale of all or substantially of its property or assets or all or any part of its common elements which are all or any part of the Property, or if any part of such common elements of the Condominium Corporation is expropriated; or (iii) the Condominium Corporation fails to comply with any provision of the *Condominium Act* (Ontario) or the declaration, by-laws or any of the rules of the Condominium Corporation; or (iv) the Condominium Corporation fails to insure the condominium units and the common elements governed by it in accordance with the *Condominium Act* (Ontario) and declaration and by-laws of the Condominium Corporation; or (v) in the Chargee's opinion, the Condominium Corporation fails to manage its property and assets in a prudent and businesslike manner and in keeping with the highest standards for similar properties in the locality in which the Property is located.

**10.12 Multi-Residential Properties.** If the Property is a multi-residential property, the Chargor represents and warrants with respect to the Property as follows: (a) except as permitted under Applicable Laws in respect of residential housing (i) no demolition, conversion, renovation, repair or severance has taken place with respect to the Property; and (ii) there have been no increases in the rental rate charged for any residential rental unit or units on the Property; (b) in accordance with Applicable Laws in respect of residential housing (i) all rents charged with respect to the Property are lawful rents and all required rebates have been paid; and (ii) all required filings have been made and were timely, accurate and complete; (c) under Applicable Laws in respect of residential housing (i) no applications, investigations or proceedings have been commenced or made; and (ii) there are no outstanding orders or decisions made by any Governmental Authority with respect to the Property or any residential rental unit. On or before the date of the first Loan advance, the Chargor shall provide a statutory declaration by an officer or director of the Chargor that the above representations and warranties are true and correct. The Chargor shall deliver to the Chargee on or before the date of the first Loan advance all documents required to establish the legality of rents. The Chargor hereby authorizes all Government Authorities having jurisdiction over residential housing to release to the Chargee or its solicitors any and all information contained in their files. The Chargor shall comply with the provisions of all Applicable Laws in respect of residential housing during the term of the Loan. In the event of a breach of this covenant or in the event that any of the representations and warranties hereinabove contained are false, the outstanding Principal Amount and any accrued interest shall, at the Chargee's option, become immediately due and payable.