

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N :**

**DBDC SPADINA LTD., and  
THOSE CORPORATIONS LISTED  
ON SCHEDULE A HERETO**

Applicants

and

**NORMA WALTON, RONAULD WALTON,  
THE ROSE & THISTLE GROUP LTD. and  
EGLINTON CASTLE INC.**

Respondents

and

**THOSE CORPORATIONS LISTED IN SCHEDULE B,  
TO BE BOUND BY THE RESULT**

Respondents

**MOTION RECORD  
(Returnable December 18, 2013)**

December 16, 2013

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

Maria Konyukhova LSUC#: 52880V  
Tel: (416) 869-5230  
Fax: (416) 947-0866

Lawyers for Computershare Trust Company of  
Canada, as custodian, nominee and agent for  
and on behalf of Investors in a Canadian  
commercial mortgage securitization known as  
Institutional Mortgage Securities Canada,  
Commercial Mortgage Pass-Through  
Certificates, Series 2012-2

**TO THE SERVICE LIST**

TO: **GOODMANS LLP**  
Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

Fred Myers  
Mark Dunn  
Tel: 416.979.2211  
Fax: 416.979.1234

Counsel to the Inspector

**LENCZNER SLAGHT GRIFFIN LLP**  
Barristers & Solicitors  
130 Adelaide St W  
Suite 2600  
Toronto, ON  
Canada M5H 3P5

Peter Griffin  
Peter Osborne  
Shara N. Roy  
Tel: 416.865.9500  
Fax: 416.865.9010

Counsel to the Applicants

**FASKEN MARTINEAU DUMOULIN LLP**  
Barristers & Solicitors  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto, ON M5H 2T6

John Champion  
Tel: 416.366.8381  
Fax: 416.364.7813

Counsel to Guillermo Schible, Counsel to the Respondents

**SCHIBLE LAW**

Barristers & Solicitors  
Adelaide Place, DBRS Tower  
181 University Avenue, Suite 2200  
Toronto, Ontario M5H 3M7

Guillermo Schible  
Tel: 416.601.6813  
Fax: 416.352.5454

Counsel to the Respondents

**McCARTHY TETRAULT LLP**

Barristers & Solicitors  
5300 – 66 Wellington Street West  
Box 48, Toronto-Dominion Bank Tower  
Toronto, Ontario M5K 1E6

Jamey Gage  
Heather Meredith  
Tel: 416.601.8342  
Fax: 416.868.0673

Counsel to CDPQ Mortgage Investment Corporation

# INDEX

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N :**

**DBDC SPADINA LTD., and  
THOSE CORPORATIONS LISTED  
ON SCHEDULE A HERETO**

**Applicants**

**and**

**NORMA WALTON, RONAULD WALTON,  
THE ROSE & THISTLE GROUP LTD. and  
EGLINTON CASTLE INC.**

**Respondents**

**and**

**THOSE CORPORATIONS LISTED IN SCHEDULE B,  
TO BE BOUND BY THE RESULT**

**Respondents**

**INDEX**

<b>TAB</b>	<b>DESCRIPTION</b>
1.	Notice of Motion
2.	Affidavit of Jean Monardo dated December 16, 2013
A	First Mortgage
B	Certificate of Corporate Status and Authority
C	General Assignment of Rents
D	Parcel Register dated November 20, 2013
E	General Security Agreement
F	Personal Property Security Act Search dated December 16, 2013
G	Receivership Order

# TAB 1

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

BETWEEN:

DBDC SPADINA LTD.  
AND THOSE CORPORATIONS LISTED ON SCHEDULE A HERETO

Applicants

- and -

NORMA WALTON, RONAULD WALTON,  
THE ROSE & THISTLE GROUP LTD. and EGLINTON CASTLE INC.

Respondents

- and -

THOSE CORPORATIONS LISTED ON SCHEDULE B HERETO,  
TO BE BOUND BY THE RESULT

**NOTICE OF MOTION**

Computershare Trust Company of Canada, as custodian, nominee and agent for and on behalf of Investors in a Canadian commercial mortgage securitization known as Institutional Mortgage Securities Canada, Commercial Mortgage Pass-Through Certificates, Series 2012-2 (the “**First Mortgagee**”), will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on December 18, 2013, or as soon after that time as the motion can be heard at 330 University Avenue, in the City of Toronto.

**THE MOTION IS FOR:**

- (a) an Order varying and/or amending the receivership order granted by the Honourable Justice Newbould on November 5, 2013 (the "**Receivership Order**") to remove Lesliebrook Holdings Ltd. (the "**Borrower**") from the list of Schedule "B" corporations bound by the Receivership Order and/or setting aside the Receivership Order as it relates to the Borrower and the real property municipally described as 1131A Leslie Street, Toronto, Ontario (together with all related rents, income, leases, and other personal property, collectively, the "**Mortgaged Property**"), and declaring that the Receivership Order does not apply to the Borrower or the Mortgaged Property;
- (b) an order directing Schonfeld Inc. Receivers + Trustees ("**Schonfeld**") in its capacity as manager pursuant to the Receivership Order (the "**Receiver**") to turn over to the First Mortgagee possession and control of the Mortgaged Property and all rent, income, receipts, revenues and other proceeds from or in respect of the Mortgaged Property (the "**Property Revenue**") received or held by the Receiver, together with an accounting of any amounts paid or disbursed from the Property Revenue since the appointment of the Receiver (an "**Accounting**");
- (c) in the alternative, an order varying and/or amending the Receivership Order:
  - i. to fully subordinate the Manager's Charge and the Manager's Borrowing Charge (each as defined in the Receivership Order and, together, the



"**Priming Charges**") to the secured mortgage and related security over the Mortgaged Property held by the First Mortgagee (the "**First Mortgage**") and all loan indebtedness secured thereby (the "**First Mortgage Loan**");

- ii. to require the Receiver and/or the Applicants to comply with all provisions of the First Mortgage and related security, including without limitation, making all required monthly payments of principal, interest and realty tax reserves when due;
- iii. to prohibit the Receiver from selling, marketing, or entering into any agreements to sell or market the Mortgaged Property without (A) the consent of the First Mortgagee, such consent not to be unreasonably withheld, and (B) complying with each of the other conditions applicable to a "Transfer" as set out in Section 4.02(d) of the First Mortgage;
- iv. to provide for an automatic and immediate lift of the stay of proceedings in respect of the Borrower and the Mortgaged Property upon the occurrence of any monetary default under the First Mortgage (including any failure to make any monthly payment of principal, interest and realty tax reserves when due under the First Mortgage) and allowing the First Mortgagee to proceed with enforcement of all of its rights and remedies under the First Mortgage without any further notice;
- v. to provide for an automatic and immediate lift of the stay of proceedings

in respect of the Borrower and the Mortgaged Property if on or before April 30, 2014, (A) the Mortgaged Property is not sold in compliance with sub-paragraph (iii) above, or (B) the First Mortgage Loan is not repaid to the First Mortgagee in full;

- (d) in the further alternative, an order setting aside the Receivership Order;
- (e) an order, if necessary, abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;
- (f) an order granting the First Mortgagee its costs of this motion; and,
- (g) such further and other relief as Counsel may request and this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The First Mortgagee holds registered and documentary title to the First Mortgage and all related security over the Mortgaged Property owned by the Borrower. The First Mortgagee also holds a first ranking general assignment of rents and leases with respect to all rents and other income arising from the Mortgaged Property (the “**General Assignment of Rents**”) and a first ranking security interest in all of the Borrower’s personal property pursuant to the General Security Agreement dated April 26, 2012;
2. On November 19, 2013, the Mortgagee learned that on November 5, 2013 the

Applicants obtained the Receivership Order appointing Schonfeld as Receiver of all the real property owned by the Schedule “B” Corporations, which includes the Mortgaged Property (collectively, the “**Real Estate**”), and all of the current and future assets, undertakings and property, real and personal, of the Schedule “B” Corporations, which include the Borrower (collectively with the Real Estate, the “**Property**”);

3. The Receivership Order, obtained without notice to the First Mortgagee, stays all proceedings against the Schedule “B” Corporations, including the Borrower, and the Real Estate, including the Mortgaged Property;
4. The Receivership Order also grants:
  - (i) a super-priority charge over all of the Mortgaged Property in an unlimited amount to secure any fees and disbursements of the Receiver and the fees and disbursements of its legal counsel (the “Receiver’s Charge”), such charge to rank in priority to all secured interests, trusts, liens, charges and encumbrances, statutory or otherwise, including the First Mortgage, the General Assignment of Rents and other security of the First Mortgagee; and
  - (ii) a super-priority charge over all of the Mortgaged Property in the amount not to exceed \$5 million to secure any borrowings of the Receiver (the “Receiver’s Borrowings Charge”), such charge to rank in priority to all

secured interests, trusts, liens, charges and encumbrances, statutory or otherwise, including the First Mortgage, the General Assignment of Rents and other security of the First Mortgagee.

5. The Receivership Order also authorizes the Receiver to collect all rents and any other forms of income arising from the Mortgaged Property (the “**Cash Controls**”), but does not obligate the Receiver to continue to pay the outstanding loan indebtedness owing to the First Mortgagee under the First Mortgage when due. Further, the Receivership Order does not require the Receiver to “ring fence” or “silo” the income and expenses from the Mortgaged Property or any other individual property comprising the Property;
6. The First Mortgagee is not aware of any relationship between the Borrower and the Mortgaged Property, on the one hand, and any other entity or property subject to the Receivership Order, on the other, (including that the First Mortgagee is not aware of the existence of any inter-corporate guarantees), except to the extent that the entities listed on Schedule "B" to the Receivership Order are alleged to each be separately incorporated entities that have common shareholders;
7. The First Mortgage is in default;
8. The First Mortgagee expects both (i) an imminent monetary default by the Borrower under the First Mortgage, and (ii) that the net proceeds of any sale of

the Mortgaged Property by the Receiver pursuant to the Order may not be sufficient to pay the loan indebtedness to the First Mortgagee in full;

9. The Receivership Order is of no benefit to the First Mortgagee; it is an order relating to the interests of shareholders in a shareholder dispute and is not necessary to protect or realize on the interests of the First Mortgagee. To the contrary, the Receivership Order has prevented the First Mortgagee from exercising its rights and remedies as holder of the First Mortgage and has placed the Mortgaged Property and revenue therefrom under the control of another party. It has also prevented the First Mortgagee from implementing a proper leasing plan for the Mortgaged Property to mitigate its expected loan losses;
10. Moreover, the Receivership Order has grouped the Mortgaged Property in with numerous other unrelated properties such that the Receiver is occupied with many other properties, entities and issues in addition to the Mortgaged Property. The First Mortgagee is very concerned that the Receiver will not have adequate time, attention, and resources to implement a leasing plan for the Mortgaged Property which will adequately mitigate the loan loss under the First Mortgage that the First Mortgagee is expecting. The time and attention of the Receiver spent on other properties and Schedule "B" Corporations' issues has already delayed the need for immediate action on the Mortgaged Property to preserve and increase the NOI to a level necessary to avoid a substantive loan loss under the First Mortgage;

11. There is no benefit to selling the Mortgaged Property and any of the remaining Real Estate of the Schedule "B" Corporations in a package or portfolio sale transaction;
12. The First Mortgagee also relies on:
  - (a) The provisions of the *Ontario Business Corporations Act*, R.S.O. 1990, Chapter B.16 and/or the *Courts of Justice Act*, R.S.O. 1990, c.C.43.
  - (b) Rules 2.03, 3.02 and 37 (in particular Rule 37.14) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
  - (c) Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. Affidavit of Jean Monardo sworn December 16, 2013; and
2. Such further and other materials as counsel may advise and this Court may permit.

December 16, 2013

## SCHEDULE "A" COMPANIES

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investment Pape Ltd.
5. DBDC Investments Highway 7 Ltd.
6. DBDC Investments Trent Ltd.
7. DBDC Investments St. Clair Ltd.
8. DBDC Investments Tisdale Ltd.
9. DBDC Investments Leslie Ltd.
10. DBDC Investments Lesliebrook Ltd.
11. DBDC Fraser Properties Ltd.
12. DBDC Fraser Lands Ltd.
13. DBDC Queen's Corner Inc.
14. DBDC Queen's Plate Holdings Inc.
15. DBDC Dupont Developments Ltd.
16. DBDC Red Door Developments Inc.
17. DBDC Red Door Lands Inc.
18. DBDC Global Mills Ltd.
19. DBDC Donalda Developments Ltd.
20. DBDC Salmon River Properties Ltd.
21. DBDC Cityview Industrial Ltd.
22. DBDC Weston Lands Ltd.
23. DBDC Double Rose Developments Ltd.
24. DBDC Skyway Holdings Ltd.
25. DBDC West Mall Holdings

26. DBDC Royal Gate Holdings Ltd.
27. DBDC Dewhurst Developments Ltd.
28. DBDC Eddystone Place Ltd.
29. DBDC Richmond Row Holdings Ltd.



## **SCHEDULE "B" COMPANIES**

1. Twin Dragons Corporation
2. Bannockburn Lands Inc. / Skyline – 1185 Eglinton Avenue Inc.
3. Wynford Professional Centre Ltd.
4. Liberty Village Properties Inc.
5. Liberty Village Lands Inc.
6. Riverdale Mansion Ltd.
7. Royal Agincourt Corp.
8. Hidden Gem Development Inc.
9. Ascalon Lands Ltd.
10. Tisdale Mews Inc.
11. Lesliebrook Holdings Ltd.
12. Lesliebrook Lands Ltd.
13. Fraser Properties Corp.
14. Fraser Lands Ltd.
15. Queen's Corner Corp.
16. Northern Dancer Lands Ltd.
17. Dupont Developments Ltd.
18. Red Door Developments Inc. and Red Door Lands Ltd.
19. Global Mills Inc.
20. Donalda Developments Ltd.
21. Salmon River Properties Ltd.
22. Cityview Industrial Ltd.

23. Weston Lands Ltd.
24. Double Rose Developments Ltd.
25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Dewhurst Developments Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited
32. 165 Bathurst Inc.

TO: **GOODMANS LLP**  
Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

Fred Myers  
Mark Dunn  
Tel: 416.979.2211  
Fax: 416.979.1234

Counsel to the Inspector

**LENCZNER SLAGHT GRIFFIN LLP**  
Barristers & Solicitors  
130 Adelaide St W  
Suite 2600  
Toronto, ON  
Canada M5H 3P5

Peter Griffin  
Peter Osborne  
Shara N. Roy  
Tel: 416.865.9500  
Fax: 416.865.9010

Counsel to the Applicants

**FASKEN MARTINEAU DUMOULIN LLP**  
Barristers & Solicitors  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto, ON M5H 2T6

John Champion  
Tel: 416.366.8381  
Fax: 416.364.7813

Counsel to Guillermo Schible, Counsel to the Respondents

**SCHIBLE LAW**

Barristers & Solicitors  
Adelaide Place, DBRS Tower  
181 University Avenue, Suite 2200  
Toronto, Ontario M5H 3M7

Guillermo Schible  
Tel: 416.601.6813  
Fax: 416.352.5454

Counsel to the Respondents

**McCARTHY TETRAULT LLP**

Barristers & Solicitors  
5300 – 66 Wellington Street West  
Box 48, Toronto-Dominion Bank Tower  
Toronto, Ontario M5K 1E6

Jamey Gage  
Heather Meredith  
Tel: 416.601.8342  
Fax: 416.868.0673

Counsel to CDPQ Mortgage Investment Corporation

# TAB 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N :**

**DBDC SPADINA LTD. and THOSE CORPORATIONS LISTED ON  
SCHEDULE A HERETO**

**Applicants**

**and**

**NORMA WALTON, RONAULD WALTON, THE ROSE & THISTLE GROUP LTD. and  
EGLINTON CASTLE INC.**

**Respondents**

**and**

**THOSE CORPORATIONS LISTED IN SCHEDULE B, TO BE BOUND BY THE RESULT**

**Respondents**

**AFFIDAVIT OF JEAN MONARDO  
(Sworn December 16, 2013)**

I, Jean Monardo, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am the Senior Vice-President of Institutional Mortgage Servicing Canada Inc., the general partner of IMS Limited Partnership ("IMS") and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated.
2. This affidavit is sworn in support of a motion brought by the First Mortgagee (as defined below) seeking an order:

(a) varying and/or amending the receivership order granted by the

Honourable Justice Newbould on November 5, 2013 (the "**Receivership Order**") to remove Lesliebrook Holdings Ltd. (the "**Borrower**") from the list of Schedule "B" corporations bound by the Receivership Order and/or setting aside the Receivership Order as it relates to the Borrower and the real property municipally described as 1131A Leslie Street, Toronto, Ontario (together with all related rents, income, leases, and other personal property, collectively, the "**Mortgaged Property**"), and declaring that the Receivership Order does not apply to the Borrower or the Mortgaged Property;

- (b) directing Schonfeld Inc. Receivers + Trustees ("**Schonfeld**") in its capacity as manager pursuant to the Receivership Order (the "**Receiver**") to turn over to the First Mortgagee possession and control of the Mortgaged Property and all rent, income, receipts, revenues and other proceeds from or in respect of the Mortgaged Property (the "**Property Revenue**") received or held by the Receiver, together with an accounting of any amounts paid or disbursed from the Property Revenue since the appointment of the Receiver (an "**Accounting**");
- (c) in the alternative, varying and/or amending the Receivership Order:
  - i. to fully subordinate the Manager's Charge and the Manager's Borrowing Charge (each as defined in the Receivership Order and, together, the "**Priming Charges**") to the secured mortgage and

related security over the Mortgaged Property held by the First Mortgagee (the “**First Mortgage**”) and all loan indebtedness secured thereby (the “**First Mortgage Loan**”);

- ii. to require the Receiver and/or the Applicants to comply with all provisions of the First Mortgage and related security, including without limitation, making all required monthly payments of principal, interest and realty tax reserves when due;
- iii. to prohibit the Receiver from selling, marketing, or entering into any agreements to sell or market the Mortgaged Property without (A) the consent of the First Mortgagee, such consent not to be unreasonably withheld, and (B) complying with each of the other conditions applicable to a “Transfer” as set out in Section 4.02(d) of the First Mortgage;
- iv. to provide for an automatic and immediate lift of the stay of proceedings in respect of the Borrower and the Mortgaged Property upon the occurrence of any monetary default under the First Mortgage (including any failure to make any monthly payment of principal, interest and realty tax reserves when due under the First Mortgage) and allowing the First Mortgagee to proceed with enforcement of all of its rights and remedies under the First Mortgage without any further notice;



- v. to provide for an automatic and immediate lift of the stay of proceedings in respect of the Borrower and the Mortgaged Property if on or before April 30, 2014, (A) the Mortgaged Property is not sold in compliance with sub-paragraph (iii) above, or (B) the First Mortgage Loan is not repaid to the First Mortgagee in full;
- (d) in the further alternative, an order setting aside the Receivership Order;
- (e) an order granting the First Mortgagee its costs of this motion; and,
- (f) such further and other relief as Counsel may request and this Honourable Court may deem just.

#### **PART 1 - The First Mortgage**

3. Computershare Trust Company of Canada, in its capacity as custodian, nominee, and agent (the **"First Mortgagee"**) for and on behalf of its investors (**"Certificateholders"**) in a Canadian commercial mortgage securitization known as Institutional Mortgage Securities Canada Inc., Commercial Mortgage Pass-Through Certificates, Series 2012-2 (the **"2012-2 Securitization"**) holds registered and documentary title to the First Mortgage and all related security over the Mortgaged Property owned by the Borrower. A copy of the First Mortgage is attached hereto as **Exhibit "A"**.

4. Pursuant to the securitization documents, Midland Loan Services, a division of PNC Bank, National Association (**"Midland"**) is authorized to service and administer

the First Mortgage loan on behalf of the First Mortgagee and all Certificateholders and may retain a sub-servicer to assist it in the performance of its duties. In this regard, Midland has retained IMS as a sub-servicer in respect of the First Mortgage loan.

5. The First Mortgage Loan, in the original principal amount of \$5,250,000, was made to the Borrower on May 3, 2012 for the purposes of financing its purchase of the Mortgaged Property. According to records provided to the First Mortgagee by the Borrower and the parcel registered in the Land Registry Office referred to in paragraph 8 below, the Borrower purchased the Mortgaged Property for \$7,000,000 on May 3, 2012.

6. The First Mortgage Loan was made to the Borrower in reliance on documents and representations from the Borrower, including a Certificate of Corporate Status and Authority of Norma Walton, President of the Borrower dated April 26, 2012 which certified that Norma Walton and Ronauld Walton were the sole shareholders of the issued and outstanding shares of the Borrower and did not reveal any ownership interest or involvement in the Borrower by Dr. Bernstein or any of the Applicants in any capacity. A copy of the Certificate of Corporate Status and Authority is attached hereto as **Exhibit "B"**.

7. In its capacity as custodian, nominee, and agent for and on behalf of all Certificateholders in the 2012-2 Securitization, the First Mortgagee also holds a first ranking general assignment of rents and leases with respect to all rents and other

income arising from the Mortgaged Property (the "**General Assignment of Rents**"). A copy of the General Assignment of Rents is attached hereto as **Exhibit "C"**.

8. Attached hereto as **Exhibit "D"** is a copy of the parcel register with respect to the Mortgaged Property dated November 20, 2013 evidencing the first priority registrations of the First Mortgage and the General Assignment of Rents.

9. To secure the Borrower's obligations under the First Mortgage Loan, the First Mortgagee also holds a first ranking security interest in all of the Borrower's personal property pursuant to the General Security Agreement dated April 26, 2012. A copy of the General Security Agreement is attached hereto as **Exhibit "E"**. The First Mortgagee's security interest was duly registered pursuant to the *Personal Property Security Act* (Ontario) on April 16, 2012. A copy of the PPSA search with respect to the Borrower dated December 16, 2013 is attached hereto as **Exhibit "F"**.

## **PART 2 - The Applicants, Motion without Notice and the Receivership Order**

10. On November 19, 2013, IMC Limited Partnership (an affiliate of IMS Limited Partnership) received a letter from counsel for the Receiver advising IMC Limited Partnership that on November 5, 2013 the Applicants obtained the Receivership Order appointing Schonfeld as Receiver of all the real property owned by the Schedule "B" Corporations, which includes the Mortgaged Property (collectively, the "**Real Estate**"), and all of the current and future assets, undertakings and property, real and personal,

of the Schedule "B" Corporations, which include the Borrower (collectively with the Real Estate, the "**Property**").

11. The Receivership Order (a copy of which is attached hereto as **Exhibit "G"**) stays all proceedings against the Schedule "B" Corporations, including the Borrower, and the Real Estate, including the Mortgaged Property.

12. The Receivership Order also grants:

- (a) a super-priority charge over all of the Mortgaged Property in an unlimited amount to secure any fees and disbursements of the Receiver and the fees and disbursements of its legal counsel (the "**Receiver's Charge**"), such charge to rank in priority to all secured interests, trusts, liens, charges and encumbrances, statutory or otherwise, including the First Mortgage, the General Assignment of Rents and other security of the First Mortgagee; and
- (b) a super-priority charge over all of the Mortgaged Property in the amount not to exceed \$5 million to secure any borrowings of the Receiver (the "**Receiver's Borrowings Charge**"), such charge to rank in priority to all secured interests, trusts, liens, charges and encumbrances, statutory or otherwise, including the First Mortgage, the General Assignment of Rents and other security of the First Mortgagee.

13. The Receivership Order also authorizes the Receiver to collect all rents and any other forms of income arising from the Mortgaged Property (the “**Cash Controls**”), but does not obligate the Receiver to continue to pay the outstanding loan indebtedness owing to the First Mortgagee under the First Mortgage Loan when due. Further, the Receivership Order does not require the Receiver to “ring fence” or “silo” the income and expenses from the Mortgaged Property or any other individual property comprising the Property.

14. The Order also authorizes the Receiver to market and sell the Mortgaged Property on such terms and conditions of sale as the Receiver in its discretion may deem appropriate and to apply for any vesting order necessary to convey the Mortgaged Property free and clear of any liens and encumbrances, including the First Mortgage, the General Assignment of Rents and other security of the First Mortgagee (the “**Authorization to Sell**”).

15. None of the First Mortgagee, Midland or IMS was provided with notice of the Applicants’ motion to appoint the Receiver over the Borrower and the Mortgaged Property and to grant the super-priority charges over the Mortgaged Property, even though the First Mortgage and General Assignment of Rents were registered against the Mortgaged Property in the Land Registry Office at all material times.

16. I am advised by Doug Klaassen of Stikeman Elliott LLP, counsel to IMS with respect to the within matter, that the materials filed in support of the Receivership

Order by the Applicants do not contain any allegations or evidence of insolvency with respect to the Borrower.

17. I am also advised by Mr. Klaassen that such materials do not contain any allegations or evidence of any impropriety or fraud on the part of the First Mortgagee with respect to the First Mortgage Loan or the funds advanced or received in connection therewith.

18. I am further advised by Mr. Klaassen that the Applicants allege in their materials that Dr. Stanley Bernstein, through his beneficially owned corporations DBDC Spadina Ltd. and those corporations listed on Schedule "A" hereto (collectively, "**DBDC**"), has invested approximately \$105 million into companies, including the Borrower, listed on Schedule "B" hereto (the "**Schedule "B" Corporations**") and was to become 50% shareholder of a number of companies holding various real estate projects of the Schedule "B" Corporations, including the Mortgaged Property.

19. The materials do not disclose any relationship between the Borrower and the Mortgaged Property and any of the other Schedule "B" Corporations. In particular, there are no inter-corporate guarantees of the First Mortgage Loan or the Borrower's obligations to the First Mortgagee by any of the other Schedule "B" Corporations.

**PART 3 - Defaults Under the First Mortgage and Risks to the First Mortgagee**

20. As of the date of this affidavit, the outstanding loan indebtedness under the First Mortgage Loan is \$5,610,630.85 (exclusive of legal costs).

21. As at the date of this affidavit, the Borrower has committed, among other things, the following events of default:

- (a) The Borrower misrepresented that only Norma Walton and Ronauld Walton were the sole shareholders of the Borrower at the time the First Mortgage loan was made. In the alternative, the Borrower has subsequently permitted an amendment to its Organizational Documents (as defined in the First Mortgage), or agreed to make such amendment, without prior consent of the First Mortgagee in its sole discretion - see sections 1.01 (Events of Default), 4.02(a), (q), 4.03 and Article 7 of the First Mortgage;
- (b) The Borrower failed to notify the First Mortgagee of the proceedings and claims initiated and made by the Applicants with respect to the Borrower and the Mortgaged Property, contrary to section 4.02(f) of the First Mortgage; and
- (c) The Borrower has failed to use, manage and operate the Mortgaged Property in a "prudent and business like manner in keeping with the

highest standards for similar properties” (as described further below), contrary to section 4.02(h) of the First Mortgage.

22. The appointment of the Receiver constitutes an additional Event of Default under the Mortgage – Section 1.01 (Events of Default, clause (h)).

23. Furthermore, based on the information and reason described below, the First Mortgagee expects both (a) an imminent monetary default by the Borrower under the First Mortgage Loan and (b) that the net proceeds of any sale of the Mortgaged Property by the Receiver pursuant to the Order may not be sufficient to pay the loan indebtedness under the First Mortgage Loan to the First Mortgagee in full.

24. The Mortgaged Property has experienced and continues to experience rapidly declining occupancy. During the 18 month period between May, 2012 and November, 2013, occupancy of the Mortgaged Property has declined from approximately 93% of the available rentable area to approximately 67% as of today's date.

25. The net operating income from the Mortgaged Property (“NOI”) at the time of the underwriting of the First Mortgage in April 2012, was \$490,136 per annum. The current monthly payments of principal and interest under the Mortgage are \$28,621.15 per month or \$343,454 per annum. The current NOI from the Mortgaged Property is estimated at \$170,724 per annum – just 35% of the NOI underwritten by the First Mortgagee in April, 2012 and a 65% decrease over a period of only 18 months. A decline in NOI of this magnitude over this short period of time is extremely unusual



and materially adverse to the interests of the First Mortgagee and its investors in the First Mortgage Loan. The sole reason for this decline is the Borrower's failure to implement a prudent leasing plan for the Mortgaged Property to address expected lease expiries.

26. The current NOI from the Mortgaged Property is insufficient to permit the Borrower to make its regularly scheduled monthly payments to the First Mortgagee under the First Mortgage Loan when due. The First Mortgagee estimates that there is a current annual NOI shortfall of approximately \$172,730 with respect to the cash available to pay the First Mortgagee its scheduled monthly payments of principal and interest under the First Mortgage Loan. The Mortgaged Property and the Borrower generate no income or revenues other than rents payable by tenants of the Mortgaged Property. In these circumstances, Midland and IMS expect an imminent monetary default under the First Mortgage Loan as early as January 1, 2014.

27. The very high vacancy rate of the Mortgaged Property has also significantly reduced its potential market value and has significantly eroded or eliminated the Borrower's original equity investment. The First Mortgagee expects to incur a material principal loss on its First Mortgage Loan as a result of the existing vacancy rate.

28. The current vacancy rate of the Mortgaged Property is not likely to improve in the near term. As of the date of this affidavit, the Borrower's website does not indicate that there is any space in the Mortgaged Property available for lease. Upon an inspection of the Mortgaged Property by IMS on November 27, 2013, there was no

evidence of any signage or information available that described the vacant space. To my knowledge, as of the date of this affidavit, no real estate brokers have been hired to lease the vacant space.

29. The absence of a leasing plan to lease-up the vacant space in the Mortgaged Property makes it unlikely that such vacant space will be leased and occupied by the tenants any earlier than 12 months following the date that a proper leasing plan for the Mortgaged Property is commenced (assuming stable leasing market conditions).

30. The Receiver has provided no information concerning its plans for the leasing of the vacant space. Any leasing plan for the vacant space Mortgaged Property will likely require a minimum of 12 months to implement and requires immediate time and attention, as well as leasing experts to complete. Any sale of the Mortgaged Property by the Receiver prior to the completion of such a leasing plan will likely result in a sale at a value that is insufficient to repay the First Mortgage Loan in full.

31. The Receivership Order is of no benefit to the First Mortgagee; it is an order relating to the interests of shareholders in a shareholder dispute and is not necessary to protect or realize on the interests of the First Mortgagee. To the contrary, the Receivership Order has prevented the First Mortgagee from exercising its rights and remedies as holder of the First Mortgage Loan and has placed the Mortgaged Property and revenue therefrom under the control of another party. It has also prevented the First Mortgagee from implementing a proper leasing plan for the Mortgaged Property to mitigate its expected loan losses.

32. Moreover, the Receivership Order has grouped the Mortgaged Property in with numerous other unrelated properties such that the Receiver is occupied with many other properties, entities and issues in addition to the Mortgaged Property. The First Mortgagee is very concerned that the Receiver will not have adequate time, attention, and resources to implement a leasing plan for the Mortgaged Property which will adequately mitigate the loan loss under the First Mortgage Loan that the First Mortgagee is expecting. The time and attention of the Receiver spent on other properties and Schedule "B" Corporations' issues has already delayed the need for immediate action on the Mortgaged Property to preserve and increase the NOI to a level necessary to avoid a substantial loan loss under the First Mortgage Loan.

33. I do not believe that there is any benefit to selling the Mortgaged Property and any of the remaining Real Estate of the Schedule "B" Corporations in a package or portfolio sale transaction. Based on my discussions with the Receiver, it is my understanding that the Receiver does not perceive the sale of the Mortgaged Property as part of a portfolio with any of the other properties of the Schedule "B" Corporations to be advantageous or likely to achieve higher sale proceeds than individual property sales.

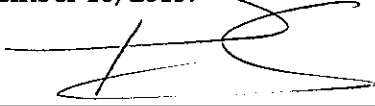
34. The First Mortgagee is facing both (a) an imminent monetary default under the First Mortgage and (b) a substantial loan loss under the First Mortgage Loan arising from a material decline in the occupancy rate and NOI of the Mortgaged Property. The

First Mortgagee should be entitled to exercise its rights and remedies to ensure the Mortgaged Property is properly protected.

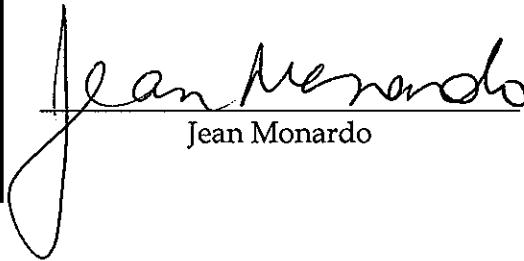
**PART 4 - PURPOSE OF AFFIDAVIT**

35. This affidavit is sworn in support of the First Mortgagee's motion for relief outlined in paragraph 2 hereof and for no improper purpose.

SWORN BEFORE ME at the City of  
Toronto, Province of Ontario, on  
December 16, 2013.

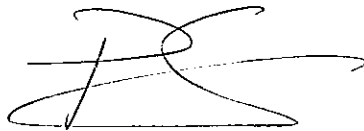


Commissioner for Taking Affidavits

  
Jean Monardo

**Patrick John Conroy, a Commissioner,  
etc., Province of Ontario,  
while a Student-at-Law.  
Expires May 4, 2015.**

***THIS IS EXHIBIT "A", referred to in the  
Affidavit of JEAN MONARDO, sworn  
on December 16, 2013.***

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a small flourish.

---

***Commissioner for Taking Affidavits***

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

yyyy mm dd Page 1 of 25

**Properties**

**PIN** 10138 - 0028 LT **Interest/Estate** Fee Simple  
**Description** PT LT 3 CON 3 EYS TWP OF YORK PARTS 1, 2, 3, 5, 6, 7 & 9, 64R10086; S/T & T/W  
TB183776; S/T TB189467, TB884493; TORONTO (N YORK) , CITY OF TORONTO  
**Address** 1131 A LESLIE STREET  
NORTH YORK

**Chargor(s)**

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

**Name** LESLIEBROOK HOLDINGS LTD.  
**Address for Service** 30 Hazelton Avenue  
Toronto, Ontario  
M5R 2E2

I, NORMA WALTON, President, have the authority to bind the corporation.

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

<b>Chargee(s)</b>	<b>Capacity</b>	<b>Share</b>
<b>Name</b> COMPUTERSHARE TRUST COMPANY OF CANADA <b>Address for Service</b> 100 University Avenue, South Tower, 8th Floor Toronto, Ontario M5J 2Y1 (Leslie Street Office)		

**Provisions**

**Principal** \$ 5,250,000.00 **Currency** CDN  
**Calculation Period** half-yearly, not in advance  
**Balance Due Date** 2017/09/01  
**Interest Rate** 4.35%  
**Payments** \$ 28,621.15  
**Interest Adjustment Date** 2012 06 01  
**Payment Date** 1st day of each month  
**First Payment Date** 2012 07 01  
**Last Payment Date** 2017 09 01  
**Standard Charge Terms** N/A  
**Insurance Amount** full insurable value  
**Guarantor**

**Additional Provisions**

See Schedules

**Signed By**

Edith Elizabeth Branning

55 Superior Boulevard  
Mississauga  
L5T 2X9acting for  
Chargor(s)

Signed

2012 05 03

Tel 8778288046

Fax 8003166884

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

**Submitted By**

FNF CANADA COMPANY

55 Superior Boulevard  
Mississauga  
L5T 2X9

2012 05 03

Tel 8778288046

Fax 8003166884

**Fees/Taxes/Payment**

Statutory Registration Fee \$60.00

Total Paid \$60.00

**File Number**

Chargor Client File Number :

20120067 - IMC / LESLIEBROOK CHARGE

## SCHEDULE - ADDITIONAL PROVISIONS

("Leslie Street Office")

### ARTICLE 1 - INTERPRETATION AND CONSTRUCTION

#### Section 1.01 Definitions.

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

"Adjusted Rate" means sum of the Initial Rate plus 2.5%. The Adjusted Rate will be effective on and after the Optional Prepayment Date (or if not a Business Day, the next Business Day thereafter). Such rate of interest shall be calculated semi-annually, not in advance, both before and after maturity, demand, default and judgment.

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

"Borrower Entity" means the Chargor, each Indemnitor, each Guarantor (if any), and each Person having any registered, unregistered or beneficial ownership interest in all or any part of the Property from time to time, including if any Borrower Entity is a general or limited partnership, each general partner and limited partner comprising such partnership.

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

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

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

"Chargor" means each Person named as Chargor in this Charge.

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

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

"Costs" means all fees, costs, charges and expenses of any Lender Entity for or incidental to (i) preparing, executing and registering the Loan Documents and making each advance of the Loan; (ii) collecting, enforcing and realizing on or under the Loan or the Loan Documents, including any workout or modification of the Loan or the Loan Documents agreed to by the Chargee in its sole discretion; (iii) inspecting, protecting, securing, completing, insuring, repairing, equipping, taking and keeping possession of, administering, managing, selling or leasing the Property, including curing any defaults under or renewing any leasehold interest, and all other protective disbursements or just allowances which may be added to principal or otherwise secured by this Charge under Applicable Laws; (iv) appointing a receiver, receiver and manager or other Person with similar powers (under the Loan Documents, Applicable Laws or otherwise) and all fees, costs and expenses of such receiver, receiver and manager or other Person and their respective agents; (v) obtaining any environmental audits or other inspections, tests or reports with respect to the Property; (vi) complying with any notices, orders, judgments, directives, permits, licenses, authorizations or approvals with respect to the Property; (vii) performing the obligations of any Borrower Entity under the Loan Documents; (viii) all legal fees and disbursements in connection with any of the foregoing matters, on a full indemnity or equivalent basis; (ix) allowances for the time, service, work or effort of any Lender Entity in connection with any of the foregoing matters, and if the Loan has been securitized, any recovery fee, workout fee and all special servicing fees which relate to the Loan and which become payable to any Loan servicer in such Securitization from time to time; (x) without limiting the foregoing, any other amounts, fees, costs, charges or expenses payable or reimbursable to any Lender Entity under any of the Loan Documents or Applicable Laws; and (xi) all applicable taxes on all amounts, fees, costs, charges and expenses otherwise included in "Costs". "Costs" also include interest at the Interest Rate on all such fees, costs, charges and expenses (and applicable taxes) from the date incurred until paid to the Chargee.

"Defeasance" and "Defeasance Collateral" have the meanings set out in Section 9.01, if applicable.

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

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

"Equipment" means all machinery, equipment, appliances, furniture, furnishings, chattels, fixtures (including all heating, air conditioning, ventilating, waste disposal, sprinkler and fire and theft protection equipment, plumbing, lighting, communications and elevator fixtures) and other similar property of every kind and nature whatsoever now or hereafter



located upon or used in connection with the Property or appurtenant thereto, excluding any such personal or moveable property which is owned by a Tenant.

**"Event of Default" or "default"** means any of the following events: (a) any default by the Chargor in payment of all or any portion of the Loan Indebtedness when due or in payment of any Loan reserves when due under the Loan Documents; (b) if any Transfer occurs in breach or violation of the provisions of any of the Loan Documents; (c) if any Lien is made, created, issued, incurred or permitted to exist in respect of, or registered against, all or any part of the Property in breach or violation of the provisions of any of the Loan Documents (whether or not having priority over the security thereof); (d) any failure by any Borrower Entity to comply with its obligations under any of the Loan Documents with respect to insurance, including the provisions of Article 5 of this Charge; (e) any utility charges and Realty Taxes in respect of the Property are not paid when due; (f) any Borrower Entity defaults in observing or performing any other covenant, condition or obligation under any Loan Document on its part to be observed or performed which default is not cured within the applicable notice, grace or cure period, or if no such period is provided and is not expressly excluded, within thirty (30) days following written notice of such default to such Borrower Entity (but for greater certainty, there is no such notice, grace or cure period in respect of any other Event of Default separately enumerated in this definition or which is expressly stated in any Loan Document to be immediate or to have no applicable notice, grace or cure period); (g) any representation or warranty of any Borrower Entity in any Loan Document, or in any financial statement or other document at any time delivered by or on behalf of any such Borrower Entity to any Lender Entity in connection with the Loan that is incorrect or misleading in any material respect as of the date of delivery to such Lender Entity or as of such other date specified therein; (h) any Borrower Entity becomes insolvent, makes any assignment in bankruptcy, makes any assignment for the benefit of creditors or makes any proposal to or seeks relief from its creditors under any bankruptcy, insolvency, reorganization, liquidation, moratorium, receivership or other similar laws affecting or relating to creditor's rights, any order, declaration or judgement of any court is made adjudging or declaring any Borrower Entity bankrupt or insolvent or ordering the liquidation, winding-up, reorganization or arrangement of any Borrower Entity or granting any Borrower Entity protection from its creditors or appointing any trustee, receiver, receiver and manager, administrator, sequestrator or other Person with similar powers in respect of any Borrower Entity or all or any part of its assets, or any proceedings are commenced by or against any Borrower Entity seeking any such order, declaration or judgement; (i) any default by any Borrower Entity under any mortgage, charge, hypothec, security interest or other financial encumbrance of all or any part of the Property ranking in priority to or subsequent to the security of the Loan Documents which is not cured within any cure periods applicable thereto; (j) any attornment of rents or withdrawal of consent to collect rents, power of sale or other sale by creditor, judicial sale, foreclosure, taking payment, taking possession or other enforcement or realization (whether or not permitted hereunder) proceedings are commenced against or in respect of any Borrower Entity, the Property or any part thereof under or in respect of such mortgage, charge, hypothec, security interest or other financial encumbrance or any holder thereof takes possession or control of any part of the Property; (k) any writ of execution, distress, attachment or other similar process is issued or levied against any Borrower Entity or all or any part of its assets, or any judgement or order is made against any Borrower Entity by a court of competent jurisdiction, and such writ, distress, attachment, process, judgment or order either (i) relates to or includes the Property or any part thereof, or (ii) in the opinion of the Chargee in its sole discretion, has or could be expected to have a Material Adverse Effect; (l) any part of the Property is expropriated and, in the opinion of the Chargee in its sole discretion, such expropriation has or could be expected to have a Material Adverse Effect; or (m) any other Event of Default expressly provided under any Loan Document.

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

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

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

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

**"Initial Rate"** means the interest rate per annum specified in this Charge (for a Charge in the non-electronic paper based registration system, being the interest rate per annum specified in Box 9(b) of the Charge/Mortgage of Land (Form 2), or for a Charge in the electronic registration system, being the interest rate per annum specified in the Charge as the "Interest Rate"), which rate of interest shall be calculated semi-annually, not in advance, both before and after demand, default and judgment.

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

**"Interest Rate"** means (i) for the period commencing on the initial Loan advance to and including the day immediately prior to the Optional Prepayment Date, the Initial Rate; and (ii) for the period commencing on the Optional Prepayment Date to and including the date upon which the Loan Indebtedness is paid in full to the Chargee, the Adjusted Rate (which Adjusted Rate will apply and be effective for all purposes under the Loan and the Loan Documents on and after the Optional Prepayment Date notwithstanding that the Initial Rate is specified as the interest rate per annum in the Charge/Mortgage of Land (Form 2) or in the Charge in the electronic registration system).

**"Lands"** means the lands and premises described in this Charge (for a Charge in the non-electronic paper-based registration system, being the lands and premises described in Box 5 of the Charge/Mortgage of Land (Form 2) and in any schedule thereto, or for a Charge in the electronic registration system, being the lands and premises described in this Charge as the "Properties").

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

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

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

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

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

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

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

**"Material Commercial Lease"** means each Commercial Lease for premises of more than 5,000 square feet and having a term (inclusive of all renewal and extension options, whether or not exercised) of 10 years or more.

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

**"Monthly Payment"** means (i) for each Payment Date to and including the Optional Prepayment Date, each monthly payment of principal and interest to be paid by the Chargor to the Chargee on account of the Loan, each in the amount specified in this Charge (for a Charge in the non-electronic paper based registration system, being the dollar amount specified in Box 9(h) of the Charge/Mortgage of Land (Form 2), or for a Charge in the electronic registration system, being the dollar amount specified as "Payments"), and (ii) for each Payment Date following the Optional Prepayment Date up to and including the Maturity Date, the monthly payment of principal and interest determined by the Chargee based on the Adjusted Rate and the amortization period of the Loan.

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

**"Optional Prepayment Date"** means the 5th anniversary of the Interest Adjustment Date.

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

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

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

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

**"Prepayment Charge"** means, with respect to any acceleration or prepayment of the Principal Amount occurring prior to the Optional Prepayment Date (including any acceleration as a result of an Event of Default), an amount equal to the greater of (A) three (3) months' interest at the Interest Rate on the Principal Amount then outstanding, and (B) the positive difference, if any, between (x) the present value on the date of such acceleration or prepayment of all future monthly payments which the Chargor would otherwise be required to pay under the Loan during the remainder of the term of the

Loan up to and including the Optional Prepayment Date, absent such prepayment or acceleration, including the unpaid Principal Amount (which for the purpose of such calculation only, will be assumed to be due and payable to the Chargee on the Optional Prepayment Date), with such present value being determined by the use of a discount rate equal to the yield to maturity on the date of such acceleration or prepayment of the Government of Canada bond having the term to maturity closest to what otherwise would have been the remainder of the term of the Loan up to and including the Optional Prepayment Date, absent such acceleration or prepayment, and (y) the then outstanding Principal Amount on the date of such acceleration or prepayment. If there is more than one Government of Canada bond with a maturity equally close to what otherwise would have been the remaining term of the Loan up to and including the Optional Prepayment Date, absent the repayment by reason of such acceleration or prepayment, as the case may be, the selection of the applicable bond will be made by the Chargee, acting reasonably.

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

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

**"Rating Agency"** shall mean, prior to a Securitization, any one or more statistical rating organizations designated by the Chargee in its sole discretion, and, after a Securitization, each statistical rating organization which has rated the certificates or other securities that are the subject of the Securitization, and in each case, including any successor to such Persons.

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

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

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

**"Rents"** means all revenues, receipts, income, credits, deposits, profits, royalties, rents, additional rents, recoveries, accounts receivable and other receivables of any kind and nature whatsoever arising from or relating to the Property or any part thereof, including all amounts payable under any Lease and all amounts arising from or relating to any guest rooms, parking or other facilities and services, meeting rooms, common areas, restaurants or other food and beverage facilities and services, vending machines, telephone, television, cable and internet services, laundry and housekeeping facilities and services, and the provision or sale of any other goods and services, and any payment, consideration or compensation of any kind to which any Borrower Entity is or becomes entitled relating to or arising from, directly or indirectly, the full or partial termination, cancellation, amendment, modification or release of any Lease or any Tenant in respect thereof.

**"Residential Leases"** means, collectively, all present and future leases, agreements to lease, subleases, concessions, licenses and other similar agreements by which the use and occupancy of one or more residential units, rooms or beds comprising the Property are granted to any Person for residential purposes (including a hotel, motel, manufactured home community, or other similar use) or any uses ancillary thereto (but excluding any ground lease or head lease of any kind and for any purpose, which will be considered a Commercial Lease for all purposes), together with all related credits, rights, options, claims, causes of action, guarantees, indemnities, security deposits and other security related thereto.

**"Securitization"** means any public or private offering(s) of securities (including CMBS securities) backed by or representing any direct or indirect interest in the Loan or any pool of loans which includes the Loan.

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

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

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

In each of the Loan Documents, including this Charge: (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders; (b) the word "including" means "including, without limitation"; (c) any reference to a statute means the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor or replacement statute thereto; (d) any reference to the Commitment Letter, any Loan Document, any Lease or other agreement or instrument includes all amendments, addenda, modifications, extensions, renewals, restatements, supplements or replacements thereto from time to time; (e) reference to the Chargee, Chargor (including equivalent references to such Persons, such as "Lender" and "Borrower"), Indemnitor, any Guarantor, any Lender Entity or Borrower Entity, and any other Person includes their respective heirs, executors, administrators, legal representatives, successors and permitted assigns, and reference to "corporation" includes a company or other form of body corporate; (f) all dollar amounts are expressed in Canadian dollars; (g) the division of any Loan Document into separate Articles, Sections, Subsections and Schedule(s), and the insertion of headings is for convenience of reference only and does not affect the construction or interpretation of such Loan Document; (h) the Chargee's right to give or withhold any consent or approval, make any determination or exercise any discretion will be exercised by the Chargee acting reasonably (unless otherwise expressly provided in the Loan Documents), except that following an Event of Default and notwithstanding the foregoing and any other provision of any Loan Document or Applicable Laws to the contrary, the Chargee will be entitled to give, withhold, exercise or make all such rights, determinations or discretions in its sole discretion at all times (even if such Loan Document expressly requires the Chargee to act reasonably); (i) notwithstanding any other provision of the Loan Documents or any Applicable Laws to the contrary, the words "sole discretion" mean the giving, withholding, exercising or making of the applicable right, determination or discretion in a manner that is completely and absolutely subjective in all respects and that the Person giving, withholding, exercising or making such right, determination or discretion has no duty or obligation at any time to act objectively or to apply any objective criteria or to conform to any other standard, it being the intention that the exercise of "sole discretion" by any Person will not be subject to any restriction, limitation, challenge or review of any kind whatsoever at any time by any Borrower Entity, any court or any other Person; (j) the Loan Documents are the result of negotiations between the parties thereto and will not be construed in favour of or against any party by reason of the extent to which any party or its legal counsel participated in its preparation; (k) notwithstanding the actual date of execution or registration of this Charge, this Charge may be referred to in the Loan Documents as having been executed as of or bearing a formal date of April 26, 2012; (l) if more than one Person is named as, or otherwise becomes liable for or assumes the obligations and liabilities of, the Chargor or any other Borrower Entity under any of the Loan Documents, then all such obligations and liabilities of all such Persons so named or who subsequently become liable for such obligations and liabilities are joint and several; (m) time is of the essence; (n) all obligations of the Chargor in the Loan Documents are deemed to be covenants by the Chargor in favour of the Chargee; (o) any reference to the knowledge, belief or awareness of the Chargor includes (and is deemed to include) the knowledge, belief and/or awareness of each Person comprising the Chargor and each Person having any registered, unregistered or beneficial ownership interest in the Property or any part thereof from time to time and their respective directors, officers, partners and employees; (p) where any reference is made in any of the Loan Documents to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, a trust, such reference will be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, the trustee(s) of the trust; (q) if there is any conflict or inconsistency between any provision of this Charge and the provision of any other Loan Document, the provision of this Charge will prevail to the extent of any such conflict or inconsistency; (r) this Charge is intended by the parties to have been executed by the Chargor under seal for all purposes with the intention that this Charge be a specialty under Applicable Laws, whether or not a seal is actually affixed hereto; and (s) unless the Chargee otherwise elects at any time in writing and in its sole discretion, the mortgage, charge, assignment or security interest created by this Charge and any other Loan Document will not (i) extend or apply to the last day of any lease or agreement to lease in respect of real property now held or hereafter acquired by the Chargor or any other Borrower Entity as lessee, but the Chargor (for itself and on behalf of each Borrower Entity holding such leasehold interest) agrees that such last day will be held in trust for the Chargee, and if the Chargee elects to enforce such mortgage, charge, assignment or security interest in respect of such lease or agreement to lease, such last day will be assigned by the Chargor or such other Borrower Entity holding same to the Person acquiring such lease or agreement to lease from the Chargee or as the Chargee may otherwise expressly direct, (ii) extend to or apply to consumer goods or the shares of any unlimited company or unlimited liability corporation, or (iii) render the Chargee liable to observe or perform any term, covenant or condition of any agreement, document or instrument to which the Chargor or any Borrower Entity is party or by which it is bound. This Charge is intended to supplement and not derogate from the other Loan Documents and the existence of additional terms, conditions or provisions (including any rights, remedies, representations and warranties) contained in this Charge will not be construed as being or deemed to be in conflict with such other Loan Documents. The delivery of this Charge for registration by direct electronic transmission will have the same effect for all purposes as if this Charge was in written form, signed by the Chargor and delivered to the Chargee. For the purposes of this Charge and each of the other Loan Documents, reference to the terms "Charge", "charge", "Chargor" and "Chargee" shall mean "Mortgage", "mortgage", "Mortgagor" and "Mortgagee" respectively and vice versa.

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

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

### **Section 1.04 Recourse.**

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

### **Section 1.05 REIT Provision.**

Notwithstanding any other provision of this Charge or any other Loan Document, if any Borrower Entity is a real estate investment trust (a "REIT"), the obligations of the REIT under the Loan Documents are not personally binding upon, and resort will not be had to, nor will recourse or satisfaction be sought from, the private property of any of: (a) the unit holders of the REIT; (b) annuitants or beneficiaries under a plan of which a unit holder of the REIT acts as a trustee or carrier; and (c) trustees, officers or employees of the REIT, provided that the Property will remain bound by and subject to this Charge and the other Loan Documents, and the Chargee will have full recourse to the Property, at all times and without limitation or restriction of any kind. Any obligation of the REIT set out in the Loan Documents will, to the extent necessary to give effect to such obligation, be deemed to constitute, subject to the provisions of the previous sentence, an obligation of the trustees of the REIT in their capacity as trustees of the REIT. Nothing herein will (i) constitute a bar to any action against the REIT for specific performance of any of its obligations under any Loan Document, or (ii) limit, restrict or otherwise affect the validity or enforceability of the obligations and liabilities of any Borrower Entity under this Charge or any other Loan Document.

## **ARTICLE 2 - CHARGE**

### **Section 2.01 Charge.**

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

### **Section 2.02 Continuing Security.**

This Charge will operate until all Loan Indebtedness has been fully paid to the Chargee and all other obligations of the Chargor under the Loan Documents have been fully performed, each in the manner contemplated by this Charge and the other Loan Documents, and a discharge of this Charge is executed and delivered by the Chargee to the Chargor pursuant to Section 7.13. Without limiting any other provision hereof, this Charge secures, *inter alia*, a current or running account and any portion of the Principal Amount may be advanced or readvanced by the Chargee in one or more sums at any future date or dates and the amount of such advances or readvances when so made will be secured by this Charge and be repayable

with interest at the Interest Rate and this Charge will be security for the ultimate balance owing to the Chargee arising from the current and running accounts represented by advances or readvances of the Principal Amount or any part thereof with interest at the Interest Rate and all other amounts secured hereby and notwithstanding any change in the amount, nature or form of the Loan Indebtedness from time to time. If the whole or any part of the Principal Amount or other amount secured hereby is repaid, this Charge will be and remain valid security for any subsequent advance or readvance of any part of the Loan Indebtedness by the Chargee to the Chargor until such time as the Chargee has executed and delivered to the Chargor a complete discharge of this Charge. The provisions relating to defeasance contained in Subsection 6(2) of the *Land Registration Reform Act* (Ontario) are hereby expressly excluded from this Charge.

### ARTICLE 3 - PAYMENT PROVISIONS

#### Section 3.01 Covenant to Pay.

The Chargor acknowledges itself indebted and promises to pay the Loan Indebtedness to the Chargee as and when provided in this Charge, without legal or equitable set-off, deduction, abatement, defence or claim of any kind.

#### Section 3.02 Interest.

The Principal Amount will bear interest at the Interest Rate, which interest shall be calculated semi-annually, not in advance, both before and after default, demand, maturity and judgment until paid.

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

#### Section 3.03 Payment Provisions.

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

#### Section 3.04 Compound Interest.

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

#### Section 3.05 Receipt of Payment.

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

#### Section 3.06 Wire Transfer/Pre-authorized Chequing.

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

#### Section 3.07 Dishonoured Cheques or Payments.

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

#### Section 3.08 No Right of Prepayment.

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

Provided that the Loan has not been defeased, the Chargor may prepay all (but not less than all) of the outstanding Loan Indebtedness to the Chargee at any time on or after (but not before) the Optional Prepayment Date, subject to the satisfaction of the following terms and conditions: (a) the Chargor gives the Chargee not less than 30 days prior written notice of such prepayment (which notice shall be irrevocable by the Chargor and will specify the date on which such prepayment will be made), and (b) if such prepayment is not made on a Payment Date, the Chargor must concurrently pay to the Chargee an amount equal to all interest that would have accrued on the outstanding Principal Amount of the Loan (absent such prepayment) at the Interest Rate up to and including the next following Payment Date, which amount will be

due and payable to the Chargee in addition to all other outstanding Loan Indebtedness. For greater certainty, this provision does not permit prepayment of all or any part of the Loan Indebtedness prior to the Optional Prepayment Date in any circumstances.

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

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

#### **Section 3.09 Application of Payments.**

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

#### **Section 3.10 Costs.**

The Chargor covenants to pay all Costs to the Chargee forthwith upon demand whether or not all or any part of the Principal Amount is advanced. Until paid, all Costs together with interest thereon at the Interest Rate will be added to the Loan Indebtedness and will be secured by the Loan Documents. The Chargor, for itself and on behalf of each Borrower Entity, agrees that any recovery fee, workout fee and all special servicing fees which become payable to any Loan servicer in respect of the Loan following Securitization and which are included in Costs are fair and commercially reasonable costs and expenses incurred by the Chargee and do not constitute a fine, penalty or default interest charged on arrears of principal or interest.

If the amount of any Cost is within the reasonable commercial control of the Chargee, the Chargee will use reasonable commercial efforts (but without incurring any additional liabilities, cost or expense and without limiting, restricting, modifying, waiving, impairing or otherwise affecting any of the rights and privileges of any Lender Entity under the Loan Documents or Applicable Laws) to try to maintain the amount of such Cost at a reasonable level, provided that this obligation of the Chargee will not apply to (i) any Cost incurred by or on behalf of any Lender Entity at any time after the occurrence of any Event of Default, (ii) any Cost paid by any Borrower Entity to any Lender Entity on or before any Loan advance, (iii) any Cost which has an amount expressly provided for in any Loan Document (such as assumption fee payable under Section 4.02(d) hereof), or (iv) any Cost charged (directly or indirectly) by any Governmental Authority or Rating Agency.

#### **Section 3.11 Deemed Re-investment.**

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

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

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

#### **Section 3.13 Reserves.**

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

## ARTICLE 4 - REPRESENTATIONS, WARRANTIES AND COVENANTS

### Section 4.01 Statutory Covenants.

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

### Section 4.02 Representations, Warranties and Covenants.

The Chargor represents and warrants to and covenants with the Chargee as follows:

- (a) **Authorization.** Each Borrower Entity (i) which is a corporation, is a duly organized and validly existing corporation under the laws of its governing jurisdiction; (ii) which is a partnership or trust, is a valid and subsisting partnership or trust, as the case may be, under the laws of its governing jurisdiction; (iii) to the extent it owns any registered, unregistered or beneficial interest in the Property, has full power, authority and legal right to own its interest in the Property and to carry on its business with respect to the Property in compliance with all Applicable Laws and is duly licensed, registered or qualified in all jurisdictions where the character of its undertaking, property and assets or the nature of its activities makes such licensing, registration or qualification necessary or desirable; (iv) has full power, authority and legal right to enter into each of the Loan Documents to which it is a party and to do all acts and execute and deliver all other documents as are required to be done, observed or performed by it in accordance with their respective terms; (v) has taken all necessary action and proceedings to authorize the execution, delivery and performance of the Loan Documents to which it is a party and to observe and perform the provisions of each in accordance with its terms; (vi) will maintain in good standing its existence, capacity, power and authority as a corporation, partnership or trust, as the case may be, and shall not liquidate, dissolve, wind-up, terminate, merge, amalgamate, consolidate, reorganize or restructure or enter into any transaction or take any steps in connection therewith; (vii) will not make or permit any amendment to its Organizational Documents without the prior written consent of the Chargee in its sole discretion and (viii) which is the Chargor, is a corporation resident in Canada for the purposes of the *Income Tax Act* (Canada).
- (b) **Enforceability.** The Loan Documents constitute valid and legally binding obligations of each Borrower Entity which is a party thereto enforceable against each of them in accordance with their respective terms and are not subject to any right of rescission, set-off (legal or equitable), counterclaim or defence. Neither execution and delivery of the Loan Documents, nor compliance with the terms and conditions of any of them, (i) has resulted or will result in a breach or violation of the Organizational Documents governing any Borrower Entity, (ii) has resulted or will result in a breach of or constitute a default under Applicable Laws or any agreement or instrument to which any Borrower Entity is a party or by which it or the Property or any part thereof is bound or (iii) requires any approval or consent of any Person except such as has already been obtained.
- (c) **Title and Security.** The Chargor is the sole registered and beneficial owner of the Property and no other Person(s) has any registered, unregistered or beneficial ownership interest therein. The Chargor has good and marketable title to the Property free and clear of all Liens other than Permitted Encumbrances. This Charge and the other Loan Documents will be at all times a good and valid first priority mortgage, charge, assignment of and security interest in and of the entire legal and beneficial ownership interest in the Property in priority to all other Liens other than Permitted Encumbrances. The Chargor will defend title to the Property for the benefit of the Chargee from and against all actions, proceedings and claims of all Persons. The Chargor will not permit the Property or any part thereof to be subject to or included in any condominium or strata title regime or any other form of multiple ownership or governance.
- (d) **Transfers and Liens.** No Transfer will be made or permitted to be made without the prior written consent of the Chargee acting reasonably. Other than Permitted Encumbrances, no Liens will be created, issued, incurred or permitted to exist (by operation of law or otherwise and whether prior to, *pari passu* with or subordinate to this Charge or the other Loan Documents or the security thereof) in respect of, or registered against, any part of the Property or any interest therein (except in favour of the Chargee as security for the Loan), without the prior written consent of the Chargee in its sole discretion. Any Lien not permitted hereby must be fully vacated and discharged from the Property by the Chargor forthwith. If, without the prior written consent of the Chargee, any Transfer or Lien of any part of the Property or any interest therein (other than a Transfer or Lien otherwise expressly permitted under the terms hereof) is made, created, incurred, taken or permitted to exist, then the Chargee, in its sole discretion and without limiting its other rights and remedies hereunder, may declare an Event of Default to have occurred and the Loan Indebtedness (including the Prepayment Charge) to be immediately due and payable by the Chargor to the Chargee, in which event all of the Chargee's rights and remedies under this Charge, the other Loan Documents and Applicable Laws will become immediately enforceable. Notwithstanding the foregoing, the Chargee's consent to any Transfer will be subject at all times to the satisfaction by the Chargor of each of the following terms and conditions prior to the completion of such Transfer, in each case at the Chargor's sole cost and expense and to the satisfaction of the Chargee in its sole discretion: (i) no Event of Default has occurred and is uncured and no event has occurred and is uncured which, with the passing of time or the giving of notice or both, would be an Event of Default, (ii) the Chargee has approved the financial condition, managerial capacity and ownership structure of the transferee, (iii) the transferee and each other Borrower Entity must execute and deliver, in the Chargee's form, an assumption agreement and such other indemnities, confirmations, insurance policies (including title insurance) and opinions as the Chargee may require in its sole discretion, (iv) if required by the Chargee in its sole discretion, the Chargor must obtain and deliver to the Chargee, at Chargor's sole expense, a Rating Confirmation in respect of such Transfer; (v) the Chargor must pay all fees, costs and expenses



(plus applicable taxes) of the Chargee, the Loan servicer and its legal counsel relating to such Transfer, its review of Chargor's compliance with these terms and conditions, the preparation and review and/or recording of any and all documents and legal opinions relating thereto, including any governmental or third-party fees, costs, taxes or assessments thereon and all fees, costs and expenses (plus applicable taxes) of the Rating Agencies in connection with their review of such Transfer and all related transactions (whether or not a Rating Confirmation is required or issued), (vi) the Chargor must pay to the Chargee an assumption fee with respect to such Transfer equal to 0.50% of the Principal Amount (such fee not to exceed \$20,000), plus applicable taxes, (vii) registered title to the Property must be held at all times by a corporation resident in Canada for the purposes of the *Income Tax Act* (Canada), and (viii) the Chargor must satisfy all other conditions imposed by the Chargee in respect of such Transfer.

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

- (c) **Realty Taxes and Utility Charges.** The Chargor will pay or cause to be paid all Realty Taxes and utility charges relating to the Property when due. Without limiting the foregoing, the Chargor will also comply with its obligations under the Commitment Letter and/or rate lock confirmation with respect to Realty Tax reserves and any applicable tax instalment payment plan applicable to the Property, including making all payments thereunder when due. The Chargor will deliver to the Chargee receipted invoices or other evidence of payment of (i) Realty Taxes, including each tax instalment, no later than each due date thereof, and (ii) utility charges upon request by the Chargee.
- (f) **Litigation.** There are no existing or threatened actions, proceedings or claims against or relating to the Property or any Borrower Entity or, to the Chargor's knowledge, any prior owner of the Property, except in each case as disclosed to and accepted by the Chargee in writing prior to the initial Loan advance. Upon becoming aware of any threatened or actual action, proceeding or claim against or relating to the Property or any Borrower Entity or any prior owner of the Property, the Chargor will promptly notify and provide the Chargee with such information concerning same as the Chargee may require from time to time.
- (g) **Property.** The Property is in good condition and repair, complies with all Applicable Laws, Permitted Encumbrances, material agreements, permits, licenses and approvals, and the current location, occupancy, operation and use of the buildings, structures and other improvements on the Property (including all existing and permitted uses of the Property by Tenants) either comply with all Applicable Laws, or to the extent of any non-compliance, such non-compliance is legally permitted under Applicable Laws. No buildings, structures or other improvements have been made, altered or removed from the Property since the date of the survey provided to the Chargee prior to the initial Loan advance and such survey accurately shows the location thereof. Except as expressly disclosed as exceptions to title in Schedule B to the title insurance policy issued to the Chargee in connection with the initial Loan advance and accepted by the Chargee in its sole discretion, the Chargor is not aware of any action, proceedings, notices, judgments, orders or claims by any Person alleging or relating to any non-compliance by the Property with any Applicable Laws, Permitted Encumbrances, material agreements or any permits, licenses or approvals and the Chargor shall promptly notify and provide the Chargee with particulars of any default thereunder and any other information as the Chargee may require from time to time. All services and utilities necessary for the use and operation of the Property are located in the public highway(s) abutting the Property (or within easements disclosed to and approved by the Chargee in writing prior to the initial Loan advance) and are connected and available for use. The Property has unrestricted and unconditional rights of public access to and from public highways (completed and available for public use) abutting the Property at all existing access points. There is no existing or threatened expropriation or other similar proceeding in respect of the Property or any part thereof.
- (h) **Use and Maintenance.** Neither the Chargor nor any other Borrower Entity will change the use of or abandon the Property, commit or permit any waste of the Property or remove or permit the removal of any building, structure or other improvement from the Property (other than any Tenant's improvements which are removable by a Tenant in accordance with its Lease). The Chargor will diligently maintain, use, manage, operate and repair the Property in a safe and insurable condition, in accordance with Applicable Laws, Permitted Encumbrances, material agreements, permits, licenses and approvals, in a prudent and business-like manner, and in keeping with the highest standards for similar properties in the locality in which the Property is situated. The Chargor will promptly make or cause to be made at its expense all 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, Permitted Encumbrances, material agreements, permits, licenses and approvals.
- (i) **Changes to Property.** Neither the Chargor nor any other Borrower Entity will demolish, remove, construct, alter, add to, repair or restore the Property or any portion thereof (collectively, "Alterations") nor consent to or permit any other Person to make such Alterations, without obtaining in each instance the Chargee's prior written consent in its sole discretion (except for Alterations costing Two Hundred Thousand Dollars (\$200,000.00) or less to complete). Nothing herein will prevent or restrict any Borrower Entity from complying with its obligations to maintain and repair the Property in accordance with the Loan Documents.
- (j) **Management.** The manager of the Property and each management agreement will each be subject to the prior written approval of the Chargee in its sole discretion from time to time. The manager will not be

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

- (k) Right of Inspection. The Chargee, the Loan servicer and their respective agents and employees will have the right, subject to the rights of Tenants under existing Leases, to enter and inspect the Property at all reasonable times and, except in an emergency or following an Event of Default, upon reasonable notice (which notice shall not be required to be writing) to the Chargor. The Chargee will not be considered to have taken possession of the Property or to otherwise become a mortgagee or chargee in possession of the Property by reason of its exercise of any such right.
- (l) Permits. The Chargor (i) has obtained all permits, agreements, rights, licences, authorizations, approvals, franchises, trademarks, trade names and similar property and rights (collectively "Permits") necessary to permit the lawful construction and the current occupancy, operation and use of the Property; (ii) is not in default under such Permits and will maintain all such Permits in good standing and in full force and effect; (iii) will not terminate, amend or waive any of its rights and privileges under any Permits without the Chargee's prior written consent in its sole discretion; and (iv) is not aware of any proposed changes or any notices or proceedings relating to any Permits (including pending cancellation, termination or expiry thereof). The Chargor will promptly notify and deliver to the Chargee particulars of any such changes, notices or proceedings that may arise from time to time.
- (m) Representations Regarding Environmental Matters. The Property and all activities conducted thereon comply with all Environmental Laws. The Property is not and will not be used at any time for the purpose of manufacturing or storing Hazardous Substances. The Property contains no Hazardous Substances (except those used incidentally in the ordinary course of business of the Chargor or any Tenant and in compliance with all Applicable Laws), has not been previously, and is not currently, subject to any remediation or clean-up of Hazardous Substances and there has not been and is no prior, existing or threatened investigation, action, proceeding, notice, order, conviction, fine, judgment, claim, directive or Lien of any nature or kind against or affecting the Property or the Chargor arising under or relating to Environmental Laws (each, an "Environmental Proceeding"). All existing environmental assessments, audits, tests and reports relating to the Property have been delivered to the Chargee. To the best of the Chargor's knowledge and belief, there are no pending or proposed changes to Environmental Laws or any Environmental Proceedings which would render illegal or affect the present use and operation of the Property. Neither the Chargor nor any other Person has used or permitted the use of the Property to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process Hazardous Substances or as a waste disposal site.
- (n) Covenants Regarding Environmental Matters. The Chargor will: (i) ensure that the Property and the Chargor comply with all Environmental Laws at all times; (ii) not permit any Hazardous Substance to be located, manufactured, stored, spilled, discharged or disposed of at, on or under the Property (except those used incidentally in the ordinary course of business of the Chargor or any Tenant and in compliance with all Environmental Laws); (iii) ensure that any Hazardous Substance brought onto the Property or used by any person on the Property shall be transported, used and stored only in accordance with Environmental Laws; (iv) notify the Chargee promptly of any actual, threatened or potential escape, seepage, leakage, spillage, release or discharge of any Hazardous Substance on, from, or under the Property; (v) notify the Chargee promptly of any threatened or actual Environmental Proceedings that may arise from time to time and provide particulars thereof; (vi) remediate and cure in a timely manner any non-compliance by the Property or the Chargor with Environmental Laws, including removal of any Hazardous Substances; and (vii) provide the Chargee promptly upon request with such information and documents and take such other steps (all at the Chargor's expense) as may be required by the Chargee to confirm and/or ensure compliance by the Property, the Chargor and each Tenant of the Property with Environmental Laws.
- (o) Environmental Indemnity. Without limiting any other provision of any Loan Document, the Chargor will indemnify and pay, protect, defend and save each Lender Entity harmless from and against all actions, proceedings, losses, damages, liabilities, claims, demands, judgments, costs and expenses (including legal fees and disbursements on a full indemnity or equivalent basis) (collectively "Environmental Claims") occurring, imposed on, made against or incurred by such Lender Entity arising from or relating to, directly or indirectly, whether or not disclosed by any environmental assessment obtained by any Lender Entity prior to the initial Loan advance and whether or not caused by the Chargor or within its control: (i) any actual or alleged breach of Environmental Laws relating to or affecting the Property, (ii) the actual or alleged presence, release, discharge or disposition of any Hazardous Substance in, on, over, under, from or affecting all or part of the Property or surrounding lands, including any personal injury or property damage arising therefrom, (iii) any actual or threatened Environmental Proceeding affecting the Property including any settlement thereof, (iv) any assessment, investigation, containment, monitoring, remediation and/or removal of all Hazardous Substances from all or part of the Property or surrounding areas or otherwise complying with Environmental Laws; or (v) any breach by any Borrower Entity of any Loan Document or Applicable Laws relating to environmental matters (including Section 4.02(m) and Section 4.02(n) above). Notwithstanding any other provision of this Charge or any other Loan Document, the Chargor agrees that each Lender Entity will have full and unrestricted recourse to the Chargor, each Indemnitor and all of their respective property and assets for all such Environmental Claims.

- (p) Estoppel Certificates. Within fifteen (15) days following a request by the Chargee from time to time, the Chargor will provide the Chargee with a written statement confirming the status of the Loan in form and content required by the Chargee or Loan servicer, including the amount of the Loan Indebtedness, interest rate and payment terms and particulars of all existing or alleged defaults, claims, offsets or defences.
- (q) Financial and Other Information. All financial statements and other information delivered to any Lender Entity by or on behalf of each Borrower Entity in connection with the Loan are complete and correct in all material respects as of the date of delivery to such Lender Entity or as of such other date specified therein, and include all material facts and circumstances concerning the financial or other condition or status of the Property, each Borrower Entity or its business and operations necessary to ensure all such statements and information so provided are not misleading as of the date of delivery to such Lender Entity or as of such other date specified therein. There has been no material adverse change in the financial or other condition of the Property, any Borrower Entity or its business and operations since the date such statements and information were delivered to such Lender Entity or since the date specified therein, as applicable. No Borrower Entity has any material liability (contingent or otherwise) or other unusual or forward commitment not reflected in such financial statements. Each Borrower Entity has filed all tax returns required by Applicable Laws and has paid, when due, all taxes, surtaxes, duties, rates, withholdings, all source deductions (for income tax, employment insurance and other matters) and other similar charges (including related interest, penalties and fines) imposed on it or required to be made by Applicable Laws or any Governmental Authority.
- (r) Financial Statements. The Chargor will provide the following financial statements and information to the Chargee, certified by the Chargor or the related Borrower Entity and prepared in accordance with generally accepted accounting principles consistently applied and in form and substance acceptable to the Chargee: (i) an annual operating statement and rent roll for the Property by January 30 of each calendar year; (ii) annual financial statements for each Borrower Entity within ninety (90) days after the end of each fiscal year of each such Person; and (iii) such other information with respect to the Property and/or any Borrower Entity reasonably requested from time to time by the Chargee. If the Property is a hotel, the Chargor will provide an occupancy summary for the applicable period in form and substance acceptable to the Chargee in lieu of a rent roll. The Chargee, the Loan servicer and/or their respective agents have the right to make inspections and audits of the Property and all books and records relating to the Property and each Borrower Entity at such time(s) as the Chargee may determine in its sole discretion and at the Chargor's expense, and the Chargor will cooperate and will cause each other Borrower Entity to cooperate fully therewith.
- (s) Not a Construction Loan. Except as otherwise expressly disclosed by the Chargor in writing and accepted by the Chargee prior to the initial Loan advance, the Chargor covenants, represents and warrants that the Loan and the proceeds thereof are not to be used for the purpose of securing the financing of any improvement (within the meaning of the *Construction Lien Act* (Ontario)) to the Property or for repaying any mortgage or charge which was taken to secure the financing of an improvement to the Property.

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

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

### **ARTICLE 5 - INSURANCE**

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

The Chargor must maintain at its sole expense the following insurance coverages with respect to the Property for the benefit of the Chargee (for itself and on behalf of each Person having an ownership interest in the Loan from time to time) until the Loan Indebtedness has been fully paid and satisfied: (a) insurance against loss or damage by fire, casualty and other hazards as are now or subsequently covered by an "all risk" policy with such endorsements as the Chargee may reasonably require from time to time, covering one hundred percent (100%) of the full replacement cost of the buildings, structures and improvements comprising the Property (including footings and foundations); (b) rental insurance covering one hundred percent (100%) of the total Rents from the Property for not less than an eighteen (18) month period (to be determined once each calendar year); (c) comprehensive broad form boiler and machinery coverage; (d) "Comprehensive General Liability Form" of commercial general liability insurance coverage with the "Broad Form CGL" endorsement, providing coverage on a per occurrence basis in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence; (e) during such time or times as there is construction of any buildings or other improvements on the Property (it being acknowledged that such construction is subject to the prior written approval of the Chargee in its sole discretion), builders' all risk insurance; and (f) such other insurance as required by the Chargee from time to time in its sole discretion. The Chargor represents and warrants to the Chargee that all such insurance is in full force and effect from and after the initial Loan advance.

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

All insurance required by this Article must have a term of not less than one year and must be in the form and amount and with such deductibles, endorsements and with such insurers as are acceptable to the Chargee from time to time in its sole discretion. Original or certified copies of all insurance policies will be delivered by the Chargor to the Chargee immediately and evidence of its renewal or replacement must be delivered not less than thirty (30) days before any policy expires or is terminated. If insurance certificates or binders evidencing such insurance and acceptable to the Chargee are delivered prior to the initial Loan advance or renewal, as the case may be, the original or certified copies of such insurance policies may be delivered to the Chargee within ninety (90) days thereafter. All property, income and boiler and machinery

policies will, in a manner satisfactory to the Chargee (i) contain either a stated amount endorsement or a waiver of any co-insurance provision, (ii) contain Canadian standard mortgage clauses in favour of the Chargee, and (iii) name the Chargee, on behalf of itself and any other Person having an ownership interest in the Loan from time to time, as first loss payee. Following any Securitization of the Loan or any interest therein, each insurance policy required to be maintained by the Chargor hereunder must be acceptable to the Rating Agencies at all times. The Chargor will not carry separate insurance, concurrent in kind or form or contributing in the event of loss, with any insurance required hereunder. If any insurance required by this Charge is not maintained by the Chargor at any time, the Chargee may (but is not obligated to) effect such insurance in any manner it shall determine in its sole discretion and all costs and expenses incurred by or on behalf of the Chargee in maintaining such insurance will be payable by the Chargor to the Chargee forthwith on demand. Until paid, such costs and expenses together with interest thereon at the Interest Rate will be added to the Loan Indebtedness and will be secured by the Loan Documents. As additional and separate security for payment and performance of the Loan Indebtedness and all of its other covenants and obligations under the Loan and the Loan Documents, the Chargor hereby assigns, transfers, grants a security interest in, and sets over to the Chargee, as a first priority Lien thereof, all legal and beneficial right, title and interest in and to all present and future insurance proceeds and expropriation awards in respect of the Property. The Chargor hereby authorizes and directs the issuer of any such insurance proceeds or expropriation awards to make payment directly to the Chargee. Upon an Event of Default, all insurance proceeds and expropriation awards arising in respect of the Property will, at the option of the Chargee in its sole discretion, be applied in reduction of the Loan Indebtedness.

#### **Section 5.03 Comply with Insurance Policies.**

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

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

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

If any damage or destruction occurs to the Property, the Chargor will: (i) give prompt written notice to the Chargee of any damage or destruction to the Property and cause the Property to be secured in a safe manner; (ii) promptly notify the Chargee of the Chargor's good faith estimate of the cost of the work and materials required to repair or restore such damage or destruction (the "Restoration Work"); (iii) promptly commence and diligently prosecute the Restoration Work to completion in accordance with all Applicable Laws and the provisions of this Article to a standard at least equal to the replacement value and general utility of the Property immediately prior to such damage or destruction; (iv) complete the Restoration Work within nine (9) months after the date of the damage and no later than six (6) months prior to the Maturity Date; (v) ensure that the proceeds of the rental insurance required by this Charge shall offset fully any loss of Rents throughout the completion of the Restoration Work and a reasonable period thereafter for leasing the Property or if not, prior to the commencement of such Restoration Work, deposit with the Chargee in cash an amount equal to any deficiency (as estimated by the Chargee and calculated to the end of the period during which the Restoration Work and lease-up will be completed), to ensure that funds are available to pay when due all scheduled payments on account of the Loan Indebtedness throughout such period and the Chargor hereby grants a first priority security interest in such cash deposit and all proceeds of any such letter of credit to the Chargee as security for the payment and performance of the Loan and the Loan Indebtedness and all of its other covenants and obligations under the Loan and the Loan Documents; (vi) ensure that following completion of such Restoration Work, the same location, density, occupation, operation and use of the Property that existed at the time of the initial Loan advance will be legally permitted under all Applicable Laws (or a legal non-conforming use), unless otherwise approved by the Chargee in its sole discretion; (vii) pay all costs and expenses incurred by any Lender Entity in connection with the recovery and administration of all insurance proceeds and the Restoration Work, including approving plans and specifications, inspecting the Restoration Work, and all reasonable architects', adjusters', lawyers', engineers' and other consultants' fees and disbursements and (viii) promptly furnish at its own expense all necessary proofs of loss and do all necessary acts to ensure that the Chargee receives payment of all insurance proceeds.

#### **Section 6.02 Application of Insurance Proceeds.**

Provided no Event of Default exists, all insurance proceeds arising or relating to any damage or destruction to the Property net of all reasonable architects', adjusters', lawyers', and other consultants' fees and disbursements ("Net Proceeds") will be held by the Chargee and paid out from time to time (but not more frequently than every thirty (30) days) to pay the cost of the Restoration Work performed in accordance with this Article on and subject to satisfaction of the following terms and conditions (each of which shall be an obligation of the Chargor to promptly satisfy): (a) Within ten (10) days of such damage or destruction, Chargor will (i) deliver to the Chargee a certificate from an architect approved by the Chargee acting reasonably (the "Architect") estimating the cost of the Restoration Work, (ii) if the estimated cost exceeds the amount of Net Proceeds then held by the Chargee, the Chargor shall deliver to the Chargee an unconditional, irrevocable, demand letter of credit, in form, substance and issued by a bank acceptable to the Chargee in its sole discretion, in the amount of such excess, or a completion bond in form, substance and issued by a surety company acceptable to the Chargee in its sole discretion, (iii) provide to the Chargee evidence satisfactory to it in its sole discretion (including an appraisal and statements of cash flow and debt service) that upon the completion of the Restoration Work, the debt service coverage ratio and loan to value ratio (each as determined by the Chargee in accordance with its then current underwriting practices) will not be less than the debt service coverage ratio or more than the loan to value ratio specified in the Commitment Letter, and (iv) provide to the Chargee evidence satisfactory to it in its sole discretion, and agree in writing with the Chargee, that the Restoration Work will be completed in accordance with this Article; (b) If the Architect's estimate of the cost of the Restoration Work is equal to or exceeds Fifty Thousand Dollars (\$50,000.00), such Restoration Work will be performed under the supervision of an Architect and in accordance with plans and specifications approved by the Chargee in its sole discretion; (c) Requests for payment of Net Proceeds held by the Chargee must be made by the Chargor on not less than ten (10) Business Days prior notice to the Chargee and must be accompanied by a certificate of an Architect, or if the Restoration Work is not required to be supervised by an Architect, by a certificate of the Chargor addressed to the Chargee, stating or containing (i) a detailed description of the completed Restoration Work for which the

request for payment is made, (ii) that such Restoration Work has been completed in compliance with this Article, and has been approved by the Chargor and if applicable, the Architect, (iii) that the requested amount is due, or is required to reimburse the Chargor, for payments made to the contractor, subcontractors, materialmen, suppliers, labourers, engineers, architects or other Persons performing the Restoration Work and that when added to all payments previously made from Net Proceeds does not exceed the value of the Restoration Work done to the date (if required by the Chargee, the payment of the requested amount shall be made directly to such Persons pursuant to a written direction of the Chargor); (iv) that title to the personal property included in the request for payment is vested in the Chargor free and clear of all Liens, together with confirmation satisfactory to the Chargee in its sole discretion that such personal property is subject to the Chargee's security as a first priority security interest therein, (v) the remaining cost to complete the Restoration Work, (vi) the amount of all lien holdbacks required or permitted to be maintained under Applicable Laws in respect of such Restoration Work, (vii) the amount of such holdbacks actually maintained by the Chargor, (viii) that except for such actual holdbacks and the amount of the requested payment required to be paid to such Persons, all contractors, subcontractors, materialmen, suppliers, labourer, engineers, architects and other Persons performing such Restoration Work have been paid in full, and (ix) that no written notice of a construction lien, mechanics lien or other similar Lien under Applicable Laws has been received by the Chargor or the Architect or registered against the Property; and, (d) Prior to disbursing any Net Proceeds, (i) the Chargee must be satisfied in its sole discretion that all holdbacks required or permitted by Applicable Laws have been maintained and that no construction lien, mechanics lien or other similar Liens under Applicable Laws have been registered against the Property, and (ii) the Chargee has the right to inspect the Property to determine that the Restoration Work complies with this Article. The Chargor irrevocably waives any requirement of Applicable Laws which may require the Net Proceeds to be used to restore or rebuild the Property.

#### **Section 6.03     Holdbacks.**

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

#### **Section 6.04     Event of Default.**

If the Chargor fails to comply with any of its obligations under this Article, an Event of Default will have occurred, and notwithstanding any other provision hereof, the Chargee will have the right exercisable in its sole discretion to apply all Net Proceeds to the Loan Indebtedness. The Chargee may (but shall have no obligation to) perform or cause to be performed any incomplete Restoration Work, and may take such other steps as it deems advisable in connection therewith. The Chargor hereby waives all actions, proceedings, claims, demands and other rights against each Lender Entity arising out of any act or omission of the Chargee completing the Restoration Work and all matters relating thereto. The Chargee may apply all or any portion of the Net Proceeds (without complying with any requirements of this Article) to pay or reimburse each Lender Entity or any contractor or other Person retained by any Lender Entity for all costs of completing the Restoration Work without prior notice to or consent of the Chargor or any other Person. Any costs and expenses incurred by or on behalf of the Chargee in completing any Restoration Work will be Costs and shall be payable by the Chargor forthwith upon demand. Until paid, such costs and expenses, together with interest thereon at the Interest Rate, will be added to the Loan Indebtedness and will be secured by the Loan Documents.

#### **Section 6.05     Proceeds of Expropriation.**

Prior to an Event of Default, all proceeds of expropriation up to \$25,000 will be paid to the Chargor and must be re-invested by the Chargor in the Property. All proceeds of expropriation which exceed \$25,000 (or following an Event of Default, all expropriation proceeds) will be paid to and held by the Chargee and may be applied by the Chargee, in its sole option exercisable in its sole discretion, to reduction of the Loan Indebtedness then due or may be held by the Chargee as security for the Loan Indebtedness.

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

#### **Section 7.01     Acceleration.**

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

#### **Section 7.02 Power of Sale.**

After the occurrence of an Event of Default which has continued for the minimum period provided by law, the Chargee, on giving the minimum notice required by law, may enter on, lease or sell the Property. If permitted by law, the Chargee may enter on, lease or sell the Property without notice. Any sale of the Property by the Chargee may be by public auction or private sale for such price and on such terms as to credit and otherwise with such conditions of sale as the Chargee in its sole discretion deems proper and in accordance with Applicable Laws. If any sale is for credit or for part cash and part credit, the Chargee will not be accountable for or be charged with any moneys until they are actually received in cash. The Chargee may rescind or vary any contract or sale and may buy and re-sell the Property, in each case in its sole discretion and without being answerable for loss occasioned thereby. No purchaser will be bound to inquire into the legality, regularity or propriety of any sale or be affected by notice of any irregularity or impropriety. No lack of default, want of notice or other requirement or any irregularity or impropriety of any kind will invalidate any sale pursuant to this Charge and the purchaser shall not be responsible for any damage or loss caused thereby. The Chargee may sell without entering into actual possession of the Property and while in possession will be accountable only for moneys which are actually received by it. The Chargee may, subject to the restrictions of Applicable Law, sell parts of the Property from time to time to satisfy any portion of the Loan Indebtedness, leaving the remainder of the Property as security for the balance of the Loan Indebtedness. The Chargee may sell the Property or any portion of the Property subject to the balance of the Loan Indebtedness not yet due at the time of such sale. The costs of any sale or other enforcement or realization proceedings pursuant to this Charge, the other Loan Documents and/or Applicable Laws, whether such sale or other proceeding proves abortive or not, including taking, recovering or keeping possession of the Property or enforcing any other remedies pursuant to this Charge, the other Loan Documents and/or Applicable Laws will be payable by the Chargor to the Chargee forthwith upon demand. Until paid, such costs will be Costs, and together with interest thereon at the Interest Rate, will be added to the Loan Indebtedness and will be secured by the Loan Documents.

#### **Section 7.03 General Rights of Chargee.**

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

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

#### **Section 7.04 Possession.**

Upon the occurrence of an Event of Default, the Chargee may enter into and take possession of the Property, as and when it may determine in its sole discretion, and each of the Chargee and each purchaser or lessee from the Chargee of the Property or any part thereof shall be entitled to have, hold, use, occupy, possess and enjoy the Property without let, suit, hindrance, interruption or denial of the Chargor or any other Borrower Entity or other Person. The Chargee may maintain, repair and complete the construction of the Property, inspect, manage, take care of, collect Rents and lease the Property or any part thereof (provided the Chargee has no obligation to perform, undertake or continue (if commenced) any of the foregoing actions) for such term (which may extend beyond the Maturity Date) and such rents and on such other terms and conditions (including providing any leasehold improvements and tenant inducements) as the Chargee may determine in its sole discretion, which lease(s) will have the same effect as if made by the Chargor, and the Chargee will have the power to amend, accept surrenders of or terminate any lease, in each case on such terms and conditions as it may determine in its sole discretion and all costs, charges and expenses incurred by the Chargee in the exercise of such rights (including allowances for the time, service, work or effort of the Chargee or any other Lender Entity in connection therewith, and all legal fees and disbursements incurred on a full indemnity or equivalent basis), will be payable by the Chargor to the Chargee forthwith on demand. Until paid, all such costs, charges and expenses will be Costs and, together with interest thereon at the Interest Rate, will be added to the Loan Indebtedness and will be secured by the Loan Documents. Each lease or renewal of lease made by the Chargee while in possession of the Property will continue for its full term notwithstanding the termination of the Chargee's possession and will be subject to the security of the Loan Documents at all times. The Chargor covenants and agrees that no Lender Entity will be liable for any loss or damage sustained by any Borrower Entity or any other Person resulting from any lease entered into by the Chargee, any failure to lease the Property, or any part thereof, or from any other act or omission of the Chargee or any receiver, receiver and manager, administrator or other Person with similar powers in managing the Property, and that no Lender Entity will be obligated to perform or discharge any obligation or liability of the Chargor to any other Borrower Entity or Person under any Lease, Loan Document or otherwise under Applicable Laws.

#### **Section 7.05 Carry on Business.**

Upon the occurrence of an Event of Default, the Chargee may in its sole discretion, carry on, or concur in the carrying on of all or any part of the business or undertaking of each Borrower Entity relating to the Property and enter on, occupy and use the Property (without charge by any Borrower Entity) in each case as and when the Chargee may determine in its sole discretion.

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

Upon the occurrence of an Event of Default, the Chargee may raise money on the security of the Property or any part thereof in priority to the security of the Loan Documents or otherwise, as required for the purpose of the maintenance,

preservation, protection or completion of the Property or any part thereof or to carry on all or any part of the business of each Borrower Entity relating to the Property, and in each case on such terms and conditions as the Chargee may determine in its sole discretion.

#### **Section 7.07 Receiver.**

Upon the occurrence of an Event of Default, the Chargee may in its discretion, with or without entering into possession of the Property or any part thereof, by instrument in writing, appoint a "Receiver" (which shall include a receiver, a manager, a receiver and manager, administrator or other Person with similar powers) of the Property or any part thereof with or without security and may from time to time remove any Receiver with or without appointing another in his stead, and in making such appointment or appointments or removing a Receiver the Chargee will be deemed to be acting for the Chargor (provided that no such appointment will be revocable by any Borrower Entity). Upon the appointment of any such Receiver from time to time, and subject to the provisions of the instrument appointing such Receiver, the following provisions will apply: (a) such Receiver may, in the discretion of the Chargee and by writing, be vested with all or any of the rights, powers and discretions of the Chargee, including the full right and power to enter, lease and sell the Property; (b) such Receiver, so far as concerns the responsibility for his acts or omissions, will be deemed the agent or attorney of the Chargor and not the agent of the Chargee (unless specifically appointed by the Chargee as the agent of the Chargee); (c) neither the appointment, removal or termination of such Receiver by the Chargee nor any act or omission by such Receiver will incur or create any liability on the part of the Chargee to the Receiver in any respect or constitute the Chargee a chargee or mortgagee in possession of the Property or any part thereof; (d) such Receiver will be the irrevocable agent or attorney of the Chargor (unless the Chargee specifically appoints such Receiver as the agent for the Chargee) for the collection of all Rents falling due in respect of the Property or any part thereof; (e) the rights and powers conferred herein in respect of the Receiver are supplemental to and not in substitution of any other rights and powers which the Chargee may have; (f) without creating any liability on the part of the Chargee, the Chargee may from time to time fix the remuneration for such Receiver, who shall be entitled to deduct the same out of revenue or sale proceeds of the Property; (g) such Receiver will have the power from time to time to lease any portion of the Property which may become vacant for such term (which may extend beyond the Maturity Date) and will have the power to amend, accept surrenders of or terminate any Lease, in each case on such terms and conditions as it may determine in its sole discretion and in so doing (unless the Chargee specifically appoints such Receiver as agent for the Chargee), such Receiver will act as the attorney or agent of the Chargor and will have authority to execute under seal any Lease or surrender of any such premises or notice(s) of termination in the name of and on behalf of each such Borrower Entity, and the Chargor agrees to ratify and confirm whatever any Receiver may do in the Property; (h) such Receiver may make such arrangements, at such time or times as it may deem necessary without the concurrence of any other persons, for the repairing, completing, adding to, or managing of the Property, including completing the construction of any incomplete building or buildings, structures, services or improvements on the Property, and constructing or providing for leasehold improvements notwithstanding that the resulting cost may exceed the original principal amount of the Loan; (i) such Receiver will have full power to manage, operate, amend, repair or alter the Property or any part thereof in the name of the Chargor for the purpose of obtaining rental and other income from the Property or any part thereof; (j) no Receiver will be liable to any Borrower Entity to account for monies other than monies actually received by it in respect of the Property and out of such monies so received from time to time such Receiver will pay in the following order: (i) its remuneration aforesaid, (ii) all obligations, costs and expenses made or incurred by it, including any expenditures in connection with the management, operation, leasing, maintenance, repair, construction or alteration of the Property or any part thereof or any business or undertaking carried on by the Receiver thereon, (iii) interest, principal and other monies which may be or become a Lien upon the Property from time to time in priority to this Charge, including all Realty Taxes, (iv) to the Chargee, all Loan Indebtedness and all reserves payable to the Chargee under the Loan Documents, to be applied in such order as the Chargee determines in its sole discretion, and (v) at the discretion of the Receiver, interest, principal and other monies which may from time to time constitute a Lien on the Property subsequent in priority or subordinate to the interest of the Chargee under this Charge, and such Receiver may retain in its discretion reasonable reserves to satisfy accruing amounts and anticipated payments in connection with any of the foregoing; (k) the Chargee may at any time and from time to time terminate any receivership by notice in writing to the Chargor and to any Receiver; and (l) the Chargor hereby irrevocably releases and discharges the Chargee and every Receiver from every claim of every nature, whether sounding in damages for negligence or trespass or otherwise, which may arise or be caused to the Chargor or any Person claiming through or under it by reason or as a result of anything done by the Chargee or any Receiver under the provisions of this paragraph. The Chargor agrees to ratify and confirm all actions of any Receiver taken or made pursuant to this provision and agrees that neither the Receiver nor any other Lender Entity will be liable for any loss sustained by the Chargor or any other Borrower Entity or Person resulting from any such action or failure to act.

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

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

**Section 7.09 Concurrent Remedies.**

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

**Section 7.10 Judgments.**

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

**Section 7.11 Remedies Cumulative.**

The rights and remedies of the Chargee under this Charge and each of the other the Loan Documents are cumulative and are in addition to and not in substitution for any rights or remedies otherwise provided under any of the other Loan Documents or Applicable Laws. No right or remedy of the Chargee will be exclusive of or dependent on any other right or remedy and any one or more of such rights and remedies may be exercised independently or in combination from time to time in such order and at such times as the Chargee may see fit, and Chargee will not be obligated to exhaust any right or remedy before exercising any of its other rights and remedies pursuant to the Loan Document or under Applicable Laws. Any single or partial exercise by the Chargee of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in any Loan Document or under Applicable Laws will not waive, alter, affect or prejudice any other right or remedy to which the Chargee may be lawfully entitled for such default or breach.

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

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

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

Interest at the Interest Rate will continue to run and accrue on all Loan Indebtedness until full payment of such Loan Indebtedness has been received by the Chargee. The Chargee will have a reasonable period of time after full payment and satisfaction of the Loan Indebtedness to execute and deliver to the Chargor a discharge of this Charge from the Property. All reasonable legal and other expenses for the preparation, execution, delivery and registration of the discharge will be paid by the Chargor upon demand (unless prohibited by Applicable Laws). The Chargor will register such discharge. The Chargee may release in its discretion and at any time any Person or any part or parts of the Property from all or any part of the Loan Indebtedness or any security of the Loan Documents either with or without any consideration and without releasing any other part of the Property or any other Person from the Loan Documents or from any of the covenants contained in the Loan Documents, and without being accountable to any Borrower Entity for the value of the land released or for any money except that actually received by the Chargee. Every part or lot into which the Property is or may hereafter be divided will stand charged with the entire Loan Indebtedness and neither the Chargor nor any other Person will have any right to require that the Loan Indebtedness be apportioned with respect thereto. The Chargee may grant time, renewals, extensions, indulgences, releases and discharges, may take securities from and give the same up, may abstain from taking securities from or from perfecting securities, may accept compositions and proposals, and may otherwise deal with the Chargor and all other Persons and securities as the Chargee may see fit without prejudicing the rights of the Chargee under the Loan or the Loan Documents. No such release or other action will constitute, evidence or result in prepayment, repayment, readvance, accord and satisfaction, novation, nor, except as expressly provided in such release or discharge, a release or discharge of all or any part of the Loan Indebtedness, the Loan Documents or the security thereof, or a release of any of the other covenants, obligations or liabilities of any Borrower Entity in respect of the Loan. No such release or other action will be binding on the Chargee unless it is made in writing and executed and delivered by the Chargee.

**ARTICLE 8 - INDEMNITY**

**Section 8.01 General Indemnity.**

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

## ARTICLE 9 - DEFEASANCE

### Section 9.01 Defeasance.

Provided no Event of Default exists and upon 30 days' prior written notice to the Chargee, the Chargor will be entitled to obtain on any Business Day following Securitization of the Loan (or earlier if permitted by the Chargee in its sole discretion) a release of the security of this Charge and the Chargee's other security from the Property upon delivery of the Defeasance Collateral (as defined below) in substitution for the other Property as security for the continuing Loan Indebtedness (a "Defeasance") upon and subject to compliance by the Chargor with the following terms and conditions at its sole expense and to the satisfaction of the Chargee in its sole discretion: (a) the Chargor must pay to the Chargee the aggregate of (i) all accrued and unpaid interest and all other sums due under the Loan up to and including the Defeasance date, and (ii) all fees, costs, expenses, charges and disbursements (plus applicable taxes) incurred by each Lender Entity relating to such Defeasance, including all fees, costs, expenses, charges and disbursements of the Chargee, its counsel and servicer for review of the Chargor's compliance with the requirements for and conditions of Defeasance and the preparation, review and/or recording of any and all documentation with respect to the Defeasance, accounting certificates and legal opinions relating thereto, including any governmental or third party fees, costs, taxes or assessments thereon, and all fees, costs, expenses, charges and disbursements (plus applicable taxes) charged by the Rating Agencies in connection with their review of such Defeasance transaction (whether or not a Rating Confirmation is required or issued); (b) the Chargor must irrevocably elect to make a full prepayment of all of the outstanding Loan Indebtedness on the Optional Prepayment Date pursuant to Section 3.08 hereof; (c) the Chargor must obtain, execute and deliver, as applicable, each of the following in form and content satisfactory to the Chargee in its sole discretion: (i) direct, non-callable obligations of the Government of Canada (the "Defeasance Collateral") which provide for payments prior, but as close as possible, to all Payment Dates to and including the Optional Prepayment Date with full payment of the balance of all Loan Indebtedness on the Optional Prepayment Date, and each such payment (together with the unexpended portion of any prior payment) must be equal to or greater than the corresponding Loan payment due and payable thereon, (ii) a promissory note made by the Chargor in favour of the Chargee evidencing the continuing indebtedness of the Chargor under the Loan and having the same financial terms as the Loan and confirming the Chargor's election under clause (b) above to prepay the outstanding Loan Indebtedness in full on the Optional Prepayment Date, (iii) a pledge and security agreement from the Chargor creating a first priority Lien in the Defeasance Collateral in favour of the Chargee as security for the Loan Indebtedness, (iv) a certificate of the Chargor certifying that all of the requirements in this Article have been satisfied, (v) an opinion of Chargor's counsel (in each jurisdiction required by the Chargee) confirming that the validity, enforceability, first priority and perfection of the Chargee's Lien on the Defeasance Collateral and that the promissory note, the pledge and security agreement and other defeasance documents (the governing law of which shall be determined by the Chargee and may differ from the original Loan Documents) are valid and legally binding obligations of each Borrower Entity which is a party thereto, enforceable against it in accordance with their terms, which opinion may be based on and subject to such customary assumptions and qualifications as the Chargee may accept in its sole discretion, (vi) such further assurances as the Chargee may require to confirm the continuing liabilities and obligations of each Borrower Entity in respect of the Loan, (vii) unless expressly waived in writing by the applicable Rating Agencies, a Rating Confirmation in respect of such Defeasance transaction, and (viii) a certificate from a chartered accountant who is a member of the Canadian Institute of Chartered Accountants (or certified public accountant that is a member of the American Institute of Certified Public Accountants) containing a mathematical verification that the Defeasance Collateral is sufficient to cover all remaining payments of principal and/or interest when due under the Loan, including full payment of all Loan Indebtedness on the Optional Prepayment Date; and (d) the Chargor must endorse the Defeasance Collateral in favour of the Chargee or as the Chargee may direct and, if required by the Chargee, must deliver a written transfer of the Defeasance Collateral in favour of the Chargee and take all other actions and execute and deliver such other documents, all in form and content satisfactory to the Chargee, in order to perfect the Chargee's first priority Lien on the Defeasance Collateral under Applicable Laws. All Defeasance Collateral must be held by a securities intermediary acceptable to the Chargee in its sole discretion, and all payments and proceeds arising from the Defeasance Collateral must be paid to the Chargee (directly or through such securities intermediary) and applied on account of the Loan Indebtedness as payments on account of such Loan Indebtedness become due and payable. Notwithstanding the foregoing and any other provision of the Loan Documents (including any provision specifically limiting the recourse of any Borrower Entity but without limiting any obligations of any Borrower Entity which are full recourse), the Chargor will be and remain at all times personally liable to pay in full all such Loan Indebtedness when due to the Chargee as and to the extent that the payments and other proceeds arising from the Defeasance Collateral are not sufficient (for any reason or cause whatsoever) to pay all amounts on account of the Loan Indebtedness when due. All taxes applicable to the Defeasance Collateral, including all such payments and proceeds arising therefrom and all interest earned thereon and whether or not received by the Chargor, will be the sole responsibility of and shall be paid by the Chargor when due from sources other than the Defeasance Collateral. To the extent that any payments and proceeds arising from the Defeasance Collateral and received by the Chargee exceed the amounts due and payable to the Chargee hereunder on account of the Loan Indebtedness from time to time, then provided no Event of Default then exists, the Chargee will pay such excess amount(s) to the Chargor as soon as possible following full repayment and satisfaction of all Loan Indebtedness to the Chargee in accordance with the provisions of this Charge and the other Loan Documents or at such earlier time or times as the Chargee determines, acting reasonably, that such excess amount(s) are not required for the purposes of paying the Loan Indebtedness when due and payable hereunder or as security for the Loan. If required by the Chargee in its sole discretion, the Chargee may require the Defeasance to be effected through a special purpose trust or corporation as a successor entity, which must be satisfactory to the Chargee in its sole discretion.

Until paid to the Chargor, such excess amount(s) will be held by the Chargee and will be subject to the security for the Loan. The Chargor will not be entitled to any interest or other investment earnings on such excess amount(s).

**Section 9.02 Continuing Obligations.**

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

**ARTICLE 10 - MISCELLANEOUS**

**Section 10.01 Notice.**

- (1) Any notice, demand or other communication required or permitted to be given or made to the Chargor pursuant to this Charge may be given or made in any manner permitted or provided by Applicable Laws, notwithstanding any provision of any other Loan Document to the contrary. Subject to the foregoing, any such notice, demand or communication may be given or made, at the option of the Chargee by personal delivery, by prepaid ordinary or registered mail (to the address for service of the Chargor set out in this Charge or to the last known address of the Chargor as shown in the Chargee's records) or by facsimile transmission to the facsimile number of the Chargor set out in Section 10.01(2) or the last known facsimile number of the Chargor as shown in the Chargee's records. Such notice will be sufficient although not addressed to any Person by name or designation and notwithstanding that any Person to be affected thereby may be unknown, unascertained or under a disability. Subject to Applicable Laws, the giving of such notice in the manner aforesaid will be as effective as if the notice had been personally served on all Persons required to be served therewith.
- (2) Subject to Section 10.01(1), any demand, notice or communication to be made or given to the Chargor in connection with this Charge or any of the other Loan Documents shall be in writing and may be made or given by personal delivery, by registered mail or by facsimile transmission addressed to the Chargor as follows: 92 Truman Road, Toronto, Ontario, M2L 2L6, Attention: Norma Walton, Facsimile No.: 416-489-9973, or to such other address or facsimile number as the Chargor may designate by written notice given to the Chargee. Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to have been made or given on the day of actual delivery thereof, and if made or given by registered mail, on the third Business Day following the deposit thereof in the mail, and if made or given by facsimile transmission, on the first Business Day following the transmittal thereof. If the party giving any demand, notice or other communication knows or reasonably ought to know of any difficulties with the postal system that might affect the delivery of mail, such demand, notice or other communication shall not be mailed, but shall be given by personal delivery or by facsimile transmission.

**Section 10.02 Severability.**

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

**Section 10.03 Governing Law.**

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

**Section 10.04 Non-Merger.**

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

**Section 10.05 Successors and Assigns.**

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

**Section 10.06 No Obligation to Advance.**

Neither the preparation, execution nor registration of any Loan Document will bind the Chargee to advance all or any part of the Principal Amount. The advance of a part of the Principal Amount will not bind the Chargee to advance any

unadvanced portion of the Principal Amount. Each advance of the Loan shall be subject to and governed by the terms and conditions of the Commitment Letter.

#### **Section 10.07 Consent to Disclosure.**

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

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

#### **Section 10.08 Change of Status.**

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

#### **Section 10.09 Maximum Rate of Return.**

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

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

This Charge, the Loan, or any terms hereof or thereof, may from time to time be extended, renewed or amended by one or more written agreements between the Chargee and the Chargor, or with any successor or successors in title to the Chargor, with or without any changes in the applicable interest rate, amortization period, principal amount, payment amount, maturity date or other financial terms. Whether or not there are any other Liens registered on title to the Property after this Charge at the time any such written agreement is entered into (each such Lien, a "Subsequent Encumbrance"), it will not be necessary for the Chargee to register the written agreement on title to the Property in order for such agreement to be legally binding upon the Chargor (and any other Borrower Entity which is a party thereto) or to retain priority for this Charge, as extended, renewed or amended, as a first priority Lien of the Property over such Subsequent Encumbrance(s). The Chargor, forthwith upon request therefor by the Chargee and at the Chargor's sole cost and expense, will obtain all such postponements and/or discharges of each Subsequent Encumbrance and such other assurances from the holder thereof as may be required by the Chargee in its sole discretion to ensure the priority of this Charge as a first priority Lien of the Property and full compliance by the Chargor and each other Borrower Entity with the provisions of this Charge and the other Loan Documents. The Chargor acknowledges that the provisions of this Section do not confer upon the Chargor or any other Borrower Entity or Person any right of extension, renewal or amendment, or any right to grant a Subsequent Encumbrance contrary to the other provisions of this Charge and the other Loan Documents. The execution and delivery of any such agreement by the Chargee granting any such extension, renewal or amendment will be in its sole discretion. The Chargor, for itself and on behalf of each Borrower Entity, hereby irrevocably consents to any extension, renewal or amendment of this Charge and the other Loan Documents, whether or not made or agreed to by the Chargor, any unregistered or beneficial owner of the Property or any part thereof or any successor in title to any such Person, and hereby

irrevocably agrees that no such extension, renewal or amendment shall release, discharge, impair or otherwise affect, or render unenforceable, any of the covenants, obligations or liabilities of any Borrower Entity (including each original Chargor and each original unregistered or beneficial owner of the Property or any part thereof named in the Loan Documents) under the Loan Documents, which covenants, obligations and liabilities are hereby confirmed and continue in full force and effect, as extended, renewed or amended, as the case may be.

**Section 10.11 Assignment.**

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

**ARTICLE 11 - OTHER SECURITY**

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

- (1) **Assignment.** As general and continuing security for payment and performance to the Chargee of the Loan Indebtedness and the observance and performance by each of the Chargor and any unregistered or beneficial owner of the Property of all of its other covenants and obligations under this Charge and the other Loan Documents (the Loan Indebtedness, together with such covenants and obligations, are collectively called the "Obligations"), the Chargor hereby assigns, transfers, grants and sets over to the Chargee, as and by way of a fixed and specific first priority assignment and security interest, all legal and beneficial right, title and interest in and to (i) the Rents now or hereafter due and payable with full power and authority to demand, collect, sue for, recover, receive and give receipts for the Rents in the name of the Chargor or the owner from time to time of the Property or in the name of the Chargee, as the Chargee may determine in its sole discretion, and (ii) the Leases with full benefit and advantage thereof including the benefit of all covenants and agreements contained in the Leases on the part of the Tenants 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 and any other Borrower Entity to the Chargee to secure the payment and performance of the Obligations or any part thereof.
- (2) **Continuing Security.** This assignment and security interest is given as general and continuing security for the payment and performance to the Chargee of the Obligations and not in substitution for or in satisfaction thereof. There is no agreement between the parties hereto, express or implied, to postpone the attachment of this assignment and security interest created hereby. The terms and conditions of this assignment and security interest in the Rents and Leases will remain binding and effective on the parties hereto and will not merge in or be extinguished by any other Loan Document or any judgment taken against the Chargor or any other Borrower Entity or Person for breach of its obligations under this Charge or any other Loan Document.
- (3) **Representations.** The Chargor represents and warrants to the Chargee as follows: (i) the Chargor has good right, full power and absolute authority to assign the Rents and Leases to the Chargee as a first priority assignment and security interest therein (subject only to Permitted Encumbrances), and has granted no prior assignment, transfer or Lien in, on or of any of the Rents or Leases that remains outstanding from and after the date hereof; (ii) the Leases are in full force and effect and are valid and binding obligations of each of the Tenants thereunder; (iii) complete copies of (A) all Commercial Leases, and (B) all Residential Leases, or if otherwise agreed by the Chargee in its sole discretion, the standard form used for each Residential Lease, have been delivered to the Chargee; (iv) except as expressly disclosed to the Chargee in writing prior to the initial Loan advance, no Rents have been prepaid under any Lease (except for security deposits and first and last months' rent paid in accordance with the provisions of the applicable Lease), discounted, released, waived, compromised or otherwise discharged; (v) there is no default by any Person now existing under any of the Leases, nor circumstances existing which, with the giving of notice or lapse of time or both, would constitute any such default; (vi) each Commercial Lease requires the related Tenant to attorn and become bound to the Chargee as tenant of its premises upon the Chargee's request from time to time for the unexpired residue of the term of such Commercial Lease and on the terms and conditions of such Commercial Lease; (vii) no notice, order or claim has been given or received by or on behalf of the Chargor or any other Borrower Entity alleging or relating to any default, circumstance or other dispute under any Lease or claiming any rebate, reduction, refund, set-off or other impairment of any of the Rents or relating to any dispute under a Lease; and (viii) all Rents previously and hereafter charged and collected in respect of each Lease have complied with and will comply with the Lease and all Applicable Laws. The Chargor will deliver to the Chargee, within ten (10) days after the Chargee's request from time to time, a true and complete copy of each Lease and a complete list of the Leases, as certified by the Chargor, setting out, in respect of each Lease, the demised premises, the name of the Tenant, the Rents payable and the date to which such Rents have been paid, the key terms of the Leases, the date of occupancy, the date of expiration, any rent concessions and other inducements granted to the Tenants, and any renewal options. The Chargor will promptly deliver to the Chargee any request, notice, order or claim of any kind given or received by any Borrower Entity from time to time in respect of any Material Commercial Lease and, with respect to any other Lease, any request, notice, order or claim given or received by any Borrower Entity relating to any matter or thing which has or could reasonably be expected to have or result in a Material Adverse Effect.
- (4) **Restrictions on Leases and Renewals.** Each new Lease or renewal or extension of an existing Lease (other than any extension or renewal of an existing Lease which is exercised pursuant to, and the terms of which are governed by, such existing Lease) (i) must be a commercially reasonable arm's-length transaction made in the ordinary course of business and in accordance with prudent property management and leasing standards and practices, (ii) must provide for rental rates and other terms and conditions consistent with prevailing market rates, terms and conditions, (iii) must be written on a standard form of lease or renewal or extension agreement with no material amendments thereto, (iv) if it is a Commercial Lease, must provide that in the event enforcement proceedings are

commenced by the Chargee following an Event of Default, the Tenant must attorn to the Chargee and become bound to it as tenant of its premises for the then unexpired residue of the term of such Commercial Lease and upon the terms and conditions contained in such Commercial Lease; (v) except for any extension or renewal of an existing Commercial Lease which is exercised pursuant to, and the terms of which are governed by such existing Commercial Lease, must not permit the Tenant under any Commercial Lease to "go dark" or otherwise stop operating its business in the ordinary course from and within its leased premises; and (vi) must not contain termination rights in favour of the Tenant or any other Person (other than the landlord) except for landlord default. Unless otherwise agreed by the Chargee in writing, the Chargor will require the Tenant under each Commercial Lease to execute and deliver to the Chargee an agreement, in the Chargee's form, confirming the attornment referred to in Subsection (iv) concurrently with the execution and delivery of each new Commercial Lease and any renewal or extension of an existing Commercial Lease.

- (5) **Chargee Right to Consent to Material Commercial Leases.** The Chargor must obtain the Chargee's prior written consent to enter into, renew or extend any Material Commercial Lease, which consent will not be unreasonably withheld or delayed by the Chargee, provided that such Material Commercial Lease, and any extension or renewal thereof, complies with all requirements of this Charge and the other Loan Documents governing new Leases and renewals and extensions of existing Leases and provided further that the Chargee will be entitled to a minimum of ten (10) Business Days following receipt of the Chargor's written request and all reasonably required supporting documentation to decide whether or not to give or withhold such consent. This provision does not apply to any renewal or extension of an existing Material Commercial Lease which is exercised pursuant to, and the terms of which are governed by, such existing Material Commercial Lease. Notwithstanding the foregoing, following the occurrence of an Event of Default, the Chargor must obtain the Chargee's prior written consent to enter into, renew or extend any Lease (including each Material Commercial Lease), which consent may be given or withheld by the Chargee in its sole discretion.
- (6) **Covenants.** Neither the Chargor nor any other Borrower Entity will, without the prior written consent of the Chargee in its sole discretion: (i) accept or permit payment of the Rents or any part thereof under any Lease in advance (except for security deposits and first and last months' rent paid in accordance with the provisions of the applicable Lease); (ii) amend, modify, cancel or terminate any Lease in whole or in part, or accept the surrender of any Lease, or take or omit to take any action or exercise any right or option which would permit the Tenant under any Lease to cancel, terminate or surrender any Lease; (iii) discount, release, waive, compromise or otherwise discharge any Rents payable under any Lease or other obligations of any Tenant or other Person under any Lease, or (iv) assign, transfer or grant a Lien in, on or of all or any part of the Rents or Leases. Provided no Event of Default has occurred, the Chargee's consent for any action referred to in Subsections (ii) and (iii) is not required in respect of any Lease or a renewal or extension thereof (except any such action relating to any Material Commercial Lease or a renewal or extension thereof, which for greater certainty, will require the Chargee's prior written consent in its sole discretion), provided in each case such action is a commercially reasonable arm's length transaction in the ordinary course of business and in accordance with prudent property management and leasing standards and practices, and provided further that prompt written notice thereof is given to the Chargee.
- (7) **Performance of Obligations.** The Chargor will observe and perform at all times all covenants and agreements contained in the Leases on the part of the landlord to be observed and performed and shall cause the Tenants under the Leases to observe and perform their respective covenants, obligations and undertakings thereunder. Neither the execution or delivery of this Charge or the other Loan Documents, nor the collection of the Rents nor the exercise of any right, remedy or other action or omission by the Chargee in respect of any of the Rents or Leases shall make any Lender Entity or any other Person for whom the Chargee is responsible under Applicable Laws (i) liable for the collection of any of the Rents or for the observance or performance of any of the covenants, terms, conditions or agreements contained in any of the Leases on the part of any party to be observed and performed, (ii) a mortgagee or chargee in possession, or (iii) liable for any action, proceeding, claim, demand, loss, damage, cost, expense of any nature and kind by the Chargor or any other Borrower Entity or Person.
- (8) **Event of Default.** Prior to the occurrence of an Event of Default, the Chargor may demand, receive, collect and apply the Rents, but only as the same fall due and payable according to the terms of each of the Leases, provided that nothing herein shall release, discharge, postpone, amend or otherwise affect the present assignment and security interest granted to the Chargee in and to the Rents and Leases and the immediate attachment thereof and provided further that unless otherwise agreed by the Chargee in advance and in writing, any payment, consideration, compensation or other benefit of any kind which any Borrower Entity is or subsequently becomes entitled to receive relating to or otherwise arising from, directly or indirectly, the full or partial termination, cancellation, amendment, modification or release of any Lease or any Tenant in respect thereof shall be paid by the related Tenant (or related payor) or any Borrower Entity (forthwith upon receipt by it) to and held by the Chargee and may be applied by the Chargee, in its sole discretion, to reduction of the Loan Indebtedness when due or may be held by the Chargee as security for the Obligations without releasing or affecting any of the other obligations and liabilities of the Chargor or any other Borrower Entity under any of the Loan Documents. Upon the occurrence of an Event of Default, the Chargee may immediately deliver a written notice to each Tenant directing it to pay all Rents to the Chargee and such notice shall be good and sufficient authority for so doing. Any payment of Rent to the Chargee after such notice is given to any Tenant shall not constitute a default by such Tenant under its Lease.
- (9) **Rights of Chargee.** Upon the occurrence of an Event of Default, the Chargee, its agents and employees, will have the right to enter the Property for the purpose of demanding, collecting, suing for, recovering, receiving or compromising the Rents, giving receipts therefor, enforcing the Leases and inspecting, protecting, operating and maintaining the Property and without being a chargee or mortgagee in possession. The Chargor hereby authorizes the Chargee to perform all such acts and do all things in connection with any of the foregoing matters or the exercise of any other rights and remedies in respect of the Rents and Leases available hereunder or under any other Loan Document or Applicable Laws, including making of payments to encumbrancers whether prior to, pari passu with or subsequent to this Charge, paying any costs and expenses in connection with such acts and things and any acts by way of enforcement of the covenants and exercising of the rights of the Chargor under or in respect of the

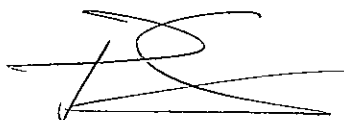
Leases or otherwise, as, when and in such manner as the Chargee may determine in its sole discretion, which acts and things may be performed or done in the name of the Chargor or in the name of the Chargee, as the Chargee may determine in its sole discretion. Nothing herein shall require the Chargee to collect or recover any of the Rents or to take any action or exercise any remedy or serve any notice upon any Tenant under its Lease upon any default or breach by such Tenant thereunder. The Chargor hereby irrevocably appoints the Chargee as its attorney and agent coupled with an interest and with full power of substitution to exercise any of the rights, powers, authority and discretion granted to the Chargor under each Lease upon the occurrence and during the continuation of an Event of Default. The Chargee shall be liable to account for only such moneys as may actually come into its hands by virtue of this Section. Upon the occurrence of an Event of Default, but subject to the provisions of the other Loan Documents, the Chargee may, after payment of all costs and expenses incurred by or on behalf of the Chargee in exercising any of its rights and remedies hereunder, credit the remainder of the moneys which it may receive in connection with the Property to payment of any amount or amounts due to the Chargee on account of Loan Indebtedness and to payment of any reserves and the manner of the application of such remainder and the item or items to which it shall be credited from time to time by the Chargee shall be in the sole discretion of the Chargee and until such moneys have been so applied or credited same shall be subject to this assignment and all other security held by the Chargee for the Obligations.

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

#### **Section 11.02 General Security Agreement.**

As general and continuing security for the payment and performance to the Chargee of the Obligations, the Chargor hereby grants to the Chargee a first priority security interest in all of its present and after acquired real and personal property of any nature or kind comprising or otherwise relating to the Property (collectively, the "Collateral") together 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 to the Chargee of the Obligations, the Chargor hereby assigns the Collateral to the Chargee and mortgages and charges the Collateral as and by way of a fixed and specific first priority mortgage and charge to the Chargee, in each case subject only to Permitted Encumbrances. Without limiting the foregoing, the Collateral shall include all right, title and interest that the Chargor now has or may hereafter have or be possessed of, be entitled to or acquire in the Collateral and (whether held individually or jointly with any other Borrower Entity or Person) 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. 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 Obligations or any part thereof. Without limiting the foregoing, the Collateral shall include, and the security interest shall attach to, all present and after acquired right, title, estate and interest of any unregistered or beneficial owner of the Collateral. The Chargor acknowledges that value has been given and agrees that the security granted hereby will attach when it signs this Charge and has any rights in the Collateral. There is no agreement between the parties hereto, express or implied, to postpone the attachment of the security granted hereby. The Chargor waives all rights to receive from the Chargee a copy of any financing statement, financing change statement or other similar statement or registration (including any renewal statement or change statement) registered or filed at any time under Applicable Laws in respect of any security granted by this Charge or any of the other Loan Documents and all confirmation, verification or other similar statement(s) with respect thereto.

*THIS IS EXHIBIT "B", referred to in the Affidavit of JEAN MONARDO, sworn on December 16, 2013.*

A handwritten signature in black ink, consisting of a stylized 'Z' or 'S' shape with a horizontal line extending to the right.

---

*Commissioner for Taking Affidavits*

**CERTIFICATE OF CORPORATE STATUS AND AUTHORITY**

**TO:** COMPUTERSHARE TRUST COMPANY OF CANADA (the "Lender")

**AND TO:** ROSE, PERSIKO, RAKOWSKY, MELVIN LLP, its solicitors herein

**RE:** COMPUTERSHARE TRUST COMPANY OF CANADA loan to LESLIEBROOK HOLDINGS LTD.,  
Part Lot 3, Concession 3 EYS, PIN 10138-0028 LT, 1131A Leslie Street, Toronto, Ontario  
("Leslie Street Office")

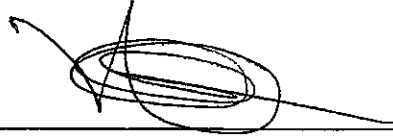
---

THE UNDERSIGNED, being an officer or director of **LESLIEBROOK HOLDINGS LTD.** (the "Corporation"), certifies that:

1. The Corporation has been duly incorporated and organized and is a valid and subsisting corporation under the laws of the Province of Ontario.
2. The constating documents of the Corporation are as listed below, are in full force and effect and no proceedings have been taken to amend, surrender or cancel them:
  - (a) Articles of Incorporation dated March 14, 2012.
3. The minute books of the Corporation contain all of the by-laws, resolutions and other proceedings of the directors and shareholders of the Corporation.
4. Attached hereto is an abstract of a true copy of By-Law No. 1, Section 2.02 of the Corporation respecting the execution of agreements and other documents by or on behalf of the Corporation, which by-law is in full force and effect and has not been repealed or amended as of the date hereof.
5. Attached hereto is a true copy or an abstracts of a true copy of By-Law No. 2 the Corporation respecting the borrowing of money by the Corporation and the issue of securities by the Corporation, which by-law is in full force and effect and has not been repealed or amended as of the date hereof.
6. The following persons are the duly elected or appointed directors and officers of the Corporation, and each such director is duly qualified as such:

Name	Director (Yes or No)	Office Held (If applicable)
Norma Walton	Yes	President, Secretary & Treasurer
Ronauld Walton	No	

7. The following are the genuine signatures of the following officers and directors of the Corporation:

Name	Specimen Signature
Norma Walton	

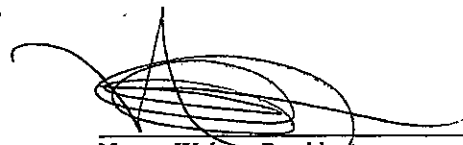


8. The particulars of the shareholders and the issued and outstanding shares of the Corporation are as follows:

Name of Shareholder	Number and Class of Shares
Norma Walton	50 Common
Ronald Walton	50 Common

9. The Corporation has made all registrations, filings and remittances that are required under the statute pursuant to which the Corporation was incorporated and under all other relevant federal, provincial and municipal statutes, regulations and by-laws.
10. No acts or proceedings have been taken by or against the Corporation in connection with any reorganization, amalgamation, liquidation, winding-up, dissolution, arrangement, proposal, insolvency or bankruptcy under the statute pursuant to which the Corporation was incorporated or under any applicable bankruptcy or insolvency laws, and the Corporation is not in the course of any such changes and has not received any notice with respect thereto.
11. There are no provisions in the constating documents or by-laws of the Corporation or in any written agreement among all of the shareholders of the Corporation or in any written agreement among all of the shareholders of the Corporation and one or more persons who are not shareholders of the Corporation or in any written declaration by a person who is the beneficial owner of all of the issued shares of the Corporation which restrict or limit the powers of the directors of the Corporation to: (a) manage or supervise the management of the business and affairs of the Corporation; (b) borrow money upon the credit of the Corporation; (c) issue, reissue, sell or pledge debt obligations of the Corporation; (d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired, to secure any obligation of the Corporation; or (e) indemnify the Lender with respect to any matters relating to the above-noted property or the above-noted loan transaction.
12. Neither the execution, delivery nor performance by the Corporation of its obligations set out in any agreement, instrument or other document entered into in connection with the above-noted loan transaction will conflict with, be in or contribute to a contravention, breach or default under the Corporation's constating documents, by-laws or resolutions or under any agreement, instrument or other document to which the Corporation is a party or by which the Corporation is bound.
13. I have carefully reviewed those records of the Corporation and have made such inquiries and investigations as are necessary to enable me to make all of the statements and certifications set out herein.

DATED this 26<sup>th</sup> day of April, 2012.

  
 \_\_\_\_\_  
 Norma Walton, President

## BY-LAW NO. 1

A by-law relating generally to the conduct of the business and affairs of  
**LESLIBROOK HOLDINGS LTD.**  
(herein called the "Corporation")

### Contents

- |   |                                       |
|---|---------------------------------------|
| 1. Interpretation                               | 7. Shares                             |
| 2. Business of the Corporation                  | 8. Meetings of Shareholders           |
| 3. Directors                                    | 9. Dividends and Rights               |
| 4. Committees                                   | 10. Notices                           |
| 5. Officers                                     | 11. Unanimous Shareholder's Agreement |
| 6. Protection of Directors, Officers and Others |                                       |

**BE IT ENACTED** as a by-law of the Corporation as follows:

### 1. INTERPRETATION

**1.01 Definitions** - In this by-law and all other By-laws and resolutions of the Corporation, unless the context otherwise requires:

- (a) "Act means the *Business Corporations Act*, Ontario, and includes the regulations made pursuant thereto;
- (b) "Articles" means the Articles of Incorporation of the Corporation as amended from time to time;
- (c) "Board" means the Board of Directors of the Corporation;
- (d) "By-laws" means all By-laws, including special By-laws, of the Corporation as amended from time to time;
- (e) "Corporation" means this Corporation;
- (f) "Person" includes an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his/her capacity as trustee, executor, administrator, or other legal representative;

**1.02** In this by-law where the context requires words importing the singular include the plural and vice versa and words importing gender include the masculine, feminine and neuter genders.

1.03 All the words and terms appearing in this by-law shall have the same definitions and application as in the Act.

## **2. BUSINESS OF THE CORPORATION**

2.01 **Financial Year** - The financial year of the Corporation shall end on such day in such month of each year as may be determined by the directors from time to time by resolution.

2.02 **Execution of Instruments** - Deeds, transfers, assignments, contracts, obligations, certificates and other instruments may be signed on behalf of the Corporation by any one person who holds the office of Chairman of the Board, President, Managing Director, Vice-President, Secretary, Treasurer, Secretary-Treasurer, or director or any other office created by by-law or by resolution of the Board. In addition, the Board may from time to time direct the manner in which the person or persons by whom any particular instrument or class of instruments may or shall be signed.

## **3. DIRECTORS**

3.01 **Quorum** - The quorum for the transaction of business at any meeting of the Board shall consist of a majority of the number of Directors.

3.02 **Qualification** - No person shall be qualified for election as a director if he/she is less than eighteen years of age; if he/she is of unsound mind and has been so found by a court in Canada or elsewhere; if he/she is not an individual; or if he/she has the status of a bankrupt. A director need not be a Shareholder. A majority of the Directors shall be resident Canadians provided that if the number of Directors is two (2), at least one shall be a resident Canadian.

3.03 **Election and Term** - The election of Directors shall take place at the first meeting of Shareholders and at each annual meeting of Shareholders and all the Directors then in office shall retire but, if qualified, shall be eligible for re-election. The election shall be by resolution. If an election of Directors is not held at the proper time, the incumbent Directors shall continue in office until their successors are elected.

3.04 **Removal of Directors** - Subject to the provisions of the Act, the Shareholders may be simple majority resolution passed at an annual or special meeting remove any director from office and the vacancy created by such removal may be filled at the same meeting failing which it may be filled by the Directors.

3.05 **Vacation of Office** - A director ceases to hold office when he/she dies; he/she is removed from office by the Shareholders; he/she ceases to be qualified for election as a director; or his/her written resignation is sent or delivered to the Corporation, or if a time is specified in such resignation, at the time so specified, whichever is later.

3.06 **Vacancies** - Subject to the Act, a quorum of the Board may fill a vacancy in the Board, except a vacancy resulting from an increase in the number of Directors or in the maximum number of Directors or from a failure of the Shareholders to elect the number of Directors. In the absence of a quorum of the Board, or if the vacancy has arisen from a failure of the Shareholders

**BY-LAW NO. 2**

A by-law respecting the borrowing of money and the issuing of securities by:

LESLIEBROOK HOLDINGS LTD.

(herein called the "Corporation")


**BE IT ENACTED** as a by-law of the Corporation as follows:

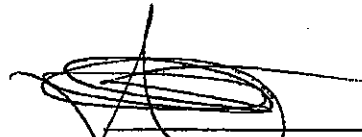
1. Without limiting the borrowing powers of the Corporation as set forth in the Ontario Business Corporations Act (the "Act"), the Directors of the Corporation may, from time to time without the authorization of the Shareholders:

- (a) borrow money upon the credit of the Corporation;
- (b) issue, re-issue, sell or pledge debt obligations of the Corporation;
- (c) subject to Section 20 of the Act, give a guarantee on behalf of the Corporation to secure performance of an obligation of any person; and
- (d) charge, mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired, to secure any obligation of the Corporation.

2. The Directors may, from time to time, by resolution delegate any or all of the powers referred to in paragraph 1 of this by-law to a director, a committee of directors or one or more officers of the Corporation.

**ENACTED** by the Directors and sealed with the Corporation's seal the 14<sup>th</sup> day of March, 2012.


  
\_\_\_\_\_  
Norma Walton, President

  
\_\_\_\_\_  
Norma Walton, Secretary

Resolved that the foregoing by-law is hereby enacted by the directors of the Corporation, pursuant to the Ontario Business Corporations Act as evidenced by the respective signatures hereto of all the directors.


Dated the 14<sup>th</sup> day of March, 2012.


  
Ronauld Walton

  
Norma Walton

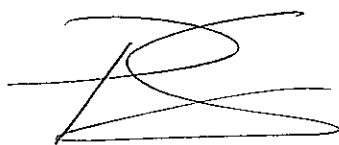
In lieu of confirmation at a general meeting of the shareholders, we the undersigned, being all of the shareholders of the Corporation entitled to vote at a meeting of shareholders, hereby confirm in writing the foregoing by-law in accordance with the Ontario Business Corporations Act.

Dated the 14<sup>th</sup> day of March, 2012.

  
Ronauld Walton

  
Norma Walton

***THIS IS EXHIBIT "C", referred to in the  
Affidavit of JEAN MONARDO, sworn  
on December 16, 2013.***

A handwritten signature in black ink, consisting of a stylized 'Z' or 'S' shape with a horizontal line crossing it.

---

***Commissioner for Taking Affidavits***

**Properties**

**PIN** 10138 - 0028 LT  
**Description** PT LT 3 CON 3 EYS TWP OF YORK PARTS 1, 2, 3, 5, 6, 7 & 9, 64R10086; S/T & T/W  
TB183776; S/T TB189467, TB864493; TORONTO (N YORK), CITY OF TORONTO  
**Address** 1131 A LESLIE STREET  
NORTH YORK

**Applicant(s)**

The assignor(s) hereby assigns their interest in the rents of the above described land. The notice is based on or affects a valid and existing estate, right, interest or equity in land.

**Name** LESLIEBROOK HOLDINGS LTD.  
Acting as a company  
**Address for Service** 30 Hazelton Avenue  
Toronto, Ontario  
M5R 2E2

I, NORMA WALTON, President, have the authority to bind the corporation.

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

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

**Name** COMPUTERSHARE TRUST COMPANY OF CANADA  
Acting as a company  
**Address for Service** 100 University Avenue, South Tower, 8th Floor  
Toronto, Ontario  
M5J 2Y1  
(Leslie Street Office)

**Statements**

The applicant applies for the entry of a notice of general assignment of rents.

This notice may be deleted by the Land Registrar when the registered instrument, IMC / LESLIEBROOK CHARGE to which this notice relates is deleted

Schedule:

**File Number**

**Applicant Client File Number :**

20120067 - IMC / LESLIEBROOK GAR

**GENERAL ASSIGNMENT OF RENTS AND LEASES**  
**("Leslie Street Office")**

THIS AGREEMENT is made as of April 26, 2012 (the "Agreement") between COMPUTERSHARE TRUST COMPANY OF CANADA (the "Lender") and LESLIEBROOK HOLDINGS LTD. (the "Borrower").

WHEREAS the Lender has agreed to make a loan (the "Loan") to the Borrower in the original principal amount of \$5,250,000.00 which is secured, *inter alia*, by a first priority charge/mortgage (the "Mortgage") of the Property (as defined below) which has been registered in the Land Registry Office for the Land Titles/Registry Division of Toronto (No. 80) on or about the date hereof;

AND WHEREAS the Borrower has agreed to assign to the Lender all legal and beneficial right, title and interest in and to the Rents and Leases together with all benefits, powers and advantages of the Borrower to be derived therefrom to secure the payment by the Borrower of the Loan Indebtedness (as defined in the Mortgage) and the observance and performance by the Borrower and any unregistered or beneficial owner of the Property of its other covenants and obligations under this Agreement and the other Loan Documents (the Loan Indebtedness, together with such covenants and obligations, collectively, the "Obligations");

NOW THEREFORE in consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Borrower hereby covenants and agrees with and in favour of the Lender as follows:

**ARTICLE 1 - INTERPRETATION**

**Section 1.01 Definitions.**

Unless otherwise defined herein, all capitalized terms and expressions used herein shall have the same meaning as set out in the Mortgage. The following terms shall have the following meanings: "Lands" means the lands and premises described in the document general or notice of assignment of rents - general to which this Agreement is attached (and any schedule thereto); "Leases" means, collectively, all present and future leases, agreements to lease, subleases, concessions, licenses and similar agreements by which the use and occupancy of the Property or any part thereof is granted to any Person for any purpose, together with all related credits, rights, options, claims, causes of action, guarantees, indemnities, security deposits and other security relating thereto, and includes all Commercial Leases (including all Material Commercial Leases) and Residential Leases; "Property" means all legal and beneficial right, title, estate and interest from time to time in and to the Lands in fee simple, including any leasehold interest of the Borrower in the Lands, 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; "Province" means the Province of Ontario; "Rents" means all revenues, receipts, income, credits, deposits, profits, royalties, rents, additional rents, recoveries, accounts receivable and other receivables of any nature and kind whatsoever arising from or relating to the Property or any part thereof, including all amounts payable under any Lease and all amounts arising from or relating to any guest rooms, parking or other facilities and services, meeting rooms, common areas, restaurants or other food and beverage facilities and services, vending machines, telephone, television, cable and internet services, laundry and housekeeping facilities and services, and the provision or sale of any goods or services, and any payment, consideration or compensation of any kind to which any Borrower Entity is or becomes entitled relating to or otherwise arising from, directly or indirectly, the full or partial termination, cancellation, amendment, modification or release of any Lease or any Tenant in respect thereof; and "Tenant" means any lessee, sublessee, licensee or grantee of a right of occupation under a Lease and each guarantor, indemnitor or other obligor thereunder or in respect thereof.

**Section 1.02 General Provisions.**

The provisions of Sections 1.02 and 1.03 of the Mortgage are incorporated in and form part of this Agreement, *mutatis mutandis*. Without limiting the foregoing, in this Agreement: (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders; (b) the word "including" means "including, without limitation," (c) any reference to a statute means the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor or replacement statute thereto; (d) any reference to a Lease or any Loan Document, including this Agreement, includes all amendments, addenda, modifications, extensions, renewals, restatements, supplements or replacements thereto from time to time; (e) reference to the Lender, Borrower, any Tenant and any other Person includes their respective heirs, executors, administrators, legal representatives, successors and permitted assigns; (f) all dollar amounts are expressed in Canadian dollars; (g) the division of this Agreement into separate Articles, Sections, Subsections and Schedule(s), and the insertion of headings is for convenience of reference only and does not affect the construction or interpretation of this Agreement; (h) the Lender's right to give or withhold any consent or approval, make any determination or exercise any discretion will be exercised by the Lender acting reasonably (unless otherwise expressly provided herein), except that following an Event of Default and notwithstanding the foregoing and any other provision hereof or Applicable Laws to the contrary, the Lender will be entitled to give, withhold, exercise or make all such rights, determinations or discretions in its sole discretion at all times (even if this Agreement expressly requires the Lender to act reasonably); (i) notwithstanding any other provision of this Agreement or any Applicable Laws to the contrary, the words "sole discretion" mean the giving, withholding, exercising or making of the applicable right, determination or discretion in a manner that is completely and absolutely subjective in all respects and that the Person giving, withholding, exercising or making such right, determination or discretion has no duty or obligation at any time to act objectively or to apply any objective criteria or to conform to any other standard, it being the intention that the exercise of "sole discretion" by any Person will not be subject to any restriction, limitation, challenge or review of any kind whatsoever at any time by any Borrower Entity, any court or any other Person; (j) this Agreement is the result of negotiations between the parties hereto and will not be construed in favour of or against any party by reason of the extent to which any party or its legal counsel participated in its preparation; (k) if more than one Person is named as, or otherwise becomes liable for or assumes the obligations and liabilities of, the Borrower hereunder, then all such obligations and liabilities of all such Persons so named or who subsequently become liable for such obligations and liabilities are joint and several; (l) time is of the essence; (m) all obligations of the Borrower



are deemed to be covenants by the Borrower in favour of the Lender; (n) any reference to the knowledge, belief or awareness of the Borrower includes (and is deemed to include) the knowledge, belief and/or awareness of each Person comprising the Borrower and each Person having any registered, unregistered or beneficial ownership interest in the Property or any part thereof from time to time and their respective directors, officers, partners and employees; (o) where any reference is made in this Agreement to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, a trust, such reference will be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, the trustee(s) of the trust; and (p) this Agreement will remain in full force and effect and shall continue to be binding on the Borrower for the benefit of the Lender notwithstanding any extension, renewal or amendment of the Loan and/or the Loan Documents made by the Lender and the Borrower from time to time. The provisions of this Agreement are intended to supplement and not derogate from the other Loan Documents and the existence of additional terms, conditions or provisions (including any rights, remedies, representations and warranties) contained in this Agreement will not be construed as being or deemed to be in conflict with the other Loan Documents. The delivery of this Agreement for registration by direct electronic transmission will have the same effect for all purposes as if this Agreement was in written form signed by the parties hereto and delivered to the Lender.

#### **Section 1.03 REIT Provision.**

Notwithstanding any other provision of any Loan Document, if any Borrower Entity is a real estate investment trust (a "REIT"), the obligations of the REIT under the Loan Documents are not personally binding upon, and resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of: (a) the unit holders of the REIT; (b) annuitants or beneficiaries under a plan of which a unit holder of the REIT acts as a trustee or carrier; and (c) trustees, officers or employees of the REIT, provided that the Property will remain bound by and subject to the Mortgage and the other Loan Documents, and the Lender will have full recourse to the Property, at all times and without limitation or restriction of any kind. Any obligation of the REIT set out in this Agreement shall, to the extent necessary to give effect to such obligation, be deemed to constitute, subject to the provisions of the previous sentence, an obligation of the trustees of the REIT in their capacity as trustees of the REIT. Nothing herein shall (i) constitute a bar to any action against the REIT for specific performance of any of its obligations under this Agreement or any other Loan Document or (ii) limit, restrict or otherwise affect the validity or enforceability of the obligations and liabilities of any Borrower Entity under this Agreement or any other Loan Document.

### **ARTICLE 2 - ASSIGNMENT**

#### **Section 2.01 Assignment.**

As general and continuing security for payment and performance to the Lender of the Obligations, the Borrower hereby assigns, transfers, grants and sets over to the Lender, as and by way of a fixed and specific first priority assignment and security interest, all legal and beneficial right, title and interest in and to (i) the Rents now or hereafter due and payable with full power and authority to demand, collect, sue for, recover, receive and give receipts for the Rents in the name of the Borrower or the owner from time to time of the Property or in the name of the Lender, as the Lender 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 thereof to be observed, performed or kept, including all proceeds of or from any of the foregoing.

#### **Section 2.02 Continuing Security.**

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

### **ARTICLE 3 - REPRESENTATIONS AND COVENANTS**

#### **Section 3.01 Representations.**

The Borrower represents and warrants to the Lender as follows: (i) the Borrower has the good right, full power and absolute authority to assign the Rents and Leases to the Lender as a first priority assignment and security interest therein (subject only to Permitted Encumbrances), and has granted no prior assignment, transfer or Lien in, on or of any of the Rents or Leases that remains outstanding from and after the date hereof; (ii) the Leases are in full force and effect and are valid and binding obligations of each of the Tenants thereunder; (iii) complete copies of (A) all Commercial Leases, and (B) all Residential Leases, or if otherwise agreed by the Lender in its sole discretion, the standard form used for each Residential Lease, have been delivered to the Lender; (iv) except as expressly disclosed to the Lender in writing prior to the initial Loan advance, no Rents have been prepaid under any Lease (except for security deposits and first and last months' rent paid in accordance with the provisions of the applicable Lease), discounted, released, waived, compromised or otherwise discharged; (v) there is no default by any Person now existing under any of the Leases, nor circumstances existing which, with the giving of notice or lapse of time or both, would constitute any such default; (vi) each Commercial Lease requires the related Tenant to attorn and become bound to the Lender as tenant of its premises upon the Lender's request from time to time for the then unexpired residue of the term of such Commercial Lease and on the terms and conditions of such Commercial Lease; (vii) no notice, order or claim has been given or received by or on behalf of the Borrower or any other Borrower Entity alleging or relating to any default, circumstance or other dispute under any Lease or claiming any rebate, reduction, refund, set-off or other impairment of any of the Rents, or relating to any dispute under a Lease; and (viii) all Rents previously and hereafter charged and collected in respect of each Lease have complied with and

will comply with the Lease and with all Applicable Laws. The Borrower will deliver to the Lender, within ten (10) days after the Lender's request from time to time, a true and complete copy of each Lease and a complete list of the Leases, as certified by the Borrower, setting out, in respect of each Lease, the demised premises, the name of the Tenant, the Rents payable and the date to which such Rents have been paid, the key terms of such Lease, the date of occupancy, the date of expiration, any rent concessions and other inducements granted to the Tenants, and any renewal options. The Borrower shall promptly deliver to the Lender any request notice, order or claim of any kind given or received by any Borrower Entity from time to time in respect of any Material Commercial Lease and, with respect to any other Lease, any request, notice, order or claim given or received by any Borrower Entity from time to time relating to any matter or thing which has or could reasonably be expected to have or result in a Material Adverse Effect.

#### **Section 3.02 Restrictions on Leases and Renewals.**

Each new Lease or any renewal or extension of an existing Lease (other than any extension or renewal of an existing Lease which is exercised pursuant to, and the terms of which are governed by such existing Lease), (i) must be a commercially reasonable arm's-length transaction made in the ordinary course of business and in accordance with prudent property management and leasing standards and practices, (ii) must provide for rental rates and other terms and conditions consistent with prevailing market rates, terms and conditions, (iii) must be written on a standard form of lease or renewal or extension agreement with no material amendments thereto, (iv) if it is a Commercial Lease, must provide that in the event enforcement proceedings are commenced by Lender following of an Event of Default, the Tenant must attorn to the Lender and become bound to it as tenant of its premises for the then unexpired residue of the term of such Commercial Lease and upon the terms and conditions contained in such Commercial Lease, (v) except for any renewal or extension of an existing Commercial Lease which is exercised pursuant to, and the terms of which are governed by such existing Commercial Lease, must not permit the Tenant under any Commercial Lease to "go dark" or otherwise stop operating its business in the ordinary course from or within its leased premises, and (vi) must not contain termination rights in favour of the Tenant or any other Person (other than the landlord) except for landlord default. Unless otherwise agreed by the Lender in writing, the Borrower will require the Tenant under each Commercial Lease to execute and deliver to the Lender an agreement, in the Lender's form, confirming the attornment referred to in Subsection (iv) concurrently with the execution and delivery of each new Commercial Lease and any renewal or extension of an existing Commercial Lease.

#### **Section 3.03 Lender Right to Consent to Material Commercial Leases**

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

#### **Section 3.04 Covenants.**

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

#### **Section 3.05 Performance of Obligations.**

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

### **ARTICLE 4 - EVENT OF DEFAULT**

#### **Section 4.01 Event of Default.**

Prior to the occurrence of an Event of Default, the Borrower may demand, receive, collect and apply the Rents, but only as the same fall due and payable according to the terms of each of the Leases, provided that nothing herein shall release, discharge, postpone, amend or otherwise affect the present assignment and security interest granted to the Lender in and to the Rents and Leases and the immediate attachment thereof and provided further that unless otherwise agreed by the

Lender in advance and in writing, any payment, consideration, compensation or other benefit of any kind which any Borrower Entity is or subsequently becomes entitled to receive relating to or otherwise arising from, directly or indirectly, the full or partial termination, cancellation, amendment, modification or release of any Lease or any Tenant in respect thereof shall be paid by the related Tenant (or related payor) or any Borrower Entity (forthwith upon receipt by it) to and held by the Lender and may be applied by the Lender, in its sole discretion, to reduction of the Loan Indebtedness when due or may be held by the Lender as security for the Obligations without releasing or affecting any of the other obligations and liabilities of the Borrower or any other Borrower Entity under any of the Loan Documents. Upon the occurrence of an Event of Default, the Lender may immediately deliver a written notice to each Tenant directing it to pay all Rents to the Lender, or as the Lender may direct, and such notice shall be good and sufficient authority for so doing. Any payment of Rent to the Lender, or as the Lender may direct, after such notice is given to any Tenant shall not constitute a default by such Tenant under its Lease.

#### **Section 4.02 Rights of Lender.**

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

#### **Section 4.03 Concurrent Remedies.**

The Lender may exercise all rights and remedies provided for in this Agreement, the other Loan Documents or otherwise under Applicable Laws separately, concurrently or in such combination or order and at such times as it may determine in its sole discretion and will not be required to exhaust any other right or remedy before exercising any of its rights and remedies in respect thereof.

### **ARTICLE 5 - GENERAL**

#### **Section 5.01 No Release.**

The assignment and security interest in the Rents and Leases and all other rights and benefits granted to the Lender hereunder shall remain in full force and effect without regard to any of the following matters, and the obligations of the Borrower and other parties under the Leases shall not be released, affected or impaired by: (a) any amendment, modification, renewal or replacement of or addition or supplement to, or release or discharge of any of the Loan Documents or any security held by the Lender as security for any of the Obligations; (b) any exercise or non-exercise of any right, remedy, power or privilege under or in respect of any Loan Document or any security held by the Lender as security for any of the Obligations; (c) any waiver, consent, extension, indulgence or other action, inaction or omission under or in respect of any Loan Document or any security held by the Lender as security for any of the Obligations; (d) any default by the Borrower or any other Borrower Entity or Person under, or any invalidity or unenforceability of, or any release or other limitation of the liability of the Borrower or any other Borrower Entity or Person under, any Loan Document or other security held by the Lender as security for any of the Obligations; or (e) any insolvency, bankruptcy, liquidation, reorganization, arrangement, composition, winding-up, dissolution or similar proceeding involving or affecting the Borrower, any Tenant or any other Borrower Entity or Person, including any change in the constitution of any partnership.

#### **Section 5.02 Notice.**

Any notice, demand or other communication required or permitted to be given or made to the Borrower pursuant to this Agreement may be given or made in any manner permitted or provided by the laws applicable thereto, notwithstanding any provision of any other Loan Document to the contrary. Subject to the foregoing, any such notice, demand or communication may be given or made, at the option of the Lender by personal delivery, by prepaid ordinary or registered mail (to the address for service of the Borrower set out in the Mortgage or to that last known address of the Borrower as shown in the Lender's records) or by facsimile transmission to the facsimile number of the Borrower set out in the Mortgage or the last known facsimile number of the Borrower as shown in the Lender's records. 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.

**Section 5.03 Severability.**

If any term, covenant, obligation or agreement contained in this Agreement, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, the remaining provisions of this Agreement 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.

**Section 5.04 Waiver and Release.**

The Lender 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 Lender will extend to, or affect, any subsequent Event of Default or the rights of the Lender arising from such Event of Default. Any such waiver must be in writing and signed by the Lender. No failure on the part of the Lender or the Borrower to exercise, and no delay by the Lender or the Borrower in exercising, any right pursuant to this Agreement 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. The registration of a complete and final discharge of the Mortgage against all of the Lands subject thereto duly executed by the Lender shall constitute a release of this Agreement and a re-assignment of the Lender's interest in the Rents and Leases to the Borrower without the need for the execution or registration of any further document or instrument.

**Section 5.05 Further Assurances.**

The Borrower shall from time to time forthwith on the Lender's request do, make and execute all such financing statements, further assignments, documents, assurances, acts, matters and things as may be reasonably required by the Lender of or with respect to the Rents or Leases or any part thereof or as may be reasonably required to give effect to this Agreement, and the Borrower hereby constitutes and irrevocably appoints the Lender as the true and lawful attorney of the Borrower, coupled with an interest and with full power of substitution to do, make and execute all such statements, assignments, documents, assurances, acts, matters or things with the right to use the name of the Borrower whenever and wherever it may be deemed necessary or expedient.

**Section 5.06 Governing Law.**

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province 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 the Province, applying to this Agreement; and the Borrower consents to the jurisdiction of the courts of the Province and irrevocably agrees that, subject to the Lender's election in its sole discretion to the contrary, all actions or proceedings arising out of or relating to this Agreement shall be litigated in such courts and the Borrower unconditionally accepts and consents to the non-exclusive jurisdiction of the said courts and waives any defense of *forum non-conveniens*, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement, provided nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of the Lender to bring any action or proceedings against the Borrower or any other Borrower Entity in the courts of any other jurisdiction.

**Section 5.07 Successors and Assigns.**

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, successors in title and assigns. The Loan, the Loan Indebtedness, the Loan Documents (including this Agreement) or any interest therein may be sold, transferred or assigned by the Lender or any other Person having or acquiring any ownership interest in the Loan from time to time at any time and to any Person as it may determine in its sole discretion without restriction and without notice to or the consent of the Borrower or any other Borrower Entity or Person. The Borrower may not assign its obligation under this Agreement.

**Section 5.08 Counterparts.**

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF the Borrower has executed this Agreement under seal as of the date set out above.

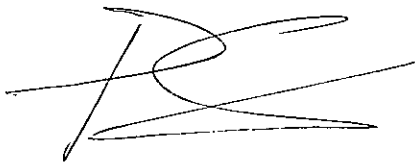
LESLIEBROOK HOLDINGS LTD.

Per: \_\_\_\_\_

Norma Walton, President

I have authority to bind the Corporation.

***THIS IS EXHIBIT "D", referred to in the  
Affidavit of JEAN MONARDO, sworn  
on December 16, 2013.***

A handwritten signature in black ink, consisting of a stylized 'R' or 'B' shape with a vertical line through it, and a horizontal line extending to the right.

---

***Commissioner for Taking Affidavits***



Ontario ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
REGISTRY  
OFFICE #66

10136-0028 (LT)

PAGE 1 OF 4

PREPARED FOR KNEWMAN  
ON 2013/11/20 AT 14:25:40

PROPERTY DESCRIPTION: PT LT 3 CON 3 EYS TWP OF YORK PARTS 1, 2, 3, 5, 6, 7 & 9, 64R10086; S/T TB189467, TB864493; TORONTO (N YORK), CITY OF TORONTO

PROPERTY REMARKS:

ESTATE/QUALIFIER:  
PRE SIMPLE  
LT CONVERSION QUALIFIED  
OTHERS' NAMES  
LESLIEBROOK HOLDINGS LTD.

RECENTLY  
RE-ENTRY FROM 10138-0118  
CAPACITY SHARE

PIN CREATION DATE:  
2002/02/25

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 2002/02/22 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
**		SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *				
**		AND RESERVE OR FORFEITURE TO THE CROWN.				
**		THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF				
**		IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY				
**		CONVENTION.				
**		ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.				
**DATE OF CONVERSION TO LAND TITLES: 2002/02/25 **						
<del>NW446659</del>	<del>1978/06/09</del>	<del>CHARGE</del>		*** COMPLETELY DELETED ***	A. D. MARGISON & ASSOCIATES LTD.	
<del>NW669685</del>	<del>1975/11/07</del>	<del>NOTICE OF LEASE</del>		*** COMPLETELY DELETED ***	TEXACO CANADA LIMITED	
<del>NW734280</del>	<del>1978/02/09</del>	<del>ASSIGNMENT-LEASE</del>		*** COMPLETELY DELETED ***	THE CADILLAC FAIRVIEW CORPORATION LIMITED	
REMARKS: DELETED PURSUANT TO DELETION OF CHARGE NY224921 ON 2004/12/22 BY R. WARNER.						
<del>NW140563</del>	<del>1928/05/28</del>	<del>ASSIGNMENT-LEASE</del>		*** COMPLETELY DELETED ***	INDUSTRIAL LIFE INSURANCE COMPANY	
REMARKS: NY222235 // DELETED PURSUANT TO DELETION OF CHARGE NY740393 ON 2004/12/22 BY R. WARNER						
6493777	1983/04/20	PLAN REFERENCE				
<del>WB122310</del>	<del>1983/09/19</del>	<del>CHARGE</del>		*** COMPLETELY DELETED ***	LANDORA HOLDINGS LTD.	C

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



Ontario ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
REGISTRY  
OFFICE #66

10138-0028 (LT)

PAGE 2 OF 4  
PREPARED FOR KHEWANI  
ON 2013/11/20 AT 14:25:40

\* CERTIFIED BY LAND REGISTRAR IN ACCORDANCE WITH LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NO.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
TR1422119	1984/09/19	CHARGE		*** COMPLETELY DELETED ***		
TR1422846	1984/12/16	ASSIGNMENT-LEASE		*** COMPLETELY DELETED ***	GRIMM, SIEGFRIED GRIMM, GERTI	
64R10062	1984/01/13	PLAN REFERENCE		REMARKS: 5 RENTS/TR142794 // DELETED PURSUANT TO DELETION OF CHARGE TR142794 ON 2004/12/22 BY R. WARNER		
64R10086	1984/02/17	PLAN REFERENCE				
TR154318	1984/02/10	DISCH-PART-CHARGE		*** DELETED AGAINST THIS PROPERTY ***		
REMARKS: TR122118				DELETED PER EXPIRED INTEREST BULLETIN 89004 ON 2012 04 30 BY M. WYLLIE		
TR142484	1984/04/03	DISCH-PART-CHARGE		*** DELETED AGAINST THIS PROPERTY ***		
REMARKS: TR122119				DELETED PER EXPIRED INTEREST BULLETIN 89004 ON 2012 04 30 BY M. WYLLIE		
TR142476	1984/02/09	TRANSFER		*** DELETED AGAINST THIS PROPERTY ***	SCHEVER (CANADA) HOLDINGS LTD.	
TR142555	1984/02/12	ASSIGNMENT-GENERAL		*** COMPLETELY DELETED ***		
REMARKS: RE-ASSIGNMENT OF LEASES & RENTS TR142846				DELETED PURSUANT TO DELETION OF TR142794 ON 2004/12/22 BY R. WARNER		
64R10276	1984/07/25	PLAN REFERENCE				
TR189467	1984/08/02	TRANSFER EASEMENT			THE HYDRO-ELECTRIC COMMISSION OF THE CORP. OF THE CITY OF NORTH YORK	
TR142556	1984/02/02	DISCH-PART-CHARGE		*** DELETED AGAINST THIS PROPERTY ***		
REMARKS: NY807425				DELETED PER EXPIRED INTEREST BULLETIN 89004 ON 2012 04 30 BY M. WYLLIE		
TR142457	1984/02/02	ASSIGNMENT-GENERAL		*** COMPLETELY DELETED ***		
REMARKS: RE-ASSIGNMENT OF RENTS NY807426				DELETED BY TR792430 ON 2004/12/22 BY R. WARNER		

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



Ontario ServiceOntario

LAND  
REGISTRY  
OFFICE #66

PAGE 3 OF 4  
PREPARED FOR KNEEMAN  
ON 2013/11/20 AT 14:25:40  
\* CERTIFIED BY LAND REGISTRAR IN ACCORDANCE WITH LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

10118-0028 (LT)

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
TD202511	1991/10/25	NOTICE OF SUBLEASE		***DELETED-AGAINST-THIS PROPERTY*** ATLANTIS REAL ESTATE CORPORATION	LABATT BREWING COMPANY LIMITED TSN ENTERPRISES AULT FOODS LIMITED AULT FOODS LIMITED AULT FOODS LIMITED - LRO #10.	C
64813264	1992/01/24	PLAN REFERENCE				
TD214017	1992/02/19	NOTICE OF LEASE		***DELETED-AGAINST-THIS PROPERTY*** ATLANTIS REAL ESTATE CORPORATION	LABATT BREWING COMPANY LIMITED AULT FOODS LIMITED TSN ENTERPRISES	C
TD2052709	1992/08/28	NOTICE OF LEASE		***DELETED-AGAINST-THIS PROPERTY*** ATLANTIS REAL ESTATE CORPORATION	THE SPORTS NETWORK	
6086841	1992/10/27	TRANSFER		***DELETED-AGAINST-THIS PROPERTY*** SCHEVER (CANADA) HOLDINGS LTD.	THE CONSUMERS' GAS COMPANY LTD.	
TD2064493	1992/10/27	TRANSFER EASEMENT	\$2	REMARKS: DOCUMENT TD2064493 - ERROR ENTRY, CANCELLED BY ISERHOFF, BEVERLY ON 2009/10/19. \$2 MONTAGE DEVELOPMENTS LTD.	THE CONSUMERS' GAS COMPANY LTD.	C
AT2061234	2004/12/21	APL (GENERAL)		*** COMPLETELY DELETED *** SCHEVER (CANADA) HOLDINGS LTD.		
AT2061235	2004/12/21	NO DET/SURR. LEASE		*** COMPLETELY DELETED ***		
AT2061236	2004/12/21	NO DET/SURR. LEASE		*** COMPLETELY DELETED ***	SCHEVER (CANADA) HOLDINGS LTD.	
AT2061237	2004/12/21	NO DET/SURR. LEASE		*** COMPLETELY DELETED ***	SCHEVER (CANADA) HOLDINGS LTD.	
AT2061238	2004/12/21	NO DET/SURR. LEASE		*** COMPLETELY DELETED ***	SCHEVER (CANADA) HOLDINGS LTD.	
AT2061239	2004/12/21	NO DET/SURR. LEASE		*** COMPLETELY DELETED ***	SCHEVER (CANADA) HOLDINGS LTD.	

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





Ontario ServiceOntario

LAND  
REGISTRY

OFFICE #66

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 4 OF 4

PREPARED FOR KNEWMAN

ON 2013/11/20 AT 14:25:40

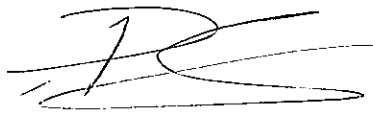
\* CERTIFIED BY LAND REGISTRAR IN ACCORDANCE WITH LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CHOWN GRANT \*

10138-0028 (L7)

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT443032	2004/12/22	NO. DET./SURE. LEASE		*** COMPLETELY DELETED ***	SCHVEY (CANADA) HOLDINGS LTD.	
	REMARKS: RE: TB792531					
AT443033	2004/12/22	DISCH. OF CHARGE		*** COMPLETELY DELETED *** GRIMM, SIEGFRIED GRIMM, GERTI		
	REMARKS: RE: TB122119					
AT443034	2004/12/22	DISCH. OF CHARGE		*** COMPLETELY DELETED *** LANDORA HOLDINGS LTD.		
	REMARKS: RE: TB122118					
AT443035	2004/12/22	TRANSFER		*** COMPLETELY DELETED *** SCHVEY (CANADA) HOLDINGS LTD.	MONTRADE DEVELOPMENTS LTD.	
	REMARKS: PLANNING ACT STATEMENTS					
AT1611586	2007/10/23	NOTICE OF LEASE		MONTRADE DEVELOPMENTS LTD.	FIDO SOLUTIONS INC.	C
AT2802589	2011/09/01	APL (GENERAL)		FIDO SOLUTIONS INC.	FIDO SOLUTIONS INC.	C
	REMARKS: AT1611586					
AT3008025	2012/05/03	TRANSFER	\$7,000,000	MONTRADE DEVELOPMENTS LTD.	LESLIEBROOK HOLDINGS LTD.	C
	REMARKS: PLANNING ACT STATEMENTS					
AT3008088	2012/05/03	CHARGE	\$5,250,000	LESLIEBROOK HOLDINGS LTD.	COMPUTERSHARE TRUST COMPANY OF CANADA	C
AT3008089	2012/05/03	NO ASSGN RENT GEN		LESLIEBROOK HOLDINGS LTD.	COMPUTERSHARE TRUST COMPANY OF CANADA	C
	REMARKS: AT3008088 - RENT					
AT3021069	2012/05/18	NOTICE	\$2	LESLIEBROOK HOLDINGS LTD.	COMPUTERSHARE TRUST COMPANY OF CANADA	C
	REMARKS: AT3008088					
AT3008065	2013/09/05	TRANSFER REL. BAND		*** COMPLETELY DELETED *** LESLIEBROOK HOLDINGS LTD.	LESLIEBROOK LANDS LTD.	
	REMARKS: TB181776, PLANNING ACT STATEMENTS.					

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

*THIS IS EXHIBIT "E", referred to in the Affidavit of JEAN MONARDO, sworn on December 16, 2013.*

A handwritten signature in black ink, consisting of a stylized 'J' followed by a series of loops and a long horizontal stroke.

---

*Commissioner for Taking Affidavits*

**GENERAL SECURITY AGREEMENT**  
**("Leslie Street Office")**

THIS AGREEMENT is made as of April 26, 2012 (the "Agreement") between COMPUTERSHARE TRUST COMPANY OF CANADA (the "Secured Party") and LESLIEBROOK HOLDINGS LTD. (the "Debtor" or "Borrower").

WHEREAS the Secured Party has agreed to make a loan (the "Loan") in the original principal amount of \$5,250,000.00 to the Borrower pursuant to a commitment letter dated April 20, 2012 (the "Commitment Letter") and secured, *inter alia*, by a first priority charge/mortgage (the "Mortgage") of certain lands and premises comprising Part Lot 3, Concession 3 EYS, PIN 10138-0028 LT, 1131A Leslie Street, Toronto, Ontario (as defined in the Mortgage, the "Property");

AND WHEREAS the Debtor has agreed to grant to the Secured Party a security interest in and an assignment, mortgage and charge of the Collateral (as defined in Section 2.01) to secure the payment by the Borrower to the Secured Party of the Loan Indebtedness and the observance and performance of all of the other covenants and obligations of the Debtor (whether individually or jointly with any other Borrower Entity or Person) to the Secured Party under this Agreement and the other Loan Documents (the Loan Indebtedness, together with such covenants and obligations, collectively, the "Obligations");

NOW THEREFORE in consideration of the Secured Party making the Loan to the Debtor and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Debtor), the Debtor hereby covenants and agrees with and in favour of the Secured Party as follows:

**ARTICLE 1 - INTERPRETATION AND CONSTRUCTION**

**Section 1.01 Interpretation and Construction.**

Unless otherwise defined herein, all capitalized words and expressions used in this Agreement will have the same meaning as defined in the Mortgage. In this Agreement, unless something in the subject matter or context is inconsistent therewith, "PPSA" means the Personal Property Security Act (Ontario), and the terms "accession", "account", "chattel paper", "consumer goods", "document of title", "equipment", "goods", "instrument", "intangible", "inventory", "money", "personal property", "proceeds", "security" and "investment property" whenever used herein have the meanings given to those terms in the PPSA; and "Province" means the Province of Ontario. The provisions of Sections 1.02 and 1.03 of the Mortgage are incorporated in and form part of this Agreement *mutatis mutandis*. If more than one Person is named as or otherwise becomes liable for or assumes the obligations and liabilities of the Debtor hereunder, then the obligations and liabilities of all such Persons so named or who otherwise become liable for the obligations and liabilities of the Debtor will be joint and several.

**Section 1.02 REIT Provision.**

Notwithstanding any other provision of any Loan Document, if any Borrower Entity is a real estate investment trust (a "REIT"), the obligations of the REIT under the Loan Documents are not personally binding upon, and resort will not be had to, nor will recourse or satisfaction be sought from the private property of any of: (a) the unit holders of the REIT; (b) annuitants or beneficiaries under a plan of which a unit holder of the REIT acts as trustee or carrier; and (c) trustees, officers or employees of the REIT, provided that the Property will remain bound by and subject to the Mortgage and other Loan Documents, and the Lender will have full recourse to the Property, at all times and without limitation or restriction of any kind. Any obligation of the REIT set out in the Loan Documents will, to the extent necessary to give effect to such obligation, be deemed to constitute, subject to the provisions of the previous sentence, an obligation of the trustees of the REIT in their capacity as trustees of the REIT. Nothing herein will (i) constitute a bar to any action against the REIT for specific performance of any of its obligations under this Agreement or any other Loan Document, or (ii) limit, restrict or otherwise affect the validity or enforceability of the obligations and liabilities of any Borrower Entity under this Agreement or any other Loan Documents.

**ARTICLE 2 - GRANT OF SECURITY INTEREST**

**Section 2.01 Security Interest.**

As general and continuing security for the payment and performance by the Debtor to the Secured Party of the Obligations, the Debtor hereby grants to the Secured Party a first priority security interest in all of its present and after acquired real and personal property of any nature or kind comprising or otherwise relating to the Property (collectively, the

"Collateral"), and as further general and continuing security for the payment and performance by the Debtor to the Secured Party of the Obligations, the Debtor hereby assigns the Collateral to the Secured Party and mortgages and charges the Collateral as and by way of a fixed and specific mortgage and charge to the Secured Party, in each case subject to Permitted Encumbrances. Without limiting the generality of the foregoing, the Collateral will include all right, title and interest that the Debtor (whether individually or jointly with any other Borrower Entity or Person) now has or may hereafter have, be possessed of, be entitled to, or acquire in all property of the following kinds comprising or relating to the Property: all debts, accounts, claims and choses in action for monetary amounts which are now or which may hereafter become due, owing or accruing due to the Debtor, including all monies on deposit in any bank account into which any Rents have been or are currently being deposited from time to time (collectively, the "Receivables"); all machinery, equipment, fixtures, furniture, plant, vehicles, goods, chattels and other tangible personal property which are not inventory (collectively, the "Equipment"); all inventory; all chattel paper; all warehouse receipts, bills of lading and other documents of title, whether negotiable or not; all shares, stock, warrants, bonds, debentures, debenture stock and other securities and all instruments (collectively, the "Securities"); all investment property; all intangibles not otherwise described in this Section 2.01 including, without limiting the generality of the foregoing, all goodwill, patents, trademarks, copyrights and other intellectual property (collectively, "Intellectual Property"); all money, coins or bills or other medium of exchange adopted for use as part of the currency of Canada or of any foreign government; all books, papers, accounts, invoices, documents and other records in any form evidencing or relating to any of the property described in this Section 2.01 and all contracts, securities, investment property, instruments and other rights and benefits in respect thereof; all reserves paid to or held by the Secured Party pursuant to any of the Loan Documents; all Permitted Encumbrances and material agreements relating to the Property or the management or operation thereof and all rights and benefits in respect thereof; all permits, consents, licenses, authorizations and other approvals granted by any Governmental Authority or utility in respect of the Property and all rights and benefits in respect thereof; all replacements of, substitutions for and increases, additions and accessions to any of the property described in this Section 2.01; 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 to lease now held or hereafter acquired by the Debtor, as lessee, but the Debtor will stand possessed of such last day and hold it in trust for the Debtor, and if the Debtor enforces such security interest, assignment, mortgage and charge in respect of such lease or agreement, and assign same to any Person acquiring such lease or agreement to lease in the course of the enforcement and as directed by the Secured Party; (ii) extend or apply to consumer goods or, unless the Secured Party otherwise elects at any time in writing and in its sole discretion, the shares of any unlimited company or unlimited liability corporation, or (iii) render the Secured Party liable to observe or perform any term, covenant or condition of any agreement, document or instrument to which the Debtor is a party or by which it is bound. Without limiting the foregoing, the Collateral will include, and the security interest granted hereby will attach to, all present and future right, title, estate and interest of any beneficial or unregistered owner in the Collateral.

#### **Section 2.02 Attachment of Security Interest.**

The Debtor acknowledges that value has been given and agrees that the security interest granted hereby will attach when it signs this Agreement and it has any rights in the Collateral. There is no agreement between the parties hereto, express or implied, to postpone the attachment of the assignment and security interest granted hereby. Upon full repayment and performance of the Obligations, the Collateral will be re-assigned to the Debtor at the Debtor's expense.

#### **Section 2.03 No Need for Consent.**

The Debtor represents to the Secured Party that none of the Collateral in existence on the date hereof (i) is incapable of being assigned or otherwise secured in favour of the Secured Party in accordance with the provisions of this Agreement, (ii) is incapable of further assignment or security granted by the Secured Party or by any receiver or receiver and manager after the occurrence of an Event of Default, or (iii) requires the consent of any third party to the security interest, assignment, mortgage and charge granted hereby, except for any consent that has already been obtained. The Debtor covenants with the Secured Party that no Collateral will be hereafter obtained, acquired or agreed to by the Debtor which is not secured in favour of the Secured Party in accordance with the provisions hereof or which requires the consent of any third party to any such security.

#### **Section 2.04 Where Consent Required.**

If any Collateral cannot be secured in favour of the Secured Party in accordance with the provisions of this Agreement or requires the consent of any third party to the granting of such security, then without limiting the Secured Party's other rights and remedies under the Loan Documents, the following provisions will apply: (i) the Debtor will forthwith make reasonable commercial efforts to obtain the consent of any necessary third party to the security in favour of the Secured Party, and (ii) the Debtor will hold all benefit to be derived from such Collateral in trust for the Secured Party as security for payment and performance of the Obligations and will deliver up all such benefit to the Secured Party forthwith and upon demand.

## ARTICLE 3 - COVENANTS OF THE DEBTOR

### Section 3.01 Covenants.

Without limiting other covenants, obligations and liabilities of the Debtor (whether individually or jointly with any other Borrower Entity or Person) under the Loan Documents, the Debtor covenants with the Secured Party that it will: not permit the Collateral to be affixed to real or personal property so as to become a fixture or accession, other than to the Property; defend the Collateral against all actions, proceedings and claims made by all Persons at any time; except as otherwise expressly permitted by the Mortgage, not Transfer all or any part of the Collateral or create, incur or permit to exist (by operation of law or otherwise) any Lien on the Collateral or any part thereof (except in favour of the Secured Party as security for the Loan or as otherwise expressly permitted by the Mortgage); unless it gives the Secured Party 15 days prior written notice, not change its name, the location of its chief executive office and/or the location of the office where it keeps its records respecting the Receivables; without the prior written consent of the Secured Party in its sole discretion, not move any of the Securities or Equipment from the Property or from any other locations specified in any schedule hereto; pay all rents, taxes, levies, assessments and government fees or dues lawfully levied, assessed or imposed in respect of the Collateral or any part thereof as and when the same become due and payable, and will deliver to the Secured Party, when required, the receipts and vouchers establishing such payment; observe and perform all the obligations imposed upon it by the Collateral (including performance of its obligations under any Permitted Encumbrance, material agreement, permit and license); maintain the Collateral in good standing and not do or permit to be done anything that would impair the validity or enforceability thereof, and promptly deliver to the Secured Party notice of any default by the Debtor pursuant to any of the Collateral upon becoming aware of the occurrence of such default; pay to the Secured Party forthwith upon demand all Costs (all such Costs will be added to and form part of the Loan Indebtedness and will be secured by the Loan Documents); not amend, modify or terminate any Permitted Encumbrance, material agreement, permit or license without the prior written consent of the Secured Party; and obtain and maintain, at its own expense, insurance against loss or damage to the Collateral as required by the Mortgage.

At the request of the Secured Party, the Debtor will take all action that the Secured Party deems advisable to cause the Secured Party to have control over any securities or other investment property that are now or at any time become Collateral, including (i) causing such Collateral to be transferred to or registered in the name of the Secured Party or its nominee or otherwise as the Secured Party may direct, (ii) endorsing any such Collateral to the Secured Party or in blank by an effective endorsement, (iii) delivering such Collateral to the Secured Party or someone on its behalf as the Secured Party may direct (iv) delivering to the Secured Party any and all consents or other documents or agreements which may be necessary to effect the transfer of any such Collateral to the Secured Party or any third party and (v) entering into control agreements with the Secured Party and the applicable securities intermediary or issuer in respect of any such Collateral in form and substance satisfactory to the Secured Party.

## ARTICLE 4 - DEALING WITH COLLATERAL

### Section 4.01 No Liability for Loss.

The Secured Party may perform any of its rights and duties hereunder by or through agents and is entitled to retain counsel and to act in reliance upon the advice of such counsel concerning all matters pertaining to its rights and duties hereunder. In the holding or dealing with any of the Collateral or in the exercise of any right or remedy granted herein, the Secured Party and any nominee on its behalf will have no liability for, and the Debtor hereby agrees to indemnify and save harmless each Lender Entity from and against, any loss, damage, liability, cost or expense of any nature or kind incurred by such Lender Entity with respect to such Collateral.

### Section 4.02 Notification of Account Debtors.

Upon and following the occurrence of an Event of Default, the Secured Party may give notice of this Agreement and the security granted hereby to any account debtors of the Debtor or to any other Person liable to the Debtor to make all further payments to the Secured Party or as the Secured Party may direct. Upon receipt of such notice, each such account debtors and other Persons liable to the Debtor are hereby irrevocably authorized and directed to make such payments to the Secured Party or as it may direct. Whether or not any such notice is given by the Secured Party, the Collateral and all payments or other proceeds thereof received by the Debtor from account debtors or from any other Persons liable to the Debtor (whether before or after any notice is given by the Secured Party) will be and remain subject to the security granted hereby and will be held by the Debtor in trust for the Secured Party and paid over to the Secured Party on request. Nothing herein will release, discharge, postpone, reassign, amend or otherwise affect the security of the Secured Party in and to the Collateral and the immediate attachment thereof.

## ARTICLE 5 - REMEDIES

### Section 5.01 Remedies.

Upon and following the occurrence of an Event of Default, (i) the entire Loan Indebtedness will, at the option of the Secured Party in its sole discretion, become immediately due and payable to the Secured Party, without demand, notice, presentment, protest or notice of dishonour, all of which are expressly waived; (ii) the security interest, assignment, mortgage and charge granted hereby will, at the option of the Secured Party in its sole discretion become immediately enforceable; and (iii) in addition to any other right or remedy set out in or available under this Agreement, the other Loan Documents and Applicable Laws, the Secured Party will have the rights and remedies set out below, all of which rights and remedies will be enforceable successively, concurrently or both, in the Secured Party's sole discretion: the Secured Party may appoint, by written instrument, a receiver, manager or receiver and manager (each herein referred to as the "Receiver") of the Collateral (which term when used in this Section will include the whole or any part of the Collateral as the Secured Party will determine in its sole discretion) and may remove or replace such Receiver from time to time or may institute proceedings in any court of competent jurisdiction for the appointment of a Receiver of the Collateral (and the term "Secured Party" when used in this Section will include any Receiver so appointed and the agents, officers and employees of such Receiver); the Secured Party will not be in any way responsible for any misconduct or negligence of any such Receiver; the Secured Party may exercise any of the rights and remedies permitted by Applicable Laws, including all rights and remedies of a secured creditor under the PPSA; the Secured Party may take possession of the Collateral by entry onto any premises where such Collateral may be located or by any other method permitted by Applicable Laws, and may require the Debtor to assemble the Collateral and deliver or make the Collateral available to the Secured Party at such place or places as may be specified by the Secured Party; the Secured Party may take such steps as it considers desirable to maintain, preserve or protect the Collateral; the Secured Party may carry on or concur in the carrying on of all or any part of the business of the Debtor; the Secured Party may enforce any rights of the Debtor in respect of the Collateral by any manner permitted by Applicable Laws; the Secured Party may sue the Debtor for the payment and performance of the Debtor's Obligations; the Secured Party may sell, lease or otherwise dispose of the Collateral at public auction, by private tender, by private sale or otherwise either for cash or upon credit upon such terms and conditions as the Secured Party may determine and without notice to the Debtor unless required by Applicable Laws; the Secured Party, in its sole discretion, may accept the Collateral in satisfaction of the Obligations upon written notice to the Debtor of its intention to do so in the manner required by Applicable Laws; the Secured Party may, for any purpose specified herein, borrow money on the security of the Collateral in priority to the security interest, assignment and mortgage and charge granted by this Agreement; the Secured Party may enter upon, occupy and use all or any of the Property occupied by the Debtor and use all or any of the Equipment and other personal property of the Debtor for such time as the Secured Party requires to facilitate the realization of the Collateral, free of charge, and the Secured Party will not be liable to the Debtor for any neglect in so doing or in respect of any rent, charges, depreciation or damages in connection with such actions; without limiting the liability of the Debtor to pay all Costs, the Secured Party may charge on its own behalf and pay to others all reasonable amounts for expenses incurred and for services rendered in connection with the exercise of the rights and remedies of the Secured Party hereunder, including, without limiting the generality of the foregoing, legal fees and disbursements (on a full indemnity or solicitor and own client basis, as applicable), and any Receiver and accounting fees and expenses, and in every such case the amounts so paid together with all costs, charges and expenses incurred in connection therewith, including interest thereon at the Interest Rate will be added to and form part of the Loan Indebtedness and will be secured by the Loan Documents; and the Secured Party may discharge or settle, in its sole discretion, any Lien or any action, proceeding or other claim that may exist or be threatened against the Collateral, and in every such case the amounts so paid together with all costs, charges and expenses incurred in connection therewith will be added to the Loan Indebtedness and will be secured by the Loan Documents.

The Secured Party may grant extensions of time, take and perfect or abstain from taking and perfecting security, give up securities, accept compositions or compromises, grant releases and discharges, and release any part of the Collateral or otherwise deal with the Debtor, debtors of the Debtor, sureties and others and with the Collateral and other security as the Secured Party sees fit without prejudice to the liability of the Debtor to the Secured Party or the Secured Party's rights hereunder. The Secured Party will not be liable or responsible for any failure to seize, collect, realize, or obtain payment with respect to the Collateral and is not bound to institute proceedings or to take other steps for the purpose of seizing, collecting, realizing or obtaining possession or payment with respect to the Collateral or for the purpose of preserving any rights of the Secured Party, the Debtor or any other person, in respect of the Collateral. The Secured Party may apply any proceeds of realization of the Collateral to payment of expenses in connection with the preservation and realization of the Collateral as above described and the Secured Party may apply any balance of such proceeds to payment of the Obligations in such order as the Secured Party may determine in its sole discretion.

## ARTICLE 6 - GENERAL

### Section 6.01 Entire Agreement and Waivers.

This Agreement, together with the other Loan Documents, constitutes the entire agreement between the Secured Party and the Debtor with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Secured Party and the Debtor concerning the subject matter hereof except as expressly set forth in this Agreement or in the other Loan Documents. No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by all of the parties hereto. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in the written waiver, will be limited to the specific breach waived.

### Section 6.02 Benefit of Agreement and Assignment.

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective personal representatives, executors, administrators, heirs, successors and assigns. The Loan, the Loan Indebtedness, the Loan Documents (including this Agreement) or any interest therein may be sold, transferred or assigned by the Secured Party or any other Person having or acquiring any ownership interest in the Loan from time to time at any time and to any Person as it may determine in its sole discretion without restriction and without notice to or the consent of the Debtor or any other Borrower Entity or Person. The Debtor may not assign its obligations under this Agreement.

### Section 6.03 Severability.

If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

### Section 6.04 Notices.

Any demand, notice or other communication to be given to the Debtor in connection with this Agreement must be given in writing and may be made or given by personal delivery, by registered mail or by facsimile transmission, addressed to the Debtor as follows: 30 Hazelton Avenue, Toronto, Ontario, M5R 2E2, Attention: Norma Walton, Facsimile No.: 416-489-9973, or such other address, individual or facsimile number as the Debtor may designate by written notice given to the Secured Party. Any demand, notice or other communication made or given by personal delivery will be conclusively deemed to have been made or given on the day of actual delivery thereof, and if given by registered mail, on the third Business Day following the deposit thereof in the mail, and if 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, any such demand, notice or other communication will not be mailed but must be given by personal delivery or by facsimile transmission.

### Section 6.05 Additional Continuing Security and Discharge.

This Agreement and the security granted hereby are in addition to and not in substitution for any other security now or hereafter held by the Secured Party and this Agreement is a continuing agreement and security that will remain in full force and effect until discharged by the Secured Party. The Debtor will not be discharged from this Agreement or any of its obligations and liabilities hereunder except upon full payment and performance by the Debtor to the Secured Party of the Obligations in accordance with the provisions of the Loan Documents and a written discharge being executed and delivered by the Secured Party.

Without limiting the foregoing, the Debtor hereby irrevocably consents to any extension, renewal or amendment of the Loan and/or any of the Loan Documents made by the Secured Party and the Borrower from time to time and acknowledges and agrees that this Agreement will remain in full force and effect and will continue to apply and be binding on it for the benefit of the Secured Party, notwithstanding any such extension, renewal or amendment.

### Section 6.06 Further Assurances.

The Debtor must do, execute and deliver, or cause to be done, executed and delivered from time to time and at its sole expense, all such financing statements, further assignments, documents, acts, matters and things as may be reasonably requested by the Secured Party for the purpose of giving effect to this Agreement, to better evidence and perfect the security granted hereby or for the purpose of establishing compliance with the representations, warranties and covenants herein contained.

**Section 6.07 Power of Attorney.**

The Debtor hereby irrevocably constitutes and appoints the Secured Party the true and lawful attorney of the Debtor, coupled with an interest and with full power of substitution, upon the occurrence of an Event of Default that is continuing, to do, make and execute all such statements, assignments, documents, acts, matters or things with the right to use the name of the Debtor whenever and wherever the Secured Party may deem reasonably necessary or expedient and from time to time to exercise all rights and powers and to perform all acts of ownership in respect to the Collateral in accordance with this Agreement.

**Section 6.08 Governing Law.**

This Agreement will be governed by and construed in accordance with the laws of the Province 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 the Province, applying to this Agreement. The Debtor consents to the jurisdiction of the courts of the Province and irrevocably agrees that, subject to the Secured Party's election in its sole discretion to the contrary, all actions or proceedings arising out of or relating to this Agreement will be litigated in such courts and unconditionally accepts and consents the non-exclusive jurisdiction of the said courts and waives any defense of *forum non-conveniens*, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement, provided nothing herein will affect the right to serve process in any other manner permitted by law or will limit the right of the Secured Party to bring proceedings against the Debtor or any other Borrower Entity in the courts of any other jurisdiction.

**Section 6.09 Executed Copy/Waiver.**

The Debtor acknowledges receipt of a fully executed copy of this Agreement. The Debtor waives all rights to receive from the Secured Party a copy of any financing statement, financing change statement or other similar statement or registration (including any renewal statement or change statement) registered or filed at any time under the PPSA in respect of this Agreement or any of the other Loan Documents and all confirmation, verification or other similar statement(s) with respect thereto.

**Section 6.10 Counterparts.**

This agreement may be executed in several counterparts, each of which when so executed will be deemed to be an original and which counterparts together will constitute one and the same instrument.

IN WITNESS WHEREOF the Debtor has executed this Agreement.

**LESLIEBOOK HOLDINGS LTD.**

Per: 

Norma Walton, President

I have authority to bind the Corporation.

**ADDRESS OF DEBTOR**


Location of Chief Executive Office and location of Business Records of the Debtor

30 Hazelton Avenue, Toronto, Ontario, M5R 2E2

1131A Leslie Street, Toronto, Ontario



*THIS IS EXHIBIT "F", referred to in the Affidavit of JEAN MONARDO, sworn on December 16, 2013.*

A handwritten signature in black ink, consisting of a stylized 'J' and 'M' followed by a horizontal line.

---

*Commissioner for Taking Affidavits*



Skip to contentOntario.ca

HOMENEWSROOMSERVICESYOUR GOVERNMENTABOUT ONTARIO

## Access Now - Personal Property Lien

Main Menu > New Enquiry  
Web Page ID: WEnqResult

File Currency: 15DEC 2013

System Date: 16DEC2013

◀◀ All Pages ▶▶ Show All Pages

Note: All pages have been returned.

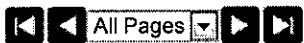

Type of Search	Business Debtor								
Search Conducted On	15DEC 2013								
File Currency	15DEC 2013								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	677615652	1	1	1	2	16APR 2024			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
677615652		001	002		20120416 1557 1862 6596	P PPSA	12		
Individual Debtor	Date of Birth	First Given Name		Initial	Surname				
Business Debtor	Business Debtor Name					Ontario Corporation No.			
	LESLIEBROOK HOLDINGS LTD.					2320541			
	Address				City	Province	Postal Code		
	30 HAZELTON AVENUE				TORONTO	ON	M5R 2E2		
Individual Debtor	Date of Birth	First Given Name		Initial	Surname				
Business Debtor	Business Debtor Name					Ontario Corporation No.			
	Address					City	Province		
	Address					City	Province		
Secured Party	Secured Party / Lien Claimant								
	COMPUTERSHARE TRUST COMPANY OF CANADA								
	Address				City	Province	Postal Code		
	100 UNIVERSITY AVE., S. TWR., 8TH FL.				TORONTO	ON	M5J 2Y1		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
		X	X	X	X				
Motor Vehicle Description	Year	Make		Model		V.I.N.			
General Collateral Description	General Collateral Description								
	ALL RIGHTS, TITLE AND INTEREST OF THE DEBTOR IN ALL PERSONAL								
	PROPERTY, AND ALL PROCEEDS OF SUCH PERSONAL PROPERTY, LOCATED AT,								
	RELATING TO OR USED IN CONNECTION WITH THE REAL PROPERTY COMPRISING								
Registering Agent	Registering Agent								
	ROSE, PERSIKO, RAKOWSKY, MELVIN LLP (RBM / 20120067)								
	Address				City	Province	Postal Code		
	390 BAY STREET, SUITE 600				TORONTO	ON	M5H 2Y2		

CONTINUED

Type of Search	Business Debtor								
Search Conducted On	LESLIEBROOK HOLDINGS LTD.								
File Currency	15DEC 2013								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	677615652	1	1	2	2	16APR 2024			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
677615652		002	002		20120416 1557 1862 6596				
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation No.			
	Address				City	Province	Postal Code		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation No.			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	Address				City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								
	PART LOT 3, CONCESSION 3 EYS, PIN 10138-0028 LT, 1131A LESLIE STREET,								
	TORONTO, ONTARIO								
Registering Agent	Registering Agent								
	Address				City	Province	Postal Code		

LAST PAGE  
Note: All pages have been returned.

BACK TO TOP ↗


All Pages


ServiceOntario Privacy Statement | PPSR Telephone Service

Contact Us | Accessibility | Privacy | Help  
Would You Like to Rate our Service?

Queen's Printer for Ontario, 2008 | Important Notices  
Last Modified: November 17, 2013

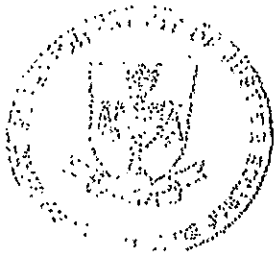


***THIS IS EXHIBIT "G", referred to in the  
Affidavit of JEAN MONARDO, sworn  
on December 16, 2013.***

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a horizontal line and a small dot.

---

***Commissioner for Taking Affidavits***



Court File No.: CV-13-10280-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

JUSTICE NEWBOULD

) FRIDAY, THE 5<sup>th</sup> DAY  
)  
)  
) OF NOVEMBER, 2013.

BETWEEN:

DBDC SPADINA LTD.,  
and THOSE CORPORATIONS LISTED ON SCHEDULE A HERETO

Applicants

and

NORMA WALTON, RONAULD WALTON, THE ROSE & THISTLE GROUP  
LTD. and EGLINTON CASTLE INC.

Respondents

and

THOSE CORPORATIONS LISTED ON SCHEDULE B HERETO, TO BE  
BOUND BY THE RESULT

**ORDER**

THIS MOTION made by the Applicants, DBDC Spadina Ltd. and those Corporations Listed on Schedule "A" hereto for an Order appointing Schonfeld Inc. Receivers + Trustees, as manager (in such capacities, the "Manager") without security, of all of the assets, undertakings and properties of the Schedule "B" Corporations, or for other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavits of Jim Reitan sworn October 1, October 3 and October 24, 2013 and the Exhibits thereto, the Affidavit of Susan Lyons and the Exhibits hereto, the Affidavit of Lorna Groves and the Exhibits thereto, the First Interim Report of the Inspector,

Schonfeld Inc., the Supplemental Report to the First Interim Report of the Inspector and the Exhibits thereto, the Second Interim Report of the Inspector and the Exhibits thereto, the Affidavits of Norma Walton sworn October 3 and 31, 2013 and the Exhibits thereto and on hearing the submissions of counsel for the Applicants, counsel for the Inspector and counsel for the Respondents,

#### SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

#### CONTINUING ORDERS

2. THIS COURT ORDERS that the Orders of the Honourable Justice Newbould dated October 4, 2013 and October 25, 2013 continue in full force and effect except as modified by this Order.

#### APPOINTMENT

3. THIS COURT ORDERS that the Manager is hereby appointed Manager, without security, of all of the real property owned by the Schedule "B" Companies hereto (the "Real Estate") and all of the current and future assets, undertakings and property, real and personal, of the Schedule "B" Corporations of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively with the Real Estate, the "Property") effective upon the granting of this Order.

#### MANAGER'S POWERS

4. THIS COURT ORDERS that the Manager shall have the powers of the Inspector granted pursuant to the Order of the Honourable Justice Newbould dated October 4, 2013, including but not limited to access to the premises and books and records of the Respondent The Rose & Thistle Group Ltd.
5. THIS COURT ORDERS that the Manager is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Manager is hereby expressly empowered and authorized to do any of the following where the Manager considers it necessary or desirable:
  - (a) to undertake sole and exclusive authority to manage and control the Property and any and all proceeds, receipts and disbursements arising out

of or from the Property, wheresoever located, and any and all proceeds, receipts and disbursements arising out of or from the Property, and for greater certainty, the Manager shall have sole and exclusive right and control of the Schedule "B" Corporations' bank accounts wherever located in accordance with this Order;

- (b) to open bank accounts at any banking institution acceptable to the Applicant to transfer funds from the current bank accounts of the Schedule "B" Companies, as necessary, ~~with prior notice to the Parties;~~ ✓ 25
- (c) to receive, preserve, and protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (d) to manage, operate, and carry on the business of the Schedule "B" Corporations, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business ~~upon prior notice to the Parties,~~ ✓ or cease to perform any contracts of any of the Schedule "B" Corporations ~~upon prior notice to the Parties;~~ ✓ 25
- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this order including but not limited to a property manager, including but not limited to:
  - (i) DMS Properties;
  - (ii) Briarlane Property Rental Management Inc.; and



(iii) Sterling Karamar;

- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Schedule "B" Corporations or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Schedule "B" Corporations and to exercise all remedies of the Schedule "B" Corporations in collecting such monies, including, without limitation, to enforce any security held by any of the Schedule "B" Corporations, ~~provided that the Manager shall give prior notice to the Parties of any enforcement of security;~~ ✓ 285
- (h) subject to paragraph 4 below, to settle, extend or compromise any indebtedness owing to any of the Schedule "B" Corporations, ~~provided that the Manager shall give prior notice to the Parties of the settlement of any material indebtedness;~~ ✓ 285
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Manager's name or in the name and on behalf of the Schedule "B" Corporations, for any purpose pursuant to this Order;
- (j) to undertake environmental investigations, assessments, engineering and building condition or other examinations of the Real Estate;
- (k) subject to paragraph 12 below, to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Schedule "B" Corporations, the Property or the Manager, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (l) subject to paragraph 13 below, to market the Property and in particular the Real Estate, including advertising and soliciting offers in respect of the Property and negotiating such terms and conditions of sale as the Manager in its discretion may deem appropriate;
- (m) to enter into agreements and to sell, convey, transfer, or assign the Property or any part or parts thereof of the Schedule "B" Corporations' business, with the prior approval of this Court in respect of any transaction, and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;
- (n) to have on-line and electronic as well as hard copy access to the bank accounts of the Rose & Thistle Group Ltd. to review all receipts and disbursements total from such accounts and to request and receive on a timely basis from the Respondents particulars of all receipts and disbursements sufficient for the Inspector to identify such transfers, the parties involved and the reasons therefore;
- (o) upon notice to all parties and affected registered encumbrances, to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Manager considers appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Manager deems advisable;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Manager, in the name of the Schedule "B" Corporations;

- (r) to do all acts and execute, in the name and on behalf of the Schedule "B" Corporations, all documents, and for that purpose use the seal of the corporation, if any; and
- (s) to take any steps reasonably incidental to the exercise of these powers.

and in each case where the Manager takes any such actions or steps, it shall, subject to paragraph 4 below, be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Schedule "B" Corporations, and without interference from any other Person. For greater certainty, nothing in this Management Order or to the Manager's exercise of its powers hereunder shall cause the Manager to be, or deemed to be, a receiver within the meaning of the *Bankruptcy and Insolvency Act*.

✓ ~~6. The Manager shall take reasonable steps to provide the Parties with an accounting on a monthly basis of any collections referred to in subparagraphs 5(g) above.~~ ~ 201

#### DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MANAGER

- 7. THIS COURT ORDERS that (i) the Schedule "B" Corporations and The Rose & Thistle Group Inc., (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, including but not limited to the Respondents and all others having notice of this Order; (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order; and (iv) Meridian Credit Union; and (v) without limiting the generality of the foregoing, Norma Walton, Ronauld Walton, anyone acting under the instructions of anyone listed in this paragraph; and (vi) anyone with notice of this order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Manager of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Manager, and shall deliver all such Property to the Manager upon the Manager's request, and in any event no later than 36 hours following the Manager's request.
- 8. THIS COURT ORDERS that all Persons shall forthwith advise the Manager of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Schedule "B" Corporations, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Manager or permit the Manager to make, retain and take away copies thereof and grant to the Manager unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this

paragraph 9 or in paragraph 11 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Manager due to the privilege attaching to solicitor-client communication or litigation work product belong to a Shareholder or a director of a Schedule "B" Corporations personally or due to statutory provisions prohibiting such disclosure.

9. THIS COURT ORDERS that the Records shall, upon reasonable notice to the Manager and during normal business hours of the Manager, be open to examination by each of the parties and their respective legal counsel, and that a copy of these Records be provided by the Manager of the parties upon request, the reasonable costs associated with such access and copies to be determined by the Manager, and invoiced to and paid by the requesting party to the Manager forthwith.
10. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Manager for the purpose of allowing the Manager to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Manager in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Manager. Further, for the purposes of this paragraph, all Persons shall provide the Manager with all such assistance in gaining immediate access to the information in the Records as the Manager may in its discretion require including providing the Manager with instructions on the use of any computer or other system and providing the Manager with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE MANAGER**

11. THIS COURT ORDERS that, except as may be provided herein, no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Manager except with the written consent of the Manager or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE SCHEDULE "B" CORPORATIONS OR THE PROPERTY**

12. THIS COURT ORDERS that no Proceeding against or in respect of any of the Schedule "B" Corporations or the Property shall be commenced or continued except with the written consent of the Manager or with leave of this Court and any and all Proceedings currently under way against or in respect of the Schedule "B" Corporations or the Property, with the exception of the proceedings referred to in paragraph 7, are hereby stayed and suspended pending further Order of this Court. Notwithstanding any other provision in this Order, the parties shall not be precluded from taking any steps or from commencing or continuing any proceedings in Ontario Superior Court of Justice, Court File No. CV-13-10280-00CL (Commercial List), and in such circumstances the Manager

shall not be obliged to defend or participate on behalf of the Schedule "B" Corporations and the Manager shall not be liable for any costs, damages or awards related to any such proceedings.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

13. THIS COURT ORDERS that, except as may be provided herein, all rights and remedies against the Schedule "B" Corporations, the Manager, or affecting the Property, are hereby stayed and suspended except with the written consent of the Manager or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Manager or the Schedule "B" Corporations to carry on any business which the Schedule "B" Corporations is not lawfully entitled to carry on, (ii) exempt the Manager or the Schedule "B" Corporations from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE MANAGER**

14. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Schedule "B" Corporations, without written consent of the Manager or leave of this Court.

#### **CONTINUATION OF SERVICES**

15. THIS COURT ORDERS that all Persons having oral or written agreements with the Schedule "B" Corporations or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Schedule "B" Corporations are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Manager, and that the Manager shall be entitled to the continued use of the Schedule "B" Corporations' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Manager in accordance with normal payment practices of the Schedule "B" Corporations or such other practices as may be agreed upon by the supplier or service provider and the Manager, or as may be ordered by this Court.
16. THIS COURT ORDERS that Respondents are enjoined from canceling or failing to renew any insurance policies or other coverage in respect of to the Rose & Thistle Group Ltd. and/or the Schedule B Companies or any property owned by them, except with the express written approval of the Manager.
17. THIS COURT ORDERS that the Inspector shall be added as a named insured to any existing insurance policies or other coverage in respect of to the Rose & Thistle Group Ltd. and/or the Schedule B Companies or any property owned by them.

#### MANAGER TO HOLD FUNDS

18. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Manager from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into either the existing bank accounts held by Schedule "B" Corporations' or one or more new accounts to be opened by the Manager, at the Manager's discretion, as the Manager may reasonably decide and the monies standing to the credit of such accounts from time to time, net of any disbursements provided for herein, shall be held by the Manager to be paid in accordance with the terms of this Order or any further Order of this Court.

#### LIMITATION ON ENVIRONMENTAL LIABILITIES

19. THIS COURT ORDERS that nothing herein contained shall require the Manager to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Manager from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Manager shall not, as a result of this Order or anything done in pursuance of the Manager's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation.

#### LIMITATION ON THE MANAGER'S LIABILITY

20. THIS COURT ORDERS that the Manager shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part as so found by a court of competent jurisdiction. The Manager shall further enjoy the protections from liability as would otherwise be afforded to a trustee in bankruptcy under section 14.06 of the *Bankruptcy and Insolvency Act* or under any other similar legislation applicable to trustees and receivers.

#### MANAGER'S ACCOUNTS

21. THIS COURT ORDERS that any expenditures or liability which shall properly be made or incurred by the Manager including the fees and disbursements of the Manager and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of

the Manager and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Manager's Charge").

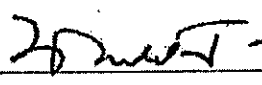
22. THIS COURT ORDERS that the Manager and its legal counsel, if any, shall pass their accounts from time to time, and for this purpose the accounts of the Manager and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.
23. THIS COURT ORDERS that prior to the passing of its accounts, the Manager shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Manager or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### FUNDING OF THE MANAGERSHIP

24. THIS COURT ORDERS that the Manager be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$5 million (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Manager by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Manager's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Manager's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
25. THIS COURT ORDERS that neither the Manager's Borrowings Charge nor any other security granted by the Manager in connection with its borrowings under this Order shall be enforced without leave of this Court.
26. THIS COURT ORDERS that the Manager is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Manager's Certificates") for any amount borrowed by it pursuant to this Order.
27. THIS COURT ORDERS that the monies from time to time borrowed by the Manager pursuant to this Order or any further order of this Court and any and all Manager's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Manager's Certificates.

**GENERAL**

28. THIS COURT ORDERS that the Manager may from time to time apply to this Honourable Court for advice and directions in the discharge of the Manager's powers and duties hereunder.
29. THIS COURT ORDERS that nothing in this Order shall prevent the Manager from acting as receiver, interim receiver or trustee in bankruptcy of the Schedule "B" Companies.
30. THIS COURT HEREBY REQUESTS that aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Manager and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Manager, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Manager and its agents in carrying out the terms of this Order.
31. THIS COURT ORDERS that the Manager be at liberty and is hereby authorized and empowered to apply to any court, tribunal regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
32. THIS COURT ORDERS that any interested party may apply to this Court to seek the advice and direction of the Court in respect of this Order or the Manager's activities on not less than seven (7) days' notice to the Manager and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
33. THIS COURT ORDERS that any court materials in these proceeds may be served by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time.

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

NOV 18 2013

NB



**SCHEDULE "A" COMPANIES**

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investment Pape Ltd.
5. DBDC Investments Highway 7 Ltd.
6. DBDC Investments Trent Ltd.
7. DBDC Investments St. Clair Ltd.
8. DBDC Investments Tisdale Ltd.
9. DBDC Investments Leslie Ltd.
10. DBDC Investments Lesliebrook Ltd.
11. DBDC Fraser Properties Ltd.
12. DBDC Fraser Lands Ltd.
13. DBDC Queen's Corner Inc.
14. DBDC Queen's Plate Holdings Inc.
15. DBDC Dupont Developments Ltd.
16. DBDC Red Door Developments Inc.
17. DBDC Red Door Lands Inc.
18. DBDC Global Mills Ltd.
19. DBDC Donalda Developments Ltd.
20. DBDC Salmon River Properties Ltd.
21. DBDC Cityview Industrial Ltd.
22. DBDC Weston Lands Ltd.
23. DBDC Double Rose Developments Ltd.
24. DBDC Skyway Holdings Ltd.

25. DBDC West Mall Holdings Ltd.
26. DBDC Royal Gate Holdings Ltd.
27. DBDC Dewhurst Developments Ltd.
28. DBDC Eddystone Place Ltd.
29. DBDC Richmond Row Holdings Ltd.

**SCHEDULE "B" COMPANIES**

1. Twin Dragons Corporation
2. Bannockburn Lands Inc. / Skyline – 1185 Eglinton Avenue Inc.
3. Wynford Professional Centre Ltd.
4. Liberty Village Properties Inc.
5. Liberty Village Lands Inc.
6. Riverdale Mansion Ltd.
7. Royal Agincourt Corp.
8. Hidden Gem Development Inc.
9. Ascalon Lands Ltd.
10. Tisdale Mews Inc.
11. Lesliebrook Holdings Ltd.
12. Lesliebrook Lands Ltd.
13. Fraser Properties Corp.
14. Fraser Lands Ltd.
15. Queen's Corner Corp.
16. Northern Dancer Lands Ltd.
17. Dupont Developments Ltd.
18. Red Door Developments Inc. and Red Door Lands Ltd.
19. Global Mills Inc.
20. Donalda Developments Ltd.
21. Salmon River Properties Ltd.
22. Cityview Industrial Ltd.
23. Weston Lands Ltd.
24. Double Rose Developments Ltd.

25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Dewhurst Developments Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited
32. 165 Bathurst Inc.

SCHEDULE "C"

MANAGER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$\_\_\_\_\_

1. THIS IS TO CERTIFY that [MANAGER'S NAME], the Manager (the "Manager") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_\_\_ of MONTH, 20YR (the "Order") made in an action having Court file number \_\_\_\_\_-CL-\_\_\_\_\_, has received as such Manager from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Manager is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Manager pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Manager to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Manager to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Manager to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Manager does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[MANAGER'S NAME], solely in its capacity  
as Manager of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

DBDC SPADINA LTD., and those corporations listed on Schedule  
A hereto  
Plaintiffs

-and- NORMA WALTON et al.

Defendants

Court File No. CV-13-10280-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDING COMMENCED AT TORONTO

ORDER

LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP  
Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)  
Tel: (416) 865-2921  
Fax: (416) 865-3558  
Email: pgriffin@litigate.com  
Shara N. Roy (49950H)  
Tel: (416) 865-2942  
Fax: (416) 865-3973  
Email: sroy@litigate.com

Lawyers for the Plaintiffs

DBDC SPADINA LTD., and those  
corporations listed on Schedule A hereto

NORMA WALTON et al.

Commercial List File No. CV-13-10280-00CL

Plaintiffs

Defendants

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at Toronto.

AFFIDAVIT OF JEAN MONARDO  
(SWORN DECEMBER 16, 2013)

STIKEMAN ELLIOTT LLP  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

Maria Konyukhova LSUC#: 52880V  
Tel: (416) 869-5230  
Fax: (416) 947-0866

Lawyers for Computershare Trust Company of  
Canada, as custodian, nominee and agent for and on  
behalf of Investors in a Canadian commercial  
mortgage securitization known as Institutional  
Mortgage Securities Canada, Commercial Mortgage  
Pass-Through Certificates, Series 2012-2



DBDC SPADINA LTD., and those  
corporations listed on Schedule A hereto

NORMA WALTON et al.

Commercial List File No. CV-13-10280-00CL

Plaintiffs

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto.

**MOTION RECORD  
(RETURNABLE DECEMBER 18, 2013)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

Maria Konyukhova LSUC#: 52880V  
Tel: (416) 869-5230  
Fax: (416) 947-0866

Lawyers for Computershare Trust Company of  
Canada, as custodian, nominee and agent for and on  
behalf of Investors in a Canadian commercial  
mortgage securitization known as Institutional  
Mortgage Securities Canada, Commercial Mortgage  
Pass-Through Certificates, Series 2012-2