



This is the first affidavit of
Samantha Tse in this case and
was made on July 17, 2024
No. S-244083
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND

3000 HENRY STREET LIMITED PARTNERSHIP

and

0790857 B.C. LTD.

RESPONDENTS

AFFIDAVIT

I, Samantha Tse, legal assistant, of 1055 Dunsmuir Street, Suite 3000, Vancouver, British Columbia, AFFIRM THAT:

1. I am a legal assistant with the law firm Osler, Hoskin & Harcourt LLP ("**Osler**"), counsel to the Petitioner, Kingsett Mortgage Corporation, and such have personal knowledge of the matter to which I now depose except where stated to be based on information and belief and where so stated I state the source of my information and believe them to be true.

2. Attached as **Exhibit A** to this affidavit is a true copy of the mortgage and assignment of rents filed with the New Westminster Land Title Office (the "LTO") under charge numbers CA9486292 and CA9486293 and registered against the following PIDS: 002-083-931, 002-083-957, 002-422-875, and 002-422-891, obtained by Osler from the LTO on July 17, 2024.

AFFIRMED BEFORE ME at Vancouver,
British Columbia, on July 17, 2024



Samantha Tse



A Commissioner for taking Affidavits for
British Columbia, Emma Newbery

EMMA NEWBERY
BARRISTER & SOLICITOR
Osler, Hoskin & Harcourt LLP
Suite 3000, Bentall Four
1055 Dunsmuir Street
Vancouver, BC V7X 1K8
TELEPHONE: 604.692.2728

This is Exhibit "A" referred to in the
Affidavit #1 of Samantha Tse, affirmed before me at
Vancouver, BC, this 17th day of July, 2024

A handwritten signature in blue ink that reads "Emma Newbery". The signature is written in a cursive style and is positioned above the printed name and title.

A Commissioner/Notary Public
for the Province of British Columbia

EMMA NEWBERY
BARRISTER & SOLICITOR
Oslar, Hoskin & Harcourt LLP
Suite 3000, Bentall Four
1088 Dunsmuir Street
Vancouver, BC V7X 1K8
TELEPHONE: 604.692.2728

DECLARATION(S) ATTACHED



NEW WESTMINSTER LAND TITLE OFFICE
 NOV 04 2021 09:11:34.001
CA9486292-CA9486293

1. Application

James Sutcliffe, McMillan LLP
 1500 - 1055 West Georgia Street
 PO Box 11117
 Vancouver BC V6E 4N7
 604-689-9111

Matter 285756

2. Description of Land

PID/Plan Number	Legal Description
002-083-931	LOT 17 DISTRICT LOT 190 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 11618
002-083-957	LOT 18 OF DISTRICT LOT 190 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 11618
002-422-875	LOT 19 DISTRICT LOT 190 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 11618
002-422-891	LOT 20 DISTRICT LOT 190 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 11618

3. Borrower(s) (Mortgagor(s))

0790857 B.C. LTD.
 #1510 - 475 HOWE STREET
 VANCOUVER BC V6C 2B3

BC0790857

4. Lender(s) (Mortgagee(s))

KINGSETT MORTGAGE CORPORATION
 40 KING STREET WEST, SUITE 3700
 TORONTO ON M5H 3Y2

A0081500

5. Payment Provisions

Principal Amount	Interest Rate	Interest Adjustment Date
\$13,350,000.00	20% PER ANNUM	N/A
Interest Calculation Period	Payment Dates	First Payment Date
MONTHLY	FIRST DAY OF EACH MONTH	N/A
Amount of each periodic payment	Interest Act (Canada) Statement. The equivalent rate of interest calculated half yearly not in advance is	Last Payment Date
N/A	N/A % per annum	N/A
Assignment of Rents which the applicant wants registered?	Place of payment	Balance Due Date
Yes	POSTAL ADDRESS IN ITEM 4	ON DEMAND
If yes, page and paragraph number: PAGES 23 and 24 PARAGRAPH 40		

6. Mortgage contains floating charge on land?

No

7. Mortgage secures a current or running account?

Yes



Land Title Act
Mortgage
Part 1 Province of British Columbia

8. Interest Mortgaged

Fee Simple

9. Mortgage Terms

Part 2 of this mortgage consists of:

(c) Express Mortgage Terms (annexed to this mortgage as Part 2)

10. Additional or Modified Terms

Guarantor(s) or Covenantor(s):

3000 HENRY STREET LIMITED PARTNERSHIP

11. Prior Encumbrances Permitted by Lender

12. Execution(s)

This mortgage charges the Borrower's interest in the land mortgaged as security for payment of all money due and performance of all obligations in accordance with the mortgage terms referred to in item 9 and the Borrower(s) and every other signatory agree(s) to be bound by, and acknowledge(s) receipt of a true copy of, those terms.

Witnessing Officer Signature

Execution Date

Borrower Signature(s)

FALKO WONG
Barrister & Solicitor
Suite 660 - 355 Burrard Street
Vancouver BC V6C 2G8

YYYY-MM-DD
2021-11-01

0790857 B.C. LTD.
By their Authorized Signatory

Navid Morawej

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.



Land Title Act
Mortgage
Part 1 Province of British Columbia

Witnessing Officer Signature

Execution Date

Borrower Signature(s)

YYYY-MM-DD

2021-11-01

AS COVENANTOR:

3000 HENRY STREET LIMITED
PARTNERSHIP

By its general partner, 1215914 B.C.
LTD.

By their Authorized Signatory

FALKO WONG

Barrister & Solicitor

Suite 660-355 Burrard Street
Vancouver BC V6C 2G8

Armin Eskooch

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

**Eun-Jeong (Esther
E.J.) Sohn
MGBZBH**

**Digitally signed by
Eun-Jeong (Esther E.J.)
Sohn MGBZBH
Date: 2021-11-02
01:30:15 -07:00**

**LAND TITLE ACT
TERMS OF INSTRUMENT – PART 2**

PART 2

EXPRESS MORTGAGE TERMS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following additional provisions shall be included in and form part of this Charge:

INTERPRETATION

1. **Definitions**

Unless there is something in the subject matter or context inconsistent therewith, in these additional provisions, the following expressions shall have the following meanings:

“**Act**” means the *Land Title Act* (British Columbia), as amended and/or restated from time to time.

“**additional provisions**” means these Express Mortgage Terms attached as Mortgage Terms - Part 2 to the Form B.

“**affiliate**” has the meaning ascribed to such term in the *Canada Business Corporations Act*, as amended and/or restated from time to time.

“**Applicable Laws**” means all applicable federal, provincial or municipal laws, statutes, regulations, rules, by-laws, policies and guidelines, orders, permits licenses, authorizations, approvals and all applicable common laws or equitable principles whether now or hereafter in force and effect.

“**Balance Due Date**” means the Balance Due Date set out in Item 5(1) of the Form B.

“**Business Day**” means a day of the week other than Saturday, Sunday, or any other day which is a statutory or municipal holiday in the municipality where the Charged Premises are located or in Toronto, Ontario.

“**Charge**” means:

- (a) the Form B, together with,
- (b) these additional provisions.

“**Charged Premises**” means the land described in Part 1 of the Form B, together with all buildings, structures and improvements built upon or made to the land from time to time, all fixtures described in Section 43, entitled Fixtures, of these additional provisions and all other appurtenances thereto.

“**Chargee**” means KingSett Mortgage Corporation, the Lender (Mortgagee) in Item 4 of the Form B, its successors and assigns.

“**Chargor**” means individually and collectively, the Borrower (Mortgagor) in Item 3 of the Form B, their respective heirs, executors, administrators, successors and permitted assigns.

“**Commitment**” means the commitment letter dated September 10, 2021, issued by the Chargee in respect of the Loan, and all amendments and supplements thereto and replacements thereof.

“**Costs**” means all fees, costs, charges and expenses of the Chargee of and incidental to:

- (a) the preparation, execution and registration of this Charge and any other instruments connected herewith and every renewal hereof, including without limitation all of the Loan Documents;
- (b) the collection, enforcement, realization of and upon this Charge and the other Loan Documents;
- (c) procuring payment of the Indebtedness due and payable hereunder, including without limitation, foreclosure, power of sale, execution, judicial sale, court appointed receivership and management of the Charged Premises or other proceedings of enforcement commenced by the Chargee or any other party;
- (d) any inspection required to be made of the Charged Premises;
- (e) all necessary repairs required to be made to the Charged Premises;
- (f) the Chargee having to go into possession of the Charged Premises and secure, complete and equip the building or buildings in any way in connection therewith, including without limitation any leasehold inducements or improvements required to lease the Charged Premises;
- (g) the Chargee's renewal of any leasehold interests;
- (h) the exercise of any of the powers of a receiver contained herein; and
- (i) any Transfers or any changes to, amendments of, or alterations to, the Loan or Loan Documents by request or reason of any Obligor, including without limitation, any costs of the Chargee in granting approvals or consents thereto and the costs of obtaining confirmation thereof by applicable rating agencies, and all solicitors' costs incurred by the Chargee on a solicitor and his own client basis and all costs and expenses incurred by the Chargee in connection with any examination of title, review of Leases, survey, appraisal, engineering review, architectural review or other professional consultant review in respect of the Charged Premises, or the obtaining of credit reports on the Chargor, the Covenantor and any Guarantor, as the same may be reasonably required by the Chargee from time to time.

“Covenantor” means each Person who signs the Form B as a covenantor and its heirs, executors, administrators, successors and permitted assigns.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would constitute an Event of Default.

“Event of Default” means any of the following events:

- (a) failure of the Obligants to make a principal or interest payment of the Indebtedness or any portion thereof at the time and in the manner required by the terms of this Charge or the Commitment;
- (b) failure of the Obligants to make a payment of the Indebtedness or any portion thereof (other than principal or interest) at the time and in the manner required by the terms of this Charge, the Commitment or any of the other Loan Documents and such failure continues for 3 Business Days;
- (c) without the prior written consent of the Chargee,
 - (i) there occurs a change of ownership (beneficial or otherwise) or control of any Obligant or the Charged Premises;
 - (ii) any Transfer occurs or agreement in respect thereof is entered into by any Obligant;
 - (iii) the building plan for the building on the Charged Premises is materially physically altered except by the tenant in accordance with its lease; or
 - (iv) any Lien is created or registered against the Charged Premises;
- (d) failure by any Obligant to observe or perform any other covenant and obligation contained in this Charge (which is not otherwise addressed elsewhere in this definition), the Commitment or any other Loan Document, provided that if such breach is capable of being cured and pertains to a non-monetary covenant or obligation, there shall not be an Event of Default so long as (i) the Obligant is actively and diligently in good faith proceeding to cure such breach, and (ii) such breach is cured within 10 Business Days of the earlier of the Obligant having knowledge of the breach or its receipt of notice of such breach from the Chargee except where the breach cannot be reasonably be expected to be cured within such 10 Business Day period then within a reasonable period of time thereafter;
- (e) failure of any Obligant to make payment of any indebtedness due under any Lien ranking in priority or subsequent to this Charge;
- (f) breach of any other of the Chargor’s covenants or other obligations under the provisions of any Lien ranking in priority or subsequent to this Charge and such breach is not cured within any applicable grace period set out therein;

- (g) any order is made or resolution passed for the winding-up, liquidation or other dissolution of any Obligor or any Guarantor, any Obligor or Guarantor makes an assignment for the benefit of creditors, any proceedings shall be instituted by or against any Obligor or Guarantor adjudicating it a bankrupt, or insolvent, or seeking liquidation, winding-up, dissolution, reorganization, arrangement, protection, or relief of any of them or their debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or other similar law, or seeking the appointment of a receiver, receiver and manager, trustee or other similar official of any of them or in respect of all or any of their respective undertaking, property or assets, or any Obligor or Guarantor is declared bankrupt or a receiver, receiver and manager, trustee or other similar official is appointed of either of them or any of their respective undertaking, property and assets, or power of sale or foreclosure proceedings are commenced against the Charged Premises;
- (h) an encumbrancer takes possession of any part of the Charged Premises, or distress, execution or other similar process is brought against, or a liquidator, or receiver is appointed or an application for such appointment is made with respect to, a substantial part of the undertaking, property or assets of any Obligor or Guarantor;
- (i) any representation or warranty made by or on behalf of any Obligor or Guarantor in connection with the Loan, this Charge, the Commitment or any other Loan Document is or becomes untrue or incomplete in any material respect;
- (j) the Chargor is in default of any Lease;
- (k) the Charged Premises are abandoned for 15 or more consecutive days;
- (l) all or any part of the Charged Premises are expropriated or condemned under the provisions of any Applicable Laws; or
- (m) there has been a material adverse change in:
 - (i) the financial position of any Obligor or Guarantor, or
 - (ii) the Charged Premises.

“Form B” means the document prescribed by the regulations made under the Act as Part I of the Form B which makes reference to and attaches these additional provisions.

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

“Guarantor” means any Person or entity who has entered into a contract of guarantee with the Chargee from time to time guaranteeing the obligations of one or more of the Obligors under this Charge and the other Loan Documents.

“Hazardous Substances” means substances or conditions that are or shall become prohibited, controlled or otherwise regulated, or are otherwise hazardous in fact, such as contaminants, pollutants, toxic, dangerous or hazardous substances, toxic, dangerous or hazardous materials, designated substances, controlled products, including without limitation, wastes, subject wastes, urea formaldehyde foam type of insulation, asbestos or asbestos-containing materials, polychlorinated biphenyls (“PCBs”) or PCB contaminated fluids or equipment, explosives, radioactive substances, petroleum and associated products, underground storage tanks or surface impoundments.

“Indebtedness” means all present and future indebtedness, liabilities and obligations of the Obligants to the Chargee, direct or indirect, absolute or contingent, matured or unmature, joint or several, arising under the Loan, the Commitment and the Loan Documents to which the Chargor is a party, and all interest obligations, all future advances, re-advances, costs, expenses and other monies payable to the Chargee by the Chargor in connection therewith.

“Interest Adjustment Date” means the Interest Adjustment Date set out in Item 5(c) of the Form B.

“Interest Rate” means the rate of interest set out in Item 5(b) of the Form B and calculated in accordance with these additional provisions or such other rate(s) that may be agreed to in writing between the Chargee and the Obligants.

“Lease” means any lease, sublease, or agreement to lease or sublease space at or in the Charged Premises.

“Lien” means any mortgage, charge, pledge, hypothec, assignment, lien, lease, sublease, easement (express or prescribed), preference, priority, trust, or other security interest or encumbrance of any kind or nature whatsoever with respect to any property.

“Loan” means the loan advanced by the Chargee to the Obligants up to the Principal Amount.

“Loan Documents” means, collectively, the Commitment, this Charge and all other documents, promissory notes, security agreements, instruments, guarantees, indemnities, agreements, certificates, undertakings and opinions now or hereafter given or entered into as evidence of or as security for the Loan.

“Obligants” means collectively, the Chargor and the Covenantor.

“Payment Dates” means Payment Dates set out in Item 5(e) of the Form B following the Interest Adjustment Date.

“Permitted Encumbrances” means, as of any particular time, any of the following encumbrances provided that the Chargee is satisfied in its sole discretion that same do not, in the aggregate, materially impair the servicing, development, construction, operation, management or marketability of the Charged Premises, or the validity, enforceability or priority of this Charge:

- (a) Liens for Taxes or utility charges in either case only if same are not yet due or payable;
- (b) registered easements, rights of way, restrictive covenants and servitudes and other similar rights in land granted to; reserved or taken by any Governmental Authority or public utility, or any registered subdivision, development, servicing, site plan or other similar agreement with any Governmental Authority or public utility provided in each case that:
 - (i) same has been complied with; and
 - (ii) the Chargee is satisfied in its sole discretion with the nature, scope and cost of any outstanding obligations thereunder and security has been posted to ensure performance of all such obligations;
- (c) minor title defects or irregularities;
- (d) any subsisting reservations contained in the original grant of the Charged Premises from the Crown;
- (e) leases of the Charged Premises which are either:
 - (i) disclosed by an Obligant to the Chargee prior to the Loan being made in a rent roll or other document; or
 - (ii) entered into after the Loan is made in accordance with the Loan Documents;
- (f) the Permitted Encumbrances as defined in the Commitment; and
- (g) such other Liens consented to in writing by the Chargee in its sole discretion.

“Person” includes any individual, partnership, joint venture, trust, unincorporated organization or any other association, corporation and government or any department or agency thereof.

“Prime Rate” means the fluctuating annual rate of interest determined by Royal Bank of Canada from time to time as the reference rate it will use to determine rates of interest payable by borrowers from Royal Bank of Canada of Canadian dollar loans made in Canada and designated by Royal Bank of Canada as its prime rate.

“Principal Amount” means the amount referred to in Item 5(a) of the Form B as the Principal Amount.

“Required Records” is defined in Section 39, entitled Financial Statements, of these additional provisions.

“Requirements of Environmental Law” means all requirements of the common law or of statutes, regulations, by-laws, ordinances, treaties, judgments and decrees, and

(whether or not they have the force of law) rules, policies, guidelines, orders, approvals, notices, permits, directives and the like, of any federal, territorial, provincial, regional, municipal or local judicial, regulatory or administrative agency, board or governmental authority relating to environmental or occupational health and safety matters and the Charged Premises and the activities carried out thereon (whether in the past, present or the future) including, but not limited to, all such requirements relating to: (a) the protection, preservation or remediation of the natural environment (the air, land, surface water or groundwater); (b) the generation, handling, treatment, storage, transportation or disposal of or other dealing with solid, gaseous or liquid waste; and (c) the presence on or at the Charged Premises of Hazardous Substances.

“**Taxes**” means all taxes, rates, assessments, levies, liens and penalties, municipal, local, parliamentary or otherwise, that are now or may hereafter be imposed, charged or levied upon or with respect to the Charged Premises.

“**Transfer**” means any (a) sale, transfer, assignment, conveyance or other disposition by an Obligant of the Charged Premises, in whole or in part, or of any interest therein (including, without limitation, any beneficial ownership interests), or (b) any change in the effective voting control of any Obligant from that existing as of the date of this Mortgage (including any change of ownership of 50% or more of the voting securities), or (b) any change in the partners of the Covenantor from those existing as of the date of this Mortgage.

“**Transferee**” means any purchaser, transferee or assignee pursuant to a Transfer.

“**Yield Maintenance Fee**” means the positive amount, if any, obtained, at the relevant time, by subtracting the Principal Amount of the Loan then outstanding from the amount obtained by discounting the then remaining payments under the Loan including the balloon payment due on the Balance Due Date, at a discount rate equal to the bid-side yield on a then current coupon Government of Canada Bond selected by the Chargee having a term similar to the remaining term to maturity of the Loan.

2. **Obligations or Covenants**

Each obligation of the Chargor and the Covenantor expressed in this Charge, even though not expressed as a covenant, is deemed for all purposes to be a covenant made with the Chargee.

3. **Land Transfer Form Act Covenants**

The Chargor covenants with the Chargee: (a) that the Chargor will pay the Principal Amount and interest; (b) that the Chargor has good title in fee simple to the land; (c) that the Chargor has the right to convey the land to the Chargee; (d) subject to Section 32, that upon the occurrence of an Event of Default the Chargee shall have possession of the land free from all encumbrances, except Permitted Encumbrances; (e) that the Chargor will execute further assurances of the land as may be requisite; (f) that the Chargor has done nothing to encumber the land, except for the Permitted Encumbrances; (g) and that the Chargor releases to the Chargee all its claims on the land subject to the proviso.

4. **Clause 15 Excluded**

Clause 15 of Schedule 6 of the *Land Transfer Form Act* (British Columbia) is expressly excluded from this Charge.

5. **Severability**

If any one or more of the provisions contained in this Charge shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Chargee, be severable from and shall not affect any other provision of this Charge, but this Charge shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Charge.

6. **Interpretation and Headings**

The words “hereto”, “herein”, “hereof”, “hereby”, “hereunder” and similar expressions refer to the whole of this Charge including, without limitation, these additional provisions, and not to any particular Section or other portion thereof or hereof and extend to and include any and every document supplemental or ancillary hereto or in implementation hereof. Words in the singular include the plural and words in the plural include the singular. Words importing the masculine gender include the feminine and neuter genders where the context so requires. Words importing the neuter gender include the masculine and feminine genders where the context so requires. Whenever two or more persons are under a liability hereunder such liability shall be both joint and several. The headings do not form part of this Charge and have been inserted for convenience of reference only.

7. **Successors and Assigns**

Every reference in this Charge to a party hereto shall extend to and include the heirs, executors, administrators, successors and assigns of such party. This Charge shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. The Chargee shall be entitled to assign all or part of the Loan and its right, title and interest pursuant to this Charge and the other Loan Documents to one or more assignees by way of assignment, syndication, securitization and/or other method of assignment or participation, without prior notice to or consent of the Obligants. The Obligants hereby consent to the disclosure by the Chargee to any such assignee, transferee or participant of all information and documentation regarding the Loan, the Charged Premises, and the Obligants in the possession and control of the Chargee. No Obligant may assign any Loan Document to which it is a party without the prior written consent of the Chargee.

8. **Date of Charge**

The parties hereby acknowledge and agree that for the purpose of defining “the date of the mortgage” with respect to any statutory right of prepayment, the date of this Charge shall be conclusively deemed to be the Interest Adjustment Date. For all other purposes, this Charge shall be deemed to be dated as of the date of signature hereof by the first named Chargor.

9. **No Merger**

Notwithstanding the execution and delivery of this Charge and the other Loan Documents and the advance of all or part of the Loan, the Commitment shall remain in full force and effect and the provisions thereof are intended not to merge or be extinguished. In the event of any inconsistency between any term of the Commitment and any term of this Charge or any other Loan Document, the term of the Commitment shall prevail.

CHARGE, PAYMENTS, INTEREST

10. **Charge**

The Chargor mortgages and charges the Charged Premises with the payment to the Chargee of the Indebtedness and with the performance of the Chargor's other obligations under this Charge and with a power of sale to be exercised after an Event of Default has occurred.

11. **Interest**

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

12. **Payment**

- (a) This Charge shall operate until all Indebtedness is paid in full to the Chargee, and all obligations whose performance is secured by this Charge are performed, in the manner provided in this Charge.
- (b) Interest at the Interest Rate on the amounts from time to time advanced, computed on a daily basis from the respective dates of such advances, shall become due and be paid on the first day of each month following the date of the first advance to and including the Interest Adjustment Date. At the option of the Chargee, interest so due and payable may be deducted from such advances. Thereafter the sums set out in the Form B as the Amount of Each Periodic Payment (comprising of principal and interest) shall become due and be paid on each Payment Date commencing with the First Payment Date set out in the Form B. The balance of the Principal Amount, together with interest thereon at the Interest Rate and any other unpaid Indebtedness will become due and payable on the Balance Due Date.
- (c) The Obligants shall have the right to prepay the Loan, in whole but not in part, at any time prior to the Balance Due Date so long as no Default then exists, upon prior written notice to the Chargee subject to payment and discharge of all scheduled principal and interest payments and all other Indebtedness, including the Chargee's discharge fee, and subject to payment of the greater of (i) the Yield Maintenance Fee, and (ii) three months' interest on the unpaid balance of the Principal Amount prior to the prepayment calculated at the Interest Rate. The date of prepayment must be set out in the aforementioned written notice and such date must be at least 10 Business Days following the date the Chargee receives such written notice. The Obligants covenant to make the payment on the proposed prepayment date as set out in the written notice.

- (d) If, by operation of Applicable Laws or by acceleration of the Loan as a result of an Event of Default occurring, the Obligants shall become entitled or obligated prior to the Balance Due Date, to pay the Loan or any part thereof is prepaid, the Obligants shall also pay to the Chargee, in addition to all other amounts owing hereunder, the greater of (i) the Yield Maintenance Fee, and (ii) three months' interest on the then unpaid balance of the Principal Amount calculated at the Interest Rate.

13. **Timing, Place of Payments**

Notwithstanding any other provision of this Charge, all payments under this Charge shall be paid to the Chargee, or as the Chargee may otherwise direct the Obligants in writing, made by electronic direct-debit transfer before 12:00 p.m. (Toronto time) on any day on which payment is to be made, to the account of the Chargee maintained at such correspondent bank as may be designated by the Chargee for such purpose, or at such other place as the Chargee may direct the Obligants in writing. If for any reason the electronic direct-debit transfer for a monthly payment is made after 12:00 p.m. (Toronto time) on any particular day, it is understood and agreed that any such payment will be deemed to have been made on the next following Business Day.

14. **Advances and Expenses**

All advances are to be made in such manner at such times and in such amounts, up to the Principal Amount, as the Chargee in its sole discretion may determine, subject always to the proviso that the Chargee is not bound to advance any unadvanced portion thereof. The Obligants agree that neither the preparation, execution nor registration of this Charge shall bind the Chargee to advance the Principal Amount, nor shall the advance of a part of the Principal Amount bind the Chargee to advance the unadvanced portion thereof, but nevertheless this Charge shall take effect forthwith upon the execution of the Form B by the Obligants. The Chargee's Costs shall be, in the event of the whole or any balance of the Principal Amount not being advanced, payable forthwith by the Obligants to the Chargee and, together with interest thereon at the Interest Rate, shall be added to the Indebtedness and secured by this Charge.

15. **Compound Interest**

All interest on becoming overdue, and any amount, cost, charge or expense that has been added to the Indebtedness under the terms of this Charge, shall be treated (as to payment of interest thereon as aforesaid) as principal and shall bear compound interest at the Interest Rate both before and after default, demand, maturity and judgment until paid, and all such interest and compound interest shall be added to the Indebtedness and secured by this Charge. If any of the monies hereby secured are not paid when due, the Obligants will, so long as any part thereof remains unpaid, pay interest thereon as above provided.

16. **Application of Installments**

The periodic payments set out in the Form B are to be applied firstly to the interest portion of the Indebtedness and the balance of the said periodic payments shall be applied to the principal component of the Indebtedness; except, however, in the case of an Event of Default which has occurred and is continuing, the Chargee may then apply any payments received during such

period to any part of the Indebtedness in whatever order it may elect notwithstanding any contrary stipulation by the Obligants.

17. **Pre-Authorized Payment Plan**

- (a) The Obligants shall deliver to the Chargee prior to the first advance of monies hereunder a completed and duly executed pre-authorized payment plan request form with a blank cheque attached for the purpose of allowing the Chargor's account to be debited for electronic direct-debit transfer on a monthly basis with respect to all payments required under this Charge.
- (b) If any cheque issued by an Obligant to the Chargee or any electronic direct-debit transfer in payment of any amount due and owing hereunder is not honoured when presented for payment, the Obligants shall pay to the Chargee on demand all expenses incurred by the Chargee as a result of such dishonour and the Chargee's reasonable administrative costs arising therefrom, which expenses and costs shall, together with interest thereon at the Interest Rate, be added to the Indebtedness and secured by this Charge and shall be forthwith due and payable to the Chargee.

18. **Taxes, Other Covenants**

The Obligants covenant to pay all Taxes and observe and perform all covenants, provisos and conditions herein contained.

19. **Covenant to Pay**

The Obligants covenant with the Chargee that the Obligants will pay the Indebtedness to the Chargee as and when provided in this Charge without any deduction, set-off, abatement or counterclaim.

20. **Taxes**

- (a) The Obligants covenant with the Chargee to pay the Taxes promptly as they fall due and will forthwith provide the Chargee with evidence satisfactory to the Chargee of payment thereof. Without limiting or restricting any other covenant or obligation on the part of the Obligants under this Charge, unless otherwise agreed to by the Chargee, it is understood and agreed that the Chargee shall during the term of this Charge estimate the amount of the Taxes and,
 - (i) the Obligants will pay to the Chargee on each monthly installment due date hereunder, an amount estimated by the Chargee to be sufficient to pay the Taxes as they become due and payable,
 - (ii) in the event that the Taxes for any period together with any interest and penalties thereon exceed the estimated amount or in the event of any part of the estimated amount paid to the Chargee being applied by the Chargee in or toward principal, interest or other monies in default, the Obligants will pay to the Chargee on demand the amount required to make up the

deficiency (the “**Deficiency**”) occurring as a result of the foregoing. In the event of a Deficiency, the Chargee may, but shall not be obliged to, pay the Taxes and the Obligants shall, on request by the Chargee, either pay the Deficiency, with interest thereon at the Interest Rate, to the Chargee forthwith or, if the Chargee so elects, pay the Deficiency to the Chargee, with interest thereon at the Interest Rate, in monthly installments specified by the Chargee from time to time,

- (iii) so long as there is not any Default under this Charge, the Chargee may apply such payments towards the Taxes annually, semi-annually or as and when such Taxes become owing and due,
 - (iv) if before any such sum or sums in the hands of the Chargee shall have been so applied, there shall be default in respect of any payment of the Indebtedness, the Chargee may, at its option, apply such sum or sums in or toward payment of such Indebtedness so in default,
 - (v) if the Obligants desire to take advantage of any discounts or avoid any penalties in connection with the payment of Taxes, the Obligants shall pay to the Chargee such additional amounts as are required for that purpose,
 - (vi) when making advances from time to time of the Principal Amount or any part thereof, the Chargee may, and is hereby permitted to, deduct and pay out of any such advances any amount that shall have become due and payable on account of Taxes or will become due and owing within 60 days of such advance, and
 - (vii) at the time of the first advance the Obligants shall pay to the Chargee an amount that Chargee reasonably estimates is required to pay the Taxes next coming due following the making of the Loan.
- (b) Nothing herein shall create, with respect to any monies paid pursuant hereto, a relationship of trust between the Chargee and the Obligants nor shall the Chargee be accountable to the Borrower for any penalties accruing from time to time on unpaid Taxes.
 - (c) The Chargee shall not be responsible for paying to the Obligants any interest earned on the amount of monies held by the Chargee on account of the payment of Taxes.
 - (d) The Chargor will transmit to the Chargee true copies of the assessment notices, tax bills and other notices affecting the imposition of Taxes forthwith upon receipt of the same by the Chargor.

REPRESENTATIONS, WARRANTIES, COVENANTS

Each Obligant represents, warrants and covenants in favour of the Chargee as follows:

21. Authorization

The Obligant (a) which is a corporation is a duly organized and validly existing corporation under the laws of its governing jurisdiction; (b) which is a partnership is a valid and subsisting general or limited partnership, as the case may be, under the laws of its governing jurisdiction; (c) which in a trust is a duly constituted and valid trust under the laws of its governing jurisdiction; (d) which owns an interest in the Charged Premises has full power, authority and legal right to own the Charged Premises and to carry on its business thereon in compliance with all Applicable Laws and is duly licensed, registered or qualified in all jurisdictions where the character of its undertaking, property and assets or the nature of its activities makes such licensing, registration or qualification necessary or desirable; (e) 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; (f) 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; and (g) shall 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.

22. Enforceability

The Loan Documents constitute valid and legally binding obligations of each Obligant party thereto enforceable against such Obligant in accordance with their terms and are not subject to any right of rescission and at the date of entering into the Loan Documents, no Obligant has any right of set-off, counterclaim or defence in respect of the Chargee, the Loan or the Loan Documents. Neither execution and delivery of the Loan Documents, nor compliance with the terms and conditions of any of them, (a) has resulted or will result in a violation of the constating documents governing any Obligant, including any unanimous shareholders' agreement, or any resolution passed by the board of directors, shareholders or partners, as the case may be, of any Obligant, (b) has resulted or will result in a breach of or constitute a default under Applicable Laws or any agreement or instrument to which any Obligant is a party or by which it or the Charged Premises or any part thereof is bound or (c) requires any approval or consent of any Person except such as has already been obtained.

23. Litigation

There are no existing or threatened actions, proceedings or claims against or relating to (i) the Charged Premises or (ii) any Obligant which would reasonably be expected to have a material adverse effect on such Obligant if determined adverse to such Obligant, except as disclosed to and accepted by the Chargee in writing prior to the initial Loan advance. Upon an Obligant becoming aware of any threatened or actual action, proceeding or claim against or relating to (i) the Charged Premises or (ii) any Obligant but only if the same would reasonably be expected to

have a material adverse effect on such Obligant if determined adverse to such Obligant, the Obligant shall promptly notify the Chargee of same and shall provide the Chargee with reasonable information concerning such action, proceeding or claim as the Chargee may require from time to time.

24. **Good Title**

The Chargor has a good and marketable title in fee simple to the Charged Premises.

25. **Right to Charge**

The Chargor has the right to give this Charge.

26. **Quiet Possession**

Upon the occurrence of an Event of Default the Chargee shall have quiet possession of the Charged Premises, free from all Liens except Permitted Encumbrances.

27. **Services, Access and No Expropriation**

All services and utilities (including storm and sanitary sewers, water, hydro, telephone and gas services) necessary for the use and operation of the Charged Premises are located in the public highway(s) abutting the Charged Premises (or within easements disclosed to and approved by the Chargee in writing prior to the initial Loan advance) and are connected and available to the Charged Premises. The Charged Premises has unrestricted and unconditional rights of public access to and from public highways (completed, dedicated and fully accepted for public use by all applicable Governmental Authorities) abutting the Charged Premises at all existing access points. No Obligant is aware of any proposed changes affecting such access or public highways. No Obligant is aware of any existing or threatened expropriation or other similar proceeding in respect of the Charged Premises or any part thereof.

28. **Right of Inspection**

The Chargee and its respective agents and employees may, whenever the Chargee deems necessary at all reasonable times and, except in an emergency or following the occurrence of an Event of Default, upon reasonable notice to the Chargor, enter upon and inspect the Charged Premises and review such records and information relating thereto and may require the Obligants, at their sole expense, to effect such repair or remediation of which the Obligants are notified by the Chargee, or the Chargee may effect such repairs or remediation as it deems necessary and the Obligants shall execute all consents, authorizations and directions that are required to permit any such inspection, review, repair or remediation, and the cost thereof and of such inspection, review, repair or remediation, together with interest thereon at the Interest Rate, shall be payable forthwith by the Obligants to the Chargee and shall be added to the Indebtedness and secured by this Charge. The Chargor shall not be a mortgagee in possession by reason of its exercise of any of its rights hereunder.

29. **Permits**

The Chargor (a) has obtained all necessary permits, agreements, rights, licences, authorizations, approvals, franchises, trademarks, trade names and similar property and rights (collectively "**Permits**") necessary to permit the lawful construction, occupancy, operation and use of the Charged Premises; (b) shall maintain all such Permits in good standing and in full force and effect; (c) has delivered to the Chargee complete copies of each Permit existing as of the date of the Loan advance; (d) shall not terminate, amend or waive any of its rights and privileges under any Permits without the Chargee's prior written consent, such consent not to be unreasonably withheld; and (e) is not in default under any Permits and is not aware of any proposed changes to any Permits (including pending cancellation, termination or expiry thereof). No action, proceeding, notice, judgment, order or claim has been given or received by or on behalf of the Chargor alleging or relating to any such default, proposed changes or other dispute in respect of any Permit and the Chargor shall promptly deliver to the Chargee any such action, proceeding, notice, order, judgment or claim given or received by the Chargor at any time in the future.

30. **Estoppel Certificates**

Within 15 days following a request by the Chargee from time to time, the Obligants shall, at the Obligants' expense, provide the Chargee with a statement, satisfactory to the Chargee, certifying (a) the original and outstanding Principal Amount, (b) the Interest Rate, (c) the date of the last payment of principal and interest, (d) that no offsets or defences to the payment of the Indebtedness exist, or if any are alleged, the particulars thereof, (e) that the Loan Documents have not been amended, or if amended, the particulars thereof, and (f) that, to its knowledge, there is no existing default of any Obligor under any of the Loan Documents or any other event which, with the giving of notice or the passage of time or both, would constitute such default, or if any such default or event exists, the particulars thereof and any action being taken to remedy such default or other event.

31. **Further Assurances**

The Chargor will execute such documents and further assurances of the Charged Premises and take such action, all at its own expense, as may be requisite to carry out the intention of this Charge.

32. **No Act to Encumber**

No Obligor has done any act to encumber the Charged Premises, except as the records of the appropriate land title office disclose or except as disclosed by the Chargor to the Chargee. No Obligor shall, without the Chargee's prior written approval, such approval not to be unreasonably withheld, charge, encumber or otherwise create any Lien in respect of the Charged Premises or any part thereof or interest therein or permit any Lien thereon.

33. **Compliance and No Adverse Change**

No Obligor is aware of any action, proceedings, notices, judgments, orders or claims by any Person alleging or relating to any non-compliance by the Charged Premises with any Applicable Laws, Permitted Encumbrances, material agreements or any permits, licenses or approvals and each Obligor shall promptly deliver to the Chargee copies of any such actions, proceedings,

notices, judgments, orders or claims received by such Obligant after the Loan advance. The Obligants covenant and agree to forthwith provide written notice to the Chargee of any circumstances, events, actions, claims or changes which have or may have an adverse effect on the financial position of any Obligant.

34. **Hazardous Substances**

- (a) Each Obligant warrants and represents that, other than as previously disclosed to the Chargee in writing,:
- (i) no Hazardous Substances have been or will be used, stored, processed, manufactured, handled or discharged in, on, under or from the Charged Premises (except as have been disclosed to and approved by the Chargee in writing);
 - (ii) neither the Charged Premises nor, to the best of such Obligant's belief, any adjacent lands have ever been used as or for a waste disposal site or coal gasification site, and there are not now, nor were there ever, any underground storage tanks on the Charged Premises;
 - (iii) all permits, licences, certificates, approvals, authorizations, registrations or the like required by the Requirements of Environmental Law for the operation of any Obligant's business on the Charged Premises have been obtained and are valid, in full force and effect and in good standing;
 - (iv) no environmental damage has ever occurred on, or will result from any Obligant's use of, the Charged Premises; and
 - (v) there are no convictions (or prosecutions settled prior to conviction) or outstanding or threatened investigations, claims, work orders, notices, directives or other similar remedial actions against the Charged Premises or the Obligants in relation to any Requirements of Environmental Law.
- (b) Each Obligant covenants that it will:
- (i) remedy forthwith, at its own expense, any environmental damage that may occur or be discovered on the Charged Premises in the future,
 - (ii) comply with and monitor, on a regular basis, its compliance with all Requirements of Environmental Law,
 - (iii) notify the Chargee promptly of any event or occurrence that will, or is likely to, give rise to a report, inquiry or investigation relating to a matter that may have an adverse effect on the financial position of any Obligant or the Charged Premises or any action, suit or proceeding against any Obligant or others having an interest in the Charged Premises relating to, or a violation of, the Requirements of Environmental Law,

- (iv) not lease or consent to any sub-lease of any part of the Charged Premises to a tenant or sub-tenant who may engage in a business involving the storing, handling, processing, manufacturing or disposing of Hazardous Substances in, on, under or from the Charged Premises or the generation of environmental contamination and any lease or sub-lease of any part of the Charged Premises shall preserve as against any lessee or sub-lessee all of the rights of the Chargee herein,
 - (v) remove, in accordance with all Requirements of Environmental Law, any Hazardous Substances from the Charged Premises forthwith upon their discovery and advise the Chargee forthwith in writing of the procedures taken, and
 - (vi) provide to the Chargee upon request such information, certificates, or statutory declarations as to compliance with the provisions hereof and all Requirements of Environmental Law and conduct such environmental audits or site assessments as may be reasonably necessary to ensure compliance with the Requirements of Environmental Law, all at the Chargor's expense.
- (c) Each Obligant further covenants that it will be liable for and fully indemnify the Chargee (including its officers, directors, employees, agents, shareholders, and of all unit holders of any pooled funds under its management) for any and all costs, expenses, damages or liabilities (including legal fees on a solicitor and his own client basis and any environmental remediation costs incurred by the Chargee) directly or indirectly arising out of or attributable to the non-compliance of the Charge Premises with the Requirements of Environmental Law prior or subsequent to any Obligant's use of the Charged Premises and all such costs, expenses, damages or liabilities shall be secured hereby, and all such liability and indemnity shall survive the repayment of the Indebtedness, foreclosure upon this Charge, and/or any other extinguishment of the obligations of the Obligants under this Charge and any other exercise by the Chargee of any remedies available to it against the Chargor.

35. **Insurance**

- (a) The Obligants shall insure the buildings, structures, chattels, fixtures and equipment, and improvements on the land forming part of the Charged Premises and keep them constantly insured against loss or damage by fire and against loss or damage by such other risks, hazards or perils as the Chargee may require to be protected by insurance, to 100% of their gross replacement cost without deduction for foundations or footings. Without limiting the foregoing, this covenant shall include comprehensive broad form boiler insurance (including pressure vessels and all electrical, mechanical and air conditioning equipment, if any, and including repair and replacement and use and occupancy coverage), rental and business interruption insurance for not less than a 24 month period, public liability insurance and environmental liability and remediation insurance (including third party pollution liability claims and first party on-site remediation

expenses), all to be in amounts and with insurers satisfactory to the Chargee. Prior to the making of any advance by the Chargee, the Obligants shall deliver to the Chargee a policy or policies evidencing such insurance, and at least 30 days prior to the expiry of a policy or at least 15 days prior to the date fixed for cancellation of a policy, should notice of cancellation be given, the Chargor shall deliver to the Chargee evidence of renewal or replacement in a form satisfactory to the Chargee. Without limiting the generality of the foregoing, the Obligants shall comply with the insurance requirements contained in Commitment.

- (b) Every policy of insurance shall be acceptable to the Chargee as to form and content, shall be signed by the insurer and shall be placed with such insurer and through such agency as may be approved of by the Chargee and shall not contain a co-insurance clause but shall contain a by-law endorsement; the loss under each policy shall be made payable to the Chargee pursuant to an Insurance Bureau of Canada or a Boiler and Machinery Underwriters Association approved mortgage clause with preference in its favour over any claim of any other Person; and each policy shall be retained by the Chargee during the currency of this Charge. Should an insurer at any time cease to have the approval of the Chargee, or in the event of failure on the part of the Chargor to execute any obligation undertaken under this Section 35, the Chargee may effect such insurance as it deems proper and the Obligants covenant to repay to the Chargee all premiums paid by it together with interest thereon at the Interest Rate and such premiums and interest shall be added to the Indebtedness and secured by this Charge.
- (c) In case of loss or damage, the Obligants shall immediately notify the Chargee and the Chargee shall have the right to receive the proceeds of each policy and to apply them wholly or, in part in reduction either of the Indebtedness remaining unpaid notwithstanding that the Indebtedness or any part thereof may not otherwise be due and payable under this Charge at that time, and/or in repayment of any legal expenses and costs on a solicitor and his own client basis incurred by the Chargee in connection with the disbursement or application of such insurance proceeds, and/or of any other sums owing to the Chargee and/or in meeting costs of repair or reconstruction, but unless the amount received by the Chargee is applied expressly by it in reduction of the Indebtedness, the receipt by the Chargee of such proceeds shall not operate as payment of the Indebtedness. The Obligants further agree to furnish, at their own expense, all necessary proofs and do all things necessary to enable the Chargee to obtain payment of the insurance proceeds to the Chargee and the production of this Charge shall be sufficient authority for the insurer to pay such proceeds to the Chargee and the insurer is hereby directed to pay same to the Chargee. No damage may be repaired nor any reconstruction effected without the approval of the Chargee. To ensure that the Chargee may apply insurance proceeds in accordance with this paragraph, the Obligants waive their respective rights and benefits under the *Insurance Act* (British Columbia) and the *Fire Prevention (Metropolis) Act, 1774*.

36. Waste, Condition of Charged Premises

The Obligants covenant and agree with the Chargee that the Obligants will not permit waste to be committed or suffered on the Charged Premises and the Obligants will not remove or attempt to remove from the Charged Premises any building, structure or improvement forming part of the Charged Premises and the Obligants shall refrain from doing anything or allowing anything to be done which would result in an impairment or diminution of the value of the Charged Premises. The Obligants will maintain such buildings, structures, or other improvements in good order and repair to the satisfaction of the Chargee. The Charged Premises are in good condition and repair. All heating, air conditioning, electrical, plumbing and other major building systems within the Charged Premises are in good working order and condition. The Charged Premises comply with all Applicable Laws, Permitted Encumbrances and all material agreements and the present use and location of the improvements on or forming part of the Charged Premises are legal conforming uses under all Applicable Laws. No improvements have been made or removed from the Charged Premises since the date of any survey of the Charged Premises delivered by the Obligants prior to the Loan advance and such survey, if any, accurately shows the location of all improvements.

37. Alterations

The Obligants covenant and agree with the Chargee that the Obligants will not make or permit to be made, except by the tenant in accordance with its lease, (i) any material alterations or additions in or to the Charged Premises, or in each case (ii) major changes in usage of the Charged Premises without the consent of the Chargee.

38. Observance of Laws

The Obligants covenant and agree with the Chargee to promptly observe, perform, execute and comply with all private covenants and restrictions and all laws, rules, requirements, orders, directions, ordinances and regulations of every Governmental Authority or agency concerning the Charged Premises (including without limitation all Requirements of Environmental Law) and, at the request of the Chargee, to obtain and provide the Chargee with confirmation of compliance from the applicable Governmental Authorities or agencies. The Obligants further agree at their own cost and expense to make any and all repairs, alterations and improvements ordinary or extraordinary, which may be required at any time hereafter by any such present or future law, rule, requirement, order, direction, ordinance, regulation, covenant or restriction.

39. Financial Statements

- (a) The Obligants covenant and agree with the Chargee to maintain at all times proper records and books of account with respect to the Charged Premises and to furnish to the Chargee within 90 days after the end of each fiscal year of the Chargor, Covenantor and corporate Guarantor, detailed, review engagement or auditor prepared financial statements relating to the Charged Premises and each Obligant, including, without limitation, separate and specific income and expense statements, prepared in accordance with generally accepted accounting principles on a review engagement basis, certified by the Obligants' independent, qualified accountants of recognized standing who are authorized to perform audits in

British Columbia and accompanied by a certified rent roll, detailed balance sheets, profit and loss statements, cash flow statements, statements of retained earnings and all supporting notes and schedules for the fiscal year and any other information concerning the Obligants which has been made available by the Obligants to the public during the fiscal year. Such statements shall clearly identify the Charged Premises both by municipal address and by the Chargee's mortgage reference number.

- (b) The Obligants further covenant and agree to provide to the Chargee such further financial information as required by the Chargee, whether made available to the public or then still undisclosed. The Chargee may, either by its officers or authorized agents at any time during normal business hours, inspect and examine the records and books of account of the Obligants relating to the Charged Premises and the business of the Chargor pertaining thereto and make copies or extracts from them and generally conduct such examination of the records and books of account and other records of the Obligants as the Chargee may deem necessary and the Chargor will, immediately upon the request of the Chargee, advise where the records and books of account are maintained and will render such assistance in connection with such examination as the Chargee deems necessary.
- (c) The Chargee reserves the right to disclose to third parties any financial information concerning the Charged Premises or the Obligants, provided that such third parties shall be limited to potential assignees or participants of all or part of the Loan, the Chargee's auditors, solicitors, bankers and other advisors and Persons to whom such information is ordinarily disclosed in a mortgage securitization or syndication.

40. **Assignment of Rents and/or Leases**

- (a) As additional security for payment of the Indebtedness, the Chargor hereby assigns and sets over unto the Chargee all rents and other sums payable from time to time under leases of the Charged Premises or any part thereof whether presently existing or arising in the future, together with the benefit of all covenants, guarantees and/or indemnities contained in the said leases or collateral thereto, in favour of the Chargor; provided that nothing herein contained shall be deemed to subordinate any of the rights of the Chargee to any such lease or to make the Chargee responsible for the collection of such rents or any part thereof or for the performance or enforcement of any covenants, guarantee and/or indemnities contained in any such lease or collateral thereto, and that the Chargee shall not, by virtue of these provisions or the collection of rents and other sums, be deemed a mortgagee-in-possession of the Charged Premises; and provided further that the Chargee shall be liable to account for only such monies as may actually come into its hands by virtue of these provisions less proper collection charges and that such monies when so received by the Chargee may be applied on account of the Indebtedness and pending application by the Chargee, the same shall be deemed to form part of the Charged Premises and be subject to this Charge hereby created and shall be held by the Chargee as additional security for

the repayment of the Indebtedness; and provided further that the Chargee will not cause the tenants under the said leases or any of them to pay rent to the Chargee unless and until default has occurred or has been deemed to have occurred under the provisions contained in this Charge; and the Chargor covenants with the Chargee to perform all of the lessor's covenants and obligations contained in all such leases and that it will not accept any prepayment of rent or other sums owing under any such lease in excess of the final month's rent (if prepayment of the final month's rent is provided for in the lease), and will not amend or accept a surrender of any such lease without first obtaining the Chargee's consent in writing, which consent may be unreasonably and arbitrarily withheld.

- (b) The Chargor covenants and agrees to execute and deliver to the Chargee from time to time assignments of leases and assignments of rents with respect to any and all leases and agreements to lease of all or any portion of the Charged Premises now or hereafter from time to time granted or entered into by the Chargor, all of such assignments to be held by the Chargee as further security for payment of the Indebtedness. Such assignments shall be acceptable to the Chargee as to form and content and shall include the benefit of all guarantees or indemnities given or to be given in respect of the obligations of tenants under the said leases.

41. **Security Interest in Personal Property**

The Obligants covenant and agree to execute and deliver to the Chargee, on demand, a security interest in all chattels, furnishings, equipment, appliances and all other personal property owned now or in the future by the Chargor and situate in or about or relating to the Charged Premises. The form and content of such security interest shall be acceptable to the Chargee. The Obligants agree to pay all legal and other expenses incurred by the Chargee in connection with the preparation and registration of the security interest and any renewals thereof forthwith upon demand and such fees and expenses, together with interest thereon at the Interest Rate, shall be added to the Indebtedness and secured by this Charge.

42. **Builders Lien Act**

- (a) At the time of each advance there shall have been full and complete compliance with all requirements of the *Builders Lien Act* (British Columbia), as amended and/or restated from time to time, and the Chargor shall submit to the Chargee, in form and content satisfactory to the Chargee, evidence of such compliance. The Obligants agree that the Chargee shall be entitled to withhold from any advance, or pay into court as an advance, such amounts as the Chargee, in its sole discretion, considers advisable to protect its interests from subordination under the provisions of the said act, and to secure the priority of this Charge over any actual or potential construction liens. Nothing in this Section shall be construed to make the Chargee an "owner" as defined by the said act, nor shall there be, or be deemed to be, any obligation by the Chargee to retain any holdback or otherwise or to maintain on the Chargor's behalf any holdback which may be required to be made by the owner. Any such obligation shall remain solely the Chargor's obligation. The Chargor hereby covenants and agrees to establish and

operate holdback accounts in accordance with the said act and to comply in all respects with the provisions of the said act.

- (b) The Chargor covenants and agrees to provide to the Chargee, prior to each advance, statutory declarations sworn by an officer of the Chargor and outlining the particulars of all contracts entered into by the Chargor in respect of the supply of services or materials to any improvements on the Charged Premises. Such statutory declarations shall be acceptable to the Chargee as to form and content. In addition, the Chargor covenants and agrees to produce such contracts for examination by the Chargee if and whenever the Chargee shall so require.
- (c) The Chargor covenants and agrees that all improvements to the Charged Premises shall comply in all respects with the provisions of the said act and if a construction lien is filed against all or part of the Charged Premises, then within ten days after receipt of notice thereof, the Chargor shall have the lien vacated or discharged. If the Chargor fails to do so, then in addition to its other rights provided herein, the Chargee shall be entitled to pay into court a sum sufficient to obtain an order vacating such lien or to purchase a financial guarantee bond in the form prescribed under the said act. All costs, charges and expenses incurred by the Chargee in connection with such payment into court or in connection with the purchase of a financial guarantee bond or in connection with any legal proceedings described below, together with interest thereon at the Interest Rate, shall be added to the Indebtedness and secured by this Charge and shall be payable forthwith by the Chargor to the Chargee. If any person that performs work, labour or services or that provides materials to or for the Charged Premises names the Chargee as a party to any legal proceedings which it takes to enforce a construction lien or trust claim, then the Chargor agrees to reimburse the Chargee for any and all legal expenses (on a solicitor and his own client basis) incurred by the Chargee in such legal proceedings.
- (d) It is the intention of the parties hereto that the building or buildings forming part of the Charged Premises form part of the security for the full amount of the monies secured by this Charge. It is hereby mutually covenanted and agreed by and between the parties hereto that all erections, buildings, improvements, machinery, plant, furnaces, boilers, oil burners, stokers, electric light fixtures, plumbing and heating equipment, refrigeration equipment, air conditioning and cooling equipment, screen doors and windows, gas and electric stoves and water heaters, floor coverings, window coverings, and all apparatus and equipment appurtenant thereto, which are now or which shall hereafter be placed or installed upon the Charged Premises, are or shall thereafter be deemed to be fixtures and an accession to the freehold and a part of the Charged Premises as between the parties hereto, their heirs, executors, administrators, successors, legal representatives and assigns, and all persons claiming by, through or under them, and shall be subject to this Charge.

43. Fixtures

It is the intention of the parties hereto that the building or buildings forming part of the Charged Premises form part of the security for the full amount of the monies secured by this Charge. It is hereby mutually covenanted and agreed by and between the parties hereto that all erections, buildings, improvements, machinery, plant, furnaces, boilers, oil burners, stokers, electric light fixtures, plumbing and heating equipment, refrigeration equipment, air conditioning and cooling equipment, screen doors and windows, gas and electric stoves and water heaters, floor coverings, window coverings, and all apparatus and equipment appurtenant thereto, which are now or which shall hereafter be placed or installed upon the Charged Premises, are or shall thereafter be deemed to be fixtures and an accession to the freehold and a part of the Charged Premises as between the parties hereto, their heirs, executors, administrators, successors, legal representatives and assigns, and all persons claiming by, through or under them, and shall be subject to this Charge.

44. Prior Encumbrances etc.

It is hereby agreed that the Chargee may pay the amount of any Lien now or hereafter existing, arising or claimed upon or against the Charged Premises having priority, or purporting to have priority, over this Charge, including any Taxes, and may pay all Costs, whether or not any action or any other proceeding is taken, which may be incurred in taking, recovering, protecting and keeping possession of the Charged Premises and/or collecting all or any portion of the Indebtedness payable by the Chargor under this Charge, and all such amounts, Costs, charges and expenses so paid shall, together with interest thereon at the Interest Rate, be added to the Indebtedness and secured by this Charge, and shall be payable forthwith by the Obligants to the Chargee. If the Chargee pays the amount of any such Lien, Costs or Taxes, either out of the monies advanced under this Charge or otherwise, the Chargee shall be entitled and subrogated to all of the rights, equities and securities of the Person so paid, without the necessity of a formal assignment, and the Chargee is hereby authorized to retain any discharge thereof, without registration, if it thinks proper to do so.

45. Transfers

- (a) If a Transfer occurs and if an agreement is entered into for a proposed Transfer, and in either case the Chargee has not provided prior written approval of the Transfer or the proposed Transferee, as the case may be then, and in either such case, a default shall have occurred and the Indebtedness and the greater of (i) the Yield Maintenance Fee, and (ii) three months' interest on then unpaid balance of the Principal Amount calculated at the Interest Rate shall, at the option of the Chargee, immediately become due and payable.
- (b) Assuming that Section 45(a) is complied with, if the proposed Transferee fails to assume the obligations under this Mortgage, execute an assumption agreement in the form required by the Chargee, or comply with other conditions of approval imposed by the Chargee, then a default shall have occurred and the Indebtedness and the greater of (i) the Yield Maintenance Fee, and (ii) three months' interest on the then unpaid balance of the Principal Amount calculated at the Interest Rate shall, at the option of the Chargee, immediately become due and payable.

- (c) The Chargee shall be entitled to all Costs of the Chargee in processing and documenting such approval (whether or not the approval is granted) as herein contemplated, which fee shall be payable by the Obligants in advance of the Chargee considering the Transfer for approval.

46. **Releases**

It is hereby agreed that the Chargee may at all times at its discretion, release any part or parts of the Charged Premises from the security of this Charge or any other security for the Indebtedness either with or without any consideration therefor, without thereby releasing any Person from this Charge or from any of the covenants herein contained, and no such release shall diminish or prejudice this Charge or such other security as against the portion of the Charged Premises remaining unreleased.

47. **No Change in Liability**

It is hereby agreed that no sale or other dealing by any Obligant with the Charged Premises or any part thereof, whether with the consent or approval of the Chargee or not, shall in any way change the liability of the Obligants or any Guarantor or in any way alter the rights of the Chargee as against the Obligants, any Guarantor or any other Person liable for payment of the Indebtedness.

48. **Extension of Time**

No extension of time given by the Chargee to one or more Obligants, or anyone claiming under any Obligants, or any other dealing by the Chargee with the owner of the Charged Premises, shall in any way affect or prejudice the rights of the Chargee against the Obligants or any other Person liable for the payment of the Indebtedness.

49. **Discharge**

The Chargee shall have a reasonable time after payment of the Indebtedness within which to prepare and execute a discharge of this Charge, and interest as aforesaid shall continue to run and accrue until actual payment in full of the Indebtedness has been received by the Chargee, and all legal and other expenses for the preparation and execution of such discharge, including the Chargee's then current standard discharge fee, if applicable, shall be paid by the Obligants, whether or not such discharge is prepared by the Obligants, the Chargee or some other Person.

50. **Expropriation**

If any material part of the Charged Premises is expropriated by any Governmental Authority, body or corporation having powers of expropriation, all expropriation proceeds payable in respect thereof shall be directly paid to the Chargee to be applied against the Loan and the Chargee shall be entitled to a Yield Maintenance Fee. Provided that if in the reasonable opinion of the Chargee, this Mortgage of the other Loan Documents or the ability of the Obligants to repay the Loan is materially and adversely affected by the expropriation, the Indebtedness shall, at the Chargee's option, forthwith become due and payable, together with interest thereon at the Interest Rate to the date of payment and a Yield Maintenance Fee.

51. Waiver

It is understood and agreed that a waiver in one or more instances of any of the terms, covenants, conditions or provisions hereof or of the obligations secured by this Charge shall apply to the particular instance or instances and at the particular time or times only. No such waiver shall be deemed a continuing waiver, but all of the terms, covenants, conditions and other provisions of this Charge and of the obligations secured thereby shall survive and continue to remain in full force and effect.

52. Priority of Extension Agreements

- (a) It is understood and agreed that any agreement for the extension of the time of payment of the Indebtedness or any part thereof and any renewal of the term of this Charge made at, before or after maturity, and prior to the execution of a discharge of this Charge, altering the term, Interest Rate (whether increased or decreased), the amount of the payments of principal, interest or other monies owing and secured by this Charge or any other provision, covenant or condition hereof, whether made with the Chargor named herein or a subsequent owner of the Charged Premises (and whether or not consented to by the Chargor named herein or any successor in title if made with a subsequent owner), need not be registered in any land title office but shall be effectual and binding upon the Chargor and upon every subsequent mortgagee, encumbrancer or other person claiming an interest in the Charged Premises or any part thereof.
- (b) The Obligants shall, forthwith on request therefor by the Chargee, provide or cause to be provided to the Chargee, at the Obligants' expense, all such postponements and other assurances as the Chargee may require to ensure or confirm the effect and priority of any such agreement. All extensions and renewals (if any) shall be done at the Obligants' expense (including, without limitation, payment of the Chargee's legal expenses on a solicitor and his own client basis). No such extension or renewal, even if made by a successor in title to the Chargor named herein, shall in any way release or abrogate or render unenforceable the covenants or obligations of the Obligants named herein, or any subsequent owner, which shall continue notwithstanding such extension or renewal. Provided that nothing contained in this provision shall confer any right of renewal or extension upon the Obligants.

53. Notice

All notices, directions, service, correspondence and communications (each a "Notice") between the parties, if required, shall be in writing and may be served upon the parties:

- (a) by sending it through the post by a prepaid registered letter addressed to the Obligants at the Charged Premises or its last known address or in the case of a company to its head office, and to the Chargee, 40 King Street West, Suite 3700, Toronto, Ontario M5H 3Y2 (attention: Mortgage Services), and any notice so served shall be deemed to have been served at the expiration of the third Business Day after posting (notwithstanding the date of actual receipt and the fact that it

may not have then been received), except in the event of interruption of postal service during which period Notices shall not be mailed;

- (b) by delivering it addressed to the Chargor at the Charged Premises or its last known address or in the case of a company to its head office, and to the Chargee at the address set forth in Subsection 53(a), and any Notice so served shall be deemed to have been served on the day of delivery, if delivered at or before 3:00p.m. (Toronto time) on a Business Day or on the next Business Day if delivered after that time;
- (c) by sending Notice by facsimile to the Chargor at the facsimile number given by the Chargor to the Chargee prior to the registration of the Charge, and to the Chargee at (416) 687-6701, and either party may provide Notice of a change of its address and/or facsimile number, provided that the Notice is communicated in accordance with this Section 53.

DEFAULT

54. Power of Sale, etc.

- (a) Upon the occurrence of an Event of Default, the Chargee may on thirty-five days' notice enter on and sell the Charged Premises or any part thereof; and it is agreed that such notices shall be given in such manner and to such Persons as may be lawfully required at the time when such notices are given and in the absence of any such requirement and/or to the extent that such requirements shall not be applicable, such notices may be effectually given either by leaving the same with an adult person on the Charged Premises, if occupied, or by placing it thereon if unoccupied, or at the option of the Chargee by mailing the same in a registered letter addressed to the Chargor's last known address or by publishing the same once in a newspaper published in the municipality in which the Charged Premises are situate and shall be sufficient though not addressed to any person or persons by name or designation and notwithstanding any person or persons to be affected thereby may be unborn, unascertained or under disability.
- (b) The Chargee may sell the Charged Premises or any part thereof by public auction or private contract, or partly one or partly the other; and the proceeds of any sale hereunder may be applied in payment of any costs, charges and expenses incurred about taking, recovering or keeping possession of the Charged Premises or by reason of non-payment or procuring payment of the Indebtedness or otherwise, including a reasonable allowance for the time and effort of the Chargee's employees; and the Chargee may sell any part of the Charged Premises on such terms as to credit and otherwise as shall appear to it most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to title or evidence or commencement of title or otherwise which it shall deem proper; and may buy in or rescind or vary any contract for the sale of the whole or any part of the Charged Premises and resell without being answerable for loss occasioned thereby; and in the case of a sale on credit the Chargee shall be bound to account to subsequent encumbrancers and to the Obligants for only such

monies as have been actually received from purchasers after the satisfaction of the claims of the Chargee and for any of such purposes may make and execute all agreements and assurances as it shall think fit; and that any purchaser shall not be bound to see to the propriety or regularity of any sale or be affected by express notice that any sale is improper; and that no want of notice or publication when required hereby shall invalidate any sale hereunder.

- (c) The Chargee may sell as aforesaid without entering into possession of the Charged Premises, and when it desires to take possession it may break locks and bolts as it may in its discretion see fit.
- (d) Provided that the title of a purchaser upon a sale made in professed exercise of the above power shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power or that such power had been improperly or irregularly exercised, or that such notice had not been given, but any person indemnified by an unauthorized, improper or irregular exercise of the power shall have his remedy against the person exercising the power in damages only.

55. **Distress**

Upon the occurrence of an Event of Default, the Chargee may distrain for arrears of interest and for arrears of principal and for any other monies lawfully charged against the Charged Premises in the same manner as if the same were arrears of interest.

56. **Acceleration**

In addition to the Chargee's other rights under this Charge, at law, in equity, or otherwise (including the right to require payment of the Indebtedness or any part thereof), the Indebtedness and any applicable prepayment indemnity as provided for in the Commitment Letter shall, at the option of the Chargee, become immediately due and payable upon the occurrence of an Event of Default.

57. **Liquidated Damages**

Each Obligant acknowledges that the payment of the Yield Maintenance Fee or three months interest, as the case may be, under this Mortgage represents liquidated damages and not a penalty, that such amount is a genuine pre-estimate of loss of interest suffered by the Chargee having regard to the fact that the Chargee is not able to immediately re-invest such funds, and that such re-investment involves significant cost.

58. **No Merger on Judgment**

It is hereby agreed that the taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Chargee's right to interest at the rate and times herein provided; and further that said judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as herein provided until the said judgment shall have been fully paid and satisfied.

59. **Possession**

The Obligants covenant and agree with the Chargee that upon the occurrence of an Event of Default, the Chargee may at its sole option and at such time or times as it may deem necessary and without the concurrence of any Person, enter into possession of the Charged Premises and may complete the construction thereof, repair any buildings, structures or improvements forming part of the Charged Premises, inspect, take care of, and lease the Charged Premises for such term and subject to such provisions as it may deem advisable or expedient (including providing any leasehold improvements the Chargee deems necessary, in its sole discretion, to lease the Charged Premises), collect the rents of, and manage the Charged Premises as it may deem expedient, and all costs, charges and expenses incurred by the Chargee in connection with the exercise of any such rights (including allowances for the time, service and effort of any officer of the Chargee or other person appointed for the above purposes) shall, together with interest thereon at the Interest Rate, be added to the Indebtedness and secured by this Charge and shall be forthwith payable by the Obligants to the Chargee. Any lease made by the Chargee while in possession of the Charged Premises shall continue for the full term and any permitted renewals thereof notwithstanding the termination of the Chargee's possession.

60. **Receiver**

It is hereby agreed that upon the occurrence of an Event of Default, the Chargee may, with or without entry into possession of the Charged Premises or any part thereof, and whether before or after such entry into possession, appoint a receiver or manager, or receiver and manager (herein called the "Receiver") of the Charged Premises or any part thereof and of the rents and profits thereof or of only the rents and profits thereof, and with or without security, and may from time to time by similar writing remove any Receiver with or without appointing another in his stead and, in making any such appointment or removal, the Chargee shall be deemed to be acting as the agent or attorney for one or more of the Obligants. Upon the appointment of any Receiver or Receivers from time to time, the following provisions shall apply:

- (a) a statutory declaration of an officer of the Chargee as to default under this Charge shall be conclusive evidence thereof for the purposes of the appointment of a Receiver;
- (b) every Receiver shall be the agent or attorney of the Obligants (whose appointment as such shall be revocable only by the Chargee) for the collection of all rents and profits falling due and becoming payable in respect of the Charged Premises or any part thereof whether in respect of any tenancies created in priority to this Charge or subsequent thereto, or otherwise;
- (c) every Receiver may, in the discretion of the Chargee, be vested with all or any of the powers and discretions of the Chargee;
- (d) 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;

- (e) the Chargee may from time to time fix the remuneration for every Receiver, who shall be entitled to deduct the same out of revenue or sale proceeds of the Charged Premises;
- (f) every Receiver shall so far as concerns responsibility for its acts or omissions, be deemed the agent or attorney of the Obligants and in no event the agent of the Chargee;
- (g) the appointment of every Receiver by the Chargee shall not incur or create any liability on the part of the Chargee to the Receiver or to the Obligants or to any other Person in any respect, and such appointment or anything which may be done by any Receiver or the removal of any Receiver or the termination of any receivership shall not have the effect of constituting the Chargee a mortgagee-in-possession in respect of the Charged Premises or any part thereof;
- (h) every such Receiver shall from time to time have the power to lease any portion of the Charged Premises which may become vacant, for such term and subject to such provisions as it may deem advisable or expedient, subject to the restrictions on leasing contained in any existing leases or agreements to lease affecting any of the Charged Premises, and in so doing, every Receiver shall act as the attorney or agent of the Obligants and shall have authority to execute under seal any lease of any such premises in the name of and on behalf of the applicable Obligants, and the Obligants agree to ratify and confirm whatever any Receiver may do in the Charged Premises;
- (i) every 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, finishing, adding to, or putting in order of the Charged Premises, including without restricting the generality of the foregoing, completing the construction of any building or buildings, structures, services or improvements on the Charged Premises left in an unfinished state, and constructing or providing for leasehold improvements notwithstanding that the resulting cost may exceed the Principal Amount, and the Receiver shall have the right to register plans of subdivision and condominium declarations and descriptions in respect of the Charged Premises as well as the right to take possession of and use or permit others to use all or any part of the Obligants' materials, supplies, plans, tools, equipment (including appliances on this Charged Premises) and property of every kind and description;
- (j) every Receiver shall have full power to manage, operate, amend, repair or alter the Charged Premises and the buildings and improvements thereon or any part thereof in the name of the Obligants for the purpose of obtaining rental and other income from the Charged Premises or any part thereof;
- (k) no Receiver shall be liable to the Obligants to account for monies other than monies actually received by it in respect of the Charged Premises and out of such monies so received from time to time every Receiver shall, in the following order, pay:

- (i) its remuneration as aforesaid,
- (ii) all obligations, costs and expenses made or incurred by it, including but not limited to, any expenditures in connection with the management, operation, amendment, repair, construction or alteration of the Charged Premises or any part thereof,
- (iii) interest, principal and other monies which may, from time to time, be or become charged upon the Charged Premises in priority to this Charge, including all Taxes,
- (iv) to the Chargee, all Indebtedness, to be applied in such order as the Chargee in its discretion shall determine, and
- (v) subject to subparagraph (iv) above, at the discretion of the Receiver, interest, principal and other monies which may from time to time constitute a charge or encumbrance on the Charged Premises subsequent in priority or subordinate to the interest of the Chargee under this Charge,

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

- (l) the Chargee may at any time and from time to time terminate any receivership by notice in writing to the Obligants and to any Receiver; and
- (m) save as to monies payable to the Obligants pursuant to subparagraph (k) of this Section, the Obligants hereby release and discharge 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 any Obligant or any Person claiming through or under it by reason of or as a result of anything done by the Chargee or any Receiver under the provisions of this section.

61. **Cumulative Remedies**

All remedies contained in this Charge are cumulative and the Chargee shall also have all other remedies provided at law and in equity or in any of the other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of the Chargee and may be exercised in any order and as often as occasion thereof shall arise. No act of the Chargee shall be construed as an election to proceed under any particular provisions of this Charge to the exclusion of any other provision of this Charge or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to the Chargee. No delay or failure by the Chargee to exercise any right or remedy under this Charge shall be construed to be a waiver of that right or remedy or of any default hereunder. The Chargee may exercise one or more of its rights and remedies at its option without regard to the adequacy of its security.

62. **Maximum Rate of Return**

Notwithstanding any provision of any of the Loan Documents 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 on the Principal Amount 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 Obligants and Chargee and the amount of such payment or collection shall either be applied to the Principal Amount (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 Obligants 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.

63. **Covenants with respect to Indebtedness; Operations and Fundamental Changes of Chargor**

Each Obligant represents, warrants and covenants as of the date hereof and until such time as the Indebtedness secured hereby is paid in full, that such Obligant:

- (a) will not enter into any contract or agreement in respect of the Charged Premises with any general partner, principal, member or affiliate of any Obligant or any affiliate of any such general partner, principal, or member of any Obligant, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm’s-length basis with third parties other than an affiliate;
- (b) has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation) in respect of the Charged Premises, other than (i) the Indebtedness, and (ii) trade payables or accrued expenses incurred in the ordinary course of business of operating the Charged Premises; no debt whatsoever may be secured (senior, subordinate or *pari passu*) by the Charged Premises;
- (c) is and will be solvent and pay its debts from its assets as the same shall become due;
- (d) has done or caused to be done and will do all things necessary to preserve its existence and corporate, limited liability company and partnership formalities (as applicable), and will not, nor will any partner, limited or general, or member or shareholder thereof, amend, modify or otherwise change its partnership certificate, partnership agreement, certificate or articles of incorporation or organization, or bylaws or operating agreement or regulations, in a manner which

adversely affects any Obligant's or any such partner's, member's or shareholder's existence as a single purpose, single-asset "bankruptcy remote" entity;

- (c) will conduct and operate its business as presently conducted and operated;
- (f) will maintain books and records and bank accounts separate from those of its affiliates, including its general partners, principals and members;
- (g) will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any general partner, principal, member or affiliate);
- (h) will file its own tax returns;
- (i) will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
- (j) will not, nor will any shareholder, partner, member or affiliate, seek the dissolution or winding up, in whole or in part, of any Obligant;
- (k) will not enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all of the business or assets of, or any stock or beneficial ownership of any entity;
- (l) will not transfer or alter, or do any act which could result in the transfer or alteration of, all or any part of the shares in the capital of the Obligants except in accordance with the provisions of Section 45 and/or the Loan Documents or with the prior written consent of the Chargee, which consent may be withheld in the Chargee's sole and absolute discretion.
- (m) will not commingle the funds and other assets of the Obligants with those of any general partner, principal, member or affiliate, or any other person;
- (n) has and will maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or any other person;
- (o) has, and any general partner or operating member of the Obligants has, at all times since its formation, observed all legal and customary formalities regarding its formation and will continue to observe all legal and customary formalities;
- (p) does not and will not hold itself out to be responsible for the debts or obligations of any other person but nothing in this clause 63(p) limits the ability of the Obligants to provide guarantees of the obligations of others in accordance with their normal business practices;
- (q) will not repay any shareholder loans, redeem shares, pay out dividends nor otherwise compensate non-arms length parties directly, or indirectly, related to

any Obligant or the Lands until such time as the Indebtedness has been repaid in full. Notwithstanding the above, the Covenantor, 3000 Henry Street Limited Partnership, may, with the prior express written consent of the Chargee, which consent may not be unreasonably withheld, use the Loan funds for redemption of partnership units held by its limited partners, except it shall not be allowed to redeem or pay for redemption of any limited partner units held by Amin Eskooch, 1006465 B.C. Ltd., Navid Morawej, Navid Holdings Corp., or their affiliates.

64. **Property Management**

The Charged Premises shall only be managed by a professional arm's length manager approved by the Chargee. No property management fee shall be paid to a manager of the Charged Premises other than to a professional arm's length manager approved by the Chargee, without the prior written authorization of the Chargee. Upon the occurrence of an Event of Default which is continuing and the commencement of any enforcement or realization proceedings by the Chargee under this Mortgage or any other Loan Document, the Chargee may, on behalf of the Obligants, terminate the property manager and appoint a replacement acceptable to the Chargee. The Chargee acknowledges that at the time of granting of the Loan, the Charged Premises is a vacant land, and there is no property manager.

65. **Continuing Security**

This Charge will be effective whether or not the whole or any portion of the Principal Amount shall be advanced before or after or upon the date of the execution of this Charge and this Charge is made to secure, inter alia, a current or running account and any portion of the Principal Amount may be advanced or readvanced by the Chargee in one or more sums at any future date or dates and the amount of such advances and readvances when so made will be secured by this Charge and be repayable with interest at the Interest Rate and this Charge will be deemed to be taken as security for the ultimate balance owing to the Chargee arising from the current and running accounts represented by advances and readvances of the Principal Amount or any part thereof with interest at the Interest Rate and all other amounts secured hereby. If the whole or any part of the Principal Amount or other amount secured hereby is repaid this Charge, nevertheless, shall be and remain valid security for any subsequent advance or readvance by the Chargee to the Obligants, or any one thereof to the same extent as if the said advance or readvance had been made on the execution of this Charge until such time as the Chargee has executed and delivered to the Obligants a registrable discharge of this Charge.

66. **Consolidation**

It is expressly agreed that the common law right of consolidation is hereby retained and preserved, and that the Chargee may, at its sole option, invoke the right to consolidate at any applicable time, whether or not all or any of the debentures or mortgages so consolidated are in default, whether or not all or any of the debentures or mortgages so consolidated have matured, and whether or not in pursuance of any action taken to realize on its security; and for the purposes hereof, Section 27 of the *Property Law Act* (British Columbia), and any other statutory provision abolishing, or purporting to abolish, the said right of consolidation is hereby expressly excluded.

67. **Joint and Several**

- (a) All covenants and liabilities of the Chargor under this Mortgage are joint and several;
- (b) All covenants and liabilities of the Covenantor are joint and several; and
- (c) All covenants and liabilities of the Obligants are joint and several.

68. **Covenant of Covenantor**

For consideration, the Covenantor covenants and agrees with the Chargee that:

- (a) the Covenantor will at all times pay, or cause to be paid, the Indebtedness and when due in accordance with this Charge and the Commitment;
- (b) the Covenantor adopts each and every covenant and agreement of the Chargor as set out in this Charge and covenants and agrees with the Chargee to observe and perform all such covenants and agreements;
- (c) the Covenantor is a primary debtor to the same extent as if the Covenantor has signed this Mortgage as mortgagor; and
- (d) for greater certainty demand may be made upon, and notice may be given to, the Covenantor in the same manner as to the Chargor under this Charge.

SUBDIVISION BY STRATIFICATION

If the Charged Premises are stratified or the Project involves the stratification of the Charged Premises, the Obligant covenants and agrees with the Lender that:

69. **Definition**

In this Section, the "Act" means the British Columbia enactment dealing with strata lots as is from time to time in force; any strata corporation and any successor thereof created under or pursuant to the Act is called the "Strata Corporation" in this Charge.

70. **Disclosure Statement, Prospectus and Strata Plan**

The Obligant will, as soon as legally possible, file a disclosure statement or prospectus under the *Real Estate Development and Marketing Act* relating to the Charged Premises, deliver copies thereof to the Lender and subdivide the Charged Premises into strata lots by depositing a strata plan in the appropriate land title office pursuant to the Act.

71. **Approvals**

The Obligant will obtain the consent and approvals of the Lender to such strata plan and any by-law amendments prior to tendering the same for registration, which consent will not be unreasonably withheld or delayed.

72. **Compliance**

The Obligant will comply with all provisions of the Act and its regulations and the bylaws, rules and regulations of the Strata Corporation.

73. **Assessments**

The Obligant will pay when due, all assessments, contributions, charges, fines or levies (collectively, the "Assessments") made by the Strata Corporation in respect of the strata lot (or lot) charged hereunder.

74. **Voting Rights**

The Lender may exercise the Obligant's right to vote at meetings of the Strata Corporation on all matters on which the Act permits a mortgagee to vote, and the Obligant assigns such right to vote to the Lender; except for those matters on which the Obligant's right to vote has been thus assigned, the Obligant irrevocably appoints the Lender or its nominee to be the proxy for the Obligant, to attend, act and vote in the place of the Obligant at such meetings of the Strata Corporation as the Lender or its nominee from time to time attends, on any matters and at any times when the Obligant has the right to vote conferred on it by the Act; for this purpose the Obligant fails to execute such proxy or proxies, the Obligant irrevocably appoints the Lender its attorney for this purpose; the Lender or the Lender's nominee will not be obliged to vote or to protect the interest of the Obligant, and the Lender or its nominee will not be liable to the Obligant for any consequences of the Lender's or its nominee's exercise or failure to exercise such right to vote; nothing in this section will constitute or be deemed to constitute the Lender a mortgagee in possession.

75. **Manner of Voting**

If for any reason the Obligant has the right to vote at a meeting of the Strata Corporation, the Obligant will vote in such manner (if any) as the Lender directs on every matter to be voted on.

76. **Notices**

At least five days prior to every general meeting of the Strata Corporation, the Obligant will deliver to the Lender written notice of the meeting specifying the place, date, house and purpose of the meeting; in addition, immediately after receiving them, the Obligant will deliver to the Lender true copies of the bylaws, rules and regulations of the Strata Corporation from time to time in force and all notices, minutes, resolutions, accounts financial statements and other documents relating to the financial statements and to the affidavits of the Strata Corporation.

77. **Defaults**

If, without the consent of the Lender, the bylaws of the Strata Corporation are amended, or any specific resolution directing the Strata Corporation to transfer or charge or add to the common property or any part there of is passed, or the Strata Corporation enters into any contract that has not been approved by the Lender, the same will be deemed a Default hereunder.

78. **Governing Law**

This Charge shall be governed by and interpreted in accordance with the laws of the Provinces of British Columbia and the laws of Canada applicable therein.

79. **Amendment**

This Charge may only be amended or otherwise modified by further written agreement signed by the parties hereto.

80. **Time**

Time shall be of the essence of this Charge.

IN WITNESS WHEREOF, this Mortgage has been duly executed by the Obligants by executing the Form B attached hereto.

END OF DOCUMENT



Related Document Number: **CA9486292**
 Fee Collected for Document: **\$164.78**

I, James Sutcliffe, declare that:

1. Form B Mortgage submitted under application numbers CA9486292 and CA9486293: filing fee was not paid by inadvertent mistake.

2. Form B Mortgage submitted under application numbers CA9486292 and CA9486293: filing fee in the sum of \$150.44 plus \$14.34 for this declaration shall be deducted from our LTSA account no. 119428555.

I make this declaration and know it to be true based on personal information / reasonable belief.

Electronic Signature	Eun-Jeong (Esther E.J.) Sohn MGBZBH Digitally signed by Eun-Jeong (Esther E.J.) Sohn MGBZBH Date: 2021-11-17 18:35:57 -08:00
Your electronic signature is a representation that <ul style="list-style-type: none"> (a) You are a subscriber under section 168.6 of the <i>Land Title Act</i>, RSBC 1996 c.250, and that you are authorized to electronically sign this document by an e-filing direction made under section 168.22(2) of the act, or (b) You are a designate authorized to certify this application under section 168.4 of the <i>Land Title Act</i>, RSBC 1996, c.250, that you certify this application under section 168.43(3) of the act, and that the supporting document or a true copy of the supporting document, if a true copy is allowed under an e-filing direction, is in your possession, or (c) If the purpose of this declaration is to bring to the attention of the registrar an error, omission or misdescription in a previously submitted document under section 168.55 of the act, you certify that, based on your personal knowledge or reasonable belief, this declaration sets out the material facts accurately. 	

Note: A Declaration cannot be used to submit a request to the Registrar for the withdrawal of a document.