

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

BETWEEN:

**KINGSETT MORTGAGE CORPORATION**

Applicant

- and -

**759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688  
SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and  
2226 ROYAL WINDSOR LP**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND  
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**APPLICATION RECORD  
(Volume I of III)**

February 12, 2024

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Lawyers for the Applicants

**TO: THE SERVICE LIST**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**SERVICE LIST**

<b>As at February 12, 2024</b>	
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<b>NORAM GLASS CORPORATION</b> 1325 Aimco Blvd. Mississauga, ON L4W 1B4	<b>BLACK &amp; MCDONALD LTD.</b> 2 Bloor St E #2100 Toronto ON M4W 1A8
<b>CLARK FARB FIKSEL LLP</b> 188 Avenue Road Toronto, ON M5R 2J1 Attention: Mary Ann David  <i>Lawyers for Noram Glass Corporation, a Construction Lien Claimant</i>	<b>SPEIGEL NICHOLS FOX LLP</b> 1 Robert Speck Parkway, Suite 200 Mississauga, ON L4Z 3M3 Attention: Erica Nadin Rochette  <i>Lawyers for Black &amp; McDonald Limited, a Construction Lien Claimant</i>

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**TAB 1**



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

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

BETWEEN:

**KINGSETT MORTGAGE CORPORATION**

Applicant

- and -

**759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688  
SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and  
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Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE  
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SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**NOTICE OF APPLICATION**

**TO THE RESPONDENTS:**

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

**THIS APPLICATION** will come on for a hearing

- In person
- By telephone conference
- By video conference

At a Zoom link to be provided by the Ontario Superior Court of Justice (Commercial List) on February 20, 2024 at 10:00 a.m. (or as soon after such time as the application may be heard).

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, serve it on the Applicant's lawyer or, where the

Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

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

Date: February 9, 2024

Issued by:

\_\_\_\_\_  
Local Registrar

Address of court office: 330 University Avenue, 9<sup>th</sup> Floor  
Toronto, ON M5G 1R7

TO: **THE ATTACHED SERVICE LIST**

## APPLICATION

### 1. THE APPLICANT MAKES THIS APPLICATION FOR:

- (a) an order (the “**Receivership Order**”), substantially in the form included at Tab 2 of the Applicant’s Application Record, *inter alia*:
  - (i) if necessary, abridging the time for service and filing of this Notice of Application and Application Record or, in the alternative, dispensing with same;
  - (ii) appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) without security, of the real property legally described in Schedule “A” to the proposed Receivership Order (collectively, the “**Real Property**”) and all of the presently owned or held, or hereafter acquired or held, assets, undertakings and personal property of the Debtors (as defined below) located at, related to, used in connection with or arising from or out of the Real Property or which is necessary to the use and operation of the Real Property, including all of the proceeds therefrom (collectively with the Real Property, the “**Property**”) pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-33, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43;
  - (iii) granting a first-priority charge (the “**Receiver’s Charge**”) over the Property in favour of the Receiver and the Receiver’s counsel to secure their fees and

disbursements in respect of these proceedings (the “**Receivership Proceedings**”); and

(iv) granting a second-priority charge (the “**Receiver’s Borrowings Charge**”) over the Property subordinate only to the Receiver’s Charge for the purpose of funding the exercise of the powers and duties conferred upon the Receiver pursuant to the proposed Receivership Order; and

(b) such further and other relief as this Honourable Court may deem just.

## 2. THE GROUNDS FOR THIS APPLICATION ARE:

### *The Parties*

- (a) the Applicant is a private equity real estate investment firm incorporated pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended, (the “**CBCA**”);
- (b) 759 Winston Churchill GP Inc. (“**Churchill GP**”) is incorporated under the *Business Corporations Act (Ontario)* R.S.O. 1990, c. B.16, as amended (the “**OBCA**”) and is the sole general partner of 759 Winston Churchill L.P. (“**Churchill LP**”, and together with Churchill GP, “**Churchill**”), an entity formed under the *Limited Partnerships Act (Ontario)*, R.S.O. 1990, c. L.16 (the “**LPA**”);
- (c) 688 Southdown GP Inc. (“**Southdown GP**”) is incorporated under the CBCA and is the sole general partner of 688 Southdown LP (“**Southdown LP**”, and together with Southdown GP, “**Southdown**”), an entity formed under the LPA;

- (d) 2226 Royal Windsor GP Inc. (“**Royal Windsor GP**”) is incorporated under the OBCA and is the sole general partner of 2226 Royal Windsor LP (“**Royal Windsor LP**”, and together with Royal Windsor GP, “**Royal Windsor**”);
- (e) Michael Moldenhauer is the sole director of Churchill GP and Royal Windsor GP, and a director of Southdown GP;
- (f) Churchill, Southdown and Royal Windsor are collectively hereinafter referred to as the “**Debtors**”;

### *The Property and Projects*

- (g) Churchill GP, Southdown GP and Royal Windsor GP are the registered owners of the Real Property which they hold for the benefit of Churchill LP, Southdown LP and Royal Windsor LP, respectively;
- (h) the Debtors intention was to utilize the Real Property for the development of three real-estate development projects (collectively the “**Projects**” and each a “**Project**”);
- (i) the Real Property, and the Projects that are being developed thereon, are comprised of the following:
  - (i) a property located at 759 Winston Churchill Boulevard, Mississauga, Ontario (the “**Churchill Lands**”) being developed into 750,354 square feet of industrial facilities, comprised of three Class A industrial buildings, of

which one is complete and fully leased, one is under construction and one has yet to have construction commence;

- (ii) a property located at 688 Southdown Road, Mississauga, Ontario (the “**Southdown Lands**”), comprised of approximately 91 acres currently zoned for industrial use which required remediation generally; and
- (iii) a property located at 2226 Royal Windsor Drive, Mississauga, Ontario (the “**Royal Windsor Lands**”), comprised of approximately 74.5 acres of industrial zoned land, to be re-zoned for residential use, with both the construction and re-zoning yet to materially commence, to the Applicant’s knowledge;
- (j) it is currently unclear to the Applicant whether or not the residential re-zoning efforts are necessary or the best use of the Southdown Lands or Royal Windsor Lands;

### ***The Loan Facilities and Security***

- (k) in connection with the acquisition and development of the Real Property and the Projects, and as further set-out below, the Applicant extended certain loan facilities to the Debtors (collectively the “**Loan Facilities**”), under which, as of January 11, 2024, \$328,327,905.79 was owed in aggregate by Churchill and Southdown, and as of January 22, 2024, \$35,252,643.84 was owed by Royal Windsor;

### The Churchill Loan and Security Documents

- (l) pursuant to a commitment letter dated January 18, 2022, (as amended by a letter amendment dated March 20, 2023, the “**Churchill Commitment Letter**”) between Churchill, as borrower, and the Applicant, as lender, the Applicant agreed to provide the Churchill Mortgage Facility in the principal amount of \$205,000,000 (the “**Churchill Mortgage Facility**”);
- (m) pursuant to the Churchill Commitment Letter, the Applicant also agreed to provide cash in lieu of letters of credit in the principal amount of \$7,653,864 for the benefit of Churchill (the “**Churchill LC Facility**”, and together with the Churchill Mortgage Facility, the “**Churchill Facilities**”);
- (n) as of January 11, 2024, the total indebtedness was \$147,852,782.89 under the Churchill Mortgage Facility and \$7,733,111.66 under the Churchill LC Facility (together the “**Churchill Indebtedness**”) with interest, fees and costs continuing to accrue;
- (o) the payment and performance of the Churchill Facilities was guaranteed by various guarantors (the “**Churchill Guarantors**”) pursuant to certain guarantee agreements (the “**Churchill Guarantees**”);
- (p) as general and continuing security for the Churchill Facilities, the Applicant was granted various security by Churchill (the “**Churchill Security**”) as well as certain collateral security by the Churchill Guarantors (the “**Churchill Collateral**”);



**Security**”, and together with the Churchill Security, Churchill Guarantees and Churchill Commitment Letter, the “**Churchill Loan and Security Documents**”);

- (q) the Churchill Loan and Security Documents include, *inter alia*:
- (i) a first ranking mortgage/charge over the Churchill Lands in the amount of \$250,000,000 (the “**Churchill Mortgage**”);
  - (ii) a General Assignment of Leases and Rents dated February 16, 2022;
  - (iii) a General Security Agreement dated February 16, 2022 (the “**Churchill GSA**”);
  - (iv) a General Assignment of Material Contracts dated February 16, 2022;
  - (v) an Assignment of Insurance dated February 16, 2022;
  - (vi) a Specific Assignment of Development Management Agreement with an acknowledgement of Kenaidan Contracting Ltd. (“**Kenaidan**”) dated February 16, 2022;
  - (vii) a Specific Assignment of Development Management Agreement with an acknowledgement of 2668945 Ontario Corp. dated February 16, 2022; and
  - (viii) a Share Pledge Agreement dated February 16, 2022, in respect of shares held by the Churchill Limited Recourse Guarantors;
- (r) the Applicant’s interest in and to all of Churchill’s present and after acquired personal property pertaining to the Churchill Lands, and the proceeds thereof,

granted pursuant to the Churchill GSA, was registered under the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended (the “**PPSA**”);

#### The Southdown Loan and Security Documents

- (s) pursuant to a commitment letter dated August 19, 2021 (as amended by a letter amendment dated March 29, 2023, the “**Southdown Commitment Letter**”) between, Southdown, as borrower, and the Applicant, as lender, the Applicant agreed to provide a loan in the principal amount of \$165,000,000 (the “**Southdown Facility**”);
- (t) as of January 11, 2024, the total indebtedness under the Southdown Commitment Letter was \$172,742,011.24, (the “**Southdown Indebtedness**”) with interest, fees and costs continuing to accrue;
- (u) the payment and performance of the Southdown Facilities was guaranteed by various guarantors (the “**Southdown Guarantors**”) pursuant to certain guarantee agreements (the “**Southdown Guarantees**”);
- (v) as general and continuing security for the payment and performance of the Southdown Indebtedness, the Applicant was granted various security by Southdown (the “**Southdown Security**”) and certain collateral security by the Southdown Guarantors (collectively, the “**Southdown Collateral Security**”, and together with the Southdown Commitment Letters, the Southdown Guarantees and the Southdown Security, the “**Southdown Loan and Security Documents**”);
- (w) the Southdown Loan and Security Documents include, *inter alia*:

- (i) a first ranking mortgage/charge over the Southdown Lands, registered in the amount of \$193,750,000 (the “**Southdown Mortgage**”);
  - (ii) an Assignment of Rents and Leases dated September 15, 2021;
  - (iii) an Assignment of Insurance dated September 15, 2021;
  - (iv) an Assignment of Material Contracts dated September 15, 2021;
  - (v) a General Security Agreement dated September 15, 2021 (the “**Southdown GSA**”); and
  - (vi) a Share Pledge Agreement dated September 15, 2021, in respect of shares held by certain of the Southdown Guarantors;
- (x) the Applicant’s security interest in and to all of Southdown’s present and after acquired personal property pertaining to the Southdown Lands, and the proceeds thereof, granted pursuant to the Southdown GSA, was registered under the PPSA;

The Royal Windsor Loan and Security Documents

- (y) pursuant to a commitment letter dated June 28, 2022 (the “**Royal Windsor Commitment Letter**”) between, Royal Windsor, as borrower, and the Applicant as lender, the Applicant agreed to provide a loan in the principal amount of \$35,000,000 (the “**Royal Windsor Facility**”);
- (z) as of January 22, 2024, the total indebtedness under the Royal Windsor Facility was \$35,252,643.84 (the “**Royal Windsor Indebtedness**”, and together with the

Churchill Indebtedness and Southdown Indebtedness the “**Indebtedness**”) with interest, fees and costs continuing to accrue;

- (aa) the payment and performance of all of the Royal Windsor Indebtedness and obligations under, among other things, the Royal Windsor Commitment Letter was unconditionally guaranteed by various guarantors (the “**Royal Windsor Guarantors**”) pursuant to certain guarantees (the “**Royal Windsor Guarantees**”);
- (bb) as general and continuing security for the payment and performance of the Royal Windsor Indebtedness, the Applicant was granted various security by Royal Windsor (the “**Royal Windsor Security**”) and certain collateral security by the Royal Windsor Guarantors (collectively, the “**Royal Windsor Collateral Security**”, and together with the Royal Windsor Commitment Letter, the Royal Windsor Guarantees and the Royal Windsor Security, the “**Royal Windsor Loan and Security Documents**”, (together with the Southdown Loan and Security Documents and the Churchill Loan and Security Documents, the “**Loan and Security Documents**”). The Royal Windsor Loan and Security Documents include, *inter alia*:
  - (i) a first ranking mortgage/charge over the Royal Windsor Lands, registered in the amount of \$43,750,000 (the “**Royal Windsor Mortgage**”);
  - (ii) an Assignment of Rents and Leases dated July 8, 2022 (the “**Royal Windsor Assignment of Rents**”);
  - (iii) an Assignment of Insurance dated July 8, 2022;

- (iv) a General Assignment of Material Contracts dated July 8, 2022;
  - (v) a General Security Agreement dated July 8, 2022 (the “**Royal Windsor GSA**”);
  - (vi) a Collateral Mortgage dated July 8, 2022 in respect of the Southdown Lands and an Assignment of Insurance and General Assignment of Leases and Rents provided thereto; and
  - (vii) a Share Pledge Agreement dated July 8, 2022, in respect of shares held certain of the Royal Windsor Guarantors in Royal Windsor;
- (cc) the Applicant’s security interest in and to all of Royal Windsor’s present and after acquired personal property pertaining to the Royal Windsor Lands, and the proceeds thereof, granted pursuant to the Royal Windsor GSA, was registered under the PPSA;

***The Debtors’ Other Creditors***

Churchill

- (dd) seven construction liens are registered against the Churchill Lands, with the most significant lien held by Kenaidan and registered in the amount of \$30,076,837;
- (ee) Kenaidan is a party to a construction agreement with Churchill that was assigned to the Applicant as part of the Churchill Security;
- (ff) the Toronto Dominion Bank holds a PPSA registration in the accounts of Churchill;

### Southdown

- (gg) there are two construction lien registered against the Southdown Lands, with the most significant lien held by Kenaidan and registered in the amount of \$9,572,190;
- (hh) there is also a second mortgage/charge (the “**Subordinate Security**”) registered against the Southdown Lands held by 7037619 Canada Inc. (the “**Subordinate Lender**”);
- (ii) pursuant to a Subordination & Standstill Agreement dated September 15, 2021, as amended by an Amended Subordination and Standstill Agreement dated June 16, 2023, between the Applicant, the Subordinate Lender and Southdown, the Subordinate Lender has agreed to postpone and subordinate the Subordinate Security in favor of the Southdown Security;

### Royal Windsor

- (jj) the Applicant is unaware of any other secured creditors of Royal Windsor;

### ***The Debtors’ Defaults***

- (kk) on January 12, 2024, the Applicant issued demand letters (the “**Churchill Demand Letters**”) along with notices of intention to enforce security to Churchill and the Churchill Guarantors for the repayment of the Churchill Indebtedness;
- (ll) the defaults enumerated within the Churchill Demand Letters included, among other things, a failure to pay the monthly payments of interest in accordance with section A12 of the Churchill Commitment Letter and section 3(b) of the Churchill

Mortgage since November 2023 (collectively, along with any other events of default having occurred and continuing under the Churchill Commitment Letter and Churchill Mortgage, the “**Churchill Events of Default**”);

- (mm) in addition to the Churchill Events of Default, the Applicant has recently been made aware of certain additional events of default including, but not limited to, lapsing of Churchill’s insurance and the registration of construction liens against the Churchill Lands;
- (nn) on January 12, 2024, the Applicant also issued demand letters (the “**Southdown Demand Letters**”), along with notices of intention to enforce security to Southdown and the Southdown Guarantors for the repayment of the Southdown Indebtedness;
- (oo) the defaults enumerated within the Southdown Demand Letters included, among others, the failure to: (i) pay the Southdown Indebtedness in full by the maturity date in accordance with section A9 of the Southdown Commitment Letter and 3(c) of the Southdown Mortgage; and (ii) pay monthly payments of interest in accordance with section A11 of the Southdown Commitment Letter and 3(b) of the Southdown Mortgage since September 2023 (collectively, along with any other events of default having occurred and continuing under the Southdown Commitment Letter and Southdown Mortgage, the “**Southdown Events of Default**”);

- (pp) in addition to the Southdown Events of Default, the Applicant has recently been made aware of certain additional events of default including, but not limited to, the registration of construction liens against the Southdown Lands;
- (qq) on January 22, 2024, the Applicant issued demand letters (the “**Royal Windsor Demand Letters**”) along with notices of intention to enforce security to Royal Windsor and the Royal Windsor Guarantors;
- (rr) the defaults enumerated within the Royal Windsor Demand Letters included, among others, breaches of section 28(e) of the Royal Windsor Mortgage and section 28(e) of the Collateral Mortgage caused by the Southdown Events of Default (collectively, along with any other events of default having occurred and continuing under the Royal Windsor Commitment Letter and the Royal Windsor Mortgage, the “**Royal Windsor Events of Default**”, and together with the Southdown Events of Default and the Churchill Events of Default, the “**Events of Default**”);

***Appointment of the Receiver***

- (ss) the Debtors are in default of their obligations under the Loan and Security Documents and are unable to repay the Indebtedness;
- (tt) pursuant to the Loan and Security Documents, the Applicant has a contractual right to the appointment of a receiver upon the occurrence of a default or event of default;
- (uu) given, among other things, the Events of Default, the current lack of progress made with respect to the Projects, the lapsing of insurance on certain of the Real Property,



the failure of the Debtors and their management to propose a viable solution to address the indebtedness, the appointment of a Receiver is just and convenient;

- (vv) the Receivership Proceedings will provide the most effective and appropriate means to attend to, secure and advance the development of the Projects as and where appropriate and effect the sale of the Property, with a view to maximizing recoveries for and distributing funds to the Debtors' stakeholders;
- (ww) KSV is a "licensed trustee" as such term is defined under the BIA, is qualified to act as the Receiver and has consented to act as the Receiver if so appointed;
- (xx) the secured creditors who may be affected by the granting of the proposed Receiver's Charge and the Receiver's Borrowings Charge will be served with the Application Record;

***Other Grounds***

- (yy) section 101 of the CJA;
- (zz) sections 243 and 244 of the BIA;
- (aaa) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 14.05, 16, 17.02, 38, and 39 of the *Rules for Civil Procedure*, R.R.O. 1990, Reg. 194; and
- (bbb) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the Affidavit of Daniel Pollack to be sworn, and the exhibits attached thereto;
- (b) the Factum of the Applicant, to be filed;
- (c) the consent of KSV to act as Receiver; and
- (d) such further and other evidence as counsel may advise and this Honourable Court may permit.

February 9, 2024

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Lawyers for the Applicant

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS  
AMENDED**

**KINGSETT MORTGAGE CORPORATION**

and

**759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P.,  
688 SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL  
WINDSOR GP INC. and 2226 ROYAL WINDSOR LP**

Applicant

Respondents

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

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

Proceedings commenced in Toronto

**NOTICE OF APPLICATION**

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Lawyers for the Applicant

**TAB 2**

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

THE HONOURABLE ) TUESDAY, THE 20<sup>th</sup>  
 )  
JUSTICE CAVANAGH ) DAY OF FEBRUARY, 2024  
 )

BETWEEN:

**KINGSETT MORTGAGE CORPORATION**

Applicant

- and -

**759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688  
SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and  
2226 ROYAL WINDSOR LP**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND  
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**ORDER  
(Appointing Receiver)**

THIS APPLICATION made by KingSett Mortgage Corporation (the “**Applicant**”) for an Order pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of the real property legally described in Schedule “A” to this Order (the “**Real Property**”) and all present and future assets, undertakings and personal property of 759 Winston Churchill GP Inc. (“**Churchill GP**”), 759 Winston Churchill L.P. (“**Churchill LP**”), 688 Southdown GP Inc. (“**Southdown GP**”), 688 Southdown LP (“**Southdown LP**”), 2226 Royal Windsor GP Inc. (“**Royal Windsor GP**”) and 2226 Royal Windsor LP (“**Royal Windsor LP**” and together with Churchill GP, Churchill LP, Southdown

GP, Southdown LP and Royal Windsor GP, the “**Debtors**” and each a “**Debtor**”), located at, related to, used in connection with or arising from or out of the Real Property or which is necessary to the use and operation of the Real Property, including all proceeds therefrom (collectively with the Real Property, the “**Property**”) was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Daniel Pollack sworn February 12, 2024 and the Exhibits thereto (the “**Pollack Affidavit**”), on hearing the submissions of counsel for the Applicant, the Respondents, the proposed Receiver and such other parties listed on the Participant Information Form, no one appearing for any other party although duly served as appears from the affidavit of service sworn and filed, and on reading the consent of KSV to act as the Receiver,

### **SERVICE AND DEFINITIONS**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that all terms not otherwise defined herein shall have the meaning ascribed to them in the Pollack Affidavit.

### **APPOINTMENT**

3. THIS COURT ORDERS that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of the Property.

### **RECEIVER'S POWERS**

4. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of the Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, or any of them, in connection with the Property, including the powers to enter into any agreements or incur any obligations in the ordinary course of business in connection with the Property, cease to carry on all or any part of the business of the Debtors in connection with the Property, or any of them, or cease to perform or disclaim any contracts of any of the Debtors in respect of the Property;
- (d) to engage construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other Persons (as defined below) from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to undertake any construction or other work at the Property necessary to bring the property into compliance with applicable laws and building codes;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors, or any of them, in connection with the Property or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to any of the Debtors in connection with the Property (including, without limitation, any rent payments in respect of the Real Property) and to exercise all remedies of any of the Debtors in collecting such monies and accounts,

including, without limitation, to enforce any security held by any of the Debtors;

- (h) to settle, extend or compromise any indebtedness owing to any of the Debtors in connection with the Property;
- (i) to deal with any lien claims, trust claims, and trust funds that have been or may be registered (as the case may be) or which arise in respect of the Property, including any part or parts thereof, and, with approval of this Court, to make any required distribution(s) to any contractor or subcontractor of the Debtors or to or on behalf of any beneficiaries of such trust funds pursuant to section 85 of the *Construction Act*, R.S.O. 1990, c. C.30;
- (j) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, including, without limitation, in respect of construction permits and any requirements related thereto, whether in the Receiver's name or in the name and on behalf of any of the Debtors, for any purpose pursuant to this Order;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to any of the Debtors (as such proceedings relate to the Property or any portion thereof), the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (l) to investigate, and report to this Court on, intercompany payments, transactions and other arrangements between any of the Debtors and other Persons, including, without limitation, other companies and entities that are affiliates of any of the Debtors, that appear to the Receiver to be out of the ordinary course of business. All Persons shall be required to provide any



and all information and documents related to the Debtors requested by the Receiver in connection with such investigations;

- (m) to undertake environmental or worker's health and safety assessments of the Property and the operations of the Debtors thereon;
- (n) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion, and with the Applicant's consent, may deem appropriate;
- (o) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act* as the case may be, shall not be required;

- (p) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (q) to report to, meet with and discuss with such affected Persons as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (r) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (s) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of any of the Debtors and to meet with and discuss with such governmental authority and execute any agreements required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);
- (t) to enter into agreements with any trustee in bankruptcy appointed in respect of any of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by any of the Debtors;
- (u) to undertake any investigations deemed appropriate by the Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;
- (v) to exercise any shareholder, partnership, joint venture or other rights which any of the Debtors may have; and
- (w) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtors,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including each of the Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. THIS COURT ORDERS that (i) each of the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other

persons acting on their instructions or behalf, (iii) all construction mangers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants and service providers, and all other persons acting on their instructions or behalf, and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information and cloud-based data of any kind related to the business or affairs of any of the Debtors or the Property, and any computer programs, computer tapes, computer disks, cloud or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software, cloud and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer, in a cloud or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph 7, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including

providing the Receiver with instructions on the use of any computer, cloud or other system and providing the Receiver with any and all access codes, account names, account numbers and account creating credentials that may be required to gain access to the information.

8. THIS COURT ORDERS that, without limiting the generality of paragraphs 5-7 of this Order, all Persons, including, without limitation, any affiliates of any of the Debtors (collectively, the “**Group**”), and each of them, shall be required to cooperate, and share information, with the Receiver in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors, or any of them, and/or the Property. In addition to the foregoing general cooperation and information sharing requirements, the Group, or any of them, shall be required to do the following: (a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents relevant to any of the Debtors and/or the Property: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty (30) days' notice of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required or requested with respect to the exercise of the Receiver's authority hereunder.

#### NO PROCEEDINGS AGAINST THE RECEIVER

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

10. THIS COURT ORDERS that no Proceeding against or in respect of any of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of any of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

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

11. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph 11 shall: (i) empower the Receiver or any of the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or any of the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE RECEIVER**

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

### **CONTINUATION OF SERVICES**

13. THIS COURT ORDERS that all Persons having oral or written agreements with any of the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, accounting services, centralized banking services, payroll services, insurance, transportation services, utility or other services to any of the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of any of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of each of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

14. THIS COURT ORDERS that in the event that an account for the supply of goods and/or services is transferred from any of the Debtors to the Receiver, or is otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

#### **RECEIVER TO HOLD FUNDS**

15. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

16. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the applicable Debtor until such time as the Receiver, on the applicable Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

#### **PIPEDA**

17. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one

or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by each of the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

18. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

19. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this

Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

20. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver's Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

23. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow from KingSett Mortgage Corporation by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount that is acceptable to the Applicant and as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order,



including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subordinate in priority to the Receiver's Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

24. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

25. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Receiver's Certificates**”) for any amount borrowed by it pursuant to this Order.

26. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

27. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: [https://ksvadvisory.com/experience/case/\[●\]](https://ksvadvisory.com/experience/case/[●]).

28. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to any of the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

29. THIS COURT ORDERS that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

### **CRITICAL PAYMENTS**

30. THIS COURT ORDERS that the Receiver may, with the written consent of the Applicant, make payments owing by any of the Debtors to suppliers, contractors, subcontractors and other creditors in respect of amounts owing prior to the date of this Order.

### **GENERAL**

31. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

32. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any of the Debtors.

33. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order.

All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

34. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

35. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the net realizations from the Property with such priority and at such time as this Court may determine.

36. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

37. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.

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**Schedule "A"**

**REAL PROPERTY**

**Churchill**

**PIN: 13493-0213(LT)**

PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 2 & 3 PLAN 43R39986; CITY OF MISSISSAUGA

**PIN: 13493-0226(LT)**

PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 5 & 6 PLAN 43R39986; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 3 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 4 PLAN 4R43R38482 AS IN PR1663804; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 5 PLAN 43R38482 AS IN PR1662397; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN PR823503; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR896377; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR1021917; CITY OF MISSISSAUGA

**PIN: 13493-0225(LT)**

PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PART 1 PLAN 43R39884; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 3 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 4 PLAN 4R43R38482 AS IN PR1663804; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 5 PLAN 43R38482 AS IN PR1662397; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN PR823503; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR896377; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR1021917; CITY OF MISSISSAUGA

**Southdown**

**PIN: 13493-0044(LT)**

PT LT 31 CON 3 SDS TORONTO; PT LT 32 CON 3 SDS TORONTO PTS 1 TO 6, 8, 43R13084; S/T TT129899; S/T TT103210, TT103804, TT153650, VS163947, VS42085, VS58563 MISSISSAUGA

**Royal Windsor**

**PIN: 13493-0190 (LT)**

PT LT 31, 32 CON 3 SDS DES PTS 1, 2 PL 43R11375 SAVE & EXCEPT PTS 1,2,3 PL 43R21957, EXCEPT PT 1 43R22260, EXCEPT PT 1 43R25470, EXCEPT PTS 1, 2, 3 PL 43R25635, EXCEPT PT 1 PL 43R28305 MISSISSAUGA.S/T EASEMENT IN FAVOUR OF INTERPROVINCIAL PIPE LINE COMPANY OVER PT LT 32 CON 3 SDS DES PT 2 PL 43R11375 EXCEPT PT 2 PL 43R21957 AS IN TT102320, TT104152.T/W EASEMENT OVER PT LT 32 CON 3 SDS DES PT 3 PL 43R21957 AS IN LT1712946

**SCHEDULE “B”  
RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver and manager (the “**Receiver**”) without security, of the real property legally described in Schedule “A” (the “**Real Property**”) to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated February [●], 2024 (the “**Order**”) and all present and future assets, undertakings and personal property of 759 Winston Churchill GP Inc., 759 Winston Churchill L.P., 688 Southdown GP Inc., 688 Southdown LP, 2226 Royal Windsor GP Inc. and 2226 Royal Windsor LP (collectively, the “**Debtors**”), located at, related to, used in connection with or arising from or out the Real Property or which is necessary to the use and operation of the Real Property, including all proceeds therefrom (collectively with the Real Property, the “**Property**”), appointed by the Order made in an application having Court File Number CV-24-00714543-00CL, has received as such Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2024.

KSV Restructuring Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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

Name:

Title:

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**KINGSETT MORTGAGE CORPORATION**      and      **759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688 SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and 2226 ROYAL WINDSOR LP**

Applicant

Respondents

Court File No.: CV-24-00714543-00CL

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

Proceedings commenced in Toronto

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**ORDER  
(Appointing Receiver)**

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**BENNETT JONES LLP**

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Lawyers for the Applicant



**TAB 3**

Court File No. —: CV-24-00714543-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) ~~WEEKDAY~~ TUESDAY, THE # 20<sup>th</sup>  
JUSTICE — CAVANAGH ) DAY OF ~~MONTH~~,  
20YR FEBRUARY, 2024

BETWEEN:

**PLAINTIFF<sup>†</sup>**

Plaintiff

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

**DEFENDANT**

Defendant

759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688  
SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and  
2226 ROYAL WINDSOR LP

Respondents

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND  
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

<sup>†</sup> ~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

**ORDER**  
**(Appointing Receiver)**

THIS ~~MOTION~~APPLICATION made by ~~the Plaintiff~~<sup>2</sup>KingSett Mortgage Corporation (the "Applicant") for an Order pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~KSV Restructuring Inc. ("KSV") as receiver ~~[and manager]~~ (in such capacities, the "Receiver") without security, of ~~all of the assets, undertakings and properties of [DEBTOR'S NAME] (the "real property legally described in Schedule "A" to this Order (the "Real Property") and all present and future assets, undertakings and personal property of 759 Winston Churchill GP Inc. ("Churchill GP"), 759 Winston Churchill L.P. ("Churchill LP"), 688 Southdown GP Inc. ("Southdown GP"), 688 Southdown LP ("Southdown LP"), 2226 Royal Windsor GP Inc. ("Royal Windsor GP") and 2226 Royal Windsor LP ("Royal Windsor LP" and together with Churchill GP, Churchill LP, Southdown GP, Southdown LP and Royal Windsor GP, the "Debtors" and each a "Debtor")~~acquired for, or, located at, related to, used in relation to a business carried on by the Debtor, connection with or arising from or out of the Real Property or which is necessary to the use and operation of the Real Property, including all proceeds thereof (the "therefrom (collectively with the Real Property, the "Property")) was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~Daniel Pollack sworn ~~[DATE]~~February 12, 2024 and the Exhibits thereto ~~and (the "Pollack Affidavit")~~, on hearing the submissions of counsel for ~~[NAMES]~~the Applicant, the Respondents, the proposed Receiver and such other parties listed on the Participant Information Form, no one appearing for ~~[NAME]~~any other party although duly served as appears from the affidavit of service ~~of [NAME]~~ sworn ~~[DATE]~~and filed, and on reading the consent of ~~[RECEIVER'S NAME]~~KSV to act as the Receiver,

<sup>2</sup>~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

## **SERVICE AND DEFINITIONS**

1. THIS COURT ORDERS that the time for service of the Notice of MotionApplication and the MotionApplication Record is hereby abridged and validated<sup>3</sup> so that this motionApplication is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that all terms not otherwise defined herein shall have the meaning ascribed to them in the Pollack Affidavit.

## **APPOINTMENT**

3. ~~2-~~THIS COURT ORDERS that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~KSV is hereby appointed Receiver, without security, of ~~all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").~~

## **RECEIVER'S POWERS**

4. ~~3-~~THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of the Property to safeguard it, the engaging of independent

<sup>3</sup>~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the ~~Debtor~~Debtors, or any of them, in connection with the Property, including the powers to enter into any agreements, or incur any obligations in the ordinary course of business in connection with the Property, cease to carry on all or any part of the business of the Debtors in connection with the Property, or any of them, or cease to perform or disclaim any contracts of ~~the Debtor~~any of the Debtors in respect of the Property;
- (d) to engage construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other ~~persons~~Persons (as defined below) from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to undertake any construction or other work at the Property necessary to bring the property into compliance with applicable laws and building codes;
- (f) ~~(e)~~ to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the ~~Debtor~~Debtors, or any of them, in connection with the Property or any part or parts thereof;
- (g) ~~(f)~~ to receive and collect all monies and accounts now owed or hereafter owing to any of the DebtorDebtors in connection with the Property (including, without limitation, any rent payments in respect of the Real Property) and to exercise all remedies of any of the Debtors in

collecting such monies and accounts, including, without limitation, to enforce any security held by any of the Debtors;

(h) ~~(g)~~ to settle, extend or compromise any indebtedness owing to any of the ~~Debtor~~ Debtors in connection with the Property;

(i) to deal with any lien claims, trust claims, and trust funds that have been or may be registered (as the case may be) or which arise in respect of the Property, including any part or parts thereof, and, with approval of this Court, to make any required distribution(s) to any contractor or subcontractor of the Debtors or to or on behalf of any beneficiaries of such trust funds pursuant to section 85 of the Construction Act, R.S.O. 1990, c. C.30;

(j) ~~(h)~~ to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, including, without limitation, in respect of construction permits and any requirements related thereto, whether in the Receiver's name or in the name and on behalf of any of the Debtors, for any purpose pursuant to this Order;

(k) ~~(i)~~ to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to any of the ~~Debtor~~ Debtors (as such proceedings relate to the Property or any portion thereof), the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

~~<sup>4</sup>This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

(l) to investigate, and report to this Court on, intercompany payments, transactions and other arrangements between any of the Debtors and other Persons, including, without limitation, other companies and entities that are affiliates of any of the Debtors, that appear to the Receiver to be out of the ordinary course of business. All Persons shall be required to provide any and all information and documents related to the Debtors requested by the Receiver in connection with such investigations;

(m) to undertake environmental or worker's health and safety assessments of the Property and the operations of the Debtors thereon;

(n) ~~(j)~~ to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion, and with the Applicant's consent, may deem appropriate;

(o) ~~(k)~~ to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business~~;~~:

(i) without the approval of this Court in respect of any transaction not exceeding \$~~\_\_\_\_\_~~250,000, provided that the aggregate consideration for all such transactions does not exceed \$~~\_\_\_\_\_~~1,000,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~†~~ or section 31 of the Ontario *Mortgages*

~~Act, as the case may be,<sup>5</sup> shall not be required, and in each case the Ontario Bulk Sales Act shall not apply.~~

- (p) ~~(1)~~ to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (q) ~~(m)~~ to report to, meet with and discuss with such affected Persons ~~(as defined below)~~ as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (r) ~~(n)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (s) ~~(o)~~ to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of any of the Debtor Debtors and to meet with and discuss with such governmental authority and execute any agreements required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);
- (t) ~~(p)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of any of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by any of the Debtor Debtors;

<sup>5</sup> ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~



(u) to undertake any investigations deemed appropriate by the Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;

(v) ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which any of the Debtors may have; and

(w) ~~(t)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtors,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons ~~(as defined below)~~, including each of the Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. ~~4-~~ THIS COURT ORDERS that (i) each of the Debtors, (ii) all of ~~its~~their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on ~~its~~their instructions or behalf, ~~and~~ (iii) all construction mangers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants and service providers, and all other persons acting on their instructions or behalf, and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. ~~5-~~ THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records ~~and~~, information and cloud-based data of any kind related to the business or affairs of any of the ~~Debtor~~Debtors or the Property, and any

computer programs, computer tapes, computer disks, cloud or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software, cloud and physical facilities relating thereto, provided however that nothing in this paragraph 56 or in paragraph 67 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. ~~6.~~ THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer, in a cloud or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph 7, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer, cloud or other system and providing the Receiver with any and all access codes, account names ~~and~~, account numbers and account creating credentials that may be required to gain access to the information.

~~7. — THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any~~

~~applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors~~

8. THIS COURT ORDERS that, without limiting the generality of paragraphs 5-7 of this Order, all Persons, including, without limitation, any affiliates of any of the Debtors (collectively, the “Group”), and each of them, shall be required to cooperate, and share information, with the Receiver in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors, or any of them, and/or the Property. In addition to the foregoing general cooperation and information sharing requirements, the Group, or any of them, shall be required to do the following: (a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents relevant to any of the Debtors and/or the Property: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty (30) days' notice of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required or requested with respect to the exercise of the Receiver's authority hereunder.

NO PROCEEDINGS AGAINST THE RECEIVER

9. ~~8.~~ THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “Proceeding”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

10. ~~9.~~ THIS COURT ORDERS that no Proceeding against or in respect of any of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect

of any of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

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

11. ~~10.~~ THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph 11 shall: (i) empower the Receiver or any of the Debtors to carry on any business which the Debtors ~~is~~ are not lawfully entitled to carry on, (ii) exempt the Receiver or any of the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

12. ~~11.~~ THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Debtors, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

13. ~~12.~~ THIS COURT ORDERS that all Persons having oral or written agreements with any of the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, accounting services, centralized banking services, payroll services, insurance, transportation services, utility or other services to any of the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of any of the Debtors' ~~s'~~ current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in

accordance with normal payment practices of each of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

14. THIS COURT ORDERS that in the event that an account for the supply of goods and/or services is transferred from any of the Debtors to the Receiver, or is otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

#### RECEIVER TO HOLD FUNDS

15. ~~13.~~ THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### EMPLOYEES

16. ~~14.~~ THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the applicable Debtor until such time as the Receiver, on the applicable Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## PIPEDA

17. ~~15.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by each of the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

18. ~~16.~~ THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to

be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

## LIMITATION ON THE RECEIVER'S LIABILITY

19. ~~17.~~ THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

## RECEIVER'S ACCOUNTS

20. ~~18.~~ THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>6</sup>

21. ~~19.~~ THIS COURT ORDERS that the Receiver and its legal counsel shall pass ~~its~~their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

<sup>6</sup>~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

22. ~~20.~~ THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### FUNDING OF THE RECEIVERSHIP

23. ~~21.~~ THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow from KingSett Mortgage Corporation by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~\_\_\_\_\_~~1,000,000 (or such greater amount that is acceptable to the Applicant and as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person; but subordinate in priority to the Receiver's Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

24. ~~22.~~ THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

25. ~~23.~~ THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A""B" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

26. ~~24.~~ THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates



evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

## SERVICE AND NOTICE

27. ~~25.~~ THIS COURT ORDERS that the E-Service ~~Protocool~~Guide of the Commercial List (the "~~Protocool~~Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocool~~Guide (which can be found on the Commercial List website ~~at~~ ~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>~~<https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph ~~24~~13 of the ~~Protocool~~Guide, service of documents in accordance with the ~~Protocool~~Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the ~~Protocool~~Guide with the following URL ~~'<@>'~~: [https://ksvadvisory.com/experience/case/\[●\]](https://ksvadvisory.com/experience/case/[●]).

28. ~~26.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the ~~Protocool~~Guide is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to any of the Debtors's creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

29. [THIS COURT ORDERS that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors'](#)

creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

### CRITICAL PAYMENTS

30. THIS COURT ORDERS that the Receiver may, with the written consent of the Applicant, make payments owing by any of the Debtors to suppliers, contracts, subcontractors and other creditors in respect of amounts owing prior to the date of this Order.

### **GENERAL**

31. ~~27.~~ THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

32. ~~28.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any of the Debtors.

33. ~~29.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

34. ~~30.~~ THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

35. ~~31.~~ THIS COURT ORDERS that the ~~Plaintiff~~Applicant shall have its costs of this ~~motion~~Application, up to and including entry and service of this Order, provided for by the terms of the ~~Plaintiff~~Applicant's security or, if not so provided by the ~~Plaintiff~~Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the ~~Debtor's estate~~net realizations from the Property with such priority and at such time as this Court may determine.

36. ~~32.~~ THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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37. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.

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**SCHEDULE "A" Schedule "A"**

**REAL PROPERTY**

**Churchill**

**PIN: 13493-0213(LT)**

**PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 2 & 3 PLAN 43R39986; CITY OF MISSISSAUGA**

**PIN: 13493-0226(LT)**

**PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 5 & 6 PLAN 43R39986; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 3 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 4 PLAN 4R43R38482 AS IN PR1663804; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 5 PLAN 43R38482 AS IN PR1662397; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN PR823503; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR896377; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR1021917; CITY OF MISSISSAUGA**

**PIN: 13493-0225(LT)**

**PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PART 1 PLAN 43R39884; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 3 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 4 PLAN 4R43R38482 AS IN PR1663804; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 5 PLAN 43R38482 AS IN PR1662397; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN PR823503; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR896377; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR1021917; CITY OF MISSISSAUGA**

Southdown

PIN: 13493-0044(LT)

PT LT 31 CON 3 SDS TORONTO; PT LT 32 CON 3 SDS TORONTO PTS 1 TO 6, 8, 43R13084; S/T TT129899; S/T TT103210, TT103804, TT153650, VS163947, VS42085, VS58563 MISSISSAUGA

Royal Windsor

PIN: 13493-0190 (LT)

PT LT 31, 32 CON 3 SDS DES PTS 1, 2 PL 43R11375 SAVE & EXCEPT PTS 1,2,3 PL 43R21957, EXCEPT PT 1 43R22260, EXCEPT PT 1 43R25470, EXCEPT PTS 1, 2, 3 PL 43R25635, EXCEPT PT 1 PL 43R28305 MISSISSAUGA.S/T EASEMENT IN FAVOUR OF INTERPROVINCIAL PIPE LINE COMPANY OVER PT LT 32 CON 3 SDS DES PT 2 PL 43R11375 EXCEPT PT 2 PL 43R21957 AS IN TT102320, TT104152.T/W EASEMENT OVER PT LT 32 CON 3 SDS DES PT 3 PL 43R21957 AS IN LT1712946

**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ KSV Restructuring Inc., the receiver and manager (the "Receiver") without security, of the ~~assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by~~ real property legally described in Schedule "A" (the "Real Property") to the Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated February [●], 2024 (the "Order") and all present and future assets, undertakings and personal property of 759 Winston Churchill GP Inc., 759 Winston Churchill L.P., 688 Southdown GP Inc., 688 Southdown LP, 2226 Royal Windsor GP Inc. and 2226 Royal Windsor LP (collectively, the "Debtors"), located at, related to, used in connection with or arising from or out the Real Property or which is necessary to the use and operation of the Debtor Real Property, including all proceeds there ~~from~~ from (collectively with the Real Property, the "Property"), appointed by ~~Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "the Order")~~ made in an application having Court ~~file number \_\_\_~~ File Number CV-24-00714543-00CL \_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the

Order and in the *Bankruptcy and Insolvency Act*, [R.S.C. 1985, c. B-3](#), and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, ~~20~~[2024](#).

~~[RECEIVER'S NAME]~~ [KSV Restructuring Inc.](#), solely in its capacity as Receiver of the Property, and not in its personal capacity

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

Name:

Title:

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

KINGSETT MORTGAGE CORPORATION     and     759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688 SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and 2226 ROYAL WINDSOR LP

Applicant

Respondents

Court File No.: CV-24-00714543-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced in Toronto

APPOINTING ORDER

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**TAB 4**

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

BETWEEN:

**KINGSETT MORTGAGE CORPORATION**

Applicant

- and -

**759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688  
SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and  
2226 ROYAL WINDSOR LP**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND  
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**AFFIDAVIT OF DANIEL POLLACK**  
(Sworn February 12, 2024)

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

**KINGSETT MORTGAGE CORPORATION**

Applicant

- and -

**759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688  
SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and  
2226 ROYAL WINDSOR LP**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND  
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**AFFIDAVIT OF DANIEL POLLACK  
(Sworn February 12, 2024)**

I, Daniel Pollack, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND  
SAY:**

1. I am an Executive Director, Portfolio Management, of KingSett Mortgage Corporation (“**KingSett**” or the “**Applicant**”). I have responsibility for matters pertaining to the borrowings of the following entities from KingSett: (i) 759 Churchill GP Inc. (“**Churchill GP**”), as general partner for and on behalf of 759 Winston Churchill L.P. (“**Churchill LP**” and together with Churchill GP, “**Churchill**”); (ii) 688 Southdown GP Inc. (“**Southdown GP**”), as general partner for and on behalf of 688 Southdown LP (“**Southdown LP**” and together with Southdown GP, “**Southdown**”); and (iii) 2226 Royal Windsor GP Inc. (“**Royal Windsor GP**”), as general partner for and on behalf of 2226 Royal Windsor LP (“**Royal Windsor LP**” and together with Royal

Windsor GP, “**Royal Windsor**” and collectively with Churchill and Southdown the “**Debtors**”). As such, I have personal knowledge of the matters to which I depose in this affidavit, unless otherwise indicated. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. I swear this affidavit in support of an application by the Applicant for an order (the “**Receivership Order**”) pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, among other things:

- (a) appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) without security, of the real property legally described in Schedule “A” to the proposed Receivership Order (collectively, the “**Real Property**”) and all of the presently owned or held, or hereafter acquired or held, assets, undertakings and personal property of the Debtors located at, related to, used in connection with or arising from or out of the Real Property or which is necessary to the use and operation of the Real Property, including all of the proceeds therefrom (collectively with the Real Property, the “**Property**”);
- (b) granting a first-ranking super-priority charge (the “**Receiver’s Charge**”) over the Property in favour of the Receiver and the Receiver’s counsel to secure their fees and disbursements in respect of these proceedings (these “**Receivership Proceedings**”); and
- (c) granting a second-ranking super-priority charge (the “**Receiver’s Borrowings Charge**”) over the Property for the purpose of funding the exercise of the powers

and duties conferred upon the Receiver pursuant to the proposed Receivership Order.

3. I understand that the Debtors may file a competing application under the *Companies' Creditors Arrangement Act* ("CCAA") with a priming debtor-in-possession loan. The Applicant will vigorously oppose any such application, but that is not addressed in this affidavit because the Applicant has not yet seen any CCAA application materials.

4. All references to currency in this affidavit are in Canadian dollars unless noted otherwise. The Applicant does not waive or intend to waive any applicable privilege by any statement herein.

## **I. OVERVIEW**

5. As described in greater detail below, the Debtors are privately held real estate development entities. Churchill GP, Southdown GP and Royal Windsor GP are the registered owners of the Real Property, and they hold the Real Property for the benefit of Churchill LP, Southdown LP and Royal Windsor LP, respectively. The Debtors are intending to develop three real-estate development projects on the Real Property (collectively, the "**Projects**" and each a "**Project**").

6. The Real Property and the Projects being developed thereon are comprised of the following:

- (a) a property located at 759 Winston Churchill Boulevard, Mississauga, Ontario (the "**Churchill Lands**"). The Churchill Lands are 47.15 acres and are owned by Churchill. The Churchill Lands are intended to be developed into 750,354 square feet of industrial facilities, comprised of three Class A industrial buildings.

Currently, one of the buildings is complete and fully leased, one is under construction and one has yet to have construction commence;

- (b) a property located at 688 Southdown Road, Mississauga, Ontario (the “**Southdown Lands**”). The Southdown Lands are approximately 91 acres, of which 80 acres are developable. The Southdown Lands are currently zoned for industrial use and required remediation. While KingSett confirmed that the agreed upon industrial remediation was complete and funded the remediation claim, it understands that Southdown unilaterally opted to spend significant additional funds remediating to residential standards. As a result, it is unclear to KingSett what exactly has or has not been completed. To KingSett’s knowledge, no construction has commenced on the Southdown Lands; and
- (c) a property located at 2226 Royal Windsor Drive, Mississauga, Ontario (the “**Royal Windsor Lands**”). The Royal Windsor Lands are comprised of approximately 74.5 acres of industrial zoned land. The Royal Windsor Lands were to be re-zoned for residential use, however, to the best of KingSett’s knowledge, such re-zoning efforts have not yet commenced or have not materially advanced. To KingSett’s knowledge, there is currently no active construction on the Royal Windsor Lands.

7. It is unclear to the Applicant the extent that the proposed residential re-zoning efforts are necessary or if they constitute the best use of the Southdown Lands or Royal Windsor Lands.

8. In connection with the acquisition and development of the Real Property and the Projects, KingSett extended certain loan facilities to the Debtors (collectively, the “**Loan Facilities**”), under which Loan Facilities there are aggregate principal amounts outstanding, as of January 11, 2024,

of \$328,327,905.79 for Churchill and Southdown, and as of January 22, 2024, \$35,252,643.84 for Royal Windsor. The Applicant is the senior secured lender in respect of each of the Debtors.

9. Certain Events of Default have arisen under the Loan and Security Documents (each as defined and discussed below). The Events of Default under the Loan and Security Documents prompted KingSett to issue demand letters (the “**Churchill Demand Letters**”) to Churchill and the Churchill Guarantors (as defined below) on January, 12, 2024 for the repayment of all of the indebtedness owing to KingSett by Churchill (the “**Churchill Indebtedness**”). Enclosed with the Churchill Demand Letters were notices of intention to enforce security (the “**Churchill NITES**”) delivered in accordance with section 244 of the BIA.

10. KingSett also issued demand letters (the “**Southdown Demand Letters**”) to Southdown and the Southdown Guarantors (as defined below) on January 12, 2024 for the repayment of the indebtedness owing to KingSett by Southdown (the “**Southdown Indebtedness**”). Enclosed with the Southdown Demand Letters were notices of intention to enforce security (the “**Southdown NITES**”) delivered in accordance with section 244 of the BIA.

11. On January 22, 2024, KingSett issued demand letters (the “**Royal Windsor Demand Letters**”), together with the Churchill Demand Letters and Southdown Demand Letters, the “**Demand Letters**”) to Royal Windsor for the repayment of the indebtedness owing to KingSett by Royal Windsor (the “**Royal Windsor Indebtedness**”, and together with the Churchill Indebtedness and the Southdown Indebtedness, the “**Indebtedness**”). Enclosed with the Royal Windsor Demand Letters were notices of intention to enforce security (the “**Royal Windsor NITES**” and together with the Churchill NITES and the Southdown NITES, the “**NITES**”).



12. It is of note that certain of the Debtors had been in default under the Loan and Security Documents for approximately four months prior to the delivery of the Demand Letters and NITES. Both before and after the Demand Letters and the NITES, the Applicant engaged with the Debtors in respect of the Debtors' proposed refinancing and/or restructuring proposals.

13. On January 29, 2024 counsel to the Debtors sent counsel to KingSett a letter outlining a restructuring proposal (the "**January 29 Letter**"). A copy of the January 29 Letter is attached hereto as **Exhibit "A"**. On January 31, 2024, counsel to the Applicant, in response to the January 29 Letter, delivered a letter which, among other things, noted that the proposal was not actionable, extremely light on detail and lacked any comprehensive solution for a refinancing or restructuring plan. The responding letter also explained why a CCAA proceeding is not required, and a receivership is appropriate in the circumstances. A copy of that letter is attached as **Exhibit "B"**. As of the date of this Affidavit, the Debtors have failed to table any viable solution that is palatable to KingSett.

14. The Applicant has lost all confidence in the Debtors' management to properly address liquidity issues or to develop an acceptable refinancing or restructuring plan given, among other things, the lack of solutions proposed over the months preceding this application and the fact that management allowed insurance to lapse in respect of the Churchill Lands. The Applicant's counsel has been advised by the Debtors' counsel that Churchill has since reinstated its insurance, however, the Applicant has not been provided with any evidence to confirm same.

15. The BIA prescribed ten-day period afforded to the Debtors to repay the Indebtedness prior to the commencement of any enforcement action has elapsed. Notwithstanding the expiration of

such notice period, the entirety of the Indebtedness demanded under the Demand Letters remains outstanding with interest, fees and costs continuing to accrue.

16. The Loan and Security Documents confer upon the Applicant a contractual right to appoint a receiver or receiver manager over the Property. In furtherance of its contractual rights, the Applicant has commenced these Receivership Proceedings with a view to preserving and maximizing the value of the Property and facilitating the completion and/or sale of the Real Property and the Projects, as applicable, to maximize recoveries for the Debtors' stakeholders.

17. The proposed receiver has significant experience acting as receiver in complex real estate developments. In addition, the Applicant is part of Canada's leading private equity real estate investment firm, and has significant experience dealing with the development and/or expansion of complex industrial projects. Accordingly, the Receiver, if appointed, with assistance from the Applicants, is well positioned to maximize value.

18. Given the Events of Default under the Loan and Security Documents, the Applicant's contractual rights, the Debtors' inability to repay or refinance the Indebtedness, the Debtors' inability to properly address liquidity issues or develop a refinancing or restructuring plan and the status, magnitude and complexity of the Projects, the Applicant believes that these Receivership Proceedings are in the best interests of the Debtors' stakeholders in the circumstances. The proposed Receiver's appointment is urgently required to avoid a further deterioration of KingSett's security position as a result of, among other things, ongoing monthly interest accruals of approximately \$3.5 million and the potential irreparable deterioration of value that may should any of the Debtors' insurance lapse again.

## II. BACKGROUND

### A. The Parties

19. KingSett is incorporated pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended, (the “**CBCA**”) with a registered head office located at 40 King Street West, Toronto, Ontario, M5H 3Y2. KingSett is a subsidiary of KingSett Capital Inc., a private equity real estate investment firm with approximately \$19.5 billion in assets under management.

20. Churchill GP is incorporated under the *Business Corporations Act (Ontario)* R.S.O. 1990, c. B.16, as amended, with a registered head office 7080 Derrycrest Drive, Mississauga, Ontario, Canada, L5W 0G5. Churchill GP is the general partner of Churchill LP, an entity formed under the *Limited Partnerships Act (Ontario)*, R.S.O. 1990, c. L.16 (the “**LPA**”) having its principal place of business as 5300-66 Wellington Street West, Toronto, Ontario, M5K 1E6. Churchill was formed for the purpose of holding and developing the Churchill Lands.

21. According to Churchill LP’s and Churchill GP’s Ontario corporate profile reports obtained from the Ministry of Public and Business Service Delivery on January 22, 2024 (together, the “**Churchill Corporate Profile Reports**”), Churchill’s sole director is Michael Moldenhauer, who has held the position since Churchill GP’s formation on August 20, 2019. The Churchill Corporate Profile Reports disclose that Churchill GP is Churchill LP’s sole general partner. Copies of the Churchill Corporate Profile Reports are attached hereto as **Exhibit “C”**.

22. Southdown GP is incorporated under the CBCA with a registered head office located at 5300-66 Wellington Street West, Toronto, Ontario, M5K 1E6. Southdown GP is the general partner of Southdown LP, an entity formed under the LPA having its principal place of business

as 5300-66 Wellington Street West, Toronto Ontario. Southdown was formed for the purpose of holding and developing the Southdown Lands.

23. According to Southdown LP's and Southdown GP's Ontario corporate profile reports obtained from the Ministry of Public and Business Service Delivery on January 22, 2024 (together, the "**Southdown Corporate Profile Reports**"), Southdown GP has three directors Aiden Flatley, Patrick Flatley and Michael Moldenhauer. The Southdown Corporate Profile Reports disclose that Southdown LP's sole general partner is Southdown GP. Copies of the Southdown Corporate Profile Reports are attached hereto as **Exhibit "D"**.

24. Royal Windsor GP is incorporated under the OBCA with a registered head office located at 2680 Royal Windsor Drive, Mississauga, Ontario, Canada L5J 1K7. Royal Windsor GP is the general partner of Royal Windsor LP, an entity formed under the LPA having its principal place of business as 2680 Royal Windsor Drive, Mississauga, Ontario, Canada, L5J 1K7. Royal Windsor was formed for the purpose of holding and developing the Royal Windsor Lands.

25. According to Royal Windsor GP's and Royal Windsor LP's Ontario corporate profile reports obtained from the Ministry of Public and Business Service Delivery on January 25, 2024 (together, the "**Royal Windsor Corporate Profile Reports**"), Royal Windsor GP's sole director is Michael Moldenhauer. The Royal Windsor Corporate Profile Reports disclose that Royal Windsor LP's sole general partner is Royal Windsor GP. Copies of the Royal Windsor Corporate Profile Reports are attached hereto as **Exhibit "E"**.

**B. Indebtedness Owing to the Applicant and Related Security**

26. The Loan Facilities extended by KingSett to the Debtors, are comprised of the following:

- (a) a loan to Churchill in the principal amount of \$205,000,000 (the “**Churchill Mortgage Facility**”);
- (b) cash in lieu of letters of credit in the principal amount of \$7,653,864 for the benefit of Churchill (the “**Churchill LC Facility**”, and together with the Churchill Mortgage Facility, the “**Churchill Facilities**”);
- (c) a loan to Southdown in the principal amount of \$165,000,000 (the “**Southdown Facility**”); and
- (d) a loan to Royal Windsor in the principal amount of \$35,000,000 (the “**Royal Windsor Facility**”).

27. Each of the Loan Facilities, together with the security granted by, among others, the Debtors in connection therewith, is discussed in greater detail immediately below.

(i) **The Churchill Facilities**

28. Pursuant to a commitment letter dated January 18, 2022, (as amended by a letter amendment dated March 20, 2023 (the “**Churchill Amendment**”), the “**Churchill Commitment Letter**”), between Churchill as borrower, and KingSett as lender, KingSett agreed to provide the Churchill Mortgage Facility in the principal amount of \$205,000,000. A copy of the Churchill Commitment Letter is attached hereto as **Exhibit “F”**.

29. Under the terms of the Churchill Commitment Letter, the Churchill Mortgage Facility: (i) bears interest at a rate of the Royal Bank of Canada’s prime rate plus 3.50%, with a floor rate of 5.95%, compounded monthly, not in advance, and payable monthly, save for the last month of the 25 month term (the “**Churchill Term**”), at which time the interest rate becomes 8.95% per annum;

and (ii) matures on March 1, 2024 (the “**Churchill Maturity Date**”). As of January 11, 2024, the total indebtedness under the Churchill Mortgage Facility was \$147,852,782.89 with interest, fees and costs continuing to accrue. In accordance with the Churchill Commitment Letter, only a portion of the Churchill Mortgage Facility was ever advanced due to the status of the Project.

30. In addition to the Churchill Mortgage Facility, pursuant to the Churchill Amendment, KingSett agreed to provide the Churchill LC Facility in the principal amount of \$7,653,864. The Churchill LC Facility: (i) bears interest at a rate of the Royal Bank of Canada’s prime rate plus 2.00%, with a floor rate of 8.70%, compounded monthly, not in advance, and payable monthly, save for the last month of Churchill Term, at which time the interest rate becomes 14.7% per annum; and (ii) matures on the Churchill Maturity Date. As of January 11, 2024, the total indebtedness under the Churchill LC Facility was \$7,733,111.66 with interest, fees and costs continuing to accrue.

31. The payment and performance of all of the Churchill Indebtedness and obligations under the Churchill Facilities has been unconditionally, absolutely, and irrevocably guaranteed by:

- (a) WPAM Royal Windsor GP Inc., in its capacity as general partner for and on behalf of WPAM Royal Windsor Limited Partnership (together, “**WPAM**”) and RW GP Inc., in its capacity as general partner for and on behalf of RW Limited Partnership (together, “**RW**”), as guarantors and primary obligors, pursuant to a Guarantee dated February 16, 2022 (the “**WPAM/RW Guarantee**”);
- (b) 2712611 Ontario Corp., Obayashi Canada Ltd. and Southshore GP Inc., in its capacity as general partner for and on behalf of Southshore Holdings LP (collectively, the “**Churchill Limited Recourse Guarantors**”, together with

WPAM and RW, the “**Churchill Guarantors**” and each a “**Churchill Guarantor**”) pursuant to a Limited Recourse Guarantee dated February 16, 2022 (the “**Limited Recourse Guarantee**”); and

- (c) WPAM and RW pursuant to a Project Completion and Cost Overrun Guarantee dated February 16, 2022 (the “**Overrun Guarantee**”, together with the WPAM/RW Guarantee and Limited Recourse Guarantee, the “**Churchill Guarantees**”).

32. Copies of the Churchill Guarantees are collectively attached hereto as **Exhibit “G”**.

33. As general and continuing security for the payment and performance of the Churchill Indebtedness, KingSett was granted various security by Churchill (the “**Churchill Security**”) as well as certain collateral security by the Churchill Guarantors (“**Churchill Collateral Security**”).

The Churchill Security and the Churchill Collateral Security includes, *inter alia*:

- (a) a first ranking mortgage/charge over the Churchill Lands registered in the amount of \$250,000,000 (the “**Churchill Mortgage**”);
- (b) a General Assignment of Leases and Rents dated February 16, 2022 (the “**Churchill Assignment of Rents**”);
- (c) a General Security Agreement dated February 16, 2022 (the “**Churchill GSA**”);
- (d) a General Assignment of Material Contracts dated February 16, 2022 (the “**Churchill Assignment of Contracts**”);

- (e) an Assignment of Insurance dated February 16, 2022 (the “**Churchill Insurance Assignment**”);
- (f) a Specific Assignment of Development Management Agreement with an acknowledgement of Kenaidan Contracting Ltd. (“**Kenaidan**”) dated February 16, 2022 (the “**Kenaidan Assignment**”);
- (g) a Specific Assignment of Development Management Agreement with an acknowledgement of 2668945 Ontario Corp. dated February 16, 2022 (the “**2668945 Assignment**”); and
- (h) a Share Pledge Agreement dated February 16, 2022, in respect of shares held by the Churchill Limited Recourse Guarantors in Churchill (the “**Pledge Agreement**”).

34. Copies of the Churchill Mortgage, the Churchill Assignment of Rents, the Churchill GSA, the Churchill Assignment of Contracts, the Churchill Insurance Assignment, the Kenaidan Assignment, the 2668945 Assignment and the Pledge Agreement are attached hereto as **Exhibits “H” – “O”**, respectively. The Churchill Commitment Letter, the Churchill Guarantees, the Churchill Security and the Churchill Collateral Security are referred to collectively herein as the “**Churchill Loan and Security Documents**”.

35. Notices of the Churchill Mortgage and Churchill Assignment of Rents were registered in the Land Registry Office for the Land Titles Division of Peel (No. 43). Copies of the sub-searches of title conducted on February 5, 2024 (collectively, the “**Churchill Parcel Registers**”) are attached hereto as **Exhibit “P”**.



36. KingSett's security interest in and to all of Churchill's present and after acquired personal property pertaining to the Churchill Lands, and the proceeds thereof, granted pursuant to the Churchill GSA, was registered under the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended (the "**PPSA**"). KingSett's registration in this regard is reflected in the search results (the "**Churchill PPSA Search Results**") conducted against Churchill under the PPSA attached hereto as **Exhibit "Q"**.

(ii) **Southdown Facility**

37. Pursuant to a commitment letter dated August 19, 2021 (as amended by a letter amendment dated March 29, 2023, the "**Southdown Commitment Letter**") between, Southdown, as borrower, and KingSett, as lender, KingSett agreed to provide the Southdown Facility in the principal amount of \$165,000,000. A copy of the Southdown Commitment Letter is attached hereto as **Exhibit "R"**.

38. Under the terms of the Southdown Commitment Letter, the Southdown Facility: (i) bears interest at the greater of Royal Bank of Canada's prime rate plus 6.05% per annum, compounded and payable monthly, with a floor rate of 8.50% per annum save for the last month of the 25 month term at which time the interest rate becomes 14.50% per annum; and (ii) matured on October 1, 2023. As of January 11, 2024, the total indebtedness under the Southdown Commitment Letter is \$172,742,011.24. Interest, fees and costs continue to accrue.

39. The payment and performance of all of the Southdown Indebtedness and obligations under, among other things, the Southdown Commitment Letter, has been unconditionally guaranteed by:

- (a) South Shore GP Inc., in its capacity as general partner for and on behalf of South Shore Holdings LP (together, the “**South Shore Guarantor**”) pursuant to a Guarantee dated September 15, 2021 (the “**South Shore Guarantee**”); and
- (b) South Shore GP II Inc. (“**South Shore GP**”), in its capacity as general partner for and on behalf of South Shore Holdings II LP (together with South Shore GP, the “**Southdown Limited Recourse Guarantors**”, and collectively with the South Shore Guarantor the “**Southdown Guarantors**”) pursuant to a Limited Recourse Guarantee dated September 15, 2021 (the “**Southdown Limited Recourse Guarantee**”, together with the South Shore Guarantee, the “**Southdown Guarantees**”).

40. Copies of the Southdown Guarantees are collectively attached hereto as **Exhibit “S”**.

41. As general and continuing security for the payment and performance of the Southdown Indebtedness, KingSett was granted various security by Southdown (the “**Southdown Security**”) and certain collateral security by the Southdown Guarantors (collectively, the “**Southdown Collateral Security**”). The Southdown Security and the Southdown Collateral Security includes, *inter alia*:

- (a) a first ranking mortgage/charge over the Southdown Lands, registered in the amount of \$193,750,000 (the “**Southdown Mortgage**”);
- (b) an Assignment of Rents and Leases dated September 15, 2021 (the “**Southdown Assignment of Rents**”);

- (c) an Assignment of Insurance dated September 15, 2021 (the “**Southdown Assignment of Insurance**”);
- (d) an Assignment of Material Contracts dated September 15, 2021 (the “**Southdown Assignment of Material Contracts**”);
- (e) a General Security Agreement dated September 15, 2021 (the “**Southdown GSA**”);  
and
- (f) a Share Pledge Agreement dated September 15, 2021, in respect of shares held by the Southdown Guarantors in Southdown (the “**Southdown Pledge**”).

42. Copies of the Southdown Mortgage, the Southdown Assignment of Rents, the Southdown Assignment of Insurance, the Southdown GSA, the Southdown Assignment of Material Contracts and the Southdown Pledge are attached hereto as **Exhibits “T” – “Y”**, respectively. The Southdown Commitment Letter, the Southdown Guarantees, the Southdown Security and the Southdown Collateral Security are referred to collectively herein as the “**Southdown Loan and Security Documents**”.

43. Notices of the Southdown Mortgage and Southdown Assignment of Rents were registered in the Land Registry Office for the Land Titles Division of Peel (No. 43). Copies of the sub-searches of title conducted on February 5, 2024 (the “**Southdown Parcel Register**”) are attached hereto as **Exhibit “Z”**.

44. KingSett’s security interest in and to all of Southdown’s present and after acquired personal property pertaining to the Southdown Lands, and the proceeds thereof, granted pursuant to the Southdown GSA, was registered under the PPSA on September 13, 2021. KingSett’s registration

in this regard is reflected in the search results (the “**Southdown PPSA Search Results**”) conducted against Southdown under the PPSA collectively attached hereto as **Exhibit “AA”**.

(iii) **Royal Windsor Facility**

45. Pursuant to a commitment letter dated June 28, 2022 (the “**Royal Windsor Commitment Letter**”) between, Royal Windsor, as borrower, and KingSett, as lender, KingSett agreed to provide the Royal Windsor Facility in the principal amount of \$35,000,000. A copy of the Royal Windsor Commitment Letter is attached hereto as **Exhibit “BB”**.

46. Under the terms of the Royal Windsor Commitment Letter, the Royal Windsor Facility: (i) bears interest at a rate of the Royal Bank of Canada’s prime rate plus 4.80%, compounded monthly, not in advance, and payable monthly, save for the last month of the 25 month term, at which time the interest rate becomes 14.5% per annum; and (ii) matures September 1, 2024. As of January 22, 2024, the total indebtedness under the Royal Windsor Facility was \$35,252,643.84 with interest, fees and costs continuing to accrue.

47. The payment and performance of all of the Royal Windsor Indebtedness and obligations under, among other things, the Royal Windsor Commitment Letter, has been unconditionally guaranteed by:

- (a) South Shore GP II Inc., in its capacity as general partner for and on behalf of South Shore Holdings II LP (in such capacity, the “**South Shore II Guarantor**”) pursuant to a Guarantee dated July 8, 2022 (the “**South Shore II Guarantee**”);
- (b) Southshore 2226 RW GP Inc., its capacity as general partner for and on behalf of Southshore 2226 RW Holdings LP, Southshore RW GP Inc. and 1000237699

Ontario Inc. (collectively, the “**Royal Windsor Limited Recourse Guarantors**”) pursuant to a Limited Recourse Guarantee dated July 8, 2022 (the “**Royal Windsor Limited Recourse Guarantee**”); and

- (c) Southdown (in such capacity and together with the Royal Windsor Limited Recourse Guarantors and the South Shore II Guarantor, the “**Royal Windsor Guarantors**”) pursuant to a Guarantee dated July 8, 2022 (the “**Collateral Property Limited Recourse Guarantee**”, together with the Royal Windsor Limited Recourse Guarantee and the South Shore II Guarantee, the “**Royal Windsor Guarantees**”).

48. Copies of the Royal Windsor Guarantees are collectively attached hereto as **Exhibit “CC”**.

49. As general and continuing security for the payment and performance of the Royal Windsor Indebtedness, KingSett was granted various security by Royal Windsor (the “**Royal Windsor Security**”) and certain collateral security by the Royal Windsor Guarantors (collectively, the “**Royal Windsor Collateral Security**”). The Royal Windsor Security and the Royal Windsor Collateral Security includes, *inter alia*:

- (a) a first ranking mortgage/charge over the Royal Windsor Lands, registered in the amount of \$43,750,000 (the “**Royal Windsor Mortgage**”);
- (b) an Assignment of Rents and Leases dated July 8, 2022 (the “**Royal Windsor Assignment of Rents**”);
- (c) an Assignment of Insurance dated July 8, 2022 (the “**Royal Windsor Assignment of Insurance**”);

- (d) a General Assignment of Material Contracts dated July 8, 2022 (the “**Royal Windsor Assignment of Contracts**”);
- (e) a General Security Agreement dated July 8, 2022 (the “**Royal Windsor GSA**”);
- (f) a Collateral Mortgage dated July 8, 2022, in respect of the Southdown Lands (the “**Collateral Mortgage**”);
- (g) a Share Pledge Agreement dated July 8, 2022, in respect of shares held by the Royal Windsor Limited Recourse Guarantors in Royal Windsor (the “**Royal Windsor Pledge**”);
- (h) a General Assignment of Rents and Leases dated July 8, 2022 (the “**Royal Windsor Collateral Assignment of Rents**”); and
- (i) an Assignment of Insurance dated July 8, 2022 (the “**Royal Windsor Collateral Assignment of Insurance**”).

50. Copies of the Royal Windsor Mortgage, Royal Windsor Assignment of Rents, Royal Windsor Assignment of Insurance, Royal Windsor Assignment of Contracts, Royal Windsor GSA, Collateral Mortgage, Royal Windsor Pledge, Royal Windsor Collateral Assignment of Rents and Royal Windsor Collateral Assignment of Insurance are attached hereto as **Exhibits “DD” – “LL”**, respectively. The Royal Windsor Commitment Letter, the Royal Windsor Guarantees, the Royal Windsor Security and the Royal Windsor Collateral Security are referred to collectively herein as the “**Royal Windsor Loan and Security Documents**” (together with the Churchill Loan and Security Documents and the Southdown Loan and Security Documents, the “**Loan and Security Documents**”).

51. Notices of the Royal Windsor Mortgage and Royal Windsor Assignment of Rents were registered in the Land Registry Office for the Land Titles Division of Peel (No. 43). Copies of the sub-searches of title conducted on February 5, 2024 (the “**Royal Windsor Parcel Register**”) are attached hereto as **Exhibit “MM”**.

52. KingSett’s security interest in and to all of Royal Windsor’s present and after acquired personal property pertaining to the Royal Windsor Lands, and the proceeds thereof, granted pursuant to the Royal Windsor GSA, was registered under the PPSA. KingSett’s registration in this regard is reflected in the search results (the “**Royal Windsor PPSA Search Results**”) conducted against Royal Windsor under the PPSA collectively attached hereto as **Exhibit “NN”**.

### **C. The Debtors’ Other Secured Creditors**

53. As disclosed within the Churchill Parcel Registers, the Southdown Parcel Register, the Royal Windsor Parcel Register, the Churchill PPSA Search Results, the Southdown PPSA Search Results and the Royal Windsor PPSA Search Results various other registrations have been made against the Property, including the Real Property.

54. Each of the Debtors’ secured creditors of which the Applicant is aware is detailed below. The Applicant intends to provide notice of these Receivership Proceedings to all such secured creditors.

#### **(i) Churchill**

55. Seven construction liens are currently registered against some or all of the Churchill Lands (the “**Churchill Liens**”), as evidenced by the Churchill Parcel Registers. The most notable of the Churchill Liens is held by Kenaidan and is registered in the amount of \$30,076,837. Kenaidan is

party to a construction agreement with Churchill that was assigned to KingSett pursuant to the Kenaidan Assignment as part of the Churchill Security.

56. The balance of the Churchill Liens are as follows:

- (a) Superior Sprinkler Co. Ltd. - \$550,503;
- (b) JC Infrastructure Ltd. – \$2,015,660;
- (c) Noram Glass Corporation - \$117,695;
- (d) Black and McDonald Limited - \$289,607;
- (e) Nucor Steel ULC - \$145,240; and
- (f) Montana Electrical Contractors Ltd. - \$637,007.

57. The Churchill PPSA Search Results also disclose a registration by the Toronto Dominion Bank in the accounts of Churchill GP.

(ii) **Southdown**

58. Two construction liens are currently registered against the Southdown Lands (the “**Southdown Liens**”), as evidenced by the Southdown Parcel Registers. The Southdown Liens are as follows:

- (a) Kenaidan – \$9,572,190; and
- (b) Soilcan Inc. - \$3,950,495.



59. There is also a second mortgage/charge (the “**Subordinate Security**”) registered against the Southdown Lands by 7037619 Canada Inc. (the “**Subordinate Lender**”) in the amount of \$20,000,000, which was granted by Southdown as security for a loan provided by an entity related to Southdown. Pursuant to a Subordination & Standstill Agreement dated September 15, 2021, as amended by an Amended Subordination and Standstill Agreement dated June 16, 2023, between KingSett, the Subordinate Lender and Southdown, the Subordinate Lender has agreed to postpone and subordinate the Subordinate Security in favor of the Southdown Security.

(iii) **Royal Windsor**

60. The Royal Windsor PPSA Search Results and Royal Windsor Parcel Register did not disclose any other secured creditors of Royal Windsor.

**III. THE EVENTS OF DEFAULT**

(i) **Churchill Defaults**

61. On January 12, 2024, KingSett issued the Churchill Demand Letters contemporaneously with the Churchill NITES in accordance with section 244 of the BIA. A copy of the Churchill Demand Letters and Churchill NITES are attached hereto as **Exhibit “OO”**.

62. The defaults enumerated within the Churchill Demand Letters include a failure to pay the monthly payments of interest in accordance with section A12 of the Churchill Commitment Letter and section 3(b) of the Churchill Mortgage since November 2023 (along with any other events of default having occurred and continuing under the Churchill Commitment Letter and Churchill Mortgage, the “**Churchill Events of Default**”).

63. In addition to the Churchill Events of Default, KingSett has recently been made aware of certain additional events of default including, but not limited to, lapsing of Churchill's insurance, which the Applicant has not been able to confirm has been reinstated, and the registration of the Churchill Liens.

*(ii)* **Southdown Defaults**

64. On January 12, 2024, KingSett also issued the Southdown Demand Letters contemporaneously with the Southdown NITES in accordance with section 244 of the BIA. A copy of the Southdown Demand Letters and Southdown NITES are attached hereto as **Exhibit "PP"**.

65. The defaults enumerated within the Southdown Demand Letters include the failure to: (i) pay the Indebtedness in full by the maturity date in accordance with section A9 of the Southdown Commitment Letter and 3(c) of the Southdown Mortgage; and (ii) pay monthly payments of interest in accordance with section A11 of the Southdown Commitment Letter and 3(b) of the Southdown Mortgage since September 2023 (collectively, along with any other events of default having occurred and continuing under the Southdown Commitment Letter and Southdown Mortgage, the "**Southdown Events of Default**").

66. In addition to the Southdown Events of Default, KingSett has recently been made aware of certain additional events of default including, but not limited to, the registration of the Southdown Liens.

(iii) **Royal Windsor Defaults**

67. On January 22, 2024, KingSett issued the Royal Windsor Demand Letters contemporaneously with the Royal Windsor NITES in accordance with section 244 of the BIA. A copy of the Royal Windsor Demand Letters and Royal Windsor NITES are attached hereto as **Exhibit “QQ”**.

68. The defaults enumerated within the Royal Windsor Demand Letters include breaches of section 28(e) of the Royal Windsor Mortgage and section 28(e) of the Collateral Mortgage caused by the Southdown Events of Default (collectively, along with any other events of default having occurred and continuing under the Royal Windsor Commitment Letter and the Royal Windsor Mortgage, the “**Royal Windsor Events of Default**”, and together with the Southdown Events of Default and the Churchill Events of Default, the “**Events of Default**”).

69. As is previously noted in this affidavit, the ten-day period afforded to the Debtors and the applicable guarantors to repay all of the Indebtedness prior to the commencement of any enforcement action has expired. Notwithstanding the issuance of the Demand Letters, the Indebtedness remains outstanding and no palatable prospect for immediate repayment, in whole or in part, has materialized to date.

**IV. THE PROPOSED RECEIVERSHIP**

70. The Debtors are in default of their obligations under the Loan and Security Documents and are unable to repay the Indebtedness despite months of patience and multiple indulgences on the part the Applicant. In the circumstances, and as is more explained in more detail in paragraphs 12-18 of this affidavit, the Applicant has lost all confidence in the Debtors’ management to continue to satisfy the Debtors’ significant obligations, obtain refinancing, table a viable restructuring

proposal, manage the Property and complete the Projects in a timely manner or at all. The Applicant has likewise lost all faith in the Debtors' ability to protect the Property by which the Indebtedness is secured, including as a result of the Debtors allowing the insurance with respect to the Churchill Lands to lapse.

71. Pursuant to the Loan and Security Documents, the Applicant has a contractual right to the appointment of a receiver upon the occurrence of a default or event of default, as applicable. In furtherance of their contractual rights, the Applicant has commenced these Receivership Proceedings to protect its investment and preserve and maximize the value of the Property.

72. The Receiver's proposed appointment is sought on an urgent basis in light of, among other things, the critical and value-preserving steps that are required to prevent the deterioration of certain of the Property. Such steps include immediately securing any insurance, should it be necessary, engaging certain trades, continuing the pursuit of remediation and re-zoning efforts to the extent that such efforts are necessary and commencing work to ensure the safety of the Projects undertaken thereon. In addition, given that KingSett is accruing but not being paid interest of approximately \$3.5 million per month, time is of the essence.

73. The Applicant believes that if the Receiver is appointed on the terms of the proposed Receivership Order, these Receivership Proceedings will provide the stability, structure and supervision required to preserve the value of the Property, including each of the Projects. Moreover, the Applicant believes that these Court-supervised Receivership Proceedings and the appointment of the proposed Receiver will, among other things, provide the most effective and appropriate means of:

- (a) attending to, securing and advancing the development of the Projects as and where appropriate; and
- (b) effecting an orderly, efficient and transparent sale of the Property, with a view to maximizing recoveries for, and distributing funds to, the Debtors' stakeholders.

74. In light of the foregoing, I believe that the appointment of the proposed Receiver over the Property is just and convenient.

75. KSV is prepared to act as the Receiver if so appointed. I am advised by Noah Goldstein of KSV, and believe that, KSV is a "licensed trustee" as such term is defined in the BIA and has extensive experience in Canadian insolvency proceedings, including with respect to complex real estate developments. A copy of KSV's consent to act as the Receiver is attached hereto as **Exhibit "RR"**.

76. I swear this affidavit in support of the Applicant's application to appoint the Receiver over the Property, and for no other or improper purpose.

**SWORN REMOTELY** by Daniel Pollack stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on February 12, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



**MILAN SINGH-CHEEMA**  
Commissioner for Taking Affidavits  
(or as may be)



**DANIEL POLLACK**

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**KINGSETT MORTGAGE CORPORATION**      and      **759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688 SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and 2226 ROYAL WINDSOR LP**

Applicant

Respondents

Court File No.: CV-24-00714543-00CL

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

Proceedings commenced in Toronto

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**Affidavit of Daniel Pollack**

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**BENNETT JONES LLP**

One First Canadian Place, Suite 3400  
P.O. Box 130  
Toronto, ON M5X 1A4

**Sean Zweig** (LSO# 57307I)

Tel: (416) 777-6254

Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

**Aiden Nelms** (LSO#: 74170S)

Tel: (416) 777-4642

Email: [nelmsa@bennettjones.com](mailto:nelmsa@bennettjones.com)

**Milan Singh-Cheema** (LSO# 88258Q)

Tel: (416) 777-5527

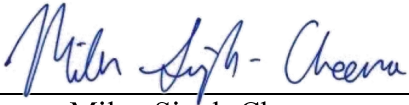
Email: [singhcheemam@bennettjones.com](mailto:singhcheemam@bennettjones.com)

Lawyers for the Applicant

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THIS IS **EXHIBIT "A"** REFERRED TO IN THE AFFIDAVIT  
OF DANIEL POLLACK, SWORN BEFORE ME THIS  
12<sup>TH</sup> DAY OF FEBRUARY, 2024.



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Milan Singh-Cheema  
A Commissioner for taking Affidavits  
(or as may be)





McCarthy Tétrault LLP  
PO Box 48, Suite 5300  
Toronto-Dominion Bank Tower  
Toronto ON M5K 1E6  
Canada  
Tel: 416-362-1812  
Fax: 416-868-0673

**Heather L. Meredith**  
Direct Line: 416-601-8342  
Direct Fax: 416-868-0673  
Email: hmeredith@mccarthy.ca

January 29, 2024

**Via Email (zweigs@bennettjones.com)**

Sean H. Zweig  
Associate  
Bennett Jones LLP  
3400 One First Canadian Place P.O. Box 130  
Toronto ON M5X 1A4  
Canada

Dear Sean:

**Re: Proposed Forbearance among Kingsett Mortgage Corporation (“Kingsett”) and the South Shore Group; And Re: 2226 Royal Windsor LP, 759 Winston Churchill L.P., 688 Southdown LP borrowers and guarantors (the “Projects”)**

Further to our discussions, I write to propose a constructive approach to addressing the present issues in respect of the three Projects in respect of which Kingsett served its demands and notices of intention to enforce security.

The proposal is as follows: that Kingsett provide a 30 day forbearance period to South Shore during which time South Shore will work with Kingsett on a restructuring solution. At this time, South Shore is contemplating the following, although this is subject to further discussion and refinement:

- 1) A CCAA filing with PWC as Monitor (note that PWC has been retained as financial advisor to South Shore and is presently working on sizing the financial requirements and assisting with strategy development);
- 2) A stalking horse transaction involving the creation of a NewCo controlled by existing management and funded by additional equity injections, with exit financing from Kingsett; and
- 3) DIP financing by Kingsett, with milestones for sale completion and reporting rights.

This is not the only possible approach, and it may also be possible to identify re-financing opportunities or other DIP financing if that is Kingsett’s preference. However, the above is one potential solution that we believe would be mutually beneficial to Kingsett and South Shore.

South Shore recognizes that Kingsett has requested a consent to a receivership filing as a condition of any forbearance. However, South Shore is of the view that there are numerous reasons why a CCAA approach is the most appropriate in this case and makes good business sense for Kingsett and South Shore. Among other things:

1. This is more than a simple real estate project for various reasons, including the following:
  - (a) South Shore does more than simply construct buildings on real property. South Shore specializes in *developing* complex properties, including through environmental remediation, land severance, addressing and accommodating waterways and storm water ponds, designing and coordinating with government on new roads and intersections, road widening, diverting culverts and creeks and addressing public transportation systems. These development steps involve detailed public works projects, and require extensive ongoing coordination with certain municipalities, the Conservation Authority and various provincial ministries. These steps are complex, rely heavily on relationships, experience and expertise and are negotiated and completed in accordance with time-sensitive schedules, many of which are presently underway and at critical points. It is difficult to imagine how a receiver could manage these steps appropriately or efficiently, and interruption of these steps, or a failure to complete them, would result in significant loss of value in respect of the Projects.

By way of just one of many examples, 688 Southdown Road is a 91.4 acre former regulated environmental land fill site. The planning and coordination of remediating a highly contaminated land fill site involves several work paths to manage environmental remediation, comply with ongoing monitoring and filing requirements, prepare a Closure Plan, consult with the Ministry, and apply to and obtain approvals from the Minister. It is essential to complete this work-stream in order to remove the current use restrictions on this property, which presently prevent its use as anything other than an environmental land fill site. Such restrictions on land use have a significant impact on the property value. At this stage, substantial effort and cost (in excess of \$30,000,000 to date) has already gone into remediating this site. Management is in the final stages of completing the remediation, preparing the Closure Plan and obtaining signoff and approval from the Ministry. The ability to achieve the critical goal of such effort – having the land use restrictions lifted - will be significantly imperilled if the present time-sensitive requirements involved in this process are not met and approvals obtained. Similarly, to expect a receiver or future buyer with no knowledge of the environmental remediation work to date to successfully complete the approval process would be highly speculative at best.

Ultimately, to properly realize on the value of this property, including the value already invested in environmental remediation, continuity in respect of the environmental issues is critical. South Shore is of the view that a receivership filing and sale would imperil this process, negatively impacting the asset value, business and likelihood of recovery for Kingsett.

- (b) These Projects are part of the larger South Shore Group, with various interconnections in the form of cross-guarantees and cross-defaults. The South Shore Group business, employees and other stakeholders would be negatively affected by a receivership of the Project companies and the cascade of defaults in other entities. This includes negative impacts on tenants and other third party

property users of the Kingsett-related properties and guarantors. All of this can be better addressed in a well-managed CCAA process.

2. There has been no loss of confidence in management by Kingsett. The management of South Shore Group has worked diligently with Kingsett to address challenges caused by various external factors outside of the control of management, including: delays in City permitting post-COVID, which resulted in scheduling delays and increased interest servicing costs; cost increases post-COVID as a result of inflationary pressures and supply chain issues; additional environmental remediation costs; and issues arising from a change of ownership at certain senior partners, which resulted in an unexpected lack of access to additional capital and a lack of cooperation in refinancing efforts.

In the face of these external challenges, management has diligently worked with Kingsett, including to inject significant additional equity in the past 18 months. Management has consistently and repeatedly shown themselves to be good partners to Kingsett and Kingsett has candidly acknowledged that management is not the issue in this matter.

3. The CCAA would be a more cost-effective process than multiple separate receiverships, while still addressing the fundamental challenges facing each project and providing protections to address secured creditor concerns.
4. It may be possible to develop a going concern solution for some or all of the South Shore Group. As described above, it may be possible to develop a stalking horse transaction that quickly and effectively addresses the issues facing the companies, recapitalizes them and positions them to realize the real value in these projects. At minimum, a CCAA process can allow for a sales process to occur with management continuity and involvement in the interim. Carefully managing the projects to complete key steps (such as the environmental remediation step described above) will produce a higher and better result than an immediate receivership sale and would ensure that parties such as the guarantor entities are not affected unnecessarily.

South Shore has been working diligently since hearing from Kingsett last week to identify a path forward to an ongoing, mutually beneficial relationship. While South Shore strongly believes that it makes sense for such a path to involve a CCAA process rather than a receivership for the reasons described above, the form of CCAA structure described here is just one potential option.

Ultimately, South Shore looks forward to working together with Kingsett to craft the best solution and to proactively work through any concerns Kingsett may have. While this does require a brief period of forbearance now before initiating legal action, the goal is to produce better results in a faster timeframe and for lower costs than would be obtained in a receivership.

We look forward to hearing from you and working together on this matter.

Yours truly,



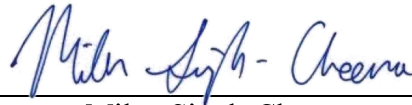
Heather L. Meredith  
Partner | Associée

HLM/jep

c: Sarit Pandya (spandya@mccarthy.ca)  
Daniel Pollack (dpollack@kingsettcapital.com)  
Michael Moldenhauer (mm@moldenhauer.ca)

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THIS IS **EXHIBIT "B"** REFERRED TO IN THE AFFIDAVIT  
OF DANIEL POLLACK, SWORN BEFORE ME THIS  
12<sup>TH</sup> DAY OF FEBRUARY, 2024.



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Milan Singh-Cheema  
A Commissioner for taking Affidavits  
(or as may be)



Bennett Jones

Bennett Jones LLP

3400 One First Canadian Place, PO Box 130

Toronto, Ontario, Canada M5X 1A4

Tel: 416.863.1200 Fax: 416.863.1716

**Sean H. Zweig**  
Partner  
Direct Line: 416.777.6254  
e-mail: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

January 31, 2024

**Via E-mail ([hmeredith@mccarthy.ca](mailto:hmeredith@mccarthy.ca))**

McCarthy Tétrault LLP  
Suite 5300, 66 Wellington Street West  
Box 48  
Toronto, Ontario  
M5K 1E6

**Attention: Heather L. Meredith**

Dear Sirs/Mesdames:

**Re: Obligations of 2226 Royal Windsor LP, 759 Winston Churchill L.P., and  
688 Southdown LP (collectively, the “Borrowers”) to KingSett Mortgage Corporation  
 (“KingSett”)**

We write in response to your letter dated January 29, 2024. While we acknowledge the constructive tone of the letter, we note that it is exceptionally light on details with respect to your client’s proposed path forward. At this stage, the proposal seems to be a CCAA filing with (i) PwC as Monitor, (ii) a stalking horse transaction by management on unknown terms with undefined exit financing to be provided by KingSett, and (iii) an unknown amount of DIP financing to be provided by KingSett with undefined milestones and reporting rights. As should be expected, KingSett is very disappointed and concerned with the current status of the Borrowers’ proposal, particularly given that the demands and NITES were sent more than four months after payment defaults began under certain of the Borrowers’ loan facilities and KingSett has repeatedly advised the Borrowers that a comprehensive solution is required.

Instead of being a proposal that is remotely actionable – or of any interest to KingSett for that matter – most of the letter appears to be an attempt to self-servingly paper the record in connection with a potential contested receivership application. We note in that regard that the letter was not sent on a without prejudice basis, which it presumably would have been if the true purpose was settlement discussions.

With respect to the substantive arguments in the letter as to why a CCAA filing would be more appropriate than a receivership, we note the following (which is intended to address certain of the specific arguments raised in the letter, but not be a comprehensive explanation as to why a receivership is more appropriate in the circumstances):

January 31, 2024

Page 2

1. The fact that South Shore does not simply construct buildings on real property that is ready for development will not create any difficulties for an experienced receiver. The receiver would have the benefit of working with KingSett, which is a part of Canada's leading private equity real estate investment firm, and can also engage whatever employees, consultants, or advisors of the Borrowers or otherwise that would be necessary or desirable to continue value accretive work at the properties. KingSett Capital has bought/sold approximately \$5.1 billion of industrial property in the last five years, and has extensive experience in major redevelopment/expansion projects across Canada. There is simply no basis for the suggestion that a receiver could not manage this appropriately or efficiently. Receivers routinely operate businesses far more complex than South Shore without incident or issue.
2. We and KingSett will not purport to advise South Shore as to how it can or should manage its various cross-guarantees and cross-defaults; we will simply note that (i) there is no basis for the bald assertion that employees, tenants, other third party property users and other stakeholders would be negatively affected by a receivership, and (ii) there are ways for South Shore to manage cross-guarantee and cross-default risks that do not take away KingSett's statutory and contractual rights to the appointment of a receiver.
3. Contrary to what is stated in the letter, there has been a loss of confidence in management by KingSett. To be clear, KingSett has previously advised that Mr. Moldenhauer is a "good guy", but that does equate to faith in management. KingSett's lost faith in management has resulted from management's refusal and/or inability to properly address the Borrowers' liquidity issues. Since at least March, 2023, KingSett has been discussing the Borrowers' liquidity issues with management, and certain interest has not been paid since September, 2023. Despite the amount of time management has had to develop a refinancing or restructuring plan, no such plan exists, which is evident from your January 29 letter. In addition, we understand that management has allowed insurance to lapse with respect to the 759 Winston Churchill project. While management may not be the problem *per se*, it has repeatedly demonstrated that it is unwilling and/or unable to find a solution.
4. The assertion that a CCAA would be more cost-effective has no basis, and is not consistent with our experience in these matters. It is a particularly non-credible statement given that at this point the Borrowers do not have a fully developed – let alone actionable – plan for their proposed CCAA proceeding.
5. A CCAA filing is not required to achieve a going concern solution. To the extent a compelling stalking horse or other refinancing transaction does materialize, that can be implemented in a receivership proceeding. In addition, to the extent a receiver believes it would be beneficial, management could continue to be involved, but under the supervision and oversight of the receiver.

For clarity, KingSett is not prepared to provide the requested 30-day forbearance at this time. Accordingly, our instructions are to continue preparing a receivership application. Unless the Borrowers come back to KingSett in very short order with an attractive proposal, we expect to proceed with the receivership application.




January 31, 2024

Page 3

We are available to discuss any questions or further proposals by the Borrowers.

Yours truly,

**BENNETT JONES LLP**

DocuSigned by:  
  
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**Sean H. Zweig**

cc: Sarit Pandya (McCarthy Tétrault LLP)  
Aiden Nelms and Milan Singh-Cheema (Bennett Jones LLP)  
Scott Coates, Justin Walton and Daniel Pollack (KingSett Mortgage Corporation)

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THIS IS **EXHIBIT "C"** REFERRED TO IN THE AFFIDAVIT  
OF DANIEL POLLACK, SWORN BEFORE ME THIS  
12<sup>TH</sup> DAY OF FEBRUARY, 2024.



---

Milan Singh-Cheema  
A Commissioner for taking Affidavits  
(or as may be)



## Profile Report

759 WINSTON CHURCHILL L.P. as of January 22, 2024

Act	Limited Partnerships Act
Type	Ontario Limited Partnership
Firm Name	759 WINSTON CHURCHILL L.P.
Business Identification Number (BIN)	290909837
Declaration Status	Active
Declaration Date	August 21, 2019
Expiry Date	August 20, 2024
Principal Place of Business	66 Wellington Street West, 5300, Toronto, Ontario, Canada, M5K 1E6
Activity (NAICS Code)	[Not Provided] - [Not Provided]

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

## General Partners

Number of General Partners 1

## Partners

### Partner 1

Name	759 WINSTON CHURCHILL GP INC.
Ontario Corporation Number (OCN)	2712294
Entity Type	Ontario Business Corporation
Registered or Head Office Address	66 Wellington Street West, 5300, Toronto, Ontario, Canada, M5K 1E6

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Firm Name History**

**Name**

759 WINSTON CHURCHILL L.P.

**Effective Date**

August 21, 2019

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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Additional historical information may exist in paper or microfiche format.

**Active Business Names**

This entity does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

### Expired or Cancelled Business Names

This entity does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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## Document List

Filing Name	Effective Date
LPA - File a Declaration of an Ontario Limited Partnership	August 21, 2019

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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## Profile Report

759 WINSTON CHURCHILL GP INC. as of January 22, 2024

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	759 WINSTON CHURCHILL GP INC.
Ontario Corporation Number (OCN)	2712294
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	August 20, 2019
Registered or Head Office Address	7080 Derrycrest Drive, Mississauga, Ontario, Canada, L5W 0G5

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Active Director(s)**

Minimum Number of Directors 1  
Maximum Number of Directors 10

**Name** MICHAEL MOLDENHAUER  
**Address for Service** 1125 Clarkson Road North, Mississauga, Ontario, Canada,  
L5J 2W1  
**Resident Canadian** Yes  
**Date Began** August 20, 2019

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Active Officer(s)**

There are no active Officers currently on file for this corporation.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Corporate Name History**

**Name**

759 WINSTON CHURCHILL GP INC.

**Effective Date**

August 20, 2019

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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### Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

### Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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## Document List

Filing Name	Effective Date
Annual Return - 2020 PAF: AIDAN FLATLEY - DIRECTOR	January 03, 2021
BCA - Articles of Incorporation	August 20, 2019

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

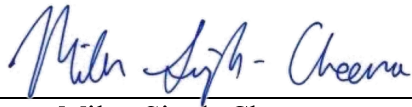
Director/Registrar

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**T  
A  
B  
D**

THIS IS **EXHIBIT "D"** REFERRED TO IN THE AFFIDAVIT  
OF DANIEL POLLACK, SWORN BEFORE ME THIS  
12<sup>TH</sup> DAY OF FEBRUARY, 2024

A handwritten signature in blue ink that reads "Milan Singh-Cheema". The signature is written in a cursive style with a horizontal line underneath it.

---

Milan Singh-Cheema  
A Commissioner for taking Affidavits  
(or as may be)



## Profile Report

688 SOUTHDOWN LP as of January 22, 2024

Act	Limited Partnerships Act
Type	Ontario Limited Partnership
Firm Name	688 SOUTHDOWN LP
Business Identification Number (BIN)	311264212
Declaration Status	Active
Declaration Date	August 27, 2021
Expiry Date	August 26, 2026
Principal Place of Business	66 Wellington Street West, 5300, Toronto, Ontario, Canada, M5K 1E6
Activity (NAICS Code)	[Not Provided] - [Not Provided]

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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## General Partners

Number of General Partners 1

## Partners

### Partner 1

Name	688 SOUTHDOWN GP INC.
Ontario Corporation Number (OCN)	3313500
Entity Type	Extra-Provincial Federal Corporation with Share
Registered or Head Office Address	66 Wellington Street West, Td Bank Tower 5300, Toronto, Ontario, Canada, M5K 1E6

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Firm Name History**

**Name**

688 SOUTHDOWN LP

**Effective Date**

August 27, 2021

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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Additional historical information may exist in paper or microfiche format.

**Active Business Names**

This entity does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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### Expired or Cancelled Business Names

This entity does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Document List**

<b>Filing Name</b>	<b>Effective Date</b>
LPA - File a Declaration of an Ontario Limited Partnership	August 27, 2021

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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Government  
of Canada

Gouvernement  
du Canada

[Canada.ca](#) → [Innovation, Science and Economic Development Canada](#) → [Corporations Canada](#)  
→ [Search for a Federal Corporation](#)

## Federal Corporation Information - 1329571-1

 Beware of scams and other suspicious activities. See [Corporations Canada's alerts](#).

### Note

This information is available to the public in accordance with legislation (see [Public disclosure of corporate information](#)).

[Order copies of corporate documents](#)

### Corporation Number

1329571-1

### Business Number (BN)

780776902RC0001

### Corporate Name

688 Southdown GP Inc.


### Status

Active

### Governing Legislation

*Canada Business Corporations Act - 2021-08-26*

[Order a Corporate Profile](#) [[View PDF Sample](#)] [[View HTML Sample](#)].

[Find existing extra-provincial registrations of this corporation on Canada's Business registries](#) 

## Registered Office Address

66 Wellington Street West  
TD Bank Tower, Suite 5300

Toronto ON M5K 1E6  
Canada

### **i Note**

Active CBCA corporations are required to update this information within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

## **Directors**

**Minimum** 1

**Maximum** 10

Aiden Flatley  
50 Yorkville Avenue, Suite 4701  
Toronto ON M4W 0A3  
Canada

Patrick Flatley  
31 Princess Anne Crescent  
Toronto ON M9A 2N9  
Canada

Michael Moldenhauer  
1125 Clarkson Road North  
Mississauga ON L5J 2W1  
Canada

### **i Note**

Active CBCA corporations are required to update director information (names, addresses, etc.) within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

## **Individuals with significant control**

No information has been filed.

[Learn more about when this information must be filed.](#)

### **i Note**

Active CBCA corporations are required to update this information annually (with their annual return) and within 15 days of a change in their ISC register via the [Online Filing Centre](#). A corporation key is required. If you are not authorized to update this information, you can contact either the corporation or Corporations Canada. We will inform the corporation of its reporting obligations.

## Annual Filings

### **Anniversary Date (MM-DD)**

08-26

### **Date of Last Annual Meeting**

2022-10-13

### **Annual Filing Period (MM-DD)**

08-26 to 10-25

### **Type of Corporation**

Non-distributing corporation with 50 or fewer shareholders

### **Status of Annual Filings**

2024 - Not due

2023 - Overdue

2022 - Filed

## Corporate History

### **Corporate Name History**

2021-08-26 to Present

688 Southdown GP Inc.

### **Certificates and Filings**

#### **Certificate of Incorporation**

2021-08-26



## Profile Report

688 SOUTHDOWN GP INC. as of January 22, 2024

<b>Act</b>	Corporations Information Act
<b>Type</b>	Extra-Provincial Federal Corporation with Share
<b>Name</b>	688 SOUTHDOWN GP INC.
<b>Ontario Corporation Number (OCN)</b>	3313500
<b>Governing Jurisdiction</b>	Canada - Federal
<b>Incorporation/Amalgamation Date</b>	August 26, 2021
<b>Registered or Head Office Address</b>	66 Wellington Street West, Td Bank Tower 5300, Toronto, Ontario, Canada, M5K 1E6
<b>Status</b>	Refer to Governing Jurisdiction
<b>Date Commenced in Ontario</b>	August 26, 2021
<b>Principal Place of Business</b>	66 Wellington Street West, Td Bank Tower 5300, Toronto, Ontario, Canada, M5K 1E6

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

A handwritten signature in black ink, appearing to read "V. Quintanilla W.".

Director/Registrar

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**Chief Officer or Manager**

There are no chief officer or managers on file for this corporation.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Corporate Name History**

Refer to Governing Jurisdiction

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*V. Quintanilla W.*

Director/Registrar

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**Active Business Names**

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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### Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

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*V. Quintanilla W.*

Director/Registrar

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## Document List

Filing Name	Effective Date
CIA - Initial Return PAF: MICHAEL MOLDENHAUER - DIRECTOR	August 27, 2021

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

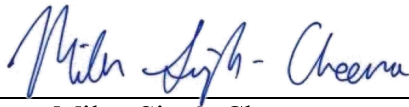
Director/Registrar

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# T A B L E

THIS IS **EXHIBIT "E"** REFERRED TO IN THE AFFIDAVIT  
OF DANIEL POLLACK, SWORN BEFORE ME THIS  
12<sup>TH</sup> DAY OF FEBRUARY, 2024.



---

Milan Singh-Cheema  
A Commissioner for taking Affidavits  
(or as may be)



## Profile Report

2226 ROYAL WINDSOR LP as of January 25, 2024

Act	Limited Partnerships Act
Type	Ontario Limited Partnership
Firm Name	2226 ROYAL WINDSOR LP
Business Identification Number (BIN)	1000227125
Declaration Status	Active
Declaration Date	June 08, 2022
Expiry Date	June 07, 2027
Principal Place of Business	2680 Royal Windsor Dr, Mississauga, Ontario, Canada, L5J 1K7
Activity (NAICS Code)	531310 - Real estate property managers

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

A handwritten signature in black ink, appearing to read "V. Quintanilla W.".

Director/Registrar

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## General Partners

Number of General Partners 1

## Partners

### Partner 1

Name	2226 ROYAL WINDSOR GP INC.
Ontario Corporation Number (OCN)	1000227094
Entity Type	Ontario Business Corporation
Registered or Head Office Address	2680 Royal Windsor Drive, Mississauga, Ontario, Canada, L5J1K7

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Firm Name History**

**Name**

2226 ROYAL WINDSOR LP

**Effective Date**

June 08, 2022

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*V. Quintanilla W.*

Director/Registrar

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**Active Business Names**

This entity does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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### Expired or Cancelled Business Names

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Director/Registrar

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**Document List**

<b>Filing Name</b>	<b>Effective Date</b>
LPA - File a Declaration of an Ontario Limited Partnership	June 08, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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## Profile Report

2226 ROYAL WINDSOR GP INC. as of January 25, 2024

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	2226 ROYAL WINDSOR GP INC.
Ontario Corporation Number (OCN)	1000227094
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	June 08, 2022
Registered or Head Office Address	2680 Royal Windsor Drive, Mississauga, Ontario, Canada, L5J1K7

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Active Director(s)**

Minimum Number of Directors 1  
Maximum Number of Directors 10

**Name** MICHAEL MOLDENHAUER  
**Address for Service** 2680 Royal Windsor Drive, Mississauga, Ontario, Canada,  
L5J1K7  
**Resident Canadian** Yes  
**Date Began** June 08, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Active Officer(s)**

**Name** MICHAEL MOLDENHAUER  
**Position** President  
**Address for Service** 2680 Royal Windsor Drive, Mississauga, Ontario, Canada,  
L5J1K7  
**Date Began** June 08, 2022

**Name** MICHAEL MOLDENHAUER  
**Position** Secretary  
**Address for Service** 2680 Royal Windsor Drive, Mississauga, Ontario, Canada,  
L5J1K7  
**Date Began** June 08, 2022

**Name** MICHAEL MOLDENHAUER  
**Position** Treasurer  
**Address for Service** 2680 Royal Windsor Drive, Mississauga, Ontario, Canada,  
L5J1K7  
**Date Began** June 08, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

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**Corporate Name History**

**Name**

2226 ROYAL WINDSOR GP INC.

**Effective Date**

June 08, 2022

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*V. Quintanilla W.*

Director/Registrar

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### Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

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Director/Registrar

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### Expired or Cancelled Business Names

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Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

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Director/Registrar

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## Document List

Filing Name	Effective Date
CIA - Initial Return PAF: Michael MOLDENHAUER	June 20, 2022
BCA - Articles of Incorporation	June 08, 2022

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

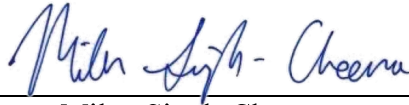
This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.



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F**

THIS IS **EXHIBIT "F"** REFERRED TO IN THE AFFIDAVIT  
OF DANIEL POLLACK, SWORN BEFORE ME THIS  
12<sup>TH</sup> DAY OF FEBRUARY, 2024.

A handwritten signature in blue ink that reads "Milan Singh-Cheema". The signature is written in a cursive style with a horizontal line underneath it.

---

Milan Singh-Cheema  
A Commissioner for taking Affidavits  
(or as may be)



January 18, 2022

759 Winston Churchill LP  
1111 Clarkson Road, North  
Mississauga, Ontario  
L5J 2W1

Attention: Michael Moldenhauer

**Re: First mortgage construction financing of 759 Winston Churchill Boulevard**

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**A. LOAN TERMS**

The Lender is pleased to offer a 1<sup>st</sup> Mortgage, non-revolving demand loan (the "**Loan**") in connection with the above noted matter, subject to the terms and conditions as described herein and within the Schedules attached hereto (the "**Commitment Letter**").

1. **Project:** a 47.15-acre industrial site located at 759 Winston Churchill Boulevard, Mississauga, Ontario to be developed with approximately 750,354 sf of state-of-the-art industrial facilities over three phases.
  - (a) **Building 1:** 215,124 sf building to be constructed with 36' clear height, 50 high dock doors, 2 drive-in doors and 186 parking stalls. Occupancy is expected for February 2023 (the "**Building 1**").
  - (b) **Building 2:** 257,121 sf building under construction with 36' clear height, 50 high dock doors, 2 drive-in doors and 147 parking stalls. Occupancy is expected for October 2022 (the "**Building 2**").
  - (c) **Building 3:** 278,109 sf building under construction with 36' clear height, 53 high dock doors, 2 drive-in doors and 291 parking stalls. Currently, 219,094 sf is preleased to Goodfood for a 10-year term at a 1st year NNN base rate of \$12.70 psf with 2.1% annual step-ups and the remaining 59,015 sf is preleased to Value Village for 15 years at \$13.50 psf with 3.0% annual step ups. Occupancy is expected in March 2022 (the "**Building 3**").  
  
(collectively, the "**Project**").
2. **Lender:** KingSett Mortgage Corporation (the "**Lender**").
3. **Borrower:** 759 Winston Churchill LP (the "**Borrower**").
4. **Guarantor:** WPAM Royal Windsor GP Inc., in its capacity as general partner for and on behalf of WPAM Royal Windsor Limited Partnership, and RW GP Inc., in its capacity as general partner for and on behalf of RW Limited Partnership (collectively, the "**Guarantors**").

5. **Limited Recourse Guarantor:** 2712611 Ontario Corp., Obayashi Canada Ltd. and South Shore Holdings LP (collectively, the "**Limited Recourse Guarantors**").
6. **Loan Amount:** \$205,000,000 1<sup>st</sup> mortgage
  - (a) **Tranche 1:** \$170,000,000 for the construction of Building 3 and Building 2 and the land for Building 1, plus up to \$5,000,000 of soft costs relating to Building 1 (the "**Tranche 1**").
  - (b) **Tranche 2:** \$35,000,000 for the construction of Building 1 (the "**Tranche 2**").(collectively, the "**Loan Amount**").
7. **Interest Rate:** Prime Rate + 3.50% (floor rate of 5.95%) per annum, calculated on the daily outstanding balance, compounded and payable monthly, not in advance, both before and after maturity, default and/or judgment with respect to the Loan the each and every month of the Term (as such Term may be extended in accordance with this Commitment Letter) , save and except for the last month of the Term, and 8.95% per annum for the last month of the Term and every month thereafter (as applicable, the "**Interest Rate**"), provided that "**Prime Rate**" shall mean, for any day, the rate of interest per annum established and published from time to time by Royal Bank of Canada as the reference rate of interest for the determination of interest rates charged to its customers of varying degrees of creditworthiness in Canada for Canadian Dollar demand loans in Toronto, Ontario.
8. **Lender's Fee:** \$2,255,000 (1.10% of the Loan Amount) non-refundable lender's fee (the "**Lender's Fee**") earned by the Lender upon the Borrower's execution of this Commitment Letter and payable by the Borrower to the Lender at the time of the initial advance of the Loan. The Lender shall deduct the Lender's Fee from the proceeds of the initial advance of the Loan.
9. **Term:** Any portion of the Loan Amount outstanding at any time is repayable on demand by the Lender, however, without prejudice to the right of the Lender to demand payment at any time for any reason whatsoever, 25 months (the "**Term**") after the first calendar day of the month next following the date of the initial advance of the Loan (the "**Interest Adjustment Date**"), as may be extended in accordance with this Commitment Letter (the "**Maturity Date**"). The principal balance of the Loan outstanding together with all accrued and unpaid interest thereon and all other costs secured by the Security is repayable in full on the Maturity Date together with all accrued and unpaid interest, costs, fees and any other amount secured by the Security. Notwithstanding the foregoing, or anything else contained in this Commitment Letter, the Lender agrees that it will not demand repayment of all or any portion of the Loan Amount unless and until an Event of Default has occurred and is continuing.
10. **Extension Option:** Provided that no Event of Default as defined in the Mortgage and referred to in this Commitment Letter as an "**Event of Default**" has occurred which is continuing and subject to the consent of the Lender, in its sole, absolute and unfettered discretion, the Lender shall permit an extension of the Term by two extensions of three months each to the Maturity Date (each an "**Extension Option**"). The exercise of each Extension Option is subject to delivery of a written request from the Borrower to the Lender at least 30 days prior to the Maturity Date and payment of the Extension Fee.
11. **Extension Fee:** \$410,000 (0.20% of the Loan Amount) extension fee earned by the Lender upon the exercise of each Extension Option (the "**Extension Fee**") and payable on or before the date which is ten days prior to the Maturity Date. Should any Extension Option not be granted by the Lender, the Lender will return the applicable Extension Fee to the Borrower, if applicable.



12. **Monthly Payments:** Monthly payments of interest only are required to be made by the Borrower to the Lender in connection with the Loan at the Interest Rate and subject to the Interest Reserve provisions of this Commitment Letter (the "**Monthly Payments**"). Monthly Payments are to be made on the first calendar day of every month commencing on the Interest Adjustment Date until the principal balance of the Loan outstanding together with all accrued and unpaid interest thereon and all other costs secured by the Security is repaid in full. Non-Sufficient Fund payments will be subject to an administration fee of \$500.
13. **Interest Reserve:** Provided an Event of Default has not occurred which is continuing, monthly interest shall be capitalized to the outstanding principal balance of the Loan until the earlier of repayment of the principal balance of the Loan outstanding together with all accrued and unpaid interest thereon and all other costs secured by the Security in full or the capitalization of a total of \$10,540,000 (the "**Interest Reserve**"). The Project Monitor will evaluate, on a monthly basis, the capacity of the Interest Reserve to complete the Project. Any deemed shortfall in the Interest Reserve shall be funded from the Borrower's own financial resources prior to the next scheduled Monthly Payment. Following the occurrence and continuance of an Event of Default, or upon full utilization of the Interest Reserve, the Borrower shall be required to make Monthly Payments from its own financial resources and not from the Interest Reserve.

14. **Sources and Uses:**

Sources	\$	Uses	\$
KingSett 1st Mortgage	\$205,000,000	Land	\$62,500,000
Equity (Cash)	14,847,570	Hard Costs	102,915,863
Equity (Appraisal Surplus)	5,500,000	Soft Costs	42,958,117
Offsetting Income	1,068,012	Financing Costs	12,795,809
		Contingency	5,245,793
<b>TOTAL</b>	<b>\$226,415,582</b>	<b>TOTAL</b>	<b>\$226,415,582</b>

15. **Project Budget:** See Schedule G (the "**Project Budget**"). For greater certainty, the Lender approved Project Budget shall be no greater than \$226,415,582. The Project Budget may be amended or modified from time to time subject to the prior written consent of the Lender. Consent to increase the Project Budget may be unreasonably withheld, delayed and/or conditioned by the Lender unless 100% of the Project Budget increase is forthwith funded by additional cash equity injected into the Project by the Borrower.
16. **Project Monitor:** An independent project monitor acceptable to the Lender shall have been engaged to act on behalf of the Lender throughout the duration of the Project at the Borrower's expense. The Lender's project monitor shall be Finnegan Marshall Inc. (the "**Project Monitor**"). The scope of the Project Monitor's mandate is outlined in Schedule C). The Lender shall have the right to expand or vary the scope of the Project Monitor or to replace the Project Monitor at any time, in its discretion, acting reasonably.
17. **Minimum Project Equity:** The Borrower shall maintain a minimum equity position of \$20,347,570 (\$14,847,570 cash equity and \$5,500,000 in appraisal surplus) in the Project until the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs secured by the Security is repaid in full (the "**Minimum Project Equity**").
18. **Prepayment:** Repayable on demand by the Lender, however, without prejudice to the right of the Lender to demand payment at any time for any reason whatsoever, this Loan is closed for prepayment from the date of the initial advance of the Loan until the date which is 24 months after



the Interest Adjustment Date. The Loan will be open thereafter for prepayment, in whole but not in part, without penalty subject to a minimum of 30 days' prior written notice to the Lender.

19. **Partial Discharge:** Provided that no Event of Default has occurred which is continuing, the Lender will provide the Borrower with partial real and personal property discharges of the Security on a per Unit basis upon receipt of the net closing proceeds for each building (the "**Net Closing Proceeds**") calculated as the greater of:

- (a) the actual gross selling price net of applicable sales tax; and
- (b) the Lender's minimum discharge amount as set forth below.

	Building 3	Building 2	Building 1
<b>Minimum Discharge Amount</b>	\$ 84,000,000	\$ 78,000,000	\$ 65,000,000

In the event that any of the buildings are re-financed, the Lender will provide a postponement of its charge on the building, provided that the minimum discharge amount is received. Notwithstanding, the Lender may amend or change the amounts noted above at their sole and unfettered discretion.

A partial discharge fee of \$500 per discharged building shall be deemed earned by the Lender and payable by the Borrower contemporaneously with the granting by the Lender of each partial discharge.

20. **Mortgage Discharge:** The Lender shall charge a one-time administrative fee of \$1,000 for ongoing administration of the Loan including, but not limited to, providing a full discharge of the Security which administration fee is earned by the Lender upon the Borrower's execution of this Commitment Letter and payable by the Borrower to the Lender on the Maturity Date. The Borrower's legal counsel shall prepare all documentation reasonably required to discharge the Security for review by the Lender and its legal counsel. Discharge statements will be provided to the Borrower within three business days after receipt of a written request for same.

21. **No Further Encumbrances:** Additional financing (prior or subsequent) of the Project, secured or unsecured, or the registration of any other encumbrance save and except for Permitted Encumbrances is not permitted in connection with the Project without the prior written consent of the Lender, which consent may be arbitrarily withheld, delayed and/or conditioned by the Lender, provided that the following encumbrances registered against title to the lands upon which the Project is to be constructed shall be permitted (collectively, the "**Permitted Encumbrances**"):

- (a) any lien in respect of any property or assets of the Borrower created by or arising pursuant to any applicable legislation in favour of any person (such as, but not limited to, a governmental authority) including a lien for the purpose of securing the Borrower's obligation to deduct and remit employee source deductions and goods and services tax pursuant to the *Income Tax Act* (Canada), the *Excise Tax Act* (Canada), the *Canada Pension Plan* (Canada), the *Employment Insurance Act* (Canada) and any legislation in any jurisdiction similar to or enacted in replacement of the foregoing from time to time (each individually, a "**Statutory Lien**") in respect of any amount which is not at the time due;
- (b) any Statutory Lien in respect of any amount which may be due but the validity of which is being contested in good faith and in respect of which reserves have been established as reasonably required by the Lender;
- (c) in respect of the lands upon which the Project will be constructed (i) any registered agreement (or unregistered agreement that is required in connection with the further



development of such lands) with any governmental authority and any public utilities or private suppliers of services, including site plan agreements, subdivision agreements and similar agreements, which has not and is not reasonably likely to have a material adverse effect on (A) such lands or the economic viability thereof, (B) the business, operations, property or financial or other condition of any of the Loan Parties which would materially negatively affect the ability of the Loan Parties, taken as a whole, to perform and discharge their obligations under the Loan Documents, (C) the Project, the Lender's liens on the Project and other collateral pursuant to the Security, or the priority of those liens, or (D) the Lender's ability to enforce its rights or remedies under any of the Loan Documents (collectively, a "**Material Adverse Effect**"), provided the same is complied with in all material respects, (ii) any registered easement for the supply of utilities or telephone services to such lands and for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services and all licenses, easements, rights-of-way, rights in the nature of easements and agreements with respect thereto not registered on title to such lands, including agreements, easements, licenses, rights-of-way and interests in the nature of easements for sidewalks, public ways, sewers, drains, utilities, gas, steam, and water mains or electric light and power, or telephone telegraphic conduits, poles, wires and cables, which has not and is not reasonable likely to have a Material Adverse Effect, (iii) any registered easement or right-of-way for the passage, ingress and egress of Persons and vehicles over parts of such lands, which has not and is not reasonably likely to have a Material Adverse Effect, (iv) any registered or unregistered easement, rights-of-way, agreement or other unregistered interest or claims not disclosed by registered title which has not and is not reasonably likely to have a Material Adverse Effect, (v) any zoning, land use and building restriction, bylaw, regulation and ordinance of any governmental authority, including municipal by-laws and regulations and airport zoning regulations, which has not and is not reasonably likely to have a Material Adverse Effect, (vi) any obligation with respect to any permit required in connection with the construction and use of such lands provided such permit is in good standing and has not and is not reasonably likely to have a Material Adverse Effect; and (vii) any minor defect in title which has not and is not reasonably likely to have a Material Adverse Effect;

- (d) any reservation, limitation, proviso, condition, restriction and exception (including royalties, reservation of mines, mineral rights, access to navigable waters and similar rights) expressed in the letters patent or grant from the Crown, as varied by statute, of the lands of which such lands form a part and any statutory limitation, exception, reservation and qualification, provided same has been complied with in all material respects;
- (e) any lien incurred or deposit made or pledged to secure any obligation under workers' compensation legislation or similar legislation, or in connection with contracts, bids, tenders or expropriation proceedings, or surety, performance or appeal bonds in connection with construction of the further development of such lands;
- (f) security given to a public utility or any governmental authority to secure obligations incurred to such utility, governmental authority or other authority in the ordinary course of business and not at the time overdue;
- (g) any inchoate lien (statutory or otherwise) arising in connection with the construction or improvement of such lands or arising out of the furnishing of materials or supplies therefor, provided that such lien secures moneys not at the time overdue (or if overdue, the validity of which is being contested in good faith and in respect of which reserves have been established as reasonably required by the Lender), notice of such lien has not been given to the Borrower, and such lien has not been registered against title to such lands;



- (h) purchase-money security interests incurred or assumed in connection with the purchase, leasing or acquisition of capital equipment in the ordinary course of business, provided that the aggregate amount of the Borrower's liability thereunder is not at any time greater than \$1,000,000.00;
  - (i) any present and future lease, offer to lease, sublease, concession, license or other contract or agreement by which the use, enjoyment or occupancy of such lands or any portion thereof is granted which has not and is not reasonably likely to have a Material Adverse Effect or any portion thereof is granted in accordance with the provisions of the Loan Documents and which has not and is not reasonably likely to have a Material Adverse Effect ;
  - (j) the Security;
  - (k) those encumbrances registered against title to such lands in priority to the Mortgage on the date of the registration of the Mortgage and which the Lender has agreed to accept in its sole, absolute, unfettered discretion;
  - (l) any other encumbrances registered against title to such lands subsequent in priority to the Mortgage, with the prior consent of the Lender, which consent shall be granted in the Lender's sole, absolute and unfettered discretion.
22. **Costs and Expenses**: The Borrower shall bear all costs and expenses incurred by the Lender from time to time in connection with the Loan regardless of whether or not all or any portion of the Loan Amount is ever advanced and, such costs may include, but shall not be limited to, legal fees, payment of property taxes as a protective disbursement, environmental site assessment reports, appraisal reports, building condition reports, insurance consulting reviews, reliance letters, title insurance, Project Monitor mandates, out-of-pocket expenses for property inspections and any applicable sales tax related to all such costs and expenses.

## B. SECURITY

The Loan shall be secured by the security set forth below which, prior to any advance under the Loan, shall be delivered by the Borrower and the Guarantors (collectively, the "**Loan Parties**") to the extent party thereto, to the Lender in form, scope and substance satisfactory to the Lender and its legal counsel in its sole, absolute and unfettered discretion (collectively, the "**Security**" and together with this Commitment Letter and all other documentation delivered in connection with this Commitment Letter and the Security, collectively, the "**Loan Documents**"):

1. **Mortgage**: A \$250,000,000 mortgage/charge (~125% of the Loan Amount) granted by the Borrower, including, without limitation, a negative pledge by the Nominee not to repay any shareholder loans, redeem shares, pay out dividends, or to otherwise compensate the Project sponsors or other non-arm's length parties until such time as the principal balance of the Loan outstanding together with all accrued and unpaid interest thereon and all other costs secured by the Security has been repaid in full, save and except for those development, marketing and/or construction fees specifically approved in writing by the Lender and included in the Project Budget prepared by the Project Monitor.
2. **General Assignment of Rents**: A general assignment of leases and rents granted by the Borrower.
3. **General Security Agreement**: A general security agreement granted by the Borrower and/or the Nominee, as applicable, creating a first ranking security interest over all presently held and



hereafter acquired personal property situated on, used in connection with or derived from the Project.

4. **General Assignment of Material Contracts**: A general assignment of all current and future material contracts for the Project including, without limitation, those relating to construction, supply, consulting, engineering specifications and drawings, architectural specifications and drawings, plans, licenses and permits for the Project granted by the Borrower and/or the Nominee, as applicable, provided that upon the request of the Lender the Borrower and/or the Nominee shall grant a specific assignment of any current or future material contract for the Project which shall be acknowledged and consented to in writing by all counterparties to such material contract.
5. **Specific Assignment of Construction Management Agreement**: A specific assignment of the construction management contract for the Project, or contracts if more than one, granted by the Borrower and/or the Nominee, as applicable, pursuant to which the Lender may assume or terminate, at its option, the rights of the Borrower under the same if the Lender has made demand for repayment of the Loan which specific assignment shall be acknowledged and consented to in writing by the construction manager.
6. **Specific Assignment of Property Management Agreement**: A specific assignment of the commercial and residential property management contracts granted by the Borrower and/or the Nominee, as applicable, pursuant to which the Lender may assume or terminate, at its option, the rights of the Borrower under the same if the Lender has made demand for repayment of the Loan which specific assignment shall be acknowledged and consented to in writing by the property manager.
7. **Assignment of Insurance**: An assignment of insurance granted by the Borrower and the Nominee, as applicable, with respect to any and all insurance proceeds arising in connection with all insurance for the Project as set forth on Schedule A.
8. **Fraud, Misrepresentation and Environmental Indemnity**: A fraud, misrepresentation and environmental indemnity granted by the Loan Parties.
9. **Beneficial Security Agreement**: An acknowledgement, direction and security agreement, if applicable, whereby the Borrower acknowledges, consents to and directs the Nominee to provide all of the Security to which the Nominee is a party to the Lender.
10. **Guarantee**: An unlimited corporate joint and several guarantee granted by the Guarantors for 100% of the Borrower's indebtedness to the Lender, including, without limitation, all accrued but unpaid fees, interest, and expenses incurred by the Lender together with a postponement of creditor and shareholder claims against the Borrower and a negative pledge by the Guarantors to not repay any shareholder loans, redeem shares, pay out dividends, or to otherwise compensate the Project sponsors and other non-arm's length parties until such time as the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs secured by the Security has been repaid in full, save and except for those development, marketing and/or construction fees specifically approved in writing by the Lender and included in the Project Budget prepared by the Project Monitor.
11. **Limited Recourse Guarantee**: an unlimited corporate several guarantee granted by the Limited Recourse Guarantors for 100% of the Borrower's indebtedness to the Lender including, without limitation, all accrued but unpaid fees, interest, and expenses incurred by the Lender together with a postponement of creditor and shareholder claims against the Borrower, provided that recourse under such guarantee and the liability of the Limited Recourse Guarantors shall be limited to the Lender's rights under the pledge agreement described in paragraph 14 below.



12. **Cost Overrun and Completion Guarantee**: A guarantee re: project completion and cost overruns granted by the Guarantors for completion of the Project, to keep the Project free of all liens and to fund all costs to complete the Project including, without limitation, all interest costs, fees, insurance premiums and other payments associated with the Project.
13. **Pledge Agreement**: A hypothecation and pledge to the Lender of any and all issued and outstanding common shares, preferred shares and limited partnership units of the Borrower (and any and all shares of a general partner of the Borrower), as applicable, by the holders thereof provided that:
  - (a) the Lender's interest in such securities shall be perfected by possession and control by the Lender (or its legal counsel on behalf of the Lender) of the original share and/or unit certificates;
  - (b) if the registered owners of such shares and units are not providing a guarantee of the Borrower's obligations to the Lender hereunder, then such registered owners shall be required to provide a limited recourse guarantee with recourse against such registered owners limited in scope to the pledge of such shares and/or unit certificates; and
  - (c) if the registered owners are different than the beneficial owners of such shares and/or unit certificates then the beneficial owners shall be required to enter into an acknowledgement, direction and security agreement authorizing the registered owner to pledge the shares and/or unit certificates to the Lender.
14. **Other**: Such other Security as the Lender and/or its legal counsel may reasonably require.

#### C. **CONDITIONS PRECEDENT TO INITIAL ADVANCE – TRANCHE 1**

The obligation of the Lender to make available the initial advance of the Loan shall be subject to the pre-funding conditions below (collectively, the "**Initial Conditions Precedent – Tranche 1**") which shall be satisfied or waived by the Lender in its sole, absolute and unfettered discretion at least two business days prior to the initial advance of the Loan.

1. **Inspection**: The Lender shall have completed an inspection of the Project.
2. **Financial Statements**: The Lender shall have received accountant prepared notice to reader statements for the Borrower and any corporate Guarantor, if applicable, for its last two fiscal year-ends.
3. **Agreement of Purchase and Sale** The Lender shall have received the agreement of purchase and sale for the acquisition of the lands upon which the Project is being constructed, any amendments thereto, and the statement of adjustments delivered on closing collectively confirming a minimum aggregate purchase price of \$44,000,000.
4. **Planning Approvals**: The Lender shall have received evidence confirming zoning approval, development permit and partial/full building permit availability to improve the lands as described under the Project together with evidence satisfactory to the Lender that the full building permit will be issued in time to meet the Project schedule.
5. **Services Capacity**: The Lender shall have received evidence confirming that physical and capacity allocation of all municipal services is immediately available for the Project.

6. **Drawings and Plans**: The Lender shall have received architectural and engineering plans, drawings and specifications together with all related architectural and engineering fee-for-service soft cost contracts.
7. **Appraisal**: The Lender shall have received an appraisal report for the Project from an acceptable appraisal firm reporting an "as complete" minimum value of \$257,386,872 and an "as is" land value of \$62,500,000 which appraisal report is to be addressed to the Lender or supported by a letter of transmittal in favour of the Lender.
8. **Environmental Site Assessment**: The Lender shall have received a phase I and, if applicable, a phase II environmental site assessment for the Project from an acceptable environmental consultant which environmental site assessment is to be addressed to the Lender or supported by a letter of transmittal in favour of the Lender. The Lender acknowledges that this condition has been satisfied.
9. **Geotechnical Soil Report**: The Lender shall have received a geotechnical report confirming the feasibility of the Project under existing soil conditions from an acceptable engineering firm which geotechnical report is to be addressed to the Lender or supported by a letter of transmittal in favour of the Lender. The Lender acknowledges that this condition has been satisfied.
10. **Fixed Price Contracts**: The Lender shall have received executed fixed price contracts for a minimum of 60% of the Project Budget hard costs.
11. **Cash Equity**: The Lender shall have received evidence that the Borrower has invested the minimum cash equity as per Section A.17. into the Project.
12. **Project Report**: The Lender shall have received and reviewed an initial report on the Project prepared by the Project Monitor in accordance with Schedule C.
13. **Goodfood Lease**: The Lender shall have received a firm and binding lease agreement to Goodfood for 219,094 square feet for a term of 10 years at no less than \$12.70 per square foot with 2.1% annual step-ups.
14. **Value Village Lease**: The Lender shall have received a firm and binding lease agreement to Value Village for 59,015 square feet for a term of 15 years at no less than \$13.50 per square foot with 3.0% annual step-ups.
15. **Delivery of Loan Documents**: The Lender shall have received the following:
  - (a) the Loan Documents duly executed by the parties thereto;
  - (b) a request for borrowing delivered in accordance with the provisions of Section **Error! Reference source not found.** which shall include, without limitation, certification that all proceeds of the advance of the Loan are being used solely to pay all accounts payable of the Project approved by the Lender and for no other purpose whatsoever;
  - (c) certificates of each corporate Loan Party dated the closing date and executed by an appropriate officer of each such person, as applicable, certifying, among other things, the constating and organizational documents, an organizational chart, incumbency of signing officers and authorizing resolutions;
  - (d) a favourable corporate and enforceability opinion from the Borrower's legal counsel, including, without limitation, existence, power and capacity, authorization, execution and



delivery, enforceability, creation of security interest, registration, share capital, and perfection, as applicable; and

- (e) a favourable title opinion from the Borrower's legal counsel or a loan policy of title insurance in lieu thereof, respecting the ownership of the Project and the ranking of the liens constituted by the Security thereon.
16. **Registration of Security:** All registrations, recordings and filings of or with respect to the Security which in the opinion of the Lender's counsel are necessary to render effective and perfected, or to give notice of, the security intended to be created thereby shall have been completed.
  17. **Material Contracts:** The Lender shall have received copies, where applicable, of any and all agreement to which any of the Loan Parties are a party or by which any of them is bound which is material to the Project or the business of the Loan Parties with respect to the Property having regard to its subject matter or the potential consequences of breach or termination, including, without limitation, any cost sharing, parking, maintenance, unregistered access or right-of-way, crane swing, or tieback agreement.
  18. **Survey:** The Lender shall have received either (i) a real property report / survey for the Project prepared by an accredited land surveyor confirming no encroachments, easements or rights of way, save those which the Lender may specifically accept, and setting out the relationship of the lands and proposed improvements thereon to public thoroughfares for access purposes, or (ii) survey coverage in a loan policy of title insurance. The Lender acknowledges that Chicago Title Insurance Company of Canada is an acceptable provider of title insurance.
  19. **Searches:** The Lender shall have received either (i) all customary off-title searches for properties of similar nature to that of the Project including, without limitation, searches for unregistered easements, rights-of way, property tax status, environmental notices, and executions against the Loan Parties, or (ii) satisfactory coverage in a loan policy of title insurance. If applicable, the off-title searches are to be obtained by the Borrower's legal counsel and forwarded to the Lender's legal counsel for review;
  20. **Clean Title:** The Lender shall be satisfied with title to the lands upon which the Project will be constructed including, without limitation, the absence of liens and other encumbrances other than the Permitted Encumbrances;
  21. **No Litigation:** There shall exist no judicial, administrative or other proceeding, investigation or litigation affecting the Project or any of the Loan Parties that has, or could reasonably be expected to have, a material adverse effect on (i) the business, operations, property or financial or other condition of any of the Loan Parties which would materially negatively affect the ability of the Loan Parties, taken as a whole, to perform and discharge their obligations under the Loan Documents, (ii) the Project, the Lender's liens on the Project and other collateral pursuant to the Security, or the priority of those liens, or (iii) the Lender's ability to enforce its rights or remedies under any of the Loan Documents.
  22. **AML/KYC:** The Lender shall have received all documentation and information in respect of the Loan Parties including each corporate Loan Party's ownership structure, and its respective authorized signing officers, including addresses and verified personal identification, as the Lender may reasonably require in respect of Loan, including in respect of compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.
  23. **Insurance:** The Lender shall have received duly executed certificate(s) of insurance evidencing the insurance over the Project in accordance with the requirements set out in Schedule A showing the Lender as mortgagee and loss payee as its interest may appear and showing the Lender as



an additional insured under all liability policies relating to the Project, all such insurance coverage and certificate(s) to be acceptable to the Lender's insurance consultant, as confirmed by a report to the Lender.

24. **Payout Statement**: If applicable, the Lender shall have received a satisfactory payout statement with respect to any loans secured by existing mortgages registered against title to the Lands.
25. **Levies and Fees**: All levies, impost fees, local improvement charges, property taxes and other charges that are due and payable in connection with the Project shall have been paid to the date of the advance of the Loan unless the same form part of the Project Budget and are to be included in ongoing advances under the Loan.
26. **Notice to Property Tax Authority**: The Borrower shall have executed and delivered the Lender's Notice to Project Tax Authority set forth on Schedule E, which shall permit the Lender to request information from the municipality from time to time regarding the Project's property taxes.
27. **Pre-Authorized Debit**: The Borrower shall have executed and delivered the Lender's Pre Authorized Debit Form set forth on Schedule F, which shall permit the Lender to debit the Borrower's applicable current account each month for the Monthly Payment(s) should full utilization, suspension or cancelation of the Interest Reserve occur including, but not limited to any applicable Lender's Fees and Extension Fees.
28. **ESG Survey**: The Borrower shall have completed and delivered the Lender's ESG Survey set forth on Schedule H.
29. **Lender's Approvals**: The Lender shall have received the approval of its investment committee and any other approvals required by the Lender.
30. **Due Diligence**: The Lender shall have completed its business, financial and legal due diligence, including without limitation property level due diligence with respect to the Project.

#### D. **CONDITIONS PRECEDENT TO INITIAL CONDITIONS PRECEDENT – TRANCHE 2**

The obligation of the Lender to make available any subsequent advance of the Loan, shall be subject to the pre-funding conditions below (collectively, the "**Initial Conditions Precedent – Tranche 2**" together with the Initial Conditions Precedent – Tranche 1, collectively, the "**Conditions Precedent**") which Initial Conditions Precedent – Tranche 2 shall be satisfied or waived by the Lender in its sole, absolute and unfettered discretion at least two business days prior to any subsequent advance of the Loan.

1. **Initial Conditions Precedent**: The Initial Conditions Precedent – Tranche 1 shall have been satisfied or waived by the Lender.
2. **No Default**: No Event of Default shall exist, nor shall the advance of the Loan result in the occurrence of an Event of Default.
3. **Representations Correct**: The representations and warranties contained in the Loan Documents shall be true and correct in all material respects on the date of each subsequent advance as if made on that date, except where any representation or warranty relates to a specified date, in which case that representation or warranty shall be made as of the date to which it relates.
4. **Request for Borrowing**: The Lender shall have received a request for borrowing delivered in accordance with the provisions of Section E.2. which shall include, without limitation, certification that all proceeds of the advance of the Loan are being used solely to pay all accounts payable of the Project approved by the Lender and for no other purpose whatsoever.

5. **Project Reports**: The Lender shall have received and reviewed a progress draw report on the Project prepared by the Project Monitor in accordance with Schedule C.
6. **Pre-Leasing**: Prior to the initial advance to fund construction costs related to Building 1, the Lender shall have received arm's length firm and binding lease agreement(s) for 37% of net leasable area of Building 2 (~95,135 sq.ft, at minimum NNN base rent of \$14.00 psf and TIs of no more than \$10.00 psf).
7. **Title Search**: the Lender shall have received on the date of each subsequent advance of the Loan a title sub search of the Project and report from the Lender's counsel confirming that no construction liens or other liens are registered against the Project, other than Permitted Encumbrances.

#### **E. CONDITIONS PRECEDENT TO SUBSEQUENT ADVANCE**

The obligation of the Lender to make available any subsequent advance of the Loan, shall be subject to the pre-funding conditions below (collectively, the "**Subsequent Conditions Precedent**" together with the Initial Conditions Precedent, collectively, the "**Conditions Precedent**") which Subsequent Conditions Precedent shall be satisfied or waived by the Lender in its sole, absolute and unfettered discretion at least two business days prior to any subsequent advance of the Loan.

1. **Initial Conditions Precedent**: The Initial Conditions Precedent – Tranche 1 shall have been satisfied or waived by the Lender. For greater clarity, subsequent advances under Tranche 2 shall also require the Initial Conditions Precedent – Tranche 2 to have been satisfied or waived by the Lender.
2. **No Default**: No Event of Default shall exist, nor shall the advance of the Loan result in the occurrence of an Event of Default.
3. **Representations Correct**: The representations and warranties contained in the Loan Documents shall be true and correct in all material respects on the date of each subsequent advance as if made on that date, except where any representation or warranty relates to a specified date, in which case that representation or warranty shall be made as of the date to which it relates.
4. **Request for Borrowing**: The Lender shall have received a request for borrowing delivered in accordance with the provisions of Section E.2. which shall include, without limitation, certification that all proceeds of the advance of the Loan are being used solely to pay all accounts payable of the Project approved by the Lender and for no other purpose whatsoever.
5. **Project Reports**: The Lender shall have received and reviewed a progress draw report on the Project prepared by the Project Monitor in accordance with Schedule C.
6. **New Leases**: The Lender shall have received all lease agreements and amendments thereto that were not previously provided to the Lender.
7. **Title Search**: the Lender shall have received on the date of each subsequent advance of the Loan a title sub search of the Project and report from the Lender's counsel confirming that no construction liens or other liens are registered against the Project, other than Permitted Encumbrances.



## F. FUNDING

Each advance of the Loan shall, in addition to being subject to the applicable Conditions Precedent, be completed in accordance with the following:

1. **Tranche 1 Initial Advance**: An initial advance of the Tranche 1 shall be determined by the Project Monitor.
2. **Subsequent Advances**: Subsequent advances under the Loan shall be permitted not more frequently than once per month and in minimum monthly increments of \$250,000 for the purpose of funding Project costs approved by the Lender with such advances to be made on a cost-in-place basis subject to the Lender's cost-to-complete formula. This dollar amount limit shall not apply to monthly advances of the Interest Reserve.
3. **Margin Calculation**: Accumulated advances under the Loan shall at no time exceed the cost of cost-in-place less the aggregate of (i) holdbacks required by the Project Monitor, (ii) Minimum Project Equity, and (iii) any advances made under the Permitted Encumbrances, if applicable.
4. **Advances to Subtrades**: The Lender reserves the right to make advances of the Loan directly to the Project Monitor or trades (sub-trades or otherwise) and/or suppliers if an Event of Default has occurred which is continuing or if the Lender believes, in its sole, absolute and unfettered discretion, without the need to furnish evidence to the Borrower thereof, that advances of the Loan are being diverted from the Project and/or are being used to fund Project costs not provided for in the Project Budget.
5. **Advance Fee**: All advances of the Loan, save and except for advances under the Interest Reserve alone, shall be subject to a \$500 advance fee payable by the Borrower to the Lender which amount shall be deducted from the applicable advance of the Loan by the Lender.
6. **Outside Funding Date**: In the event that the initial advance of the Loan has not been made by March 1, 2022, at the exclusive option of the Lender, its obligations under this Commitment Letter shall cease and be at an end and the Lender shall be released from any and all of its present and/or future obligations under this Commitment Letter and the Security including, without limitation, the obligation to make any advances under the Loan. Notwithstanding the foregoing, the Lender shall remain entitled to earn and receive full payment of the Lender's Fee and to fully recover from the Borrower and any Guarantor any expenses incurred by the Lender in connection with this Commitment Letter.

## G. COUNSEL

Counsel for the Lender and the Loan Parties with respect to the Loan is as follows:

1. **Lender's Counsel**:

Bennett Jones LLP (Attention: John van Gent)  
3400 One First Canadian Place  
Toronto, ON  
M5X 1A4

Phone: (416) 777-6522  
Fax: (416) 863-1716  
Email: [vanGentJ@bennettjones.com](mailto:vanGentJ@bennettjones.com)

2. **Loan Parties' Counsel:**

McCarthy Tetrault LLP (Attention: Sarit Pandya)  
Suite 5300, TD Bank Tower  
Box 48, 66 Wellington Street West  
Toronto, ON M5K 1E6

Phone: 416-601-7785  
Email: [spandya@mccarthy.ca](mailto:spandya@mccarthy.ca)



If you are in agreement with the foregoing terms and conditions, please indicate this by signing and returning this Commitment Letter to the Lender by January 25, 2022, failing which this letter shall, at the Lender's option, be deemed null and void.

Yours truly,

**KINGSETT MORTGAGE CORPORATION**

Per:   
Justin Walton  
Managing Director, Mortgage  
Investments

Per:   
Bryan Salazar  
Managing Director, Mortgage  
Underwriting & Funding

**ACKNOWLEDGEMENT**

I/We hereby accept the terms and conditions of this Commitment Letter and any accompanying Schedules and each person executing this Commitment Letter on behalf of any Borrower or any Guarantor represents and warrants that he/she has the power and authority to bind such entity.

Accepted and agreed as of the 19<sup>th</sup> day of JANUARY, 2022.

**BORROWER:**

759 Winston Churchill GP Inc. in its capacity as general partner for and on behalf of 759 Winston Churchill LP

Per:

Name: M. Moldenhauer  
Title: A.S.O.

**GUARANTOR:**

WPAM Royal Windsor GP Inc., in its capacity as general partner for and on behalf of WPAM Royal Windsor Limited Partnership

Per:

Name:  
Title:

**GUARANTOR:**

RW GP Inc. in its capacity as general partner for and on behalf of RW Limited Partnership

Per:

Name:  
Title:

**LIMITED RECOURSE GUARANTOR:**

2712611 ONTARIO CORP.

Per:

Name: M. Moldenhauer  
Title: A.S.O.

**LIMITED RECOURSE GUARANTOR:**

South Shore GP Inc. in its capacity as general partner for and on behalf of South Shore Holdings LP

Per:

Name: M. Moldenhauer  
Title: A.S.O.

**LIMITED RECOURSE GUARANTOR:**

Obayashi Canada Ltd.

Name:

Title:

**ACKNOWLEDGEMENT**

I/We hereby accept the terms and conditions of this Commitment Letter and any accompanying Schedules and each person executing this Commitment Letter on behalf of any Borrower or any Guarantor represents and warrants that he/she has the power and authority to bind such entity.

Accepted and agreed as of the 19<sup>th</sup> day of January, 2022.

**BORROWER:**

759 Winston Churchill GP Inc. in its capacity as general partner for and on behalf of 759 Winston Churchill LP

Per: \_\_\_\_\_  
Name:  
Title:

**GUARANTOR:**

WPAM Royal Windsor GP Inc., in its capacity as general partner for and on behalf of WPAM Royal Windsor Limited Partnership

Per: [Signature]  
Name:  
Title:

**GUARANTOR:**

RW GP Inc. in its capacity as general partner for and on behalf of RW Limited Partnership

Per: [Signature]  
Name:  
Title:

**LIMITED RECOURSE GUARANTOR:**

2712611 ONTARIO CORP.

Per: \_\_\_\_\_  
Name:  
Title:

**LIMITED RECOURSE GUARANTOR:**

South Shore GP Inc. in its capacity as general partner for and on behalf of South Shore Holdings LP

Per: \_\_\_\_\_  
Name:  
Title:

**LIMITED RECOURSE GUARANTOR:**

Obayashi Canada Ltd.

\_\_\_\_\_  
Name:  
Title:

**SCHEDULE A**  
**CONSTRUCTION INSURANCE REQUIREMENTS CHECKLIST**

1. All insurance policies must be forwarded to the Lender's insurance consultant for review. The cost of such review shall be for the account of the Borrower.
2. All insurance policies shall be in form and with insurers reasonably acceptable to the Lender and contain the original signatures of the insurers (which may include being signed by certified electronic signature).
3. The Lender must be shown as First mortgagee and loss payee under the builder's risk and, where applicable, the boiler and machinery insurance policies.
4. The Lender must be shown as an additional insured under all liability policies covering the Project with respect to claims arising out of the operations of the named insured.
5. The Borrower or the Nominee, as applicable, must be shown as a named insured or additional named insured under all policies of insurance in force with respect to the Project.
6. The insurers, policy numbers, policy limits, policy term, applicable reasonable deductibles and the location of the Project as an insured location must be shown on the insurance policies.
7. The builder's risk and, where applicable, the boiler and machinery policies shall contain a standard mortgage clause in favour of the Lender.
8. All policies of insurance must provide the Lender with at least 30 days' prior written notice of adverse material change or cancellation, except for the non-payment of premium, in which case the statutory conditions may apply.
9. There needs to be evidence of builders risk insurance written on an all risk or broad form basis and may or may not be subject to the latest CCDC policy wording.
10. The builders risk insurance needs to insure 100% of the projected hard costs of the Project and not less than 25% of all Project soft costs plus 100% of any finance charges, or 100% of recurring Project soft costs.
11. There needs to be evidence of full by-law extensions, including the increased cost of construction, cost of demolition of the undamaged portion of the property and resultant loss of income.
12. There needs to be evidence of earthquake, flood and sewer back-up insurance.
13. The builders risk policy needs to include a "permission to occupy" clause and coverage for the installation, testing and commissioning of machinery and equipment, and for all central HVAC and miscellaneous electrical equipment (and production machinery where applicable) for explosion, electrical, and mechanical breakdown.
14. The builders risk policy needs to include delayed start up insurance to cover 100% of the anticipated loss of revenue for a minimum of one year, which may be incurred in the event of an insured loss, during construction.
15. The builders risk policy, where applicable, must contain a minimum DE4/LEG2 amended workmanship, design or materials exclusion working and confirmation of resulting damage is covered.



**Owners Liability:**

16. There must be evidence of owner's liability insurance, with a minimum limit of \$5,000,000 per occurrence or such other limit as may be agreed to by the Lender or its insurance consultant unless a wrap-up liability policy has been purchased. Coverage should include but not be limited to cross liability, severability of interest, contractual liability and sudden and accidental pollution extension.

**Contractors Liability:**

17. There must be evidence of contractors liability insurance, with a minimum limit of \$5,000,000 per occurrence or such other limit as may be agreed to by the Lender or its insurance consultant unless a wrap-up liability policy has been purchased. Coverage should include but not be limited to cross liability, severability of interest, contractual liability, non-owned auto, and sudden and accidental pollution extension.
18. The Borrower or the Nominee, as applicable, must be added as an additional insured under any contractor's liability insurance, but only with respects to claims arising out of the operations of the named insured.

**Wrap-up Liability:**

19. There must be evidence of wrap-up liability insurance, with a minimum limit of \$5,000,000 per occurrence or such other limit as may be agreed to by the Lender or its insurance consultant and provide 12/24/36 months completed operations period, cross liability, severability of interest, contractual liability, and sudden and accidental pollution extension.
20. The Borrower or the Nominee, as applicable, must be added as an additional named insured under the contractor's wrap-up liability insurance, but only with respects to claims arising out of the operations of the named insured. The Borrower or the Nominee, as applicable, and all contractors, sub-contractors, trades and consultants must be named insureds with respect to the work or operations at the Project, excluding professional liability.

**Other:**

21. The Lender will not accept evidence of insurance on a CSIO form, or an ACORD Form #25 (or their equivalents), due to the limitation in the wording as to its efficacy, and the restrictive cancellation provisions, unless accompanied with an additional remarks schedule/comments ACORD 101 or CSIO equivalent.
22. Evidence of professional liability (errors & omission) insurance is required for the architect and the engineer of the Project for a minimum limit of \$1,000,000 per occurrence.
23. The Lender and its insurance consultant shall receive copies of all policy "Warranties" that apply.
24. Such other insurance and the Lender and/or its insurance consultant may reasonably require given the nature of the security and that which a prudent owner of similar security would purchase and maintain or cause to be purchased and maintained.

There must be full, original, certified, endorsed copies of the insurance policies provided to the Lender as soon as available from the insurers, which certified policy copies should be available within 60 to 90 days. Signed Certificates or binders of insurance addressing the above will suffice as insurance evidence for closing purposes.

In the instance that any portion of the property insurance coverage described above has expired or been cancelled and evidence of adequate and satisfactory insurance coverage has not been provided to the Lender within 45 days (with the certified policy copies provided within 90 days) of the expiration or cancellation date, the Lender will have the option, without obligation, to place adequate and satisfactory insurance (in the Lender's sole, absolute and unfettered discretion) for the Project at the Borrower's expense.

Certificates or binders of insurance are not acceptable if they contain the words, "*This certificate is issued as a matter of information only and confers no rights upon the certificate holder*" and the words "*will endeavour to*" and "*but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives*" under the cancellation clause.

-- Insurance broker contact information and release follows on next page --





**SCHEDULE B  
OTHER CONDITIONS**

1. **Prohibition on Sale of Project:** Subject to Section A.18 of the Commitment Letter, prior to repayment of the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs secured by the Security in full on the Maturity Date or as otherwise contemplated in the Commitment Letter, the Borrower may not sell the Project, in whole or in part, without the Lender's prior written consent, which consent may be arbitrarily withheld, delayed and/or conditioned by the Lender. The assumption of the Loan by a purchaser of the Project, or part thereof, shall be subject to the prior written approval of the Lender, which approval may be arbitrarily withheld, delayed and/or conditioned by the Lender.
2. **Change of Ownership:** A direct or indirect change in ownership of the Borrower shall not be permitted without the Lender's prior written consent, which consent may be arbitrarily withheld, delayed and/or conditioned by the Lender.
3. **Payment of Property Taxes:** The Borrower shall pay when due to the taxing authority or authorities having jurisdiction all property taxes, local improvement rates and charges with respect to the Project.
4. **Indemnity:** The Loan Parties shall indemnify and save harmless the Lender and its officers, agents, trustees, employees, contractors, licensees or invitees from and against any and all losses, damages, injuries, expenses, suits, actions, claims and demands of every nature whatsoever arising out of the provisions of the Loan Documents, any letters of credit or letters of guarantee issued or indemnified, sale or lease of the Project and/or the use or occupation of the Project including, without limitation, those arising from the right to enter the Project from time to time and to carry out the various tests, inspections and other activities permitted by the Loan Documents.
5. **Environmental Liability:** In addition to any liability imposed on any of the Loan Parties under any of the Loan Documents, the Loan Parties shall be jointly and severally liable for any and all of the Lender's costs, expenses, damages or liabilities, including, without limitation, all reasonable legal fees, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Project of any hazardous or noxious substances. The representations, warranties, covenants and agreements of the Loan Parties set forth in this subparagraph:
  - (a) are separate and distinct obligations from the Loan Parties' other obligations;
  - (b) survive the payment and satisfaction of the Loan Parties other obligations and the discharge of all or any of the Security;
  - (c) are not discharged or satisfied by foreclosure against the Project pursuant to the Security; and
  - (d) shall continue in effect after any transfer of the Project including, without limitation, transfers pursuant to foreclosure proceedings (whether judicial or non-judicial) or by any transfer in lieu of foreclosure.
6. **Assignability:** The Loan Documents may not be assigned, transferred or otherwise disposed of by any of the Loan Parties without the Lender's prior written consent, which consent may be arbitrarily withheld, delayed and/or conditioned by the Lender. The Loan, any of the Loan Documents or any interest in the Loan or the Loan Documents may be assigned or participated by the Lender (and its successors and assigns), in whole or in part, without the consent of the



Borrower. Except as hereinafter provided, the Borrower consents to the disclosure by the Lender to any such prospective assignee or participant of all information and documents regarding the Loan, the Loan Documents, the Project and any of the Loan Parties within the possession or control of the Lender.

7. **Information:** For purposes of this Commitment Letter, "**Information**" means all information relating to the Loan Parties and their respective affiliates or any of their respective businesses, other than any such information that is available to the Lender on a non-confidential basis prior to such receipt. Any person required to maintain the confidentiality of Information in accordance with this Commitment Letter shall be considered to have complied with its obligation to do so if such person has exercised the same degree of care to maintain the confidentiality of such Information as such person would accord to its own confidential information. In addition, from time to time the Lender publishes advertisements or announcements of completed transactions which advertisements or announcements include, but are not limited to, press releases, paid advertisements, internally displayed tombstones, social media, investor brochures or information displayed on the internet or on the Lender's intranet. The Loan Parties consent to the publication of an advertisement or announcement of the Loan and agree to allow the Lender to photograph or utilize existing photographs or artistic renderings (for unfinished projects) of the Project for possible use in internal or external marketing programs.
8. **Confidentiality of Information:** The Lender agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to it, its affiliates and its and its affiliates' respective partners, directors, officers, employees, agents, advisors and representatives to the extent necessary to administer or enforce any of the Loan Documents, it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and will be bound and instructed to keep such Information confidential, (b) to the extent requested by any regulatory authority having jurisdiction over it (including any self-regulatory authority), (c) to the extent required by any applicable law or other legal process, (d) to any other party hereto, (e) to the extent reasonable, in connection with the exercise of any remedies under any of the Loan Documents or any action or proceeding relating to any of the Loan Documents or the enforcement of rights thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under the Loan or any of the Loan Documents, (g) with the consent of the Borrower, or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section, or (ii) becomes available to the Lender on a non-confidential basis from a source other than any of the Loan Parties or their respective affiliates and provided such source has not, to the knowledge of the Lender, breached a duty or obligation of confidentiality owed to any of the Loan Parties or their respective affiliates, or the Lender. If the Lender is requested or required to disclose any Information pursuant to or as required by any applicable law or by an subpoena or similar legal process, the Lender shall use its reasonable commercial efforts to provide the Borrower with notice of such requests or obligation in sufficient time so that the Borrower may seek an appropriate protective order or waive the Lender's compliance with the provisions of this Section, and the Lender shall co-operate with the Borrower in obtaining any such protective order.
9. **Use of Information:** The Lender shall be entitled to use any Information to assess the ability of the Loan Parties to obtain the Loan and to evaluate the ability of the Loan Parties to meet their respective financial obligations which includes, without limitation, disclosing and exchanging Information on an on-going basis with credit bureaus, credit reporting agencies and financial institutions or their agents, or to service providers, in order to determine and verify, on an on-going basis, the continuing eligibility of the Loan Parties for the Loan and the continuing ability of the Loan Parties to meet their respective financial obligations. This use, disclosure and exchange of Information will continue until the principal balance of the Loan outstanding together with all accrued and unpaid interest thereon and all other costs secured by the Security is repaid in full



and will help protect the Loan Parties from fraud and will also protect the integrity of the credit-granting system.

10. **Right to Inspect:** The Borrower acknowledges that the Lender may inspect the Project at any time at the expense of the Borrower.
11. **Demand and Default:** Notwithstanding the Lender's right to demand repayment of the Loan at any time and for any reason, in the event of any of the Loan Parties failing to pay any amount when due or being in breach of any covenant, condition or term of any of the Loan Documents, or if any representation or warranty made by any of the Loan Parties, or any information provided by any of the Loan Parties or their respective agents is found to be untrue or incorrect in any material respect, if all or any portion of the Project in the course of construction remains unfinished and without any work being done for a period of 20 consecutive days other than as a result of force majeure, if any Event of Default as defined in the Security has occurred which is continuing, or if in the sole opinion of the Lender, a material adverse change occurs relating to any of the Loan Parties, the Project, or the risk associated with the Loan, then the Borrower shall, at the option of the Lender, be in default of its obligations to the Lender, the Lender may, at its option on notice to the Borrower, demand repayment of the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs secured by the Security in full, cease or delay further funding, and/or may exercise any and/or all remedies available to it under the Security, at law and/or in equity. Furthermore, the Lender may, at its option, on notice to the Borrower, declare the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs secured by the Security forthwith due and payable, whereupon the same shall be and become immediately due and payable in full.
12. **Remedies Cumulative:** No extension, postponement, forbearance, delay, or failure on the part of the Lender in the exercise of any power, right or remedy under any of the Loan Documents, at law or in equity shall operate as a waiver thereof, nor shall a single or partial exercise of any power, right or remedy preclude other or further exercise thereof or the exercise of any other power, right or remedy. Neither the acceptance of any payment nor the making of any concession by the Lender at any time during the existence of a default shall be construed as a waiver of any continuing default or of any of the Lender's rights or remedies. All of the powers, rights and remedies of the Lender shall be cumulative and may be exercised simultaneously or from time to time in such order or manner as the Lender may elect. No waiver of any condition or covenant of any of the Loan Parties or of the breach of any such covenant or condition shall be deemed to constitute a waiver of any other covenant or condition or of any subsequent breach of such covenant or condition or justify or constitute a consent to or approval by the Lender of any violation, failure or default by the applicable Loan Party of the same or any other covenant or condition contained under any of the Loan Documents.
13. **Appointment of Receiver:** Upon and during the continuance of an Event of Default, in addition to any other rights which it may have, the Loan Parties each consent to the Lender's appointment of a receiver, or a receiver and manager either privately or by court appointment, to manage the Project and do all things necessary as an owner would be entitled to do.
14. **Severability:** Each of the Loan Parties agrees that if any one or more of the provisions contained in this Commitment Letter shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Lender, not affect any or all other provisions of this Commitment Letter and this Commitment Letter shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
15. **Multiple Parties:** If any of the Loan Parties is comprised of more than one person or corporation, the obligations shall be the joint and several obligations of each such person or corporation unless otherwise specifically stated herein.



16. **Time of the Essence:** Time is of the essence in this Commitment Letter.
17. **Non-Merger:** The representations, warranties, covenants and obligations herein set out in any of the Loan Documents shall not merge or be extinguished by the execution or registration of the Security but shall survive until the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other amounts secured by the Security are repaid in full.
18. **Representations and Warranties:** Each of the Loan Parties will, as applicable, provide the usual representations and warranties in the Loan Documents including, without limitation (a) the accuracy of any financial statements provided to the Lender, (b) that there has been no material adverse change in the financial condition or operations, as reflected in the financial statements used to evaluate this Loan, (c) title to the Project, (d) such Loan Party's power and authority to execute and deliver the Loan Documents to which it is a party, (e) the accuracy of any documentation delivered to the Lender, (f) the accuracy of all representations and warranties made to the Lender in the Loan Documents to which it is a party, (g) that there are no pending adverse claims, no outstanding judgments, no defaults under other agreements relating to the Project, and no undefended material actions, suits or proceedings with respect to such Loan Party or the Project, (h) that such Loan Party is attending to the preservation of its assets, (i) the payment of all taxes, (j) that no consents, approvals or authorizations are necessary in connection with such Loan Party's business including without limitation, the construction of the Project, (k) that the construction of the Project is proceeding in accordance with all applicable laws, (l) that there are no other encumbrances registered against title to the lands upon which the Project is to be constructed except for Permitted Encumbrances, (m) that all necessary services are available to the Project, and (n) that no hazardous substances used, stored, discharged or present on the Project other than in accordance with all applicable laws, and will represent and warrant such other reasonable matters as the Lender or its counsel may require.
19. **Interim Occupancy Fees and Revenues:** Interim Occupancy fees/revenue must be used exclusively towards Project costs or to reduce the outstanding balance of any loan secured by a first ranking mortgage of the lands upon which the Project will be constructed. Save and except as set forth in this Section, interim occupancy fees may not be used by the Borrower for any other purpose nor may they be removed from the project as a fee, equity repatriation, dividend, interest, premium, or any other form of distribution.
20. **Payment of Sales Taxes:** The Borrower accepts full responsibility for remittance and payment of any and all applicable sales tax due and the periodic submission and collection of all applicable sales tax claims and credits. The Project Budget shall include a net difference of \$Nil for applicable sales tax paid less applicable sales tax recovered and shall also include a ceiling of \$500,000 at any point in time, prior to repayment of the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs secured by the Security in full, with respect to the permitted difference between applicable sales tax included in work-in-place less applicable sales tax recovered by the Borrower from government authorities. If the difference referred to in the previous sentence exceeds \$500,000 at any point in time prior to repayment of the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs secured by the Security in full, the portion of the difference in excess of \$500,000 be funded by the Borrower as additional equity.
21. **Lender's Sign:** The Lender shall have the right, but shall not be obligated, at the Lender's cost, to place a sign on the Project at any time after execution of this Commitment Letter by the Borrower but prior to repayment of the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs secured by the Security in full, which sign shall state that the Lender has assisted with the financing of the Project. The Lender, at the Lender's cost, shall be permitted to take down the sign at any time prior to repayment of the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs



secured by the Security in full, after which time the Borrower shall be permitted to take down such sign at any time at the Borrower's cost.

22. **Governing Law:** The Loan and the Loan Documents shall be governed by and construed under laws of the Province of Ontario and the federal laws of Canada as applicable therein.
23. **Modification:** No term or requirement of any of the Loan Documents may be waived or varied orally or by any course of conduct of the Borrower or anyone acting on his behalf or by any officer, employee or agent of the Lender. Any alteration or amendment to any of the Loan Documents must be in writing and signed by a duly authorized officer of the Lender and accepted by a duly authorized officer of the Borrower.
24. **Language:** Any word importing the singular or plural shall include the plural and singular respectively. If any party is comprised of more than one entity, the obligations of each of such entities shall be joint and several. Any word importing persons of either gender or firms or corporations shall include persons of the other gender and firms or corporations were the context so requires.
25. **Headings:** The headings and section numbers appearing in any of the Loan Documents are included only for convenience of reference and in no way define, limit, construe or describe the scope or intent of any provision of any of the Loan Documents.
26. **Counterparts:** Any of the Loan Documents may be executed in several counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument.
27. **Electronic Execution:** The words "execution," "execute", "signed," "signature," and words of like import in or related to any Loan Documents to be signed in connection with the Loan shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada) and the *Electronic Commerce Act, 2000* (Ontario), or any other similar laws based on the *Uniform Electronic Commerce Act* of the Uniform Law Conference of Canada.
28. **Calculations:** All interest calculated under this Commitment Letter shall be computed based on the actual number of days elapsed in a year consisting of 365 days.
29. **Paramountcy:** In the event of any inconsistency or conflict between any of the provisions of the Commitment Letter and any provision or provisions of the Security, the provisions of the Commitment Letter will prevail.

**SCHEDULE C**  
**PROJECT MONITOR MANDATE / REPORTING**

**PRELIMINARY REPORT PRIOR TO INITIAL FUNDING:**

The Project Monitor is to prepare a preliminary report inclusive of the following information:

**Budget:**

1. review the Borrower's proposed detailed Project Budget as revised and approved by the Lender, further to the Project Monitor's recommendations;
2. review all material cost-items, contracts and change orders with trades;
3. confirm quantum of any contemplated trade contract change orders or extras not yet approved;
4. confirm all funding sources including without limitation, equity, purchaser deposits, deferrals, mezzanine financing and construction loan, as applicable;
5. confirm that Minimum Project Equity has been injected into the Project on the agreed-upon land valuation contained in the Commitment Letter and costs incurred to date;
6. confirm that the Borrower has continually maintained the Minimum Project Equity at all times;
7. confirm the adequacy of the interest expense carried in the Project Budget including, without limitation, the preparation of independent Project cash flows;
8. confirm the adequacy of the contingency allowances carried in terms of construction risk and other soft costs;
9. confirm the costs incurred to date through a review of invoices, the Borrower's trial balance, aged payables listing, cancelled cheques, etc.;
10. confirm applicable development charges and levies relating to the Project including, without limitation, parkland deduction, regional and municipal, education, Section 37 and any other applicable municipal fees;
11. confirm the expected timing of payments;
12. as required by the Lender, provide commentary on relative experience of major trade contractors and any requirement for bonding;
13. review any leases for conformity to landlord's work and tenant inducement allowances within the Project Budget;
14. review the and the Project construction time schedule (the "Project Schedule") to confirm overall reasonableness and allowance for lost weather days, statutory holidays etc.; and
15. review allowance for appropriate HST and whether this is to be funded by the Lender or the Borrower and, where the Project includes residential rental units, validate the amount of self-assessed HST included in the Project Budget.

**Other Conditions:**



1. review all loan agreements and commitment letters including, without limitation, any deposit insurance agreement and amendments for the financing of the Project;
2. confirm the purchase price for the lands upon which the Project is to be constructed by reviewing the purchase and sale agreement and supporting documents;
3. review all available architectural and engineering plans and specifications to be reviewed for conformity with the Project Budget, along with all awarded contracts, letters of intent or tendered quotations;
4. review all environmental site assessments reports, geotechnical reports and hydrogeology reports, as applicable, and confirm that all recommendations are included within the Project Budget;
5. review all design consultant contracts in conjunction with a review of costs incurred to date to confirm the adequacy of applicable budgets; and
6. review all sales, legal and marketing agreements in conjunction with a review of costs incurred to date to confirm the adequacy of applicable budgets and the timing of commission payments with respect thereto.

**Management Contract:**

1. review the development management agreement to confirm the requirements and any other material agreements against the Project Budget;
2. review the CCDDC-Fixed Price Contract or a construction management contract, as applicable, as follows:
  - (a) all arm's length CCDDC-Fixed Price Contracts should be reviewed in terms of reasonableness, conformity to the latest design documents, Project Schedule and for front end loading and, in the case of non-arm's length contracts, an independent estimate should be completed;
  - (b) construction management contracts should be reviewed in terms of the overall Project and the Project Schedule;
  - (c) for all arm's length construction management contracts, the construction manager's budget should be confirmed for reasonableness by review of fixed price trade contracts, letters of intent, and trade quotations (supported by bid levelling analysis) with an independent estimate for all uncommitted items, and for all non-arm's length construction management contracts, a full independent estimate is to be prepared to verify the construction managers budget for complete scope and market pricing;
  - (d) confirmation of committed costs identifying contracts, awards, letters of intent and trade quotations together with a summary of major contracts still to be awarded and tendering schedule for all un-awarded scopes of work.

**Permits and Approvals:** review all of the development agreements, building permits, and other municipal / regional agreements and, in the case where not all permits are available, identify which permits have been received and any that have been applied for and anticipated timing of receipt.

**Letters of Credit:** confirm the amounts of any required letters of credit and whether any or all of the letters of credit are duplicates of Project costs included within the Project Budget.

**Insurance:** review the insurance provided in terms of period of coverage, insured parties, loss payable and the sum insured.

**Other:**

1. identify any potential issues that may affect the completion of the Project in accordance with the Project Budget and the Project Schedule;
2. provide any additional recommendations as they become apparent during the Project Monitor's review and discussions with the Borrower and the Lender.

**PROGRESS DRAW REPORTS PRIOR TO SUBSEQUENT ADVANCES FOR WORK-IN-PLACE:**

During construction of the Project the Project Monitor is to prepare monthly progress draw reports inclusive of the following information.

**Site Visit:**

1. conduct monthly site inspections prior to every draw request, including photographs and commentary on all work-in-place and the status of the Project;
2. confirm if there are any materials stored off-site and ensure that appropriate bill of sales and off-site material documentation is provided; and
3. provide commentary on the status of physical progress on-site and whether it is progressing in accordance with the Project Schedule.

**Project Budget, Cost-to-Date and Cost-to-Complete:**

1. review the Borrower's draw request based on a Project cost report, invoices and aged payables listing, and update and confirm the cost of work completed to date including holdbacks;
2. update the Project Budget and comment on any amendments to the Project Budget based on a review of the latest information and discussions with the Borrower;
3. review and update the Project cash flow projections and advise on any necessary revisions;
4. comment on the adequacy of the remaining contingency allowances;
5. review cancelled cheques to confirm that all material costs claimed in the Borrower's last draw request have been paid; and
6. receive and review a standard Statutory Declaration of Progress Payment Distribution and WSIB certificate.

**Construction:**

1. review and comment on any changes to the scope of the Project or the Project Budget, including without limitation, any revised drawings, if applicable;
2. identify and comment on any amendments to the construction budget to reflect approved change orders, requested change orders under review, and the impact of same on contingencies;
3. review any additional contracts received since the last draw report for completeness of scope, construction budget, and Project Schedule;



4. confirm committed costs identifying awarded contracts, letters of intent and trade quotations and provide an updated summary of major contracts still to be awarded, and a tendering schedule for such remaining un-awarded scopes of work;
5. provide commentary on the relative experience of any new major trade contractors and any requirement for bonding; and
6. review any additional new change orders over \$100,000. Loan Calculation/Monthly Draw:
7. prepare a Loan advance calculation outlining work completed to date, work-in-place, holdback amounts, value of change orders, estimate of cost-to-complete, and recommended source of funding breakdown; and
8. reconcile any deposit use with deposits received to date. Sales and Deposits:
9. review and analyze the Borrower's updated presale and/or deposit schedule and provide comments on any material changes from the last draw report; and
10. where deposits are held in trust, obtain an updated confirmation from the trustee as to the amounts held.

**Permits and Approvals:**

1. review any additional development agreements and permits received and, in the case where not all permits are available, identify which permits have been received and any that have been applied for together with the anticipated timing of receipt and the impact on construction progress, if any; and
2. confirm the amounts of any required letters of credit and whether any or all of these are duplicates of Project costs included within the Project Budget.

**Insurance:** review insurance provided in terms of period of coverage, insured parties, loss payable and the sum insured.

**Other:**

1. identify any potential issues that may affect the completion of the Project in accordance with the Project Budget and the Project Schedule;
2. provide any additional recommendations as they become apparent during the Project Monitor's review and discussions with the Borrower and the Lender;
3. obtain and review a Borrower's certificate; and
4. provide a Project Monitor's certificate



## SCHEDULE D REPORTING

The Borrower shall provide the Lender with copies of the following regarding the Loan Parties and the Project:

1. any and all insurance policy renewals and/or amendments within ten business days of the issuance thereof. The Lender may, in its unfettered discretion, require its insurance consultant to conduct an insurance review at the Borrower's expense;
2. ongoing Project information including, but not limited to, strata plan documentation, working and final architects' / engineers' drawings, construction budgets, artist's renderings, and floor plans for the proposed Units;
3. any and all lease agreements entered into by the Borrower.
4. annually or as otherwise requested from time to time by the Lender evidence of the payment of all property taxes, local improvement rates and charges with respect to the Project;
5. within 90 days of the end of each of its fiscal years, or if the Borrower is an individual, each calendar year, or more often if requested by the Lender, the Borrower shall provide to the Lender:
  - (a) notice to reader financial statements of the Borrower and of any corporate Guarantor (but not for greater certainty, any Limited Recourse Guarantor), including a balance sheet and supporting schedules, a detailed statement of income and expenditures and supporting schedules, and a statement of change in cash flow.
6. at the Lender's request from time to time, the Borrower shall provide the Lender with any other relevant updates regarding the Project.

**SCHEDULE E  
NOTICE TO PROPERTY TAX AUTHORITY**

Re:            Project: 759 WINSTON Churchill Project.

To Whom It May Concern:

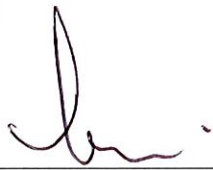
Approval is being given to release any information verbally or in writing as requested by the Lender or its affiliates regarding all matters related to taxes for the above-noted property. This is including but not limited to taxes outstanding, status of tax account, payments received and/or outstanding or copies of tax statements.

This approval will remain in full force and effect until the mortgage is paid in full.

Dated this 19<sup>th</sup> day of January, 2022.

**BORROWER:**

759 Winston Churchill GP Inc. in its capacity  
as general partner for and on behalf of 759  
Winston Churchill LP

Per:   
Name: R. MOLNETHAUER  
Title: A.S.O.

**Project Civic Address:**

-759 Winston Churchill Blvd.

-701 Winston Churchill Blvd

**Roll Number:**

-759 WC – 05-02-0-025-03400-0000-0-3

-701 WC – 05-02-0-025-03300-0000-0-5

(Please complete in full)

**SCHEDULE F  
PRE-AUTHORIZED DEBIT ("PAD") FORM**

I/we authorize the Lender or its affiliates and the financial institution designated (or any other financial institution I/we may authorize at any time) to begin deductions as agreed herein for monthly regular recurring payment and/or one-time payments from time to time. Regular monthly interest payments will be debited from my/our specific account on the first business day of each month. The Lender will obtain my/our authorization for any other one-time or irregular debits.

This authority is to remain in effect until the Lender has received written notification from me/us of its change or termination. This change or termination notification must be received by the Lender at least ten business days before the next debit is scheduled at the address provided below.

The Lender may not assign this authorization, whether directly or indirectly, by operation of law, change of control or otherwise, without providing at least ten days prior written notice to me/us.

I/we have certain recourse rights if any debit does not comply with this agreement. For example, I/we have the right to receive reimbursement for any debit that is not authorized by the Lender loan agreement(s) or is inconsistent with this PAD agreement.

<b>Borrower Name:</b> 759 Winston Churchill L.P.	
<b>Address:</b> 1125 Clarkson Rd. N	<b>Province:</b> Ontario
<b>City:</b> Mississauga	<b>Postal Code:</b> L5J 2W1
<b>Phone #</b> 416-624-5062	

<b>FI Name:</b> TD Canada Trust	<b>Institution #:</b> 004
<b>Account # :</b> 8389-5247491	<b>Transit #:</b> 05352
<b>Address:</b> 254 Lakeshore Road West	<b>Province:</b> ON
<b>City:</b> Mississauga	<b>Postal Code:</b> L5H 1G6

<b>Authorized Signature(s)</b>	
<b>Name(s)</b>	

**SCHEDULE G  
PROJECT BUDGET**

The total Project Budget has been represented by the Borrower to be \$226,415,582 as set out below:

Land	\$ 62,500,000	\$ Nil	\$ 62,500,000
DCs and Levies	\$ 13,691,454	\$ 5,855,753	\$ 19,547,207
Hard Costs	\$ 76,739,790	\$ 26,176,073	\$ 102,915,863
Contingency	\$ 3,936,989	\$ 1,308,804	\$ 5,245,793
Soft Costs	\$ 23,249,882	\$ 161,028	\$ 23,410,910
Financing Costs	\$ 11,034,278	\$ 1,761,531	\$ 12,795,809
<b>Total Use of Funds</b>	<b>\$ 191,152,393</b>	<b>\$ 35,263,189</b>	<b>\$ 226,415,582</b>

KingSett 1st Mortgage - Tranche 1	\$ 170,000,000	\$ -	\$ 149,000,000
KingSett 1st Mortgage - Tranche 2	\$ -	\$ 35,000,000	\$ 56,000,000
Equity- Cash	\$ 14,847,570	\$ -	\$ 14,847,570
Equity- Appraisal Surplus	\$ 5,500,000	\$ -	\$ 5,500,000
Offsetting Income	\$ -	\$ 1,068,012	\$ 1,068,012
<b>Total Source of Funds</b>	<b>\$ 190,347,570</b>	<b>\$ 36,068,012</b>	<b>\$ 226,415,582</b>



**SCHEDULE H  
ESG SURVEY**

**KingSett Mortgage Investments - ESG SURVEY**

KingSett Capital is committed to integrating best-in-class ESG practices throughout all its investment vehicles. We kindly ask that you complete this questionnaire so that we can track the Environmental, Social and Governance performance of the mortgage investments managed by KingSett Mortgage Corporation.

Date: January 19, 2022  
 Borrower: 759 WINSON CHURCHILL GP. INC.  
 Property: 759 WINSON CHURCHILL, MISSISSAUGA, ONTARIO  
 Completed By: M. MOLLENHAWER

Please identify any of the following ESG initiatives that apply to your organization and/or the property being financed.

<b>General</b>	Does your organization have an ESG strategy or annual report? If yes, where can we find more information?
<b>Environmental Initiatives</b> (please select all that apply to the property being financed)	<input type="checkbox"/> Water & energy consumption tracking <input checked="" type="checkbox"/> Waste volume tracking <input type="checkbox"/> On-site clean or renewable energy generation or storage (ex. solar, geothermal) <input type="checkbox"/> Retrofits to improve the energy-efficiency of the property (ex. lighting, HVAC, windows) <input checked="" type="checkbox"/> Stormwater management system <input type="checkbox"/> Green roof or green wall <input type="checkbox"/> Electric vehicle chargers on site <input type="checkbox"/> High performance envelope (ex. triple glazing) <input type="checkbox"/> Air tightness testing <input type="checkbox"/> High-efficiency appliances or fixtures <input type="checkbox"/> Green building certifications (ex. LEED, BOMA, WELL) _____ <input type="checkbox"/> Is the property's carbon footprint tracked? <input type="checkbox"/> Are carbon offsets purchased to offset embodied or operational carbon? <input type="checkbox"/> Other _____
<b>Social Impact</b>	<input type="checkbox"/> Does the project create or preserve any affordable housing units? Number of units _____ <input type="checkbox"/> Is there any community space (ex. daycare, arts & culture) in the property? Sq. ft. _____ <input type="checkbox"/> Tenant wellness or community focused programs <input type="checkbox"/> Other _____
<b>Governance</b>	<input type="checkbox"/> Does your organization have an ESG strategy or annual report? <input checked="" type="checkbox"/> Does your organization have a code of ethics? <input checked="" type="checkbox"/> Does your organization have ESG performance targets (ex. emissions reduction, diversity targets)? <input checked="" type="checkbox"/> Does your organization have any responsible hiring or contracting policies in place? <input type="checkbox"/> Other _____

Please tell us about any other ESG initiatives not highlighted above:

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March 20, 2023

759 Winston Churchill LP  
2680 Royal Windsor Drive,  
Mississauga, Ontario  
L5J 1K7

Attention: Mr. Michael Moldenhauer

**Re: First ranking construction financing of 759 Winston Churchill Boulevard, Mississauga, Ontario.**

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We are pleased to advise that KingSett Mortgage Corporation has approved the following first amendment (the "**First Amendment**") to the commitment letter dated January 18, 2022 (the "**Commitment**"), which Commitment sets out the terms and conditions of the Loan granted by the Lender to the Borrower and is incorporated herein by reference.

All capitalized terms contained in this First Amendment shall have the respective meanings ascribed thereto in the Commitment unless expressly defined in this First Amendment.

## **AMENDED LOAN TERMS**

### **A. LOAN TERMS**

1. Section A. 6 is deleted in its entirety and replaced with the following:
  5. **Loan Amount:**
    1. **Facility 1:** \$205,000,000 1<sup>st</sup> Mortgage (the "**Facility 1**")
      - (a) **Tranche 1:** \$170,000,000 for the construction of Building 3 and Building 2 and the land for Building 1, plus up to \$5,000,000 of soft costs relating to Building 1 (the "**Tranche 1**")
      - (b) **Tranche 2:** \$35,000,000 for the construction of Building 1 (the "**Tranche 2**").
    2. **Facility 2:** Funds in the amount of \$7,653,864 to be used for the purposes of the Cash-in-Lieu Letters of Credit (the "**Facility 2**" or "**LC Facility**") to be advanced to the City of Mississauga for Project-specific letters of credit.  
  
(Collectively, the "**Loan**" or "**Loan Amount**")
2. Section A. 7 is deleted in its entirety and replaced with the following:
  7. **Interest Rate:**
    1. **Facility 1:** Prime Rate + 3.50% (floor rate of 5.95%) per annum, calculated on the daily outstanding balance, compounded and payable monthly, not in advance, both before and after maturity, default and/or judgment with respect to the Loan the each and every month of the Term (as such Term may be extended in accordance with this Commitment), save and except for the last month of the Term, and 8.95% per annum for the last month of the Term and every month thereafter (as applicable, the "**Interest Rate**"), provided that "**Prime Rate**" shall mean, for any day, the rate of interest per annum established and published from time to time by Royal Bank of Canada as the reference rate of interest for the determination of interest rates charged to its customers of varying degrees of creditworthiness in Canada for Canadian Dollar demand loans in Toronto, Ontario.





2. **Facility 2:** Prime Rate + 2.00% (floor rate of 8.70%) per annum, calculated on the daily outstanding balance, compounded and payable monthly, not in advance, both before and after maturity, default and/or judgment with respect to the Loan the each and every month of the Term (as such Term may be extended in accordance with this Commitment), save and except for the last month of the Term, and 14.70% per annum for the last month of the Term and every month thereafter (as applicable, the "Interest Rate"), provided that "Prime Rate" shall mean, for any day, the rate of interest per annum established and published from time to time by Royal Bank of Canada as the reference rate of interest for the determination of interest rates charged to its customers of varying degrees of creditworthiness in Canada for Canadian Dollar demand loans in Toronto, Ontario.
3. The following new section Section A. 23 is added immediately below the existing Section A. 22 as follows:
  23. **Letter of Credit Fee:** \$38,270 (0.50% of Facility 2) non-refundable letter of credit fee (the "LC Fee") earned by the Lender upon the Borrower's execution of this First Amendment and payable by the Borrower to the Lender at the time of the initial advance of Facility 2. The Lender shall deduct the LC Fee from the proceeds of the initial advance of Facility 2.

## B. CONDITIONS PRECEDENT

This **First** Amendment shall be subject to the following additional conditions precedent which shall each have been received, reviewed and/or met to the satisfaction of the Lender in its sole, absolute and unfettered discretion (collectively, the "**First Amendment Conditions Precedent**").

1. The Lender shall have received copies of all required letters of credit for the Project;
2. The Project Monitor shall confirm the costs to be secured by Facility 2 are duplicative in nature and are reflected within the Project Budget; and
3. Security to be amended and/or extended as deemed necessary by the Lender and its legal counsel to reflect the revised terms specified in this First Amendment.

In the event that the abovementioned First Amendment Conditions Precedent have not been satisfied by March 21, 2023, at the exclusive option of the Lender, the Lender's obligations under this First Amendment shall cease and the Loan will become due and payable in accordance with the terms of the original Commitment.

## GENERAL MATTERS

1. **Entire Agreement** – No alteration, modification, amendment, change or addition to this First Amendment (nor further alteration, modification, amendment, change or addition to the Commitment) shall be effective unless the same is in writing and signed by all of the parties hereto.
2. **Not a Novation** – It is the intent of the Borrower and Lender that this First Amendment shall not constitute a novation or in any way adversely affect the Commitment or the Security for the Loan, including, without limitation, the mortgage/charge in favour of the Lender.
3. **Captions** – The captions and headings herein shall be solely for convenience of reference and in no way define, limit or describe the scope or intent of any provisions or sections of this First Amendment.
4. **Successors and Assigns** – The First Amendment shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, successors and assigns but may not be assigned



by the Borrower under any circumstances and the parties hereto agree that any such attempted assignment by the Borrower shall be null and void and of no force and effect.

5. Limited Modification – The Commitment, as amended by this First Amendment, and the Security shall remain in full force and effect and all parties liable or obligated with respect thereto shall remain so liable or obligated with respect to the Commitment, as amended by this First Amendment, and the Security. The Property shall remain in all respects subject to the liens, charges and encumbrances as set out in the Commitment, as amended by this First Amendment, and the Security and nothing herein and nothing done pursuant hereto shall affect or be construed to affect the liens, charges and encumbrances of, or warranties of title in, any of the loan documents including, without limitation, the Commitment and the Security (the “**Loan Documents**”), nor the priority thereof over other liens, charges, encumbrances or conveyances. This First Amendment shall not release or affect the liability of any party or parties who may have been, now or hereafter be liable under or on account of any of the Loan Documents.

If any obligation of any party or parties who may have been, now or hereafter be liable under or on account of any of the Loan Documents is determined to be void or unenforceable on account of this First Amendment and/or the modification of the Loan Documents as contemplated by this First Amendment, the Borrower, as an additional and independent obligation, hereby agrees to indemnify and hold harmless the Lender against and from all loss, cost, damage or expense (including attorney’s fees, whether or not litigation has been commenced, and any and all costs for trial, bankruptcy and appellate proceedings) suffered or incurred by the Lender as the result of any such obligation being void or unenforceable.

6. Commitment References – This First Amendment shall form a part of the Commitment and shall be read as such and reference in the Commitment to the Commitment or similar expressions shall be deemed, as of the date hereof, to include this First Amendment.
7. Time is of the Essence - Time is of the essence in this First Amendment.
8. Conflict - In the event of any inconsistency between the terms and conditions of any one or more of the Loan Documents and this First Amendment, the terms and conditions and provisions of this First Amendment shall prevail. Whenever possible, this First Amendment shall be read to harmonize, rather than conflict, with any term or provision contained in the Loan Documents which is not specifically modified by this First Amendment.
9. Appointment of a Receiver - In the event of a default of the Borrower on the Property, beyond the applicable cure period, in addition to any other rights which it may have, the Borrower consents to the Lender’s appointment of a receiver manager or receiver, either privately or court appointed, to manage the Property and do all things necessary as an owner would be entitled to do, including sell the Property, subject to the terms of the Mortgage and all applicable governmental legislation.
10. Electronic Transmission - The parties hereto acknowledge that this First Amendment may be executed in any number of counterparts, and may be executed electronically in accordance with the terms of the *Electronic Commerce Act, 2000* (Ontario), by way of DocuSign or a similar program, or may be executed in original form, and may be transmitted electronically by facsimile or email transmission, and that if signed by each party hereto in counterparts, and electronically submitted, such electronic submission will constitute a legally binding agreement between the parties.
11. Privacy Act Consent - The parties hereto acknowledge that this First Amendment shall be subject to the Privacy Act Consent, unamended, as set out in the Commitment.






**PRIVACY ACT CONSENT**


The parties hereto acknowledge that this First Amendment shall be subject to the Privacy Act Consent, unamended, as set out in the Commitment.

Please execute and return one copy of this First Amendment to the attention of the undersigned no later than March 21, 2023, failing which, at the Lender's exclusive option, this First Amendment shall be null and void and of no force nor effect and the Lender shall be entitled to all of its rights and remedies under the Commitment and the Security.

Yours truly,

**KINGSETT MORTGAGE CORPORATION**

Per:   
Justin Walton  
Managing Director, Mortgage Investments

Per:   
Bryan Salazar  
Managing Director, Mortgage Underwriting & Funding

*\*\*Borrower and Guarantor acknowledgement on following page\*\**

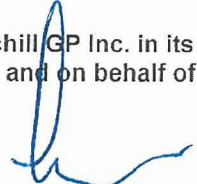


**ACKNOWLEDGEMENT**

The terms and conditions of this Commitment are hereby acknowledged and agreed to by the Borrower and Guarantors at Toronto this 25 day of March, 2023.

**BORROWER:**

759 Winston Churchill GP Inc. in its capacity as general partner for and on behalf of 759 Winston Churchill LP

Per:   
Name: A. Molodtsov  
Title: A.S.O.

I/we have authority to bind the Corporation.

**GUARANTOR:**

WPAM Royal Windsor GP Inc., in its capacity as general partner for and on behalf of WPAM Royal Windsor Limited Partnership

Per:   
Name: Aidan Flatley  
Title: A.S.O.

I/we have authority to bind the Corporation.

**GUARANTOR:**

RW GP Inc., in its capacity as general partner for and on behalf of RW Limited Partnership

Per:   
Name: Aidan Flatley  
Title: A.S.O.

I/we have authority to bind the Corporation.



LIMITED RECOURSE GUARANTOR:

2712611 ONTARIO CORP.

Per: 

Name: M. MOLDENKAUW  
Title: A.S.O.

I/we have authority to bind the Corporation.

LIMITED RECOURSE GUARANTOR:

South Shore GP Inc., in its capacity as  
general partner for and on behalf of South  
Shore Holdings LP

Per: 

Name: M. MOLDENKAUW  
Title: A.S.O.

I/we have authority to bind the Corporation.

LIMITED RECOURSE GUARANTOR:

Obayashi Canada Ltd.

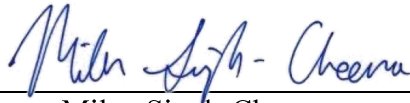
Per: 

Name: TSUKASA NAKAO  
Title: Secretary

I/we have authority to bind the Corporation.

**T  
A  
B  
G**

THIS IS **EXHIBIT "G"** REFERRED TO IN THE AFFIDAVIT  
OF DANIEL POLLACK, SWORN BEFORE ME THIS  
12<sup>TH</sup> DAY OF FEBRUARY, 2024.



---

Milan Singh-Cheema  
A Commissioner for taking Affidavits  
(or as may be)

## GUARANTEE

THIS GUARANTEE made as of the \_\_\_ day of February, 2022.

B E T W E E N:

**WPAM ROYAL WINDSOR GP INC.**, in its capacity as general partner for and on behalf of **WPAM ROYAL WINDSOR LIMITED PARTNERSHIP**, and **RW GP INC.**, in its capacity as general partner for and on behalf of **RW LIMITED PARTNERSHIP**

(collectively, the "**Guarantors**" and each a "**Guarantor**")

OF THE FIRST PART

- and -

**KINGSETT MORTGAGE CORPORATION**

(the "**Lender**")

OF THE SECOND PART

**WHEREAS** 759 Winston Churchill GP Inc., in its capacity as general partner for and on behalf of 759 Winston Churchill L.P. (the "**Mortgagor**"), as mortgagor, has granted a mortgage (the "**Mortgage**") to and in favour of the Lender, as mortgagee, of the lands charged therein (the "**Lands**"), notice of which was registered on the date hereof in the Land Registry Office for the Land Titles Division of Peel (No. 43) to secure the payment of principal, interest and other monies and the performance of all obligations arising thereunder, as amended, modified, supplemented or replaced from time to time;

**AND WHEREAS** each Guarantor will benefit from extension of the Loan Indebtedness to the Mortgagor and the Lender has stipulated that the Guarantors enter into this Guarantee as a further continuing and collateral security for the payment of the Loan Indebtedness and observance and performance of the Loan Obligations,

**NOW THEREFORE IN CONSIDERATION** of the recitals, the Lender extending the Loan Indebtedness and for such other good and valuable consideration received by the Guarantors, the receipt and adequacy of which is acknowledged by each Guarantor, each Guarantor agrees with the Lender as follows:

### **ARTICLE 1** **DEFINITIONS, INTERPRETATION**

#### **1.1 Definitions**

In this Guarantee capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Mortgage. Otherwise, in this Guarantee:

- (a) **"Indebtedness"**, in respect of any Person, is used in its most comprehensive sense and includes any and all advances, debts, duties, endorsements, guarantees, liabilities, obligations, responsibilities and undertakings of such Person at any time assumed, incurred or made, however arising, whether or not now due, absolute or contingent, liquidated or unliquidated, direct or indirect, and whether such Person is liable individually or jointly with others, irrespective of the regularity or validity thereof or of any security therefor;
- (b) **"Loan Indebtedness"** means any Indebtedness from time to time of the Mortgagor and any of the other Covenantors to the Lender arising under any of the Loan Documents; and
- (c) **"Loan Obligations"** means the obligations of the Mortgagor and any of the other Covenantors arising under the Loan Documents.

## 1.2 Interpretation

For the purposes of this Guarantee, all references to the singular include the plural where the context so admits, the masculine to include the feminine and neuter gender and, where necessary, a body corporate, and vice versa.

## 1.3 Headings

In this Guarantee, the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this Guarantee.

## **ARTICLE 2** **REPRESENTATIONS AND WARRANTIES**

### 2.1 Representations and Warranties of the Guarantors

Each Guarantor makes the following representations and warranties to the Lender which will continue to be true and correct as long as any Loan Indebtedness remains unpaid:

- (a) each Guarantor is executing and delivering this Guarantee at the sole and exclusive request of the Mortgagor;
- (b) each Guarantor has derived or expects to derive financial and other advantage from the Loan Indebtedness;
- (c) no Guarantor has received or relied on any representation from the Lender or any agreement or undertaking with the Lender or any officer, employee or agent of the Lender, except as expressly set out in this Guarantee;
- (d) the Mortgagor has furnished each Guarantor with all financial and other information and copies of all agreements and documents such Guarantor has requested concerning the Mortgagor, any of the other Covenantors, the Lands, the

Loan Documents, the Loan Indebtedness, the Loan Obligations and the nature and extent of the risk each Guarantor incurs under this Guarantee;

- (e) each Guarantor has established means satisfactory to it of obtaining from the Mortgagor, independently of the Lender, such other information and copies of all agreements and other writings such Guarantor deems desirable concerning the Mortgagor, any of the other Covenantors, the Lands, the Loan Documents, the Loan Indebtedness, the Loan Obligations, the Mortgagor's and any of the other Covenantors' relationship with the Lender and the nature and extent of the risk each Guarantor incurs under this Guarantee;
- (f) each Guarantor:
  - (i) is an entity validly formed and existing under the laws of its jurisdiction of incorporation;
  - (ii) has the legal right and all necessary corporate or other power and authority to own its assets and carry on its business in all material respects;
  - (iii) is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions where it conducts business, except where failure to be so qualified, licensed or registered has not and is not reasonably likely to have a Material Adverse Effect; and
  - (iv) each Guarantor has all requisite power and authority to enter into and perform its obligations under this Guarantee, and to do all acts and things and execute and deliver all other documents and instruments as are required hereunder to be done, observed or performed by it in accordance with the terms hereof;
- (g) the execution and delivery by each Guarantor, and the performance by it of its obligations under, and compliance with the terms, conditions and provisions of, this Guarantee will not conflict with or result in a breach of any of the terms, conditions or provisions of:
  - (i) its articles, by-laws, shareholders' agreements or other organizational documents; as the case may be;
  - (ii) any applicable laws;
  - (iii) any material contracts, material authorizations or material contractual restriction binding on or affecting it or its assets; or
  - (iv) any material judgment, injunction, determination or award which is binding on it in each such case, except to the extent that such breach has not and is not reasonably likely to have a Material Adverse Effect;



- (h) the execution and delivery by each Guarantor of this Guarantee, and the performance by it of its obligations thereunder have been duly authorized by all necessary corporate or other action including, without limitation, the obtaining of all necessary partner, shareholder or other material and relevant consents. No authorization, consent, approval, registration, qualification, designation, declaration or filing with any governmental entity, or other person, is or was necessary in connection with the execution, delivery and performance of each Guarantor's obligations under this Guarantee to which it is a party, except where failure to obtain same would not have or be reasonably likely to have a Material Adverse Effect; and
- (i) this Guarantee has been duly executed and delivered, as the case may be, by each Guarantor, and constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by the availability of equitable remedies and the effect of bankruptcy, insolvency or similar laws affecting the enforcement of credit's rights generally), is (or will be immediately upon the execution thereof by such person) in full force and effect, and each Guarantor has performed and complied in all material respects with all the terms, provisions, agreements and conditions set forth herein and therein and required to be performed or complied with by each Guarantor.

### **ARTICLE 3** **COVENANTS**

#### **3.1 Covenants**

Each Guarantor unconditionally, absolutely and irrevocably covenants and agrees with the Lender:

- (a) in addition to and separate and distinct from its agreements in Subsections 3.1(b) and 3.1(c), to guarantee to the Lender the repayment by the Mortgagor and any Covenantors of the Loan Indebtedness and to guarantee to the Lender the punctual performance of the Loan Obligations;
- (b) in addition to and separate and distinct from its agreements in Subsections 3.1(a) and 3.1(c), to indemnify and save harmless the Lender from and against all loss, damage, expenses, costs and liability whatsoever which shall arise from or be caused by the default or breach by the Mortgagor and any of the other Covenantors with respect to the repayment of the Loan Indebtedness and the performance of the Loan Obligations;
- (c) in addition to and separate and distinct from its agreements in Subsections 3.1(a) and 3.1(b), as primary obligor and not as guarantor, to repay the Loan Indebtedness and to perform the Loan Obligations;
- (d) that it will not accept from the Mortgagor at any time prior to the repayment in full of all Loan Indebtedness; (i) the repayment of any loans (principal or interest) to, (ii) the redeeming or purchase of any of shares, units or partnership interests held

by or on behalf of, (iii) the payment of any compensation, fee or other amount to, or (iv) the payment of any distributions or dividends or return on partnership or shareholder investment to, in each case, any Guarantor or any shareholder, unitholder or partner of the Guarantor, save and except for those development, marketing and/or construction fees specifically approved in writing by the Lender and included in the Project Budget prepared by the Project Monitor; and

- (e) that it will not compensate any person who is a sponsor of the Project, including without limitation any of the other Guarantors, or any other non-arms length parties at any time prior to the repayment in full of all Loan Indebtedness.

### **3.2 Nature of Obligations of Guarantors**

Each Guarantor covenants and agrees with the Lender that:

- (a) except as expressly set out in this Guarantee the obligations and liabilities of each Guarantor under this Guarantee will be irrevocable and as long as any of the Loan Indebtedness remains unpaid, will continue and be of full force and effect and will not be terminated or in any manner affected, and no right of the Lender under this Guarantee will in any manner be prejudiced or impaired by:
  - (i) the dissolution, winding-up or other cessation of existence of the Mortgagor or any of the other Covenantors or the institution of any proceeding relating thereto, any continuance, reorganization or change in the business, directors, management, objects, organization or shareholders of the Mortgagor or any of the other Covenantors, the amalgamation of the Mortgagor or any of the other Covenantors with another corporation, the sale or disposal of or appointment of a liquidator, receiver, receiver-manager, receiver and manager or trustee in respect of any of the assets or undertaking of the Mortgagor or any of the other Covenantors, any distribution of the assets of the Mortgagor or any of the other Covenantors on any arrangement, bankruptcy, composition insolvency, liquidation, receivership, reorganization or other similar proceeding or occurrence, any assignment by the Mortgagor or any of the other Covenantors for the benefit of creditors, any other marshalling of any of the assets of the Mortgagor or any of the other Covenantors or any other act or event which constitutes a novation of any obligation or liability of the Mortgagor or any of the other Covenantors in respect of the Loan Indebtedness and the Loan Obligations, whether by substitution of the obligations or liabilities of any other person in place of those of the Mortgagor or any of the other Covenantors or otherwise;
  - (ii) any obligation or liability of the Mortgagor or any of the other Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise, any Guarantor, whether under this Guarantee or otherwise or any agreement or instrument evidencing any such obligation or liability at any time being unenforceable;

- (iii) any defect in, omission from, failure to file or register, or defective filing or registration of any document under which the Lender has taken security for payment of the Loan Indebtedness or for performance of the Loan Obligations, or any failure or loss in respect of any such security of the Lender, whether arising in connection with the fault of the Lender or otherwise;
  - (iv) any issue or levy by any administrative, government, judicial or other authority or arbitrator of any award, execution, injunction, judgment, order, attachment, writ or similar process against the Mortgagor or any of the other Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise;
  - (v) any occurrence or non-occurrence of any other act or event which would result in termination, discharge, limitation, merger, novation, reduction or release of any Guarantor or of any of its obligations or liabilities under this Guarantee or which would otherwise prejudice or impair any right of the Lender under this Guarantee; or
  - (vi) any sale, transfer, agreement to sell or other disposition of the Lands by the Mortgagor;
- (b) the obligations and liabilities of each Guarantor under this Guarantee are absolute and independent of and not in consideration of or conditional on any other obligation or liability of any Guarantor, the Mortgagor or any of the other Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise, or any prior notice or protest to, demand upon or action, suit or other proceeding against the Mortgagor or any of the other Covenantors. The Lender may bring or prosecute a separate action, suit or other proceeding against any Guarantor whether it is brought or prosecuted against the Mortgagor or any of the other Covenantors or whether the Mortgagor or any of the other Covenantors is joined;
- (c) this Guarantee will be binding in respect of any modification or renewal of the Loan Indebtedness or the Loan Obligations by the Mortgagor, any of the other Covenantors or any subsequent owner of the Lands, whether or not each Guarantor has consented to same and whether or not such modification or renewal constitutes an adverse or material alteration of such Guarantor's obligations under this Guarantee; and
- (d) any part payment by the Mortgagor and/or any of the other Covenantors of any of the Loan Indebtedness or part performance of any of the Loan Obligations that operates to extend any statute of limitations or law of prescription as to the Mortgagor and/or any of the other Covenantors will operate to extend such statute of limitations or law of prescription as to each Guarantor to the extent permitted by applicable law.

### 3.3 Authorizations

Each Guarantor authorizes the Lender, in the sole discretion of the Lender, without notice to or demand on the Guarantors and without in any manner affecting any obligation or liability of any Guarantor under this Guarantee or any security furnished to the Lender by any Guarantor in connection with the Loan Indebtedness and the Loan Obligations or prejudicing or impairing any right of the Lender under this Guarantee, from time to time to:

- (a) adjust, compromise, extend, modify, accelerate, renew or otherwise change the time, form or manner for payment of or any term in respect of the Loan Indebtedness or the Loan Obligations, including, without limitation, increasing or decreasing the rate of interest, changing the method of calculation of interest, extending the term, or altering the periodic payments;
- (b) take any security for payment of the Loan Indebtedness or for performance of the Loan Obligations and enforce, exchange, perfect, release, subordinate, subrogate, substitute, surrender, waive or take advantage of or defer or waive taking, perfecting, enforcing or otherwise taking advantage of any such security and apply such security and direct the manner of sale as the Lender determines in its sole discretion;
- (c) compromise, release, substitute, delay or waive the exercise of any right or remedy against the Mortgagor, any Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations;
- (d) grant any other indulgence to the Mortgagor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations and deal with all or any of such persons as the Lender sees fit;
- (e) accept payment of any Loan Indebtedness from the Mortgagor or any of the other Covenantors incurred by the Mortgagor or any of the other Covenantors after the execution of this Guarantee;
- (f) apply any payment by, recovery from or credit, deposit or offset due to, or any funds realized from any security furnished to the Lender by the Mortgagor, any Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations, to any Indebtedness, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise of the Mortgagor, any Guarantor or any of the other Covenantors to the Lender, as the case may be, in such manner and at such times as the Lender in its sole discretion determines;
- (g) otherwise deal with the Mortgagor, any Guarantor or any of the other Covenantors or the Loan Indebtedness, the Loan Obligations or any security provided to the Lender by the Mortgagor, any Guarantor or any of the other Covenantors as the Lender deems appropriate; and

- (h) impose a lien on or set off any money, security or other property of any Guarantor at any time in the possession of or on deposit with the Lender, whether held in a special account or on deposit or for safekeeping or otherwise, against any payment due from such Guarantor to the Lender under this Guarantee.

### **3.4 Waiver**

Subject to compliance with applicable laws by the Lender, each Guarantor unconditionally waives:

- (a) any right to receive from the Lender any communication with respect to the Loan Indebtedness, the Loan Obligations or any other obligation or liability of any Guarantor under this Guarantee, or of any of the other Covenantors liable in respect of any of the Loan Indebtedness or the Loan Obligations, including, without limitation:
  - (i) any notice of the creation or existence of any Indebtedness, the intention of the Lender to act on or in reliance on any obligation or liability of the Guarantor, whether under this Guarantee or otherwise, or of any of the other Covenantors, or any default by or non-observance of any obligation of the Mortgagor, any Guarantor or any of the other Covenantors;
  - (ii) any communication of any information known by the Lender relating to the financial condition of the Mortgagor or any of the other Covenantors or to any other circumstance bearing upon the risk of non-payment under the Loan Indebtedness or non-performance of any of the Loan Obligations; or
  - (iii) any demand for performance, notice of dishonour, notice of protest, presentment or protest relating to any obligation or liability of the Mortgagor, any Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations;
- (b) any right to require the Lender to:
  - (i) proceed against the Mortgagor, any Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations, including, without limitation, any right or benefit of discussion or division;
  - (ii) proceed against or exhaust any security furnished to the Lender by the Mortgagor, any Guarantor or any of the other Covenantors;
  - (iii) first apply any property or assets of the Mortgagor or any of the other Covenantors to the discharge of the Loan Indebtedness and the Loan Obligations or to marshal in favour of any Guarantor; or
  - (iv) pursue or exercise any other right or remedy of the Lender whatsoever;

- (c) as long as any of the Loan Indebtedness remains unpaid or any of the Loan Obligations have not been performed, any right of subrogation to or any right to enforce any right or remedy of the Lender in respect of the Mortgagor or any of the other Covenantors or any security provided to the Lender by the Mortgagor or any of the other Covenantors or any benefit of or right to participate in any such security; and
- (d) any defence arising out of or in connection with:
  - (i) any absence, impairment or loss of any right of contribution, reimbursement or subrogation or any other right or remedy of any Guarantor in respect of the Mortgagor or any of the other Covenantors;
  - (ii) any disability, incapacity or other defence available to the Mortgagor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations, or any cessation from any cause whatsoever of any obligation or liability of the Mortgagor or any of the other Covenantors in respect of the Loan Indebtedness or the Loan Obligations; or
  - (iii) any other circumstance which might otherwise constitute a defence to any action, suit or other proceeding against any Guarantor, whether under this Guarantee or otherwise.

### **3.5 Bankruptcy, etc.**

In the event of any distribution of any of the assets of the Mortgagor, any Guarantor or any of the other Covenantors, any arrangement, bankruptcy, composition, execution, sale, insolvency, liquidation, receivership, reorganization or other similar proceeding or occurrence, any proceeding for the dissolution, liquidation, winding-up or other cessation of existence of the Mortgagor or any of the other Covenantors, voluntary or involuntary, whether or not involving bankruptcy or insolvency proceedings, any assignment by the Mortgagor or any of the other Covenantors for the benefit of creditors or any other marshalling of any of the assets of any such person:

- (a) no obligation or liability of any Guarantor under this Guarantee will be terminated or in any manner affected and no right of the Lender under this Guarantee will in any manner be prejudiced or impaired by same or by any omission by the Lender to prove its claim or its full claim and the Lender may prove such claim as it sees fit and may refrain from proving any claim and may value or refrain from valuing any security held by the Lender; and
- (b) if any of the Loan Indebtedness is unpaid or if any of the Loan Obligations has not been performed, the Lender has the right to include in any claim made by it all sums paid by any Guarantor, whether under this Guarantee or otherwise, and to prove and rank for and receive dividends in respect of such claim, all right to prove and rank for such sums paid by such Guarantor and to receive the full amount of all dividends in respect thereof, which are hereby assigned and transferred by each Guarantor to the Lender.

**ARTICLE 4**  
**SUBORDINATION**

**4.1 Subordination of Indebtedness**

Each Guarantor defers, postpones and subordinates in the manner set out in this Article all of the Indebtedness from time to time of the Mortgagor and any of the other Covenantors to such Guarantor, to all of the Loan Indebtedness and each Guarantor assigns and transfers to the Lender every right of such Guarantor relating to the Indebtedness.

**4.2 Payment of Indebtedness**

Any right of any Guarantor to receive any payment on account of Indebtedness of the Mortgagor and any of the other Covenantors to any Guarantor will be subordinated to any right of the Lender to receive any payment of the Loan Indebtedness and no Guarantor shall:

- (a) commence any action, take any proceeding, collect or receive any payment upon, by set off or counterclaim or in any other manner, any of the Indebtedness of the Mortgagor and any of the other Covenantors to any Guarantor;
- (b) assign, charge, mortgage, pledge, sell, transfer or otherwise encumber or give a security interest in any of the Indebtedness of the Mortgagor and any of the other Covenantors to any Guarantor;
- (c) enforce or apply any security now or hereafter furnished by the Mortgagor and any of the other Covenantors to any Guarantor; or
- (d) incur any Indebtedness to or receive any loan, advance or gift from the Mortgagor or any of the other Covenantors.

**4.3 Payment in Trust**

If an Event of Default has occurred which is continuing, and any payment or distribution of assets of the Mortgagor and any of the other Covenantors are made to any Guarantor on account of the Indebtedness to which such Guarantor would be entitled except for this Article 4, such payment or distribution will be received by such Guarantor in trust for the benefit of the Lender, and such Guarantor shall forthwith pay same to the Lender for application to the Loan Indebtedness.

**ARTICLE 5**  
**MISCELLANEOUS**

**5.1 Payments**

All payments required to be made by any Guarantor to the Lender under this Guarantee will be made at the address of the Lender set out in Section 5.12 (or at any other place

specified by the Lender by written notice to such Guarantor) in immediately available funds in lawful Canadian currency, without any set off, counter claim or deduction.

## **5.2 Guarantors to Keep Informed**

As long as any of the Loan Indebtedness is unpaid or the Loan Obligations have yet to be performed in full each Guarantor assumes responsibility for keeping itself informed of the financial condition of the Mortgagor and any of the other Covenants and of all other circumstances bearing on the risk it incurs under this Guarantee.

## **5.3 Lender's Records**

The records of the Lender as to the Loan Indebtedness, the Loan Obligations or any failure by the Mortgagor or any of the other Covenants to make full and punctual payment or performance when due are conclusive evidence of the relevant facts without further proof.

## **5.4 Release**

Upon payment in full of the Loan Indebtedness and the satisfaction of all of the Loan Obligations, this Guarantee shall terminate and the Lender shall, upon the receipt of a request in writing from the Guarantors and at each Guarantor's expense, provide such releases and other documents as the Guarantors may reasonably request evidencing the termination of this Guarantee.

## **5.5 Failure of Indulgence Not Waiver**

No extension of time, waiver, or other indulgence given by the Lender to any Guarantor, or anyone claiming under such Guarantor, shall in any way affect or prejudice the rights of the Lender against such Guarantor or any other Covenantor. Each power and right under this Guarantee is cumulative and is in addition to and not in substitution for any other rights and remedies at law, or in equity or otherwise.

## **5.6 Modification**

No modification or waiver of this Guarantee is binding on the Lender unless made in writing and signed by a duly authorized officer of the Lender.

## **5.7 Entire Agreement**

On execution and delivery by each Guarantor, this Guarantee is deemed to be finally executed and delivered by each Guarantor to the Lender and is not subject to or affected by any condition as to the receipt by the Lender of any of the other Security Documents or as to the execution and delivery by any of the other Covenants to the Lender of any other Loan Documents, nor by any promise or condition affecting the liability of any Guarantor. No agreement, promise, representation or statement by the Lender or any of its officers, employees or agents unless in this Guarantee forms part of this Guarantee, has induced the making of it or affects the liability of any Guarantor and the Mortgagor under it.



## **5.8 Severability**

If any Section or part thereof of this Guarantee is invalid or unenforceable for any reason, then such Section or part thereof will be severable from this Guarantee and will not affect the validity or enforceability of any other part of this Guarantee.

## **5.9 Non-Merger**

The giving of this Guarantee is by way of additional and collateral security for the payment of the Loan Indebtedness and the performance of the Loan Obligations and not in substitution for or in satisfaction thereof, and the Commitment Letter, the Mortgage or any of the other Loan Documents shall not be merged hereby and in case of an Event of Default that is continuing, proceedings may be taken under this Guarantee, the Mortgage, or any of the other Security Documents or any one or more of them at the option of the Lender.

## **5.10 Paramountcy**

The provisions of any agreement between any Guarantor and the Lender in connection with the Loan Indebtedness, including but not limited to any loan application in respect thereof, the Mortgage and all of the other Loan Documents, shall form part of this Guarantee except where inconsistent with the provisions hereof. In the case of any inconsistency between this Guarantee and the Mortgage, the provisions of the Mortgage shall prevail.

## **5.11 Assignability**

Each Guarantor hereby consents to the Lender assigning, transferring or selling all or any portion of its interest under this Guarantee in connection with the proportionate assignment, transfer or sale of its interest in the Loan Indebtedness and the Loan Obligations. Without limiting the foregoing, the Lender may enter into participation, contending or syndication agreements with other lenders in connection with this Guarantee, the Loan Indebtedness and the Loan Obligations. The Lender may provide information of a financial or other nature to any prospective assignee, transferee, purchaser or other lenders concerning any Guarantor, this Guarantee, the Loan Indebtedness and the Loan Obligations.

## **5.12 Notices**

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication to be given under or in connection with this Guarantee shall be in writing and shall be delivered by personal delivery, prepaid courier service, postage prepaid registered mail or by electronic or digital transmission to the relevant party, addressed:

(a) to the Guarantors:

1111 Clarkson Road, North  
Mississauga, Ontario  
L5J 2W1

Attention: Michael Moldenhauer  
Email: [mm@moldenhauer.ca](mailto:mm@moldenhauer.ca)  
Facsimile: 416-637-9633

with a copy to the Guarantors' solicitors at

McCarthy Tetrault LLP  
Suite 5300 – 66 Wellington Street West  
Toronto, Ontario  
M5K 1E6

Attention: Sarit Pandya  
Email: [spandya@mccarthy.ca](mailto:spandya@mccarthy.ca)  
Facsimile: 416-601-7785

(b) to the Lender:

Scotia Plaza  
40 King Street West, Suite 3700,  
Toronto, Ontario  
M5H 3Y2

Attention: Scott Coates  
Email: [SCoates@kingsettcapital.com](mailto:SCoates@kingsettcapital.com)  
Facsimile: 416-687-6701

and such notice or other communication shall be deemed to have been given and received on the day on which it was delivered personally or by courier, or transmitted by electronic or digital transmission (or, if such day is not a business day or if delivery or transmission is made on a business day after 5:00 p.m. at the place of receipt, then on the next following business day) or, if mailed, on the third (3<sup>rd</sup>) business day following the date of mailing; provided, however, that if at the time of mailing or within three (3) business days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid. Each party may change its address for notice by providing notice of same in accordance with the foregoing.

### **5.13 Expenses, Fees and Indemnity**

Each Guarantor will pay to the Lender all costs, charges and expenses, including all administrative fees, legal fees and professional fees, incurred by the Lender in connection

with the collection of any amount payable under this Guarantee by any Guarantor to the Lender. Each Guarantor shall indemnify the Lender against all claims, loss or damages arising out of or in connection with any breach or default by any Guarantor under this Guarantee.

#### **5.14 Applicable Law**

This Guarantee and the rights and obligations of the Guarantors and the Lender under it are governed by and construed according to the laws of the jurisdiction in which the Lands are situate (the "**Province**") and the laws of Canada applicable therein.

#### **5.15 Time of the Essence**

Time is of the essence of this Guarantee.

#### **5.16 Execution by the Lender**

This Guarantee need not be executed by the Lender to be binding on and to enure to the benefit of the Lender.

#### **5.17 Counterparts**

This Guarantee may be executed in any number of counterparts, each of which will constitute an original, but all of which together will constitute one and the same document. A signed copy of this Guarantee or a counterpart of it delivered by email, facsimile or other means of electronic or digital transmission or signature is deemed to have the same legal effect as delivery of an original signed copy of this Guarantee.

#### **5.18 Further Assurances**

Each Guarantor will promptly do all further acts and execute and deliver further documents as may be required to carry out the terms or intent of this Guarantee.

#### **5.19 Successors and Assigns**

This Guarantee is binding on and enures to the benefit of the Lender and the Guarantors and their respective executors, administrators, successors and permitted assigns and to any Person to whom the Lender may grant any participation in this Guarantee, the Loan Indebtedness or any of the Loan Obligations or any power, remedy or right of the Lender under this Guarantee or any of the Lender's interest herein or in the Loan Indebtedness and the Loan Obligations.

#### **5.20 Multiple Parties**

This Guarantee will be read with all necessary grammatical changes and each reference to the Guarantors includes each and every such Person. All covenants and agreements herein of the Guarantors are the joint and several covenants and agreements of each such Person. If the Lender consists of more than one party, this Guarantee will be read with all necessary

grammatical changes and each such party or any one or more of them is entitled to enforce each right and remedy of the Lender under this Guarantee.

-- signatures follow on next page --

**IN WITNESS WHEREOF** each Guarantor has executed this Guarantee as of the date and year first written above.

**WPAM ROYAL WINDSOR GP INC.**, in its capacity as general partner for and on behalf of **WPAM ROYAL WINDSOR LIMITED PARTNERSHIP**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DocuSigned by:  
*Aidan Flatley*  
5CD85C379EF64AD...

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**RW GP INC.**, in its capacity as general partner for and on behalf of **RW LIMITED PARTNERSHIP**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DocuSigned by:  
*Aidan Flatley*  
5CD85C379EF64AD...

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACCEPTANCE OF SUBORDINATION**

The undersigned, for good and valuable consideration (the receipt and sufficiency of which is acknowledged), accepts and consents to the provisions of Article 4 of the Guarantee to which this acceptance is attached and agrees to be bound by its provisions and to recognize all priorities and other rights granted to the Lender and to pay the Lender in accordance therewith.

**DATED** as of the date of the Guarantee.

**759 WINSTON CHURCHILL GP INC.**, in its capacity as general partner for and on behalf of **759 WINSTON CHURCHILL L.P.**

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

Name: M. MOLDENTHAUER  
Title: A.S.O.

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

Name:  
Title:

**LIMITED RECOURSE GUARANTEE**

**THIS GUARANTEE** made as of the \_\_\_ day of February, 2022.

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

**2712611 ONTARIO CORP., OBAYASHI CANADA LTD. and SOUTH SHORE HOLDINGS LP**

(collectively, the "**Guarantors**" and each a "**Guarantor**")

**OF THE FIRST PART**

- and -

**KINGSETT MORTGAGE CORPORATION**

(the "**Lender**")

**OF THE SECOND PART**

**WHEREAS** 759 Winston Churchill GP Inc., in its capacity as general partner for and on behalf of 759 Winston Churchill L.P. (the "**Mortgagor**"), as mortgagor, has granted a mortgage (the "**Mortgage**") to and in favour of the Lender, as mortgagee, of the lands charged therein (the "**Lands**"), notice of which was registered on the date hereof in the Land Registry Office for the Land Titles Division of Peel (No. 43) to secure the payment of principal, interest and other monies and the performance of all obligations arising thereunder, as amended, modified, supplemented or replaced from time to time;

**AND WHEREAS** each Guarantor will benefit from extension of the Loan Indebtedness to the Mortgagor and the Lender has stipulated that the Guarantors enter into this Guarantee as a further continuing and collateral security for the payment of the Loan Indebtedness and observance and performance of the Loan Obligations,

**NOW THEREFORE IN CONSIDERATION** of the recitals, the Lender extending the Loan Indebtedness and for such other good and valuable consideration received by the Guarantors, the receipt and adequacy of which is acknowledged by each Guarantor, each Guarantor agrees with the Lender as follows:

**ARTICLE 1**  
**DEFINITIONS, INTERPRETATION**

**1.1 Definitions**

In this Guarantee capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Mortgage. Otherwise, in this Guarantee:

- (a) **"Indebtedness"**, in respect of any Person, is used in its most comprehensive sense and includes any and all advances, debts, duties, endorsements, guarantees, liabilities, obligations, responsibilities and undertakings of such Person at any time assumed, incurred or made, however arising, whether or not now due, absolute or contingent, liquidated or unliquidated, direct or indirect, and whether such Person is liable individually or jointly with others, irrespective of the regularity or validity thereof or of any security therefor;
- (b) **"Loan Indebtedness"** means any Indebtedness from time to time of the Mortgagor and any of the other Covenantors to the Lender arising under any of the Loan Documents; and
- (c) **"Loan Obligations"** means the obligations of the Mortgagor and any of the other Covenantors arising under the Loan Documents.

## 1.2 Interpretation

For the purposes of this Guarantee, all references to the singular include the plural where the context so admits, the masculine to include the feminine and neuter gender and, where necessary, a body corporate, and vice versa.

## 1.3 Headings

In this Guarantee, the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this Guarantee.

# **ARTICLE 2** **REPRESENTATIONS AND WARRANTIES**

## 2.1 Representations and Warranties of Guarantor

Each Guarantor makes the following representations and warranties to the Lender which will continue to be true and correct as long as any Loan Indebtedness remains unpaid:

- (a) each Guarantor is executing and delivering this Guarantee at the sole and exclusive request of the Mortgagor;
- (b) each Guarantor has derived or expects to derive financial and other advantage from the Loan Indebtedness;
- (c) no Guarantor has received or relied on any representation from the Lender or any agreement or undertaking with the Lender or any officer, employee or agent of the Lender, except as expressly set out in this Guarantee;
- (d) the Mortgagor has furnished each Guarantor with all financial and other information and copies of all agreements and documents such Guarantor has requested concerning the Mortgagor, any of the other Covenantors, the Lands, the



Loan Documents, the Loan Indebtedness, the Loan Obligations and the nature and extent of the risk each Guarantor incurs under this Guarantee;

- (e) each Guarantor has established means satisfactory to it of obtaining from the Mortgagor, independently of the Lender, such other information and copies of all agreements and other writings such Guarantor deems desirable concerning the Mortgagor, any of the other Covenantors, the Lands, the Loan Documents, the Loan Indebtedness, the Loan Obligations, the Mortgagor's and any of the other Covenantors' relationship with the Lender and the nature and extent of the risk each Guarantor incurs under this Guarantee;
- (f) each Guarantor:
  - (i) is an entity validly formed and existing under the laws of its jurisdiction of incorporation;
  - (ii) has the legal right and all necessary corporate or other power and authority to own its assets and carry on its business in all material respects;
  - (iii) is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions where it conducts business, except where failure to be so qualified, licensed or registered has not and is not reasonably likely to have a Material Adverse Effect; and
  - (iv) each Guarantor has all requisite power and authority to enter into and perform its obligations under this Guarantee, and to do all acts and things and execute and deliver all other documents and instruments as are required hereunder to be done, observed or performed by it in accordance with the terms hereof;
- (g) the execution and delivery by each Guarantor, and the performance by it of its obligations under, and compliance with the terms, conditions and provisions of, this Guarantee will not conflict with or result in a breach of any of the terms, conditions or provisions of:
  - (i) its articles, by-laws, shareholders' agreements or other organizational documents; as the case may be;
  - (ii) any applicable laws;
  - (iii) any material contracts, material authorizations or material contractual restriction binding on or affecting it or its assets; or
  - (iv) any material judgment, injunction, determination or award which is binding on it in each such case, except to the extent that such breach has not and is not reasonably likely to have a Material Adverse Effect;

- (h) the execution and delivery by each Guarantor of this Guarantee, and the performance by it of its obligations thereunder have been duly authorized by all necessary corporate or other action including, without limitation, the obtaining of all necessary partner, shareholder or other material and relevant consents. No authorization, consent, approval, registration, qualification, designation, declaration or filing with any governmental entity, or other person, is or was necessary in connection with the execution, delivery and performance of each Guarantor's obligations under this Guarantee to which it is a party, except where failure to obtain same would not have or be reasonably likely to have a Material Adverse Effect; and
- (i) this Guarantee has been duly executed and delivered, as the case may be, by each Guarantor, and constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by the availability of equitable remedies and the effect of bankruptcy, insolvency or similar laws affecting the enforcement of credit's rights generally), is (or will be immediately upon the execution thereof by such person) in full force and effect, and each Guarantor has performed and complied in all material respects with all the terms, provisions, agreements and conditions set forth herein and therein and required to be performed or complied with by each Guarantor.

### **ARTICLE 3** **COVENANTS**

#### **3.1 Covenants**

Each Guarantor unconditionally, absolutely and irrevocably covenants and agrees with the Lender:

- (a) in addition to and separate and distinct from its agreements in Subsections 3.1(b) and 3.1(c), to guarantee to the Lender the repayment by the Mortgagor and any of the other Covenantors of the Loan Indebtedness and to guarantee to the Lender the punctual performance of the Loan Obligations;
- (b) in addition to and separate and distinct from its agreements in Subsections 3.1(a) and 3.1(c), to indemnify and save harmless the Lender from and against all loss, damage, expenses, costs and liability whatsoever which shall arise from or be caused by the default or breach by the Mortgagor and any of the other Covenantors with respect to the repayment of the Loan Indebtedness and the performance of the Loan Obligations;
- (c) in addition to and separate and distinct from its agreements in Subsections 3.1(a) and 3.1(b), as primary obligor and not as guarantor, to repay the Loan Indebtedness and to perform the Loan Obligations; and
- (d) that it will not accept from the Mortgagor at any time prior to the repayment in full of all Loan Indebtedness; (i) the repayment of any loans (principal or interest) to, (ii) the redeeming or purchase of any of shares, units or partnership interests held

by or on behalf of, (iii) the payment of any compensation, fee or other amount to, or (iv) the payment of any distributions or dividends or return on partnership or shareholder investment to, in each case, any Guarantor or any shareholder, unitholder or partner of such Guarantor or any other person not at arms-length to any of the foregoing.

### **3.2 Nature of Obligations of the Guarantor**

Each Guarantor covenants and agrees with the Lender that:

- (a) except as expressly set out in this Guarantee the obligations and liabilities of each Guarantor under this Guarantee will be irrevocable and as long as any of the Loan Indebtedness remains unpaid, will continue and be of full force and effect and will not be terminated or in any manner affected, and no right of the Lender under this Guarantee will in any manner be prejudiced or impaired by:
  - (i) the dissolution, winding-up or other cessation of existence of the Mortgagor or any of the other Covenantors or the institution of any proceeding relating thereto, any continuance, reorganization or change in the business, directors, management, objects, organization or shareholders of the Mortgagor or any of the other Covenantors, the amalgamation of the Mortgagor or any of the other Covenantors with another corporation, the sale or disposal of or appointment of a liquidator, receiver, receiver-manager, receiver and manager or trustee in respect of any of the assets or undertaking of the Mortgagor or any of the other Covenantors, any distribution of the assets of the Mortgagor or any of the other Covenantors on any arrangement, bankruptcy, composition insolvency, liquidation, receivership, reorganization or other similar proceeding or occurrence, any assignment by the Mortgagor or any of the other Covenantors for the benefit of creditors, any other marshalling of any of the assets of the Mortgagor or any of the other Covenantors or any other act or event which constitutes a novation of any obligation or liability of the Mortgagor or any of the other Covenantors in respect of the Loan Indebtedness and the Loan Obligations, whether by substitution of the obligations or liabilities of any other person in place of those of the Mortgagor or any of the other Covenantors or otherwise;
  - (ii) any obligation or liability of the Mortgagor or any of the other Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise, any Guarantor, whether under this Guarantee or otherwise or any agreement or instrument evidencing any such obligation or liability at any time being unenforceable;
  - (iii) any defect in, omission from, failure to file or register, or defective filing or registration of any document under which the Lender has taken security for payment of the Loan Indebtedness or for performance of the Loan Obligations, or any failure or loss in respect of any such security of the

Lender, whether arising in connection with the fault of the Lender or otherwise;

- (iv) any issue or levy by any administrative, government, judicial or other authority or arbitrator of any award, execution, injunction, judgment, order, attachment, writ or similar process against the Mortgagor or any of the other Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise;
  - (v) any occurrence or non-occurrence of any other act or event which would result in termination, discharge, limitation, merger, novation, reduction or release of any Guarantor or of any of its obligations or liabilities under this Guarantee or which would otherwise prejudice or impair any right of the Lender under this Guarantee; or
  - (vi) any sale, transfer, agreement to sell or other disposition of the Lands by the Mortgagor;
- (b) the obligations and liabilities of each Guarantor under this Guarantee are absolute and independent of and not in consideration of or conditional on any other obligation or liability of any Guarantor, the Mortgagor or any of the other Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise, or any prior notice or protest to, demand upon or action, suit or other proceeding against the Mortgagor or any of the other Covenantors. The Lender may bring or prosecute a separate action, suit or other proceeding against any Guarantor whether it is brought or prosecuted against the Mortgagor or any of the other Covenantors or whether the Mortgagor or any of the other Covenantors is joined;
- (c) this Guarantee will be binding in respect of any modification or renewal of the Loan Indebtedness or the Loan Obligations by the Mortgagor, any of the other Covenantors or any subsequent owner of the Lands, whether or not each Guarantor has consented to same and whether or not such modification or renewal constitutes an adverse or material alteration of such Guarantor's obligations under this Guarantee; and
- (d) any part payment by the Mortgagor and/or any of the other Covenantors of any of the Loan Indebtedness or part performance of any of the Loan Obligations that operates to extend any statute of limitations or law of prescription as to the Mortgagor and/or any of the other Covenantors will operate to extend such statute of limitations or law of prescription as to each Guarantor to the extent permitted by applicable law.

### **3.3 Recourse**

It is a condition of this Guarantee, and the Lender hereby agrees that, notwithstanding any other provision of this Guarantee, the Lender's recourse against the Guarantors and the liability of the Guarantors for any indebtedness, liability or obligation to the Lender under

this Guarantee shall be limited to the Lender's rights under the pledge agreement dated as of the date hereof granted by the Guarantors to and in favour of the Lender, in and to the Secured Property (as defined therein), and the Lender shall have no claim against any Guarantor in respect of any deficiency or be entitled to seek recourse against any other asset or property of such Guarantor, provided however nothing herein shall limit the Lender's recourse against the interest of the Guarantors in and to the Pledged Interests as this term is defined in the pledge agreement entered into among the Lender and the Guarantors on the date of this Guarantee.

### **3.4 Authorizations**

Each Guarantor authorizes the Lender, in the sole discretion of the Lender, without notice to or demand on the Guarantors and without in any manner affecting any obligation or liability of any Guarantor under this Guarantee or any security furnished to the Lender by any Guarantor in connection with the Loan Indebtedness and the Loan Obligations or prejudicing or impairing any right of the Lender under this Guarantee, from time to time to:

- (a) adjust, compromise, extend, modify, accelerate, renew or otherwise change the time, form or manner for payment of or any term in respect of the Loan Indebtedness or the Loan Obligations, including, without limitation, increasing or decreasing the rate of interest, changing the method of calculation of interest, extending the term, or altering the periodic payments;
- (b) take any security for payment of the Loan Indebtedness or for performance of the Loan Obligations and enforce, exchange, perfect, release, subordinate, subrogate, substitute, surrender, waive or take advantage of or defer or waive taking, perfecting, enforcing or otherwise taking advantage of any such security and apply such security and direct the manner of sale as the Lender determines in its sole discretion;
- (c) compromise, release, substitute, delay or waive the exercise of any right or remedy against the Mortgagor, any Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations;
- (d) grant any other indulgence to the Mortgagor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations and deal with all or any of such persons as the Lender sees fit;
- (e) accept payment of any Loan Indebtedness from the Mortgagor or any of the other Covenantors incurred by the Mortgagor or any of the other Covenantors after the execution of this Guarantee;
- (f) apply any payment by, recovery from or credit, deposit or offset due to, or any funds realized from any security furnished to the Lender by the Mortgagor, any Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations, to any Indebtedness, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise of the Mortgagor, any

Guarantor or any of the other Covenantors to the Lender, as the case may be, in such manner and at such times as the Lender in its sole discretion determines;

- (g) otherwise deal with the Mortgagor, any Guarantor or any of the other Covenantors or the Loan Indebtedness, the Loan Obligations or any security provided to the Lender by the Mortgagor, any Guarantor or any of the other Covenantors as the Lender deems appropriate; and
- (h) impose a lien on or set off any money, security or other property of any Guarantor at any time in the possession of or on deposit with the Lender, whether held in a special account or on deposit or for safekeeping or otherwise, against any payment due from such Guarantor to the Lender under this Guarantee.

### **3.5 Waiver**

Subject to compliance with applicable laws by the Lender, each Guarantor unconditionally waives:

- (a) any right to receive from the Lender any communication with respect to the Loan Indebtedness, the Loan Obligations or any other obligation or liability of any Guarantor under this Guarantee, or of any of the other Covenantors liable in respect of any of the Loan Indebtedness or the Loan Obligations, including, without limitation:
  - (i) any notice of the creation or existence of any Indebtedness, the intention of the Lender to act on or in reliance on any obligation or liability of the Guarantor, whether under this Guarantee or otherwise, or of any of the other Covenantors, or any default by or non-observance of any obligation of the Mortgagor, any Guarantor or any of the other Covenantors;
  - (ii) any communication of any information known by the Lender relating to the financial condition of the Mortgagor or any of the other Covenantors or to any other circumstance bearing upon the risk of non-payment under the Loan Indebtedness or non-performance of any of the Loan Obligations; or
  - (iii) any demand for performance, notice of dishonour, notice of protest, presentment or protest relating to any obligation or liability of the Mortgagor, any Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations;
- (b) any right to require the Lender to:
  - (i) proceed against the Mortgagor, any Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations, including, without limitation, any right or benefit of discussion or division;

- (ii) proceed against or exhaust any security furnished to the Lender by the Mortgagor, any Guarantor or any of the other Covenantors;
  - (iii) first apply any property or assets of the Mortgagor or any of the other Covenantors to the discharge of the Loan Indebtedness and the Loan Obligations or to marshal in favour of any Guarantor; or
  - (iv) pursue or exercise any other right or remedy of the Lender whatsoever;
- (c) as long as any of the Loan Indebtedness remains unpaid or any of the Loan Obligations have not been performed, any right of subrogation to or any right to enforce any right or remedy of the Lender in respect of the Mortgagor or any of the other Covenantors or any security provided to the Lender by the Mortgagor or any of the other Covenantors or any benefit of or right to participate in any such security; and
- (d) any defence arising out of or in connection with:
- (i) any absence, impairment or loss of any right of contribution, reimbursement or subrogation or any other right or remedy of any Guarantor in respect of the Mortgagor or any of the other Covenantors;
  - (ii) any disability, incapacity or other defence available to the Mortgagor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations, or any cessation from any cause whatsoever of any obligation or liability of the Mortgagor or any of the other Covenantors in respect of the Loan Indebtedness or the Loan Obligations; or
  - (iii) any other circumstance which might otherwise constitute a defence to any action, suit or other proceeding against any Guarantor, whether under this Guarantee or otherwise.

### **3.6 Bankruptcy, etc.**

In the event of any distribution of any of the assets of the Mortgagor, any Guarantor or any of the other Covenantors, any arrangement, bankruptcy, composition, execution, sale, insolvency, liquidation, receivership, reorganization or other similar proceeding or occurrence, any proceeding for the dissolution, liquidation, winding-up or other cessation of existence of the Mortgagor or any of the other Covenantors, voluntary or involuntary, whether or not involving bankruptcy or insolvency proceedings, any assignment by the Mortgagor or any of the other Covenantors for the benefit of creditors or any other marshalling of any of the assets of any such person:

- (a) no obligation or liability of any Guarantor under this Guarantee will be terminated or in any manner affected and no right of the Lender under this Guarantee will in any manner be prejudiced or impaired by same or by any omission by the Lender to prove its claim or its full claim and the Lender may prove such claim as it sees

fit and may refrain from proving any claim and may value or refrain from valuing any security held by the Lender; and

- (b) if any of the Loan Indebtedness is unpaid or if any of the Loan Obligations has not been performed, the Lender has the right to include in any claim made by it all sums paid by any Guarantor, whether under this Guarantee or otherwise, and to prove and rank for and receive dividends in respect of such claim, all right to prove and rank for such sums paid by such Guarantor and to receive the full amount of all dividends in respect thereof, which are hereby assigned and transferred by each Guarantor to the Lender.

## **ARTICLE 4**

### **SUBORDINATION**

#### **4.1 Subordination of Indebtedness**

Each Guarantor defers, postpones and subordinates in the manner set out in this Article all of the Indebtedness from time to time of the Mortgagor and any of the other Covenantors to such Guarantor, to all of the Loan Indebtedness and each Guarantor assigns and transfers to the Lender every right of such Guarantor relating to the Indebtedness.

#### **4.2 Payment of Indebtedness**

Any right of any Guarantor to receive any payment on account of Indebtedness of the Mortgagor and any of the other Covenantors to any Guarantor will be subordinated to any right of the Lender to receive any payment of the Loan Indebtedness and no Guarantor shall:

- (a) commence any action, take any proceeding, collect or receive any payment upon, by set off or counterclaim or in any other manner, any of the Indebtedness of the Mortgagor and any of the other Covenantors to any Guarantor;
- (b) assign, charge, mortgage, pledge, sell, transfer or otherwise encumber or give a security interest in any of the Indebtedness of the Mortgagor and any of the other Covenantors to any Guarantor;
- (c) enforce or apply any security now or hereafter furnished by the Mortgagor and any of the other Covenantors to any Guarantor; or
- (d) incur any Indebtedness to or receive any loan, advance or gift from the Mortgagor or any of the other Covenantors.

#### **4.3 Payment in Trust**

If an Event of Default has occurred which is continuing, and any payment or distribution of assets of the Mortgagor and any of the other Covenantors are made to any Guarantor on account of the Indebtedness to which such Guarantor would be entitled except for this Article 4, such payment or distribution will be received by such Guarantor in trust for the



benefit of the Lender, and such Guarantor shall forthwith pay same to the Lender for application to the Loan Indebtedness.

**ARTICLE 5**  
**MISCELLANEOUS**

**5.1 Payments**

All payments required to be made by any Guarantor to the Lender under this Guarantee will be made at the address of the Lender set out in Section 5.12 (or at any other place specified by the Lender by written notice to the Guarantors) in immediately available funds in lawful Canadian currency, without any set off, counter claim or deduction.

**5.2 Guarantor to Keep Informed**

As long as any of the Loan Indebtedness is unpaid or the Loan Obligations have yet to be performed in full each Guarantor assumes responsibility for keeping itself informed of the financial condition of the Mortgagor and any of the other Covenants and of all other circumstances bearing on the risk it incurs under this Guarantee.

**5.3 Lender's Records**

The records of the Lender as to the Loan Indebtedness, the Loan Obligations or any failure by the Mortgagor or any of the other Covenants to make full and punctual payment or performance when due are conclusive evidence of the relevant facts without further proof.

**5.4 Release**

Upon payment in full of the Loan Indebtedness and the satisfaction of all of the Loan Obligations, this Guarantee shall terminate and the Lender shall, upon the receipt of a request in writing from the Guarantors and at each Guarantor's expense, provide such releases and other documents as the Guarantors may reasonably request evidencing the termination of this Guarantee.

**5.5 Failure of Indulgence Not Waiver**

No extension of time, waiver, or other indulgence given by the Lender to any Guarantor, or anyone claiming under such Guarantor, shall in any way affect or prejudice the rights of the Lender against such Guarantor or any other Covenantor. Each power and right under this Guarantee is cumulative and is in addition to and not in substitution for any other rights and remedies at law, or in equity or otherwise.

**5.6 Modification**

No modification or waiver of this Guarantee is binding on the Lender unless made in writing and signed by a duly authorized officer of the Lender.

## **5.7 Entire Agreement**

On execution and delivery by each Guarantor, this Guarantee is deemed to be finally executed and delivered by each Guarantor to the Lender and is not subject to or affected by any condition as to the receipt by the Lender of any of the other Security Documents or as to the execution and delivery by any of the other Covenantors to the Lender of any other Loan Documents, nor by any promise or condition affecting the liability of any Guarantor. No agreement, promise, representation or statement by the Lender or any of its officers, employees or agents unless in this Guarantee forms part of this Guarantee, has induced the making of it or affects the liability of any Guarantor and the Mortgagor under it.

## **5.8 Severability**

If any Section or part thereof of this Guarantee is invalid or unenforceable for any reason, then such Section or part thereof will be severable from this Guarantee and will not affect the validity or enforceability of any other part of this Guarantee.

## **5.9 Non-Merger**

The giving of this Guarantee is by way of additional and collateral security for the payment of the Loan Indebtedness and the performance of the Loan Obligations and not in substitution for or in satisfaction thereof, and the Commitment Letter, the Mortgage or any of the other Loan Documents shall not be merged hereby and in case of an Event of Default that is continuing, proceedings may be taken under this Guarantee, the Mortgage, or any of the other Security Documents or any one or more of them at the option of the Lender.

## **5.10 Paramountcy**

The provisions of any agreement between any Guarantor and the Lender in connection with the Loan Indebtedness, including but not limited to any loan application in respect thereof, the Mortgage and all of the other Loan Documents, shall form part of this Guarantee except where inconsistent with the provisions hereof. In the case of any inconsistency between this Guarantee and the Mortgage, the provisions of the Mortgage shall prevail.

## **5.11 Assignability**

Each Guarantor hereby consents to the Lender assigning, transferring or selling all or any portion of its interest under this Guarantee in connection with the proportionate assignment, transfer or sale of its interest in the Loan Indebtedness and the Loan Obligations. Without limiting the foregoing, the Lender may enter into participation, contending or syndication agreements with other lenders in connection with this Guarantee, the Loan Indebtedness and the Loan Obligations. The Lender may provide information of a financial or other nature to any prospective assignee, transferee, purchaser or other lenders concerning any Guarantor, this Guarantee, the Loan Indebtedness and the Loan Obligations.

## 5.12 Notices

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication to be given under or in connection with this Guarantee shall be in writing and shall be delivered by personal delivery, prepaid courier service, postage prepaid registered mail or by electronic or digital transmission to the relevant party, addressed:

(a) to the Guarantors:

1111 Clarkson Road, North  
Mississauga, Ontario  
L5J 2W1

Attention: Michael Moldenhauer  
Email: [mm@moldenhauer.ca](mailto:mm@moldenhauer.ca)  
Facsimile: 416-637-9633

with a copy to the Guarantors' solicitors at

McCarthy Tetrault LLP  
Suite 5300 – 66 Wellington Street West  
Toronto, Ontario  
M5K 1E6

Attention: Sarit Pandya  
Email: [spandya@mccarthy.ca](mailto:spandya@mccarthy.ca)  
Facsimile: 416-601-7785

(b) to the Lender:

Scotia Plaza  
40 King Street West, Suite 3700,  
Toronto, Ontario  
M5H 3Y2

Attention: Scott Coates  
Email: [SCoates@kingsettcapital.com](mailto:SCoates@kingsettcapital.com)  
Facsimile: 416-687-6701

and such notice or other communication shall be deemed to have been given and received on the day on which it was delivered personally or by courier, or transmitted by electronic or digital transmission (or, if such day is not a business day or if delivery or transmission is made on a business day after 5:00 p.m. at the place of receipt, then on the next following business day) or, if mailed, on the third (3<sup>rd</sup>) business day following the date of mailing; provided, however, that if at the time of mailing or within three (3) business days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder

shall be delivered or transmitted by means of recorded electronic communication as aforesaid. Each party may change its address for notice by providing notice of same in accordance with the foregoing.

### **5.13 Expenses, Fees and Indemnity**

Each Guarantor will pay to the Lender all costs, charges and expenses, including all administrative fees, legal fees and professional fees, incurred by the Lender in connection with the collection of any amount payable under this Guarantee by any Guarantor to the Lender. Each Guarantor shall indemnify the Lender against all claims, loss or damages arising out of or in connection with any breach or default by any Guarantor under this Guarantee.

### **5.14 Applicable Law**

This Guarantee and the rights and obligations of the Guarantors and the Lender under it are governed by and construed according to the laws of the jurisdiction in which the Lands are situate and the laws of Canada applicable therein.

### **5.15 Time of the Essence**

Time is of the essence of this Guarantee.

### **5.16 Execution by the Lender**

This Guarantee need not be executed by the Lender to be binding on and to enure to the benefit of the Lender.

### **5.17 Counterparts**

This Guarantee may be executed in any number of counterparts, each of which will constitute an original, but all of which together will constitute one and the same document. A signed copy of this Guarantee or a counterpart of it delivered by email, facsimile or other means of electronic or digital transmission or signature is deemed to have the same legal effect as delivery of an original signed copy of this Guarantee.

### **5.18 Further Assurances**

Each Guarantor will promptly do all further acts and execute and deliver further documents as may be required to carry out the terms or intent of this Guarantee.

### **5.19 Successors and Assigns**

This Guarantee is binding on and enures to the benefit of the Lender and the Guarantors and their respective executors, administrators, successors and permitted assigns and to any Person to whom the Lender may grant any participation in this Guarantee, the Loan Indebtedness or any of the Loan Obligations or any power, remedy or right of the Lender

under this Guarantee or any of the Lender's interest herein or in the Loan Indebtedness and the Loan Obligations.

**5.20 Multiple Parties**

This Guarantee will be read with all necessary grammatical changes and each reference to the Guarantors includes each and every such Person. All covenants and agreements herein of the Guarantors are the joint and several covenants and agreements of each such Person. If the Lender consists of more than one party, this Guarantee will be read with all necessary grammatical changes and each such party or any one or more of them is entitled to enforce each right and remedy of the Lender under this Guarantee.

-- signatures follow on next page --

**IN WITNESS WHEREOF** each Guarantor has executed this Guarantee as of the date and year first written above.

**2712611 ONTARIO CORP.**

Per: \_\_\_\_\_  
Name: M. MOLDENHAUER  
Title: A.S.O.

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SOUTH SHORE GP INC.**, in its capacity as general partner for and on behalf of **SOUTH SHORE HOLDINGS LP**

Per: \_\_\_\_\_  
Name: M. MOLDENHAUER  
Title: A.S.O.

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**OBAYASHI CANADA LTD.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**IN WITNESS WHEREOF** each Guarantor has executed this Guarantee as of the date and year first written above.

**2712611 ONTARIO CORP.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**SOUTH SHORE GP INC., in its capacity as  
general partner for and on behalf of SOUTH  
SHORE HOLDINGS LP**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**OBAYASHI CANADA LTD.**

Per:   
Name: TSUKASA NAKAO  
Title: Secretary

Per: \_\_\_\_\_  
Name:  
Title:

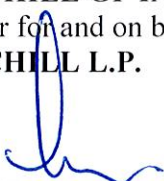
**ACCEPTANCE OF SUBORDINATION**

The undersigned, for good and valuable consideration (the receipt and sufficiency of which is acknowledged), accepts and consents to the provisions of Article 4 of the Guarantee to which this acceptance is attached and agrees to be bound by its provisions and to recognize all priorities and other rights granted to the Lender and to pay the Lender in accordance therewith.

**DATED** as of the date of the Guarantee.

**759 WINSTON CHURCHILL GP INC.**, in its  
capacity as general partner for and on behalf of  
**759 WINSTON CHURCHILL L.P.**

Per:

  
\_\_\_\_\_  
Name: M. MOLDENHAUER  
Title: A.S.O.

Per:

\_\_\_\_\_  
Name:  
Title:



**GUARANTEE RE: PROJECT COMPLETION AND COST OVERRUN**

**THIS GUARANTEE** made as of the \_\_\_\_ day of February, 2022.

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

**WPAM ROYAL WINDSOR GP INC.**, in its capacity as general partner for and on behalf of **WPAM ROYAL WINDSOR LIMITED PARTNERSHIP**, and **RW GP INC.**, in its capacity as general partner for and on behalf of **RW LIMITED PARTNERSHIP**

(collectively, the "**Guarantors**" and each a "**Guarantor**")

OF THE FIRST PART

- and -

**KINGSETT MORTGAGE CORPORATION**

(the "**Lender**")

OF THE SECOND PART

**WHEREAS** 759 Winston Churchill GP Inc., in its capacity as general partner for and on behalf of 759 Winston Churchill L.P. (the "**Mortgagor**"), as mortgagor, has granted a mortgage (the "**Mortgage**") to and in favour of the Mortgagee, as mortgagee, of the lands charged therein (the "**Lands**"), notice of which was registered on the date hereof in the Land Registry Office for the Land Titles Division of Peel (No. 43) to secure the payment of principal, interest and other monies and the performance of all obligations arising thereunder, as amended, modified, supplemented or replaced from time to time;

**AND WHEREAS** each Guarantor will benefit from extension of the Loan Indebtedness to the Mortgagor and the Lender has stipulated that the Guarantors enter into this Guarantee as a further continuing and collateral security for the payment of the Loan Indebtedness and observance and performance of the Loan Obligations,

**NOW THEREFORE IN CONSIDERATION** of the recitals, the Lender extending the Loan Indebtedness and for such other good and valuable consideration received by the Guarantors, the receipt and adequacy of which is acknowledged by each Guarantor, each Guarantor agrees with the Lender as follows:

**ARTICLE 1**  
**DEFINITIONS, INTERPRETATION**

**1.1 Definitions**

In this Guarantee capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Mortgage. Otherwise, in this Guarantee:

(a) "**Budgeted Project Costs**" means the Project Costs as set out in the Project Budget;

- (b) "**Construction Completion**" means completion of the construction of the Project in accordance with the Plans and Specifications and to the standard required by the Leases and applicable laws, including payment in full of all Project Costs, and expiry of all applicable construction lien periods arising without there being any outstanding construction liens claimed against the Project or the interest of the Mortgagor, the Guarantors or any of the other Covenantors therein (including the requirement that the general contract or construction management contract, as the case may be, is deemed to be substantially performed or completed pursuant to the relevant respective provisions of the *Construction Act* (Ontario));
- (c) "**Construction Completion Date**" means the date upon which Construction Completion occurs as certified by the Project Monitor as contemplated in Section 3.1 hereof.
- (d) "**Contingency Amount**" means, without duplication, with respect to any line item of Project Costs in the Project Budget the amount, if any, of any contingency provided in the Project Budget relating thereto;
- (e) "**Cost Overrun Amount**" means the amount that is certified by the Project Monitor as the amount of Cost Overruns then due;
- (f) "**Cost Overruns**" means all Project Costs in excess of Budgeted Project Costs (which, for greater certainty, includes any Contingency Amount);
- (g) "**Demand Notice**" means a written notice of demand given by the Lender to the Guarantors pursuant to Subsection 3.2(c) of this Guarantee, which notice of demand shall state the following:
  - (i) that such Demand Notice is given pursuant to Subsection 3.2(c) of this Guarantee;
  - (ii) that fifteen (15) days has elapsed since the Project Monitor certified a Cost Overrun Amount and the Mortgagor, any of the other Covenantors and any other mortgagee whose mortgage is a Permitted Encumbrance is unable or unwilling to fund such Cost Overrun Amount; and
  - (iii) the Cost Overrun Amount specifying in reasonable detail the Cost Overruns that are then due and payable or will be due and payable within not more than thirty (30) days following the date of giving such Demand Notice, as the case may be;
- (h) "**Hard Costs**" means amounts expended or to be expended for work, services or materials done, performed, placed or furnished in the construction of the Project which would be subject to a Holdback Amount (excluding any Soft Costs which would be the subject of a Holdback Amount);
- (i) "**Holdback Amount**" means an amount equal to the amount of the holdback or holdbacks required by the *Construction Act* (Ontario) which the Mortgagor or any of the other Covenantors, at the time of determination:

- (i) has retained or ought to have retained from previous payments made pursuant to any provisions of an existing contract pursuant to which an encumbrance under such statute could arise against the Project; and
- (ii) will be required to retain from any payment currently due or about to become due pursuant to such a contract,

whether or not any such payment is made from credit extended by the Lender to the Mortgagor, any of the other Covenantors or the Guarantors or such other amount as may be agreed upon between the Mortgagor or any of the other Covenantors and the Lender. Notwithstanding the foregoing, in determining the amount of the Holdback Amount at any time, there shall not be included therein any amount which as of a previous time was included in the holdback which the Mortgagor or any of the other Covenantors retained pursuant to such statute, but which has subsequently been paid out by the Mortgagor in accordance with such statute;

- (j) "**Indebtedness**", in respect of any Person, is used in its most comprehensive sense and includes any and all advances, debts, duties, endorsements, guarantees, liabilities, obligations, responsibilities and undertakings of such Person at any time assumed, incurred or made, however arising, whether or not now due, absolute or contingent, liquidated or unliquidated, direct or indirect, and whether such Person is liable individually or jointly with others, irrespective of the regularity or validity thereof or of any security therefor;
- (k) "**Loan Indebtedness**" means any Indebtedness from time to time of the Mortgagor or any of the other Covenantors to the Lender arising under any of the Loan Documents;
- (l) "**Loan Obligations**" means the obligations of the Mortgagor or any of the other Covenantors arising under the Loan Documents;
- (m) "**Material Project Agreements**" means, collectively, at any time, all agreements, documents and instruments now existing or from time to time entered into in the future or assigned to or obtained by the Mortgagor, the Guarantors or any of the other Covenantors affecting or relating to the Project and which are material to the development, operation, use or ownership thereof;
- (n) "**Plans and Specifications**" means the plans and specifications pertaining to the construction of the Project, as reviewed for reasonableness by the Project Monitor and as initially approved by the Lender, as amended from time to time with the approval of the Lender;
- (o) "**Project**" has the meaning ascribed to such term in the Commitment Letter;
- (p) "**Project Budget**" has the meaning ascribed to such term such term in the Commitment Letter;

- (q) "**Project Costs**" means the aggregate of all Hard Costs and all Soft Costs expended or to be expended in connection with the Project reaching Construction Completion;
- (r) "**Project Monitor**" means the project monitor appointed for the Project; and
- (s) "**Soft Costs**" means all amounts expended or to be expended in respect of the Project for consultants, architects, taxes, surveys, construction insurance, bonding costs, legal fees, promotion of the Project, financing, leasing, pre-operating costs and all other costs related to the Project (except Hard Costs).

## 1.2 Interpretation

For the purposes of this Guarantee, all references to the singular include the plural where the context so admits, the masculine to include the feminine and neuter gender and, where necessary, a body corporate, and vice versa.

## 1.3 Headings

In this Guarantee, the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this Guarantee.

## **ARTICLE 2** **REPRESENTATIONS AND WARRANTIES**

### 2.1 Representations and Warranties

Each Guarantor makes the following representations and warranties to the Lender which will continue to be true and correct as long as any Loan Indebtedness remains unpaid:

- (a) each Guarantor is executing and delivering this Guarantee at the sole and exclusive request of the Mortgagor;
- (b) each Guarantor has derived or expects to derive financial and other advantage from the Loan Indebtedness;
- (c) no Guarantor has received or relied on any representation from the Lender or any agreement or undertaking with the Lender or any officer, employee or agent of the Lender, except as expressly set out in this Guarantee;
- (d) the Mortgagor has furnished each Guarantor with all financial and other information and copies of all agreements and documents such Guarantor has requested concerning the Mortgagor, any of the other Covenantors, the Lands, the Loan Indebtedness, the Loan Obligations and the nature and extent of the risk each Guarantor incurs under this Guarantee;
- (e) each Guarantor has established means satisfactory to it of obtaining from the Mortgagor, independently of the Lender, such other information and copies of all agreements and other writings such Guarantor deems desirable concerning the Mortgagor, any of the other Covenantors, the Lands, the Loan Documents, the Loan

Indebtedness, the Loan Obligations, the Mortgagor's and any of the other Covenantors' relationship with the Lender and the nature and extent of the risk each Guarantor incurs under this Guarantee;

- (f) each Guarantor:
  - (i) is an entity validly formed and existing under the laws of its jurisdiction of incorporation;
  - (ii) has the legal right and all necessary corporate or other power and authority to own its assets and carry on its business in all material respects;
  - (iii) is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions where it conducts business, except where failure to be so qualified, licensed or registered has not and is not reasonably likely to have a Material Adverse Effect; and
  - (iv) each Guarantor has all requisite power and authority to enter into and perform its obligations under this Guarantee, and to do all acts and things and execute and deliver all other documents and instruments as are required hereunder to be done, observed or performed by it in accordance with the terms hereof;
- (g) the execution and delivery by each Guarantor, and the performance by it of its obligations under, and compliance with the terms, conditions and provisions of, this Guarantee will not conflict with or result in a breach of any of the terms, conditions or provisions of:
  - (i) its articles, by-laws, shareholders' agreements or other organizational documents; as the case may be;
  - (ii) any applicable laws;
  - (iii) any material contracts, material authorizations or material contractual restriction binding on or affecting it or its assets; or
  - (iv) any material judgment, injunction, determination or award which is binding on it in each such case, except to the extent that such breach has not and is not reasonably likely to have a Material Adverse Effect;
- (h) the execution and delivery by each Guarantor of this Guarantee, and the performance by it of its obligations thereunder have been duly authorized by all necessary corporate or other action including, without limitation, the obtaining of all necessary partner, shareholder or other material and relevant consents. No authorization, consent, approval, registration, qualification, designation, declaration or filing with any governmental entity, or other person, is or was necessary in connection with the execution, delivery and performance of each Guarantor's obligations under this Guarantee to which it is a party, except where

failure to obtain same would not have or be reasonably likely to have a Material Adverse Effect; and

- (i) this Guarantee has been duly executed and delivered, as the case may be, by each Guarantor, and constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by the availability of equitable remedies and the effect of bankruptcy, insolvency or similar laws affecting the enforcement of credit's rights generally), is (or will be immediately upon the execution thereof by such person) in full force and effect, and each Guarantor has performed and complied in all material respects with all the terms, provisions, agreements and conditions set forth herein and therein and required to be performed or complied with by each Guarantor.

### **ARTICLE 3** **COVENANTS**

#### **3.1 Project Completion**

Each Guarantor unconditionally, absolutely and irrevocably covenants and agrees with the Lender, in addition to and separate and distinct from its agreements in Subsection 3.2 and Subsection 3.3, to ensure the servicing, completion of construction and development of the Project such that it achieves Construction Completion and covenants and agrees to do so in accordance with, and in compliance with, in all material respects, the Plans and Specifications, all applicable laws, Permitted Encumbrances and Material Project Agreements and in accordance with sound building and engineering practices. For the purposes of this Guarantee, the servicing, construction and development of the Project shall be deemed to be completed when the Lender shall have received a certificate of the Project Monitor, in form and content satisfactory to the Lender, acting reasonably, wherein the Project Monitor certifies that Construction Completion has occurred.

#### **3.2 Cost Overruns**

- (a) Each Guarantor unconditionally, absolutely and irrevocably covenants and agrees with the Lender, in addition to and separate and distinct from its agreements in Subsection 3.1 and Subsection 3.3, to pay or cause the Mortgagor to pay, from time to time to all persons entitled thereto, when due, all Cost Overruns in order to cause Construction Completion in accordance with the standard set forth in Subsection 3.1;
- (b) For the purposes of any Demand Notice, the Lender shall be entitled to establish the Cost Overrun Amount pursuant to Subsection 3.2(a) without regard to:
  - (i) the value of any security or other guarantee or completion agreement for or in respect of any obligations of or owing by the Mortgagor to the Lender which is held by the Lender at the time of such Demand Notice; and
  - (ii) any amount received on account of, or as proceeds of any enforcement or realization of, any security or guarantee or completion agreement for or in respect of any obligations of or owing by the Mortgagor to the Lender which

is held by the Lender at the time of such Demand Notice, where such amount is received by the Lender subsequent to the Demand Notice by the Lender from the Guarantors pursuant to this Guarantee or any amount received on account of, or as proceeds of any enforcement of or realization under the Mortgages or any of the other Security Documents;

- (c) Without limiting the generality of Subsection 3.2(a) each Guarantor covenants and agrees with the Lender that thirty (30) days after receipt of a Demand Notice, the Guarantors will pay or cause to be paid by cash, certified cheque or manner approved by the Lender, the full amount specified in such Demand Notice to the persons entitled thereto pursuant to Subsection 3.2(a) hereof together with all such interest and penalties as may be due to such persons in respect of such amount and provide to the Lender evidence thereof. If the Guarantors fail to do so, the Lender shall be entitled (but not obligated) to, advance monies to pay the Cost Overrun Amount to the persons entitled to such payment;
- (d) Each Guarantor agrees to pay to the Lender on demand, interest on all amounts paid by the Lender pursuant to Subsection 3.2(c) hereof, calculated both before and after demand, default and judgment at a rate equal to the rate provided for in the Commitment Letter, calculated and capitalized monthly and due and payable at the earlier of payment and performance of all Loan Obligations and the Maturity Date; and
- (e) The giving of any Demand Notice at any time or from time to time hereunder regarding the amount or amounts required to be paid by the Guarantors hereunder in respect of the Cost Overrun Amount shall in no way exhaust the right of the Lender to give a further or other Demand Notice at any time or from time to time hereunder requesting any further or other amount or amounts so required.

### **3.3 Liens**

Each Guarantor unconditionally, absolutely and irrevocably covenants and agrees with the Lender, in addition to and separate and distinct from its agreements in Subsection 3.1 and Subsection 3.2 to within thirty (30) days of notice of same discharge any Encumbrance registered against title to the Lands in priority to or *pari passu* with the charge or security interest created by the Mortgages or any of the other Security Documents, save and except for Permitted Encumbrances.

### **3.4 Nature of Obligations of Guarantor**

Each Guarantor covenants and agrees with the Lender that:

- (a) except as expressly set out in this Guarantee the obligations and liabilities of each Guarantor under this Guarantee will be irrevocable and as long as any of the Loan Indebtedness remains unpaid, will continue and be of full force and effect and will not be terminated or in any manner affected, and no right of the Lender under this Guarantee will in any manner be prejudiced or impaired by:

- (i) the dissolution, winding-up or other cessation of existence of the Mortgagor or any of the other Covenantors or the institution of any proceeding relating thereto, any continuance, reorganization or change in the business, directors, management, objects, organization or shareholders of the Mortgagor or any of the other Covenantors, the amalgamation of the Mortgagor or any of the other Covenantors with another corporation, the sale or disposal of or appointment of a liquidator, receiver, receiver-manager, receiver and manager or trustee in respect of any of the assets or undertaking of the Mortgagor or any of the other Covenantors, any distribution of the assets of the Mortgagor or any of the other Covenantors on any arrangement, bankruptcy, composition insolvency, liquidation, receivership, reorganization or other similar proceeding or occurrence, any assignment by the Mortgagor or any of the other Covenantors for the benefit of creditors, any other marshalling of any of the assets of the Mortgagor or any of the other Covenantors or any other act or event which constitutes a novation of any obligation or liability of the Mortgagor or any of the other Covenantors in respect of the Loan Indebtedness and the Loan Obligations, whether by substitution of the obligations or liabilities of any other Person in place of those of the Mortgagor or any of the other Covenantors or otherwise;
- (ii) any obligation or liability of the Mortgagor or any of the other Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise, any Guarantor, whether under this Guarantee or otherwise or any agreement or instrument evidencing any such obligation or liability at any time being unenforceable;
- (iii) any defect in, omission from, failure to file or register, or defective filing or registration of any document under which the Lender has taken security for payment of the Loan Indebtedness or for performance of the Loan Obligations or any failure or loss in respect of any such security of the Lender, whether arising in connection with the fault of the Lender or otherwise;
- (iv) any issue or levy by any administrative, government, judicial or other authority or arbitrator of any award, execution, injunction, judgment, order, attachment, writ or similar process against the Mortgagor or any of the other Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise;
- (v) any occurrence or non-occurrence of any other act or event which would result in termination, discharge, limitation, merger, novation, reduction or release of any Guarantor or of any of its obligations or liabilities under this Guarantee or which would otherwise prejudice or impair any right of the Lender under this Guarantee; or
- (vi) any sale, transfer, agreement to sell or other disposition of the Lands by the Mortgagor;



- (b) the obligations and liabilities of each Guarantor under this Guarantee are absolute and independent of and not in consideration of or conditional on any other obligation or liability of any Guarantor, the Mortgagor or any of the other Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise, or any prior notice or protest to, demand upon or action, suit or other proceeding against the Mortgagor or any of the other Covenantors. The Lender may bring or prosecute a separate action, suit or other proceeding against any Guarantor whether it is brought or prosecuted against the Mortgagor or any of the other Covenantors or whether the Mortgagor or any of the other Covenantors is joined;
- (c) this Guarantee will be binding in respect of any modification or renewal of the Loan Indebtedness or the Loan Obligations by the Mortgagor, any of the other Covenantors or any subsequent owner of the Lands, whether or not each Guarantor has consented to same and whether or not such modification or renewal constitutes an adverse or material alteration of such Guarantor's obligations under this Guarantee; and
- (d) any part payment by the Mortgagor and/or any of the other Covenantors of any of the Loan Indebtedness or part performance of any of the Loan Obligations that operates to extend any statute of limitations or law of prescription as to the Mortgagor and/or any of the other Covenantors will operate to extend such statute of limitations or law of prescription as to each Guarantor to the extent permitted by applicable law.

### **3.5 Authorizations**

Each Guarantor authorizes the Lender, in the sole discretion of the Lender, without notice to or demand on the Guarantors and without in any manner affecting any obligation or liability of any Guarantor under this Guarantee or any security furnished to the Lender by any Guarantor in connection with the Loan Indebtedness and the Loan Obligations or prejudicing or impairing any right of the Lender under this Guarantee, from time to time to:

- (a) adjust, compromise, extend, modify, accelerate, renew or otherwise change the time, form or manner for payment of or any term in respect of the Loan Indebtedness or the Loan Obligations, including, without limitation, increasing or decreasing the rate of interest, changing the method of calculation of interest, extending the term, or altering the periodic payments;
- (b) take any security for payment of the Loan Indebtedness or for performance of the Loan Obligations and enforce, exchange, perfect, release, subordinate, subrogate, substitute, surrender, waive or take advantage of or defer or waive taking, perfecting, enforcing or otherwise taking advantage of any such security and apply such security and direct the manner of sale as the Lender determines in its sole discretion;

- (c) compromise, release, substitute, delay or waive the exercise of any right or remedy against the Mortgagor, any Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations;
- (d) grant any other indulgence to the Mortgagor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations and deal with all or any of such persons as the Lender sees fit;
- (e) accept payment of any Loan Indebtedness from the Mortgagor or any of the other Covenantors incurred by the Mortgagor or any of the other Covenantors after the execution of this Guarantee;
- (f) apply any payment by, recovery from or credit, deposit or offset due to, or any funds realized from any security furnished to the Lender by the Mortgagor, any Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations, to any Indebtedness, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise of the Mortgagor, any Guarantor or any of the other Covenantors to the Lender, as the case may be, in such manner and at such times as the Lender in its sole discretion determines;
- (g) otherwise deal with the Mortgagor, any Guarantor or any of the other Covenantors or the Loan Indebtedness, the Loan Obligations or any security provided to the Lender by the Mortgagor, any Guarantor or any of the other Covenantors as the Lender deems appropriate; and
- (h) impose a lien on or set off any money, security or other property of any Guarantor at any time in the possession of or on deposit with the Lender, whether held in a special account or on deposit or for safekeeping or otherwise, against any payment due from such Guarantor to the Lender under this Guarantee.

### **3.6 Waiver**

Subject to compliance with applicable laws by the Lender, each Guarantor unconditionally waives:

- (a) any right to receive from the Lender any communication with respect to the Loan Indebtedness, the Loan Obligations or any other obligation or liability of any Guarantor under this Guarantee, or of any of the other Covenantors liable in respect of any of the Loan Indebtedness or the Loan Obligations, including, without limitation:
  - (i) any notice of the creation or existence of any Indebtedness, the intention of the Lender to act on or in reliance on any obligation or liability of any Guarantor, whether under this Guarantee or otherwise, or of any of the other Covenantors, or any default by or non-observance of any obligation of the Mortgagor, any Guarantor or any of the other Covenantors;
  - (ii) any communication of any information known by the Lender relating to the financial condition of the Mortgagor or any of the other Covenantors or to

- any other circumstance bearing upon the risk of non-payment under the Loan Indebtedness or non-performance of any of the Loan Obligations; or
- (iii) any demand for performance, notice of dishonour, notice of protest, presentment or protest relating to any obligation or liability of the Mortgagor, any Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations;
- (b) any right to require the Lender to:
- (i) proceed against the Mortgagor, any Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations, including, without limitation, any right or benefit of discussion or division;
  - (ii) proceed against or exhaust any security furnished to the Lender by the Mortgagor, any Guarantor or any of the other Covenantors;
  - (iii) first apply any property or assets of the Mortgagor or any of the other Covenantors to the discharge of the Loan Indebtedness and the Loan Obligations or to marshal in favour of any Guarantor; or
  - (iv) pursue or exercise any other right or remedy of the Lender whatsoever;
- (c) as long as any of the Loan Indebtedness remains unpaid or any of the Loan Obligations have not been performed, any right of subrogation to or any right to enforce any right or remedy of the Lender in respect of the Mortgagor or any of the other Covenantors or any security provided to the Lender by the Mortgagor or any of the other Covenantors or any benefit of or right to participate in any such security; and
- (d) any defence arising out of or in connection with:
- (i) any absence, impairment or loss of any right of contribution, reimbursement or subrogation or any other right or remedy of any Guarantor in respect of the Mortgagor or any of the other Covenantors;
  - (ii) any disability, incapacity or other defence available to the Mortgagor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations, or any cessation from any cause whatsoever of any obligation or liability of the Mortgagor or any of the other Covenantors in respect of the Loan Indebtedness or the Loan Obligations; or
  - (iii) any other circumstance which might otherwise constitute a defence to any action, suit or other proceeding against any Guarantor, whether under this Guarantee or otherwise.

### **3.7 Bankruptcy, etc.**

In the event of any distribution of any of the assets of the Mortgagor, any Guarantor or any of the other Covenantors, any arrangement, bankruptcy, composition, execution, sale, insolvency, liquidation, receivership, reorganization or other similar proceeding or occurrence, any proceeding for the dissolution, liquidation, winding-up or other cessation of existence of the Mortgagor or any of the other Covenantors, voluntary or involuntary, whether or not involving bankruptcy or insolvency proceedings, any assignment by the Mortgagor or any of the other Covenantors for the benefit of creditors or any other marshalling of any of the assets of any such person:

- (a) no obligation or liability of any Guarantor under this Guarantee will be terminated or in any manner affected and no right of the Lender under this Guarantee will in any manner be prejudiced or impaired by same or by any omission by the Lender to prove its claim or its full claim and the Lender may prove such claim as it sees fit and may refrain from proving any claim and may value or refrain from valuing any security held by the Lender; and
- (b) if any of the Loan Indebtedness is unpaid, the Lender has the right to include in any claim made by it all sums paid by any Guarantor, whether under this Guarantee or otherwise, and to prove and rank for and receive dividends in respect of such claim, all right to prove and rank for such sums paid by such Guarantor and to receive the full amount of all dividends in respect thereof, which are hereby assigned and transferred by each Guarantor to the Lender.

## **ARTICLE 4 MISCELLANEOUS**

### **4.1 Payments**

All payments required to be made by any Guarantor to the Lender under this Guarantee will be made at the address of the Lender set out in Section 4.12 (or at any other place specified by the Lender by written notice to such Guarantor) in immediately available funds in lawful Canadian currency, without any set off counter claim or deduction.

### **4.2 Guarantors to Keep Informed**

As long as any of the Loan Indebtedness is unpaid or the Loan Obligations have yet to be performed in full each Guarantor assumes responsibility for keeping itself informed of the financial condition of the Mortgagor and any of the other Covenantors and of all other circumstances bearing on the risk it incurs under this Guarantee.

### **4.3 Lender's Records**

The records of the Lender as to the Loan, any Loan Indebtedness, the Loan Obligations or any failure by the Mortgagor or any of the other Covenantors to make full and punctual payment or performance when due are conclusive evidence of the relevant facts without further proof.

#### **4.4 Release**

Upon payment in full of the Loan Indebtedness and the satisfaction of all of the Loan Obligations, this Guarantee shall terminate and the Lender shall, upon the receipt of a request in writing from the Guarantors and at each Guarantor's expense, provide such releases and other documents as the Guarantors may reasonably request evidencing the termination of this Guarantee.

#### **4.5 Failure of Indulgence Not Waiver**

No extension of time, waiver, or other indulgence given by the Lender to any Guarantor, or anyone claiming under such Guarantor, shall in any way affect or prejudice the rights of the Lender against such Guarantor or any other Covenantor. Each power and right under this Guarantee is cumulative and is in addition to and not in substitution for any other rights and remedies at law, or in equity or otherwise.

#### **4.6 Modification**

No modification or waiver of this Guarantee is binding on the Lender unless made in writing and signed by a duly authorized officer of the Lender.

#### **4.7 Entire Agreement**

On execution and delivery by each Guarantor, this Guarantee is deemed to be finally executed and delivered by each Guarantor to the Lender and is not subject to or affected by any condition as to the receipt by the Lender of any of the other Security Documents or as to the execution and delivery by any of the other Covenantors to the Lender of any other Loan Documents, nor by any promise or condition affecting the liability of any Guarantor. No agreement, promise, representation or statement by the Lender or any of its officers, employees or agents unless in this Guarantee forms part of this Guarantee, has induced the making of it or affects the liability of any Guarantor and the Mortgagor under it.

#### **4.8 Severability**

If any Section or part thereof of this Guarantee is invalid or unenforceable for any reason, then such Section or part thereof will be severable from this Guarantee and will not affect the validity or enforceability of any other part of this Guarantee.

#### **4.9 Non-Merger**

The giving of this Guarantee is by way of additional and collateral security for the payment of the Loan Indebtedness and the performance of the Loan Obligations and not in substitution for or in satisfaction thereof, and the Commitment Letter, the Mortgage or any of the other Loan Documents shall not be merged hereby and in case of an Event of Default that is continuing, proceedings may be taken under this Guarantee, the Mortgage, or any of the other Security Documents or any one or more of them at the option of the Lender.

#### 4.10 Paramountcy

The provisions of any agreement between any Guarantor and the Lender in connection with the Loan Indebtedness, including but not limited to any loan application in respect thereof, the Mortgage and all of the other Loan Documents, shall form part of this Guarantee except where inconsistent with the provisions hereof. In the case of any inconsistency between this Guarantee and the Mortgage, the provisions of the Mortgage shall prevail.

#### 4.11 Assignability

Each Guarantor hereby consents to the Lender assigning, transferring or selling all or any portion of its interest under this in connection with the proportionate assignment, transfer or sale of its interest in Guarantee the Loan Indebtedness and the Loan Obligations. Without limiting the foregoing, the Lender may enter into participation, contending or syndication agreements with other lenders in connection with this Guarantee, the Loan Indebtedness and the Loan Obligations. The Lender may provide information of a financial or other nature to any prospective assignee, transferee, purchaser or other lenders concerning any Guarantor, this Guarantee, the Loan Indebtedness and the Loan Obligations.

#### 4.12 Notices

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication to be given under or in connection with this Guarantee shall be in writing and shall be delivered by personal delivery, prepaid courier service, postage prepaid registered mail or by electronic or digital transmission to the relevant party, addressed:

(a) to the Guarantors:

1111 Clarkson Road, North  
Mississauga, Ontario  
L5J 2W1

Attention: Michael Moldenhauer  
Email: [mm@moldenhauer.ca](mailto:mm@moldenhauer.ca)  
Facsimile: 416-637-9633

with a copy to the Guarantors' solicitors at

McCarthy Tetrault LLP  
Suite 5300 – 66 Wellington Street West  
Toronto, Ontario  
M5K 1E6

Attention: Sarit Pandya  
Email: [spandya@mccarthy.ca](mailto:spandya@mccarthy.ca)  
Facsimile: 416-601-7785

(b) to the Lender:

Scotia Plaza  
40 King Street West, Suite 3700,  
Toronto, Ontario  
M5H 3Y2

Attention: Scott Coates  
Email: [SCoates@kingsettcapital.com](mailto:SCoates@kingsettcapital.com)  
Facsimile: 416-687-6701

and such notice or other communication shall be deemed to have been given and received on the day on which it was delivered personally or by courier, or transmitted by electronic or digital transmission (or, if such day is not a business day or if delivery or transmission is made on a business day after 5:00 p.m. at the place of receipt, then on the next following business day) or, if mailed, on the third (3<sup>rd</sup>) business day following the date of mailing; provided, however, that if at the time of mailing or within three (3) business days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid. Each party may change its address for notice by providing notice of same in accordance with the foregoing.

#### **4.13 Expenses, Fees and Indemnity**

Each Guarantor will pay to the Lender all costs, charges and expenses, including all administrative fees, legal fees and professional fees, incurred by the Lender in connection with the collection of any amount payable under this Guarantee by any Guarantor to the Lender. Each Guarantor shall indemnify the Lender against all claims, loss or damages arising out of or in connection with any breach or default by any Guarantor under this Guarantee.

#### **4.14 Applicable Law**

This Guarantee and the rights and obligations of the Guarantor and the Lender under it are governed by and construed according to the laws of the jurisdiction in which the Lands are situate and the laws of Canada applicable therein.

#### **4.15 Time of the Essence**

Time is of the essence of this Guarantee.

#### **4.16 Execution by the Lender**

This Guarantee need not be executed by the Lender to be binding on and to enure to the benefit of the Lender.

#### **4.17 Counterparts**

This Guarantee may be executed in any number of counterparts, each of which will constitute an original, but all of which together will constitute one and the same document. A signed copy of this Guarantee or a counterpart of it delivered by email, facsimile or other means of electronic or digital transmission or signature is deemed to have the same legal effect as delivery of an original signed copy of this Guarantee.

#### **4.18 Further Assurances**

Each Guarantor will promptly do all further acts and execute and deliver further documents as may be required to carry out the terms or intent of this Guarantee.

#### **4.19 Successors and Assigns**

This Guarantee is binding on and enures to the benefit of the Lender and the Guarantors and their respective executors, administrators, successors and permitted assigns and to any Person to whom the Lender may grant any participation in this Guarantee, the Loan Indebtedness or any of the Loan Obligations or any power, remedy or right of the Lender under this Guarantee or any of the Lender's interest herein or in the Loan Indebtedness and the Loan Obligations.

#### **4.20 Multiple Parties**

This Guarantee will be read with all necessary grammatical changes and each reference to the Guarantors includes each and every such Person or corporation individually. All covenants and agreements herein of the Guarantors are the joint and several covenants and agreements of each such Person. If the Lender consists of more than one party, this Guarantee will be read with all necessary grammatical changes and each such party or any one or more of them is entitled to enforce each right and remedy of the Lender under this Guarantee.

-- signatures follow on next page --



**IN WITNESS WHEREOF** each Guarantor has executed this Guarantee as of the date and year first written above.

**WPAM ROYAL WINDSOR GP INC.**, in its capacity as general partner for and on behalf of **WPAM ROYAL WINDSOR LIMITED PARTNERSHIP**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DocuSigned by:  
*Aidan Flatley*  
5CD85C379EF64AD...

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**RW GP INC.**, in its capacity as general partner for and on behalf of **RW LIMITED PARTNERSHIP**

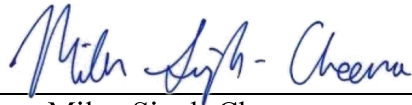
Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DocuSigned by:  
*Aidan Flatley*  
5CD85C379EF64AD...

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**T  
A  
B  
H**

THIS IS **EXHIBIT "H"** REFERRED TO IN THE AFFIDAVIT  
OF DANIEL POLLACK, SWORN BEFORE ME THIS  
12<sup>TH</sup> DAY OF FEBRUARY, 2024.



---

Milan Singh-Cheema  
A Commissioner for taking Affidavits  
(or as may be)

## MORTGAGE

759 WINSTON CHURCHILL GP INC., in its capacity as general partner for and on behalf of 759 WINSTON CHURCHILL L.P., having an office at 1111 Clarkson Road North, Mississauga, Ontario L5J 2W1 (hereinafter referred to as the "**Mortgagor**") being registered as owner of an estate in fee simple in possession of the Property;

IN CONSIDERATION of the sum of \$250,000,000.00 of lawful money of Canada, (the "**Principal Amount**"), or any portion thereof, lent to the Mortgagor by KINGSETT MORTGAGE CORPORATION, having an office at Scotia Plaza, 40 King Street West, Suite 3700, Toronto, Ontario M5H 3Y2 (hereinafter referred to as the "**Mortgagee**"), the Mortgagor **HEREBY COVENANTS WITH** the Mortgagee as follows:

### DEFINITIONS

1. The terms defined below shall have the indicated meanings unless the context expressly or by necessary implication requires otherwise:
  - (a) "**Closed Prepayment Period**" has the meaning ascribed thereto in Section 8;
  - (b) "**Commitment Letter**" means the first mortgage commitment letter dated as of January 18, 2022 between, inter *alios*, the Mortgagor and the Mortgagee, as amended, varied, supplemented, restated, renewed or replaced at any time and from time to time;
  - (c) "**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise;
  - (d) "**Covenantors**" means, collectively, the Mortgagor or any joint debtor or any obligor to the Mortgagee in connection with repayment of the Loan Indebtedness or the performance of the Loan Obligations;
  - (e) "**Event of Default**" has the meaning ascribed thereto in Section 30;
  - (f) "**Extension Fee**" means a \$410,000.00 (0.20% of the Maximum Loan Amount) fee;
  - (g) "**Governmental Authority**" means the government of Canada or any other nation, or of any political subdivision thereof, whether state/provincial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency;
  - (h) "**Hazardous Substance**" means any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, liquid waste, industrial waste, hauled liquid waste, deleterious substances, corrosive or toxic substances, hazardous wastes, hazardous materials, hazardous substances, special waste or waste of any kind or any other substance, the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release into the environment of which is now or hereafter prohibited, controlled or regulated under any applicable environmental law;
  - (i) "**Indebtedness**", in respect of any Person, is used in its most comprehensive sense and includes any and all advances, debts, duties, endorsements, guarantees, liabilities, obligations, responsibilities and undertakings of such Person at any time assumed, incurred or made, however arising, whether or not now due, absolute or contingent, liquidated or unliquidated, direct or indirect, and whether such Person is liable individually or jointly with others, irrespective of the regularity or validity thereof or of any security therefor;
  - (j) "**Interest Adjustment Date**" means the first day of the calendar month following the calendar month in which the initial advance of all or any portion of the Loan

Indebtedness is made, unless such initial advance takes place on the first day of a calendar month, in which case the interest adjustment date shall be the date of such initial advance;

- (k) **"Interest Rate"** means:
  - (i) from the date of the initial advance of all or any portion of the Loan Indebtedness until the end of the 24<sup>th</sup> month after the Interest Adjustment Date, the RBC Prime Rate plus 3.50% per annum (with a floor rate of 5.95%), calculated daily, compounded and payable monthly, not in advance, both before and after maturity, default and/or judgement with respect to the Loan Indebtedness; and
  - (ii) in the 25<sup>th</sup> month after the Interest Adjustment Date and every month thereafter, 8.95% per annum calculated daily, compounded and payable monthly, not in advance, both before and after maturity, default and/or judgement with respect to the Loan Indebtedness;
- (l) **"Lands"** means those lands and premises more particularly described in Schedule "A" attached hereto;
- (m) **"Lease Benefits"** means, collectively, the benefit of all covenants and obligations of lessees, tenants, licensees, or occupants as well as all other rights, privileges, advantages and benefits contained in any of the Leases, including without limitation, all rights and benefits of any guarantees thereof, the right to demand, sue for, collect, recover and receive all Rents, to enforce the Mortgagor's rights under any Lease, and generally any collateral advantage or benefit to be derived from the Leases or any of them;
- (n) **"Leases"** means, collectively, all present and future leases, subleases, licenses, agreements to lease, agreements to sublease, options to lease or sublease, rights of renewal or other agreements by which the Mortgagor or any predecessor or successor in title thereto, has granted or will grant the right to use or occupy all or part or parts of the Property, and including all agreements collateral thereto;
- (o) **"Lien"** means, collectively, any: (i) lien, charge, mortgage, pledge, security interest or conditional sale agreement; (ii) assignment, lease, consignment, trust or deemed trust that secures payment or performance of an obligation; (iii) garnishment; (iv) other encumbrance of any kind; and (v) any commitment or agreement to enter into or grant any of the foregoing;
- (p) **"Loan Documents"** means, collectively, the Commitment Letter, this Mortgage, the Security Documents and all certificates, instruments, agreements and other documents delivered, or to be delivered, to the Mortgagee under, pursuant to or in connection with this Mortgage or any of the other Loan Documents, each as amended, varied, supplemented, restated, renewed or replaced at any time and from time to time and, when used in relation to any Person, the term **"Loan Documents"** means the Loan Documents executed and delivered by such Person.
- (q) **"Loan Indebtedness"** means any Indebtedness from time to time of the Mortgagor or any of the other Covenantors to the Mortgagee arising under any of the Loan Documents;
- (r) **"Loan Obligations"** means the obligations from time to time of the Mortgagor or any of the other Covenantors arising under the Loan Documents;
- (s) **"Material Adverse Effect"** means a material adverse effect on:
  - (i) the Property or the economic viability thereof;
  - (ii) the business, operations, property or financial condition of any of the Covenantors which would materially impact the ability of the Covenantors, taken as a whole, to repay the Loan Indebtedness and to perform and discharge the Loan Obligations;

- (iii) the validity or enforceability of this Mortgage or any of the other Loan Documents; or
- (iv) the Mortgagee's ability to enforce its rights or remedies under this Mortgage or any of the other Loan Documents, including with respect to the Mortgagee's security position;
- (t) "**Maturity Date**" means twenty-five (25) months after the Interest Adjustment Date as may be extended in accordance with the Commitment Letter;
- (u) "**Maximum Loan Amount**" means, notwithstanding the Principal Amount, the amount of \$205,000,000.00;
- (v) "**Mortgaged Premises**" means every building, structure, improvement and fixture (including those more fully set out in Section 19 hereof), including replacements therefor, on or which may hereafter be erected or placed on the Lands, including all plate glass, plant, equipment, apparatus and machinery of every kind now or hereafter located therein, thereon or used in connection therewith, and all personal property including, contents thereof to the extent that they are the property of the Mortgagor;
- (w) "**Mortgagee**" means KingSett Mortgage Corporation;
- (x) "**Mortgagor**" means 759 Winton Churchill GP Inc., in its capacity as general partner for and on behalf of 759 Winston Churchill L.P.;
- (y) "**Other Obligations**" has the meaning ascribed thereto in Section 39;
- (z) "**Permitted Encumbrances**" mean, collectively:
  - (i) any Lien in respect of any property or assets of the Mortgagor created by or arising pursuant to any applicable legislation in favour of any Person (such as, but not limited to a Governmental Authority), including a Lien for the purpose of securing the Mortgagor's obligation to deduct and remit employee source deductions and goods and services tax pursuant to the *Income Tax Act* (Canada), the *Excise Tax Act* (Canada), the *Canada Pension Plan* (Canada), the *Employment Insurance Act* (Canada) and any legislation in any jurisdiction similar to or enacted in replacement of the foregoing from time to time (each individually a "**Statutory Lien**") in respect of any amount which is not at the time due;
  - (ii) any Statutory Lien in respect of any amount which may be due but the validity of which is being contested in good faith and in respect of which reserves have been established as reasonably required by the Mortgagee;
  - (iii) in respect of the Property: (A) any registered agreement (or unregistered agreement that is required in connection with the further development of the Property) with any Governmental Authority and any public utilities or private suppliers of services, including site plan agreements, subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements, which has not and is not reasonably likely to have a Material Adverse Effect, provided the same is complied with in all material respects; (B) any registered easement for the supply of utilities or telephone services to the Property and for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services and all licences, easements, rights-of-way, rights in the nature of easements and agreements with respect thereto not registered on title to the Property, including agreements, easements, licences, rights-of-way and interests in the nature of easements for sidewalks, public ways, sewers, drains, utilities, gas, steam and water mains or electric light and power, or telephone telegraphic conduits, poles, wires and cables, which has not and is not reasonably likely to have a Material Adverse Effect; (C) any registered easement or right-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Lands, which has not and is not reasonably likely to have a Material Adverse Effect; (D) any registered or

unregistered easement, rights-of-way, agreement or other unregistered interest or claims not disclosed by registered title which has not and is not reasonably likely to have a Material Adverse Effect; (E) any zoning, land use and building restriction, bylaw, regulation and ordinance of any Governmental Authority, including municipal by-laws and regulations and airport zoning regulations, which has not and is not reasonably likely to have a Material Adverse Effect; (F) any obligation with respect to any permit required in connection with the construction and use of the Property provided such permit is in good standing and has not and is not reasonably likely to have a Material Adverse Effect; and (G) any minor defect in title which has not and is not reasonably likely to have a Material Adverse Effect;

- (iv) any reservation, limitation, proviso, condition, restriction and exception (including royalties, reservation of mines, mineral rights, access to navigable waters and similar rights) expressed in the letters patent or grant from the Crown, as varied by statute, of the lands of which the Lands form a part and any statutory limitation, exception, reservation and qualification, provided same has been complied with in all material respects;
  - (v) any Lien incurred or deposit made or pledged to secure any obligation under workers' compensation legislation or similar legislation, or in connection with contracts, bids, tenders or expropriation proceedings, or surety, performance or appeal bonds in connection with construction of the further development of the Property;
  - (vi) security given to a public utility or any Governmental Authority to secure obligations incurred to such utility, Governmental Authority or other authority in the ordinary course of business and not at the time overdue;
  - (vii) any inchoate Lien (statutory or otherwise) arising in connection with the construction or improvement of the Property or arising out of the furnishing of materials or supplies therefor, provided that such Lien secures moneys not at the time overdue (or if overdue, the validity of which is being contested in good faith and in respect of which and reserves have been established as reasonably required by the Mortgagee), notice of such Lien has not been given to the Mortgagee and such Lien has not been registered against title to the Property;
  - (viii) purchase-money security interests incurred or assumed in connection with the purchase, leasing or acquisition of capital equipment in the ordinary course of business, provided that the aggregate amount of the Mortgagor's liability thereunder is not at any time greater than one million (\$1,000,000.00) dollars;
  - (ix) any present and future lease, offer to lease, sublease, concession, licence or other contract or agreement by which the use, enjoyment or occupancy of the Property or any portion thereof is granted which has not and is not reasonably likely to have a Material Adverse Effect;
  - (x) this Mortgage and the other Security Documents;
  - (xi) the Prior Permitted Encumbrances; and
  - (xii) any Subsequent Encumbrances with the express prior written consent of the Mortgagee in its sole, absolute and unfettered discretion;
- (aa) "**Person**" means, and includes, natural persons, corporations, limited liability companies, limited partnerships, limited liability partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof and their respective permitted successors and assigns (or in the case of a governmental person, the successor functional equivalent of such Person);

- (bb) "**Principal Amount**" has the meaning ascribed thereto in the preamble to this Mortgage;
- (cc) "**Prior Permitted Encumbrances**" means those encumbrances registered against title to the Property in priority to this Mortgage on the date of the registration of this Mortgage against title to the Lands and which the Mortgagee has agreed to accept in its sole, absolute and unfettered discretion;
- (dd) "**Project**" means a 47.15 acre industrial site located at 759 Winston Churchill Boulevard, Mississauga, Ontario, to be developed with an approximately 750,354 square feet of state-of-the-art industrial facilities over three phases, and all landscaping, all plants, machinery, improvements and equipment and all other property whether free-standing or otherwise, auxiliary or ancillary thereto or connected therewith or added thereto;
- (ee) "**Property**" means, collectively, the Lands and the Mortgaged Premises;
- (ff) "**RBC Prime Rate**" means, for any day, the rate of interest per annum established and published from time to time by Royal Bank of Canada as the reference rate of interest for the determination of interest rates that Royal Bank of Canada will charge its customers of varying degrees of creditworthiness in Canada for Canadian Dollar demand loans made by the Royal Bank of Canada in Toronto, Ontario;
- (gg) "**Rents**" means, collectively, all rents, issues and profits now due or to become due under or derived from the Leases and/or the Property;
- (hh) "**Security Documents**" means, collectively, the Loan Documents creating Liens on the undertaking, property and assets of the Covenantors in favour of the Mortgagee, and all other instruments, agreements and documents which have been or may hereafter from time to time be executed in connection therewith, and includes without limitation, the following:
  - (i) this Mortgage;
  - (ii) a general assignment of rents and leases;
  - (iii) a general security agreement;
  - (iv) a general assignment of material contracts;
  - (v) a specific assignment of construction management agreement;
  - (vi) a specific assignment of development management agreement;
  - (vii) a specific assignment of property management agreement;
  - (viii) an assignment of insurance;
  - (ix) a fraud, misrepresentation and environmental indemnity;
  - (x) an unlimited joint and several guarantee;
  - (xi) a guarantee re: project completion and cost overrun;
  - (xii) a limited recourse guarantee; and
  - (xiii) a pledge agreement;in each case as the same may be hereafter amended, modified, supplemented or restated in accordance with the terms thereof.;
- (ii) "**Statutory Lien**" has the meaning ascribed thereto in Section 1(z)(i);
- (jj) "**Subsequent Encumbrances**" means, collectively, encumbrances registered against title to the Lands subsequent in priority to this Mortgage with the prior



consent of the Mortgagee, which consent shall be granted in the Mortgagee's sole, absolute and unfettered discretion;

(kk) **"Taxes"** means all present or future taxes, rates, liens, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto; and

(ll) **"Title Agreements"** has the meaning ascribed thereto in Section 50;

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise: (i) any definition of or reference to any agreement, instrument or other document herein (including this Mortgage) shall be construed as referring to such agreement, instrument or other document amended, varied, supplemented, restated, renewed or replaced at any time and from time to time (subject to any restrictions on such amendments, variations, supplements, restatements, renewals or replacements set forth herein); (ii) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns; (iii) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Mortgage in its entirety and not to any particular provision hereof; (iv) unless otherwise expressly stated, all references in this Mortgage to Sections, Exhibits and Schedules shall be construed to refer to Sections of, and Exhibits and Schedules to, this Mortgage, and references to a Section, means such Section or an enumerated sub-Section thereof, as applicable; (v) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, varied, supplemented, restated, renewed or replaced at any time and from time to time; and (vii) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

## **PROMISE TO PAY AND FULFIL OBLIGATIONS**

2. The Mortgagor will pay or cause to be paid to the Mortgagee, on demand, in lawful money of Canada the full amount of the Loan Indebtedness in the manner of payment provided by this Mortgage before as well as after maturity, both before and after default, and both before and after judgment on this Mortgage, without any deduction or abatement, and shall do, observe, perform, fulfil and keep all of the Loan Obligations.

## **PAYMENTS**

3. The Loan Indebtedness shall be repaid as follows:
  - (a) interest on the Loan Indebtedness advanced and remaining unpaid from time to time at the fixed rate per annum equal at all times to the Interest Rate, calculated daily not in advance, before as well as after maturity, default and judgment, on the basis of the actual number of days elapsed in a year of 365 days or 366 days, as the case may be, and compounded monthly not in advance and computed from and including the respective dates of such advances;
  - (b) subject to Section 3(d)(iii), interest, at the Interest Rate, shall become due and be paid on the Interest Adjustment Date and thereafter in monthly instalments on the first business day of the month which is one month after the Interest Adjustment Date and continuing on the first business day of each and every month which is one month after the date of each such payment, and in addition, at the option of the Mortgagee, may be deducted from advances of moneys under this Mortgage, and the balance, if any, of the aforesaid interest on advances shall become due and be paid at the same time as is hereinafter provided for payment in full of the Loan Indebtedness;
  - (c) the Loan Indebtedness shall become due and be paid in full on the earlier of:

- (i) the Mortgagor demanding repayment of the Loan Indebtedness in full and the performance of the Loan Obligations at any time; and
  - (ii) the Maturity Date;
- (d) it is acknowledged and agreed that:
- (i) notwithstanding the Principal Amount, the maximum amount to be advanced by the Mortgagee from time to time in respect of the Loan Indebtedness shall not exceed the Maximum Loan Amount;
  - (ii) an initial and subsequent advances of Loan Indebtedness representing advances from time to time of the Loan may be made by the Mortgagee, subject to and in accordance with the Commitment Letter and the conditions precedent and other provisions set out therein;
  - (iii) beginning on the Interest Adjustment Date, the amount of monthly interest, at the Interest Rate, shall, provided no Event of Default has occurred hereunder which is continuing, be capitalized monthly to the Loan Indebtedness advanced hereunder until the earlier of:
    - A. such capitalized interest, at the Interest Rate, reaching in the aggregate the amount of \$10,540,000.00;
    - B. the sum of such capitalized interest and all other amounts advanced hereunder reaching, in the aggregate, the Maximum Loan Amount;
    - C. repayment of all amounts outstanding hereunder; and
    - D. any Event of Default or a default by any of the Covenantors under any of the Loan Documents; and
  - (iv) in the event that amounts are no longer available in accordance with the provisions of Section 3(d)(iii), any additional interest payments shall not be capitalized and shall be required to be paid by the Mortgagor from sources other than subsequent advances of moneys under this Mortgage.

#### **CHARGE**

4. **THE MORTGAGOR HEREBY** grants, mortgages and charges to and in favour of the Mortgagee all right, title and interest of the Mortgagor in and to the Property as security for the payment of the Loan Indebtedness and performance of the Loan Obligations by the Mortgagee.

#### **COMPOUND INTEREST**

5. It is hereby agreed that in case default shall be made in payment of any sum to become due for interest, at the Interest Rate, at any time appointed for payment thereof as aforesaid, compound interest shall be payable and the sum in arrears for interest from time to time, before as well as after maturity, shall bear interest, at the Interest Rate, and in case the interest and compound interest are not paid within the next thirty (30) days, compound interest, at the Interest Rate, shall be payable on the aggregate amount then due of outstanding interest and compound interest, before as well as after maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the Property.

#### **INTEREST RATE**

6. Notwithstanding the provisions hereof in no event shall the aggregate "**interest**" (as that term is defined in Section 347 of the *Criminal Code* (Canada)) exceed the effective annual rate of interest on the "**credit advanced**" (as defined therein) lawfully permitted under that section. The effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices and principles from the date of the initial advance of the Loan Indebtedness until the Maturity Date and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Mortgagee will be conclusive for the purposes of such determination. If any provision of the Mortgage would

obligate the Mortgagor to make any payment of interest or other amount payable to the Mortgagee in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Mortgagee of interest at a criminal rate, then notwithstanding that provision, that amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or result in a receipt by the Mortgagee of interest at a criminal rate, the adjustment to be effected, to the extent necessary, as follows:

- (a) first, by reducing the amount or rate of interest required to be paid to the Mortgagee under this Mortgage; and
- (b) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to the Mortgagee which would constitute "**interest**" (as that term is defined in Section 347 of the *Criminal Code* (Canada)).

## **RENEWALS AND NON-REVOLVING NATURE OF LOAN**

7. That:

- (a) in the event that this Mortgage shall be renewed or extended pursuant to Section 7(b) or by written agreement executed by the Mortgagor and the Mortgagee, such renewal or extension (and the rate of interest, term, instalment and other stipulations of such renewal or extension) shall be binding upon Subsequent Encumbrances, the Mortgagor and the Mortgagee, its successors in title and assigns, and all Subsequent Encumbrances, and shall take full priority over all Subsequent Encumbrances, whether or not the said renewal, extension or notice thereof is registered, filed or recorded by caveat at the applicable Land Titles Office and whether or not the rate of interest payable or payment amortization period applicable during the renewal or extension term is greater than or less than the rate or amortization stipulated in this Mortgage. The Mortgagor shall, forthwith on request therefor by the Mortgagee, provide to the Mortgagee, at the Mortgagor's expense, all such postponements and other assurances as the Mortgagee may require to ensure the foregoing binding effect and priority. All renewals (if any) shall be done at the Mortgagor's expense (including without limitation payment of the Mortgagee's reasonable legal expenses on a solicitor and his own client basis). In the event the within Mortgagor is a corporation, no such renewal or extension, even if made by a successor in title to the Mortgagor named herein and whether or not the Mortgagor shall consent thereto, shall in any way release or abrogate or render unenforceable the covenants or obligations of the Mortgagor named herein, which shall continue notwithstanding such renewal or extension and shall apply to this Mortgage as renewed or extended.
- (b) the Mortgagor has the option, subject to the prior consent of the Mortgagee, not to be unreasonably withheld, to extend the Maturity Date by up to two (2) extensions with each extension being for a period of three (3) months on the terms and conditions set out in Section A.10 and Section A.11 of the Commitment Letter, and provided that in connection with each extension option:
  - (i) the Mortgagor pays to the Mortgagee an Extension Fee, which shall be deemed earned by the Mortgagee upon receipt of notice requesting an extension of the Maturity Date, and payable on or before the date which is ten (10) days prior to the Maturity Date, provided that if such extension is not granted by the Mortgagee, the Mortgagee will return such amount to the Mortgagor;
  - (ii) the Mortgagor or any other Covenantor delivering at least 30 days' written notice prior to the Maturity Date to the Mortgagee requesting each extension; and
  - (iii) no Event of Default has occurred which is continuing;
- (c) Other than the extension right set forth in Section 7(b), there are no further rights to renew or extend this Mortgage; and

- (d) no amount that is borrowed or advanced hereunder may, if repaid or prepaid, be reborrowed at any time, it being acknowledged and agreed that this Mortgage creates a non-revolving loan.

### **PREPAYMENT**

- 8. This Mortgage will be closed for prepayment from the initial advance of the Loan until twenty four (24) after the Interest Adjustment Date, save and except for each prepayment of Net Closing Proceeds on the terms and conditions set out in Section A.19 of the Commitment Letter (the "**Closed Prepayment Period**"). From and after the Closed Prepayment Period, the Loan Indebtedness will be open for prepayment, in whole but not in part, with a minimum of thirty (30) days' prior written notice to the Mortgagee without any fee, bonus or penalty.

### **MANDATORY REPAYMENT**

- 9. Subject to the rights of creditors of the Mortgagor in accordance with Prior Permitted Encumbrances, the Mortgagor agrees to pay to the Mortgagee one hundred (100%) of any proceeds received by any Covenantor from any source in respect of the development of the Project, if any. The Mortgagee shall apply any proceeds received from the Mortgagor in accordance with this Section 9 first against accrued and unpaid interest, at the Interest Rate, and second against the then outstanding Loan Indebtedness.

### **TAXES**

- 10. Subject as hereinafter in this Section 10 provided, the Mortgagor will pay when and as the same fall due all Taxes; provided that in respect of municipal taxes, school taxes, local improvements charges and all taxes and levies made or assessed in lieu of real property taxes, the Mortgagor shall provide the Mortgagee with a paid receipted tax bill within fifteen (15) days after the payment deadline of each such tax bill, and in the event the Mortgagor should default in payment of same and such default continues for more than three (3) business days following written notice to the Mortgagor, the Mortgagee shall have the right to implement any of the following:
  - (a) the Mortgagee may deduct from time to time, from advances of moneys under this Mortgage, amounts sufficient to pay the Taxes which have become due and payable or will have become due and payable and are unpaid from time to time as advances are made;
  - (b) the Mortgagor shall in each year during the currency hereof at the request of the Mortgagee pay to the Mortgagee in equal monthly instalments, such amounts as the Mortgagee may estimate as being the annual Taxes next becoming due and payable, the said monthly instalments to be paid in addition to the payments required under Section 2, and the Mortgagor shall also pay to the Mortgagee before the due date of the current annual Taxes such additional sums as may be requisite to enable the Mortgagee to pay out of such monthly instalments and additional payments, the whole amount of the annual Taxes on or before the due date thereof, provided, however, that the exercise of the foregoing right shall be subject to the rights and obligations of the Mortgagor and the Mortgagee under all Permitted Encumbrances;
  - (c) so long as there is not an Event of Default that has occurred and is continuing, the Mortgagee shall apply such deduction and payments on the Taxes as they become due, but nothing herein contained shall obligate the Mortgagee to apply such payments on account of Taxes more often than yearly, nor to pay the same in advance of the due date for payment of the same. Provided however, that if (before any sum or sums so paid to the Mortgagee shall have been so applied) an Event of Default shall have occurred which is continuing, the Mortgagee may, at its option, apply such sum or sums in or towards payment of the Loan Indebtedness;
  - (d) in the event that there is default in the payment by the Mortgagor of moneys for Taxes as aforesaid, then the Mortgagee may pay such Taxes and, in addition, upon providing the Mortgagor with ten (10) days' prior written notice, the Mortgagee may pay any and all liens, charges and encumbrances which may be charged against the Property which are not otherwise first paid by the Mortgagor. All moneys expended by the Mortgagee for any of such purposes together with interest thereon

at the Interest Rate shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default;

- (e) if the Property or any part thereof becomes subject to sale or forfeiture for non-payment of Taxes while any Loan Indebtedness remains outstanding, then, subject to all applicable laws, the Mortgagee may acquire title and rights of the purchaser at any sale, or the rights of any other Person or corporation becoming entitled on or under any such forfeiture, or the Mortgagee may pay, either in its own name or in the Mortgagor's name or on the Mortgagor's behalf, any and all sums necessary to be paid to redeem the Property so sold or forfeited, and to re-vest the Property in the Mortgagor, and the Mortgagor hereby nominates and appoints the Mortgagee agent of the Mortgagor to pay such moneys on the Mortgagor's behalf and in the Mortgagor's name, and any moneys so expended by the Mortgagee together with interest thereon at the Interest Rate shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default, or, in the alternative, the Mortgagee shall have the right to bid on and purchase the Property at any tax sale of the same and shall thereupon become the absolute owner thereof; and
- (f) the Mortgagor shall transmit to the Mortgagee evidence, satisfactory to the Mortgagee acting reasonably, of the payment of all Taxes affecting the Property to the Mortgagee at least quarterly or as otherwise reasonably requested by the Mortgagee from time to time, and the Mortgagor authorizes the Mortgagee to obtain any tax or assessment information concerning the Property directly from the municipal taxing authority having jurisdiction over the Property.

## INSURANCE

11. That:

- (a) the Mortgagor will, at the Mortgagor's expense, forthwith insure or cause to be insured, and during the continuance of this security keep insured in favour of the Mortgagee, the Property on an all risks basis, or as otherwise allowed by the Mortgagee, including coverage for course of construction, earthquake, flood and such other risks or perils as the Mortgagee may require or consider expedient and satisfactory to the Mortgagee, acting reasonably, including and pursuant to the following coverages, provisions and conditions:
  - (i) the Mortgagee must be shown as a named insured, or an additional named insured, and loss payee as its interest may appear;
  - (ii) the limit of insurance shall not be less than one hundred (100%) percent of new replacement cost including recurring soft costs and costs of foundations and all parts below ground level including confirmation that the "same or adjacent site" clause has been deleted from the replacement cost wording;
  - (iii) any co-insurance clause contained in the policy shall be a stated amount co-insurance clause;
  - (iv) the policy shall include an Insurance Bureau of Canada standard mortgage clause or its equivalent;
  - (v) losses shall be made payable to the Mortgagee according to its interest;
  - (vi) rental income coverage on an "all risks" basis sufficient to cover one hundred (100%) percent of the gross annual revenues, including Rents and if leases are on a net-net basis, the equivalent gross revenues, including rentals for a period of not less than twelve (12) months; or if the property is owner-occupied, business interruption coverage;

- (b) the Mortgagor will maintain liability insurance coverage, including without limitation earthquake, flood and sewer back-up insurance at least equivalent in scope to a Commercial General Liability form, such insurance to be in the minimum amount of five million (\$5,000,000.00) dollars per occurrence, to include all required extensions of liability and naming the Mortgagee as co-insured;
- (c) the Mortgagor will cause its contractors to maintain contractors liability insurance coverage, and wrap-up liability insurance coverage, in each instance to be in the minimum amount of five million (\$5,000,000.00) dollars per occurrence, to include all required extensions of liability and naming the Mortgagor as an additional named insured, but only with respect to claims arising out of the operations of the named insured;
- (d) as applicable, the Mortgagor will maintain builders "all risks" or "broad form" insurance, subject to the latest CCDC policy wording and will include:
  - (i) coverage sufficient to cover one hundred (100%) percent of the projected hard costs and not less than twenty-five (25%) percent of the projected recurring soft costs;
  - (ii) a "permission to occupy" clause, "delayed rental income / soft costs" insurance to cover the anticipated loss of revenue for one (1) year, which may be incurred in the event of an insured loss, during construction;
  - (iii) coverage for the installation, testing and commissioning, of machinery and equipment; and
  - (iv) the Mortgagee as loss payee and as mortgagee as its interest appears, pursuant to a standard mortgage clause satisfactory to the Mortgagee;
- (e) the Mortgagor will maintain boiler and machinery insurance covering all central HVAC and miscellaneous electrical equipment (and production machinery where applicable) for explosion, electrical and mechanical breakdown;
- (f) promptly upon written request, the Mortgagor will deliver to the Mortgagee and directly to its insurance consultants all policy binders of insurance together with all applicable certificates of insurance or such other evidence of insurance as the Mortgagee may reasonably require, and, prior to their due date, proof of payment of the premiums and renewal premiums therefor;
- (g) all policies shall be with insurers and subject to terms and conditions reasonably satisfactory to the Mortgagee. Any deviation from these requirements shall be approved in writing by the Mortgagee acting reasonably. The policies must provide for thirty (30) days' written notice to the Mortgagee of material alteration, if available, and cancellation and must be signed by the insurer(s) or their authorized representative(s);
- (h) if the Mortgagor shall neglect to keep the Property insured as aforesaid, or to deliver all policy binders of insurance together with all applicable certificates of insurance or such other evidence of insurance as the Mortgagee may reasonably require and evidence proving payment of premiums or renewal premiums when reasonably requested by the Mortgagee, or to produce to the Mortgagee at least forty-five (45) days' before the termination of such insurance evidence of the renewal thereof, the Mortgagee shall, without reference to the Mortgagor, be entitled (but shall not be obliged) to insure the Property, or any part thereof, as set forth above, and the amount of any premiums paid by the Mortgagee together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default;
- (i) promptly upon the occurrence of any loss or damage, the Mortgagor at its own expense will furnish all necessary proof and do all necessary acts to enable the

Mortgagee to obtain payment of the insurance moneys, subject to the rights of creditors of the Mortgagor in accordance with Prior Permitted Encumbrances;

- (j) subject to the rights of creditors of the Mortgagor in accordance with Prior Permitted Encumbrances, if any cheque issued by an insurer in complete or partial settlement of an insurance claim pursuant to the coverages above, other than the coverage for general public liability insurance, is given, sent or delivered to the Mortgagor or the solicitor or agent of the Mortgagor, then the Mortgagor shall cause such cheque to be delivered to the Mortgagee forthwith and if any such cheque is made payable to the Mortgagor alone or jointly to the Mortgagor and another or others, then the Mortgagor shall forthwith endorse and deliver such cheque over to the Mortgagee, and the Mortgagor does hereby constitute the Mortgagee as the Mortgagor's true and lawful attorney to receive and endorse any such cheque for an on behalf of the Mortgagor; and
- (k) subject to the rights of creditors of the Mortgagor in accordance with Prior Permitted Encumbrances, all monies received by virtue of such policy or policies of insurance may at the option of the Mortgagee either be applied in or towards substantially rebuilding, reinstating or repairing the Property or towards the payment of the Loan Indebtedness, interest and other amounts secured hereby, whether or not the same are then due, in such manner as the Mortgagee shall from time to time determine, or may be paid in full or in part to the Mortgagor or its assigns, or may be applied or paid partly in one way and partly in another, as the Mortgagee may determine.

#### **PAYMENT METHOD**

- 12. The Mortgagor shall from time to time as required by the Mortgagee, provide a signed pre-authorized withdrawal form /or forms directed to the bank or financial institution at which the Mortgagor regularly keeps a chequing account, in such form and manner so as to enable the Mortgagee to receive payments from time to time of the monthly instalments payable hereunder and/or the Mortgagee's estimate of the monthly instalment for property Taxes, if applicable, from the Mortgagor's account with such bank or financial institution. Any payments received by the Mortgagee which are payable on a non-business day in the Province of Ontario or are received after 2 p.m. (Toronto time) on any business day in the Province of Ontario on or after receipt thereof, shall be credited to the mortgage account on the next business day thereafter.

#### **CONSTRUCTION**

- 13. The Mortgagor agrees with the Mortgagee that:
  - (a) the building or buildings being erected or to be erected on the Lands form part of the security for the full amount of the moneys secured by this Mortgage;
  - (b) the Mortgagor will construct the Project in accordance, in all material respects, with plans and specifications which have been or which may hereafter be approved by the Mortgagee (such approval not to be unreasonably withheld or delayed), provided the Mortgagor may make alterations to such plans and specifications from time to time to accommodate construction requirements, and purchaser or tenant requests so long as such alterations do not, in the aggregate, negatively affect the Project or the economic viability thereof in any material respect, in accordance with applicable building codes and will carry on diligently to completion the construction of the said Project, and other improvements, and will complete such construction in compliance with the requirements of all Governmental Authorities, laws, by-laws or regulations and will, when so required by the Mortgagee, supply the Mortgagee with evidence or confirmation from any such Governmental Authority of such compliance;
  - (c) the Mortgagor shall fund from their own resources any Cost Overruns. Until such time as a Cost Overrun has been advanced by the Covenantors, the Mortgagee shall have no obligation to make any further advances under the Commitment Letter. Failure to advance such Cost Overrun as required herein shall constitute an Event of Default hereunder. Upon and during the continuance of such Event of Default, in addition to the Mortgagee's other remedies (whether at law or as may be set out

in any Loan Documents), the Mortgagee may, in its sole and unfettered discretion, advance the amount of such Cost Overrun to the trades or suppliers with respect to which the Cost Overrun relates. An advance of the Cost Overrun by the Mortgagee shall not operate to cure such Event of Default which shall remain outstanding, shall bear interest in an amount 4% above the Interest Rate, and until the amount of the Cost Overrun has been repaid by the Covenantors, shall be added to the Loan Indebtedness and shall be secured by this Mortgage;

- (d) the Mortgagor will obtain the Mortgagee's approval before giving effect to any engineering and architectural change orders, in respect of work valued at \$250,000.00 or greater and, notwithstanding the foregoing, the Mortgagor may make alterations from time to time to accommodate construction requirements, and purchaser or tenant requests so long as such alterations do not in the aggregate negatively affect the Project or the economic viability thereof in any material respect and so long as aggregate Project costs do not exceed the amount set out in the Project Budget which has been or which may hereafter be approved by the Mortgagee (such approval not to be unreasonably withheld or delayed), excluding costs related to purchaser or tenant requests that a purchaser or tenant is paying for;
- (e) in the event that any such building and other improvements comprising all or any portion of the Project now or hereafter in the course of construction remain unfinished and without any work being done for a period of 20 consecutive days, other than as a result of force majeure including without limitation strikes, labour actions or shortages of supplies, the Mortgagee may directly or through a receiver (which term when used herein includes a receiver and manager) enter onto the Property and do all work necessary to protect the same from deterioration and to complete the construction in such manner as the Mortgagee may deem expedient and through such contractors, sub-contractors, or agents as the Mortgagee in its sole discretion may choose, and any moneys expended by the Mortgagee or any receiver pursuant to this Section 13(e) together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default. No such entry or occupation by the Mortgagee or any receiver shall constitute or be deemed to make the Mortgagee a mortgagee in possession;
- (f) the Mortgagee shall be entitled, at the expense of the Mortgagor, to inspect all aspects of the construction and make tests of materials, and the Mortgagor, if so requested by the Mortgagee, will not cover any portion of the construction work requiring inspection by the Mortgagee until the Mortgagee has inspected the same, and the Mortgagee shall carry out any such inspections in a prompt and efficient manner, and the Mortgagor shall forthwith remedy and carry out again any work which does not conform to the standards in this Section 13, if required by the Mortgagee, acting reasonably;
- (g) the Mortgagee shall not be obliged to hold back loan proceeds to provide the lien fund or other protection to the Mortgagor under the *Construction Act* (Ontario); provided that if the Mortgagee holds back loan proceeds in a manner similar to the way the said Act provides for an owner to make holdbacks then, notwithstanding such holdbacks by the Mortgagee, such holdbacks shall not constitute the lien fund under the said Act and the Mortgagee shall not be a mortgagee authorized by the owner to disburse money secured by a mortgage as referred to in the said Act.

## **INSPECTION**

14. The Mortgagee, at such time or times as it may deem necessary, acting reasonably, and without the concurrence of any other Person but upon reasonable prior notice except, upon and during the continuance of an Event of Default when no notice shall be required, and in all cases subject to the rights of tenants at the Property, may send its inspector or agent to report upon the value, state and condition of the Property and, upon the occurrence of an Event of Default which is continuing, make arrangements for the improving, repairing, finishing and putting in order of the Property which may be reasonably required, and for leasing, collecting the Rents of and managing generally the Property, and may expend



money, for any and all the purposes aforesaid, as it may deem expedient, and all moneys reasonably expended, costs, charges and out-of-pocket expenses together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing.

#### **RESTRICTION ON TRANSFER, ENCUMBRANCES ETC.**

15. The Mortgagor shall not convey, transfer, mortgage, alienate, or otherwise encumber all or any part of the Property or any direct or indirect interest therein (including as a result of a direct or indirect change in Control of the Mortgagor) nor allow all or any part of the Property or any direct or indirect interest therein to be encumbered without the prior written consent of the Mortgagee, in its absolute discretion, provided that, notwithstanding the forgoing, the Permitted Encumbrances shall be permitted to encumber the Property and that the Mortgagee shall act reasonably in providing its consent to any non-arm's length transfer. In the event that the Mortgagor breaches this Section 15 and has not first or contemporaneously prepaid the loan secured hereby in full in compliance with Section 8 hereof, then the entire Loan Indebtedness (but with interest at the Interest Rate calculated and compounded to the Maturity Date), shall immediately be due and payable.

#### **ADVANCES**

16. Neither the execution nor the registration nor the acceptance of this Mortgage, nor the advance of part of the Loan Indebtedness, shall bind the Mortgagee to make an advance of moneys under this Mortgage or any unadvanced portion thereof notwithstanding the provisions of the Commitment Letter, this Mortgage or any of the other Loan Documents, but nevertheless this Mortgage shall take effect forthwith on the execution of these presents, and if any Loan Indebtedness shall not be advanced at the date hereof, the Mortgagee may advance the same in one or more sums to or on behalf of the Mortgagor at any future date or dates, and the amount of such advances then so made together with interest at the Interest Rate shall be secured hereby.

#### **SUBROGATION**

17. In the event that the moneys advanced hereunder or any part thereof are applied to the payment of any charge or encumbrance, the Mortgagee shall be subrogated to all the rights and stand in the position of and be entitled to all the equities of the party so paid off whether such charge or encumbrance has or has not been discharged; and the decision of the Mortgagee as to the validity or amount of any advance or disbursement made under this Mortgage or of any claim so paid off, shall be final and binding on the Mortgagor.

#### **WASTE**

18. Subject to the provisions of Section 20, the Mortgagor will not commit any act of waste on the Property or do any other thing by which the value of the Property shall, in the opinion of the Mortgagee, be diminished and will at all times remain in actual possession of the said Property. The Mortgagor will take good and reasonable care of the Property and without cost and expense to the Mortgagee manage, operate, maintain and keep or cause the same to be kept in good order, repair and condition throughout, both exterior and interior, structural or otherwise, and promptly make all required or necessary repairs and replacements thereto, including without limitation, the roof, walls, foundations and appurtenances, pipes and mains, and all other fixtures, machinery, facilities and equipment that belong to or are used in connection with the Property, all of the foregoing to the extent that a prudent owner would do. Notwithstanding the foregoing, the Mortgagor shall not be obligated to repair any damage caused by reasonable wear and tear which does not affect the use and enjoyment of the improvements beyond the extent to which they would ordinarily be repaired by a prudent owner. If, in the opinion of the Mortgagee, acting reasonably, the Property is not at any time in a proper state of repair, the Mortgagee may serve notice upon the Mortgagor to make such repairs or replacements as the Mortgagee, acting reasonably, deems proper within a period of thirty (30) days and in the event of the Mortgagor not having complied or not being in the process of diligently complying with such requisition, the Mortgagee may authorize the making of such repairs or replacements by its agents, employees or contractors and they may enter upon the Property for the

purpose of doing such work with or without the Mortgagor's concurrence, but in all cases subject to the rights of tenants at the Property, and the cost thereof, together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid, shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing.

### **FIXTURES**

19. All erections, buildings, fences, improvements, machinery, plant, furnaces, boilers, electric light fixtures, plumbing and heating equipment, aerials, incinerators, radiators and covers, fixed mirrors, fitted blinds and drapes, window screens, doors, storm windows and storm doors, shutters and awnings, floor coverings, air conditioning, ventilating, water heating equipment, partitions, elevators, and all component parts of any of the foregoing, fixed or otherwise now on or in or hereafter put on or in the Property (and also in all cases where the Mortgaged Premises are units rented in whole or in part, all refrigeration equipment, gas and electric stoves, ovens, washers, dryers, garburators, garbage compactors, microwave ovens and dishwashers whether affixed or not, and provided that same are owned by the Mortgagor) are and shall in addition to other fixtures thereon be and become fixtures and form part of the realty and of the security and are included in the expression the "Mortgaged Premises", and that the Mortgagor will not commit any act of waste thereon, and that the Mortgagor will at all times during the continuance of the security granted by this Mortgage, repair, maintain, restore, amend, keep, make good, finish, add to and put in order, the Property and in the event of any loss or damage thereto or destruction thereof which has had or is reasonably likely to have a Material Adverse Effect, the Mortgagee may give notice to the Mortgagor to repair, rebuild, or reinstate the same, and upon the Mortgagor failing so to repair, rebuild, or reinstate within such time such failure shall constitute a breach of covenant hereunder and thereupon the Loan Indebtedness shall, at the sole option of the Mortgagee, become immediately due and payable and without any demand by the Mortgagee upon the Mortgagor, provided that the Mortgagee may (but shall not be obligated to) repair, rebuild or reinstate the Property and the cost thereof, together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid, shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing. This provision shall be in addition to any statutory covenants implied in this Mortgage.

### **ALTERATIONS**

20. The Mortgagor shall not make or permit to be made, any additions or alterations to the Property without the prior written consent of the Mortgagee acting reasonably and except as may be permitted or required under the Permitted Encumbrances (including any leases which are Permitted Encumbrances), and the Mortgagor shall not use the Property nor permit the Property to be used, without the written consent of the Mortgagee, for a purpose not approved by the Mortgagee acting reasonably. Notwithstanding the foregoing:
- (a) the Mortgagor, its agents, employees and parties authorized by it may conduct building operations, construction and development on the Property including, without limitation, grading and excavation operations, installation of services and all other acts incidental to the development of the Property without the same being deemed acts of waste or requiring the prior written consent of the Mortgagee in accordance with this Section 20; and
  - (b) the Mortgagee shall, upon reasonable notice, promptly execute:
    - (i) such plans, agreements, documents, easements, rights-of-way and consents as may be required to facilitate the development of the Property;
    - (ii) such partial discharges as may be required to convey to any Governmental Authority or public utility such portion of interest in the Property as may be required for municipal or governmental purposes and for which the Mortgagor receives no financial compensation, provided that in each case

the Mortgagee's security is not adversely affected thereby (as determined by the Mortgagee, acting reasonably); and

- (iii) applications, documents and plans for rezoning, development review, site plan approval, land titles registration, subdivision plan registration, severance consents and other related development matters required by the Mortgagor,

provided that the Mortgagee's reasonable legal fees and disbursements and out-of-pocket expenses in connection with the review and execution of the forgoing together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing. In addition to the forgoing, the Mortgagor hereby indemnifies and agrees to hold the Mortgagee harmless with respect to the payment of any such reasonable legal fees and disbursements and out-of-pocket expenses in connection with the review and execution of the forgoing.

### **PLACE OF PAYMENT**

- 21. All moneys reflecting Loan Indebtedness shall be payable, in lawful money of Canada, to the Mortgagee at its address hereinbefore stated, or such other place as may be designated by the Mortgagee from time to time.

### **CROSS-DEFAULT**

- 22. The occurrence of an Event of Default hereunder shall constitute default under the other Security Documents and default, beyond any applicable cure or notice periods, under any of the other Security Documents shall constitute an Event of Default hereunder. The Mortgagee may, upon and during the continuance of an Event of Default or a default under the other Security Documents, pursue its remedies separately under any of the Security Documents, including without limitation, this Mortgage, or jointly all together, or jointly one with any one or more of the Security Documents, without any of the rights and remedies of the Mortgagee not so pursued merging therewith or with any action or judgment with respect thereto.

### **RELEASE OF SECURITY**

- 23. Subject to the provisions in Section 42, the Mortgagee may (but shall have no obligation to) at any time release any part or parts of the Property or any of the Covenants from any of the Security Documents, or may release the Mortgagor or any other Covenantor from any covenant or other liability to pay any of the Loan Indebtedness or perform any of the Loan Obligations, either with or without any consideration therefor, without being accountable for the value of any such consideration or for any moneys except those actually received by the Mortgagee, and without thereby releasing any other part of the Property or any of the other Covenants from any of the Security Documents, it being specifically agreed that notwithstanding any such release, the Property, securities and covenants remaining unreleased shall stand charged with the whole of the Loan Indebtedness, and no Person shall have the right to require that any of the Loan Indebtedness be apportioned. Notwithstanding the foregoing, upon the closing of the sale of Building 1, Building 2, or Building 3 (each, a "**Building**") as contemplated in Section A.19 of the Commitment Letter, and provided that (i) no Event of Default has occurred that is continuing, (ii) the Mortgagor has performed and observed the terms and conditions contained in Section A.19 of the Commitment Letter (which terms and conditions are subject to change in the Mortgagee's sole and unfettered discretion), and (iii) the Mortgagor pays a fee (the "**Discharge Fee**") equal to Five Hundred Dollars (\$500.00) to the Mortgagee, the Mortgagee shall provide a partial discharge of this Mortgage from title to such Building to be sold upon closing. The Discharge Fee is applicable to each and every partial discharge of a Building in the Project. The Mortgagor's solicitor shall prepare the mortgage discharge document for review by the Mortgagee and the Mortgagee's solicitor. All legal fees, disbursements and GST related to the discharge of this Mortgage and any other Security from title to a Building in the Project to be sold at the closing shall be paid by the Mortgagor.

### **WAIVER**

24. No extension of time, waiver, or other indulgence given by the Mortgagee to the Mortgagor, or anyone claiming under the Mortgagor, shall in any way affect or prejudice the rights of the Mortgagee against the Mortgagor, any guarantor, or any other Person liable for payment of the moneys hereby secured.

### **USE OF MONEY**

25. The Mortgagee shall not be charged with any moneys receivable or collectible out of the Property or otherwise, except those actually received; and all revenue of the Property received or collected by the Mortgagee from any source other than payment by the Mortgagor may, provided an Event of Default has occurred which is continuing, at the option of the Mortgagee, be used in maintaining or insuring or improving the Property, or in payment of Taxes or other charges against the Property, or applied on the mortgage account, and the Mortgagee may (at its option) retain such moneys received or collected, in suspense account; and the Mortgagee shall not, by reason of the collection of any moneys receivable or collectible out of the Property, be deemed to be a mortgagee in possession.

### **LIABILITY OF MORTGAGOR**

26. No sale or other dealings by the Mortgagor or any receiver with the Property or any part thereof, shall in any way change the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other Person liable for payment of the moneys hereby secured.

### **ATTORNTMENT**

27. For better securing the punctual payment of the said mortgage moneys, the Mortgagor hereby attorns and becomes tenant to the Mortgagee of the Property at a monthly rental equivalent to the monthly instalments secured hereby, the same to be paid on such day appointed for the payment of instalments; and if any judgment, execution or attachment shall be issued against any of the goods or lands of the Mortgagor or if the Mortgagor shall become insolvent or bankrupt or commit an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act of Canada* as amended, or shall take the benefit of any statute relating to bankruptcy or insolvent debtors, then such rental shall, if not already payable, be payable immediately thereafter. The legal relation of landlord and tenant is hereby constituted between the Mortgagee and the Mortgagor, but neither this Section 27 nor anything done by virtue hereof, shall render the Mortgagee a mortgagee in possession or accountable for any moneys except those actually received. The Mortgagee may at any time after default hereunder enter upon the Property, or any part thereof, and determine the tenancy hereby created without giving the Mortgagor any notice to quit.

### **RECORDS**

28. The Mortgagor will maintain full and correct books and records showing in detail the earnings and expenses of the Property, and will permit the Mortgagee and its representatives to examine the said books and records and all supporting vouchers and data at any time and from time to time upon reasonable prior request by the Mortgagee, and at any time and from time to time will furnish the Mortgagee at its request within thirty (30) days of such request, a statement showing in detail reasonably satisfactory to the Mortgagee all such earnings and expenses since the last such statement, certified by an officer of the Mortgagor.

### **ASSIGNMENT OF LEASE RIGHTS AND BENEFITS**

29. The Mortgagor:
- (a) hereby assigns, transfers and sets over unto the Mortgagee, all of the Mortgagor's right, title and interest, both at law and in equity, in and to the Leases, the Rents and the Lease Benefits, to hold and receive the same unto the Mortgagee with full power and authority to demand, collect, sue for, recover and receive and give receipts for Rents and to enforce payment of the same and enforce performance of obligations under the Leases, including without limitation, the Lease Benefits, assigned in accordance with and subject to the terms of this Mortgage, to have and

to hold unto the Mortgagee until payment in full of the Loan Indebtedness and performance of all of the Loan Obligations, provided that the Mortgagor may, subject to any other terms contained in any of the other Security Documents which restrict the Mortgagor's ability to deal with the Leases, collect the Rents and deal with the Leases from time to time as would a prudent landlord so long as an Event of Default does not exist, and upon the occurrence of an Event of Default which is continuing, the Mortgagee shall be entitled to:

- (i) demand, collect and receive the Rents or any part thereof and to give acquittances therefor, and to take from time to time, in the name of the Mortgagor, any proceeding which may be, in the opinion of the Mortgagee or its counsel, expedient for the purpose of collecting Rents or for securing the payment thereof or for enforcing any of the Mortgagor's rights under the Leases, and the Mortgagor hereby grants to the Mortgagee irrevocable authority to join the Mortgagor in any such proceedings or actions, whether judicial or extra-judicial;
  - (ii) to compound, compromise or submit to arbitration any dispute which has arisen or may arise in respect to any amount of Rent, and any settlement arrived at shall be binding upon the Mortgagor;
  - (iii) to enter upon the Property by its officers, agents or employees for the purpose of collecting the Rents and to manage, operate and maintain its interest in the Property including without limitation, the making of repairs or replacements to maintain the Mortgaged Premises;
  - (iv) to receive, enjoy or otherwise avail itself of the Lease Benefits;
  - (v) to appoint and dismiss such agents or employees as may be necessary or desirable for exercise of the Mortgagee's rights hereunder;
  - (vi) to alter, modify, amend or change the terms of Leases; to enter into new Leases; to give consents, concessions or waivers of any rights or provisions of Leases; to accept surrenders of Leases; to give consents to assignment of or subletting under Leases;
  - (vii) to send or employ any inspector or agent to inspect and report upon the value, state and condition of the Property and to employ a solicitor to examine and report upon title to the same and the lease documentation pertaining to same;
  - (viii) to appoint a receiver or a receiver and manager in accordance with the provisions of the Mortgage which are hereby incorporated by reference into this Agreement; and
  - (ix) to generally perform all such acts as may in the reasonable opinion of the Mortgagee be necessary or desirable for the proper operation and maintenance of the Property, which acts may be performed in the name of the Mortgagor, or in the name of the Mortgagee;
- (b) whenever any and all Events of Default have been cured after the exercise by the Mortgagee of its rights under this Section 29, may resume collection of the rentals until a further Event of Default has occurred, whereupon the Mortgagee may re-exercise its rights hereunder, and thereafter at any time any Event of Default occurs;
- (c) shall not at any time during the existence of this Mortgage assign, pledge or hypothecate any of the Leases or the Rents or revenues due or to become due thereunder, or any part thereof, other than to the Mortgagee or pursuant to a Permitted Encumbrance nor shall the Mortgagor grant any general assignment of book debts which would cover such rentals, except pursuant to a Permitted Encumbrance;
- (d) shall not collect more than two (2) month's rental in advance;

- (e) acknowledges and agrees that neither the taking of this assignment nor anything done in pursuance hereof shall make the Mortgagee liable in any way, as landlord or otherwise, for the performance of any covenants, obligations and liabilities under the Leases or any of them; and
- (f) acknowledges and agrees that the exercise of this Section 29 or of any collateral security with respect to Rents shall not entitle the Mortgagor to redeem this mortgage.

#### **EVENT OF DEFAULT**

30. Notwithstanding the Mortgagee's rights to demand repayment of the Loan Indebtedness in full and the performance of the Loan Obligations at any time in the Mortgagee's sole, absolute and unfettered discretion, any one or more of the following events shall constitute an event of default under the provisions of this Mortgage (an "**Event of Default**"), whether such Event of Default shall be voluntary or involuntary or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or other rule or regulation of any Governmental Authority:
- (a) any of the Covenantors fail to pay on the date upon which the same is due and payable any monies payable hereunder or under any of the other Loan Documents with respect to principal secured hereunder;
  - (b) any of the Covenantors fail to pay on the date upon which the same is due and payable any monies payable hereunder or under any of the other Loan Documents (other than on account of principal), and such failure is not remedied within three (3) business days written notice to the Mortgagor;
  - (c) any of the Covenantors fail to perform or observe any of the terms and conditions contained in this Mortgage or any of the other Loan Documents, and such failure is not remedied within thirty (30) days of written notice to the Mortgagor (but for greater certainty, there shall be no grace or cure period in respect of any Event of Default expressly enumerated hereunder, except as otherwise provided in respect of such Event of Default);
  - (d) any funds secured under this Mortgage are used for any purpose other than as set forth in the Commitment Letter;
  - (e) the failure of the Mortgagor to maintain the Minimum Project Equity in the Project, and such failure is not remedied within five (5) days of written notice to the Mortgagor (but for greater certainty, there shall be no grace or cure period in respect of any Event of Default expressly enumerated hereunder, except as otherwise provided in respect of such Event of Default);
  - (f) any representation or warranty by any of the Covenantors that is contained in this Mortgage or any of the other Loan Documents furnished to the Mortgagee in connection herewith or therewith shall prove at any time to be untrue or incorrect as of the date made in any material respect;
  - (g) a resolution is passed or an order is made for the dissolution, liquidation or winding-up of any of the Covenantors or other cancellation or suspension of its incorporation or termination of its existence or if a petition is filed for the winding-up of the any of the Covenantors;
  - (h) any of the Covenantors is found to be insolvent or bankrupt by a court of competent jurisdiction or makes an authorized assignment or bulk sale of its assets or a compromise or arrangement for the benefit of its creditors, makes a proposal to its creditors under the *Bankruptcy and Insolvency Act* (Canada), seeks relief under the *Companies Creditors Arrangement Act* (Canada), or any other bankruptcy, insolvency or analogous law, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian or other Person with similar powers over all or any substantial portion of its assets, files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency,

moratorium, reorganization or other similar law affecting creditor's rights or consents to, or acquiesces in, the filing of such a petition; or if a petition in bankruptcy is filed or presented against any of the Covenantors;

- (i) an encumbrancer takes possession of the property of any of the Covenantors which has had or is reasonably likely to have a Material Adverse Effect, or any distress or analogous process is levied upon any of the Covenantors provided that this Section 30(i) shall not apply to any judgment, court order for the payment of money, execution, sequestration, extant or other process that is being contested in good faith if reserves deemed by the Mortgagee to be adequate therefor have been set aside with the Mortgagee or insurance coverage acceptable to the Mortgagee is held, as the case may be, and if there is no Material Adverse Effect regarding the Mortgagee's security position;
- (j) any of the Covenantors permit any sum which has been admitted as due or which is not disputed to be due and which forms or is capable of forming a charge, Lien the Property in priority to or *pari passu* with the charge or security interest created by this Mortgage and any of the other Security Documents, to remain unpaid after proceedings have been taken to enforce the same as a Lien upon the Property has been vacated or discharged within ten (10) business days of such proceedings having been taken;
- (k) the occurrence of a default under: (i) any other security or agreement (including any Permitted Encumbrance) made or assumed by any of the Covenantors (or by which it is bound) in favour of any Person in connection with the Property, to the extent such default has had or is reasonably likely to have a Material Adverse Effect; and (ii) any other security or agreement made or assumed by any of the Covenantors (or by which it is bound) in favour of the Mortgagee whether or not such security or agreement is in connection with the Property; and in each case if not remedied within the applicable cure or notice period provided for in such security or agreement;
- (l) the Mortgagor does not comply within a reasonable period with any work order issued by a municipal or provincial authority;
- (m) a receiver, receiver-manager or receiver and manager of the any of the Covenantors of any material part of its properties, assets or undertakings is appointed, or if a monitor is appointed in respect of any of the Covenantors;
- (n) any writ of execution, distress, attachment or other similar process is issued or levied against any of the Covenantors or all or any part of its assets, or attachment or other similar process is issued or levied against any of the Covenantors by a court of competent jurisdiction and, in the opinion of the Mortgagee, such judgement or order would materially and adversely affect the ability of any of the Covenantors to fulfil its obligations to the Mortgagee hereunder or under any of the other Loan Documents;
- (o) any part of the Property is condemned or expropriated and, in the opinion of the Mortgagee in respect of any expropriation, such expropriation materially impairs the value of the Property, the validity, enforceability or priority of the security of this Mortgage, or the ability of the Mortgagor to pay the Loan Indebtedness or to perform any of the Loan Obligations;
- (p) any direct or indirect change (i) in the ownership of (A) the Property; or (B) any Covenantor; or (ii) any change of Control of any of the Covenantors, in each case without the consent of the Mortgagee in its sole, absolute and unfettered discretion;
- (q) if a Material Adverse Effect occurs; or
- (r) the occurrence of a cross-default pursuant to Section 22.

## **RECEIVER**

31. Upon the occurrence of an Event of Default which is continuing, the Mortgagee may at such time and from time to time and with or without entry into possession of the Property

or any part thereof, appoint a receiver (which term includes a receiver or a manager or a receiver and manager) of the Property or any part thereof and of the Rents and profits thereof and with or without security, and may from time to time remove any receiver and appoint another in his stead and that, in making any such appointment or removal, the Mortgagee shall be deemed to be acting as the agent or attorney for the Mortgagor and not of the Mortgagee. Such appointment may be made at any time either before or after the Mortgagee shall have entered into or taken possession of the Property or any part thereof. Upon the appointment of any such receiver or receivers from time to time, the following provisions shall apply, subject to compliance with applicable laws:

- (a) the statutory declaration of an officer of the Mortgagee as to the Event of Default under the provisions of this Mortgage, shall be conclusive evidence thereof;
- (b) every such receiver shall be the irrevocable agent or attorney of the Mortgagor for the collection of all Rents falling due in respect of the Property or any part thereof, whether in respect of any tenancies created in priority to these presents or subsequent thereto;
- (c) every such receiver may, in the discretion of the Mortgagee and by writing under its corporate seal, be vested with all or any of the powers and discretions of the Mortgagee;
- (d) the Mortgagee may from time to time, by such writing fix the remuneration of every such receiver who shall be entitled to deduct the same out of the Rents from the Property or from the proceeds of the judicial sale of the Property;
- (e) every such receiver shall, so far as concerns responsibility for his acts or omissions, be deemed the agent or attorney of the Mortgagor and in no event the agent of the Mortgagee, and the Mortgagee shall not in any way be responsible for any acts or omissions (including negligence, misconduct or misfeasance) on the part of any such receiver;
- (f) the appointment of every such receiver by the Mortgagee shall not create any liability on the part of the Mortgagee to the receiver in any respect, and such appointment or anything which may be done by any such receiver or the removal of any such receiver or the termination of any such receivership shall not have the effect of constituting the Mortgagee a mortgagee in possession in respect of the Property or any part thereof;
- (g) every such receiver shall from time to time have the power to rent any portion of the Property which may become vacant, for such term and subject to such provisions as he may deem advisable or expedient, and in so doing every such receiver shall act as the attorney or agent of the Mortgagor and he shall have authority to execute under seal any lease of such portion of the Property in the name of and on behalf of the Mortgagor, and the Mortgagor undertakes to ratify and confirm whatever any such receiver may do in respect of the Property;
- (h) every such receiver shall have full power to complete any unfinished construction upon the Property with the intent that the Mortgaged Premises when so completed shall be a complete structure;
- (i) every such receiver shall have full power to manage, operate, amend, repair, alter or extend the Property or any part thereof in the name of the Mortgagor for the purpose of securing the payment of rental from the Property or any part thereof;
- (j) no such receiver shall be liable to the Mortgagor to account for moneys or damages other than cash received by him in respect of the Property or any part thereof, and out of such cash so received every such receiver shall, subject to the approval of the Mortgagee, in the following order, pay:
  - (i) his remuneration aforesaid;
  - (ii) all payments including, without limitation, costs as between solicitor and his own client made or incurred by him in connection with the management,



- operation, amendment, repair, alteration or extension of the Property or any part thereof;
- (iii) interest, principal and other moneys which may from time to time, be or become charged upon the Property in priority to these presents, and all Taxes, insurance premiums and every other proper expenditure made or incurred by him in respect to the Property or any part thereof;
  - (iv) to the Mortgagee, all interest due or falling due under these presents and the balance to be applied upon principal due and payable and secured by these presents;
  - (v) into a reserve account in the name of the receiver, an appropriate sum of money as a reserve fund for unusual, emergency or lump sum payments or expenses with respect to the Property; and
  - (vi) any surplus thereafter remaining in the hands of every such receiver after payments made as aforesaid, to the Mortgagor;
- (k) save as to claims for an accounting under Section 31(j) above, the Mortgagor hereby releases and discharges every such receiver from every claim of every nature which may arise or accrue to the Mortgagor or any Person claiming through or under the Mortgagor by reason or as a result of anything done by any such receiver under the provisions of this Section 31, unless such claim by the direct and proximate result of gross negligence or wilful misconduct;
- (l) the power of sale, foreclosure and any other remedies of the Mortgagee may be exercised either before, concurrent with, during, or after the appointment of any receiver hereunder.

### **RIGHTS OF MORTGAGEE**

32. The Mortgagor further covenants and agrees with the Mortgagee upon the occurrence of an Event of Default which is continuing:
- (a) the Mortgagee may and when and to such extent as the Mortgagee deems advisable, observe and perform or cause to be observed and performed such covenants, agreements, provisos or stipulations and the costs incurred by the Mortgagee in connection therewith, together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing;
  - (b) the Mortgagee may at such time or times as the Mortgagee may deem necessary and without the concurrency of any Person, enter upon the Property and may make such arrangements for completing the construction, repairing or putting in order of the Mortgaged Premises, or for inspecting, taking care of, leasing, collecting the Rents of and managing generally the Property as the Mortgagee may deem expedient; all reasonable costs, charges and expenses, including allowances for the time and services of any employee of the Mortgagee or other Person appointed for the above purposes, together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing;
  - (c) the Mortgagee may send or employ an inspector or agent to inspect and report upon the value, state and condition of the Property, and a solicitor to examine and report upon the title to the same;
  - (d) the Mortgagee or agent of the Mortgagee may enter into possession of the Property and whether in or out of possession collect the Rents and profits thereof, and make

any demise or lease of the Property, or any part thereof, for such terms and periods and at such Rents as the Mortgagee shall think proper; and the power of sale hereunder may be exercised either before or after and subject to any such demise or lease;

- (e) it shall and may be lawful for and the Mortgagor does hereby grant full power, right and license to the Mortgagee to enter, seize and distrain upon the Property, or any part thereof, and by distress warrant to recover by way of rent reserved as in the case of demise of the Property or any part thereof, as much of the mortgage moneys as shall from time to time be or remain in arrears and unpaid, together with costs, charges and expenses attending such levy or distress, as in like cases of distress for rent;
- (f) the Mortgagee shall be entitled forthwith to take such proceedings to obtain repayment of the moneys and interest payable to the Mortgagee hereunder and to realize on its security under this Mortgage by foreclosing the same or by whatever other action it may by law be entitled to do, it being acknowledged that nothing herein shall limit such recourse to the Property only;
- (g) subject to applicable law, the Mortgagee shall be entitled to sell and dispose of the Property with or without entering into possession of the same and with or without notice to the Mortgagor or any party interested in the Property; and all remedies competent may be resorted to; and all the rights, powers and privileges granted to or conferred upon the Mortgagee under and by virtue of any statute or by this Mortgage may be exercised; and no want of notice or publication or any other defect, impropriety or irregularity shall invalidate any sale made or purporting to be made of the Property hereunder, and the Mortgagee may sell, transfer and convey any part of the Property on such terms of credit, or part cash and part credit, secured by contract or agreement for sale or mortgage, or otherwise, as shall in the opinion of the Mortgagee be most advantageous, and for such price as can reasonably be obtained therefor; and in the event of a sale on credit, or part cash and part credit, whether by way of contract for sale or by conveyance or transfer and mortgage, the Mortgagee is not to be accountable for or charged with any moneys until the same shall be actually received in cash; and the sales may be made from time to time of any portion or portions of the Property to satisfy interest or parts of the principal overdue, leaving the principal or parts thereof to run with interest payable as aforesaid; and the Mortgagee may make stipulations as to the title or evidences or commencement of title or otherwise as the Mortgagee shall deem proper; and the Mortgagee may buy in or rescind or vary any contract for sale of the Property and any resale thereof; and on any sale or release, the Mortgagee shall not be answerable for loss occasioned thereby; and for any of such purposes the Mortgagee may make and execute all agreements and assurances that the Mortgagee shall deem advisable or necessary; and in case any sale held by the Mortgagee under and by virtue of the laws of the Province of Ontario under the power of sale herein contained should prove abortive the Mortgagee may take foreclosure proceedings in respect of the Property in accordance with the provisions of the laws of the Province of Ontario; and in the event of any deficiency on account of the moneys secured by this Mortgage remaining due to the Mortgagee after realizing all the Property, then Mortgagor will pay to the Mortgagee on demand the amount of such deficiency with interest at the Interest Rate both before and after judgment; and in the exercise of any of the foregoing powers, the Mortgagor hereby appoints the Mortgagee the attorney of the Mortgagor for the purpose of making any agreements and assurances on behalf of the Mortgagor as the Mortgagee may deem necessary which power of attorney is coupled with an interest; and the proceeds of any sale hereunder shall be applied as above provided for or in payment of moneys payable under this Mortgage and costs on a solicitor and his own client basis, the balance, if any, to be paid to the Mortgagor;
- (h) the whole of the mortgage moneys shall, at the option of the Mortgagee, become due and payable;
- (i) the Mortgagee may exercise each of the foregoing powers without notice to the Mortgagor.

### **COVENANTOR MISREPRESENTATION**

33. Notwithstanding any other provision in this Mortgage, the Mortgagee may demand repayment of all Loan Indebtedness and exercise all of its rights hereunder, including without limitation pursuant to Sections titled "**Receiver**" and "**Rights of Mortgagee**" if any of the Covenantors, any agent of any of the Covenantors or any officers or director of any of the Covenantors shall have made any material misrepresentation in any of the Loan Documents.

### **ATTORNEY**

34. As further assurance to the rights and remedies granted by the Mortgagor to the Mortgagee herein, the Mortgagor, as the owner of the Property hereby irrevocably appoints the Mortgagee on its own behalf or any receiver or manager or receiver and manager appointed by the Mortgagee attorney on behalf of the Mortgagor to sell, lease, mortgage, transfer or convey the Property in accordance with the provisions of this Mortgage and to execute all instruments, and do all acts, matters and things that may be necessary for carrying out the powers hereby given and for the recovery of all Rents and Lease Benefits and sums of money that may become or are now due or owing to the Mortgagor in respect of the Property, and for the enforcement of all contracts, covenants or conditions binding on any lessee or occupier of the Property or on any other Person in respect of it, and for the taking and maintaining possession of the Property, and for protecting it from waste, damage, or trespass, in all cases only following an Event of Default which is continuing. Such power of attorney is coupled with an interest.

### **JUDGMENT**

35. The taking of a judgment on any of the covenants or agreements herein contained shall not operate as a merger thereof or affect the Mortgagee's rights to interest to the Maturity Date at the Interest Rate and at the times herein provided. Further, any and all such judgments shall provide for interest thereon to be computed at the Interest Rate and in the same manner as herein provided to the Maturity Date shall have been fully paid and satisfied and, without limiting the generality of the foregoing, the Mortgagee shall be entitled to receive interest at the Interest Rate to the Maturity Date on all moneys payable to the Mortgagee under this Mortgage, after any judgment has been rendered with respect to this Mortgage.

### **EXPENSES**

36. All expenses, fees, charges or payments incurred, expended or paid by the Mortgagee, acting reasonably and without duplication, (whether with the knowledge, consent, concurrence or acquiescence of the Mortgagor or otherwise) with respect to the following matters:
- (a) all reasonable solicitors', inspectors', valuers' and surveyors' fees and expenses for drawing and registering this Mortgage and for examining the Property and the title thereto, and for making or maintaining this Mortgage a good and valid charge and mortgage (subject only to the Prior Permitted Encumbrances);
  - (b) all sums which the Mortgagee may advance for insurance premiums, Taxes, or rates;
  - (c) any unpaid amount due to the Mortgagee for the Lender's Fee, and, if applicable, the Extension Fee and the Administration Fee;
  - (d) all sums which the Mortgagee may expend in payment of prior liens, charges, encumbrances or claims charged or to be charged against the Property or on this Mortgage or against the Mortgagee in respect of this Mortgage;
  - (e) all sums which the Mortgagee may expend in maintaining, repairing, restoring or completing the construction on the Property pursuant to the terms of this Mortgage;
  - (f) the cost of inspecting, leasing, managing or improving the Property, including the price or value of any goods of any sort or description supplied for use on the Property pursuant to the terms of this Mortgage;

- (g) all sums paid to a receiver of the Property;
- (h) the cost of exercising or enforcing or attempting to exercise or enforce any right, power, remedy or purpose hereunder provided or implied, and including an allowance for the time, work and expenses of the Mortgagee or any agent or employee of the Mortgagee, for any purpose provided for herein; and
- (i) the Mortgagee's reasonable solicitors' costs as between solicitor and his own client incurred or paid by the Mortgagee as a result of any Event of Default, or of endeavouring to collect (with or without suit) any money payable hereunder, or of taking, recovering or keeping possession of the Property, and generally in any other proceedings, matter or thing taken or done to protect or realize this security or any other security for payment of the Loan Indebtedness and performance of the Loan Obligations;

together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing.

### **COVENANTS AND REPRESENTATIONS**

37. The Mortgagor:

- (a) further represents and warrants to the Mortgagee that:
  - (i) the Mortgagor:
    - (A) is a corporation incorporated formed and existing under the laws of its jurisdiction of incorporation;
    - (B) has the legal right and all necessary corporate or other power and authority to own its assets, possess a freehold interest in the Property, and carry on its business in all material respects; and
    - (C) is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions where it conducts business, except where failure to be so qualified, licensed or registered has not and is not reasonably likely to have a Material Adverse Effect;
  - (ii) the Mortgagor has all requisite corporate power and authority to enter into and perform its obligations under this Mortgage and the other Loan Documents, and to do all acts and things and execute and deliver all other documents and instruments as are required hereunder and thereunder to be done, observed or performed by it in accordance with the terms hereof and thereof;
  - (iii) the execution and delivery by the Mortgagor, and the performance by it of its obligations under, and compliance with the terms, conditions and provisions of, this Mortgage and the other Loan Documents will not conflict with or result in a breach of any of the terms, conditions or provisions of:
    - (A) its articles, by-laws, shareholders' agreements or other organizational documents; as the case may be;
    - (B) any applicable laws;
    - (C) any material contracts, material authorizations or material contractual restriction binding on or affecting it or its assets, including without limitation, the Property; or
    - (D) any material judgment, injunction, determination or award which is binding on it in each such case, except to the extent that such breach

has not and is not reasonably likely to have a Material Adverse Effect;

- (iv) the execution and delivery by the Mortgagor of this Mortgage and the other Loan Documents, and the performance by it of its Loan Obligations have been duly authorized by all necessary corporate or other action including, without limitation, the obtaining of all necessary partner, shareholder or other material and relevant consents. No authorization, consent, approval, registration, qualification, designation, declaration or filing with any Governmental Authority, or other Person, is or was necessary in connection with the execution, delivery and performance of the Mortgagor's obligations under this Mortgage the other Loan Documents, except where failure to obtain same would not have or be reasonably likely to have a Material Adverse Effect;
- (v) this Mortgage and the other Loan Documents have been duly executed and delivered, as the case may be, by the Mortgagor, and constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by the availability of equitable remedies and the effect of bankruptcy, insolvency or similar laws affecting the enforcement of credit's rights generally), is (or will be immediately upon the execution thereof by such Person) in full force and effect, and the Mortgagor has performed and complied in all material respects with all the terms, provisions, agreements and conditions set forth herein and therein and required to be performed or complied with by the Mortgagor;
- (vi) the Mortgagor is not a non-resident within the meaning of the *Income Tax Act* (Canada);
- (vii) there is not now pending or, to the knowledge of the Mortgagor, threatened in writing, against the Mortgagor, any litigation, action, suit, investigation (to the knowledge of the Mortgagor) or other proceeding by or before any Governmental Authority or before any arbitrator which has had or is reasonably likely to have a Material Adverse Effect;
- (viii) as of the date hereof, the written information heretofore supplied by any of the Covenantors (other than information or reports prepared by third parties) to the Mortgagee is true and accurate in all material respects as at the date thereof;
- (ix) all financial statements delivered to the Mortgagee as of the date hereof pursuant to Section 49 present fairly and in all material respects the financial position of any of the Covenantors as of the date thereof and for the fiscal years or financial quarters, as the case may be, then ended;
- (x) since the later of the date hereof and the date of the most recent financial statements delivered to the Mortgagee, there has been no change regarding the financial condition or operations, of any of the Covenantors as reflected in such financial statements or Personal net worth statements, as applicable which has had or is reasonably likely to have a Material Adverse Effect;
- (xi) there is no Event of Default under this Mortgage, nor has the Mortgagor done or omitted to do anything which constitutes an Event of Default which has not been waived or cured. None of the Covenantors is in default under any agreement, guarantee, indenture or instrument to which it is a party or by which it is bound, the breach of which has had or is reasonably likely to have a Material Adverse Effect;
- (xii) as of the date hereof, there are no outstanding judgments, orders, writs, injunctions or decrees that have not been stayed or of which enforcement has not been suspended, against the Mortgagor or any of its assets, including without limitation the Property, which would reasonably be expected to result in a Material Adverse Effect regarding the financial condition or operations of the Mortgagor;

- (xiii) the Mortgagor is the legal owner of a freehold interest in the Property with good and marketable title thereto, and any other real and personal property of the Mortgagor of any nature which is part of the Property, in each case free and clear of all encumbrances, except Permitted Encumbrances, and no Person has any agreement or right to acquire an interest in the Property except as previously disclosed to the Mortgagee in writing by the Mortgagor or permitted in connection with the Permitted Encumbrances;
  - (xiv) the Mortgagor has not received notice of any proposed rezoning of all or any part of the Property which has had or is reasonably likely to have a Material Adverse Effect;
  - (xv) the Mortgagor has not received notice of any expropriation of all or any part of the Property;
  - (xvi) the Mortgagor has the right to mortgage the Property;
  - (xvii) upon the enforcement of its remedies under this Mortgage the Mortgagee shall have quiet possession of the Property, free from all encumbrances, other than Permitted Encumbrances;
  - (xviii) the Mortgagor, and the operation of its business and assets, including without limitation, the Property, are in compliance in all material respects with all applicable laws (including any environmental laws), except where any non-compliance is not reasonably likely to have a Material Adverse Effect; and
  - (xix) the Mortgagor has filed all tax returns which are required to be filed, other than such tax returns the failure of which to file has had or is reasonably likely to have a Material Adverse Effect, and has paid all Taxes, interest and penalties, if any, which have become due pursuant to such returns or pursuant to any assessment received by it and adequate provision for payment has been made for Taxes not yet due except any such payment of which the concerned party is contesting in good faith by appropriate proceedings and for which appropriate reserves have been provided on its books and as to which no foreclosure, distraint, seizure, attachment, sale or other similar proceedings have been commenced or the non-payment of which would not reasonable be excepted to result in a Material Adverse Effect regarding the financial condition or operations of the Mortgagor;
- (b) to the extent within the control of the Mortgagor, covenants to cause the forgoing representations and warranties to be true and correct in all material respects until the Loan Indebtedness is repaid in full and the Loan Obligations are fully performed;
  - (c) acknowledges and agrees that all representations and warranties of the Mortgagor made in this Mortgage or in any of the other Loan Documents are material, shall survive and shall not merge upon the execution and delivery of this Mortgage and shall continue in full force and effect. The Mortgagee shall be deemed to have relied upon such representations and warranties notwithstanding any investigation made by or on behalf of the Mortgagee at any time;
  - (d) shall not, at any time prior to the repayment in full of the Loan Indebtedness and the performance of all of the Loan Obligations:
    - (i) repay any loans (principal or interest) to;
    - (ii) redeem or purchase any shares or units or partnership interests held by or on behalf of;
    - (iii) pay any compensation, fee or other amount to; or
    - (iv) pay any distributions or dividends or return on partnership or shareholder investment to,

in each case, any of the Covenantors or any other shareholder, unitholder or partner of any Covenantor, or any other Person not at arms-length to any of the foregoing, save and except for those development, marketing and/or construction fees specifically approved in writing by the Mortgagee and included in the Project Budget prepared by the Project Monitor.

- (e) acknowledges and agrees that any third party property manager of the Property and each property management agreement will be subject to the prior written approval of the Mortgagee, acting reasonably; and
- (f) acknowledges and agrees that each new Lease of the Property, including each renewal or extension of an existing Lease (other than any extension or renewal of an existing Lease which is exercised pursuant to, and the terms of which are governed by, such existing Lease), must:
  - (i) be a commercially reasonable arm's length transaction made in the ordinary course of business and in accordance with prudent property management and leasing standards and practices; and
  - (ii) provide for rental rates and other terms and conditions consistent with prevailing market rates, terms and conditions.

### **EXPROPRIATION**

38. Subject to the rights of creditors of the Mortgagor in accordance with Prior Permitted Encumbrances, the Mortgagor hereby assigns to the Mortgagee, that portion of any proceeds which may become due and payable to the Mortgagor by an expropriating authority upon an expropriation of the Property or the proceeds of any condemnation, eminent domain or like proceeding or the sale in lieu of or in reasonable anticipation thereof of the whole or any part of the Property or any portion thereof, not to exceed the balance outstanding under the Mortgage, provided that the Mortgagee shall permit the Mortgagor to use such portion of any proceeds as reasonably necessary to pay the cost to repair any damage resulting from such expropriation. The Mortgagor shall forward to the Mortgagee, copies of any documentation relating to an expropriation or a proposed expropriation of the Property or any portion thereof, forthwith upon receipt of the said documentation by it and shall execute and deliver any further or additional documentation which the Mortgagee in its sole discretion deems necessary to effect the above assignment or which is requested by the expropriating authority. Notwithstanding anything to the contrary contained herein, if the Mortgagor or the Mortgagee receives a notice of intention to expropriate in relation to the Property, or any portion thereof, that has had or is reasonably likely to have a Material Adverse Effect, at the option of the Mortgagee, the whole of the outstanding balance secured under this Mortgage at the date of the expropriation, shall immediately become due and payable in like manner and to all intents and purposes as if the time for payment of the said balance had fully come and expired. If any or all of the Property is expropriated, it is agreed that the proceeds from any such expropriation up to the amount outstanding under this Mortgage shall be paid directly to the Mortgagee in priority to the claims of any other party, except such creditors of the Mortgagor and other parties with priority to collect such proceeds pursuant to any Prior Permitted Encumbrances. Service of a copy of this Mortgage on the expropriating authority shall be sufficient authority for the expropriating authority to deliver proceeds to the Mortgagee, in accordance with the terms of the assignment contained herein.

### **PERMITTED ENCUMBRANCES AND OTHER OBLIGATIONS**

39. The Mortgagor hereby covenants to perform and observe and satisfy all the terms, covenants and conditions to be performed and observed by the Mortgagor under the terms of any Prior Permitted Encumbrances and the Leases (hereinafter called the "**Other Obligations**"). It is expressly agreed and understood by the Mortgagor that in the event of default by the Mortgagor under any of the terms of any Other Obligations, beyond any applicable notice or cure periods, then at the option of the Mortgagee an Event of Default shall have occurred hereunder. The Mortgagee may at its option make any payment or cure any default under the any Prior Permitted Encumbrance and any amount or amounts so paid together with all costs, charges, expenses and outlays of the Mortgagee thereby incurred together with interest thereon at the Interest Rate shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith,

and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing.

#### **SEVERABILITY**

40. In the event any Section or part thereof or any Section or part thereof is invalid and not enforceable for any reason, then such Section or part thereof or such Section or part thereof shall be severable from this Mortgage and not affect the validity or enforceability of any other part of this Mortgage.

#### **SUCCESSORS AND ASSIGNS**

41. When the context makes it possible, the word "**Mortgagee**" wherever it occurs in this Mortgage, shall include the successors and assigns of the Mortgagee, and the word "**Mortgagor**" shall include heirs, executors, administrators, successors and permitted assigns of the Mortgagor; and that words in the singular include the plural, and that words in plural include the singular, and words importing the masculine gender include the feminine; and that if there is more than one entity comprising the Mortgagor all covenants herein contained and implied are to be construed as joint and several; and that heirs, executors, administrators, successors and assigns of any party executing this Mortgage are jointly and severally bound by the covenants, provisos and agreements herein contained or implied. The Documents, including without limitation this Mortgage, together with the Loan Indebtedness and the Loan Obligations may be assigned by the Mortgagee, provided that the Mortgagee shall provide the Mortgagor and the Covenantors with written notice of any such assignment and obtain the Mortgagor's consent to the assignment, which consent shall not be unreasonably withheld, conditioned or delayed.

#### **DISCHARGE**

42. The Mortgagee shall upon payment and performance of all indebtedness and obligations secured hereby in full deliver an executed discharge of this Mortgage; it being agreed that the Mortgagor's solicitor shall be responsible for preparing the mortgage discharge document for review by the Mortgagee and its counsel at least seven (7) days prior to payment, and interest as aforesaid shall continue to run and accrue until actual payment in full has been received by the Mortgagee; and all reasonable legal and other expenses and Taxes thereon, if any, for the preparation and execution of such discharge shall be borne by the Mortgagor.

#### **LAW**

43. This Mortgage is made pursuant to the *Land Titles Act* (Ontario) and any amendments thereto.

#### **COMMITMENT LETTER**

44. The parties agree that the accepted terms and conditions of the Commitment Letter, shall survive the initial advance of monies by the Mortgagee to the Mortgagor as contemplated hereunder and continue to be in full force and effect after said initial advance. In the event there is a direct conflict between the terms and conditions of this Mortgage and the Commitment Letter, then the Commitment Letter shall prevail to the extent necessary to resolve the conflict. In the event there is a direct conflict between the terms and conditions of this Mortgage and any other Loan Document (other than the Commitment Letter), the terms and conditions of this Mortgage shall prevail to the extent necessary to resolve the conflict.

#### **HAZARDOUS MATERIALS**

45. The Mortgagor,
- (a) has not nor, to the best knowledge of the Mortgagor, has any other Person ever caused or permitted any hazardous materials to be placed, held, located or disposed of on, under or at the Property and that its business and assets are operated in compliance with applicable laws intended to protect the environment (including,



without limitation, laws respecting the disposal or emission of hazardous materials) and that no enforcement actions in respect thereof are threatened or pending.

- (b) covenants and agrees that it will at all times during the continuance of this Mortgage, operate the Property in compliance with applicable laws intended to protect the environment (including, without limitation, laws respecting the disposal or emission of hazardous materials) and shall, subject to the rights of tenants under the Leases, permit the Mortgagee to conduct inspections and appraisals of all or any of its records, business and assets at any time or from time to time upon reasonable prior notice to ensure such compliance.
- (c) in addition to the representations and warranties contained in Section 37, hereby represents, warrants and agrees that,
  - (i) to the best of the knowledge of the Mortgagor, the condition and use of the Property is, and will continue to be in compliance with all applicable environmental laws and standards; all necessary licenses and permits relating to the release of contaminants, production of dangerous materials and carrying on of hazardous activities have been obtained and are being complied with; there are no outstanding orders against the Mortgagor from any Governmental Authority responsible for protecting the environment;
  - (ii) to the best of the knowledge of the Mortgagor, the Property is not being subjected to environmental damage or contamination and to the best of the Mortgagor's knowledge, the Property incurred no such damage or contamination prior to the Mortgagor's control;
  - (iii) the Mortgagor will use commercially reasonable efforts to use the Property and conduct its business thereon so as not to cause environmental damage and that the use of the Property will not change without the Mortgagee's approval, acting reasonably;
  - (iv) to the best of the knowledge of the Mortgagor, the terms of any past credit arrangement have not been altered, cancelled or not renewed due to environmental risk considerations;
  - (v) all legally required remedial action will be taken with respect to violations of environmental laws, and spills or other contaminations;
  - (vi) the Mortgagor will give notice to the Mortgagee of any contamination of which the Mortgagor has or acquires knowledge of, or any pending or threatened government enforcement action or civil suit arising out of alleged environmental damage of which the Mortgagor has or acquires knowledge of;
  - (vii) in accordance with Section 14 above, the Mortgagor will permit the Mortgagee and its agents to enter onto the Property at any time to conduct an environmental inspection and to permit the Mortgagee to take such action as it deems reasonably necessary to remedy any environmental damage or breach of law which the Mortgagor fails to take, subject to the rights of tenants under the Leases;
  - (viii) the Mortgagor will provide copies of its own internal/external environmental audits to the Mortgagee upon request;
  - (ix) subject to the terms of the existing Leases, the Mortgagor will use commercially reasonable efforts to cause any other occupants or Persons in control of the Property to comply with the foregoing covenants;
  - (x) the Mortgagor will defend and indemnify the Mortgagee, its directors, officers, employees and agents against all costs, etc., arising out of any environmental damage caused by the Mortgagor's activities or by contamination of or from the Property (unless caused by the Mortgagee or those for whom in law it is responsible); and

- (xi) if the Mortgagor fails to perform any of the foregoing covenants beyond any applicable notice or cure periods, the Mortgagee may do so and any money expended by the Mortgagee shall be paid by the Mortgagor out of any funds coming into the Mortgagee's possession in priority to the Loan.

#### **DUE ON SALE**

- 46. The Loan Indebtedness shall, at the election of the Mortgagee, immediately become due and payable in full without notice by nor demand from the Mortgagee if the Property or any part thereof or interest therein is, without the prior consent in writing of the Mortgagee sold, transferred, conveyed, foreclosed, exchanged, assigned, mortgaged, or otherwise disposed of, or if the Mortgagor enters into an agreement to effect any of the foregoing whether by registered or unregistered instrument and whether for valuable or nominal consideration (and if the Mortgagor is a corporation, any change in Control of the Mortgagor or any other Covenantor shall constitute a default under this Section 46), in all cases except as specifically permitted in this Mortgage or in the Commitment Letter; provided however that nothing herein shall be construed as permitting the Mortgagor to prepay this Mortgage in whole or in part except in accordance with Section 8 hereof; and provided further that the acceptance by the Mortgagee of any instalment payment or other payment under this Mortgage from any entity other than the Mortgagor shall not constitute a waiver by the Mortgagee of its rights under this Section 46, nor a consent by the Mortgagee of any such sale or disposal of the Property as above described.

#### **SUBSEQUENT FINANCING**

- 47. The Loan Indebtedness shall, at the election of the Mortgagee, become due and payable in full if the Property or any part thereof or interest therein is, without the prior consent in writing of the Mortgagee acting reasonably, mortgaged or similarly charged, except as may be specifically permitted in this Mortgage, the Commitment Letter or under a Permitted Encumbrance; provided however that nothing herein shall be construed as permitting the Mortgagor to repay this Mortgage in whole or in part except in accordance with Section 8 hereof.

#### **PROHIBITED BUSINESSES**

- 48. The Mortgagor agrees not to operate, nor allow any tenant to operate a business on the Property that:
  - (a) is sexually exploitive or that is inconsistent with generally accepted community standards of conduct and propriety, including those that feature sexually explicit entertainment, products or services; or
  - (b) are engaged in or associated with illegal activities.

#### **FINANCIAL STATEMENTS AND REPORTS**

- 49. The Mortgagor shall deliver or cause to be delivered the following documentation to the Mortgagee:
  - (a) any and all insurance certificate renewals and/or amendments within ten (10) business days of the issuance thereof. In the event of any change to the insurance held by the Mortgagor, the Mortgagee may, in its unfettered discretion, require its insurance consultant to conduct an insurance review at the Mortgagor's expense;
  - (b) ongoing Project information, including, but not limited to, strata plan documentation, working and final architects'/engineers' drawings, construction budgets, artist's renderings, and floor plans for any proposed Buildings;
  - (c) any and all lease agreements entered into by the Mortgagor;
  - (d) property tax statements supported by proof of payment on an annual basis or as otherwise requested by the Mortgagee from time to time;
  - (e) each year, or more often if requested by the Mortgagee, within ninety (90) days of the Mortgagor's fiscal year end, notice to reader financial statements of the Mortgagor and of the Guarantors (but not any Limited Recourse Guarantor),

including a balance sheet and supporting schedules, a detailed statement of income and expenditures and supporting schedules, and a statement of change in case flow;

- (f) on a regular basis Project Budgets prepared and updated by the Project Monitor;
- (g) a copy of each and every Project Monitor report prepared for the Borrower or the Mortgagee forthwith upon receipt thereof; and
- (h) at the request of the Mortgagee from time to time any other relevant updates regarding the Project.

### **BENEFIT OF EASEMENTS**

50. As additional security for the indebtedness and other obligations secured hereunder and interest thereon and the due performance of the Mortgagor's obligations hereunder and under any collateral security the Mortgagor hereby assigns, transfers, mortgages, charges and sets over to and in favour of the Mortgagee as and by way of a specific assignment, mortgage and charge all of the right, title and interest of the Mortgagor in and with respect to any and all easements, restrictive covenants, rights of way, party wall agreements and encroachment agreements benefiting the Property (the "**Title Agreements**") and all of the benefit, power and advantage of the Mortgagor to be derived therefrom (including without limitation the benefit of any positive covenants) and otherwise to enforce the rights of the Mortgagor under the Title Agreements in the name of the Mortgagor. Nothing herein contained shall render the Mortgagee liable to any Person for the fulfilment or non-fulfilment of the obligations covered in any of the Title Agreements, including, but not limited to, the payment of any moneys thereunder or in respect thereto and the Mortgagor hereby indemnifies and agrees to save and hold harmless the Mortgagee from and against any and all claims, demands, actions, causes of action, losses, suits, damages and costs whatsoever arising directly or indirectly from or out of any of the Title Agreements. The Mortgagor covenants and agrees with the Mortgagee that the Mortgagor shall not surrender, alter, amend or modify any of the Title Agreements or any of the terms or conditions thereof except with the prior written consent of the Mortgagee or as required to complete the Project, if applicable, as determined by the Mortgagor, acting as a prudent owner.

### **INDEMNITY**

51. The Mortgagor shall indemnify and save harmless the Mortgagee and its officers, agents, trustees, employees, contractors, licensees or invitees from and against any and all losses, damages, injuries, expenses, suits, actions, claims and demands of every nature whatsoever in connection with any breach or default by the Mortgagor under this Mortgage and any of the other Loan Documents.

### **GENERAL**

52. This Mortgage shall be construed in accordance with and governed under the laws of the Province of Ontario and the federal laws of Canada applicable therein.

53. The Mortgagor agrees with the Mortgagee as follows:

- (a) to comply with the terms and conditions of this Mortgage and the other Loan Documents at all times;
- (b) to maintain the Property in a sound state of repair at all times as would other prudent owners of similar property;
- (c) to allow the Mortgagee and its appointees to have access to the property at all reasonable times upon reasonable prior notice, subject to the rights of tenants at the Property; and
- (d) at the Mortgagee's request, acting reasonably, to promptly deliver or cause to be delivered to the Mortgagee promptly such information about the financial condition and operation with respect to the Property as the Mortgagee may request from time to time.

54. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Commitment Letter.
55. Notwithstanding anything in this Mortgage, in dealing with enforcing and realizing on this Mortgage, the Mortgagee shall not claim hereunder any greater amount in the aggregate than the amounts advanced by the Mortgagee that remain unpaid, together with all accrued and unpaid interest, and any other amounts unpaid hereunder.

-- signatures follow on next page --

IN WITNESS WHEREOF the Mortgagor has duly executed this Mortgage this \_\_\_\_ day of February, 2022.

759 WINSTON CHURCHILL GP INC., in its capacity as general partner for and on behalf of 759 WINSTON CHURCHILL L.P.

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

Name:

Title:

  
M. MOLDENHAUER  
A.S.O.

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

Name:

Title:

## SCHEDULE "A"

### DESCRIPTION OF THE LANDS

PIN: 13493-0213(LT)

PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 2 & 3 PLAN 43R39986; CITY OF MISSISSAUGA

PIN: 13493-0226(LT)

PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 5 & 6 PLAN 43R39986; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 3 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 4 PLAN 4R43R38482 AS IN PR1663804; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 5 PLAN 43R38482 AS IN PR1662397; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN PR823503; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR896377; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR1021917; CITY OF MISSISSAUGA

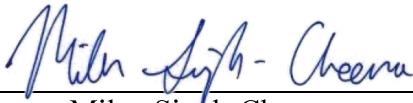
PIN: 13493-0225(LT)

PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PART 1 PLAN 43R39884; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 3 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 4 PLAN 4R43R38482 AS IN PR1663804; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 5 PLAN 43R38482 AS IN PR1662397; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN PR823503; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR896377; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR1021917; CITY OF MISSISSAUGA

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I**

THIS IS **EXHIBIT "I"** REFERRED TO IN THE AFFIDAVIT  
OF DANIEL POLLACK, SWORN BEFORE ME THIS  
12<sup>TH</sup> DAY OF FEBRUARY, 2024.



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Milan Singh-Cheema  
A Commissioner for taking Affidavits  
(or as may be)



## GENERAL ASSIGNMENT OF LEASES AND RENTS

THIS AGREEMENT made as of the \_\_\_ day of February, 2022.

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

**759 WINSTON CHURCHILL GP INC.**, in its capacity as general partner  
for and on behalf of **759 WINSTON CHURCHILL L.P.**

(the "**Assignor**")

OF THE FIRST PART

- and -

**KINGSETT MORTGAGE CORPORATION**

(the "**Assignee**")

OF THE SECOND PART

**WHEREAS** the Assignor, as mortgagor, has granted a mortgage (the "**Mortgage**") to and in favour of the Assignee, as mortgagee, of the lands and premises charged therein (the "**Property**"), notice of which was registered on the date hereof in the Land Registry Office for the Land Titles Division of Peel (No. 43) to secure the payment of principal, interest and other monies and the performance of all obligations arising thereunder, as amended, modified, supplemented or replaced from time to time;

**AND WHEREAS** as a condition for receiving the Loan Indebtedness, the Assignor agreed to assign to the Assignee, its successors and assigns, as a further continuing and collateral security for the payment of the Loan Indebtedness and observance and performance of the Loan Obligations, in all of the Assignor's right, title and interest in and to:

- (a) all present and future leases, subleases, licenses, agreements to lease, agreements to sublease, options to lease or sublease, rights of renewal or other agreements by which the Assignor or any predecessor or successor in title thereto, has granted or will grant the right to use or occupy all or part or parts of the Property, and including all agreements collateral thereto (collectively, the "**Leases**");
- (b) all rents, issues, profits and other monies now due or accruing due or to become due and payable under or derived from the Leases or receivable by the Assignor pursuant to the Leases or the Property (collectively, the "**Rents**"); and
- (c) the benefit of all covenants and obligations of lessees, tenants, licensees, or occupants as well as all other rights, privileges, advantages and benefits contained in any of the Leases, including without limitation, all rights and benefits of any present and future guarantees or indemnities thereof, with full power and authority to demand, sue for, collect, recover and receive all Rents, to enforce the Assignor's

rights under any Lease, and generally any collateral advantage or benefit to be derived from the Leases or any of them together with the full benefit of all security in support of any guarantees or indemnities (collectively, the "**Lease Benefits**" and together with the Leases and the Rents, collectively, the "**Assigned Rights and Benefits**").

**NOW THEREFORE IN CONSIDERATION** of the recitals, the Assignee extending the Loan Indebtedness and for such other good and valuable consideration received by the Assignor, the receipt and adequacy of which is acknowledged by the Assignor, the Assignor agrees with the Assignee as follows:

## **ARTICLE 1** **DEFINITIONS, INTERPRETATION**

### **1.1 Definitions**

Capitalized terms that are not defined herein have the meanings set out in the Mortgage. Otherwise, in this Agreement:

- (a) "**Excluded Lease**" has the meaning ascribed to it in Section 2.3;
- (b) "**Indebtedness**", in respect of any Person, is used in its most comprehensive sense and includes any and all advances, debts, duties, endorsements, guarantees, liabilities, obligations, responsibilities and undertakings of such Person at any time assumed, incurred or made, however arising, whether or not now due, absolute or contingent, liquidated or unliquidated, direct or indirect, and whether such Person is liable individually or jointly with others, irrespective of the regularity or validity thereof or of any security therefor;
- (c) "**Loan Indebtedness**" means any Indebtedness from time to time of the Assignor or any of the other Covenantors to the Assignee arising under any of the Loan Documents;
- (d) "**Loan Obligations**" means the obligations of the Assignor or any of the other Covenantors arising under the Loan Documents;
- (e) "**Other Parties**" has the meaning ascribed to it in Section 2.13(a); and
- (f) "**Receiver**" has the meaning ascribed to it in Section 2.12(a).

### **1.2 Interpretation**

For the purposes of this Agreement, all references to the singular include the plural where the context so admits, the masculine to include the feminine and neuter gender and, where necessary, a body corporate, and vice versa.

### **1.3 Headings**

In this Agreement, the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this Agreement.

## **ARTICLE 2** **AGREEMENT**

### **2.1 Assignment**

As continuing collateral security for the payment of the Loan Indebtedness and the performance of the Loan Obligations, the Assignor hereby assigns, transfers and sets over unto the Assignee and grants to the Assignee a security interest in all of the Assignor's right, title, estate, interest and benefit, both at law and in equity, in and to the Assigned Rights and Benefits, to hold and receive the same unto the Assignee with full power and authority to demand, sue for, collect, recover and receive and give receipts for the Rents and to enforce the payment of the Rents and the payment and performance of all Assigned Rights and Benefits, assigned in accordance with and subject to the terms of this Agreement.

### **2.2 Last Day of Term**

This Agreement shall not extend or apply to the last day of the term, or the last day of any extended or renewed term, of any of the Leases provided that if this Agreement is enforced by the Assignee, the Assignor shall stand possessed of each such last day and shall hold same in trust and if this Agreement is enforced by the Assignee, to assign at the direction of the Assignee or any Person who may acquire any such term or renewal term or who in the course of enforcement hereof may be entitled to so direct.

### **2.3 Excluded Leases**

Nothing in this Agreement shall constitute an assignment or attempted assignment of any of the right, title, estate, interest and benefit of the Assignor in any Assigned Rights and Benefits which require the consent of a third party to assignment unless such consent has been obtained (an "**Excluded Lease**"). The Assignor shall, upon request, obtain the required consent of any third party to the assignment of any Excluded Lease under this Agreement and to its further assignment by the Assignee to any third party as a result of the exercise by the Assignee of its remedies hereunder after an Event of Default. Upon consent being obtained, this Agreement shall apply to the applicable Excluded Lease without regard to this Section and without the necessity of any further assurance to effect assignment under this Agreement. Until consent to assignment is obtained, the Assignor shall, to the extent it may do so at law or pursuant to the provisions of the Excluded Lease and without giving rise to any default or penalty under the Excluded Lease, hold all right, title, estate, interest and benefit to be derived from the Excluded Lease in trust for the Assignee as additional security for the payment of the Loan Indebtedness and performance of the Loan Obligations as if this Agreement applied.

## **2.4 Representations and Warranties**

The Assignor represents and warrants to and in favour of the Assignee that:

- (a) each of the Leases is in existence, and is in full force and effect, and there is currently no default by any party to any Lease under any term, condition or covenant required to be performed by it under the Assigned Rights and Benefits and there exists no event or circumstance, which would with the passage of time or the giving of notice or both constitute a default or an event of default under any of the Assigned Rights and Benefits;
- (b) there is no outstanding dispute under any Lease by any of the parties to it and no lessee under any Lease is entitled to any set off or defense against the payment of Rent under the Lease; and
- (c) the Assignor has good right, full power and absolute authority to assign the Assigned Rights and Benefits in the manner aforesaid, and has not performed any act or executed any other instrument which might prevent the Assignee from operating under the terms and conditions of this Agreement or which would limit the Assignee in such operation.

## **2.5 Covenants**

The Assignor hereby covenants with the Assignee:

- (a) that it will at all times perform or cause to be performed all of the covenants and obligations on the part of lessor contained in the Leases as would a prudent landlord (except to the extent that the same have been expressly waived by the Other Parties to the Leases);
- (b) to maintain or cause to be maintained the Leases in good standing and not to do, permit to be done or omit to do, anything which may impair the enforceability of the Leases;
- (c) that in respect of all of the Leases, save for the deposits for the first and last month rentals, not to accept Rents more than one month in advance of the dates when Rents fall due;
- (d) except as provided for in Section 2.7 below, all offers to lease and all tenancy agreements, leases or subleases entered into with lessees of the Property shall be on the standard forms previously approved by the Assignee to be used in connection with the Property, amended as deemed appropriate in the circumstances by the Assignor, acting reasonably, to give effect to the arrangements made with each lessee or, if not on a pre-approved standard form, then in all cases in form and substance acceptable to the Assignee acting reasonably;

- (e) upon and during the continuance of an Event of Default, to facilitate in all ways the Assignee's exercise of its rights hereunder, including without limitation, upon request of the Assignee:
  - (i) to deliver to the Assignee up-to-date rent rolls and true copies of all then outstanding Leases and any other document giving rise to any of the Lease Benefits;
  - (ii) to permit access by the Assignee or its agent during regular business hours, upon reasonable notice to the Assignor, to all records pertaining to the Property, wherever held; and
  - (iii) to provide written notices to the lessees or any Other Parties, directing them to make payment of Rents to the Assignee or as it may direct; and
- (f) to obtain estoppel certificates from the lessees under the Leases (provided that the lessees are obliged to do so pursuant to their Lease) when and as reasonably required by the Assignee, or if any of such estoppel certificate is not forthcoming, to furnish a certificate of a senior officer of the Assignor in lieu thereof attesting (to the extent within the Assignor's knowledge and without Personal liability) to the information which would have been provided in such estoppel certificate.

## **2.6 Right to Deal**

Until the occurrence of an Event of Default which is continuing, and subject to Section 2.5, the Assignor is permitted to enjoy the benefits of and deal with the Assigned Rights and Benefits, and may demand, receive, collect and enjoy the Rents, but only as the same fall due and payable according to the terms of each of the Leases and any of the documents giving rise to any of the Lease Benefits, and not more than one month in advance (except for prepayment of the last month of the term if so provided in the Lease) as would a prudent landlord. Upon the occurrence of an Event of Default which is continuing, the Assignee may, in addition to any other rights and remedies it may have, deliver a written notice to any lessee or any Other Party directing it to deal with the Assignee and to pay the Rents payable under its Lease to the Assignee, and such notice shall be good and sufficient authority for so doing.

## **2.7 No Dealings with Leases**

The Assignor shall not, without the prior written consent of the Assignee:

- (a) do any act or thing or omit to do any act or thing that would materially adversely change the obligations of the Assignor under that Lease, other than as permitted by the Mortgage (except where the provisions of the Lease require the landlord to do so); or
- (b) enter into any Lease, including each renewal or extension of an existing Lease (other than any extension or renewal of an existing Lease which is exercised pursuant to, and the terms of which are governed by, such existing Lease), unless:

- (i) it is a commercially reasonable arm's length transaction made in the ordinary course of business and in accordance with prudent property management and leasing standards and practices;
  - (ii) it provides for rental rates and other terms and conditions consistent with prevailing market rates, terms and conditions; and
  - (iii) the Assignor has notified the Assignee of the proposed Lease and provided a copy of it to the Assignee; and
- (c) upon the Assignee delivering a written notice to the Assignor notifying the Assignor that the Assignee has elected to exercise its rights under this Section, enter into any Lease unless the Assignee has approved, acting reasonably, the form and content thereof.

Whenever the Assignee's consent is required hereunder, the Assignee shall act in a commercially reasonable manner as would a prudent owner of similar real estate and the Assignee shall communicate its consent or non-consent within ten (10) Business Days of any written request (unless otherwise indicated herein), failing which the Assignee shall be deemed to have given its consent.

The Assignor covenants to specifically assign any future Lease to the Assignee upon the Assignee's request in a form satisfactory to the Assignee. In such event, the Assignor further covenants that it will use its commercially reasonable efforts to have the lessee of all such future Leases, covenant to attorn to the Assignee on request.

## **2.8 Assigned Rights and Benefits Not Impaired**

The within assignment to the Assignee of the Assigned Rights and Benefits shall remain in full force and effect without regard to, and the obligations of the lessees under the Leases shall not be affected or impaired by:

- (a) any amendment, modification, renewal or replacement of or addition or supplement to any of the other Loan Documents or the loan secured by the Security Documents; or
- (b) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the other Security Documents; or
- (c) any waiver, consent, extension, indulgence or other action, inaction or omission under or in respect of this Agreement or any of the other Security Documents; or
- (d) any insolvency, bankruptcy, liquidation, reorganization, arrangement, composition, winding-up, dissolution or similar proceeding involving or affecting the Assignor or any of the lessees under any of the Leases.

## **2.9 Power of Attorney**

So long as the Loan Indebtedness and the Loan Obligations, or any portion thereof, remains outstanding:

- (a) the Assignor hereby irrevocably appoints the Assignee, or any Receiver appointed by the Assignee as provided for in this Agreement, to be the attorney of the Assignor with full power of substitution, and with full authority in the place of the Assignor and in the name of the Assignor or otherwise, from time to time in the Assignee's discretion, to do all acts, matters and things that may be necessary for, incidental to, or advisable for, carrying out the powers given to the Assignee under this Agreement and the Mortgage upon the occurrence of any Event of Default which is continuing (but the Assignee is not obligated to take such action and will have no liability to the Assignor or any third party for failure to take any action). This power of attorney is given for valuable consideration, is coupled with an interest, and is irrevocable until registration of a complete discharge of the Mortgage; and
- (b) in the event any action is brought by the Assignee to enforce any rights under the Assigned Rights and Benefits, the Assignor agrees to cooperate fully with and assist the Assignee in the prosecution thereof.

## **2.10 Acceleration**

Upon the occurrence of an Event of Default which is continuing all of the Loan Indebtedness shall, at the Assignee's option and without notice to the Assignor, become immediately due and payable and the Assignee may, in its sole, absolute and unfettered discretion, exercise its rights in respect of the Assigned Rights and Benefits in addition to all other rights and remedies afforded by applicable law, in equity or otherwise. The Assignee shall have the right to enforce one or more remedies successively or concurrently in accordance with applicable law and the Assignee expressly retains all rights and remedies not inconsistent with the provisions in this Agreement including any rights it may have under the PPSA. The provisions of this clause do not and are not intended to affect in any way any rights of the Assignee with respect to any Loan Obligations or any Loan Indebtedness which may now or hereafter be payable on demand.

## **2.11 Enforcement**

Upon the occurrence of and during the continuance of an Event of Default, the security hereby constituted will, at the option of the Assignee, immediately become enforceable.

## **2.12 Assignee's Rights and Remedies**

In addition to the Assignee's rights under the Mortgage, the Assignee may, at its option and without any obligation or liability therefor and in addition to any other remedy in respect of the Assigned Rights and Benefits to which it is entitled under any of the Loan Documents, upon the occurrence of any Event of Default which is continuing and to the

extent permitted by applicable law, enforce and realize on the security constituted by this Agreement and take any action permitted by law or in equity, as it may deem expedient, and in particular, but without limiting the generality of the foregoing, the Assignee may do the following:

- (a) appoint or reappoint by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of the Assignee or not, to be a receiver or receivers, or may institute proceedings in any court of competent jurisdiction for the appointment of a receiver (the "**Receiver**", which term includes a receiver or a manager or a receiver and manager) of the Assigned Rights and Benefits and may remove any appointed Receiver and appoint a replacement. Any Receiver shall, so far as concerns responsibility for its acts, be deemed the agent of the Assignor and not of the Assignee, and the Assignee shall not in any way be responsible for any misconduct, negligence, or nonfeasance on the part of any Receiver, the Receiver's servants, agents or employees. Subject to the provisions of the instrument appointing it, any Receiver shall be vested with all or any of the rights, powers and discretions of the Assignee. Except as may be otherwise directed by the Assignee all monies received from time to time by the Receiver in carrying out its appointment shall be received in trust for and paid over to the Assignee for the benefit of the Assignee;
- (b) compound, compromise or submit to arbitration any dispute which has arisen or may arise in respect to any amount of Rents or any other matter relating to the Assigned Rights and Benefits, and any settlement arrived at shall be binding upon the Assignor and any Other Parties;
- (c) at its option and without notice to the Assignor, take possession of or enter upon the Property by its officers, agents or employees for the purpose of collecting the Rents and any and all amounts which may be or become due or payable or remain unpaid at any time to the Assignor pursuant to the Assigned Rights and Benefits and give acquittances for them and to manage, operate and maintain its interest in the Property including without limitation, the making of repairs or replacements to maintain the Property;
- (d) receive, enjoy or otherwise avail itself of the Lease Benefits;
- (e) appoint and dismiss such agents or employees as may be necessary or desirable to exercise the Assignee's rights hereunder;
- (f) alter, modify, amend or change the terms of Leases; enter into new Leases; give consents, concessions or waivers of any rights or provisions of Leases; accept surrenders of Leases; give consents to assignment of or subletting under Leases;
- (g) send or employ any inspector or agent to inspect and report upon the value, state and condition of the Property and employ a solicitor to examine and report upon title to the same and the lease documentation pertaining to same;



- (h) in the Assignor's name, perform, at the Assignor's expense, any and all of the Assignor's obligations or covenants relating to the Assigned Rights and Benefits and enforce performance by any Other Parties of their obligations in relation to the Assigned Rights and Benefits and settle any disputes with Other Parties upon terms that the Assignee deems appropriate, in its discretion;
- (i) make payment of or cure any default under any Permitted Encumbrance or any Liens or other claims that may exist or be threatened against the Assigned Rights and Benefits, and any amount so paid together with costs, charges and expenses incurred together with interest at the Interest Rate shall be added to the Loan Indebtedness;
- (j) if the proceeds of realization are insufficient to pay all of the Loan Indebtedness, the Assignor shall forthwith pay or cause to be paid to the Assignee any deficiency and the Assignee may sue the Assignor to collect the amount of such deficiency;
- (k) subject to applicable law, seize, collect, realize, borrow money on the security of, release to third parties, sell (by way of public or private sale), lease or otherwise deal with the Assigned Rights and Benefits in such manner, upon such terms and conditions, at such time or times and place or places and for such consideration as may seem to the Assignee advisable and without notice to the Assignor. The Assignee may charge on its own behalf and pay to others sums for expenses incurred and for services rendered (expressly including legal, consulting, broker, management, receivership and accounting fees) in or in connection with seizing, collecting, realizing, borrowing on the security of, selling or obtaining payment of the Assigned Rights and Benefits and may add all such sums to the Loan Indebtedness;
- (l) perform all such acts as may in the reasonable opinion of the Assignee be necessary or desirable for the proper operation and maintenance of the Property, which acts may be performed in the name of the Assignor or in the name of the Assignee and the Assignor hereby grants to the Assignee irrevocable authority to join the Assignor in any proceedings or actions relating to the Assigned Rights and Benefits whether judicial or extra-judicial; and
- (m) waive any Event of Default, and any waiver of an Event of Default shall not extend to any subsequent Event of Default, nor shall the Assignee be bound to serve any notice on any lessees or any Other Parties on the happening of any Event of Default.

### **2.13 Assignee's Dealings with Other Parties**

The Assignor and the Assignee hereby covenant and agree that:

- (a) the Assignee may at any time upon the occurrence of an Event of Default which is continuing, with respect to any and all Assigned Rights and Benefits, give to any lessee or other Person from whom the Assignor would have been entitled to receive or claim any benefit under the Assigned Rights and Benefits in question (the "**Other Parties**" or "**Other Party**") upon written notice to it by the Assignee to pay

the Rents directly to the Assignee and such notice shall be good and sufficient notice for doing so. Without limiting the foregoing the Assignee may, after giving such notice, deal with the Other Party or Other Parties in respect of the Assigned Rights and Benefits without reference to or consent of the Assignor while the Event of Default is continuing;

- (b) this Agreement constitutes an irrevocable direction and authorization of the Assignor to any Other Party to pay Rents to the Assignee and otherwise honour the rights of the Assignee under this Agreement;
- (c) any Other Party may rely upon any notice given by the Assignee or on its behalf and the Assignor hereby waives as against any Other Party any claims they might otherwise have by reason of the Other Party acting on such notice;
- (d) in the event all Events of Defaults are subsequently cured, the Assignee shall upon request of the Assignor, and at the Assignor's expense, execute and deliver to the Assignor directions and authorizations to any Other Party who received notice of this Agreement in connection with the Events of Default so cured as aforesaid, authorizing and directing such Other Party to resume payment of Rents to the Assignor until such time as a further written notice is delivered by the Assignee pursuant to the terms of this Agreement;
- (e) all receipts given by the Assignee to any lessee under the Leases after delivery of a written notice pursuant to Section 2.13(a) and prior to the delivery of a notice pursuant to Section 2.13(d) on account of any Rents paid to the Assignee in accordance with the terms of this Agreement shall constitute a good and valid discharge therefor to each such lessee; and
- (f) the Assignee shall not be required or obligated in any manner to make any demand or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim or take any other action to collect or enforce the payment of any amounts which may have been assigned to the Assignee or to which the Assignee may be entitled hereunder at any time or times.

#### **2.14 Assignee's Obligations and Limitation on Liabilities**

It is expressly acknowledged and agreed by the Assignor and the Assignee that:

- (a) nothing herein contained shall oblige the Assignee to assume or perform any obligation of the Assignor to any Other Party in respect of or arising out of the Assigned Rights and Benefits or any of them. The Assignee may, however, after the occurrence of an Event of Default which is continuing, at its option assume or perform any such obligations as the Assignee considers necessary or desirable to obtain the benefit of the Assigned Rights and Benefits free of any set-off, deduction or abatement, and any money expended by the Assignee in this regard shall form part of and be deemed to form part of the Loan Indebtedness and bear interest at the maximum rate stipulated in the Mortgage;

- (b) the Assignee shall only be liable to account for such moneys as shall actually be received by the Assignee by virtue of this Agreement at the address provided herein, less reasonable collection charges and costs (including, without limitation, legal costs on a solicitor and client basis) and other reasonable expenses to which the Assignee may be put, and the Assignee shall not be responsible for any act or default of any agent employed by the Assignee for the collection of any such amounts. Such moneys when so received by the Assignee shall be applied in accordance with the provisions of the Mortgage and the Assignee shall not be responsible for diligence in the collection of any monies as contemplated herein. No credit shall be given for any Rent received by the Assignee after it obtains ownership of the Property under court order or by operation of law;
- (c) exercise by the Assignee of its rights under this Agreement or the assumption of certain obligations of the Assignor upon the occurrence of an Event Default as referred to in Section 2.14(a) shall not constitute or have the effect of making the Assignee a mortgagee in possession nor shall the entering into of this Agreement or anything done in pursuance of it make the Assignee liable in any way, as landlord or otherwise, for the performance of any covenants, obligations and liabilities under any of the Leases;
- (d) care, control and management of the Property shall remain and be deemed to be with the Assignor, in the absence of clear and unequivocal action by the Assignee depriving the Assignor of such care, control and management and the assumption thereof by the Assignee;
- (e) the Assignee's obligations as to any Rents or other amounts actually collected (including, without limitation, those arising from the Lease Benefits) shall be discharged by application of such Rents or other amounts (including, without limitation, those arising from the Lease Benefits) against the Loan Indebtedness or for any of the other purposes described in this Agreement; and
- (f) the Assignee shall not be:
  - (i) liable for and no credit shall be given in respect of any uncollected Rents or other uncollected amounts;
  - (ii) liable to any lessee for the return of any security deposit made under any Lease unless the Assignee shall have actually received such security deposit; and
  - (iii) by reason of this Agreement or the exercise of any right granted herein, responsible for any act committed by the Assignor or any breach or failure to perform by the Assignor with respect to any of the Assigned Rights and Benefits.

### **2.15 Continuing Security**

Notwithstanding any variation of the terms of the Mortgage or any of the other Security Documents, or any extension of time for payment or any release of any security, this Agreement shall continue as general and collateral security for the Loan Indebtedness and observance and performance of all of the Loan Obligations. This Agreement and the assignments granted hereby are in addition to and not in substitution for any other security now or hereafter held by the Assignee and this Agreement will remain in full force and effect until registration of a complete discharge of the Mortgage by the Assignee, which discharge shall be deemed to be a reassignment of this Agreement and the Assigned Rights and Benefits in favour of the Assignor. On the complete discharge of the Mortgage, the Assignee will, at the request and at the sole cost and expense of the Assignor, execute and deliver to the Assignor such instruments in registrable form as may be necessary to evidence the termination of this Agreement and the reassignment to the Assignor of the Assigned Rights and Benefits.

### **2.16 Reassignment/Discharge**

The Assignee may, at any time and whether or not an Event of Default has occurred, without further request or agreement by the Assignor, reassign to the Assignor, its successors and assigns, the Assigned Rights and Benefits or any part or parts thereof, by an instrument of reassignment in writing executed by the Assignee delivered to the Assignor, its successors and assigns, at the address for notice herein provided. Such instrument upon delivery shall constitute a good and sufficient reassignment of all of the Assignee's right, title and interest in and benefit of the Assigned Rights and Benefits to which it pertains and a good and valid release and termination of obligations (if any) of the Assignee with respect thereto. Such reassignment shall not expressly or impliedly constitute any representation or warranty by the Assignee to the Assignor as to the Assigned Rights and Benefits or anything related thereto.

## **ARTICLE 3** **MISCELLANEOUS**

### **3.1 Payments**

All payments required to be made by the Assignor to the Assignee under this Agreement will be made at the address of the Assignee set out in Section 3.9 (or at any other place specified by the Assignee by written notice to the Assignor) in immediately available funds in lawful Canadian currency, without any set off, counter claim or deduction.

### **3.2 Failure of Indulgence Not Waiver**

No extension of time, waiver, or other indulgence given by the Assignee to the Assignor, or anyone claiming under the Assignor, shall in any way affect or prejudice the rights of the Assignee against the Assignor or any Covenantor unless explicitly set forth in writing and signed by the waiving party. No failure to exercise or delay in exercising any right, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof, nor will any single or partial exercise of any right, remedy, power or

privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. Each power and right under this Agreement is cumulative and is in addition to and not in substitution for any other rights and remedies at law, or in equity or otherwise.

### **3.3 Modification**

No modification or waiver of this Agreement is binding on the Assignee unless made in writing and signed by a duly authorized officer of the Assignee.

### **3.4 Entire Agreement**

On execution and delivery by the Assignor, this Agreement is deemed to be finally executed and delivered by the Assignor to the Assignee and is not subject to or affected by any condition as to the receipt by the Assignee of any of the other Security Documents or as to the execution and delivery by any of the other Covenantors to the Assignee of any other Loan Documents, nor by any promise or condition affecting the liability of the Assignor. No agreement, promise, representation or statement by the Assignee or any of its officers, employees or agents unless in this Agreement forms part of this Agreement, has induced the making of it or affects the liability of the Assignor or any Covenantor under it.

### **3.5 Severability**

If any Section or part thereof of this Agreement is invalid or unenforceable for any reason, then such Section or part thereof will be severable from this Agreement and will not affect the validity or enforceability of any other part of this Agreement.

### **3.6 Non-Merger**

The giving of this Agreement is by way of additional and collateral security for the payment of the Loan Indebtedness and the performance of the Loan Obligations and not in substitution for or in satisfaction thereof, and the Commitment Letter, the Mortgage or any of the other Loan Documents shall not be merged hereby and in case of an Event of Default that is continuing, proceedings may be taken under this Agreement, the Mortgage, or any of the other Security Documents or any one or more of them at the option of the Assignee.

### **3.7 Paramountcy**

The provisions of any agreement between the Assignor and the Assignee in connection with the Loan Indebtedness, including but not limited to any loan application in respect thereof, the Mortgage and all of the other Loan Documents, shall form part of this Agreement except where inconsistent with the provisions hereof. In the case of any inconsistency between this Agreement and the Mortgage, the provisions of the Mortgage, as the case may be, shall prevail.

### 3.8 Assignability

The Assignor hereby consents to the Assignee assigning, transferring or selling all or any portion of its interest under this Agreement in connection with the proportionate assignment, transfer or sale of its interest in the Loan Indebtedness and the Loan Obligations. Without limiting the foregoing, the Assignee may enter into participation, contending or syndication agreements with other lenders in connection with this Agreement, the Loan Indebtedness and the Loan Obligations. The Assignee may provide information of a financial or other nature to any prospective assignee or transferee or other lenders concerning the Assignor, this Agreement, the Loan Indebtedness and the Loan Obligations.

### 3.9 Notices

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication to be given under or in connection with this Agreement shall be in writing and shall be delivered by personal delivery, prepaid courier service, postage prepaid registered mail or by electronic or digital transmission to the relevant party, addressed:

(a) to the Assignor:

1111 Clarkson Road, North  
Mississauga, Ontario  
L5J 2W1

Attention: Michael Moldenhauer  
Email: [mm@moldenhauer.ca](mailto:mm@moldenhauer.ca)  
Facsimile: 416-637-9633

with a copy to the Assignor's solicitors at

McCarthy Tetrault LLP  
Suite 5300 – 66 Wellington Street West  
Toronto, Ontario  
M5K 1E6

Attention: Sarit Pandya  
Email: [spandya@mccarthy.ca](mailto:spandya@mccarthy.ca)  
Facsimile: 416-601-7785

(b) to the Assignee:

Scotia Plaza  
40 King Street West, Suite 3700,  
Toronto, Ontario  
M5H 3Y2

Attention: Scott Coates  
Email: [SCoates@kingsettcapital.com](mailto:SCoates@kingsettcapital.com)  
Facsimile: 416-687-6701

and such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a business day or if delivery or transmission is made on a business day after 5:00 p.m. at the place of receipt, then on the next following business day) or, if mailed, on the third (3<sup>rd</sup>) business day following the date of mailing; provided, however, that if at the time of mailing or within three (3) business days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid. Each party may change its address for notice by providing notice of same in accordance with the foregoing.

### **3.10 Expenses, Fees and Indemnity**

The Assignor will pay to the Assignee all costs, charges and expenses, including all administrative fees, legal fees and professional fees, incurred by the Assignee in connection with the collection of any amount payable under this Agreement by the Assignor to the Assignee. The Assignor shall indemnify the Assignee against all claims, loss or damages arising out of or in connection with any breach or default by the Assignor under this Agreement.

### **3.11 Applicable Law**

This Agreement and the rights and obligations of the Assignor and the Assignee under it are governed by and construed according to the laws of the jurisdiction in which the Property is situate and the laws of Canada applicable therein.

### **3.12 Time of the Essence**

Time is of the essence of this Agreement.

### **3.13 Execution by the Assignee**

This Agreement need not be executed by the Assignee to be binding on and to enure to the benefit of the Assignee.

### **3.14 Counterparts**

This Agreement may be executed in any number of counterparts, each of which will constitute an original, but all of which together will constitute one and the same

document. A signed copy of this Agreement or a counterpart of it delivered by email, facsimile or other means of electronic or digital transmission or signature is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

### **3.15 Further Assurances**

The Assignor will promptly do all further acts and execute and deliver such further documents as the Assignee considers necessary or advisable to carry out the terms or intent of this Agreement.

### **3.16 Successors and Assigns**

This Agreement is binding on and enures to the benefit of the Assignee and the Assignor, and their respective executors, administrators, successors and assigns and to any Person to whom the Assignee may grant any participation in this Agreement, the Loan Indebtedness or any of the Loan Obligations or any power, remedy or right of the Assignee under this Agreement or any of the Assignee's interest herein or in the Loan Indebtedness and the Loan Obligations.

### **3.17 Multiple Parties**

If the Assignor consists of more than one party, this Agreement will be read with all necessary grammatical changes and each reference to the Assignor includes each and every such Person individually. All covenants and agreements herein of the Assignor are the joint and several covenants and agreements of each such Person or corporation. If the Assignee consists of more than one party, this Agreement will be read with all necessary grammatical changes and each such party or any one or more of them is entitled to enforce each right and remedy of the Assignee under this Agreement.

-- signatures follow on next page --



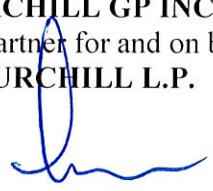
**IN WITNESS WHEREOF** the Assignor has executed this Agreement as of the date and year first written above.

**759 WINSTON CHURCHILL GP INC.**, in  
its capacity as general partner for and on behalf  
of **759 WINSTON CHURCHILL L.P.**

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

Name:

Title:

  
N. MOLDENHAUER  
A.S.O.

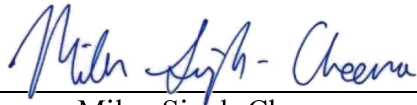
Per: \_\_\_\_\_

Name:

Title:

**T  
A  
B  
J**

THIS IS **EXHIBIT "J"** REFERRED TO IN THE AFFIDAVIT  
OF DANIEL POLLACK, SWORN BEFORE ME THIS  
12<sup>TH</sup> DAY OF FEBRUARY, 2024.



---

Milan Singh-Cheema  
A Commissioner for taking Affidavits  
(or as may be)

## GENERAL SECURITY AGREEMENT

THIS AGREEMENT (the "General Security Agreement") is dated as of the \_\_\_ day of February, 2022.

### BETWEEN:

**759 WINSTON CHURCHILL GP INC.**, in its capacity as general partner  
for and on behalf of **759 WINSTON CHURCHILL L.P.**

(the "**Grantor**")

OF THE FIRST PART

- and -

**KINGSETT MORTGAGE CORPORATION**

(the "**Grantee**")

OF THE SECOND PART

**WHEREAS** the Grantor, as mortgagor, has granted a mortgage (the "**Mortgage**") to and in favour of the Grantee, as mortgagee, of the lands charged therein (the "**Property**"), notice of which was registered on the date hereof in the Land Registry Office for the Land Titles Division of Peel (No. 43) to secure the payment of principal, interest and other monies and the performance of all obligations arising thereunder, as amended, modified, supplemented or replaced from time to time;

**AND WHEREAS** as a condition for receiving the Loan Indebtedness, the Grantor agreed to create and to grant to the Grantee, its successors and assigns, as further continuing and collateral security for the payment of the Loan Indebtedness and observance and performance of the Loan Obligations, the collateral security constituted by this General Security Agreement;

**NOW THEREFORE IN CONSIDERATION** of the recitals, the Grantee extending the Loan Indebtedness and for such other good and valuable consideration received by the Grantor, the receipt and adequacy of which is acknowledged by the Grantor, the Grantor agrees with the Grantee as follows:

### ARTICLE 1

#### DEFINITIONS, INTERPRETATION

##### 1.1 Definitions

Capitalized terms that are not defined herein have the meanings set out in the Mortgage. Unless otherwise defined herein or in the Mortgage, capitalized terms used herein that are defined in the *Personal Property Security Act*, as amended or replaced from time to time (the "**PPSA**"), of the province where the Collateral is situate (the "**Province**") or in the *Securities Transfer Act* of the Province as amended or replaced from time to time (the

"STA") shall have the meanings set out in the PPSA or the STA, respectively, unless the context otherwise requires. Otherwise, in this General Security Agreement:

- (a) "**Account Borrower**" has the meaning ascribed to it in Section 3.1(h);
- (b) "**Account Debtor**" means any Person who is or becomes obligated to the Grantor under, with respect to, or on account of an account;
- (c) "**Collateral**" has the meaning ascribed to it in Section 2.1, and any reference to Collateral shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof";
- (d) "**Contract**" means any contracts, agreements, indentures, licenses, permits, commitments, entitlements, engagements or other arrangements, including any investment with or interest in any Person, which does not constitute Chattel Paper, Investment Property or Instruments, whether written or unwritten, to which the Grantor is now or subsequently becomes a party or has a benefit, right, or in which the Grantor now has or subsequently acquires an interest;
- (e) "**Control Agreement**" means:
  - (i) with respect to any Uncertificated Security included in the Collateral, an agreement between the issuer of such Uncertificated Securities and another Person whereby such issuer agrees to comply with instructions that are originated by such Person in respect of such Uncertificated Security, without the further consent of the Grantor; and
  - (ii) with respect to any Securities Accounts or Security Entitlements included in the Collateral, an agreement between the Securities Intermediary in respect of such Securities Accounts or Security Entitlements to comply with any Entitlement Orders with respect to such Securities Accounts or Security Entitlements that are originated by the Grantee without the further consent of the Grantor;
- (f) "**Debts**" has the meaning ascribed to it in Section 2.1(c);
- (g) "**Encumbrances**" has the meaning ascribed to it in Section 3.1(f);
- (h) "**Future Purchase Agreements**" has the meaning ascribed to it in Section 2.1(q);
- (i) "**Indebtedness**", in respect of any Person, is used in its most comprehensive sense and includes any and all advances, debts, duties, endorsements, guarantees, liabilities, obligations, responsibilities and undertakings of such Person at any time assumed, incurred or made, however arising, whether or not now due, absolute or contingent, liquidated or unliquidated, direct or indirect, and whether such Person is liable individually or jointly with others, irrespective of the regularity or validity thereof or of any security therefor;

- (j) "**Loan Indebtedness**" means any Indebtedness from time to time of the Grantor or any of the other Covenantors to the Grantee arising under any of the Loan Documents;
- (k) "**Loan Obligations**" means the obligations from time to time of the Grantor or any of the other Covenantors arising under the Loan Documents;
- (l) "**Receiver**" has the meaning ascribed to it in Section 5.3(a);
- (m) "**Secured Obligations**" has the meaning ascribed to it in Section 2.5; and
- (n) "**Security Interest**" has the meaning ascribed to it in Section 2.1.

## 1.2 Interpretation

For the purposes of this General Security Agreement, all references to the singular include the plural where the context so admits, the masculine to include the feminine and neuter gender and, where necessary, a body corporate, and vice versa. If more than one Grantor executes this General Security Agreement, this General Security Agreement shall apply and be binding upon each of them jointly and severally and all obligations hereunder shall be joint and several.

## 1.3 Headings

In this General Security Agreement, the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this General Security Agreement.

## **ARTICLE 2** **SECURITY INTERESTS**

### 2.1 Grant of Security

As general and continuing collateral security for the payment of the Loan Indebtedness and performance of the Loan Obligations, the Grantor hereby grants to the Grantee by way of mortgage, charge, assignment and transfer, a security interest in and to all right, title and interest of the Grantor in all presently owned or held and hereafter acquired or held, by way of amalgamation or otherwise, personal property of whatsoever nature and kind pertaining to the Property, and in all Proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor (all of which are herein collectively called the "**Collateral**") (the "**Security Interest**"), including, without limiting the generality of the foregoing:

- (a) all Inventory of whatever kind (whether or not supplied or sold by the Grantee to the Grantor) including, without limiting the generality of the foregoing, all goods held for sale or lease or that have been leased or that are to be furnished or have been furnished under contracts for service, or that are raw materials, works in process, or materials used or consumed in the business of the Grantor;

- (b) Equipment (other than Inventory) of whatsoever nature and kind, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature and kind;
- (c) book accounts and book debts and generally all Accounts (excluding Investment Property), debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including but not limited to Instruments, Chattel Paper, and letters of guarantee, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Grantor (all of which are herein collectively called the "**Debts**");
- (d) all warehouse receipts, bills of lading and other documents of title, whether negotiable or not;
- (e) all Investment Property, including but not limited to shares, stock, warrants, bonds, debentures, debenture stock and other Securities (whether evidenced by a Security Certificate or being an Uncertificated Security), Security Entitlements, Securities Accounts, Futures Contracts and Futures Accounts and Financial Assets;
- (f) all coins or bills or other medium of exchange adopted for use as part of the currency of Canada or of any foreign government;
- (g) all deeds, documents, writings, papers, books of account and other books relating to or being records of Accounts, Debts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
- (h) all contractual rights, insurance claims, insurance proceeds and all goodwill, patents, trademarks, copyrights, and other intellectual property;
- (i) all construction, supply, consulting, architect, engineer, construction manager, marketing agent or other like contracts of any nature for construction or supply of materials in connection with the construction or maintenance of the Mortgaged Premises, whether those contracts exist as of the date hereof or at any time in the future;
- (j) all licenses, permits, in the possession, control or name of the Grantor now or at any time in the future with respect to all chattels which are required to be inspected, approved or licensed;
- (k) all of the necessary licenses and permits (including building/development permits) required for the construction of all of the Mortgaged Premises and for the conduct and operation of the Grantor's intended use thereof issued by any government, statutory or other authority having jurisdiction over same, and all monies paid thereunder;

- (l) all plans, conceptual specifications and drawings, architects' and engineers' drawings, technical specifications, building permit drawings, building permits (including all interest in monies paid thereunder), surveyors' drawings, quantity specifications, and all similar items related to the construction of all of the Mortgaged Premises;
- (m) all outstanding guarantees, warranties and indemnities obtained for the benefit of the Grantor;
- (n) all surviving rights under any agreement(s) of purchase and sale (including all amendments, waivers and other agreements related thereto) or any delivery or agreement entered into pursuant thereto and all interests and benefits to be derived therein and thereunder, including all rights to commence actions or enforce rights thereunder, and without limiting the generality of the foregoing, all amounts (whether cash, instruments or other consideration) which, pursuant to the terms of the foregoing agreements, are withheld at any time by or on behalf of the Grantor from the payment of the purchase price;
- (o) all monies and cash, including any held in a cash collateral account, and all cash held as collateral security for outstanding letters of credit or letters of guarantee, including deposits from purchasers on the sale of units, parking and storage lockers which may be held in a solicitor's deposit trust account (other than trust monies lawfully belonging to others);
- (p) all other personal property now or hereafter owned by the Grantor, including all personal property otherwise described in any schedule now or hereafter annexed hereto;
- (q) all right, title and interest of the Grantor in and to any purchase agreement for the sale of real or personal property and all agreements delivered to the Grantor pursuant thereto or in connection therewith (collectively, "**Future Purchase Agreements**"), and all interests and benefits to be derived therein and thereunder, including all rights to commence actions or enforce rights thereunder, and without limiting the generality of the foregoing, all amounts (whether cash, instruments or other consideration) which, pursuant to the terms of the foregoing agreements, are received by the Grantor on account of the purchase price under the Future Purchase Agreement; and
- (r) all of the Grantor's right, title and interest, both present and future, in and to all of its presently owned or held and after acquired or held property which:
  - (i) is or hereafter becomes a fixture, or
  - (ii) constitutes a license, quota, permit or other similar right or benefit or crops;

and all proceeds and products of the property described above including, without limiting the generality of the foregoing, all personal property in any form or fixtures derived directly or



indirectly from any dealing with such property or the proceeds therefrom and any payment that indemnifies or compensates for the loss of or damage to such property or the proceeds therefrom.

## **2.2 Exceptions**

The Security Interest granted hereby shall not extend or apply to and the Collateral shall not extend to or include:

- (a) Consumer Goods; and
- (b) the last day of the term created by any real property lease or sublease, or agreement to lease real property or sublease now held or hereafter acquired by the Grantor, but the Grantor shall stand possessed of the reversion thereby remaining upon trust to assign and dispose thereof to any third party as the Grantee shall direct.

## **2.3 Value and Attachment**

The Grantor acknowledges that value has been given and that the Grantor has rights in the Collateral. The Grantee and the Grantor have not agreed to postpone the time for attachment of the Security Interest created by this General Security Agreement and the Grantor and the Grantee intend that the Security Interest shall attach to presently owned or held Collateral upon execution of this General Security Agreement and shall attach to each item of hereafter acquired Collateral upon acquisition of any right, title and interest of the Grantor in that Collateral.

## **2.4 Consent; Limitation on grant of Security Interest**

Nothing in this General Security Agreement shall constitute an assignment or attempted assignment of any Contract which by its provisions or by applicable law is not assignable, which would result in the termination of or a breach under such Contract, or which requires the consent of a third party to its assignment unless such consent has been obtained. With respect to any Contract which the Grantee reasonably determines to be material, the Grantor shall promptly, upon written request by the Grantee, attempt to obtain the consent of any necessary third party to its assignment under this General Security Agreement and to its further assignment by the Grantee to any third party as a result of the exercise by the Grantee of remedies after demand. Upon such consent being obtained or waived, this General Security Agreement shall apply to the applicable Contract without regard to this section and without the necessity of any further assurance to effect such assignment. Unless and until the consent to assignment is obtained as provided above, the Grantor shall, to the extent it may do so at law or pursuant to the provisions of the Contract or interest in question hold all benefit to be derived from such Contract in trust for the Grantee (including the Grantor's beneficial interest in any Contract which may be held in trust for the Grantee by a third party), as additional security for the payment of the Loan Indebtedness and performance of the Loan Obligations.

## 2.5 Secured Obligations

The Collateral secures the payment of the Loan Indebtedness and the performance of all Loan Obligations including without limitation, all present and future obligations of the Grantor arising under the Mortgage, this General Security Agreement and the Loan Documents, whether primary, secondary, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, whether the Loan Indebtedness is reduced and thereafter increased or entirely extinguished and thereafter incurred again, whether incurred by the Grantor alone or with another or others and whether as a principal or surety, when and as due, whether at maturity, by acceleration, upon on or more dates set for prepayment or otherwise together with all fees, costs, lawyers' fees and disbursements, reimbursement obligations, contract causes of action, expenses and indemnities related thereto (all such obligations, covenants, duties, debts, liabilities, sums and expenses being herein collectively called the "**Secured Obligations**").

## 2.6 Perfection

The Grantor shall from time to time as may be required by the Grantee with respect to the Collateral take all actions as may be requested by the Grantee to perfect the Security Interest at the expense of the Grantor.

### **ARTICLE 3** **REPRESENTATIONS, WARRANTIES AND COVENANTS**

## 3.1 Representations and Warranties

The Grantor represents and warrants that, and, so long as this General Security Agreement remains in effect, the Grantor shall be deemed to continuously represent and warrant that:

- (a) the Grantor:
  - (i) is a corporation incorporated, formed and existing under the laws of its jurisdiction of incorporation;
  - (ii) has the legal right and all necessary corporate or other power and authority to own its assets, possess an interest in the Collateral, and carry on its business in all material respects; and
  - (iii) is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions where it conducts business, except where failure to be so qualified, licensed or registered has not and is not reasonably likely to have a Material Adverse Effect;
- (b) the Grantor has all requisite corporate power and authority to enter into and perform its obligations under this General Security Agreement, and to do all acts and things and execute and deliver all other documents and instruments as are required

hereunder to be done, observed or performed by it in accordance with the terms hereof;

- (c) the execution and delivery by the Grantor, and the performance by it of its obligations under, and compliance with the terms, conditions and provisions of, this General Security Agreement will not conflict with or result in a breach of any of the terms, conditions or provisions of:
  - (i) its articles, by-laws, shareholders' agreements or other organizational documents, as the case may be;
  - (ii) any applicable laws;
  - (iii) any material contracts, material authorizations or material contractual restrictions binding on or affecting it or its assets, including without limitation, the Collateral; or
  - (iv) any material judgment, injunction, determination or award which is binding on it in each such case, except to the extent that such breach has not and is not reasonably likely to have a Material Adverse Effect;
- (d) the execution and delivery by the Grantor of this General Security Agreement, and the performance by it of its obligations hereunder have been duly authorized by all necessary corporate or other action including, without limitation, the obtaining of all necessary partner, shareholder or other material and relevant consents. No authorization, consent, approval, registration, qualification, designation, declaration or filing with any Governmental Authority, or other Person, is or was necessary in connection with the execution, delivery and performance of the Grantor's obligations under this General Security Agreement except where failure to obtain same would not have or be reasonably likely to have a Material Adverse Effect;
- (e) this General Security Agreement has been duly executed and delivered by the Grantor, and constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by the availability of equitable remedies and the effect of bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally), is (or will be immediately upon the execution thereof by the Grantor) in full force and effect, and the Grantor has performed and complied in all material respects with all the terms, provisions, agreements and conditions set forth herein and required to be performed or complied with by the Grantor;
- (f) the Collateral is genuine and is owned by the Grantor or the Grantor has rights in the Collateral, free of all security interests, mortgages, liens, claims, charges and other encumbrances (herein collectively called "**Encumbrances**"), save for the security constituted by this General Security Agreement, the security constituted by or granted in connection with any Permitted Encumbrances;

- (g) the Grantor has good and lawful authority to create the security interests in the Collateral constituted by this General Security Agreement;
- (h) each Debt included in Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "**Account Borrower**"), and the amount represented by the Grantor to the Grantee from time to time as owing by each Account Borrower or by all Account Borrowers will be the correct amount actually and unconditionally owing by such Account Borrower or Account Borrowers, except for normal cash discounts where applicable, and no Account Borrower will have any defense, set off, claim or counterclaim against the Grantor which can be asserted against the Grantee, whether in any proceeding to enforce the Collateral or otherwise; and
- (i) the Grantor is not in breach or default of any agreement to which it is a party;
- (j) the Grantor has not consented to the entering into of a Control Agreement by: (A) any issuer of any Uncertificated Securities included in or relating to the Collateral; or (B) any Securities Intermediary for any Securities Accounts or Security Entitlements included in or relating to the Collateral, other than, in either case, the Grantee;
- (k) 759 Winston Churchill GP Inc. is the full legal name of the general partner of 759 Winston Churchill L.P. which is its full legal name. There are no French forms of name or trade names for either 759 Winston Churchill GP Inc. or 759 Winston Churchill L.P.; and
- (l) the registered office, the principal place of business of the Grantor, and the location of all books and records evidencing the Debts is 1111 Clarkson Road, North, Mississauga, Ontario L5J 2W1 (the "**Grantor's Head Office**").

### 3.2 Survival

All representations and warranties of the Grantor made in this General Security Agreement or in any of the other Loan Documents are material, shall survive and shall not merge upon the execution and delivery of this General Security Agreement and shall continue in full force and effect. The Grantee shall be deemed to have relied upon the representations and warranties notwithstanding any investigation made by or on behalf of the Grantee at any time.

### 3.3 Covenants

The Grantor covenants and agrees that at all times while this General Security Agreement remains in effect the Grantor:

- (a) will (i) maintain its corporate or other existence in good standing under the laws of its jurisdiction of incorporation or organization; (ii) continue to conduct its business substantially as now conducted; and (iii) do, or cause to be done, all things necessary to keep in full force and effect all permits and all properties, rights,

franchises, licenses and qualifications to carry on its business in all jurisdictions where such business is currently being carried on;

- (b) will not, without the prior written consent of the Grantee, change its legal name, jurisdiction of formation and organization, address of its registered office, head office, principal place of business or chief executive office, corporate structure, province or territory in which its registered office, head office, principal place of business or chief executive office is located. The Grantor will, prior to any change described in the preceding sentence, take all actions requested by the Grantee to maintain the perfection and priority of the Grantee's security interest in the Collateral;
- (c) will keep the Collateral, to the extent not delivered to the Grantee, at the Property or the Grantor's Head Office and, except for Inventory sold or leased in the ordinary course of business, the Grantor will not remove the Collateral from those locations without obtaining the Grantee's prior written consent. The Grantor will, prior to any change described in the preceding sentence, take all actions requested by the Grantee to maintain the perfection and priority of the Grantee's security interest in the Collateral;
- (d) will defend the Collateral for the benefit of the Grantee against the claims and demands of all other Persons;
- (e) will not, without the prior written consent of the Grantee:
  - (i) create or permit to exist any Encumbrance against any of the Collateral which ranks or could in any event rank in priority to or *pari passu* with the security constituted by this General Security Agreement, save for those Encumbrances relating to Prior Permitted Encumbrances, if any; and
  - (ii) grant, sell, exchange, transfer, assign, lease or otherwise dispose of any of the Collateral;

except as expressly provided in the Mortgage, in the ordinary course of business or with the prior written consent of the Grantee, and provided always that, until an Event of Default and then only so long as same continues, the foregoing restriction shall not prevent the Grantor from, in the ordinary course of the Grantor's business, selling or leasing or disposing or otherwise deal with any part of the Collateral from time to time including without limitation using monies available to the Grantor. This provision is not paramount to any restrictions on dealings with Collateral otherwise provided for in the Mortgage or any of the other Security Documents;

- (f) will fully and effectively maintain and keep maintained, valid and effective the Security Interests constituted by this General Security Agreement;
- (g) will take such steps as the Grantee requires to enable the Grantee to obtain control of any Investment Property, including but not limited to arranging for any Securities

Intermediary or Futures Intermediary to enter into an agreement satisfactory to the Grantee to enable the Grantee to obtain control of such Investment Property;

- (h) will notify the Grantee promptly of:
  - (i) any change in the information contained herein relating to the Grantor, the Grantor's name, or the Grantor's business;
  - (ii) the details of any claims or affecting the Grantor or the Collateral;
  - (iii) any loss or damage to the Collateral; and
  - (iv) any material failure of any Account Debtor in the payment or performance of obligations due to the Grantor;
- (i) will keep the Collateral in good order, condition and repair (in such locations as may be reasonable), subject to reasonable wear and tear, and not use the Collateral in material violation of the provisions of this General Security Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- (j) will carry on and conduct the business of the Grantor in a proper manner and shall comply with all applicable laws in the conduct of its business including those relating to quotas, licensing, privacy, employment and labour matters, pension and environmental laws, and obtain all required permits and authorizations required in the conduct of its business and maintain them and all material contracts in good standing;
- (k) will forthwith pay:
  - (i) all obligations to its employees and all obligations to others which relate to its employees when due, including, without limitation, all taxes, duties, levies, government fees, claims and dues related to its employees;
  - (ii) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon it or the Collateral when due, unless the Grantor shall in good faith contest its obligations so to pay and shall furnish such security as the Grantee may require; and
  - (iii) all Encumbrances which rank or could in any event rank in priority to or *pari passu* with the security constituted by this General Security Agreement, other than the Encumbrances relating to Prior Permitted Encumbrances, if any, and those approved in writing by the Grantee;
- (l) will prevent the Collateral, save Inventory sold or leased as permitted hereby, from being or becoming an Accession to other property not covered by this General Security Agreement;

- (m) will insure the Collateral for such periods, in such amounts, on such terms and against loss or damage by fire and such other risks as the Grantee shall reasonably direct (but in any event in accordance with prudent business practice and in accordance with the Mortgage) with loss payable to the Grantee and the Grantor, as insureds, as their respective interests may appear, and to pay all premiums for such insurance;
- (n) will deliver to the Grantee from time to time promptly upon request:
  - (i) any Documents of Title, Instruments, Securities and Chattel Paper comprised in or relating to the Collateral;
  - (ii) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the Collateral for the purpose of inspecting, auditing or copying the same;
  - (iii) all financial statements prepared by or for the Grantor regarding the Grantor's business, subject to the provisions of the Mortgage;
  - (iv) all policies and certificates of insurance relating to the Collateral;
  - (v) copies of all Contracts and consents relating to the Collateral and the Grantor's business; and
  - (vi) such information concerning the Collateral, the Grantor and Grantor's business and affairs as the Grantee may reasonably require.
- (o) will forthwith pay all costs, charges, expenses and legal fees and disbursements (on an indemnity basis) which may be incurred by the Grantee in:
  - (i) perfecting and registering this General Security Agreement and other documents, whether or not relating to this General Security Agreement;
  - (ii) taking, recovering, keeping possession of and insuring the Collateral;
  - (iii) connection with any disclosure requirements under the PPSA; and
  - (iv) all other actions and proceedings taken in connection with the preservation of the Collateral and the confirmation, perfection and enforcement of this General Security Agreement and of any other security held by the Grantee as security for the payment of the Loan Indebtedness and performance of the Loan Obligations;
- (p) will, at the Grantee's request at any time and from time to time execute and deliver such further and other documents and instruments and do all other acts and things as the Grantee reasonably requires in order to give effect to this General Security Agreement or to confirm and perfect, and maintain perfection of, the security constituted by this General Security Agreement in favour of the Grantee; and

- (q) will not enter into any corporate transaction (or series of transactions) whether by way of reconstruction, arrangement, reorganization, consolidation, amalgamation, wind-up, liquidation, dissolution, merger or otherwise, whereby any other Person would become the owner of all or substantially all of the undertaking and assets of the Grantor and it shall not do any act or thing that would materially adversely affect its business, property, prospects or financial condition and shall not permit any corporation of which it is the majority shareholder to do any of the foregoing;
- (r) authorizes the Grantee, (if Collateral at any time includes Investment Property) to transfer the same or any part thereof into its own name or that of its nominee(s) so that the Grantee or its nominee(s) may appear on record as the sole owner thereof; provided that, until an Event of Default has occurred which is continuing, the Grantee shall deliver promptly to the Grantor all notices or other communications received by it or its nominee(s) as such registered owner and, upon demand and receipt of payment of any necessary expenses thereof, shall issue to the Grantor or its order a proxy to vote and take all action with respect to such Investment Property. After default, the Grantor waives all rights to receive any notices or communications received by the Grantee or its nominee(s) as such registered owner and agrees that no proxy issued by the Grantee to the Grantor or its order as aforesaid shall thereafter be effective;
- (s) will ensure that, to the extent that Investment Property includes an interest in or unit certificates in a partnership or a limited liability company, the terms of any interest in such partnership or limited liability company provide that such interest is a "**security**" for the purposes of the STA and in the event that the terms of any interest in a partnership or limited liability company does not so provide, the Grantor agrees to amend the terms with respect to such partnership or limited liability company to expressly provide that such interest is a "**security**" for the purposes of the STA;
- (t) will not consent to:
  - (i) the entering into by any issuer of any Uncertificated Securities included in or relating to the Collateral of a Control Agreement in respect of such Uncertificated Securities with any Person other than the Grantee or such nominee or agent as it may direct; or
  - (ii) the entering into by any Securities Intermediary for any Securities Accounts or Security Entitlements included in or relating to the Collateral of a Control Agreement with respect to such Securities Accounts or Securities Entitlements with any Person other than the Grantee or such nominee or agent as it may direct;
- (u) will promptly, upon request from time to time by the Grantee:
  - (i) enter into and use reasonable commercial efforts to cause any Securities Intermediary for any Securities Accounts or Security Entitlements included in or relating to the Collateral to enter into a Control Agreement with the



Grantee with respect to such Securities Accounts or Security Entitlements as the Grantee requires in form and substance satisfactory to the Grantee; and

- (ii) enter into and use reasonable commercial efforts to cause any issuer of any Uncertificated Securities included in or relating to the Collateral to enter into a Control Agreement with the Grantee with respect to such Uncertificated Securities as the Grantee requires in form and substance satisfactory to the Grantee; and
- (v) permit the Grantee and its representatives, at all reasonable times, access to and the right to examine the books of accounts, financial records and reports of the Grantor wherever and however such data may be stored and to have temporary custody of, make copies of and take extracts from such books, records and reports, and to examine the Collateral and review and copy any and all information and data relating to the Collateral, or to any related transactions, wherever and however such information and data may be stored.

#### **ARTICLE 4** **RIGHT TO DEAL**

##### **4.1 Rights before Default**

Until the occurrence of an Event of Default which is continuing the Grantor is entitled to deal with the Collateral in the ordinary course of business, provided that no such action shall be taken which would impair the effectiveness of the Security Interests or the value of the Collateral or which would be inconsistent with or violate the provisions of this General Security Agreement, the Mortgage or any of the other Security Documents.

##### **4.2 Rights after Default**

Upon the occurrence of an Event of Default which is continuing all of the Grantor's rights pursuant to this Article 4 shall cease and the Grantor will not request or receive any money constituting income from, proceeds of, or interest on Collateral and if the Grantor receives any such money in any event, the Grantor shall hold such money in trust for the Grantee and will pay the same promptly to the Grantee.

#### **ARTICLE 5** **ACCELERATION AND REMEDIES**

##### **5.1 Acceleration**

Upon the occurrence of an Event of Default which is continuing all of the Loan Indebtedness shall, at the Grantee's option and without notice to the Grantor, become immediately due and payable and the Grantee may, in its sole, absolute and unfettered discretion, exercise its rights in respect of the Collateral (including the notification and

collection of same from any of the Account Borrowers) in addition to all other rights and remedies afforded by applicable law, in equity or otherwise. The Grantee shall have the right to enforce one or more remedies successively or concurrently in accordance with applicable law and the Grantee expressly retains all rights and remedies not inconsistent with the provisions in this General Security Agreement including all the rights it may have under the PPSA. The provisions of this clause do not and are not intended to affect in any way any rights of the Grantee with respect to any Loan Indebtedness which may now or hereafter be payable on demand.

## **5.2 Enforcement**

Upon the occurrence of and during the continuance of an Event of Default, the security hereby constituted will, at the option of the Grantee, immediately become enforceable.

## **5.3 Grantee's Rights and Remedies**

The Grantee may, upon the occurrence of any Event of Default which is continuing and to the extent permitted by applicable law, enforce and realize on the security constituted by this General Security Agreement and take any action permitted by law or in equity, as it may deem expedient, and in particular, but without limiting the generality of the foregoing, the Grantee may do any of the following:

- (a) appoint or reappoint by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of the Grantee or not, to be a receiver or receivers, or may institute proceedings in any court of competent jurisdiction for the appointment of a receiver (hereinafter called a "**Receiver**", which term when used herein shall include a receiver or a manager or a receiver and manager) of the Collateral (including any interest, income or profits therefrom) and may remove any appointed Receiver and appoint a replacement. Any Receiver shall, so far as concerns responsibility for his acts, be deemed the agent of the Grantor and not of the Grantee, and the Grantee shall not in any way be responsible for any misconduct, negligence, or non-feasance on the part of any Receiver, the Receiver's servants, agents or employees. Subject to the provisions of the instrument appointing him, any Receiver shall be vested with all or any of the rights, powers and discretions of the Grantee under this Section 5.3. Except as may be otherwise directed by the Grantee all monies received from time to time by the Receiver in carrying out its appointment shall be received in trust for and paid over to the Grantee for the benefit of the Grantee;
- (b) either directly or through its agents or nominees, exercise any or all of the powers and rights given to a Receiver by virtue of Subsection 5.3(a);
- (c) immediately and without notice enter the Grantor's premises (including, without limitation, the Property) and repossess, disable or remove the Collateral, and whether in or out of possession of the Property, collect the Rents and profits which form part of the Collateral, from the Property;

- (d) take possession of the Collateral, to preserve the Collateral or its value, to retain and administer the Collateral in the Grantee's sole, absolute and unfettered discretion, which discretion the Grantor acknowledges is commercially reasonable;
- (e) carry on or concur in carrying on all or any part of the business of the Grantor, including, without limitation, the right to sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of the Collateral. To facilitate the foregoing powers, the Grantee may, to the exclusion of all others, including the Grantor, enter upon, use and occupy all premises (which shall include fixtures) of the Grantor owned or occupied by the Grantor wherein Collateral may be situate, maintain Collateral upon the premises, borrow money on a secured or unsecured basis and use Collateral directly in carrying on the Grantor's business or as security for loans or advances to enable the Grantee to carry on the Grantor's business or otherwise, as the Grantee shall, in its discretion, determine. The Grantee shall not be liable to the Grantor for any neglect in so doing or in respect of any related rent, costs, charges, depreciation or damages;
- (f) dispose of any Collateral by public auction, private tender or private contract with or without notice, advertising or any other formality, all of which are waived by the Grantor to the extent permitted by applicable law. The Grantee may, to the extent permitted by applicable law, at its discretion, establish the terms of such disposition, including terms and conditions as to credit, upset, reserve bid or price. All payments made pursuant to such dispositions shall be credited against the Loan Indebtedness only as they are actually received. The Grantee may, to the extent permitted by applicable law, enter into, rescind or vary any contract for the disposition of any Collateral and may dispose of any Collateral again without being answerable for any related loss. Any such disposition may take place whether or not the Grantee has taken possession of the Collateral;
- (g) file proofs of claims or other documents as may be necessary or desirable to have the Grantee's claim lodged in any bankruptcy, winding-up, liquidation, arrangement, dissolution or other proceedings (voluntary or otherwise) relating to the Grantor;
- (h) in the Grantor's name, perform, at the Grantor's expense, any and all of the Grantor's obligations or covenants relating to the Collateral and enforce performance by any other parties of their obligations in relation to the Collateral and settle any disputes with other parties upon terms that the Grantee deems appropriate, in its discretion;
- (i) notify all or any Account Borrowers of the security constituted by this General Security Agreement and direct such Account Borrowers to make all payments to the Grantee and the Grantee shall have the right, at any time, to hold all amounts acquired from any Account Borrowers as part of the Collateral. Upon the occurrence of an Event of Default which is continuing, any payments received by the Grantor from any Account Borrowers shall be held by the Grantor in trust for the Grantee in the same medium in which received, shall not be commingled with

any assets of the Grantor and shall, at the request of the Grantee, be turned over to the Grantee not later than the next Business Day following the day of receipt;

- (j) make payment of or cure any default under any Permitted Encumbrance or any Liens or other claims that may exist or be threatened against the Collateral, and any amount so paid together with costs, charges and expenses incurred together with interest at the Interest Rate shall be added to the Loan Indebtedness;
- (k) if the proceeds of realization are insufficient to pay all of the Loan Indebtedness, the Grantor shall forthwith pay or cause to be paid to the Grantee any deficiency and the Grantee may sue the Grantor to collect the amount of such deficiency;
- (l) subject to applicable law, seize, collect, realize, borrow money on the security of, release to third parties, sell (by way of public or private sale), lease or otherwise deal with the Collateral in such manner, upon such terms and conditions, at such time or times and place or places and for such consideration as may seem to the Grantee advisable and without notice to the Grantor. The Grantee may charge on its own behalf and pay to others sums for expenses incurred and for services rendered (expressly including legal, consulting, broker, management, receivership and accounting fees) in or in connection with seizing, collecting, realizing, borrowing on the security of, selling or obtaining payment of the Collateral and may add all such sums to the Loan Indebtedness;
- (m) enforce its rights under any agreement, to which the Grantee and the Grantor are parties, with any Securities Intermediary or Futures Intermediary; or
- (n) exercise all of the rights and remedies of a secured party under the PPSA and the STA.

#### **5.4 Allocation of proceeds**

Subject to applicable law and the claims, if any, of the creditors of the Grantor under Prior Permitted Encumbrances, the Grantee shall apply the proceeds of any collection, sale or other realization of all or any part of the Collateral, including any Collateral consisting of cash, to such part or parts of the Loan Indebtedness as the Grantee may see fit, and the Grantee shall at all times and from time to time have the right to change any appropriation as the Grantee sees fit.

#### **5.5 Waivers and Extensions**

The Grantee may waive default or any breach by the Grantor of any of the provisions contained in this General Security Agreement. No waiver shall extend to a subsequent breach or default, whether or not the same as or similar to the breach or default waived and no act or omission of the Grantee shall extend to or be taken in any manner whatsoever to affect any subsequent breach or default of the Grantor or the rights of the Grantee resulting therefrom. Any such waiver must be in writing and signed by the Grantee to be effective. The Grantee may also grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and

discharges, release the Collateral to third parties and otherwise deal with the Grantor's guarantors or sureties and others and with the Collateral and other securities as the Grantee may see fit without prejudice to the liability of the Grantor to the Grantee, or the Grantee's rights, remedies and powers under this General Security Agreement. No extension of time, forbearance, indulgence or other accommodation now, heretofore or hereafter given by the Grantee to the Grantor shall operate as a waiver, alteration or amendment of the rights of the Grantee or otherwise preclude the Grantee from enforcing such rights.

## **5.6 Remedies Cumulative and Waivers**

The rights and remedies of the Grantee under this General Security Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by applicable law or equity; and any single or partial exercise by the Grantee of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this General Security Agreement shall not be deemed to be a waiver of, or to alter, affect or prejudice, any other right or remedy to which the Grantee may be lawfully entitled for such default or breach. Any waiver by the Grantee of the strict observance, performance or compliance with any term, covenant, condition or other matter contained in this General Security Agreement and any indulgence granted, either expressly or by course of conduct by the Grantee shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any right or remedy of the Grantee under this General Security Agreement as a result of any other default or breach under this General Security Agreement.

## **5.7 Grantee's Fees and Expenses; Indemnification**

Any costs, charges and expenses (including legal fees and disbursements on an indemnity basis) incurred by the Grantee acting reasonably and without duplication, in connection with or incidental to:

- (a) the exercise by the Grantee of all or any of the powers granted to it pursuant to this General Security Agreement, the Mortgage or pursuant to applicable law or equity; and
- (b) the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted to the Receiver pursuant to this General Security Agreement, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;

shall be payable by the Grantor to the Grantee forthwith with interest until paid at the Interest Rate and such amounts shall form part of the Loan Indebtedness and constitute a charge upon the Collateral in favour of the Grantee prior to all claims subsequent to this General Security Agreement.

**ARTICLE 6**  
**APPOINTMENT OF ATTORNEY**

**6.1 Grant**

The Grantor hereby irrevocably appoints the Grantee to be the attorney of the Grantor or the Receiver, as the case may be, with full power of substitution, and with full authority in the place of the Grantor and in the name of the Grantor or otherwise, from time to time in the Grantee's discretion, to do all acts, matters and things that may be necessary for, incidental to, or advisable for, carrying out the powers given to the Grantee under this General Security Agreement, upon the occurrence of any Event of Default which is continuing (but the Grantee is not obligated to take such action and will have no liability to the Grantor or any third party for failure to take any action). This power of attorney is coupled with an interest and is irrevocable until the discharge of the Security Interests created by this General Security Agreement.

**ARTICLE 7**  
**LIABILITY OF THE MORTGAGEE**

**7.1 Liability of the Grantee**

Other than for its own gross negligence or wilful misconduct, the Grantee shall not be:

- (a) responsible or liable for any debts contracted by it, for damages to persons or property or for salaries or non-fulfilment of contracts during any period when the Grantee shall manage the Collateral upon entry or manage the business of the Grantor, as herein provided, nor shall the Grantee be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss or realization or for any default or omission for which a mortgagee in possession may be liable;
- (b) bound to do, observe or perform or to see to the observance or performance by the Grantor of any obligations or covenants imposed upon the Grantor nor shall the Grantee, in the case of Securities, Instruments or Chattel Paper, be obliged to reserve rights against other persons, nor shall the Grantee be obliged to keep any of the Collateral identifiable; and
- (c) obliged to inquire into the right of any Person purporting to be entitled under the PPSA to information and materials from the Grantee by making a demand upon the Grantee for such information and materials and the Grantee shall be entitled to comply with such demand and shall not be liable for having complied with such demand notwithstanding that such Person may in fact not be entitled to make such demand.

**7.2 Indemnity by Grantor**

The Grantor will indemnify the Grantee and hold the Grantee harmless from and against any and all claims, costs, losses, demands, actions, causes of action, lawsuits, damages,

penalties, judgments and liabilities of whatsoever nature and kind in connection with or arising out of any representation or warranty given by the Grantor, being untrue, the breach of any term, condition, proviso, agreement or covenant to the Grantee hereunder, or the exercise of any of the rights and or remedies of the Grantee hereunder, or any transaction contemplated in this General Security Agreement.

**ARTICLE 8**  
**SATISFACTION AND DISCHARGE**

**8.1 Partial Payment**

Any partial payment of the Loan Indebtedness or partial satisfaction of the Loan Obligations, or any ceasing by the Grantor to be indebted to the Grantee, shall be deemed not to be redemption or discharge of the security constituted by this General Security Agreement.

**8.2 Release and Discharge**

Upon registration of a discharge of the Mortgage, this General Security Agreement shall become of no force or effect. At such time as the Mortgage has been discharged, the Grantee will, upon the request of the Grantor, and at the sole cost and expense of the Grantor, execute and deliver to the Grantor such instruments as may be necessary or effective, in registrable form, to evidence the termination of the Security Interests pursuant to this General Security Agreement.

**ARTICLE 9**  
**MISCELLANEOUS**

**9.1 Demand Obligations**

The fact that this General Security Agreement provides for Events of Default and rights of acceleration shall not derogate from the nature of any Loan Indebtedness which is payable on demand.

**9.2 Filings**

The Grantor hereby authorizes the Grantee to file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying the Collateral or any Permitted Encumbrances affecting the Collateral or identifying the locations at which the Grantor's business is carried on and the Collateral and records relating thereto are situate) as the Grantee may deem appropriate to perfect and continue the security constituted hereby, to protect and preserve the Collateral and to realize upon the security constituted hereby.

**9.3 Liability to Advance**

None of the preparation, execution, perfection and registration of this General Security Agreement or the advance of any monies shall bind the Grantee to make any advance or

loan or further advance or loan, or renew any note or extend any time for payment of any indebtedness or liability of the Grantor to the Grantee or extend any term for performance or satisfaction of any obligation of the Grantor to the Grantee.

#### **9.4 Copy of Agreement and Financing Statement**

The Grantor hereby:

- (a) acknowledges receiving a copy of this General Security Agreement; and
- (b) waives all rights to receive from the Grantee a copy of any financing statement, financing change statement or verification statement filed at any time or from time to time in respect of this General Security Agreement.

#### **9.5 Statutory Waivers**

To the fullest extent permitted by law, the Grantor waives all of the rights, benefits and protections given by the provisions of any existing or future statute which imposes limitations upon the powers, rights or remedies of the Grantee or upon the methods of realization of security including, without limitation, those which impose higher or greater obligations upon the Grantee than provided in this General Security Agreement.

#### **9.6 Payments**

All payments required to be made by the Grantor to the Grantee under this General Security Agreement will be made at the address of the Grantee set out in Section 9.13 (or at any other place specified by the Grantee by written notice to the Grantor and the Covenantors) in immediately available funds in lawful Canadian currency, without any set off, counter claim or deduction.

#### **9.7 Modification**

No modification or waiver of this General Security Agreement is binding on the Grantee unless made in writing and signed by a duly authorized officer of the Grantee

#### **9.8 Entire Agreement**

On the execution and delivery by the Grantor, this General Security Agreement is deemed to be finally executed and delivered by the Grantor to the Grantee and is not subject to or affected by any condition as to the receipt by the Grantee of any of the other Security Documents or as to the execution and delivery by any of the other Covenantors to the Grantee of any other Loan Documents, nor by any promise or condition affecting the liability of the Grantor. No agreement, promise, representation or statement by the Grantee or any of its officers, employees or agents unless in this General Security Agreement forms part of this General Security Agreement, has induced the making of it or affects the liability of the Grantor or any Covenantor.



### **9.9 Severability**

If any Section or part thereof of this General Security Agreement is invalid or unenforceable for any reason, then such Section or any part thereof will be severable from this General Security Agreement and will not affect the validity or enforceability of any other part of this General Security Agreement.

### **9.10 Non-Merger**

The giving of this General Security Agreement is by way of additional and collateral security for the payment of the Loan Indebtedness and the performance of the Loan Obligations and not in substitution for or in satisfaction thereof, and the Commitment Letter, the Mortgage, or any of the other Loan Documents shall not be merged hereby and in case of an Event of Default that is continuing, proceedings may be taken under this General Security Agreement, the Mortgage, or any of the other Security Documents or any one or more of them at the option of the Grantee.

### **9.11 Paramountcy**

The provisions of any agreement between the Grantor and the Grantee in connection with the Loan Indebtedness, including but not limited to any loan application in respect thereof, the Mortgage, and all of the other Loan Documents, shall form part of this General Security Agreement except where inconsistent with the provisions hereof. In the case of any inconsistency between this General Security Agreement and the Mortgage, the provisions of the Mortgage shall prevail.

### **9.12 Assignability**

The Grantor hereby consents to the Grantee assigning, transferring or selling all or any portion of its interest under this General Security Agreement in connection with the proportionate assignment, transfer or sale of its interest in the Loan Indebtedness and the Loan Obligations. Without limiting the foregoing, the Grantee may enter into participation, contending or syndication agreements with other Grantees in connection with this General Security Agreement, the Loan Indebtedness and the Loan Obligations. The Grantee may provide information of a financial or other nature to any prospective assignee, or transferee or other Grantees concerning the Grantor, this General Security Agreement, the Loan Indebtedness and the Loan Obligations.

### **9.13 Notices**

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication to be given under or in connection with this General Security Agreement shall be in writing and shall be delivered by personal delivery, prepaid courier service, postage prepaid registered mail or by electronic or digital transmission to the relevant party, transmitted by e-mail or similar means of recorded electronic communication or sent by registered mail, addressed:

(a) to the Grantor:

1111 Clarkson Road, North  
Mississauga, Ontario  
L5J 2W1

Attention: Michael Moldenhauer  
Email: [mm@moldenhauer.ca](mailto:mm@moldenhauer.ca)  
Facsimile: 416-637-9633

with a copy to the Grantor's solicitors at

McCarthy Tetrault LLP  
Suite 5300 – 66 Wellington Street West  
Toronto, Ontario  
M5K 1E6

Attention: Sarit Pandya  
Email: [spandya@mccarthy.ca](mailto:spandya@mccarthy.ca)  
Facsimile: 416-601-7785

(b) to the Grantee:

Scotia Plaza  
40 King Street West, Suite 3700,  
Toronto, Ontario  
M5H 3Y2

Attention: Scott Coates  
Email: [SCoates@kingsettcapital.com](mailto:SCoates@kingsettcapital.com)  
Facsimile: 416-687-6701

and such notice or other communication shall be deemed to have been given and received on the day on which it was delivered personally or by courier or transmitted by electronic or digital transmission (or, if such day is not a business day or if delivery or transmission is made on a business day after 5:00 p.m. at the place of receipt, then on the next following business day) or, if mailed, on the third business day following the date of mailing; provided, however, that if at the time of mailing or within three business days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid. Each party may change its address for notice by providing notice of same in accordance with the foregoing.

#### **9.14 Expenses, Fees and Indemnity**

The Grantor will pay to the Grantee all costs, charges and expenses, including all administrative fees, legal fees and professional fees, incurred by the Grantee in

connection with the collection of any amount payable under this General Security Agreement by the Grantor to the Grantee. The Grantor shall indemnify the Grantee against all claims, loss or damages arising out of or in connection with any breach or default by the Grantor under this General Security Agreement.

**9.15 Applicable Law**

This General Security Agreement and the rights and obligations of the Grantor and the Grantee under it are governed by and construed according to the laws of the Province and the laws of Canada applicable therein.

**9.16 Time of the Essence**

Time is of the essence of this General Security Agreement.

**9.17 Execution by the Grantee**

This General Security Agreement need not be executed by the Grantee to be binding on and to enure to the benefit of the Grantee.

**9.18 Counterparts**

This General Security Agreement may be executed in any number of counterparts, each of which will constitute an original, but all of which together will constitute one and the same document. A signed copy of this General Security Agreement or a counterpart of it delivered by email, facsimile or other means of electronic or digital transmission or signature is deemed to have the same legal effect as delivery of an original signed copy of this General Security Agreement.

**9.19 Further Assurances**

The Grantor will promptly do all further acts and execute and deliver further documents as may be required to carry out the terms or intent of this General Security Agreement.

**9.20 Successors and Assigns**

This General Security Agreement is binding on and enures to the benefit of the Grantee and the Grantor, and their respective executors, administrators, successors and permitted assigns and to any Person to whom the Grantee may grant any participation in this General Security Agreement, the Loan Indebtedness or any of the Loan Obligations or any power, remedy or right of the Grantee under this General Security Agreement or any of the Grantee's interest herein or in the Loan Indebtedness and the Loan Obligations.

**9.21 Multiple Parties**

If the Grantor consists of more than one party, this General Security Agreement will be read with all necessary grammatical changes and each reference to the Grantor includes each and every such Person individually. All covenants and agreements herein of the Grantor are the joint and several covenants and agreements of each such Person. If the Grantee consists of more than one party, this General Security Agreement will be read with all necessary grammatical changes and each such party or any one or more of them is entitled to enforce each right and remedy of the Grantee under this General Security Agreement.

-- signatures follow on next page --

**IN WITNESS WHEREOF** the Grantor has executed this General Security Agreement as of the date and year first written above.

**759 WINSTON CHURCHILL GP INC.**, in  
its capacity as general partner for and on behalf  
of **759 WINSTON CHURCHILL L.P.**

Per:

Name:

Title:

  
M. GOLDENHABER

A.S.O.

Per:

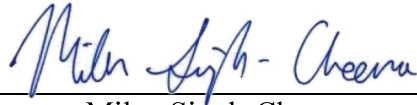
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THIS IS **EXHIBIT "K"** REFERRED TO IN THE AFFIDAVIT  
OF DANIEL POLLACK, SWORN BEFORE ME THIS  
12<sup>TH</sup> DAY OF FEBRUARY, 2024.



---

Milan Singh-Cheema  
A Commissioner for taking Affidavits  
(or as may be)

## GENERAL ASSIGNMENT OF MATERIAL CONTRACTS

THIS AGREEMENT made as of the \_\_\_ day of February, 2022.

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

**759 WINSTON CHURCHILL GP INC.**, in its capacity as general partner  
for and on behalf of **759 WINSTON CHURCHILL L.P.**

(the "**Assignor**")

OF THE FIRST PART

- and -

**KINGSETT MORTGAGE CORPORATION**

(the "**Assignee**")

OF THE SECOND PART

**WHEREAS** the Assignor, as mortgagor, has granted a mortgage (the "**Mortgage**") to and in favour of the Assignee, as mortgagee, of the lands and premises charged therein (the "**Property**"), notice of which was registered on the date hereof in the Land Registry Office for the Land Titles Division of Peel (No. 43) to secure the payment of principal, interest and other monies and the performance of all obligations arising thereunder, as amended, modified, supplemented or replaced from time to time;

**AND WHEREAS** as a condition for receiving the Loan Indebtedness, the Assignor agreed to assign to the Assignee, its successors and assigns, as a further continuing and collateral security for the payment of the Loan Indebtedness and observance and performance of the Loan Obligations, all of the Assignor's right, title and interest in and to the Material Contracts;

**NOW THEREFORE IN CONSIDERATION** of the recitals, the Assignee extending the Loan Indebtedness and for such other good and valuable consideration received by the Assignor, the receipt and adequacy of which is acknowledged by the Assignor, the Assignor agrees with the Assignee as follows:

### **ARTICLE 1** **DEFINITIONS, INTERPRETATION**

#### **1.1 Definitions**

Capitalized terms that are not defined herein have the meanings set out in the Mortgage. Otherwise, in this Agreement:

- (a) "**Effective Date**" has the meaning ascribed to it in Section 2.7;
- (b) "**Enforcement Notice**" has the meaning ascribed to it in Section 2.7;



- (c) "**Indebtedness**", in respect of any Person, is used in its most comprehensive sense and includes any and all advances, debts, duties, endorsements, guarantees, liabilities, obligations, responsibilities and undertakings of such Person at any time assumed, incurred or made, however arising, whether or not now due, absolute or contingent, liquidated or unliquidated, direct or indirect, and whether such Person is liable individually or jointly with others, irrespective of the regularity or validity thereof or of any security therefor;
- (d) "**Loan Indebtedness**" means any Indebtedness from time to time of the Assignor or any of the other Covenantors to the Assignee arising under any of the Loan Documents;
- (e) "**Loan Obligations**" means the obligations of the Assignor or any of the other Covenantors arising under the Loan Documents;
- (f) "**Material Contracts**" means, collectively, all of the Assignor's right, title and interest in and to all contracts, agreements, permits, and licenses, material or significant to the ownership, management, development, construction or operation of the Property, as applicable, and which the Assignee designates from time to time as material to the Property, including, without limitation, the contracts relating to engineering specifications and drawings, architectural specifications and drawings, all other specifications and drawings related to the Project, plans, construction contracts, licenses and permits (including without limitation any and all building and development permits), as the same may be amended, restated, modified, supplemented, assigned and/or assumed from time to time, including without limitation, the benefits of and advantages under all undertakings given to the Assignor in connection with its acquisition of the Property; and
- (g) "**Other Party**" means a Person from whom the Assignor would have been entitled to receive or claim any benefit under a Material Contract.

## 1.2 Interpretation

For the purposes of this Agreement, all references to the singular include the plural where the context so admits, the masculine to include the feminine and neuter gender and, where necessary, a body corporate, and vice versa.

## 1.3 Headings

In this Agreement, the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this Agreement.

# **ARTICLE 2** **AGREEMENT**

## 2.1 Assignment

As continuing collateral security for the payment of the Loan Indebtedness and performance of the Loan Obligations, the Assignor hereby assigns, transfers and sets over

unto the Assignee, its successors and assigns, and grants a security interest in all of the Assignor's right, title and interest, both at law and in equity, in and to the Material Contracts (to the extent assignable), including, without limitation: (i) the benefit of all representations, warranties, conditions, terms and covenants made or contained in the Material Contracts or implied or expressed by law in relation thereto; (ii) all moneys due or accruing due or at any time hereafter to become due under the Material Contracts, as applicable; and (iii) all rights, benefits and advantages derived from the Material Contracts and any and all present and future guarantees or indemnities of all or any of the obligations under the Material Contracts, as applicable, together with the full benefit of all security in support of such guarantees or indemnities.

## **2.2 Default and Power of Attorney**

So long as the Loan Indebtedness and the Loan Obligations, or any portion thereof, remains outstanding:

- (a) the Assignor hereby irrevocably appoints the Assignee, or any receiver appointed by the Assignee pursuant to any of the Loan Documents, to be the attorney of the Assignor with full power of substitution, and with full authority in the place of the Assignor and in the name of the Assignor or otherwise, from time to time in the Assignee's discretion, to do all acts and things that may be necessary for, incidental to, or advisable for, carrying out the powers given to the Assignee under this Agreement upon the occurrence of any Event of Default which is continuing. This power of attorney is given for valuable consideration, is coupled with an interest, and is irrevocable until registration of a complete discharge of the Mortgage;
- (b) in the event any action is brought by the Assignee to enforce any rights under any of the Material Contract, the Assignor agrees to cooperate fully with and assist the Assignee in the prosecution thereof;
- (c) without limiting any other provision of this Agreement, upon and during the continuance of an Event of Default, the Assignor hereby specifically authorizes and directs each Other Party upon written notice to it by the Assignee to make all payments due under or arising under the Material Contracts directly to the Assignee and hereby irrevocably authorizes and empowers the Assignee after an Event of Default and for so long as it is continuing to request, demand, receive, and give acquittance for any and all amounts which may be or become due or payable or remain unpaid at any time to the Assignor under and pursuant any Material Contract, and to endorse any cheques, drafts or other orders for the payment of money payable to the Assignor in payment thereof, and in the Assignee's discretion, to file any claims or take any action or proceeding, either in its own name or in the name of the Assignor or otherwise, which the Assignee may deem necessary or desirable in its sole discretion; and
- (d) the Assignee shall not be required or obligated in any manner to make any demand or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim or take any other action to collect or enforce the payment of any amounts which may have been assigned to the Assignee or to which the Assignee may be entitled hereunder at any time or times.

### **2.3 Consent; Limitation on Assignment**

Nothing in this Agreement shall constitute an assignment or attempted assignment of any of the Material Contracts which by its provisions or by applicable law is not assignable, which would result in the termination of or a breach under such Material Contract, or which requires the consent of any Other Party to its assignment unless such consent has been obtained. With respect to any Material Contract which the Assignee reasonably determines to be material, the Assignor shall attempt to obtain the consent of any necessary Other Party to its assignment under this Agreement and to its further assignment by the Assignee to any Other Party as a result of the exercise by the Assignee of remedies after demand. Upon such consent being obtained or waived, this Agreement shall apply to the applicable Material Contract without regard to this section and without the necessity of any further assurance to effect such assignment. Unless and until the consent to assignment is obtained as provided above, the Assignor shall, to the extent it may do so at law or pursuant to the provisions of such Material Contract or interest in question, hold all benefit to be derived from such Material Contract in trust for the Assignee (including the Assignor's beneficial interest in any such Material Contract which may be held in trust for the Assignee by a third party), as additional security for the payment of the Loan Indebtedness and performance of the Loan Obligations.

### **2.4 Representations and Warranties**

The Assignor represents and warrants to and in favour of the Assignee that:

- (a) the Assignor has good right, full power and absolute authority to assign the Material Contracts in the manner aforesaid, and has not performed any act or executed any other instrument which might prevent the Assignee from operating under the terms and conditions of this Agreement or which would limit the Assignee in such operation;
- (b) each Material Contract is in existence, is unamended, and is in full force and effect, and there is no existing dispute under any of them;
- (c) there is currently no default by any Other Party to a Material Contract under any term, condition or covenant required to be performed by it under any Material Contract;
- (d) the copies of any Material Contracts delivered to the Assignee are true and complete copies of those Material Contracts; and
- (e) the Assignor has observed and performed all of its obligations under the Material Contracts and will, in all material aspects, continue hereafter to observe and perform all of its obligations under the Material Contracts.

### **2.5 Right to Deal**

Until the occurrence of an Event of Default which is continuing, the Assignor is permitted to enjoy the benefits of and deal with the Material Contracts and to enforce or sue in respect of any representation, warranty, condition, term or covenant under any Material Contract,

and any Other Party shall be entitled to deal with the Assignor until receipt of written notice from the Assignee stating that they should no longer deal with the Assignor.

## **2.6 Continuing Security**

Notwithstanding any variation of the terms of the Mortgage or any of the other Security Documents, or any extension of time for payment or any release of any security, this Agreement shall continue as collateral security until the payment in full of the Loan Indebtedness and observance and performance of all of the Loan Obligations.

## **2.7 Enforcement**

The Assignee, upon the occurrence of an Event of Default and for so long as it is continuing may, but shall not be bound to enforce its rights and remedies under this Agreement. Upon the Assignee's election to enforce its rights and remedies under this Agreement, the Assignee or its agent shall give written notice (the "**Enforcement Notice**") concurrently to the Assignor and the affected Other Party or Parties advising that the Assignee has elected to: (i) terminate their Material Contract effective as of the date set out in the Enforcement Notice, which date shall be five (5) Business Days after the date of the Enforcement Notice (the "**Effective Date**"); or (ii) enforce its rights and remedies under this Agreement and requiring the Other Party or Parties, to deal directly with the Assignee (subject to the provisions of Section 2.10), and the Assignor covenants and agrees, at the request of the Assignee, to join with the Assignee in such notice and hereby irrevocably appoints the Assignee as its attorney to join the Assignor in such notice.

## **2.8 Waiver of Event of Default**

The Assignee may waive any Event of Default or breach of covenant and shall not be bound to exercise its rights hereunder or to serve the Enforcement Notice upon any Other Party upon the happening of any Event of Default but any such waiver shall not extend to any subsequent Event of Default.

## **2.9 Negative Covenants of the Assignor**

That the Assignor shall not, without the consent in writing of the Assignee:

- (a) assign, pledge, or hypothecate the Material Contracts other than to the Assignee or to the holder of any Prior Permitted Encumbrance and shall not do or omit to do or permit any act to be done which either directly or indirectly has the effect of waiving, releasing, reducing or abating any rights, remedies or obligations of any party thereunder or in connection therewith, other than as permitted under the Loan Documents; and
- (b) terminate, accept a surrender of, or agree to any modification or amendment to the Material Contracts which would materially adversely change the obligations of the Assignor thereunder, other than as permitted under the Loan Documents.

## **2.10 Assignee's Obligations and Limitation on Liabilities**

It is expressly acknowledged and agreed by the Assignor and the Assignee that:

- (a) effective from and after the Effective Date, the Assignee shall be entitled to enforce all of the rights and remedies granted to it hereunder on the condition that the Assignee, from and after the Effective Date, assumes responsibility for the performance of all of the covenants, provisions, stipulations, terms and conditions under the Material Contracts on the part of the Assignor to be performed. Notwithstanding the foregoing, the Assignee shall not be liable to cure any defaults of the Assignor then existing under the Material Contracts;
- (b) nothing herein contained shall oblige the Assignee to assume or perform any obligation of the Assignor to any Other Party in respect of or arising out of the Material Contracts. The Assignee may, however, after the occurrence of an Event of Default which is continuing, at its option, assume or perform any such obligations as the Assignee considers necessary or desirable to obtain the benefit of the Material Contracts, free of any set-off, deduction or abatement, and any money expended by the Assignee in this regard shall form part of and be deemed to form part of the Loan Indebtedness and bear interest at the Interest Rate;
- (c) exercise by the Assignee of its rights under this Agreement or the assumption of certain obligations of the Assignor upon the occurrence of an Event Default as referred to in Subsection 2.10(a) shall not constitute or have the effect of making the Assignee a mortgagee in possession; and
- (d) the Assignee shall not be by reason of this Agreement or the exercise of any right granted herein, responsible for any act committed by the Assignor or any breach or failure to perform by the Assignor with respect to any Material Contract.

## **2.11 Reassignment/Discharge**

The Assignee may, at any time and whether or not an Event of Default has occurred, without further request or agreement by the Assignor, reassign to the Assignor, its successors and assigns, all or any of the Material Contracts by an instrument of reassignment in writing executed by the Assignee delivered to the Assignor, its successors and assigns, at the address for notice herein provided. Such instrument upon delivery shall constitute a good and sufficient reassignment of all of the Assignee's right, title and interest in and benefit of the Material Contracts to which it pertains and a good and valid release and termination of obligations (if any) of the Assignee with respect thereto. Such reassignment shall not expressly or impliedly constitute any representation or warranty by the Assignee to the Assignor as to any Material Contract or anything related thereto. Upon registration of a discharge of the Mortgage, this Agreement shall thereupon become and be of no force or effect. At such time as the Mortgage has been discharged, the Assignee will, upon the request of the Assignor, and at the sole cost and expense of the Assignor, execute and deliver to the Assignor such instruments as may be necessary or effective, in registrable form, to evidence the termination of this Agreement and the reassignment to the Assignor of the Material Contracts.

**ARTICLE 3**  
**MISCELLANEOUS**

**3.1 Payments**

All payments required to be made by the Assignor to the Assignee under this Agreement will be made at the address of the Assignee set out in Section 3.9 (or at any other place specified by the Assignee by written notice to the Assignor) in immediately available funds in lawful Canadian currency, without any set off, counter claim or deduction.

**3.2 Failure of Indulgence Not Waiver**

No extension of time, waiver, or other indulgence given by the Assignee to the Assignor, or anyone claiming under the Assignor, shall in any way affect or prejudice the rights of the Assignee against the Assignor, or any other Covenantor. Each power and right under this Agreement is cumulative and is in addition to and not in substitution for any other rights and remedies at law, or in equity or otherwise.

**3.3 Modification**

No modification or waiver of this Agreement is binding on the Assignee unless made in writing and signed by a duly authorized officer of the Assignee.

**3.4 Entire Agreement**

On execution and delivery by the Assignor, this Agreement is deemed to be finally executed and delivered by the Assignor to the Assignee and is not subject to or affected by any condition as to the receipt by the Assignee of any of the other Security Documents or as to the execution and delivery by any of the other Covenantors to the Assignee of any other Loan Documents, nor by any promise or condition affecting the liability of the Assignor. No agreement, promise, representation or statement by the Assignee or any of its officers, employees or agents unless in this Agreement forms part of this Agreement, has induced the making of it or affects the liability of the Assignor or any Covenantor under it.

**3.5 Severability**

If any Section or part thereof of this Agreement is invalid or unenforceable for any reason, then such Section or part thereof will be severable from this Agreement and will not affect the validity or enforceability of any other part of this Agreement.

**3.6 Non-Merger**

The giving of this Agreement is by way of additional and collateral security for the payment of the Loan Indebtedness and the performance of the Loan Obligations and not in substitution for or in satisfaction thereof, and the Commitment Letter, the Mortgage or any of the other Loan Documents shall not be merged hereby and in case of an Event of Default that is continuing, proceedings may be taken under this Agreement, the Mortgage, or any of the other Security Documents or any one or more of them at the option of the Assignee.

### 3.7 Paramountcy

The provisions of any agreement between the Assignor and the Assignee in connection with the Loan Indebtedness, including but not limited to any loan application in respect thereof, the Mortgage and all of the other Loan Documents, shall form part of this Agreement except where inconsistent with the provisions hereof. In the case of any inconsistency between this Agreement and the Mortgage, the provisions of the Mortgage shall prevail.

### 3.8 Assignability

The Assignor hereby consents to the Assignee assigning, transferring or selling all or any portion of its interest under this Agreement in connection with the proportionate assignment, transfer or sale of its interest in the Loan Indebtedness and the Loan Obligations. Without limiting the foregoing, the Assignee may enter into participation, contending or syndication agreements with other lenders in connection with this Agreement, the Loan Indebtedness and the Loan Obligations. The Assignee may provide information of a financial or other nature to any prospective assignee, transferee, purchaser or other lenders concerning the Assignor, this Agreement, the Loan Indebtedness and the Loan Obligations.

### 3.9 Notices

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication to be given under or in connection with this Agreement shall be in writing and shall be delivered by personal delivery, prepaid courier service, postage prepaid registered mail or by electronic or digital transmission to the relevant party, addressed:

(a) to the Assignor:

1111 Clarkson Road, North  
Mississauga, Ontario  
L5J 2W1

Attention: Michael Moldenhauer  
Email: [mm@moldenhauer.ca](mailto:mm@moldenhauer.ca)

(b) Facsimile: 416-637-9633

with a copy to the Assignor's solicitors at

McCarthy Tetrault LLP  
Suite 5300 – 66 Wellington Street West  
Toronto, Ontario  
M5K 1E6

Attention: Sarit Pandya  
Email: [spandya@mccarthy.ca](mailto:spandya@mccarthy.ca)  
Facsimile: 416-601-7785

(c) to the Assignee:

Scotia Plaza  
40 King Street West, Suite 3700,  
Toronto, Ontario  
M5H 3Y2

Attention: Scott Coates  
Email: [SCoates@kingsettcapital.com](mailto:SCoates@kingsettcapital.com)  
Facsimile: 416-687-6701

and such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a business day or if delivery or transmission is made on a business day after 5:00 p.m. at the place of receipt, then on the next following business day) or, if mailed, on the third (3<sup>rd</sup>) business day following the date of mailing; provided, however, that if at the time of mailing or within three (3) business days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid. Each party may change its address for notice by providing notice of same in accordance with the foregoing.

### **3.10 Expenses, Fees and Indemnity**

The Assignor will pay to the Assignee all costs, charges and expenses, including all administrative fees, legal fees and professional fees, incurred by the Assignee in connection with the collection of any amount payable under this Agreement by the Assignor to the Assignee. The Assignor shall indemnify the Assignee against all claims, loss or damages arising out of or in connection with any breach or default by the Assignor under this Agreement.

### **3.11 Applicable Law**

This Agreement and the rights and obligations of the Assignor and the Assignee under it are governed by and construed according to the laws of the jurisdiction in which the Property are situate and the laws of Canada applicable therein.

### **3.12 Time of the Essence**

Time is of the essence of this Agreement.

### **3.13 Execution by the Assignee**

This Agreement need not be executed by the Assignee to be binding on and to enure to the benefit of the Assignee.

### **3.14 Counterparts**

This Agreement may be executed (including by DocuSign or other electronic means) in any number of counterparts and delivered (including by DocuSign or other electronic



means) in any number of counterparts, each of which (including any electronic transmission of an executed signature page), is deemed to be an original, and such counterparts together constitute one and the same agreement.

### **3.15 Further Assurances**

The Assignor will promptly do all further acts and execute and deliver further documents as may be required to carry out the terms or intent of this Agreement.

### **3.16 Successors and Assigns**

This Agreement is binding on and enures to the benefit of the Assignee and the Assignor, and their respective executors, administrators, successors and permitted assigns and to any Person to whom the Assignee may grant any participation in this Agreement, the Loan Indebtedness or any of the Loan Obligations or any power, remedy or right of the Assignee under this Agreement or any of the Assignee's interest herein or in the Loan Indebtedness and the Loan Obligations.

### **3.17 Multiple Parties**

If the Assignor consists of more than one party, this Agreement will be read with all necessary grammatical changes and each reference to the Assignor includes each and every such Person individually. All covenants and agreements herein of the Assignor are the joint and several covenants and agreements of each such Person. If the Assignee consists of more than one party, this Agreement will be read with all necessary grammatical changes and each such party or any one or more of them is entitled to enforce each right and remedy of the Assignee under this Agreement.

-- signatures follow on next page --

IN WITNESS WHEREOF the Assignor has executed this Agreement as of the date and year first written above.

759 WINSTON CHURCHILL GP INC., in  
its capacity as general partner for and on behalf  
of 759 WINSTON CHURCHILL L.P.

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

Name: M. MOLDENTHAUSE

Title: A.S.O.

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

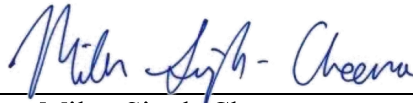
Name:

Title:

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# T A B L

THIS IS **EXHIBIT "L"** REFERRED TO IN THE AFFIDAVIT  
OF DANIEL POLLACK, SWORN BEFORE ME THIS  
12<sup>TH</sup> DAY OF FEBRUARY, 2024.



---

Milan Singh-Cheema  
A Commissioner for taking Affidavits  
(or as may be)

## ASSIGNMENT OF INSURANCE

THIS AGREEMENT made as of the \_\_\_ day of February, 2022.

B E T W E E N:

**759 WINSTON CHURCHILL GP INC.**, in its capacity as general partner  
for and on behalf of **759 WINSTON CHURCHILL L.P.**

(the "Assignor")

OF THE FIRST PART

- and -

**KINGSETT MORTGAGE CORPORATION**

(the "Assignee")

OF THE SECOND PART

**WHEREAS** the Assignor, as mortgagor, has granted a mortgage (the "**Mortgage**") to and in favour of the Assignee, as mortgagee, of the lands and premises charged therein (the "**Property**"), notice of which was registered on the date hereof in the Land Registry Office for the Land Titles Division of Peel (No. 43) to secure the payment of principal, interest and other monies and the performance of all obligations arising thereunder, as amended, modified, supplemented or replaced from time to time;

**AND WHEREAS** as a condition for receiving the Loan Indebtedness, the Assignor agreed to assign to the Assignee, its successors and assigns, as a further continuing and collateral security for the payment of the Loan Indebtedness and observance and performance of the Loan Obligations, all of the Assignor's right, title and interest in and to the Policies;

**NOW THEREFORE IN CONSIDERATION** of the recitals, the Assignee extending the Loan Indebtedness and for such other good and valuable consideration received by the Assignor, the receipt and adequacy of which is acknowledged by the Assignor, the Assignor agrees with the Assignee as follows:

### **ARTICLE 1** **DEFINITIONS, INTERPRETATION**

#### **1.1 Definitions**

Capitalized terms that are not defined herein have the meanings set out in the Mortgage. Otherwise, in this Agreement:

- (a) "**Indebtedness**", in respect of any Person, is used in its most comprehensive sense and includes any and all advances, debts, duties, endorsements, guarantees, liabilities, obligations, responsibilities and undertakings of such Person at any time

assumed, incurred or made, however arising, whether or not now due, absolute or contingent, liquidated or unliquidated, direct or indirect, and whether such Person is liable individually or jointly with others, irrespective of the regularity or validity thereof or of any security therefor;

- (b) "**Loan Indebtedness**" means any Indebtedness from time to time of the Assignor or any of the other Covenantors to the Assignee arising under any of the Loan Documents;
- (c) "**Loan Obligations**" means the obligations of the Assignor or any of the other Covenantors arising under the Loan Documents;
- (d) "**Policies**" means any and all insurance policies maintained by the Assignor in respect of the Property, including without limitation, those Policies reflected in the certificates attached in Schedule "A" hereto, as they may be amended, restated, modified, supplemented, renewed or replaced from time to time.

## 1.2 Interpretation

For the purposes of this Agreement, all references to the singular include the plural where the context so admits, the masculine to include the feminine and neuter gender and, where necessary, a body corporate, and vice versa.

## 1.3 Headings

In this Agreement, the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this Agreement.

# **ARTICLE 2** **AGREEMENT**

## 2.1 Assignment

The Assignor does hereby assign, transfer and set over unto the Assignee, as additional insured and loss payee as the Assignee's interest may appear, all of the Assignor's right, title and interest, in the entire amount of proceeds from time to time payable to the Assignor with respect to the Property under any and all Policies, whether now or hereafter existing, in each case subject to the terms and conditions of the Permitted Encumbrances, and the rights of the creditors of the Assignor and other parties with, in each case, priority to collect such proceeds, and with full power, following the occurrence of an Event of Default which is continuing, to receive all money payable, held or accumulated as aforesaid with respect to such Policies, and to grant receipts thereof which shall effectually discharge the issuing insurance companies thereof (the "**Insurers**") and exonerate the Insurers from seeing to the application of the money therein acknowledged to have been received and from being accountable for any disposition thereof or dealing therewith. Without restricting the generality of the foregoing, all of the Assignor's rights and benefits under the Policies are hereby vested in the Assignee, including the right to bring action to recover monies under the Policies. Provided however that nothing contained in this Agreement shall be construed

so as to oblige the Assignee to pay any premiums owing under the policies or to otherwise maintain the Policies in good standing.

## **2.2 Covenants**

So long as the Loan Indebtedness and the Loan Obligations, or any portion thereof, remains outstanding, the Assignor shall:

- (a) keep and maintain insurance on the Property in accordance with the requirements of the Assignee as set forth in the Loan Documents;
- (b) pay all premiums owing in respect of the Policies as the same become due;
- (c) refrain from committing or omitting any acts which could or would affect the validity or enforceability of the Policies; and
- (d) from time to time, at the reasonable request of the Assignee, provide the Assignee with evidence that the Policies have been obtained and are in good standing.

## **2.3 Power of Attorney**

Effective upon, and during the continuance of, an Event of Default, the Assignor hereby constitutes and appoints any officer or director of the Assignee from time to time, or any receiver appointed of the Assignor, the true and lawful attorney of the Assignor irrevocably with full power of substitution to do, make and execute all such documents, acts, matters or things with the right to use the name of the Assignor whenever and wherever it may be deemed necessary or expedient in connection with the exercise of its rights and remedies set forth in this Agreement. The Assignor hereby declares that the irrevocable power of attorney granted hereby, being coupled with an interest, is given for valuable consideration.

## **2.4 Reassignment/Discharge**

The Assignee may, at any time and whether or not an Event of Default has occurred, without further request or agreement by the Assignor, reassign to the Assignor, its successors and assigns, all or any of the Policies by an instrument of reassignment in writing executed by the Assignee delivered to the Assignor, its successors and assigns, at the address for notice herein provided. Such instrument upon delivery shall constitute a good and sufficient reassignment of all of the Assignee's right, title and interest in and benefit of the Policies to which it pertains and a good and valid release and termination of obligations (if any) of the Assignee with respect thereto. Such reassignment shall not expressly or impliedly constitute any representation or warranty by the Assignee to the Assignor as to the Policies or anything related thereto. Upon registration of a discharge of the Mortgage, this Agreement shall thereupon become and be of no force or effect. At such time as the Mortgage has been discharged, the Assignee will, upon the request of the Assignor, and at the sole cost and expense of the Assignor, execute and deliver to the Assignor such instruments as may be necessary or effective, in registrable form, to evidence the termination of this Agreement and/or the reassignment to the Assignor of the Policies.

**ARTICLE 3**  
**MISCELLANEOUS**

**3.1 Payments**

All payments required to be made by the Assignor to the Assignee under this Agreement will be made at the address of the Assignee set out in Section 3.9 (or at any other place specified by the Assignee by written notice to the Assignor) in immediately available funds in lawful Canadian currency, without any set off counter claim or deduction.

**3.2 Failure of Indulgence Not Waiver**

No failure or delay by the Assignee in the exercise of any power or right under this Agreement constitutes a waiver thereof, nor does any exercise of any such power or right preclude any other exercise of same. Each power and right under this Agreement is cumulative with, and not exclusive of, any power or right otherwise available.

**3.3 Modification**

No modification or waiver of this Agreement is binding on the Assignee unless made in writing and signed by a duly authorized officer of the Assignee.

**3.4 Entire Agreement**

On the execution and delivery by the Assignor, this Agreement is deemed to be finally executed and delivered by the Assignor to the Assignee and is not subject to or affected by any condition as to the receipt by the Assignee of any of the other Security Documents or as to the execution and delivery by any of the other Covenantors to the Assignee of any other Loan Documents, nor by any promise or condition affecting the liability of the Assignor. No agreement, promise, representation or statement by the Assignee or any of its officers, employees or agents unless in this Agreement forms part of this Agreement, has induced the making of it or affects the liability of the Assignor and any Covenantor under it.

**3.5 Severability**

If any part or provision of this Agreement is determined to be invalid, illegal or unenforceable, it will be severable from this Agreement and the remainder of this Agreement will be construed as if such invalid, illegal or unenforceable provision or part had been deleted.

**3.6 Non-Merger**

The giving of this Agreement is by way of additional and collateral security for the payment of the Loan Indebtedness and the performance of the Loan Obligations and not in substitution for or in satisfaction thereof, and the Commitment Letter, the Mortgage or any of the other Loan Documents shall not be merged hereby and in case of an Event of Default



that is continuing, proceedings may be taken under this Agreement, the Mortgage, or any of the other Security Documents or any one or more of them at the option of the Assignee.

### **3.7 Paramountcy**

The provisions of any agreement between the Assignor and the Assignee in connection with the Loan Indebtedness, including but not limited to any loan application in respect thereof, the Mortgage and all of the other Loan Documents, shall form part of this Agreement except where inconsistent with the provisions hereof. In the case of any inconsistency between this Agreement and the Mortgage, the provisions of the Mortgage shall prevail.

### **3.8 Assignability**

The Assignor hereby consents to the Assignee assigning, transferring or selling all or any portion of its interest under this Agreement, the Loan Indebtedness and the Loan Obligations and without limiting the foregoing, the Assignee may enter into participation, contending or syndication agreements with other lenders in connection with this Agreement, the Loan Indebtedness and the Loan Obligations. The Assignee may provide information of a financial or other nature to any prospective assignee, transferee, purchaser or other lenders concerning the Assignor, this Agreement, the Loan Indebtedness and the Loan Obligations.

### **3.9 Notices**

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication to be given under or in connection with this Agreement shall be in writing and shall be delivered in Person, transmitted by e-mail or similar means of recorded electronic communication or sent by registered mail, charges pre-paid, addressed:

(a) to the Assignor:

1111 Clarkson Road, North  
Mississauga, Ontario  
L5J 2W1

Attention: Michael Moldenhauer  
Email: [mm@moldenhauer.ca](mailto:mm@moldenhauer.ca)  
Facsimile: 416-637-9633

with a copy to the Assignor's solicitors at

McCarthy Tetrault LLP  
Suite 5300 – 66 Wellington Street West  
Toronto, Ontario  
M5K 1E6

Attention: Sarit Pandya  
Email: [spandya@mccarthy.ca](mailto:spandya@mccarthy.ca)  
Facsimile: 416-601-7785

(b) to the Assignee:

Scotia Plaza  
40 King Street West, Suite 3700,  
Toronto, Ontario  
M5H 3Y2

Attention: Scott Coates  
Email: [SCoates@kingsettcapital.com](mailto:SCoates@kingsettcapital.com)  
Facsimile: 416-687-6701

and such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a business day or if delivery or transmission is made on a business day after 5:00 p.m. at the place of receipt, then on the next following business day) or, if mailed, on the third (3<sup>rd</sup>) business day following the date of mailing; provided, however, that if at the time of mailing or within three (3) business days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid. Each party may change its address for notice by providing notice of same in accordance with the foregoing.

### **3.10 Expenses, Fees and Indemnity**

The Assignor will pay to the Assignee all reasonable costs, charges and expenses, including all administrative fees, legal fees and professional fees, incurred by the Assignee in connection with the collection of any amount payable under this Agreement by the Assignor to the Assignee. The Assignor shall indemnify the Assignee against all claims, loss or damages arising out of or in connection with any breach or default by the Assignor under this Agreement.

### **3.11 Applicable Law**

This Agreement and the rights and obligations of the Assignor and the Assignee under it are governed by and construed according to the laws of the jurisdiction in which the Property are situate (the "**Province**") and the laws of Canada applicable therein.

### **3.12 Time of the Essence**

Time is of the essence of this Agreement.

### **3.13 Jurisdiction**

Any legal action or proceeding with respect to this Agreement may be brought, in the discretion of the Assignee, in the courts of the Province or in such other courts as the Assignee in its sole discretion elects and the Assignor irrevocably submits to each such jurisdiction.

### **3.14 Execution by the Assignee**

This Agreement need not be executed by the Assignee to be binding on and to enure to the benefit of the Assignee.

### **3.15 Counterparts**

This Agreement may be executed in any number of counterparts, each of which will constitute an original, but all of which together will constitute one and the same document, and such will not affect the obligations of the Assignor under this Agreement. This Agreement or counterparts hereof may be executed by fax or email PDF, and the parties shall adopt any signatures provided or received by fax or email PDF as original signatures of the applicable party or parties, provided that any party providing its signature by fax or email PDF shall promptly forward to the other party a copy of this Agreement with an original signature.

### **3.16 Further Assurances**

The Assignor will promptly do all further acts and execute and deliver further documents as the Assignee considers necessary or advisable to carry out the terms or intent of this Agreement.

### **3.17 Successors and Assigns**

This Agreement is binding on and enures to the benefit of the Assignee and the Assignor, and their respective executors, administrators, successors and assigns and to any Person to whom the Assignee may grant any participation in this Agreement, the Loan Indebtedness or any of the Loan Obligations or any power, remedy or right of the Assignee under this Agreement or any of the Assignee's interest herein or in the Loan Indebtedness and the Loan Obligations.

### **3.18 Multiple Parties**

If the Assignor consists of more than one party, this Agreement will be read with all necessary grammatical changes and each reference to the Assignor includes each and every such Person or corporation individually. All covenants and agreements herein of the Assignor are the joint and several covenants and agreements of each such Person or

corporation. If the Assignee consists of more than one party, this Agreement will be read with all necessary grammatical changes and each such party or any one or more of them is entitled to enforce each right and remedy of the Assignee under this Agreement.

-- signatures follow on next page --

**IN WITNESS WHEREOF** the Assignor has executed this Agreement as of the date and year first written above.

**759 WINSTON CHURCHILL GP INC.**, in  
its capacity as general partner for and on behalf  
of **759 WINSTON CHURCHILL L.P.**

Per:



Name: M. MOLMENHAUER  
Title: A.S.O.

Per:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE "A"**  
**INSURANCE CERTIFICATE**

Please see attached.

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**KINGSETT MORTGAGE CORPORATION**      and      **759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P.,  
688 SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL  
WINDSOR GP INC. and 2226 ROYAL WINDSOR LP**

Applicant

Respondents

Court File No.: CV-24-00714543-00CL

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

Proceedings commenced in Toronto

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**APPLICATION RECORD  
(Volume I of III)**

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Lawyers for the Applicant